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Book Review

In Harm's Way: The Memoir of a Child Protection Lawyer

By Teresa Thornhill

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Teresa Thornhill is an English barrister who has had three decades of experience working in the field of child protection law. She has previously authored works about women, refugees, and vulnerable people in the Middle East. She writes engagingly, with a neat turn of phrase: at one point she describes an opposing barrister, whom she found smug and self-satisfied, as looking 'cool and calm as a glass of mint tea' (p. 5).

In Harm's Way is a coruscating account of the deep (and ever-deepening) flaws in the child protection process as it operates in England and Wales. The format of the book is a series of case-studies, interspersed with scenes from her own life. She sets out the aims of the book as making people aware of the miserable circumstances too many children are growing up in in contemporary England and Wales, and bringing to public attention how unsatisfactory – even dysfunctional – and grossly underfunded the system of child protection is. Years of austerity bear much of the blame for exacerbating these problems. However, few of the problems she identifies are unique to England and Wales.

The book opens with the startling declaration that the cases she will be discussing 'are not real cases' (p. 34). The case studies are amalgams, obviously constructed to bring out the points that the author seeks to make, and she explains that she is obliged to adopt this approach in order to maintain confidentiality for the families (each of whose circumstances are so unique that identification would otherwise be relatively easy) – and, she might have added, for the other professionals she deals with (the more sensitive of whom might otherwise regard the book as actionable).

Though structured into four separate parts, the book naturally falls into two quite separate, and imbalanced, sections: the author's work representing



parents, and her work as a local authority lawyer. The first of these sections, which makes up the bulk of the book, mostly concerns the frustrations the author feels at the deep and systemic unfairness faced by parents whose children local authorities are seeking to remove into care, who seldom understand the processes involved; the second focuses more on the frustrations local authority lawyers face with respect to the institutional processes by which their employers perform their child protection duties. Throughout the whole book, the author time and again returns to the devastation caused to local authority services in general – and child protection in particular – by years of austerity leading to unceasing reductions in funding. This has led to good outcomes being replaced as the primary goal of child protection by measurable process, accompanied by an across-the-board deskilling not only of social workers but of the lawyers who seek to support them.

The scenes from the author's own life (putting logs on a wood burner, walking holidays in the Pyrenees, seeing her son off to university) are distracting but do serve to underline one of her main points – the sheer middle-classness of child protection professionals. These scenes are inescapably alien from the life experiences of the families caught up in child protection processes, and the point is well made that it is vanishingly rare for abuse and neglect of middle-class children to lead to local authority intervention in family life. Sometimes however these scenes are clearly tendentious constructs. Chapter 10 consists of a chat over coffee the author had with a court-appointed guardian, which consisted of her asking her companion questions such as 'why has CAFCASS deliberately devalued the role of the guardian?' 'Why do they recruit people who are so green?' 'Has your case law risen in the past few years?' 'Don't you think, Naihm, there's a huge problem with social work recruitment and training?' 'Do you think there should be a minimum age for people to become social workers?' Doubtless the author wanted to draw attention to matters which were outwith her own professional experience, but the artificiality of the conversation was grating.

The author identifies many aspects of the system which she considers broken beyond repair. She regards paying for psychologists to produce court reports recommending therapy as an immoral waste of money, when there are no resources to pay for it, and their large fees could be used to do so instead. She is angry at managerialism in the system, where judges and magistrates are more concerned with ensuring that their cases are dealt with within set timeframes than properly, and where CAFCASS reviews of guardians leave no space for personal initiative. She dislikes intensely the idea of lay tribunals making child protection decisions – at least as they operate in England and Wales. The Scottish system of children's hearings is not within her knowledge, where the whole structure is very different: the English system endows lay magistrates (overwhelmingly white, retired, financially comfortable) with the whole panoply of court ritual: 'All rise' the clerk will say when 'their worships' (the magistrates) appear (p. 9, p. 13). This is never likely to create an atmosphere in which struggling families can meaningfully engage in judicial proceedings.



