

DESIGNING CHILD WELFARE DISPUTE SYSTEMS: A FRAMEWORK FOR ADVANCING PARENTHOOD DISABILITY RIGHTS

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ABSTRACT

This article addresses a critical problem in the child welfare system: parents with disabilities, particularly those with intellectual, cognitive, and mental disabilities, disproportionately lose custody of their children due to systemic discrimination and lack of proper support. Although laws exist to protect the rights of people with disabilities, these rights are rarely implemented effectively in child welfare cases. The system frequently views children's interests as conflicting with their parents' disabilities, leading to unnecessary family separations.

While previous scholarship has identified these problems and called for reform, this article makes a novel contribution by directly tackling the implementation gap between disability rights principles and child welfare practice. It does so by applying the Disability-Rights-Based Dispute System Design framework, an analytical tool developed for implementing disability rights in various legal contexts, to the specific child welfare domain.

This innovative approach moves beyond theoretical critiques to offer specific guidance for reshaping how the child welfare system operates, focusing on preventing unnecessary child welfare interventions and improving court proceedings. Based on dispute system design (DSD) guidelines, the framework addresses six key areas: establishing clear goals that respect disability rights, involving all affected parties in decision-making, considering cultural and disability-related contexts, restructuring processes to be more accessible and supportive, providing necessary resources and support services, and ensuring success and accountability through continuous evaluation.

The article proposes several transformative recommendations, including legitimizing broader forms of parental support without jeopardizing parental status; reconceptualizing the parent-child relationship as interdependent rather than solely dependent; incorporating therapeutic jurisprudence while maintaining strong rights-based protections; ensuring proper disability-oriented legal education for professionals; and developing comprehensive early intervention and support systems. The design emphasizes prevention and proactive support while improving judicial processes. This approach promises to enhance access to justice not only for parents with disabilities but for all families in the child welfare system, particularly those from underprivileged communities.

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INTRODUCTION

Sarah and Ben married five years ago. Sarah has schizophrenia, and Ben experiences temporary depressive episodes. They work part-time. They have a four-year-old daughter, Ella, and a one-year-old son, Ethan. Sarah's mother lives close to them and used to help them raise the children and keep up with the house chores. When her mother is diagnosed with Alzheimer's disease, Sarah experiences a crisis and is hospitalized. Ben tries to keep up with his job, the children, and the house chores but soon starts to experience a depressive episode.

Consequently, he wakes up late, does not always bring the children to daycare, and struggles with bathing and preparing meals. The municipal child protective services try to provide Ben with some help at home, but when he does not seem to cooperate, they turn to the district family court and ask to place the children in a temporary foster home. Ben is appointed a lawyer through the legal aid program, and the judge

orders social services to provide him with more help at home. However, Ben is reluctant to let a stranger in the house, especially concerning the care of Ella and Ethan, and stops returning his lawyer's calls. Meanwhile, the children are not attending daycare and are not visiting their mother in the hospital. Two months after the first hearing, the judge warns Ben that if the situation does not change immediately, she will place Ella and Ethan in foster care.

This scenario illustrates how the current child welfare system often fails to recognize and accommodate parental disabilities, leading to potentially unnecessary family separations. As Sarah and Ben's case demonstrates, the system typically responds with standardized interventions rather than disability-informed approaches that could address the root causes of family struggles. A system designed to account for disability rights could have provided this family with targeted support services, disability-appropriate communication methods, and accommodations — potentially preventing court involvement altogether.

Parents participating in child welfare proceedings usually belong to underprivileged and marginalized groups.¹ This article focuses on one of those groups: parents with disabilities. Parents with disabilities, predominantly those with mental disabilities (including intellectual, developmental, psychosocial, and psychiatric disabilities), face disproportionate scrutiny in child welfare proceedings.² Despite their frequent involvement in these proceedings, the system rarely acknowledges or accommodates their disability-related rights and needs³ — as illustrated in Sarah and Ben's case.

Underlying this systemic failure is the persistent stigma that views people with disabilities as inherently incapable. This perception transforms disabled parenting from a fundamental right requiring

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¹ Tricia N. Stephens, Colleen C. Katz, Caterina Pisciotto & Vicky Lens, *The View from the Other Side: How Parents and Their Representatives View Family Court*, 59 FAM. CT. REV. 491 (2021).

² NATIONAL COUNCIL ON DISABILITY, *ROCKING THE CRADLE: ENSURING RIGHTS OF PARENTS WITH DISABILITIES AND THEIR CHILDREN* (2012) [hereinafter: NCD *ROCKING THE CRADLE*]; Robyn M. Powell, *Family Law, Parents with Disabilities, and the Americans with Disabilities Act*, 57 FAM. CT. REV. 37 (2019); Elizabeth Lightfoot, Katharine Hill & Traci LaLiberte, *The Inclusion of Disability as a Condition for Termination of Parental Rights*, 34 CHILD ABUSE & NEGLECT 927 (2010); Hanna Bjorg Sigurjónsdóttir & James G. Rice, *'Evidence' of Neglect as a Form of Structural Violence: Parents with Intellectual Disabilities and Custody Deprivation*, 6 SOC. INCLUSION 66 (2018); Chris Watkins, *Beyond Status: The Americans with Disabilities Act and the Parental Rights of People Labeled Developmentally Disabled or Mentally Retarded*, 83 CALIF. L. REV. 1415 (1995).

³ Leslie Francis, *Maintaining the Legal Status of People with Intellectual Disabilities as Parents: The ADA and the CRPD*, 57 FAM. CT. REV. 21, 30 (2019).

support into a perceived societal burden requiring intervention. Consequently, even though parenting disability rights are legally recognized through various statutes and the Americans with Disabilities Act, parents and professionals struggle to implement these rights in practice.⁴ The result is a legal response to disabled parenthood dominated by skepticism and presumptions of harm to children, leading to excessive reliance on adversarial proceedings, child removal, and termination of parental rights - outcomes that could often be prevented through proper disability accommodations and support.⁵

Drawing from recent literature documenting this implementation gap between disability rights law and child welfare practice,⁶ this article proposes a novel solution: applying “dispute system design” (DSD) principles to create disability-responsive child welfare systems. Rather than focusing on individual cases, DSD develops comprehensive frameworks for preventing and managing recurring disputes.⁷ Its six key elements — goals; stakeholders; context and culture; process and structure; resources; and successfulness, accountability and learning — provide a practical roadmap for systemic reform. This practical orientation makes DSD particularly valuable for implementing new policies and legal reforms in complex systems like child welfare.⁸

Specifically, this article uses a “*Disability-Rights-Based DSD*,” which focuses on managing disputes in disability-related fields,⁹ such as psychiatric hospitalization, torts, legal capacity,¹⁰ and child welfare. The Disability-Rights-Based DSD aims to develop practical solutions to varied cases and situations and ways to prevent or manage the autonomy-protection tension that underlies child welfare conflicts, aiming to design a comprehensive child welfare policy.

An essential contribution of this work is demonstrating how DSD principles can transform the preventive and judicial aspects of the child welfare system.¹¹ By redesigning early intervention services through a

⁴ See Jasmine E. Harris, *Legal Capacity at a Crossroad: Mental Disability and Family Law*, 57 FAM. CT. REV. 14, 14 (2019).

⁵ Francis, *supra* note 3, at 33. As Francis articulates, though most countries, including the United States, have moved away from sterilizing people with disabilities, the legal response to disabled parenthood is still dominated by negativity, doubt, and consideration of the disability as harmful to children, resulting in a high percentage of termination of parental rights. *Id.* “It is time,” she writes, “to consider seriously how efforts can be made to better realize the promise of the ADA and the CRPD for people with intellectual disabilities as parents.” *Id.*

⁶ Robyn M. Powell, Susan L. Parish, Monika Mitra, Michael Waterstone & Stephen Fournier, *The Americans with Disabilities Act and Termination of Parental Rights Cases: An Examination of Appellate Decisions Involving Disabled Mothers*, 39 YALE L. & POL’Y REV. 157, 199–201 (2020).

⁷ LISA BLOMGREN AMSLER, JANET K. MARTINEZ & STEPHANIE E. SMITH, DISPUTE SYSTEM DESIGN: PREVENTING, MANAGING, AND RESOLVING CONFLICT (2020); NANCY H. ROGERS, ROBERT C. BORDONE, FRANK E.A. SANDER & CRAIG A. MCEWEN, DESIGNING SYSTEMS AND PROCESSES FOR MANAGING DISPUTES 4 (2013).

⁸ Stephanie Smith & Janet Martinez, *An Analytic Framework for Dispute Systems Design*, 14 HARV. NEGOT. L. REV. 123, 126 (2009).

⁹ Roni Rothler, *Designing Access to Justice: A Disability-Rights-Based Dispute System*, 29(1) HARV. NEGOT. L. REV. (forthcoming).

¹⁰ Roni Rothler, *Access to Legal Capacity: A Disability-Rights-Based Design*, 40 OHIO ST. J. DISP. RESOL. 77 (2024).

¹¹ This approach reflects a “public health perspective,” which is essentially preventive to the socio-legal system. For elaboration, see Michal Alberstein & Nadav Davidovitch, *Intersecting Professions: A Public Health Perspective on Law to Address Health Care Conflicts*, 5 INT’L J. CONFLICT ENGAGEMENT RESOL. 83, 85 (2017).

disability rights lens, we can often prevent the escalation to court involvement — as might have happened in Sarah and Ben’s case with proper disability accommodations. When judicial processes become necessary, DSD principles can help courts better balance disability rights with child welfare concerns. This comprehensive approach moves beyond the current reactive, court-centered model to create proactive solutions that respect disability rights while ensuring family well-being.

The ultimate goal of Disability-Rights-Based DSD in child welfare is to address the issue of *access to justice*. This argument aligns with the “access to justice” movement’s claim that unequal access to the legal system, resulting, among other things, from belonging to a disadvantaged social group, violates the equal protection of the law and infringes on the ability of individuals and groups to exercise their fundamental rights.¹²

The article proposes *Disability-Rights-Based DSD in child welfare policy as access to justice*: through the lens of DSD, such as a systematic analysis of the dispute according to the participant’s goals, the system’s structure and resources, the stakeholders, and the system’s successfulness and accountability, the article suggests the redesign of child welfare policy, which is practice-oriented and specifically sensitive to nuances of the children and the parents that are the system’s main stakeholders. Moreover, based on DSD’s focus on context and culture, this framework has the potential to endorse cultural diversities and enhance families’ resilience.

Although it focuses on disability, according to the universal approach,¹³ such a design promises to provide better access to justice for everyone, especially for parents and children from underprivileged societies and groups.

The article proceeds as follows: Section I presents the phenomenon of parents with disabilities in child welfare proceedings, detailing the obstacles that prevent the full implementation of disability rights in this realm. Section II introduces the “Disability-Rights-Based DSD,” providing a comprehensive guideline for designing a disability-rights-sensitive child welfare system according to DSD’s six elements: goals, stakeholders, context and culture, process and structure, resources, and successfulness, accountability and learning. The conclusion provides a summary of the discussion presented in the article.

¹² Mauro Cappelletti & Bryant Garth, *Access to Justice: The Newest Wave in the Worldwide Movement to Make Rights Effective*, 27 BUFF. L. REV. 181, 186 (1978); Marc Galanter, *Access to Justice in a World of Expanding Social Capability*, 37 FORDHAM URB. L.J. 115, 124 (2010).

¹³ Irving K. Zola, *Toward the Necessary Universalizing of a Disability Policy*, 83 MILBANK Q. 1 (2005).

I. PARENTS WITH DISABILITIES AND CHILD WELFARE PROCEEDINGS

A. Parents with Disabilities and Underprivileged Groups in Child Welfare Proceedings

Child welfare proceedings¹⁴ are legal interventions concerning child safety and well-being in family life. These proceedings, also known as child protection or child dependency cases, enable state intervention in parental care.¹⁵ The process encompasses both child protective services and subsequent judicial proceedings.

Child welfare judicial proceedings and decisions vary greatly. While some decisions merely instruct parents regarding care and education, the judicial power extends to decisions of parent-child separation through foster care or termination of the relationship through adoption. The judicial proceedings, initialized by the child protective services, take place in the general family or specialized courts, such as family drug courts, family treatment courts, family domestic violence courts, and youth courts. Usually, they occur after a failure to follow a non-judicial intervention plan.¹⁶ Occasionally, parallel non-adjudicative proceedings such as “family group conferencing” occur, depending on the country’s or state’s applied laws and policies.¹⁷ However, usually, the “parental autonomy / child-protection” paradigm prevails in child welfare proceedings, leading to long-lasting or even irreversible “all or nothing” decisions.¹⁸

There is a high correlation between parents who participate in child welfare proceedings and underprivileged conditions,¹⁹ predominantly low socio-economic levels,²⁰ and parents who are characterized by

¹⁴ The proceedings are also called “child protection” or “child dependency.” In this article, I will refer to the “child welfare proceedings,” which encompass the process within the child protective services and the judicial proceedings that usually follow it. This term reflects various aspects of safeguarding children from abuse, neglect, and exploitation. Still, it also has a broader scope that includes the overall well-being of children, covering aspects such as health, education, and family support.

