

## Articles

### Rights and support: a conversation

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with Fatima Ahdash, Emily Jackson, Dafni Lima, Daniel Monk, Julie McCandless, Beth Tarleton, Rachel Taylor, and Sarah Trotter

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Note from the editors: in the conversation that follows, which took place on Friday 18 October 2024, members of the project discuss the three reflection pieces that feature in the *rights and support* section of the special issue: Daniel Monk's paper 'Elective home education: rights and their limits', Rachel Taylor's paper 'The limits of parental authority', and Beth Tarleton and Nadine Tilbury's paper 'Substituted parenting: assumptions, stigma and parents with learning disabilities'.

FATIMA: The thing that struck me the most about your paper, Beth, was that it was such an interesting continuation of our discussion during the last two panels. One of the major themes that came out of those discussions was a call for rethinking parenthood, to focus instead on the 'what' of parenting (that is parental responsibility) rather than the 'who' of parenthood. But what I thought was interesting in your paper, especially some of the quotes that you outlined from the practitioners and judges you interviewed, was this pervasive idea that parents with learning disabilities who are getting state support were doing such little 'real' parenting as to basically no longer really be recognised, even symbolically, as parents. So, if we do take the call from the last panel seriously and move beyond *parenthood* as a status and focus on *parental responsibility*, some of these parents with learning difficulties you wrote about Beth would lose any recognition of their role as parents, even if it is just symbolic. Because if you do look at parents with learning difficulties from the lens of parental responsibility, then it looks like these parents are doing so little 'actual' parenting that they are no longer really parents and instead there is the 'substituted' parenting of the social workers and professionals. So, your work, Beth, almost flags up the dangers of the discourse in the previous panels around abolishing parenthood as a legal category.

BETH: They are doing so 'little' parenting because of the assumption that they cannot parent and so professionals take over. I think going back to what you were saying, Fatima, you can take away – in legal terms – parenthood and just talk about parental responsibility, but these parents with learning difficulties will still feel that they *are* the parents of those children. So, is the *legal* discussion actually the *real-life* discussion? Because I've met a mother who has had 8 kids removed, but she still feels like she's still the parent to all of them, even though she's not in touch with any of them. Parents with learning disabilities are already vulnerable – they are not seen as proper citizens and they are often stigmatised. Becoming a parent is a valued role that they can have and they can do; with the right support, lots of parents would

be able to and can do their best. But child protection services seem to think that parents must be completely independent to even be recognised as parents. Yet, no parent is completely independent. Some of the judges we spoke to realised, in the middle of the interview, that they didn't do independent parenting because they had a nanny or a housekeeper to help. So, here the concept that we try to talk about is not independent parenting but *interdependent parenting* or *supported parenting*. There might be social workers helping, or even people with parental responsibility, like grandparents, supporting, but the parents themselves will be involved and you need a word to recognise that role of the parents.

EMILY: While you were talking, Beth, I was reminded of a great piece by Jackie Leach Scully that I always set my students about vulnerability, bioethics, and disability which argues that actually we're all vulnerable but because some vulnerabilities are widely shared, we don't see the supports we have to deal with them as supports at all.<sup>1</sup> So the example Scully gives, which I think is quite compelling, is the fact that when we go on the tube none of us can see in the dark – that without lights in the tube none of us would be able to get around. But because we share that vulnerability, we don't see lighting on the tube as a support which helps us to deal with our inability to see in the dark. It is only when a vulnerability is not widely shared that the supports necessary to deal with it become obvious *as supports*. That seems to me to be a really good analogy with what you're saying, Beth, about judges having nannies but that is almost invisible to them as supported parenting.

DANIEL: I am very sympathetic to what you just said there Beth, that something about parenting as a status matters. It made me think about that early critique of rights, the idea that rights really matter when you don't have rights. And maybe it is similar with that status of being a parent. It is very easy to critique that but actually when you listen to it from the perspective of people who don't have it, it does change your viewpoint; and it is important to hear that.

FATIMA: I think what really comes across your paper, Beth, implicitly and explicitly is class, which is a theme that also was also very present during the workshop discussions. The example you just mentioned about judges and their nannies is a really classed example. The other example I always think of is boarding schools. Parents sending their children at a very young age to boarding schools is not seen as 'substituted' parenting or even a risk in any way.

