

Pre-birth child protection and the reproductive rights of fathers

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ABSTRACT

INTRODUCTION: Whilst acknowledging that child-welfare-involved pregnant women occupy a uniquely precarious position in terms of their human dignity and rights, this paper focuses on the vulnerabilities of fathers of children subject to child protection assessment before the birth of a child.

APPROACH: This article draws on data from two qualitative research studies, both focused on social work practice in Scotland. The first study created ethnographic data with and about eight fathers who were experiencing pre-birth child protection involvement with their babies. The second study did not include fathers themselves, yet research data were created through interviews with 10 birth mothers, which reinforced findings of the prior research in relation to men being written out of planning and legal processes before their children were born.

FINDINGS: Taking a reproductive justice lens to the findings of the two studies reveals how this population of fathers are exposed to legal and social precarity in relation to their paternal role. Through the advice of social workers, women were encouraged not to name the fathers of their as yet unborn infants on their child's birth certificate, creating an immediate barrier to fathers' involvement.

IMPLICATIONS: The article demonstrates that a reproductive justice framework (L. Ross & Solinger, 2017) can be applied in order to understand how men's rights to parent their children may be compromised by child protection involvement in the family. Acknowledging the power held by social workers is a crucial first step in beginning to address the social inequalities around "reproductive destiny" (L. Ross, 2006, p. 4) experienced by fathers.

Keywords: Reproductive justice; fathers; pregnancy; infant removal

Pre-birth child protection involvement with families and the removal of infants from their birth parents have become a central part of the child protection response across international risk-focused child protection systems (Broadhurst et al., 2018, Griffiths et al., 2020, Keddell et al., 2023; O'Donnell et al., 2023). There is also evidence that in the family-service based systems of the Nordic countries, infants at risk are removed on child welfare grounds (Hestbæk et al.,

2020). Clearly, this is an ethically complex area (Corner, 1997) and questions about the practice of pre-birth child protection involvement and infant removal have been raised over time (Barker, 1997; Broadhurst et al., 2017, 2022). The impact of infant removal on families is most fully understood in relation to birth mothers (Mason et al., 2019). More recently, the "collateral consequences" (Broadhurst & Mason, 2020) for fathers have

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been explored through research (Philip et al., 2020, 2021, 2023).

The experience for families of being subject to child protection assessment and living with the possibility of infant removal during a pregnancy is extremely challenging (Critchley, 2019a). For social workers too, the task of assessing risk to babies and of separating newborn infants from birth relatives can be highly stressful (Critchley, 2020). Beyond the impact on individual well-being, the nature of child protection intervention in babies' lives, being differentially focused on particular communities, introduces the possibility of group-based harms (Dettlaff & Boyd, 2020), through the erosion of trust between state and the community affected. Notably, in Aotearoa New Zealand (NZ), there have been recent policy and practice changes introduced to reduce baby removals (Keddell et al., 2021, 2022) in response to concerns about the over-representation of Māori infants in the child protection system (Office of the Children's Commissioner of New Zealand, 2020).

In this article, I will argue that fundamental questions of reproductive justice are raised by child protection processes that intervene in family life before birth, a time when infants lack legal personality and parents are unlikely to have recourse to legal advice. In child protection practice, all foetal life from the point of notification of pregnancy through to birth can be classified as an "unborn baby", who is considered to be the client of the social worker, and as an individual who may require protection. In practice, pre-birth child protection processes are enacted at a stage at which the pregnant mother intends to proceed with the pregnancy to term, and intends that, once born, the baby be cared for within the family. As such, expectant parents are likely to be comfortable with referring to the infant who will arise from the pregnancy as their "baby". However, it is important to recognise that the contested terminology used to refer to foetal life can convey both

meaning and political positioning. In social work, the category of "unborn baby" differentiates the "foetal subject" in a way that lacks ambiguity or nuance (E. Ross, 2016). This categorisation of the unborn baby implies a quasi-personhood, creating a grey area for practices that may trespass (Weinberg, 2016) heavily on parental and community-based rights. Considering pre-birth child protection involvement through the theoretical lens of reproductive justice (Ross & Solinger, 2017) provides useful insight into the precariousness of the reproductive rights of child-welfare-involved parents. Although this is an issue that clearly concerns both women and men, in this article I will focus particularly on fathers.