¹⁵ Harris, *supra* note 4, at 15; *see also* Powell, *supra* note 2, at 40 (discussing the constitutional grounds establishing the right to parent—care and control of one’s children—without state interference as a fundamental liberty protected by the 14th Amendment of the U.S. Constitution and its balance against the state’s rights to safeguard children from harm); Francis, *supra* note 3, at 26; Theresa Glennon, *Walking with Them: Advocating for Parents with Mental Illnesses in the Child Welfare System*, 12 TEMP. POL. & C.R. L. REV. 273, 294 (2003).

¹⁶ For a detailed overview of the different means and procedures regarding child welfare, see Glennon, *supra* note 15, at 280–82. In this article, “child welfare proceedings” encompass the process within the child welfare protective services and the judicial proceedings that follow it.

¹⁷ Susan L. Brooks & Ya’ir Ronen, *The Notion of Interdependence and Its Implications for Child and Family Policy*, 17 J. FEMINIST FAM. THERAPY, no. 3, 2006, at 23, 39.

¹⁸ Francis, *supra* note 3, at 32.

¹⁹ *See generally* Stephens, Katz, Pisciotto & Lens, *supra* note 1; Shanta Trivedi, *The Adoption and Safe Families Act is Not Worth Saving: The Case for Repeal*, 61 FAM. CT. REV. 315, 317 (2023) (focusing on the negative impact of adoption regulation on families of color). A recent British research study revealed similar findings since parents were racialized as black and black mixed race. GILLIAN HUNTER, MONICA THOMAS & NICOLA CAMPBELL, EXPERIENCES OF PUBLIC LAW CARE PROCEEDINGS: A BRIEFING ON INTERVIEWS WITH PARENTS AND SPECIAL GUARDIANS (2024).

²⁰ Stephens, Katz, Pisciotto & Lens, *supra* note 1; Guy Enosh & Tali Bayer-Topilsky, *Reasoning and Bias: Heuristics in Safety Assessment and Placement Decisions for Children at Risk*, 45 BRIT. J. SOC. WORK 1771, 1773 (2015).

“otherness.”²¹ Over the years, research has revealed racial disproportionalities and disparities in the child welfare system²² and distinct inaccessibility to justice.²³ Moreover, parents reported experiencing the proceedings as punitive and unsupportive spaces, even traumatic, where justice is not being served.²⁴ These feelings are directly linked to the high intimate exposure required within the proceedings.²⁵

Overall, parents, and sometimes even their representatives, experience the courts as unfavorable and anti-therapeutic, raising three main themes: the absence of voice and feeling as not included in the proceedings and not considering their input, lack of understanding of the judicial process, and concerns regarding the proceedings’ fairness, including bias of the judicial decisions.²⁶ Specifically, research has found that parents often perceived themselves as outsiders or by-standers at court proceedings, even physically: sitting at the back of the courtroom or muted in virtual hearings, with very few opportunities to speak. Similarly, they reported a lack of understanding of the discussion between the judge and the legal professionals.²⁷

Parents with disabilities,²⁸ predominantly mental disabilities, which include intellectual, developmental, psychosocial, and psychiatric disabilities,²⁹ may find themselves, more often than other parents, as

²¹ Brooks & Ronen, *supra* note 17, at 24; Mayis Eissa & Anat Zeira, *The Backyard: Cumulative Trauma of Children from East Jerusalem Who Were Removed from Their Homes*, 153 CHILD ABUSE & NEGLECT 8 (2024).

²² See Vicki Lens, *Judging the Other: The Intersection of Race, Gender, and Class in Family Court*, 57 FAM. CT. REV. 72 (2019) for both a general overview of racial and gender disproportionalities and a focus on the discrimination of poor mothers of color in child welfare proceedings.

²³ See generally DOROTHY ROBERTS, *TORN APART: HOW THE CHILD WELFARE SYSTEM DESTROYS BLACK FAMILIES — AND HOW ABOLITION CAN BUILD A SAFER WORLD* (2022) (stressing the oppressive intentions and effects of the family system towards marginalized communities, reinforcing gender and racial hierarchies). See also Anne K. McKeig & Mary Madden, *Family Court Enhancement Project: Improving Access to Justice*, 57 FAM. CT. REV. 107 (2019).

²⁴ See Stephens, Katz, Pisciotto & Lens, *supra* note 1 and the literature mentioned therein for discussion regarding parents’ displeasure with the proceedings and the need to enhance aspects of justice and therapeutic jurisprudence. See also discussion *infra* Section II.B.4.iv.; HUNTER, THOMAS & CAMPBELL, *supra* note 19.

²⁵ Stephens, Katz, Pisciotto & Lens, *supra* note 1, at 496 (“Unlike many other types of court proceedings, Family Court involves intimate and sustained relationships. Cases evolve over months and even years, with the normally private details of family life exposed and judged at virtually every court appearance.”)

²⁶ *Id.*, including the literature mentioned therein regarding the parents’ voice.

²⁷ HUNTER, THOMAS & CAMPBELL, *supra* note 19. See also Ravit Alfandari, *Partnership with Parents in Child Protection: A Systems Approach to Evaluate Reformative Developments in Israel*, 47 BRIT. J. SOC. WORK 1061, 1067–73 (2017) (exhibiting the limited partnership and collaboration between parents and the authorities).

²⁸ The term “disabilities” encompasses intellectual and developmental disabilities, psychiatric disabilities, physical disabilities, and sensory disabilities. Parents with all these kinds of disabilities are overrepresented in child protection proceedings. For some statistics and data regarding parents with disabilities in the United States, see Powell, *supra* note 2, at 39 (noting although estimates vary, it is clear that parents with disabilities exist within the system in significant numbers).

²⁹ The definition of disabilities with mental and intellectual characteristics varies across countries. Recent British research uses “learning disabilities” as a broader term. Mary Baginsky, *The Role of Adult Social Care for Parents with Learning Disabilities When a Child Is No Longer in Their Care*, NIHR SCH. FOR SOC. CARE RSCH. (2024), <https://www.sscr.nihr.ac.uk/projects/p203/> (last visited Apr. 2, 2025); NADINE TILBURY & BETH TARLETON, *SUBSTITUTED PARENTING: WHAT DOES THIS MEAN FOR PARENTS WITH LEARNING DISABILITIES IN THE FAMILY COURT*

litigants in child welfare proceedings.³⁰ Research has found that these parents face substantial and persistent discrimination and bias within the family law system, threatening their custody over their children.³¹ This bias, based on historically rooted beliefs regarding parental inabilities,³² is still manifested today through discriminatory child welfare, adoption, and reproductive health care policies³³ and practices that presume parental unfitness,³⁴ which are rooted in negative perceptions regarding their right or capability to parent.³⁵

Moreover, under some regulations, having a disability, and specifically a mental disability, may, in and of itself, provide grounds for parental termination.³⁶ Consequently, research has found that children's protective services tend to consider their children to be at risk of

CONTEXT? (2023). Harris uses the term "mental disabilities" to include intellectual, developmental, psychosocial, and psychiatric disabilities. *See* Harris, *supra* note 4, at 18. At the same time, she acknowledges that, in many instances, there is a need for disaggregation and individualization in regulatory approaches. *Id.* Nevertheless, as she notes, current laws and regulations tend to approach mental disabilities in a unified nature. *Id.* For further reading regarding parents with psychiatric disabilities, see Robyn M. Powell, Susan L. Parish, Monika Mitra & Joanne Nicholson, *Responding to the Legal Needs of Parents with Psychiatric Disabilities: Insights from Parent Interviews*, 38 MINN. J.L. & INEQ. 69, 75–78 (2020).

³⁰ NCD ROCKING THE CRADLE, *supra* note 2, at 1; Lightfoot, Hill & LaLiberte, *supra* note 2, at 928; Sigurjónsdóttir & Rice, *supra* note 2, at 66; Watkins, *supra* note 2 at 1419; Harris, *supra* note 4, at 15; Powell, *supra* note 2, at 38; Elizabeth Lightfoot & Sharyn DeZelar, *The Experiences and Outcomes of Children in Foster Care Who Were Removed Because of a Parental Disability*, 62 CHILD. & YOUTH SERVS. REV. 22 (2016); Sharyn DeZelar & Elizabeth Lightfoot, *Use of Parental Disability as a Removal Reason for Children in Foster Care in the U.S.*, 86 CHILD. & YOUTH SERVS. REV. 128 (2018); Traci L. LaLiberte & Elizabeth Lightfoot, *Breaking Down the Silos: Examining the Intersection Between Child Welfare and Disability*, 7 J. PUB. CHILD WELFARE 471 (2013).

³¹ Robyn M. Powell, *Legal Ableism: A Systematic Review of State Termination of Parental Rights Laws*, 101 WASH. U. L. REV. 423, 459–64 (2023). *See also* Powell, *supra* note 2, at 38; Robyn M. Powell, Susan L. Parish, Monika Mitra, Michael Waterstone & Stephen Fournier, *Terminating the Parental Rights of Mothers with Disabilities: An Empirical Legal Analysis*, 85 MO. L. REV. 1069, 1093 (2020).

³² Robyn M. Powell & Michael A. Stein, *Persons with Disabilities and Their Sexual, Reproductive, and Parenting Rights: An International and Comparative Analysis*, 11 FRONTIERS L. CHINA 53 (2016) (analyzing the evolution of the curtailment of sexual, reproductive, and parenting rights for people with disabilities over time and across jurisdictions). For the influence of the eugenic movement on the restricting U.S. legislative history regarding family formation, see Powell, *supra* note 2, at 38–40.

³³ *See generally* Roni Rothler, *Disability Rights, Reproductive Technology, and Parenthood: Unrealized Opportunities*, 25 REPROD. HEALTH MATTERS 104 (2017).

³⁴ Powell, *supra* note 2, at 38.

³⁵ Ayelet Gur & Michael A. Stein, *Social Worker Attitudes Toward Parents with Intellectual Disabilities in Israel*, 42 DISABILITY & REHAB. 1803 (2020); Elizabeth Lightfoot & Sharyn DeZelar, *Social Work with Parents with Disabilities: Historical Interactions and Contemporary Innovations*, 18 REVISTA DE ASISTENTA SOCIALA 19 (2019) (describing the lack of supports or services available for parents with disabilities, and dearth of models for social work practice, presenting several contemporary innovations in social work practice for working with parents with disabilities).

³⁶ *See* Glennon, *supra* note 15, at 281 (explaining that courts may rely on a parent's mental illness that prevents them from being capable of providing proper care and control as a basis for removal and for determining that they are not able to meet their children's special needs); *see also* Francis, *supra* note 3, at 24 (noting that the laws of many states include intellectual disability in the list of factors to be considered in determining whether parents are unable to discharge their responsibilities, thus allowing their rights to be terminated). Further, in some states, statutes permit services needed for reasonable efforts at reunification to be bypassed in the case of parents with intellectual disabilities; sometimes, parents with intellectual disabilities are viewed by the authorities as children themselves and, therefore, conceptually, not fit for parenthood, Francis, *supra* note 3, at 28. According to Powell, these bypass provisions may generate assumptions that parents with an intellectual disability cannot benefit from services. *See* Robyn M. Powell, *Safeguarding the Rights of Parents with Intellectual Disabilities in Child Welfare Cases: The Convergence of Social Science and Law*, 20 CUNY L. REV. 127 (2016).

significant harm,³⁷ and they are more likely than other parents to have children removed from their care.³⁸

This prevalence is usually linked to the difficulties some parents with disabilities experience, which affect their physical, intellectual, and mental parental capacities.³⁹ However, as noted by researchers in this field,⁴⁰ underlying these difficulties are social factors, specifically, a history of community segregation, eugenic policies and practices,⁴¹ a disproportionate level of social disadvantage resulting from negative experiences of domestic abuse, childhood trauma, poverty, inadequate economic opportunities,⁴² homelessness, absence of medical and social support, discrimination, and low self-esteem.⁴³ Those factors are the ones that often affect their ability to care for their children.

Indeed, a central issue of “disability-related parenting” is intersectionality. Intersectionality is a theoretical framework for understanding how aspects of a person’s identities (e.g., gender, sex, race, class, sexuality, religion, or disability) combine to create unique modes of discrimination and privilege.⁴⁴ Therefore, parents with disabilities from racial and ethnic minority backgrounds may experience even more significant child welfare system inequities than parents from either individual group owing to the intersection of racism and ableism.⁴⁵ Additionally, as parents with disabilities often experience high rates of poverty, low education, and unemployment, and depend on government

³⁷ Sharyn DeZelar & Elizabeth Lightfoot, *Who Refers Parents with Intellectual Disabilities to the Child Welfare System? An Analysis of Referral Sources and Substantiation*, 119 CHILD. & YOUTH SERVS. REV. (2020) (suggesting that the high prevalence of parents with intellectual disabilities within child welfare proceedings is also due to higher rates of referral from their social workers); see also Marjorie Aunos & Laura Pacheco, *Able or Unable: How Do Professionals Determine the Parenting Capacity of Mothers with Intellectual Disabilities*, 15 J. PUB. CHILD WELFARE 357 (2020).