BETH: I do think it's about who's paying. The support given to parents with learning difficulties is seen as a problem because the state is paying. These parents usually have very complicated lives: they probably live in council housing, they haven't got social capital. The state pays because it is concerned about the children, and that's seen as 'bad'. Whereas if you are a judge, contributing to society, doing a really high-powered job, and paying for a nanny, that's seen as 'good'.

DANIEL: And there is a sort of outrage when privileged people are then questioned by the state. That comes out very strongly in the home education area where you do get articulate middle-class parents. They become outraged that the state should know what they're doing and that it might ask them questions. There is sense of 'you can't ask *us* these questions, that's appalling, we're parents, how dare you'. It often comes from quite a privileged place ...

DAFNI: I guess that's quite often the case with a lot of interactions with the law in general, the privilege of being able to push back against legal authorities or various regulators does

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<sup>1</sup> JL Scully, 'Disability and Vulnerability: On Bodies, Dependence, and Power', in C Mackenzie, W Rogers, and S Dodds (eds), *Vulnerability: New Essays in Ethics and Feminist Philosophy* (Oxford University Press, 2013).

come with a particular socio-economic status. I was thinking based on what you said, Daniel, that it isn't only specific to this particular area of law, I think it spills over to most of our interactions with authorities.

DANIEL: Yes, and that also comes across clearly in all of the legal consciousness literature: that is those who are for/with the law or those who are against the law, you know it is quite distinct there ... Rachel, I have got lots of questions for you on your paper! I love the language in your paper, the way you talk about being astonished by things and outraged by the lack of clarity. But I was thinking of being a bit provocative: why are you astonished by this? Why does this lack of clarity matter? And, I wondered, do you think it *is* a problem? Because I thought I could make a defence of all the things that you seem to think of as problems. Isn't this the beauty of discretion? Isn't this the beauty of the common law? And these are complicated issues we have to fudge – and it is all a fudge. Unless you're arguing from a children's rights liberationist perspective, the idea of autonomy, which actually does not really come across in your paper?

RACHEL: Fudges are fine when you're a court, because a court can exercise its discretion if it wants to and it can explain why it's doing things. But the difficulty is when there is no judicial decision-making. So, what I'm really interested in is what happens between professionals and parents and how we understand the limits of the parental role. And it really does matter: if you're a doctor and you don't know whether this parent can consent for this child, that matters to you as a doctor and it also matters to the child as well. If, as a child, you don't know whether you can make a decision that you can trust is going to be respected, that matters for you. The gender identity example is important here. If a child doesn't know whether disclosing to their teacher is going to be confidential or not, if they don't know whether that's going to be respected, it really does matter. So, I think the lack of clarity does matter *outside* the court. Maybe from a judicial perspective there is some value to uncertainty, there is a value to discretion. But it doesn't work when we're thinking about the relationships between that triage of professionals, parents, and children. And that's where my worry is.

DANIEL: I suppose my response would be: if clarity could be achieved, would that lead to a sort of professionalisation – giving experts all the discretion?

RACHEL: That's also my worry. Especially if a very 'safeguarding approach' to children is adopted, if there is an understanding that the Human Rights Act gives obligations to all state officials including doctors and teachers etc to safeguard children, what does that do to the relationship between the child and parent and the professional and the parent? If there are independent obligations on the professional as a representative of the state in some sense to safeguard the child, my worry is that yes, you can have a creeping professionalisation of the regulation of parenting that is then not really *seen* because it is coming from shifts in understanding what children are doing that aren't made explicit. Does that make sense?

DANIEL: Yes.

RACHEL: So, for example, I was thinking of the chapter on 'child runaways' in the last edition of Jane Fortin's book *Children's Rights and the Developing Law*.<sup>2</sup> Jane talked about children turning to prostitution and criminal activity to support themselves. Of course, that is not the way in which it would be framed today – the policy guidance around these issues would refer to them as children who are *vulnerable* to sexual and criminal exploitation. And there are good reasons for that. But as soon as you frame it not as children making bad

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<sup>2</sup> J Fortin, *Children's Rights and the Developing Law* (Cambridge University Press, 3rd edn, 2009), ch 4.

choices but as children who are vulnerable, that's when it becomes a *professional* concern rather than a matter of adolescent choices.