In centring the reproductive rights of heterosexual men who are non-birthing biological fathers, I am not seeking to deny the struggles of other groups, which have powerfully informed the reproductive justice movement (cf: Solinger, 2002; Roberts, 2017; Ross, 2006). As Ross and Solinger explained, "all people experience their reproductive capacity according to multiple intersecting factors" (2017, pp. 65–66), and the reproductive interests of different groups can easily come into tension with one another (Russell, 2018). Queer scholarship challenges and expands reproductive justice theory and activism (Price, 2017), by widening the lens to include queer reproductive concerns, and acknowledge the contribution that queer reproductive struggles have made to the movement. George (2020) describes how the furthering of reproductive rights of one group can serve the interests of others, and offer glimpses of transformative ways forwards for all. In this article I focus on the experiences of non-birthing cisgender fathers. This is not to deny the rights of trans parents, including birthing fathers, and their interests in bringing up children, or to ignore any issues particular to birthing parents, their bodies, and their rights.

The control of women's fertility and their pregnant bodies continue to be essential activities in limiting access to power and

liberty (Ross & Solinger, 2017). Child-welfare-involved pregnant women occupy a uniquely precarious position relative to their human dignity and rights (Waterhouse & McGhee, 2016). Waggoner (2017) has argued that the fertile bodies of women are subject to societal scrutiny and control even before the onset of childbearing, with women held individually responsible for reducing and mitigating reproductive risks. Women's bodies and "choices" are frequently understood as being the site of the contested fight for reproductive justice. However, whilst Ross and Solinger emphasised women's embodied and personal experiences in order to demonstrate the importance of reproductive rights and autonomy (2017, pp. 58–65), from the contested site of fertile female bodies extends a movement that "demands sexual autonomy and gender freedom for every human being" (Ross & Solinger, 2017, p. 65).

Within this inclusive framework of reproductive justice, both the political contribution that is required of men in order to achieve this goal and the reproductive disciplining that men may themselves be subject to are "often overlooked" (Dukes & Palm, 2019, p. 712). This article is specifically concerned with the reproductive rights of men, and with the idea that fathers' identities *qua* fathers and their right to "parent children in safe and healthy environments" (Ross & Solinger, 2017, p. 65) can be compromised by pre-birth child protection assessment processes. In order to illustrate the risks to the reproductive rights of men that can be created through pre-birth involvement in their infants' lives, I will draw on data from two separate research studies, both undertaken in Scotland. Therefore, in the following section, I begin by outlining the Scottish legal and administrative context for the data presented, before briefly describing the methodologies for the two studies through which this data was created. I then go on to present relevant empirical findings about fathers of child-welfare-involved unborn and newborn infants, before considering

the implications of these findings through a reproductive justice lens.

Legal and administrative context

Broadly, women in the Scottish legal context can be conceptualised as being afforded the protection to make choices around their own reproduction. Women can make decisions in relation to any pregnancy that reflect their sovereignty over their own bodies, including refusal of medical treatment believed necessary for foetal health (Scott, 2000). However, unlike in Aotearoa NZ (Snelling, 2022), abortion in Scotland operates under a system of exceptionality (Deutscher, 2008), whereby it is required of women that they provide evidence that they have sufficient grounds for ending a pregnancy in order to secure a safe and legal termination (Lavalette et al., 2022, p. 3). When women do choose to continue with a pregnancy in the Scottish context, at the point of birth, they become immediate bearers of parental rights and responsibilities in relation to any child born to them. It is at the moment of birth that both an infant's legal personhood and the rights and responsibilities of their birth mother towards them "crystallise" (Wilkinson & Norrie, 1999, p. 54).