³⁸ Nicole Buonocore Porter, *Mothers with Disabilities*, 33 BERKELEY J. GENDER L. & JUST. 75 (2018); DeZelar & Lightfoot, *supra* note 30; Powell, *supra* note 2, at 38 (documenting, through the studies discussed there, data from the United States, England, Canada, and Australia).

³⁹ See, e.g., LEONE HUNTSMAN, PARENTS WITH MENTAL HEALTH ISSUES: CONSEQUENCES FOR CHILDREN AND EFFECTIVENESS OF INTERVENTIONS DESIGNED TO ASSIST CHILDREN AND THEIR FAMILIES (2008).

⁴⁰ Harris, *supra* note 4, at 19; Powell, *supra* note 2; Francis, *supra* note 3.

⁴¹ Angela Frederick, *Between Stigma and Mother-Blame: Blind Mothers’ Experiences in the USA Hospital Postnatal Care*, 37 SOCIO. HEALTH & ILLNESS 1127, 1130 (2015).

⁴² Silvia Krumm, Thomas Becker & Silke Wiegand-Grefe, *Mental Health Services for Parents Affected by Mental Illness*, 26 CURRENT OP. PSYCHIATRY 362 (2013); Andrea Reupert & Darryl Maybery, *What Do We Know About Families Where Parents Have a Mental Illness? A Systematic Review*, 37 CHILD & YOUTH SERVICES 98 (2016); Alison Luciano, Joanne Nicholson & Ellen Meara, *The Economic Status of Parents with Serious Mental Illness in the United States*, 37 PSYCHIATRIC REHAB. J. 242 (2014).

⁴³ For an extensive British report on these issues, see UNIV. BRISTOL & ESMÉE FAIRBAIRN FOUND., GOOD PRACTICE GUIDANCE ON WORKING WITH PARENTS WITH A LEARNING DISABILITY (2021), <https://www.bristol.ac.uk/media-library/sites/sps/documents/wtpn/FINAL%202021%20WTPN%20UPDATE%20OF%20THE%20GPG.pdf> (last visited Apr. 2, 2025).

⁴⁴ Kimberle Crenshaw, *Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics*, 1989 U. CHI. LEGAL F. 139 (1989).

⁴⁵ Elizabeth Lightfoot & Elspeth Slayter, *Disentangling Over-Representation of Parents with Disabilities in the Child Welfare System: Exploring Child Maltreatment Risk Factors of Parents with Disabilities*, 47 CHILD. & YOUTH SERVS. REV. 283 (2014); Lightfoot & DeZelar, *supra* note 30.

benefits, they face an increased risk of child welfare system involvement.⁴⁶

As people with disabilities, in general, suffer from specific discrimination, coined “ableism,” so do parents in the child welfare system. Albert and Powell⁴⁷ categorize this ableism into four categories: the first category is personal beliefs about people with disabilities among parents with disabilities and the attorneys who represent them (“internalized ableism”); the second is interpersonal judgment and bias towards parents with disabilities by professionals who work with them in the child welfare system (interpersonal ableism);⁴⁸ the third is discrimination against people with disabilities in the policies and practices of the child welfare system (institutional ableism); and the fourth is cumulative ableism across the child welfare system and other institutions, and its effects on parents with disabilities (structural ableism).

B. The Lack of Implementation of Parenting Disability Rights in Child Welfare Policy and Proceedings

The legal response to ableism should be found within the corpus of “disability rights,” which is the legal manifestation of the social movement focusing on the discrimination and exclusion of people with disabilities. This discrimination and exclusion are manifested in the inaccessibility of places and services, which prevents participation in private and public activities. It is also manifested in social marginalization, such as placement in secluded institutions, denial of legal capacity, and, generally, pushing people with disabilities to the fringes of society.⁴⁹

The disability rights discourse sheds light on the historical structuring of the legal subject, which has led to the inferiority of people with disabilities (and especially people with intellectual disabilities) who were, and sometimes still are, perceived as too incompetent to pass the threshold requirements of the rights discourse, such as rationality, autonomy, and independence, and as a consequence, as ineligible to fully participate in civil and social life or make decisions regarding their personal lives, let alone care for children. In this respect, disability rights emphasize the inherent human quality of people with disabilities, even if they do not adhere to the “normal” standards of participation and productivity.⁵⁰

⁴⁶ Lightfoot & Slayter, *supra* note 45.

⁴⁷ Sasha M. Albert & Robyn M. Powell, *Ableism in the Child Welfare System: Findings from a Qualitative Study*, 46 SOC. WORK RSCH. 141 (2022).

⁴⁸ See Ron Shor & Maya Moreh-Kremer, *Identity Development of Mothers with Mental Illness: Contribution and Challenge of Motherhood*, 14 SOC. WORK MENTAL HEALTH 215 (2016); Clare Dolman, Ian Jones & Louise M. Howard, *Pre-Conception to Parenting: A Systematic Review and Meta-Synthesis of the Qualitative Literature on Motherhood for Women with Severe Mental Illness*, 16 ARCHIVES WOMENS' MENTAL HEALTH 173, 187 (2013).

⁴⁹ Roni Holler & Yael Ohayon, *Understanding Disability Policy Development: Integrating Social Policy Research with the Disability Studies Perspective*, SOC. POL'Y & SOC'Y, 2022, at 1, 3.

⁵⁰ Martha Nussbaum, *The Capabilities of People with Cognitive Disabilities*, 40 METAPHILOSOPHY 331, 335 (2009).

Disability rights are based on acknowledging that people with disabilities face particular obstacles and suffer from distinct inaccessibility to justice as a result of the inaccessibility and marginalization mentioned above.⁵¹ In recent years, researchers have further emphasized the need for a broader concept of “*disability justice*” that addresses the marginality of groups with the intersectionality of disability and gender, people of color, immigrants, and LGBTQ+ people. They stress the importance of bearing all one’s identities and being included in society.⁵²

Given the inaccessibility and marginalization experienced by people with disabilities, the provision of disability rights is based on a shift from an individualized bio-medical approach to a social approach that focuses not on the disability but on the current social construction and, therefore, calls for access to places, services, and personal support.⁵³ Regarding parenting, access and support should be provided for both child-bringing and child-raising since parents with disabilities are more likely to encounter obstacles in all parenting levels, including cases of assisted conception,⁵⁴ marital disputes regarding child custody,⁵⁵ and child welfare.⁵⁶ This duty to accommodate parenthood is legally manifested in national⁵⁷ and international legislation.⁵⁸ It is based on the understanding that the family realm is integral to adult life and that people with disabilities experience distinct obstacles in various parenting aspects.

According to this understanding, Article 23 of the United Nations Convention on the Rights of People with Disabilities (CRPD)⁵⁹ “Respect for Home and the Family” requires state parties to ensure equality for people with disabilities in family and parenthood. It includes the duty to ensure that their rights to marry and found a family based on free and full consent is recognized,⁶⁰ it renounces their right to decide “freely and responsibly” on the number and spacing of their children and to have access to information, reproductive and family planning education; it requires the provision of the means necessary to enable them to exercise

⁵¹ Sagit Mor, *With Access and Justice for All*, 39 CARDOZO L. REV. 611, 612–13, 623 (2017).

⁵² See, e.g., Natalie M. Chin, *Centering Disability Justice*, 71 SYRACUSE L. REV. 683 (2021); Patricia Berne, Aurora L. Morales & David Langstaff, *Ten Principles of Disability Justice*, 46 WOMEN’S STUD. Q. 227 (2018). See also Robyn M. Powell, *Care Reimagined: Transforming Law by Embracing Interdependence*, 122 MICH. L. REV. 1185, 1190–94 (2024) (analyzing the differences between “disability rights” and “disability justice”). Powell addresses their different focuses in relation to the notion of care; while “disability rights” focus on enhancing independence through the usage of care, “disability justice” pertains to more complex care relations that are interdependent. *Id.* See *infra* section II.B.2.b. for an in-depth discussion of these aspects of interdependence and their relation to parenthood.

⁵³ See generally MICHAEL OLIVER, *THE POLITICS OF DISABLEMENT: A SOCIOLOGICAL APPROACH* (1990).

⁵⁴ Rothler, *supra* note 33.

⁵⁵ NDC ROCKING THE CRADLE, *supra* note 2, at 120. Those kind of cases will not be examined thoroughly in this article. For examples of child custody cases where the abilities of parents with disabilities were questioned by their ex-spouses, see Powell, *supra* note 2, at 37–38.

⁵⁶ See *supra* Section I.A.

⁵⁷ NDC ROCKING THE CRADLE, *supra* note 2; Powell, *supra* note 2.

⁵⁸ United Nations Convention on the Rights of People with Disabilities, Art. 23, *opened for signature* Dec. 13, 2006, 2515 U.N.T.S. 3 (entered into force May 3, 2008) [hereinafter CRPD].

⁵⁹ CRPD, *supra* note 58.

⁶⁰ *Id.* at Art. 23(1)(a).

these rights;⁶¹ and it addresses their rights to retain their fertility equally with others.⁶²

Concerning child welfare proceedings, Article 23(2) of the CRPD poses a duty to ensure the rights and responsibilities of persons with disabilities relating to children's guardianship and to assist them in performing their child-rearing responsibilities. It also stresses that the child's best interests shall be paramount in all cases. Article 23(4) further asserts that the state should ensure that children are not separated from their parents against their will unless such separation is necessary for the child's best interest. It also states that in no case shall a child be separated from their parents based on a disability, either the child's or the parent's.

The U.S. administration signed the Convention, but it was not ratified. However, the Convention echoes the federal and state constitutional law defining the rights to conceive and to raise one's children as essential, fundamental civil rights, deriving the state's duty to make reasonable efforts to preserve and unify families, including the prevention or elimination of the need to remove children from home or safely return to their homes.⁶³

Additionally, disability rights scholars and attorneys focusing on family have stressed the need to interpret and use domestic disabilities law, namely, the Americans with Disabilities Act (ADA)⁶⁴ and Section 504 of the Rehabilitation Act of 1973,⁶⁵ to argue a failure to accommodate or disparate treatment in family proceedings, including in-court accommodations, home assessments of parental capacity, or family reunification efforts,⁶⁶ and to promote family and parenting disability rights by eliminating discrimination and incorporating reasonable modifications into parents' and children's services.⁶⁷ In addition, they stress that federal and state constitutional law should be applied in courts

⁶¹ *Id.*

⁶² *Id.*

⁶³ For elaboration regarding U.S. family law on this matter, see Harris, *supra* note 4, at 16.

⁶⁴ Americans with Disabilities Act of 1990, 42 U.S.C. § 12101 et seq.

⁶⁵ Rehabilitation Act of 1973, § 504, 29 U.S.C. § 794 (2018).

⁶⁶ Harris, *supra* note 4, 16; Powell, *supra* note 2; Francis, *supra* note 3; Glennon, *supra* note 15, at 285–88 (providing an overview of the ADA's potential to advance disability rights in child welfare and the termination of parental rights). Consequently, child welfare services failing to "reasonably modify" services to accommodate parents' disabilities would violate the ADA. As Glennon shows, case studies assert that agencies have not made reasonable efforts to help parents regain custody of their children because the services provided to them prior to the termination were not tailored to their mental illnesses. Glennon, *supra* note 15. However, as she explains, attempts to use the ADA as a defense to the termination of parental rights for the benefit of parents with mental illnesses in child welfare cases were mainly unsuccessful. *Id.* at 276.

⁶⁷ Americans with Disabilities Act, 42 U.S.C. § 12102. Under Title II of the ADA, people with disabilities must have an equal opportunity to participate in and benefit from state and local governments' programs, services, and activities; Title III of the ADA focuses on the accessibility of private businesses (also known as public accommodations). Together, those titles should cover access to parenting-related services, both state and local government services, and places of public accommodations. Rachel N. Shute, Note, *Disabling the Presumption of Unfitness: Utilizing the Americans with Disabilities Act to Equally Protect Massachusetts Parents Facing Termination of Their Parental Rights*, 50 SUFFOLK U. L. REV. 493, 507–08 (2017).

to challenge disparate treatment in parental termination proceedings on due process grounds.⁶⁸

Consequently, several states, the Department of Justice, and the American Bar Association (ABA), have adopted legislation and resolutions against disability discrimination in parental rights matters, including child welfare proceedings.⁶⁹ Also, over the past few years, there has been some improvement in enforcing ADA principles in child welfare cases, such as in providing accommodations for parents.⁷⁰

However, as scholars note, very few decisions involving parents with disabilities raise ADA provisions.⁷¹ The courts still view parenting as a “solo operation,” thus failing to apply ADA provisions to parenthood fully and ignoring their duties according to this law.⁷² Another major problem detected regarding the application of the ADA is the courts’ decisions regarding the timing of disability rights claims. According to these decisions, such claims should be raised when the services were not provided, not during the (later) welfare proceedings.⁷³ Therefore, in practice, parenting disability rights are rarely discussed during child welfare proceedings.⁷⁴

Powell and Albert⁷⁵ have found three themes indicating barriers and facilitators that affect ADA compliance in this field: knowledge, training, and information about the ADA by parents with disabilities, child welfare workers, and legal professionals; institutional support and resource availability; and factors related to the legal and social context, such as tensions between children’s rights and parents’ rights.