DANIEL: It is really interesting the way in which the language of vulnerability is so pronounced, and it really shows the contingency of the term vulnerability. I am thinking here of Jonathan Herring and all those who say: vulnerability is a great term, we should all acknowledge vulnerability. I have always had a slight problem with that framing, even though I know it is coming from a good place. But I do not like where it gets to. The context of adolescence is an example of the problem of arguments about inherent vulnerability. It shows us how problematic vulnerability is, when it is actually applied and engaged with. At least a little bit of an alarm bell should go off regarding the argument of celebrating vulnerability, possibly?

RACHEL: Yes, exactly. I think to a degree you can defend that when you're in a court because you are going to hear both sides to an extent, you're going to have a consideration of whether or not there really is a proportionate response. But how does that translate when you have a language of vulnerability but none of the express decision-making?

SARAH: Just picking up on that vulnerability point, it seems to be there also in your paper, Daniel, the sense that the home is a space of potential vulnerability for children, but not the education system. At least on my reading that seems to be part of the justification of, or narrative around, regulation: that children who are out of the school system, and are being home educated, are at some sort of risk that leads to the need for greater regulation in the form of registration. Would that be a fair reading?

DANIEL: Yes, I do think that some of the concerns about home education are expressed through that in some ways. Not the majority, but some do claim that there is, somehow, a safeguarding concern. As I wrote in the paper, there are some very tragic cases where there have been real child-protection problems in that sense. But I don't think that home education per se is seen as a risk. Even advocates like myself, who are very keen on the need for regulation, have been clear that home education is not about vulnerability or a safeguarding issue in the slightest.

FATIMA: So what is it about, then, exactly? If it's not about risk, if it is not about protection, what is it about?

DANIEL: I suppose in a sense it's fundamentally about ensuring that children have the skills they need to exercise some sort of autonomy when they leave school. So, it is about really arguing very clearly that if a child doesn't know how to read and write and do basic arithmetic by the time they are at school leaving age, that's a problem and the state does have a legitimate interest in ensuring that people can read and write – and indeed, read and write in English.

EMILY: I am wondering if there is research on what home-educated children think about having been home educated? I'd be really interested to know whether people feel it was adequate. I imagine when they're children they would be pro, because of their experience, but I wonder how they feel as adults? I wonder if people feel that home education held them back or do they feel that it was progressive for them?

DANIEL: There is a little bit of research, but not enough. The problem is that with some of the research it's very anecdotal. I mean, anecdotally, I have heard from local authorities stories of teenagers calling up saying 'please I want to go to school, but my parents won't allow me to go to school though I really do want to go'. But then there are lots of arguments where the only reason the child is being home educated isn't because the parent doesn't want the child to go to school, but because the child is desperately unhappy at school because of

school failure. So, it's really hard to generalise, actually.

BETH: Lots of the time, from my experience, if children are home educated it is because they just don't feel that they fit in the school system and it's too stressful.

DANIEL: Yes, and so it is really important not to generalise. I think people often have a fixed image of home education, but the more one looks into it the more one realises that it is extraordinarily varied. And politically it is also varied. You have the extremely far-right, socially conservative parents who want to home educate and you have the hippie generation of home educators. They agree on nothing at all other than that they don't want their child to go to school.

FATIMA: I just wanted to follow up on the point you made earlier, Daniel, that your main issue with home education is the issue of skills and enabling the future autonomy of children. I thought that the line of argument was remarkably similar to the points made by some of the judges in *Re G*,<sup>3</sup> especially the way the judges characterised the Jewish Orthodox schools in that case. And indeed in that case the judges decided for the mother and her choice of more modern schools based on the argument that studying in modern schools would enable the children to have better life choices in the future. I agree with you that the ability to read and write is fundamental, but beyond that minimum are we looking for anything else? Are we looking for good GCSE grades, for example? Are we looking for the ability to compete in the job market? Because those outcomes are 'good' from a specific, normative perspective – from a liberal, almost neo-liberal view of being able to participate in the economy. Not everyone agrees that this is the 'good' vision of life.