Fathers occupy a more complex legal position. In Scotland, if married to, or in a civil partnership with, the mother, fathers automatically attain parental rights and responsibilities in relation to any biological child arising from the marriage or partnership. If the parents of a baby are unmarried, just as in Aotearoa NZ, in Scotland parental rights and responsibilities can be conferred on the father by joint registration of the birth by the baby's parents. If this process does not happen at the time of the birth, under Scots law, the father can ask the mother to sign a simple legal document conferring parental rights and responsibilities to him at a later date. A mother can transfer rights to the biological father of her child at any time, and these cannot then be revoked. If she does not consent, the father must apply to the court

to gain parental rights and responsibilities. Online guidance provided by Scottish public services advises fathers that, “If you don't have parental responsibilities and rights, it's up to the child's mother to decide what's best. You have no legal right to make these choices” (Mygov.scot, 2021, n.p.). In practice, unmarried men in the general population may be unaware of their lack of parental rights and responsibilities in relation to their birth children unless they have a particular cause to formally assert these.

In Scotland, as in all the UK nations, a baby has no legal personhood until the birth (Mason & Laurie, 2011, pp. 369–370). Nonetheless, it is possible for Scottish child protection processes to be enacted before the birth of the baby. An unborn baby understood to be at risk of harm can be considered at a Pre-birth Child Protection Planning Meeting (Scottish Government, 2021). At this formal meeting, a decision can be made to register the expected baby on the local Child Protection Register, which acts as a marker of risk to a child. If the unborn baby is registered, a series of regular multi-disciplinary meetings will follow. The parents are invited to these meetings, at which the plan for the child agreed at the Child Protection Planning Meeting is kept under review. Whilst no legal steps can be taken until after the baby has been born, the National Guidance for Scotland (Scottish Government, 2021) provides clear advice that pre-birth child protection meetings should create a plan for the unborn baby's future care, agreed in advance of their arrival. This means that significant decisions can be made in relation to the baby during a period when expectant parents have no recourse to free legal advice or representation.

In Scotland, as in comparable legal and administrative systems, social work practice has developed such that practitioners behave *as if* the unborn baby were a legally distinct person and their primary client. In this way, pre-birth child protection involvement operates according to an established legal fiction. The common law *nasciturus* legal

fiction developed in order to benefit unborn children and allows legal entitlements to be held in abeyance for an infant's arrival and their attainment of legal rights. Child protection processes operate according to the same fiction, in that the baby's right to protection from harm and state support is treated *as if* it existed prior to the baby's attainment of legal personhood. This places parents in a potentially precarious position in asserting their parental rights and responsibilities. This article seeks to explore the potential consequences of this position in relation to the reproductive rights of fathers.

Research methods

This article presents data from two separate research projects. The first was an ethnographic study conducted in a Scottish local authority between 2014 and 2015. Ethical approval for the research was provided by the ethics committee of the School of Social and Political Science at the University of Edinburgh. Over one year, the author observed key meetings including formal child protection meetings, and also shadowed more informal meetings with expectant parents and social work home visits to the family. Expectant parents were asked for consent to these observations and were invited to participate in one or more research interviews in relation to the child protection involvement. Social workers involved with the families were also invited to participate in research interviews. These semi-structured interviews allowed participants to reflect on the meaning of the pre-birth child protection activities for them.

The final research sample comprised 12 families, and the social work practitioners involved with their expected babies: in total 41 participants. Within the participating families, eight fathers were named and contactable. All eight provided their consent to participation in the research, and to being observed. In total, 20 observations were undertaken, and 31 research interviews were completed. All of the participating

parents were invited to take part in a research interview. Two of the fathers participated in research interviews; both were interviewed twice. In comparison, six of the mothers took part in at least one research interview. The ethnography was designed to be responsive to the views and decisions of participants around the extent of their involvement in the research, and the available choices were emphasised at all times. This was particularly important in relation to expectant parents, who were experiencing a highly stressful intervention in their family lives. For full details of the research methodology, please see Critchley (2019b). Further details of the extent of the fathers' participation and the complexities of recruiting fathers to the study can be found in Critchley (2022a).

The second study was a Scottish Government commissioned project designed to explore the experiences that birth parents across Scotland have of child welfare processes leading to permanent separation from a child or children, and to map the available support services for those affected. Ethical approval for the study was provided by the Board of the Adoption, Fostering and Kinship Alliance (AFKA) Scotland, which was commissioned to complete the research. The project was initially designed to be participatory in nature, but limits to this aspiration were imposed by the global Covid-19 pandemic and the series of national lockdowns that were put in place to control this. However, participatory work has been possible in the dissemination phase of the work.