C. Calls for Fundamental Disability-Rights Redesign of the Child Welfare System

While both national and international frameworks acknowledge the parenting rights of people with disabilities, translating these legal

⁶⁸ Harris, *supra* note 4, at 16; see also Michael E. Waterstone, *Disability Constitutional Law*, 63 EMORY L. J. 527 (2014); Sasha M. Albert, Robyn M. Powell & Jack Rubinstein, *Barriers and Solutions to Passing State Legislation to Protect the Rights of Parents With Disabilities: Lessons From Interviews With Advocates, Attorneys, and Legislators*, 33 J. DISABILITY POL’Y STUDS. 15, 17–21 (2021).

⁶⁹ Francis, *supra* note 3, at 22. As Francis notes, some inspiring exceptions of statutory approaches specifically link the ADA nondiscrimination requirements to child protection proceedings. Under the “South Carolina Persons with Disabilities Right to Parent Act,” courts and social service agencies must comply with the ADA and Section 504 of the Rehabilitation Act before taking any action in termination or removal proceedings impacting the parental rights of persons with disabilities. The Department of Social Services must make reasonable, individualized efforts, based on the parent’s specific disability, to avoid the removal of a child from the home and provide reasonable accommodations regarding accessing services available to all parents. Family court orders must make specific findings of reasonable efforts to address the parenting limits caused by a disability. *Id.* at 31.

⁷⁰ Press Release, U.S. Atty’s Off. E.D. Wash., Department of Justice (DOJ) and Washington Department of Children, Youth and Family Services Settle Claims of Americans with Disabilities (ADA) Violations (April 19, 2021), <https://www.justice.gov/usao-edwa/pr/departement-justice-doj-and-washington-department-children-youth-and-family-services>.

⁷¹ Powell, Parish, Mitra, Waterstone & Fournier, *supra* note 6, at 199–201.

⁷² Francis, *supra* note 3, at 28.

⁷³ *Id.* at 30.

⁷⁴ Powell, *supra* note 2.

⁷⁵ Robyn M. Powell & Sasha M. Albert, *Barriers and Facilitators to Compliance with the Americans with Disabilities Act by the Child Welfare System: Insights from Interviews with Disabled Parents, Child Welfare Workers, and Attorneys*, 32 STAN. L. & POL’Y REV. 119 (2021).

protections into meaningful safeguards within child welfare proceedings remains an unfulfilled promise. Those are still dominated by bias, stigma, and lack of accommodation and support, resulting in intervention and, many times, separation of children from their parents. Often, these interventions are based on “children’s best interests” grounds, which are perceived as contradictory to the parent’s disability.⁷⁶ As such, child welfare proceedings suffer from multi-level ableism,⁷⁷ reaching from the personal opinions and feelings of the stakeholders (professionals and parents) to the very core and infrastructure of this socio-legal system, thus infringing on disabled parents’ access to justice.⁷⁸

This disconnect between ideals of disability rights and parenting was addressed by Harris, who identified a general gap between disability rights and family-law-related issues, such as parenting, adoption, reproductive rights, and marriage, arguing that a disability rights lens should be applied to family law. As Harris articulates, many times, disability is antithetical not only to child rearing but also to child-preliminary issues of intimacy, sexuality, and marriage.⁷⁹

As scholars claim, a genuine “disability rights” interpretation of parenting would apply the social approach to family-related proceedings and shift the focus from the parent’s impairment to their disabling surroundings, such as the inaccessibility of places and services that should support parenting.⁸⁰ As Francis notes, “[p]arenting is as much a function of schools, community supports, families and neighbors, and even social services, as it is of the characteristics of individual parents. Seeing the disabled parent in isolation forgets that other parents may not be viewed in this way”.⁸¹

⁷⁶ *Id.*

⁷⁷ See Albert & Powell, *supra* note 47.

⁷⁸ Cappelletti & Garth, *supra* note 12, at 186. Following the depiction of justice as an inherently changing concept, achieved by pushing back against injustice, Galanter, *supra* note 12, at 124, and arguing for a dynamic conception of access to justice, Lydia Nussbaum, *ADR, Dynamic (In)Justice, and Achieving Access: A Foreclosure Crisis Case Study*, 88 *FORDHAM L. REV.* 2337, 2338 (2020), the meaning of “access to justice” has transformed from a formal state duty to enable people to defend their claims into an approach focusing on the state’s obligation to provide an affordable, effective justice system accessible to all. Cappelletti & Garth explain that “access to justice” focuses on procedural justice, reveals barriers in the legal procedure, and promotes lowering the costs of litigation and legal representation (via state-funded attorneys, NGOs, or legal clinics), shortening the length of the proceedings, and making legal information available and accessible for all. Cappelletti & Garth, *supra* note 12, at 183–86. Galanter adds a focus on the advantage “repeating players” have in litigation processes. Marc Galanter, *Afterword: Explaining Litigation*, 9 *L. SOC’Y. REV.* 347, 360–66 (1975). This approach shows that formal access cannot bring just outcomes in a hierarchic system. Lawrence M. Friedman, *Access to Justice: Some Historical Comments*, 37 *FORDHAM URB. L.J.* 3, 4 (2010).

⁷⁹ See Harris, *supra* note 4, at 15 (describing “soft” means to regulate family in the disability realm through, e.g., the absence of sex education and inaccessibility of gynecological equipment and services, as the risk of sexual harm usually underlies and justifies restricting regulations and policy.) See also Elizabeth Pendo, *Reducing Disparities Through Health Care Reform: Disability and Accessible Medical Equipment*, 4 *UTAH L. REV.* 1057 (2010); Elizabeth Pendo, *Disability, Equipment Barriers, and Women’s Health: Using the ADA to Provide Meaningful Access*, 2 *ST. LOUIS U. J. HEALTH L. & POL’Y*, 15, 16–17 (2008).

⁸⁰ Elizabeth B. Lightfoot & Traci L. LaLiberte, *Approaches to Child Protection Case Management for Cases Involving People with Disabilities*, 30 *CHILD ABUSE & NEGLECT* 381, 389 (2006) (finding a lack of standardization in providing services regarding disability within child protection).

⁸¹ Francis, *supra* note 3, at 25.

As Harris suggests, meaningful legal reform implementing disability rights in family law (including child welfare cases) demands a critical redesign of deeply embedded legal constructions and standards that fail to consider people with disabilities in the normative baseline from which courts measure deviance and incapacity. Therefore, she suggests moving beyond individual accommodation in family law toward more inclusive legal standards and broader structural reforms, aiming at “a universal design of family law standards,”⁸² echoing the suggestions made by Roberts,⁸³ Trivedi,⁸⁴ and Powell⁸⁵ regarding the need not to amend, but to abolish, dismantle, and redesign adoption and child welfare regulation. The following Section will suggest a detailed outline of such systematic redesign.

II. REDESIGNING CHILD WELFARE PROCEEDINGS: A DISABILITY-RIGHTS-BASED DISPUTE SYSTEM

A. Disability-Rights-Based Dispute System Design

As described in Section I, a major challenge lies within the *comprehensive implementation* of the existing knowledge and data regarding parenting disability rights in the design of the child welfare system. In this Section, I will tackle this implementation problem by outlining the principles for designing child welfare systems and proceedings rooted in disability rights principles. This design is based on an infrastructure that enhances access to justice in all disability rights fields: the “Disability-Rights-Based Dispute System Design.”⁸⁶

The Disability-Rights-Based Dispute System Design merges disability rights and dispute resolution principles using the analytical lens of “Dispute System Design” (DSD). DSD emerged as an outgrowth of the alternative dispute resolution (ADR) movement, seeking institutional court reform through non-legal dispute resolution methods.⁸⁷ Building on these foundations and extending to broader contexts, DSD encompasses process design that allows organizations, institutions, states, or individuals to more effectively manage, prevent,

⁸² Harris, *supra* note 4, at 17. For an extensive study of parents with mental illness that suggests structural reforms in policy and services and “speaking the language” of DSD, see JOANNE NICHOLSON, KATHLEEN BIEBEL, BETSY HINDEN, ALEXIS HENRY & LAWRENCE STIER, *CRITICAL ISSUES FOR PARENTS WITH MENTAL ILLNESS AND THEIR FAMILIES* 1, 48 (2001).

⁸³ Dorothy Roberts, *Why Abolition*, 61 *FAM. CT. REV.* 229, 231 (2023).

⁸⁴ Trivedi, *supra* note 19, at 338.

⁸⁵ Robyn M. Powell, *Under the Watchful Eye of All: Disabled Parents and the Family Policing System's Web of Surveillance*, 112 *CALIF. L. REV.* 2005, 2061 (2024) [hereinafter Powell, *Under the Watchful Eye*]; Robyn M. Powell, *Achieving Justice for Disabled Parents and Their Children: An Abolitionist Approach*, 33 *YALE J.L. & FEMINISM* 37, 81 (2022) [hereinafter Powell, *Abolitionist Approach*]. Powell, Parish, Mitra, Waterstone & Fournier further suggested the “Inequalities Conceptual Framework for Disabled Parents Involved with the Child Welfare System” as a means that can help in the system’s redesign. Robyn M. Powell, Susan L. Parish, Monika Mitra, Michael Waterstone & Stephen Fournier, *Child Welfare System Inequities Experienced by Disabled Parents: Towards a Conceptual Framework*, 39 *DISABILITY & SOC’Y* 291, 295–304 (2024).

⁸⁶ Rothler, *supra* note 9.

⁸⁷ Smith & Martinez, *supra* note 8, at 124. The term “dispute system design” was first articulated by Ury, Brett, and Goldberg in the late 1980s. WILLIAM L. URY, JEANNE M. BRETT & STEPHEN B. GOLDBERG, *GETTING DISPUTES RESOLVED: DESIGNING SYSTEMS TO CUT THE COSTS OF CONFLICT* 133 (1988).

or resolve both individual and recurring conflicts. The framework rests on six fundamental elements: *goals, stakeholders, context and culture, process and structure, resources, and successfulness, accountability and learning*. Crucially, DSD's scope encompasses not only dispute resolution but also conflict management and prevention, fostering a problem-solving culture within organizations while providing multiple access points that combine rights-based and interests-based approaches.⁸⁸

DSD's practical and analytical framework facilitates disability rights implementation alongside other principles. The 'Disability-Rights-Based DSD' advances this further by interpreting DSD's six core elements through a disability rights lens, as shown in TABLE 1. This approach structures the design around disability rights objectives while addressing implementation barriers. The model moves beyond procedural changes to challenge fundamental assumptions in existing legal frameworks.⁸⁹

TABLE 1: DISABILITY RIGHTS INTERPRETATION TO DISPUTE SYSTEM DESIGN'S ELEMENTS

	DSD ELEMENTS	DISABILITY RIGHTS INTERPRETATION
1	Goals	Advancing disability rights
2	Stakeholders	Nothing about us without us
		Interdependence
3	Context and culture	Disability context
		Disability culture
4	Process and structure	Accessibility and accommodations
		Universal design
		Procedural justice and disability
		The structure of conflict-resolution institutions and their relevance to disability
5	Resources	Legitimizing the cost of disability and its accommodations
		Support and assistance
		Social, therapeutic, and care resources
		Disability-oriented legal education and professional training
6	Successfulness, accountability, and learning	Achieving disability rights goals

The Disability-Rights-Based DSD combines practical and justice-oriented approaches through two key features: *first*, it inherently

⁸⁸ See generally AMSLER, MARTINEZ & SMITH, *supra* note 7; ROGERS, BORDONE, SANDER & MCEWEN, *supra* note 7, at 201.

⁸⁹ Rothler, *supra* note 9. For a thorough implementation of the Disability-Rights-Based DSD in legal capacity, see Rothler, *supra* note 10.

provides *access* to disability justice by directly confronting disability rights implementation challenges, offering practical application tools and enhanced justice access. This is accomplished by introducing dispute management tools to disability rights while reinterpreting DSD guidelines through a disability rights perspective, as detailed in the table.

Second, applying disability rights perspectives to DSD's six elements strengthens DSD's capacity to achieve justice — a core DSD objective⁹⁰ — beyond disability-specific contexts, particularly in systems marked by power imbalances or historical inequities. This interpretation incorporates universal disability rights principles such as socially constructed barriers, hierarchies, marginalization, universal design, accessibility, accommodations, and interdependence.⁹¹

As elaborated in Section I, parents with disabilities are highly involved in the child welfare system, a system which fails to fully address their parenthood disability rights. In this section, I will utilize the Disability Rights-Based DSD to address this challenge by suggesting redesigning the system and its proceedings. As shown in detail, such a design will enhance parenthood disability rights since its infrastructure is based on disability rights core principles, considering and overcoming existing barriers to their implementation. Moreover, this design is compatible with handling child welfare issues since it enables a nuanced design for different cases,⁹² providing courts diverse dispute management tools⁹³ and emphasizing preventive measures.⁹⁴

B. Disability-Rights-Based Dispute System Design in Child Welfare Systems and Proceedings

1. Goals

The first DSD component addresses the system's *goals*, encompassing values, outcomes, and priorities⁹⁵ (see Table 1). In disability-rights-based DSD, these include a fundamental 'meta-goal' of advancing disability rights and disability justice, recognizing that negative disability perceptions stem from social constructs embedded within systems. This approach advocates viewing disability as socially-dependent rather than inherently limiting,⁹⁶ and embraces disability as enriching human diversity. This aligns with the CRPD's disability

⁹⁰ AMSLER, MARTINEZ & SMITH, *supra* note 7, at 8, 14; ROGERS, BORDONE, SANDER & MCEWEN, *supra* note 7, at 205; Mariana Hernandez Crespo G., foreword, *Introduction to the Symposium: Leveraging on Disruption: The Potential of Dispute System Design for Justice, Accountability, and Impact in Our Global Economy*, 13 U. ST. THOMAS L.J. 159, 164 (2017).