DANIEL: Yeah, I think as you suggest, the more one thinks about it, the more any attempt to try and find what is the 'right' type of education, or what is a 'good' education appears as a philosophical question. And you know people have been arguing for centuries about the question: what is education for? You can never detach it from the type of society that you're creating or wanting to create or being idealistic about. How do we evaluate what education is for? Who is education for? These are really big questions. And you see these arguments going on constantly around debates regarding the curriculum at the moment, particularly because of this concern about liberalism and the focus on adopting a more muscular liberal approach in the curriculum. When I have spoken to German academics about this, they are absolutely adamant that it should not be possible to home educate in Germany. They say that because of their experience of Nazism, they will not allow extremism to take root at all and so they see that the state has a right and a duty to ensure that we are a collective and that the collective matters. So here they are using leftist language: it is about a collective, the idea that society must have some sense of collective. I am not necessarily saying I agree with their arguments, and in fact I disagree about some of it, but I'm sympathetic to where they are coming from, to the logic of their argument. This goes back to some of the points raised by Sarah in her discussion of the European Court of Human Rights case involving a dispute between parents and the Swiss authorities about compulsory participation in mixed swimming classes.<sup>4</sup> It is reminiscent of the language in that case about somehow *being together*, this sense of: what does it mean to be together? To have a togetherness in an increasingly split world? It is an attempt to project onto education a desire for some sense of collective.

SARAH: It is really interesting, the way in which that narrative emerges in the German case

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<sup>3</sup> *Re G (Children) (Education: Religious Upbringing)* [2012] EWCA Civ 1233, [2013] 1 FLR 677.

<sup>4</sup> S Trotter, “‘Living Together’, ‘Learning Together’, and ‘Swimming Together’: *Osmanoğlu and Kocabas v Switzerland (2017) and the Construction of Collective Life’* (2018) 18 *Human Rights Law Review* 157.

you mentioned in the paper<sup>5</sup> – you know, this notion of avoiding the emergence of parallel societies. It is exactly the idea of ‘living together’. It is interesting because it is sometimes thought that the whole notion of ‘living together’ has fallen out of the jurisprudence of the European Court of Human Rights, but it hasn’t; it is just there in different forms. It is still that same sort of idea that we need people to be able to be together in a certain way. So, in the Swiss case, the narrative was that children can’t go to separate swimming lessons, that they have to go to the mixed swimming lessons at school, because that’s where they learn how to be together with other children.<sup>6</sup> But that narrative is still coming out in other cases, seemingly in the home education cases now as well. So, it is very interesting, the degree to which the regulation of parenting involves this broader idea of being together in society. And, as Fatima says, what does that society then look like?

DANIEL: But things move in different directions as well, as, for example, in the increased academisation of schools which is really a dramatic revolution in our education system. Academies don’t have to follow the national curriculum, so it’s quite a complicated picture, broadly speaking. But just going back to vulnerability, Nigel Parton has written a brilliant piece about vulnerability in social work – about how vulnerability has shifted and how it means different things.<sup>7</sup> His argument, to put it very crudely, is that we used to talk about an underclass but now we just talk about vulnerability.

RACHEL: Daniel, going back to home education, the incoming Labour government has proposed something that looks very similar to what the outgoing Conservative government was doing. This is quite interesting given how politically polarised debates around home education are in other jurisdictions, for example the USA. Is it yet clear what the background narrative of the current Labour government is and the extent that it differs from the Conservative government discussions that you mentioned in your piece?

DANIEL: There is not that much now. At the end of the last Labour government there had been a statutory proposal, but it just got knocked out at the end because there was not enough time. So, this would be the fourth attempt at statutory reform in the area of home education. It is now striking that you have some cross-party agreement, though not all agree. The Conservative Party is split on it. It is interesting that in the House of Lords debate, one of the most vocal opponents was a Green peer. But to answer your question about whether the Labour proposals will be the same: yes, I think it will be vaguely quite similar. The big question mark is the money question. When I talk to local authorities, they are saying that there is a massive increase in home education but not an increase in the numbers of local authority workers tasked with monitoring it. So that would be the sticking point: how much support can a local authority give here? Because, really, this is private education. In law, parents are responsible for covering all the costs if they home educate. If they change that, will there be any support? What if we shift the viewpoint and see home education almost maybe as a type of state-understood education, or if the state is more involved, if the state offers services? Can we see it as a possibility that maybe not all children would want to be in this school space? Online education has transformed things as a possibility; you can have amazing tailored one-to-one education now in a way that was unimaginable before. So, maybe historically that will change the vision of education. But in answer to your question, Rachel, the stumbling block is money.