The final reporting comprised a review of the available literature on the topic, a description of the services for birth parents and family members available nationally, based on survey and interview data from practitioners, and a report of semi-structured research interviews with 10 birth mothers in relation to experiences of family separation in the Scottish context. Five of the mothers participating were accompanied by support or advocacy workers, and all interviews

were conducted in 2022. The women who participated in the study were aged between 28 and 52 at the time of the interview, and their experiences of separation from their children spanned a considerable period of time. Nevertheless, there were no particular shifts in practice around permanent separation that were discernible in the interview data. Each of the birth mothers had between one child and five children, and therefore in total, 27 children were discussed in the interviews. Birth fathers were notable by their absence from the sample. Despite targeted attempts to recruit men to the study, all of the respondents were mothers. Therefore, the data presented from this study do not come from fathers directly and relate more to their absence than presence in the plans for their children. For further methodological detail, please see Part Two of Critchley et al. (2023).

Findings from the first study had been written up and shared by the time that the fieldwork for the second study was under way. Data analysis of the first set of findings had included a follow-up analysis of the ethnographic data, specifically as it related to fathers (Critchley, 2022a), prior to data destruction. Interview data from the second study was analysed by Mark Hardy and the author, and it was noted that, although fathers had not participated in this research study, data which related to fathers were present in the data set. These findings spoke to specific findings of the first study in relation to fathers' rights, which had been shared in conference presentations, but were as yet unpublished, and are presented for peer-reviewed publication here for the first time. Combining and analysing the two datasets together was impossible, as the first set of data had been destroyed as per the ethical approval for the study, due to its sensitivity. However, it was possible to consider data drawn from both studies as they related to men as fathers, through the theoretical lens of reproductive justice. The results of this analysis are presented in this article.

Findings

“They rule the roost”: power and pre-birth child protection

This article is concerned with one important and shared finding of both the research studies described above. The central claim based on this data is that unmarried fathers can be, and are, erased from their children’s lives and denied the opportunity to gain parental rights and responsibilities as a result of pre-birth child protection involvement. In the Scottish context, as outlined above, the usual way for unmarried fathers to gain parental rights and responsibilities for a child is by registering the birth with the mother. In common parlance, this is often referred to as the father being “named on the birth certificate”. Pre-birth involvement with families has the capacity to interfere with this process. In the following extract of data from the study of pre-birth child protection, a social worker Emma describes her perspective on involving fathers.

No, I think we do try to have fairly explicit discussions with both mums and dads. I don’t know if it’s something they see within themselves that actually dads are often a problem, and if they remove themselves from the situation, mum can get the baby back, and then they can get back together and then everything. So, you know it may be a view that how to circumvent the process that they don’t necessarily want to get involved. But then one of my colleagues has a case where the wee one [baby] has gone to be with dad and he’s doing very, very well. But that doesn’t happen very often.

(Extract from research interview with Emma, social worker to Jane and Hugh’s unborn baby)

Emma is suggesting here that parents themselves sometimes agree between them that the father should appear as if he is not involved in the family. Particularly if the father is seen as a major risk to the baby, for

example, in situations of reported domestic abuse. Emma suggests that child protection professionals would nonetheless try to involve fathers and assess their capacity to care for the expected baby. However, Emma goes on to acknowledge an imbalance between mothers’ and fathers’ legal rights in relation to infants. Whereas birthing mothers automatically have rights and responsibilities in relation to any child born to them, for non-birthing fathers this is only automatic if they are married to the mother. This means that many of the men that child welfare social workers encounter do not have a legal relationship to their child or children.

And quite often Dads don’t have parental rights and responsibilities. You know mums always do. So, from a legal point of view sometimes that is where we have to focus you know if we are thinking long-term and where we don’t actually have to deal with removing a dad’s parental rights and responsibilities, you know where they are not really doing the business there is perhaps less pressure on us to evidence that to the Court to remove rights and responsibilities that aren’t actually there in the first place.

