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BOOK REVIEWS AND NOTICES

Lydia Bracken, *Same-Sex Parenting and the Best Interests Principle*. Cambridge University Press, Cambridge, 2020. xv+256pp. £85.00 (hardback) ISBN: 9781108497190.

Although families come in many different shapes and sizes, anxiety around the ideal context in which to raise children is a regular theme in social and political discourse. Parenting by people who are LGBTQ and by same-sex couples has long been a source of controversy and a staple of culture war debates. This long-standing debate around gender and parenting is the focus of Dr Lydia Bracken's impressive monograph *Same-Sex Parenting and the Best Interests Principle*, the mission of which is to identify optimum legal responses to same-sex parenting. The monograph's anchor is the well-established best interests principle, whereby the best interests of the child are considered paramount (or at least a primary consideration) in relation to actions and decisions concerning children.

Bracken opens by evaluating the application of the best interests principle, cogently defending its use as a powerful and flexible tool for promoting children's rights and interests. She acknowledges, however, that the indeterminacy of the principle, coupled with its susceptibility to subjective bias, runs the risk that best interests analysis becomes a smokescreen for subjective perspectives. This is particularly the case in relation to the issue of parenting by same-sex couples and by people who are LGBTQ, on which there can often be passionately divergent views.

To ensure robust objectivity in her best interests analysis, Bracken proposes a conceptual framework that draws holistically on the other rights contained in the UN Convention on the Rights of the Child, on the guidance of the Committee on the Rights of the Child, and on objective sociological and psychological research data. Armed with this framework, in Ch.2 the author turns to addressing the central controversy in this area: is it in the best interests of children to be raised by a couple of the same sex or does parenting by opposite-sex couples generally yield better outcomes? While acknowledging the risks of advocacy bias and the limitations of some of the studies, Bracken compellingly demonstrates how social and psychological research data broadly support the conclusion that children develop just as well when raised by same-sex couples as when raised by opposite-sex couples. Notably, meta-analyses of multiple studies demonstrate how the developmental outcomes for children being raised by same-sex couples are at least as positive as for those being raised by opposite-sex couples. At a minimum, there is no evidence, Bracken contends, that being raised by same-sex couples in itself causes harm to children. Instead, the evidence establishes that it is the quality of parenting

that best ensures positive parenting outcomes. While same-sex families may suffer the effects of external social prejudice, the author observes that this strengthens rather than weakens the case for legal recognition of same-sex parenting.

Having established that a child's best interests are not compromised by his/her being raised by same-sex parents and that the latter "can and do act as suitable parents" (p.76), Bracken moves to examine how legal responses can most effectively promote the best interests of children being raised by same-sex couples. The overriding message is that legal recognition of existing same-sex parenting arrangements can help enhance the status, stability, and security enjoyed by the child and his or her family.

With the best interest principle to the fore, Bracken ably critiques legal responses under each of four headings—parental responsibility, adoption, parenting following donor-assisted conception, and parenting following surrogacy. The analysis focuses on the law in three jurisdictions—England and Wales, Ireland, and South Africa—each of which already provides extensive recognition for same-sex parenting, but with some notable gaps and deficiencies. Northern Irish and ECHR case law also feature.

In Ch.3, Bracken makes a strong case for allowing social parents to acquire parental responsibility (in Ireland, guardianship) as a sound foundation for ensuring stability for children in same-sex parenting arrangements. Chapter 4 addresses measures allowing same-sex couples to apply for second-parent adoption and to be eligible to apply for joint adoption, where appropriate in the particular circumstances. In Chs 5 and 6, the author addresses donor conception and surrogacy, arguing that recognition of intending parents as a child's legal parents can help provide greater stability for parenting arrangements following donor-assisted conception and surrogacy. Bracken also engages, however, with the need for safeguards in this context, especially with a view to protecting the child's right to identity and ensuring against the exploitation of surrogate mothers.

The author engages in a clear-minded and compelling manner with the various nuances of these legal remedies. There is, for instance, an illuminating analysis of donor-assisted conception in non-clinical contexts, and of the challenges in recognising same-sex parenting in the context of international adoption. The text also ably critiques the diverse approaches to surrogacy arrangements, making a strong case, for instance, for pre-conception allocation of parentage in domestic surrogacy arrangements. Throughout the text, the author emphasises the need for flexibility and individually tailored solutions suitable to the specific circumstances of individual children. For instance, eschewing the notion that "one size fits all", the author cautions that adoption may not always be an appropriate remedy, particularly where it would sever ongoing relationships between a parent and child.

The book provides an insightful and thoroughly informed analysis of the relevant domestic laws in this context and an intelligent critique of the ECtHR's approach, particularly on the topics of adoption and surrogacy. The account of South African law is especially interesting, interweaving constitutional

considerations with an illuminating discussion of legislation and case law in that jurisdiction.

Bracken's monograph adopts a thoughtful, nuanced, and evidence-based approach. The text is eminently clear, erudite, and thorough without ever being too heavy or laborious. The analysis is firmly rooted in a robust scientific evidence base, but the approach is also pragmatic and grounded, recognising the lived reality of same-sex parenting. The author offers a wealth of information and analysis that will be useful not only to those interested in same-sex parenting, but to child and family lawyers generally. The monograph never shies away from engaging with alternative perspectives and the need for appropriately nuanced safeguards in this context. It nonetheless presents a robust and compelling case for facilitating and supporting parenting by same-sex couples, and for offering a flexible range of legal options recognising parental responsibility and parenting in this context.

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