⁹¹ Rothler, *supra* note 9.

⁹² Nofit Amir & Michal Alberstein, *Designing Responsive Legal Systems: A Comparative Study*, 22 PEPP. DISP. RESOL. L.J. 263, 308 (2022).

⁹³ Hadas Cohen & Michal Alberstein, *Multilevel Access to Justice in a World of Vanishing Trials: A Conflict Resolution Perspective*, 47 FORDHAM URB. L.J. 1, 21 (2019).

⁹⁴ Alberstein & Davidovich, *supra* note 11, 85.

⁹⁵ AMSLER, MARTINEZ & SMITH, *supra* note 7, at 74.

⁹⁶ As elaborated in AMSLER, MARTINEZ & SMITH, *supra* note 7, at Section I.B.

definition, which incorporates identity, anti-discrimination, community inclusion, and policy participation elements.⁹⁷

Promoting disability rights as one of the system's goals entails transformative qualities. As mentioned in Sections I and as elaborated by Francis, the current legislation on child welfare and parenthood does not only ignore disability rights but is contradictory to those rights. As she explains, current parental rights termination statutes assess disability through an individualized lens, focusing solely on parents' isolated capabilities rather than adopting a social model of disability. This approach ignores how disability intersects with environmental and social factors — including community support, educational systems, and social services. While other parents are evaluated within their support networks, disabled parents are often assessed in isolation, without considering how reasonable accommodations and support systems could enable effective parenting. State laws notably lack the requirement to evaluate parenting ability in conjunction with available family, community, or social support resources.⁹⁸

Moreover, since the child welfare system encompasses significant therapeutic and welfare components, it tends to be viewed through the traditional bio-medical disability paradigm,⁹⁹ resulting in a deficit-focused approach, as detailed in Section I. However, establishing disability rights as an explicit system goal would necessitate critically examining the system's norms and regulations for disability rights compliance. Additionally, a disability rights focus would emphasize that conflict resolution must serve the broader goal of disability rights realization.¹⁰⁰ This consideration is particularly crucial given the power disparities between persons with disabilities and the institutions they typically depend on.¹⁰¹

The following Disability-Rights-Based Dispute System Design components — stakeholders, context and culture, process and structure, and resources — will help clarify *how* disability rights as a goal could be achieved in the child welfare system.

2. Stakeholders

The second DSD component addresses *stakeholders*. Based on the principle that people support what they help create,¹⁰² individuals, groups, and organizations who host, use, or are affected by a system play a vital role in DSD development.¹⁰³

⁹⁷ Gerard Quinn & Anna Arstein-Kerslake, *Restoring the 'Human' in 'Human Rights': Personhood and Doctrinal Innovation in the UN Disability Convention*, in THE CAMBRIDGE COMPANION TO HUMAN RIGHTS LAW 36, 38–39 (Conor Gearty & Costas Douzinas eds., 2012).

⁹⁸ Francis, *supra* note 3, at 25.

⁹⁹ As mentioned *supra* section I.B.

¹⁰⁰ Rothler, *supra* note 9, at 15.

¹⁰¹ TOM SHAKESPEARE, *DISABILITY RIGHTS AND WRONGS REVISITED* 1 (2013).

¹⁰² ROGERS, BORDONE, SANDER & MCEWEN, *supra* note 7, at 265.

¹⁰³ *Id.* at 225–47. For an overview of stakeholders' "participatory approaches" in decision-making processes and their critiques, see PRADIP N. THOMAS & ELSKE VAN DE FLIERT, *INTERROGATING THE THEORY AND PRACTICE OF COMMUNICATION FOR SOCIAL CHANGE: THE BASIS FOR A RENEWAL* 39 (2015).

i. Nothing About Us Without Us

Disability theory enriches this stakeholder approach in two ways.¹⁰⁴ First, the principle of ‘nothing about us without us,’ central to the CRPD,¹⁰⁵ requires consulting persons with disabilities on policies affecting them. This counters the traditional dominance of disability discourse by family members, social workers, and medical professionals.¹⁰⁶

As mentioned in Section I.A., this rule is fundamental in child welfare proceedings, where parents have often reported feeling like outsiders in their hearings and not having their input considered,¹⁰⁷ and where findings showed a minimal realization of partnership with parents in terms of allowing them power to influence child welfare decisions.¹⁰⁸ Apart from making more room for the parents’ opinions in the proceedings and policy-making, this rule can be achieved by advancing “parents advocates,” who are parents with experience in child welfare or family court involvement who escort other parents in the proceedings.¹⁰⁹

Additionally, the participation rule is relevant not only for the parents but also for their children. As Gal explains,¹¹⁰ even in unstable family settings, parents, adults who are alternative caretakers, and professionals can enhance children’s ability to participate. To encourage this, training for mainstreaming child participation should be allocated through social organizations and a regulatory regime that requires, promotes, funds, or at least enables child-inclusive processes.¹¹¹

While designing the child welfare regime, it is, therefore, crucial to involve both children and parents with disabilities themselves in the design and operation.¹¹² Given the nature of child welfare barriers, it is imperative to include parents with intellectual and cognitive disabilities.

¹⁰⁴ Rothler, *supra* note 9, at 21.

¹⁰⁵ CRPD, *supra* note 58, at the Preamble, subsection 13: “Considering that persons with disabilities should have the opportunity to be actively involved in decision-making processes about policies and programs, including those directly concerning them”; Article 4(4) adds that “[i]n the development and implementation of legislation and policies to implement the present Convention, and in other decision-making processes concerning issues relating to persons with disabilities, State Parties shall closely consult with and actively involve persons with disabilities.”

¹⁰⁶ For a thorough explanation of the slogan’s origin in the 1990s, see JAMES I. CHARLTON, *NOTHING ABOUT US WITHOUT US: DISABILITY, OPPRESSION AND EMPOWERMENT* 3 (1998).

¹⁰⁷ Stephens, Katz, Pisciotta & Lens, *supra* note 1.

¹⁰⁸ Alfandari, *supra* note 27, at 1067–73.

¹⁰⁹ Stephens, Katz, Pisciotta & Lens, *supra* note 1, at 495; Powell further mentions the importance of disabled parents as leaders. See Powell, *Abolitionist Approach*, *supra* note 85, at 91.

¹¹⁰ Tali Gal, *An Ecological Model of Child and Youth Participation*, 79 *CHILD. & YOUTH SERVS. REV.* 57, 62–63 (2017).

¹¹¹ *Id.* at 62. Gal explains that a budgetary basis for participatory practices should support such encouragement. *Id.* The UN Committee on Children’s Rights published its General Comment on child participation, specifying nine basic requirements for meaningful child participation. According to this, all processes that involve children must be transparent and informative, voluntary, respectful, relevant, child-friendly, inclusive, supported by training, safe and sensitive to risk, and accountable *Id.* at 63.

¹¹² For the importance of collaboration and partnership with parents in child welfare proceedings, see Alfandari, *supra* note 27, at 1063.

This is critical given their historical inferiority and communication differences.¹¹³

ii. Interdependence

The second disability aspect relevant to DSD's stakeholder component is *interdependence*, which is crucial to child welfare. Interdependence recognizes that perceived independence stems from reliance on others.¹¹⁴ This applies universally, including to people with disabilities whose autonomy often depends on support services. The concept aligns with a broader understanding of 'care' as reciprocal relationships¹¹⁵ rather than unidirectional support, acknowledging personal and relational elements beyond technical assistance.¹¹⁶

Interdependence extends beyond physical support to the concept of 'choice.' While liberal theories define choice through independent evaluation and prioritize self-reliance as prerequisite for autonomy, feminist and disability scholars argue this emphasis on independence as essential for personhood overlooks fundamental values of trust, caring, and interdependence. Understanding relatedness and interconnectedness reveals that choice-making abilities develop only through relationships and supportive environments.¹¹⁷ Therefore, an interdependent interpretation of parental choices must include necessary support systems for making and acting on those choices.¹¹⁸ This framework embraces *relational autonomy*, emphasizing the social context of individual existence¹¹⁹ and others' central role in decision-making.¹²⁰

Interdependence's relevance to DSD's stakeholder component reflects DSD's relationship-centered approach. DSD requires incorporating or considering the interests of all stakeholders in the

¹¹³ Amita Dhanda, *Universal Legal Capacity as a Universal Human Right*, in MENTAL HEALTH AND HUMAN RIGHTS: VISION, PRAXIS, AND COURAGE 177, 178 (Michael Dudley, Derrick Silove & Fran Gale eds., 2012) (explaining the historical inferiority of people with intellectual disabilities and the way they were overlooked at the beginning of the disability rights social struggle, lacking voice to influence).

¹¹⁴ See Eva Feder Kittay, *The Ethics of Care, Dependence, and Disability*, 24 RATIO JURIS 49, 50 (2011); Martha A. Fineman, *Cracking the Foundational Myths: Independence, Autonomy, and Self-Sufficiency*, 8 J. GENDER SOC. POL'Y & L. 13, 14 (2000).

¹¹⁵ Janice McLaughlin, *Understanding Disabled Families: Replacing Tales of Burden with Ties of Interdependency*, in ROUTLEDGE HANDBOOK OF DISABILITY STUDIES 402, 409 (Nick Watson, Alan Roulstone & Carol Thomas eds., 2012).

¹¹⁶ For a review of the concept of "care" in relation to disability, see Eva Feder Kittay, *Care and Disability: Friends or Foes*, in THE OXFORD HANDBOOK OF PHILOSOPHY AND DISABILITY 416 (Adam Cureton & David Wasserman eds., 2020). For elaboration on care and disability, specifically regarding disability and interdependence, see Powell, *supra* note 52, and Jonathan Herring, *Disability and Care*, 12 J. INDIAN L. & SOC'Y 35 (2021).

¹¹⁷ In the early 1980s, Carol Gilligan revealed how the atomistic discourse is lacking, ignoring the basic insight that we mature to interdependence and not to independence. CAROL GILLIGAN, IN A DIFFERENT VOICE (1982). Roni Holler, Shirli Werner, Yotam Tolub & Miriam Pomerantz, *Choice Within the Israeli Welfare State: Lessons Learned from Legal Capacity and Housing Services*, in CHOICE, PREFERENCE, AND DISABILITY: POSITIVE PSYCHOLOGY AND DISABILITIES SERIES 87, 95 (Roger J. Stancliffe, Michael L. Wehmeyer, Karrie A. Shogren & Brian H. Abery eds., 2020) (addressing a similar disability angle of interdependence).

¹¹⁸ Holler, Werner, Tolub & Pomerantz, *supra* note 117, at 95.

¹¹⁹ RELATIONAL AUTONOMY: FEMINIST PERSPECTIVES ON AUTONOMY, AGENCY, AND THE SOCIAL SELF (Catriona Mackenzie & Natalie Stoljar eds., 2000).

¹²⁰ Jennifer K. Walter & Lainie Friedman Ross, *Relational Autonomy: Moving Beyond the Limits of Isolated Individualism*, 133 PEDIATRICS, Supp no. 1, at 16, 18–19 (2014).

design process, including those targeted by the design and the professionals operating the current system who may resist changes.¹²¹ It's crucial to understand which stakeholders participated in the initial system design and whose interests are represented for existing systems. This comprehensive stakeholder approach aligns with social policy reform theories.¹²²

Consequently, when designing child welfare systems, "interdependence" has three primary meanings: the *first* is a vision of parent's and children's rights as inseparable and interdependent; the *second* is the interdependent relationship parents have with others; The *third* is the interdependent relationship parents have with their children.

Susan Brooks and Ya'ir Ronen described *the first aspect of interdependence* within the child welfare context. They view the child-parent relationship as a system of interdependence that draws its content from therapeutic law, preventive law, culturally sensitive law, and family system theory. According to this approach, and drawing from Martha Minow's work, they argue that children's and parent's rights should be unified, defying the tendency to assess them automatically.¹²³ They describe this approach as presenting a more realistic and protective perspective toward the child and their family, benefitting underprivileged populations characterized by "otherness," whose parenting is often questioned legally.¹²⁴

The second aspect of interdependence within the child welfare context is connected to Bronfenbrenner's ecological approach to children's development, according to which children are dependent not only on their parents but on other family members¹²⁵ (the microsystem); the mesosystem, such as education, health, and welfare services; the exosystem, such as the parent's workplace, parental social networks, and government and non-government agencies; and the broad regulatory regime of the macrosystem. All these have interdependent relationships

¹²¹ AMSLER, MARTINEZ & SMITH, *supra* note 7, at 10. In addition to the immediate parties in conflict, stakeholders can be individuals or entities that are subsidiary to or constituents of those parties, as well as others directly or indirectly affected by the outcome of the dispute. *Id.* at 29. For existing systems, it is essential to learn which stakeholders were involved in the system's initial design and whose interests are represented. SMITH & MARTINEZ, *supra* note 8, at 131. It is also important to note that stakeholders do not have equivalent power and that the dictum to engage all stakeholders in a DSD process does not address how to resolve competing interests. AMSLER, MARTINEZ & SMITH, *supra* note 7, at 104.