(Extract from research interview with Emma, social worker)

As Emma highlights, parental rights and responsibilities that have never been granted to a father, do not then have to be removed in a court if professionals are later pursuing a permanent care arrangement outside of the birth family. There are at least two potential impacts of this situation in the short-term: Firstly, child protection professionals may be more likely to make mothers the focus of their work; secondly, fathers may find it far more difficult to oppose the plans for a child for whom they do not hold parental rights and responsibilities. Prior to the interview with Emma, I had observed a child protection meeting that was attended by the baby’s mother Jane, health professionals, and

Emma herself as the social worker. The baby's father Hugh did not attend this meeting, although he had been present at an earlier child protection meeting, when it was decided to place the expected baby's name on the child protection register. In the meeting following this, when Hugh was not present, Jane was advised by professionals not to name him as the baby's father on the birth certificate. I asked Emma about this in the research interview.

Researcher: That was something that came up in the Core Group Meeting, wasn't it? Was that Jane was specifically not going to register Hugh's name on the birth certificate and that was her choice in terms of the...

Emma: Aha, yeah. Yeah, but she's not disputing that he's the dad and we would still invite him, still assess him, you know still involve him in the process. But yeah, thinking long-term as one of the possible outcomes, if he doesn't have parental rights and responsibilities, because that is always the first question our lawyers will ask, who's the dad? Has he rights and responsibilities? So they know whether they need to deal with that or not.

(Extract from research interview with Emma, social worker)

It is important to recognise that the child welfare professionals at this meeting had the power to recommend whether Jane's baby would remain in her care following the birth. As Jane was motivated to have her baby home with her, the advice of professionals would hold great weight. Although Emma contends in the extract above that Hugh will still be involved, his rights in relation to the baby have effectively been erased by the advice given to Jane. These interactions happened at a stage when neither Jane nor Hugh was receiving any legal advice or any non-legal advocacy support. The implications of this erasure of a father's legal rights and responsibilities has both short- and long-term implications for him, for the

mother and, crucially, for their as yet unborn child. The social worker participating in the research interview presented the practice as pragmatic and as ethically uncomplicated. The power that Emma and her colleagues held in relation to the family remains unexamined.

As Bill and Tracy, expectant parents who participated in the same study described, families are uniquely vulnerable in the context of pre-birth assessment of the risks to a baby.

Bill: There's nae. There's nae [no] appeals system. There's nae, you cannae [can't] do nothing about it, they [professionals] rule the roost, that's it. What they basically say goes.

Tracy: It seems like they just make up their rules as they go along. And just adding, and adding, and adding, there's never an end to the list.

(Extracts from research interview with Bill and Tracy, expectant parents)

The lack of legal support and advocacy available to parents who are marginalised, often living in poverty, and unable to seek legal counsel appears in this context to be deeply problematic. Bill and Tracy perceived that they were disadvantaged by this situation, and that professionals held a huge amount of power in relation to their child and family. However, for the professionals who participated in the study, that power was not always fully acknowledged or reflected upon. This leaves significant room for "ethical trespass" (Weinberg, 2016) and the erasure of fathers from the plans for and lives of their children.

"It was just me and the social work": Parental learning disability and infant removal

When interviewing birth mothers for the second study described above, in which all the research participants had

experienced permanent separation from a child, the practice of excluding fathers pre-birth appeared again in the data. In the following extract, Deborah describes events surrounding the births of her two daughters. Deborah's first daughter Rebecca was born in 2001, following a planned pregnancy, and remained in Deborah's care, with the support of Deborah's own parents, until Rebecca was 13 years old. At this point, Rebecca was placed in foster care and did not return home. Around this time, Deborah had a second daughter Celine, born to a different father who was considered a significant risk to both Deborah and to Celine. Deborah recalled that Celine was removed from her care directly from hospital, six hours after the birth, remained in foster care, and was later adopted with Deborah's consent. Deborah has a diagnosed learning disability and was taken under the legal guardianship of a Scottish local authority during her pregnancy with Celine.