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<sup>5</sup> *Wunderlich v Germany* (Application No 18925/15) [2019] ELR 149.

<sup>6</sup> *Osmanoğlu and Kocabas v Switzerland* (Application No 29086/12) (2017) 10 January.

<sup>7</sup> N Parton, *Safeguarding Childhood: Early Intervention and Surveillance in a Late Modern Society* (Red Globe Press, 2005).

FATIMA: Is there a reason for the huge increase in the number of people choosing to home educate their children? Is this a post-Covid reality? Or is it about individual concerns that the children are unhappy, as in more pastoral concerns, or is it fuelled by concerns about the quality of education provided by schools?

DANIEL: All of those things, and more! It is really hard to pinpoint it. Because there is not a national register, you cannot really collect figures on this. But to the extent that we do have figures, it is a very varied picture. It does seem that the big increase now isn't people who consciously choose to home educate for ideological or political reasons, but because of the crisis around special educational needs and failures to deal with that. It is about desperation. So, a lot of it is a reflection on the school system in some ways. Perhaps there is a sense in which children's 'vulnerability' and displeasure at school is more listened to, which may be a good thing or a bad thing, I don't know. So, it is really a very varied and complicated picture.

BETH: Another big theme is autism and how autistic kids just cannot cope with schools. There is a failure in terms of schools meeting those needs.

DANIEL: Yes, absolutely; there is a broad category of special educational needs. And the argument of schools here is that they need a lot more resources to be able to cope with that.

RACHEL: Daniel, I thought that a major theme of your paper and Beth's was exactly that: resourcing. So, the resourcing question is the real children's rights question here. If there aren't sufficient resources for the state to meet the needs of the children, then it's displaced onto debates around parents. What the parents are trying to do is to deal with the lack of resources to support them to parent these children in an adequate way to meet their needs. To me that seems to be the underlying issue for each of your papers, Daniel and Beth.

DANIEL: That makes me think that actually across all of the papers in some ways, there is this question of: what do we want from the state? Even if we include the judiciary in that question. It is very easy, I think, as academics to critique the state in some ways, even if we want a bigger state.

SARAH: Rachel, I think this theme was there in your paper as well – that there is a question of the resources required to listen to children and to listen to adolescents in particular. I think it spanned the three papers in different ways.

JULIE: If we think of home schooling as being on the rise and sometimes it is not particularly voluntary because of lack of resources at school, what does that do for the parenting role? So, regarding the comment earlier about the ability now to have a bespoke education online for example, that increases the parental role, especially with younger children. Is there an intensification of the parental role here? In fact, even when children are in school, there is this intensification with the amount of information that is out there. And again, does this become a class issue? Because what the middle-class, well-educated parent is able to facilitate in contrast to a parent that maybe doesn't have access to the technology, for example, is very different. As Daniel said, this is all nothing new, but is there an intensification of it in terms of regulating parenting or the expectations around parenting?

DANIEL: There certainly does seem to be an intensification, not necessarily of the regulation of parenting but of the added extras in terms of expectations. It is not enough to just get your child to school. And something that has not been researched properly I think is the issue of private tutoring, which is a vast industry now. It is also relatively new; it just didn't really exist before. So, yes, it seems to be going hand in hand with an intensity of parenting generally amongst particular class groups in society.

BETH: To take it back to the issue of disability, one of the reasons why the children of

parents with learning difficulties are removed is because of a concern that the children will outstrip the parents intellectually. There is a concern that these parents will not be able to support the learning of their children, that they can't engage with the schoolwork as they are expected to do. But they also cannot pay for the extra tuition. And it is seen as not being 'good' that a child would be more intelligent than their parent. So, on the one hand you have all the parents who are paying all this extra money for tuition and then that is used as yet another reason to say why these parents with learning disabilities are not 'good' parents. This then increases the disparities.