¹²² Holler & Ohayon *supra* note 49, at 10.

¹²³ Martha Minow, *Comments on "Suffering, Justice, and the Politics of Becoming"* by William E. Connolly, 20 CULTURE, MED. & PSYCHIATRY 279, 285 (1996).

¹²⁴ BROOKS & RONEN, *supra* note 17, at 30 (focusing on the family (parents and other family members) when assessing rights). As an example, Brooks & Ronen describe that, from the child's perspective, it makes no sense to prosecute a mother victimized by domestic violence or to punish her for failure to protect her child in any other way since such an approach often leads to separating the child from her or making it more difficult for her to fulfill her parental role. *Id.* This separation deprives the child of his right to a self-constructed identity. *Id.*

¹²⁵ See Convention on the Rights of the Child, art. 5, *opened for signature* Nov. 20, 1989, 1577 U.N.T.S. 3, 59 (entered into force Sept. 2, 199) [hereinafter CRC] (stating the importance of the extended family and the community). The U.S. Administration has signed the Convention but has not ratified it. Status of Treaties: Chapter IV No. 11. See also BROOKS & RONEN, *supra* note 17, at 38 (showing the CRC's clear foundation on interdependence, and clarifying that the state's primary responsibility towards the child is to respect the role of the nuclear and extended family and the community in the child's life rather than to intervene to protect the child from them).

with the parents, directly or indirectly affecting their parenthood. Therefore, they should be considered in the system's design and implementation.¹²⁶

During the implementation stage, particular attention should be paid to the professional stakeholders. Policy implementation is often integral to the policy-making process, especially in cases where the implementation stage is open to broad interpretation, leaving professionals with relatively high discretionary power.¹²⁷ This is especially true in child welfare since social work and therapeutic professionals play a hegemonic role in shaping its boundaries, as elaborated in Section I.

Moreover, positive relationships with these stakeholders should be enhanced in the DSD process to contribute to the design's success¹²⁸ through different means, such as constructive contracts¹²⁹ and creating a pleasant environment by mentioning common values¹³⁰ and fostering common goals.¹³¹ "Family Group Conferences," where the family actively designs the care plan together with community members and professional services, can exemplify such a collaborative process.¹³² Throughout the design, the designer should focus on empowering "weaker" sides,¹³³ including parents and children. These steps will help keep stakeholders on equal footing, make the interactions pleasant, and increase their depth.¹³⁴

The third aspect of interdependence is understanding the parent-child relationship as interdependent, where *both* parties provide care and value for the relationship. According to this understanding, parents with disabilities do not have to choose between being "care receivers" (and therefore unfit parents) or "care providers" (and thus deny their disability) and can openly and legitimately be aided in their parental roles without jeopardizing their parental status. This legitimization opens the path for broader accommodations and support for parents (as will be elaborated further in Sections II.B.4.i. and II.B.5.ii.), aiming not

¹²⁶ Urie Bronfenbrenner, *Toward an Experimental Ecology of Human Development*, 32 AM. PSYCH. 513, 514 (1997); Urie Bronfenbrenner, *Ecology of the Family as a Context for Human Development: Research Perspectives*, 22 DEV. PSYCH. 723 (1986).

¹²⁷ Holler & Ohayon, *supra* note 49, at 10.

¹²⁸ ROGERS, BORDONE, SANDER & MCEWEN, *supra* note 7, at 225, 243.

¹²⁹ Differences between members of groups that distrust and dislike one another can lead individuals to attribute ulterior motives for innocent actions, insult each other, and be dishonest, resulting in unstable agreements. Social scientists identified characteristics that tend to promote constructive contracts: positive shared activities, participants who are personable and have common values, extensive interactions, working together toward a common goal, and equal status. Negotiators with higher levels of trust for each other are more likely to use cooperative negotiation techniques, disclose information, and understand the other's perspective. Trust between the parties to a single dispute increases the chances of reaching a long-lasting agreement. Without these situational characteristics, bringing together people who distrust and misunderstand one another runs the risk of reinforcing divisions, hatred, and prejudice. Therefore, in creating a system, designers might consider building activities promoting constructive contracts. *Id.* at 229–30.

¹³⁰ *Id.* at 234.

¹³¹ *Id.* at 126 (asserting that constructive contracts could be part of the system's design or drafted within a specific case)

¹³² See Brooks & Ronen, *supra* note 17, at 39–40 (noting that family group conferences serve the family's procedural justice).

¹³³ ROGERS, BORDONE, SANDER & MCEWEN, *supra* note 7, at 235.

¹³⁴ *Id.* at 244.

only at the children's functional needs but also at broader parental aspects such as relationships and self-growth. Such support, therefore, will not be limited to helping parents fulfill functional tasks since it can encompass broader support means, including, in some cases, support that was characterized (and therefore denied) as substitutional, which will be provided while keeping and valuing the parent-child relationship.

This approach is connected to the understanding of interdependency, disability, and care, according to the writing by Fink¹³⁵ and Powell,¹³⁶ who reveal that “[c]are work is the hidden twin of disability.”¹³⁷ They claim that reimagining “care” according to disability justice values is necessary, including allocating resources to acquire proper care and acknowledging the needs and rights of formal and non-formal caregivers. Most of all, as they claim, society should abolish its ableistic approach to care and realize that disability and care provision should not be considered a burden but part of family life. As Powell concludes, support for care transforms disability from a source of fear into a celebration of interdependence and shared humanity, embracing diversity as enriching family life and fostering dignity and opportunity for all.¹³⁸

As mentioned above, this reimagination of the care that is provided for people with disabilities can also benefit disabled parents caring for their children. It reminds us that taking care of children (whether with or without a disability) is not only a task of technical care but one that enriches life. It focuses on parents' (im)proper and unsupported place as caregivers. It shows how interdependence provides room for broader parent-child relationships since it is not based on one-sided functional dependence but depicts a reciprocal relationship where both sides are co-dependent in their path to realizing their autonomy. Such a relationship legitimizes the child's dual role as the dependent side of the relationship and as a provider of valuable assets such as meaning, company, community, parents' growth, a sense of belonging and security, and love.

3. *Context and Culture*

The third DSD component is *context and culture*. *Context* represents the circumstances surrounding system diagnosis and design, while *culture* encompasses shared patterns of perception, belief, behavior, and meaning attribution within a group.¹³⁹ Cultural influences on fairness perceptions in disputes¹⁴⁰ necessitate aligning conflict processes with organizational culture¹⁴¹ and developing cultural

¹³⁵ JENNIFER NATALYA FINK, *ALL OUR FAMILIES: DISABILITY LINEAGE AND THE FUTURE OF KINSHIP* (2022).

¹³⁶ Powell, *supra* note 52.

¹³⁷ FINK, *supra* note 135, at xv.

¹³⁸ Powell, *supra* note 52.

¹³⁹ AMSLER, MARTINEZ & SMITH, *supra* note 7, at 30.

¹⁴⁰ *Id.* at 32.

¹⁴¹ *Id.* at 31. In this respect, DSD deals with ADR's critics of being detached from the culture in which the dispute occurs.

awareness among designers to address intercultural dynamics.¹⁴² In disability-rights-based DSD, these contextual and cultural elements must be viewed through a disability rights perspective.¹⁴³

i. Disability Context

First and foremost, disability must be recognized as a *contextual* phenomenon where perceived limitations emerge from environmental interactions.¹⁴⁴ Accordingly, the design context should frame disability as a socio-political construct arising from systemic power inequities,¹⁴⁵ acknowledging how societal structures sustain discrimination against persons with disabilities.¹⁴⁶

Consequently, the designer must recognize how the system's context is embedded in systemic discrimination against persons with disabilities across life domains — from sheltered workshops and segregated education to institutional living, medical paternalism, and restrictive guardianship practices.¹⁴⁷ Concerning parenthood, this discrimination and exclusion include the stigmatization regarding disabled parenting and the inaccessibility of places and services that relate to parenting or are supposed to provide parental support, as detailed further in Sections II.B.4.i. and II.B.5.ii. These opinions and practices lead to and normalize the legally-based denial of parenting as described in Section I.

Therefore, *context-wise*, the child welfare system design should consider the negative historical interaction between disability and society, resulting in exclusion and marginalization.¹⁴⁸ In the context of child welfare and parenting, it is imperative to acknowledge that people with disabilities, especially intellectual disabilities, experience discouragement from parenting from an early age and, therefore, might not even expect to be parents.¹⁴⁹ Given this understanding, a designer who wishes to promote a disability consciousness in child welfare systems and cases should be aware of two main issues: The first is the potential opposition of various institutions and individuals, including

¹⁴² Jayne S. Docherty, *Culture and Negotiation: Symmetrical Anthropology for Negotiators*, 87 MARQ. L. REV. 710 (2004); Judith Resnik, *Many Doors? Closing Doors? Alternative Dispute Resolution and Adjudication*, 10 OHIO ST. J. DISP. RESOL. 211 (1995); Sukhsimranjit Singh, *Access to Justice and Dispute Resolution Across Cultures*, 88 FORDHAM L. REV. 2407, 2423 (2020) (claiming that without an established structure and precedent in place, ADR may only provoke low-quality justice for the impoverished).

¹⁴³ Rothler, *supra* note 9.

¹⁴⁴ See, e.g., Michael A. Stein, Anita Silvers, Bradley A. Areheart & Leslie Pickering Francis, *Accommodating Every Body*, 81 U. CHI. L. REV. 689 (2014); Theresia Degener, *Disability in a Human Rights Context*, 5 LAWS, No. 34, Aug. 25, 2016, at 16.

¹⁴⁵ Claire Tregaskis, *Social Model Theory: The Story So Far . . .*, 17 DISABILITY AND SOC'Y 457, 462 (2002).

¹⁴⁶ For elaboration regarding the principles and historical roots of disability studies and the social approach, see OLIVER, *supra* note 53, at 30–33; Mor, *supra* note 51, at 645; and the literature mentioned there.

¹⁴⁷ Holler & Ohayon, *supra* note 49, at 2–3.

¹⁴⁸ See OLIVER, *supra* note 53.

¹⁴⁹ Sheila Gould & Karen Dodd, 'Normal People Can Have a Child but Disability Can't': *The Experiences of Mothers with Mild Learning Disabilities Who Have Had Their Children Removed*, 42 BRIT. J. LEARNING DISABILITIES 27 (2012).

health professionals and family members,¹⁵⁰ as elaborated in Section I. The second is the empowerment of people with disabilities, who hold opposing opinions regarding themselves as parents. Therefore, the system should be designed to overcome both kinds of objection by providing institutions, professionals, and individuals with information and practical tools, as will be elaborated further in Sections II.B.4 and II.B.5.

ii. Disability Culture

Regarding *culture*, designers must recognize the distinctive *disability culture* that has emerged from the lived experiences and perspectives of people with disabilities. This approach reconceptualizes disability, moving beyond views of socially constructed or individually based inferiority¹⁵¹ to embrace it as an expression of human diversity.¹⁵² This cultural framework emphasizes disability's positive contributions, including expanded perspectives, liberation from societal constraints, and the development of empowering personal and collective identities.¹⁵³ In parenting, such benefits regarding children's sense of autonomy, openness to differences, and resilience were mainly discussed.¹⁵⁴

A disability-culture consciousness calls for legitimizing and mainstreaming the life experiences of parents with disabilities, which often challenge traditional concepts of what is "normalcy" and of social expectations.¹⁵⁵ Thus, the designer should be aware of the importance of social recognition of the disability experience.¹⁵⁶ Moreover, when designing legal systems, it is imperative to implement the disability context and culture among lawyers representing parents with disabilities.¹⁵⁷

¹⁵⁰ HOLLER, WERNER, TOLUB & POMERANTZ, *supra* note 117, at 96.

¹⁵¹ *See generally*, SHAKESPEARE, *supra* note 101, at 1.

¹⁵² John Swain & Sally French, *Towards an Affirmation Model of Disability*, 15 *DISABILITY & SOC'Y* 569, 579 (2000). For a disability justice approach that emphasizes another angle of disability culture, shedding light on the intersection of disability and historically excluded groups such as women, people of color, immigrants, and LGBTQ+, stressing the importance of bearing all of one's identities together, see Chin, *supra* note 52.

¹⁵³ Swain & French, *supra* note 152, at 579–80.