Deborah participated in a research interview alongside an advocacy and support worker from a national member-led group for parents with learning disabilities. Talking about the period when her younger daughter Celine was accommodated at birth, Deborah stated that "I was on my own really. There was only me and social work'. Deborah had been 'disowned' by her father, her mother having died some years previously, and stated that 'I had no support at that time, no support whatsoever.'" In interview, Deborah conveyed the view that things may have been different if she had the benefit of advocacy advice and support then. As it was, she recalled attending the child welfare and protection meetings in relation to Celine alone, with the support of a social worker. When it came to the legal adoption of Celine, Deborah described the process as follows.

Deborah: And then I signed all the agreed paperwork for Celine.

Researcher: Did you have a solicitor? Did you have a lawyer that worked with you at all?

D: No. No. Again, it was just me and the social work.

(Extract from Research Interview with Deborah and Florence)

In the interview, Deborah described her feelings of isolation at the time of Celine's birth and the lack of support available to her, beyond that of social work professionals. Here, Deborah begins to describe her relationship with Celine's father.

D: And when Celine was born, my mum had already died years before.

R: Oh, I'm sorry.

D: And Celine's father [father], and Celine's father's family didn't want anything to do with Celine neither. And he didnae [didn't] really want anything to do with Celine neither.

R: And you had to get away from him as well by the sounds of it?

D: Yeah.

R: It wasn't good for you. OK, right. And was that thought about at all? Was it thought about that she could stay with her Dad, or her Dad's family, was that ever talked about?

D: He didn't want, when social work went to ask them, none of his family wanted Celine.

R: Yeah, 'cos I guess for some mothers that can be a hard thing, where actually they talk to the father, or they think, "maybe we'll try this".

D: But Celine's Dad was never on her birth certificate. Because of concerns they had previously with his other child. Because he was on supervised visits with his other child. And social work was advising me not to put his name on the birth certificate because he had no legal

rights with the child after that. Because social work came and told me, "Look Celine's dad wants to see, meet Celine". I was like, "No" I was like, "Give him photos" but I was like, "dinnae [don't] let her near him".

R: What did you think of that advice, Deborah? Can I ask you that, what did you think of that advice about not putting his name on the birth certificate and, kind of trying to write him out really, wasn't it?

D: I was fine because I did the same with Rebecca [older daughter], I did the same with Rebecca. Her dad wasn't about when Rebecca was born. So, I went back to my parents and again, I chose not to do that back then [approximately 23 years previous to interview], yeah, so it wasn't really, I was just more than happy to keep Celine.

(Extract from Research Interview with Deborah and Florence)

Much as was observed in the ethnographic study in relation to Jane and Hugh's baby, Deborah described being explicitly advised by social workers not to register Celine's father on her birth certificate. Deborah's position is more complicated as she states she was under local authority guardianship at the time of Celine's birth. Without full details of that guardianship, it is not possible to know if there were any areas in which Deborah lacked legal capacity, and if so, what exactly these were. Celine's father had been charged with an assault on Deborah, and following this Deborah accepted direction from professionals about major life decisions, such as moving to a care facility in a different area. For Deborah, there was no clear distinction between accepting this guidance, and accepting social work advice in terms of who held parental rights and responsibilities for Celine. The power imbalance between Deborah and the professionals involved was very steep and it would have been difficult for her to

go against any advice she was offered in terms of her daughter. The advice Deborah followed around Celine's father not being named on the birth certificate, meant that she alone could consent to Celine's adoption, when a social worker later advised her to do this. There was no other person with parental rights and responsibilities who could oppose the adoption, and Celine's father was erased from any further involvement in Celine's life. However well-intentioned the advice Deborah was offered may have been, in terms of Celine's father's assessed dangerousness to her and Celine, the child welfare and protection intervention with Deborah during the pregnancy effectively erased Celine's father from the legal processes that followed. In her account of this period, Deborah clearly stated that she did not have any independent advice or advocacy and was not instructing a solicitor. Deborah was advised by a social worker to "focus on herself" when she tried to "fight for a mother and baby unit" placement for her and Celine following the birth, where she could care for her daughter with support. However, no such facility was offered. Following Celine's birth, she was placed with foster carers. Deborah remained in a care home environment for a further nine years and left this less than a year prior to the research interview.