FATIMA: Is this based on a developmental kind of model of childhood? Is there a recognition that a child will get more intellectually capacious as they get older? Because I would assume that this is seen as relatively 'normal'?

BETH: It is one of the stereotypical arguments that gets used in court cases, but I don't know if it's analysed per case or if it's just one of those stereotypes that are used – as in an assumption that this parent has got a learning disability, so necessarily the child is going to be more intelligent than the parent and as such the parent won't be able to support them at school.

FATIMA: So is that the risk, then, that if the children become more 'intelligent', then the parent will fail to meet their intellectual or educational needs?

BETH: Yes, exactly. There is also the concern that the child won't be 'controlled' properly by the parent and so the child will be able to run rings around their parent. And all the stuff about tutoring and middle-class home education just makes the stereotype even worse.

FATIMA: I mean for new immigrant parents, for example, who wouldn't speak English at home, of course the child is going to 'outstrip' them linguistically really quickly. Not speaking English at home is problematised in different contexts, with the fear that the children will not be properly integrated into British society and the concern that they will then live a parallel life and won't feel loyal to Britain and so on. And that's a different kind of problem – it is not so much that a parent is unable to meet their child's educational needs; rather, it's almost a security threat.

SARAH: And it's also interesting in the kind of parent-child relationship that's then portrayed there, and the way in which there's a construction of what the parent is supposed to be doing and of what the position of the child is supposed to be in relation to the parent. I think it also goes back to Rachel's paper about the position of the child and how that is constructed in the case law and the assumptions that are made about children and parents. To me, Beth, your paper links so well to the others in terms of highlighting how these assumptions then work in practice and the regulatory force of those assumptions.

BETH: There is an assumption here that a child will become a young carer, whether or not that's actually the case. If the parents had the right support, the child wouldn't become a carer, though.

FATIMA: I think it also goes back to this fear of the 'parentification' of children, this idea that it's somehow really bad for children to assume duties or to assume the role that is prescribed for parents. I think, Daniel, in your report about siblings and the law you wrote about how older siblings are construed as being parentified.<sup>8</sup> I've always found it interesting, this nervousness about 'parentified' children. It goes back to the rigid categories, as Sarah

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<sup>8</sup> D Monk and J Macvarish, *Siblings, contact and the law: an overlooked relationship?* (Nuffield Foundation, 2018), available at: [www.nuffieldfoundation.org/project/siblings-contact-and-the-law-an-overlooked-relationship](http://www.nuffieldfoundation.org/project/siblings-contact-and-the-law-an-overlooked-relationship), last accessed 14 January 2025.

said, about what a child is supposed to be, what a parent is supposed to be. There is a massive divide, and as soon as it is muddied a bit it is seen as risky.

SARAH: What's also interesting there is the role that is assigned to – and the ideas that are articulated about – different children in a sibling group, especially older siblings in that context, which again I think came through in Daniel's earlier work on siblings. And Fatima, also – around the responsibilities and duties point, what kinds of responsibilities and duties are being constructed as involving parentification?

FATIMA: I think it also goes back to a point that Rachel made about the extension of social childhood – children are children for so much longer, and as soon as they act in a way that's considered to be too adult, too precocious, they are labelled as being parentified and it's seen as a problem.

RACHEL: Yes, that's right. I also had a question for Beth that is perhaps connected somewhat, which is: where does this idea of 'substituted parenting' come from? You said, Beth, that you could not see any research literature that backed it up and it was felt that it was a label that was being used and I wondered if you knew where that label came from? Why I am asking is because you see this a lot with the 'parentification' label and also a similar line of cases on the idea of 'parental alienation', where we have a label that attaches to an assumed harm but that label becomes a substitute for actually investigating assumptions about what harm is and what welfare is.

BETH: There is one book, by Beckett, where it is assumed that 'substituted parenting' is a bad thing,<sup>9</sup> but nobody really knows where it came from. One of the barristers we interviewed said that it has become an orthodoxy, but without any evidence. Nobody could tell us in our research where it came from, just that it is being used.

RACHEL: There does seem to be a problem in the way that these kinds of labels become professional currency and then are then used in evidence in a way that masks a real assessment of what matters to the child. The idea of 'parental alienation' is a good example of that too. Can you see any evidence that the courts are now more willing to go behind the label, Beth, or has it just got such currency that a busy court will just accept it?