¹⁵⁴ Adam Cureton, *Some Advantages to Having a Parent with a Disability*, 42 *J. MED. ETHICS* 31, 32 (2016). In her best-selling book, Jeanette Walls describes her childhood life with parents who are described as having mental disabilities; alongside the difficulties, she describes a loving atmosphere and a unique perspective of life, which is embedded her writing career. *See* JEANETTE WALLS, *THE GLASS CASTLE* (2005).

¹⁵⁵ SHAKESPEARE, *supra* note 101, at 1. For a cultural approach in family and child welfare cases, see Brooks & Ronen, *supra* note 17, at 36–39.

¹⁵⁶ Robina Goodlad & Sheila Riddell, *Social Justice and Disabled People: Principles and Challenges*, 4 *SOC. POL'Y & SOC'Y* 45, 46–47 (2005).

¹⁵⁷ Glennon, *supra* note 15; Powell, *supra* note 2. The aspect of disability-conscious legal education will be discussed in depth *infra* Section II.B.5.iv.. *See also*, e.g., Michael E. Waterstone, Michael Ashley Stein & David B. Wilkins, *Disability Cause Lawyers*, 53 *WM. & MARY L. REV.* 1287 (2012) (describing the central role of "cause lawyers" in advancing disability rights); Susan L. Brooks & Robert G. Madden, *Introduction, Relationship-Centered Lawyering: The Emerging 'Science' of Professionalism*, in *RELATIONSHIP-CENTERED LAWYERING: SOCIAL SCIENCE THEORY FOR TRANSFORMING LEGAL PRACTICE* (Susan L. Brooks & Robert G. Madden eds., 2010) (detailing issues of disability-related relationship and communication among lawyers); Roni Rothler, *Clinical Legal Education and Therapeutic Jurisprudence in the Disability Rights Clinic*, in *THINKING*

The inclination to embrace disability culture will enable the child welfare system to be open and responsive to the authentic conduct, opinions, and decisions of parents with disabilities, even when they do not adhere to the “conventional” habits. A disability culture sensitivity might also indirectly benefit other parents, not necessarily those with disabilities, characterized by “otherness,” as described by Brooks & Ronen,¹⁵⁸ since it will increase the system’s adherence to different cultural aspects of parenting, forming a substantial multicultural policy framework.

4. Process and Structure

The fourth DSD component — process and structure — addresses dispute prevention, management, and resolution systems. Processes span formal mechanisms like trials, mediation, and arbitration to varied methods tailored to specific conflicts and organizations. These can function as integrated systems or separate pathways.¹⁵⁹ Best practice typically involves designing multiple options incorporating interest- and rights-based strategies with the flexibility to move between them.¹⁶⁰ Designers must also consider how proposed systems interact with existing legal frameworks and courts’ receptiveness to changes.¹⁶¹

When designing a child welfare framework, designers must consider how discriminatory historical practices and systemic barriers shaped current processes,¹⁶² leading to adverse outcomes for parents with disabilities.¹⁶³ The design should incorporate disability rights principles and mechanisms to address and overcome these obstacles.

In her article, *Family Law, Parents with Disabilities, and the Americans with Disabilities Act*,¹⁶⁴ Robyn Powell directly addresses the structural reforms necessary for the strategic deployment of the ADA in child welfare proceedings. She identifies four major issues: individualized treatment, courtroom accessibility, accessible and appropriate parenting evaluations, and enhanced professional responsibility requirements for family law practitioners. Drawing from Powell’s insight on the need for structural reforms, this Section will outline the disability-rights-related mechanisms to design the system’s process and structure, focusing not only on court proceedings but on all levels of the child welfare system. According to the Disability-Rights-Based DSD, “Process & Structure” should include four critical elements: accessibility and accommodations, universal design, procedural justice, and attention to the structure of the socio-legal system.

CLINICAL LEGAL EDUCATION: PHILOSOPHICAL AND THEORETICAL PERSPECTIVES 37 (Omar Madhloom & Hugh McFaul eds., 2022) (addressing lawyers’ necessity of disability culture knowledge).

¹⁵⁸ Brooks & Ronen, *supra* note 17, at 25.

¹⁵⁹ Smith & Martinez, *supra* note 8, at 130–31.

¹⁶⁰ *Id.* at 128.

¹⁶¹ AMSLER, MARTINEZ & SMITH, *supra* note 7, at 126.

¹⁶² Mor, *supra* note 51, at 613; Holler & Ohayon, *supra* note 49, at 2–3.

¹⁶³ See *supra* Section I.

¹⁶⁴ Powell, *supra* note 2.

i. Accessibility and Accommodations

Accessibility obligations reflect disability rights' unique combination of 'negative' civil-political and 'positive' social rights.¹⁶⁵ Physical and structural barriers make purely 'negative' anti-discrimination measures insufficient — disability rights must include both negative liberties and affirmative duties.¹⁶⁶ These require public and private actors to actively redesign spaces and services by eliminating structural and institutional barriers.¹⁶⁷ In the justice system context, accessibility focuses on removing obstacles to courts, law, and justice that people with disabilities encounter when engaging with legal and social support systems.¹⁶⁸

As Powell elaborates,¹⁶⁹ in the United States, these accessibility duties of public entities (including courts) are manifested in Title II of the ADA. Those include the duty to provide an equal opportunity to participate in services, programs, and activities; to administer services, programs, and activities in the most integrated setting and appropriate to the needs of people with disabilities; not to impose criteria that might screen out people with disabilities; to provide auxiliary aids and services; not to place surcharges on people with disabilities to cover costs of nondiscriminatory treatment; and not to deny services due to inaccessible facilities.

Accordingly, public entities must provide reasonable modifications in policies, practices, and procedures to avoid disability-based discrimination. Title III of the ADA prohibits discrimination against people with disabilities by places of public accommodations, including professional offices such as attorneys and health care professionals. Those places must not apply eligibility criteria that screen out persons with disabilities, make reasonable modifications in policies and procedures to ensure access to services and facilities and provide

¹⁶⁵ Neta Ziv, *The Social Rights of People with Disabilities: Reconciling Care and Justice*, in *EXPLORING SOCIAL RIGHTS: BETWEEN THEORY AND PRACTICE* 369 (Daphne Barak-Erez & Aeyal M. Gross eds., 2007).

¹⁶⁶ Robert L. Burgdorf, Jr., *The Americans with Disabilities Act: Analysis and Implications of a Second-Generation Civil Rights Statute*, 26 HARV. C.R.-C.L. L. REV. 413, 453 (1991).

¹⁶⁷ Stein, Silvers, Areheart & Pickering Francis, *supra* note 144; Ziv, *supra* note 165. Accessibility and the duty to accommodate are rooted in most international obligations articulated by the CRPD. CRPD, *supra* note 58. Specifically, Article 9 is dedicated to accessibility and acknowledges it as the precondition for full participation in all aspects of life on an equal basis with others. *Id.* at Art. 9. According to the Article, accessibility, including identifying and eliminating obstacles and barriers, should be interpreted broadly: accessibility to the physical environment, transportation, information, technology, facilities, and services, using technology-based and live assistance. *Id.* Moreover, discrimination against people with disabilities includes denying reasonable accommodation. *See id.* at Arts. 2, 5, 13, 14, 24, 27; Shivuan Quinlivan, *Reasonable Accommodation: An Integral Part of the Right to Education for Persons with Disabilities*, in *THE RIGHT TO INCLUSIVE EDUCATION IN INTERNATIONAL HUMAN RIGHTS LAW* 169 (Gauthier de Beco, Shivaun Quinlivan & Janet E. Lord eds., 2019).

¹⁶⁸ Mor, *supra* note 51, at 613–14, 621. For a discussion on positive duties regarding supported decision-making, see Terry Carney, *Clarifying, Operationalising, and Evaluating Supported Decision-Making Models*, RSCH. AND PRAC. INTELL. & DEV. DISABILITIES 46 (2014).

¹⁶⁹ Powell, *supra* note 2, at 42.

auxiliary aids and services, including meeting physical accessibility guidelines.¹⁷⁰

As Powell explains, in addition to accessibility duties, the ADA mandates an affirmative accommodation obligation. The courts must modify their services to accommodate particular disabilities, ensuring meaningful access. These ADA provisions can and should be applied in child welfare cases, specifically in individualized treatment, courtroom accessibility, accessible and appropriate parenting assessments, and attorneys' legal obligations.¹⁷¹

Powell shows how the individualized treatment of parents¹⁷² is a matter of accessibility and reasonable modifications. She claims that by treating each case individually and consistent with facts and objectives, courts will be less inclined to act upon stereotypes and (negative) generalizations about people with disabilities and better assess the "reasonability" of the modifications needed by everyone. She adds on the importance of courtroom accessibility allowing for meaningful participation, which is imperative for parents, and which denial can result in unfavorable decisions.¹⁷³

Next, Powell tackles the imperative issue of *professional reports* assessing accommodations and evaluating parental capacity.¹⁷⁴ As she shows, many of the mental health professionals who are involved in child welfare cases lack experience or training related to parents with disabilities. Therefore, they do not know how to assess accommodations or perform parental capacity evaluations accommodating various disabilities.¹⁷⁵ She concludes that parenting evaluations must be fully accessible, include reasonable modifications, and comply with the ADA's individualized treatment requirements.¹⁷⁶

Child welfare system design must ensure accessibility across multiple dimensions: proceedings, institutions, courts, and support services. This requires creating structures that enable accommodated, non-stigmatic, and individualized participation, with particular focus on making legal procedure information accessible. This comprehensive approach to accessibility aligns with Mor's broad access to justice

¹⁷⁰ *Id.* As Powell elaborates, those duties are subject to defenses in circumstances that render the accommodations "unreasonable" because they are too costly, too risky, or alter the nature of the existing services. *Id.* See also Title II of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12102.

¹⁷¹ Powell, *supra* note 2, at 44.

¹⁷² *Id.* at 43–44.

¹⁷³ *Id.* at 44.

¹⁷⁴ *Id.* at 45. See Jon Amundson & Glenda Lux, *Tippins and Wittmann Revisited: Law, Social Science, and the Role of the Child Custody Expert 14 Years Later*, 57 FAM. CT. REV. 88, 95–102 (2019) (similarly addressing issue of experts' opinions regarding child custody evaluations and the way irrelevant information and biased opinions might harm parental rights).

¹⁷⁵ Powell, *supra* note 2. As Powell shows, this lack of accommodation violates Articles II and III of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12102.

¹⁷⁶ Powell, *supra* note 2, at 45 (noting that these individualized treatment requirements were also mandated in guidance issued in 2015 by the U.S. Departments of Justice and Health and Human Services to child welfare agencies and courts). Gur & Stein, *supra* note 35 (also detecting a lack of the necessary training for professionals—namely, social workers—that work with parents with intellectual disabilities and reporting the needed training for empowering social workers to act on behalf of their client's parenting rights).

framework.¹⁷⁷ At the policy level, accessibility should facilitate collaborative governance, enabling people with disabilities to actively shape the laws and procedures affecting their lives.¹⁷⁸

ii. Universal Design

The second disability rights element within DSD’s ‘process and structure’ is *universal design*¹⁷⁹ — creating products and environments usable by all people without adaptation.¹⁸⁰ This approach aims to accommodate diverse ages, body types, and intellectual capacities, recognizing that systems accessible to people with disabilities often benefit broader populations.¹⁸¹

Providing universally designed places and services will help increase the number of parents (with or without disabilities) who can understand and use those places and services without special accommodations. Such universal design can *prevent* conflicts and thus render the involvement of the legal system unnecessary.¹⁸²

The second aspect of universal design concerns the design of parenthood’s *meaning*. Harris¹⁸³ specifically addresses this issue of a universal redesign of family law. As she explains, the remedy of accommodations (as mentioned in *supra* Section II.B.4.i.) might not be sufficient for parents who “even with accommodations cannot meet those normative expectations.” Therefore, a meaningful intervention would be to consider reshaping the norm of parenthood by “reimagining the core duties of parents and goals of parenting.” As she suggests, parental fitness does not necessarily entail functional care, such as assisting children with homework or bathing them independently.

Universal design in child welfare would challenge conventional definitions of parenting, fitness, and neglect. As Harris notes, viewing parental capacity through a communal lens — where parents can delegate tasks while maintaining decision-making authority, similar to non-disabled parents employing caregivers — reduces justification for terminating parental rights of people with disabilities who may execute parental roles differently. As she further explains, the ideal of “super-competence” attributed to parenthood, and especially to motherhood, is unreachable for nondisabled and disabled mothers alike, making

¹⁷⁷ Mor, *supra* note 51, at 631–33.

¹⁷⁸ AMSLER, MARTINEZ & SMITH, *supra* note 7, at 56.

¹⁷⁹ Mor, *supra* note 51, at 620 (noting that the principle of universal design was not fully integrated into the CRPD’s vision of access and is mainly mentioned in the general obligations sections, not in particular articles such as article 9, which deals with accessibility). Nevertheless, Mor believes that such a vision of universal design should guide our understanding of access to justice. *Id.*

¹⁸⁰ MOLLY FOLLETTE STORY, JAMES L. MUELLER & RONALD L. MACE, *THE UNIVERSAL DESIGN FILE: DESIGNING FOR PEOPLE OF ALL AGES AND ABILITIES* (1998). See also, Mor, *supra* note 51, at 624; AIMI HAMRAIE, *BUILDING ACCESS: UNIVERSAL DESIGN AND THE POLITICS OF DISABILITY* (2017).