Discussion

Unbalanced power relations are at the heart of the observed and reported interactions between social workers and parents described above. There is much that is troubling in the findings shared in this article. However, focussing specifically on the legal position of fathers, the data presented show how fathers can be denied the opportunity to obtain legal rights and responsibilities for their children through advice given to mothers during the pregnancy. Whilst holding parental rights and responsibilities is not necessary for involvement in discussions and decisions about the care of a child, fathers who lack such rights can more easily be excluded by

child welfare and protection professionals, as can their wider family and community.

Without parental rights and responsibilities, fathers lack a clear legal position from which to oppose decisions about their children's lives, including the decision that a child join a non-related family through legal adoption. This represents a significant constraint on men's rights to have a child, to parent that child, and even to confer on that child legal and social paternity. There is no straightforward way in which an expectant mother, father, or couple can seek or secure legal advice on this matter within the timescale of registering the child's birth, which must be within 21 days of the birth in Scotland. Seeking legal advice was not an option that most parents taking part in the studies reported on here were aware of or had tried to access around their child's birth. Rather, the mothers accepted the advice given to them by social workers around the registration of the birth and complied with the legal erasure of the fathers of their children.

Applying a reproductive justice lens to this problem is complex. It is crucial to acknowledge that reproductive justice as theory, praxis, and activism "predominantly focuses on the importance of including marginalized views and voices" (Liddell, 2019, p. 110). A reproductive justice approach requires engagement with the "damaging heritage" (Roberts, 2021, p. 61) of "the colonial legal apparatus" (Roberts, 2021, p. 60). Reproductive justice was built through the activism and organising of African American women who demonstrated the ways in which the legacy of that apparatus continued to deny women their full reproductive rights (Ross & Solinger, 2017). Using this work, and the analytical power of reproductive justice, to consider the rights of white heterosexual men can appear jarring and counter-intuitive. It might be objected that when social workers ensure that the fathers of infants at risk are "discounted altogether or seen as problematic" (Weinberg, 2016, p. 106), they are simply

aiming to secure the safety of those infants, and that of their mothers. Through their work, social work practitioners can be understood as foregrounding women's rights, by enabling mothers to walk away from the fathers of their babies without legal entanglement.

However, there are two significant problems with reading social workers' advice to women not to name the fathers of their babies on the birth certificate as a feminist act. The first is that the outcome is to locate the responsibility for the infant solely with the pregnant woman, responsabilising her as a mother, whilst the responsibilities of the child's father are suppressed and erased. The second is that this is a practice that weaponises women's desire to care for, live with, or at the very least have ongoing contact with their children against them, in order to coerce a particular outcome. For the women who participated in the research studies reported on here, the power imbalance between them and the social work practitioners involved was very pronounced at the time the advice was given.

Pregnant women living with the threat of physical and sexual violence from their partners may be reluctant to discuss this with child welfare professionals, for fear of being blamed for a "failure to protect" the baby from the risks of assault (Ross & Solinger, 2017, p. 218). The stakes for women whose capacity to care for their baby is assessed by child protection social workers during pregnancy are undeniably high (Beddoe, 2022, p. 8). Disclosing experiences of intimate partner violence and abuse is a huge risk for women. In this context, it could be argued, as the social worker Emma does above, that erasing some men from their children's lives is safer and easier all-round. However, as Davis et al. argue, acting "under the pretext of ending gender violence allows the state to determine the nature of the problem, to decide on 'reasonable' solutions, and to categorize people as either deserving to be free from injury or not" (2022, p. 111). Under this reading, it is not only men's

rights as fathers which are threatened, but also women's autonomy as mothers. In this process, the rights of both men and women to have and to parent children (Ross & Solinger, 2017) are compromised.

Any child welfare practice which fails to engage with men as fathers in a respectful and holistic way, is ultimately a practice which fails to grapple with the problem of male violence (Critchley, 2022b). It is a "business as usual" practice whereby fathers are hidden in the shadows (Ewart-Boyle et al., 2015; Grundělová & Stanková, 2019), while women are held accountable for family safety. It is a practice that fails to offer those men who are a risk to their partners meaningful opportunities for change and also allows them to move on to father children with future partners, with little accountability. The foetal subjects who are viewed as the unborn baby clients of child welfare professionals may be imagined as untethered infants (Critchley & Keddell, forthcoming), but all children are tethered: to family, to community, to their roots. In Scotland, as in Aotearoa NZ, there is renewed commitment within legislation, policy, and practice to preserving children's relationships with their birth family and to prioritising care within kinship networks (The Promise, 2021). This commitment sits uncomfortably up against a practice with the potential to exclude fathers from their children's lives, from their infancy onwards.