BETH: Well, I think that some of the judges have had a wake-up call. Nadine, who actually did the interviews for the research report,<sup>10</sup> has done some training with the judiciary, so hopefully maybe this will lead to cases being scrutinised. The information is there, the Family Justice Board knows about it, but we will just have to see in the court cases coming through in the next couple of years if there's more analysis and if the term 'substituted parenting' stops being used.

RACHEL: But it's interesting how this seems to come around in cycles in the way in which different issues are dealt with in the courts. It starts with a phrase that is used and then it is elevated to being regarded as a particular kind of harm that's recognised in and of itself without any investigation of the individual child's circumstances. And then we have a big case that reminds us to go back to the individual child and to identify the harms involved. But it does seem to go around in cycles, and it'd be interesting to see why that happens in the family courts.

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<sup>9</sup> C Beckett, *Child Protection: An Introduction* (Second Edition) (SAGE Publications, 2007).

<sup>10</sup> B Tarleton and N Tilbury, *Substituted parenting: what does this mean in the family courts?* (Nuffield Foundation, 2023), available at: [www.nuffieldfoundation.org/project/substituted-parenting-family-court](http://www.nuffieldfoundation.org/project/substituted-parenting-family-court), last accessed 14 January 2025.

BETH: We have had a case this year that warned against making any assumptions.<sup>11</sup> There is also good practice guidance for working with parents with learning disabilities which was endorsed by the former and current presidents of the Family Division.<sup>12</sup> Hopefully at some point practitioners will follow the good practice guidance and not make assumptions. But it is more than about training social workers and judges. It's about how as a society we can rethink our approach to parenting – that it is okay for not only certain people but for everybody to have support.

DANIEL: I wonder whether that links into the broader issue around the engagement with concepts. I suppose it makes sense to reflect on our own myths. Yes, sibling attachment is problematic as a concept, but autonomy is also problematic and yet as lawyers we're always quite hooked up on it even though it has been so rigorously and effectively critiqued. And I suppose another related question I had for you Rachel is: do we want to hold on to autonomy? Really, after all we know about its limits, is it still valuable? Could we be as critical? Would we be as critical here about courts using the words like autonomy as we are of courts using words like attachment and parentification? We should be able to critique them equally, shouldn't we?

RACHEL: Yes, absolutely. I hope my piece didn't suggest that it was entirely pro-autonomy. But equally I think we need to be concerned around the term safeguarding as well. It's very easy to assume that there's harm being done in the courts and that the courts have a protective role without assessing what that protection is. Any concept that you use has these risks.

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<sup>11</sup> *Hounslow LBC v Fiona* [2024] EWFC 106 (B).

<sup>12</sup> Working Together with Parents Network (WTPN), *Further update of the DoH/DfES Good practice guidance on working with parents with a learning disability* (2021), available at [www.bristol.ac.uk/media-library/sites/sps/documents/wtpn/FINAL%202021%20WTPN%20UPDATE%20OF%20THE%20GPG.pdf](http://www.bristol.ac.uk/media-library/sites/sps/documents/wtpn/FINAL%202021%20WTPN%20UPDATE%20OF%20THE%20GPG.pdf), last accessed 14 January 2025. There are also good practice documents for Scotland and Wales. See Scottish Consortium for Learning Disabilities (SCLD), *Supported Parenting: Refreshed Scottish Good Practice Guidelines for Supporting Parents with a Learning Disability* (2015), available at: [www.scld.org.uk/wp-content/uploads/2015/06/Supported\\_Parenting\\_web.pdf](http://www.scld.org.uk/wp-content/uploads/2015/06/Supported_Parenting_web.pdf), last accessed 14 January 2025 and Welsh Government, *Guidance for social workers for families where the parent has a learning disability* (2023), available at: [www.gov.wales/sites/default/files/pdf-versions/2024/3/2/1710251507/guidance-social-workers-families-where-parent-has-learning-disability.pdf](http://www.gov.wales/sites/default/files/pdf-versions/2024/3/2/1710251507/guidance-social-workers-families-where-parent-has-learning-disability.pdf), last accessed 14 January 2025.