The system is full of Catch-22s: parents often need to attend therapy to show they are working to get over their problems, but self-funding is out of the question, and the courts cannot order it if local authorities refuse (or are unable) to pay; a homeless young person without her child is low down on the list of social housing priorities, and both local authorities and judges feel unable to return children to homeless parents even when doing so would allow them to escape homelessness; the fact that recovery from addiction takes time means that children are removed permanently prematurely, applying the assumption 'that it's almost never in the interests of children to be made to wait while their parents try to change, even when the alternative is stranger adoption' (pp. 94-95).

The author describes one disturbing case (in truth, they are all disturbing) in which her client is the drug-recovering father of a six-year-old boy, whose mother has abandoned him and her two younger children. The father wants to care for all three of the children, but the social workers are clear that the younger two (who have only a social connection to the author's client) should be placed for adoption, with the six-year-old placed in long-term foster care. The author fails to persuade the judge that the best solution is to give the father more time to show he has properly recovered from his addiction, and to fund therapy to help him to do so – and she rightly worries that the outcome, involving more lost relationships, will be devastating for the six-year-old. This case illustrates so many things: that the best outcome for one sibling is not necessarily the best outcome for another; that what is best for the parent is frequently not best for the child; that time constraints place too many children on a trajectory that is virtually impossible to escape from once initiated; that funding constraints rob so many families of the support that they need, meaning that care proceedings invariably lead to much more extreme outcomes than would otherwise be necessary; and that middle-class decision-makers have little real understanding of the pressures and challenges faced by those at the margins of society.

The author's work was primarily either for or against parents, and she did not represent the children in any of the cases she discusses. At various points, she admits her doubts as to whether what her clients want – and what she was paid to argue for – was in fact the best solution for the child involved, but she points out that her job was to take instructions and to present these to the court in as effective a manner as possible: it was *not* to assess the welfare of the child. An analogous approach is adopted by criminal defenders, on the basis that everyone accused of a crime has the right to challenge and test the evidence offered against them, and to go free if that evidence is found wanting. This is right and proper in criminal law, but I am not convinced that the same argument works as well in child protection. Few criminal defenders lose sleep when the guilty go free, but from the author's own experience that almost certainly cannot be said for lawyers successfully representing parents in child protection proceedings. The ethical dilemma this poses is not explored to any great extent, given that the purpose of this book is not to show how the system is bad for children, but how it ill-serves parents at risk of losing their children. The usual focus of most books on child protection law is the children, but this book serves



as a very timely reminder that parents too are deeply involved and may face processes utterly destructive to their own wellbeing.

The final chapter of the book seeks to offer some solutions (or at least practical improvements). Most are utopian (by which I mean out of the question in today's reality): a reversal of the deep cuts the past 10 or 15 years have seen in local authority resources, and far higher pay for social workers, placing them on a par with doctors. Some identify deeper social and political problems which would not be addressed by even an ideal child protection process: lone parents struggling with lack of family support, too often with lives devastated by drugs and alcohol, low educational achievements, social exclusion, unemployment, homelessness. Rather more achievable, if requiring political and judicial will (and academic engagement), is her recommendation for vastly increased research into which outcomes delivered by the courts have worked in the long-term. The author would also welcome an expansion of the Family Drug and Alcohol Court and its more holistic approach (though she accepts that would be inappropriate for cases of physical or sexual abuse). The book ends with a plea for a massive increase in taxpayer money going into child protection, knowing that it will not happen, but few could disagree with the final sentence of the book: 'As one of the wealthiest countries in the world, Britain should strive to do better by its children' (p. 300).

About the reviewer

Professor Kenneth McK. Norrie taught family law at Strathclyde Law School for over 30 years, where he specialised in Scottish child protection law. He is author of a number of textbooks on that subject, as well as work on medical law, trust law, and defamation. He retired in 2023.

The publisher, Harper Collins, supplied a copy of this book for review.