When there is child welfare and protection involvement in the perinatal period, the reproductive rights of both women and men are at risk. Women are vulnerable to "pregnancy policing" (Ross & Solinger, 2017, p. 219) whereby their fitness to be mothers is held up to scrutiny. The risks to the reproductive rights of men in this context have been subject to less consideration. Yet men too can "face multiple diverse barriers to reproduction and parenthood" (Dukes & Palm, 2019, p. 715). Young men and men raising children in economic poverty can be easily marginalised within systems that are underpinned by assumptions of middle-

class motherhood (Tarrant, 2021). Service investment in families by child welfare agencies is primarily in mothers, rather than fathers (Perez-Vaisvidowsky et al., 2023). Men who are separated from their children through child welfare proceedings experience the double-blow of the pain of that separation, followed by an almost complete lack of concern with their own welfare needs (Critchley, 2022b; Philip et al., 2020). This jeopardises the capacity of fathers to recover and address the issues that led to family separation, and ultimately to have and to parent children successfully.

Conclusion

In advocating for social work to engage with global threats to reproductive justice, Beddoe has argued that "social workers are in a good position to aggregate stories with a focus on social justice (health inequities, racism, poverty and so on) and human rights (bodily autonomy, choices about fertility and parenthood, and so on) in order to avoid the need for some people to be brave and lay out their private decisions to raise awareness" (2022, p. 17). In this article I have chosen to aggregate the stories of families and individuals encountered during two research projects. When these stories are considered through the lens of reproductive justice, it becomes clear that the rights of men, women, and their children are not being fully respected or realised.

As highlighted by Perez-Vaisvidovsky, fathers are part of highly complex configurations of care (2023, p. 10). Fathers who are written out legally, may nonetheless remain present in the lives and psyches of their children, and perhaps also in relationship to the children's mothers, despite becoming invisible to child welfare services (Brown et al., 2009) and in any legal proceedings. Where fathers do remain apart from their children, by dispensing with their participation at an early stage, an opportunity is lost to engage with fathers' grief at separation from their children, and to address the potentially long-lasting

impact of this experience (Philip et al., 2023). There is an urgent need for expectations of practice to shift and for the inclusion of men as fathers to become the standard against which practitioners are held accountable. Significant failures to respect men's responsibilities and rights as fathers are described in this article, and the pre-birth child protection loopholes that enable such practices need to be closed.

Gomez et al. suggested that "both social work and reproductive justice share a commitment to furthering and shaping knowledge and practice towards a more equitable society" (2020, p. 359). In order to realise this aspiration, it is important to acknowledge that the social work profession has been, and continues to be, involved in coercive practices that threaten reproductive rights, rather than furthering reproductive justice. In this article I have focussed on the reproductive rights of men as fathers, presenting data that illustrate how these are made precarious through pre-birth child protection involvement with families. Recognising the power that social workers hold in relation to the reproductive rights of child welfare-involved parents within the perinatal period is an essential first step in beginning to change practice.

A reproductive justice lens not only brings clarity to social work dilemmas, by showing the harm that is done to individuals and families when reproductive rights are not acknowledged and respected. It also begins to shine a light on possible ways forwards in working with situations of intrafamilial risk. By engaging with the idea that child-welfare involved expectant parents "deserve the same sexual, biological, and affective relationships and opportunities as others" (Ross & Solinger, 2017, p. 203), it becomes possible to shift the professional gaze beyond the risks to the unborn baby to the needs of their mother, their father, and their wider family. To take as a starting point the enabling conditions that could empower expectant parents to care for a child; to offer a child what they can of

themselves. Practice and policy that engages with families within a reproductive justice framework has the potential to be genuinely transformative, by focusing on the conditions required for children to be born, cared for, and raised within their families, and their communities.

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