¹⁸¹ Mor, *supra* note 51, at 620, 624.

¹⁸² See Brooks & Ronen, *supra* note 17, at 32–33 (suggesting the adoption of the lens of “preventive law” in family cases, calling for professionals—mainly lawyers—to identify their clients’ “soft spots” in advance, to prevent risk situations).

¹⁸³ Harris, *supra* note 4, at 17.

disabled mothers seem unfit for parenthood.¹⁸⁴ It is the wrong assumption that able-bodied parents execute custodial duties independently, leading to a lack of public (and legal) support for parents who require assistance performing some tasks. Therefore, universalizing parenting will potentially benefit not only parents with disabilities but all parents who have different abilities and needs — whether temporary or permanent — and parenting styles, cultures, and traditions without being categorized as pathologies.¹⁸⁵

If disability will not be depicted as a deficit but as diversity (as suggested in *supra* Section II.B.3.ii), and if we understand that parents, with or without disability, need and are entitled to assistance, we will achieve a better and more wholesome depiction of parenthood, thus eliminating or diminishing certain negative feelings and situations such as anxiety, stress, or postpartum depression.¹⁸⁶ As a result, disabled parents' needs will be legitimized and will not necessarily provide the grounds for children's removal.¹⁸⁷ It will also legitimize and even provide official status for relationships between children and significant adults other than the biological parents who take part in raising them without jeopardizing parental status.¹⁸⁸

iii. Procedural Justice

The emphasis on *process and structure* in design reflects understanding that satisfaction stems from both outcomes and procedural elements.¹⁸⁹ This connects to the third disability rights aspect — *procedural justice*. Procedural justice encompasses multiple elements: impartiality, the right to be heard, legal grounds for decisions, neutral procedures and decision-makers, dignified treatment of participants, and trustworthy decision-making authorities.¹⁹⁰

Research demonstrates that participants in legal processes heavily weigh procedural justice in their overall evaluation, particularly valuing opportunities to be heard, respectful treatment, and interaction with unbiased, trustworthy third parties.¹⁹¹ DSD principles therefore emphasize participant involvement in shaping solutions based on lived

¹⁸⁴ See also Christina Minaki, *Scrutinizing and Resisting Oppressive Assumptions About Disabled Parents*, in *DISABLED MOTHERS: STORIES AND SCHOLARSHIP BY AND ABOUT MOTHERS WITH DISABILITIES* 31 (Gloria Filax & Dena Taylor eds., 2014). This “super competence” is also derived from Western standards of “intensive parenting,” which the Justice system echoes and portrays. See Gaia Bernstein & Zvi Triger, *Over-Parenting*, 44 U.C. DAVIS L. REV. 1221 (2011).

¹⁸⁵ For a similar suggestion in the field of labor, see Einat Albin, *Universalising the Right to Work of Persons with Disabilities: An Equality and Dignity Based Approach*, in *THE RIGHT TO WORK: LEGAL AND PHILOSOPHICAL PERSPECTIVES* 61 (Virginia Mantouvalou ed., 2014).

¹⁸⁶ Gloria Filax & Dena Taylor, *Introduction*, in *DISABLED MOTHERS: STORIES AND SCHOLARSHIP BY AND ABOUT MOTHERS WITH DISABILITIES I* (Gloria Filax & Dena Taylor eds., 2014).

¹⁸⁷ Harold Braswell, *My Two Moms: Disability, Queer Kinship, and the Maternal Subject*, 30 *HYPATIA* 234 (2015).

¹⁸⁸ ANDREW BAINHAM & STEPHEN GILMORE, *CHILDREN—THE MODERN LAW* 181–85, 205–10 (4th ed. 2013).

¹⁸⁹ AMSLER, MARTINEZ & SMITH, *supra* note 7, at 16, 35.

¹⁹⁰ *Id.* at 16–17. For a discussion regarding the importance of procedural justice in family and child welfare cases, see Brooks & Ronen, *supra* note 17, at 39–40.

¹⁹¹ ROGERS, BORDONE, SANDER & MCEWEN, *supra* note 7, at 23.

experience and promoting procedural fairness.¹⁹² This focus on procedural justice is especially crucial given the historical silencing of people with disabilities' authentic voices.

As discussed in Section I.A., procedural justice is significantly lacking in child welfare proceedings. Parents (with and without disabilities) reported an absence of voice and felt as if they were not included in the proceedings and that their input was not considered. They also reported a lack of understanding of the judicial process and concerns regarding the proceedings' fairness, including bias in the judicial decisions.¹⁹³ Additionally, they reported feeling that the process was moving too quickly toward court proceedings and being rushed into making life-changing decisions about the care arrangements of their children.¹⁹⁴ Research has shown that judges' conduct significantly shaped parents' court experience and fueled their hope, reporting to especially note and remember aspects of judicial kindness and informal and formal positive and negative comments.¹⁹⁵

Procedural justice, manifested in neutrality and the authorities' respectful behavior, is also vital for children.¹⁹⁶ Notably, children's *participation* in the process was found to be an important aspect of child welfare proceedings. Tali Gal elaborated on this issue,¹⁹⁷ stressing findings that show how children's ability to participate is changeable¹⁹⁸ and encourages states to foster child participation. As she describes, research has found that children's effective participation depends on support and encouragement provided by relationships based on trust and respect, communication, and precise information.¹⁹⁹ Specifically, children personally invited to meet with the authority — whether a judge or a social worker — during family court proceedings relating to parental disputes were more keen to have a say in the process.²⁰⁰ Gal also explains that children are sensitive to tokenistic participation, which leads to frustration and anger, as opposed to genuine interest in their perspectives.²⁰¹

¹⁹² AMSLER, MARTINEZ & SMITH, *supra* note 7, at 15.

¹⁹³ Stephens, Katz, Pisciotta & Lens, *supra* note 1; Sara P. Schechter, *Family Court Case Conferencing and Post-Dispositional Tracking: Tools for Achieving Justice for Parents in the Child Welfare System*, 70 *FORDHAM L. REV.* 427 (2001); HUNTER, THOMAS & CAMPBELL, *supra* note 19.

¹⁹⁴ HUNTER, THOMAS & CAMPBELL, *supra* note 19.

¹⁹⁵ *Id.*

¹⁹⁶ Gal, *supra* note 110, at 61; JEANETTE LAWRENCE, SAFEGUARDING FAIRNESS FOR CHILDREN IN INTERACTIONS WITH ADULTS IN AUTHORITY (May 2003), <https://www.aic.gov.au/sites/default/files/2020-05/200001-35.pdf>.

¹⁹⁷ Gal, *supra* note 110, at 59.

¹⁹⁸ *Id.* at 59 (explaining that research has suggested a gradual process of developing children's participation ability (coined "scaffolding")).

¹⁹⁹ Michael Gallagher, Mark Smith, Mark Hardy & Heather Wilkinson, *Children and Families' Involvement in Social Work Decision Making*, 26 *CHILD. & SOC'Y* 74 (2012).

²⁰⁰ Tamar Morag, Dori Rivkin & Yoa Sorek, *Child Participation in the Family Courts—Lessons from the Israeli Pilot Project*, 26 *INT'L J.L. POL'Y & FAM.* 1 (2012).

²⁰¹ Jodi Hall, Joan Pennell, & R.V. Rikard, *Child and Family Team Meetings: The Need for Youth Participation in Educational Success*, in *INTERNATIONAL PERSPECTIVES AND EMPIRICAL FINDINGS ON CHILD PARTICIPATION: FROM SOCIAL EXCLUSION TO CHILD-INCLUSIVE POLICIES* 207 (Tali Gal & Benedetta Duramy eds., 2015); Chelsea Marshall, Bronagh Byrne & Laura Lundy, *Face to Face: Children and Young People's Right to Participate in Public Decision-Making*, in *INTERNATIONAL PERSPECTIVES AND EMPIRICAL FINDINGS ON CHILD PARTICIPATION: FROM*

Another key consideration in procedural justice and disability is self-identity. Dorfman's research on social security benefits demonstrates that individuals who embrace the social model of disability view medical and individual model-based procedures as procedurally unjust — reporting lack of control, silenced voices, poor representation, pressure for inauthentic self-presentation, and labor market discouragement.²⁰² Since child welfare proceedings similarly rely on medicalized and individual models rather than parenting disability rights frameworks, parents who identify with the social model are likely to perceive these proceedings as lacking procedural fairness.

Consequently, parents and children should actively participate in the proceedings and the system's design, aiming to design a system that answers procedural justice challenges. One of those challenges addresses the complex and sometimes temporary nature of family circumstances and parents' and children's changing needs and interests (as discussed in Section I). Hence, procedural justice requires enhanced court involvement in implementing the ordered custody plan.²⁰³ This can be achieved by establishing ground rules regarding the temporary nature of these decisions. They should be revisited periodically to ensure that limitations on parenthood are minimized.

Finally, a fundamental procedural justice aspect involving time is the immediacy and availability of support, which is often crucial in child welfare matters. Welfare services and courts alike are reluctant to implement parenting disability rights when presented with cases of apparent neglect, which can result from insufficient accommodations, accessibility, and support. These cases portray children's rights as opposed to their parents', usually resulting in separation. When provided early, various parenting resources, accommodations, and support are far more valuable and can help prevent such risky situations.²⁰⁴ Therefore, adopting a "Disability-Rights-Based DSD" in child welfare should emphasize early attention to disability rights.

Another procedural justice aspect in child welfare proceedings is attaining proper legal representation. Given the hierarchies between people with disabilities, families, and professionals and the weight of the parenthood rights at stake, legal representation is crucial, including free-of-charge representation for people who cannot afford it.²⁰⁵ However,

SOCIAL EXCLUSION TO CHILD-INCLUSIVE POLICIES 357 (Tali Gal & Benedetta Duramy eds., 2015). See also Tali Gal & Dahlia Schilli-Jerichower, *Mainstreaming Therapeutic Jurisprudence in Family Law: The Israeli Child Protection Law as a Case Study*, 55 FAM. CT. REV. 177, 185–86 (2017) (addressing guidelines on children's participation in child welfare proceedings from a Therapeutic Jurisprudence (TJ) perspective, and explaining that children's participation should be tailored to their abilities through a mechanism for empowering them and allowing them to participate according to their abilities, wishes, and best interests).

²⁰² Doron Dorfman, *Re-Claiming Disability: Identity, Procedural Justice, and the Disability Determination Process*, 42 L. & SOC. INQUIRY 195 (2017).

²⁰³ Kristen M. Blankley, *Online Resources and Family Cases: Access to Justice in Implementation of a Plan*, 88 FORDHAM L. REV. 2121, 2122 (2020).

²⁰⁴ For the importance of early intervention and advocacy for disabled parents, see Glennon, *supra* note 15, at 299.

²⁰⁵ As mentioned *supra* Section I, Powell identifies proper legal representation as one of the accessibility requirements for advancing parenting rights for people with disabilities. Powell, *supra* note 2.

the formal representation is not enough: parents reported feeling that their lawyer did not adequately represent their views on life or challenge aspects of evidence that they considered wrong or unfair.²⁰⁶ Therefore, as will be elaborated *infra* Section II.B.5.iv., lawyers representing parents with disabilities should be “disability-educated,” focus on fairness and justice, enhance clients’ trust and respect for the law and its actors, and increase clients’ feeling that they were treated fairly. They should fully inform their clients about the procedures and criteria for legal decisions in accessible language according to their client’s needs and ensure they are treated with respect by other legal professionals.²⁰⁷ Notably, lawyers should support their clients’ decision-making process within the representation, refrain from making decisions for the client’s best interests, and respect their wishes regarding the legal procedure.²⁰⁸

The timing of legal representation presents another critical concern. While formal representation is typically assigned only upon court filing, significant parent-agency interactions and decisions often occur during pre-filing stages without legal counsel. For parents with disabilities, this creates heightened vulnerability to power imbalances and potential rights violations. Moreover, early legal representation could facilitate better conflict resolution with child welfare authorities, potentially preventing unnecessary court proceedings.²⁰⁹

*iv. The Process and Structure of the Justice System:
Socio-Legal Aspects and Therapeutic Jurisprudence in
the Child Welfare System’s Design*²¹⁰

Finally, a disability-rights-based DSD must address the justice system’s process and structure.²¹¹ With their complexity, multiple stakeholders, and lasting impact, child welfare cases are particularly suited for a DSD-based tribunal approach. This framework can create space for nuanced conflict resolution models that embrace non-binary justice concepts and enhance legal dispute processing.²¹²

²⁰⁶ HUNTER, THOMAS & CAMPBELL, *supra* note 19, at 4.

²⁰⁷ David M. Boulding & Susan L. Brooks, *Trying Differently: A Relationship-Centered Approach to Representing Clients with Cognitive Challenges*, 33 INT’L J.L. & PSYCHIATRY 448, 451 (2010).

²⁰⁸ For a detailed explanation of such legal representation of clients with mental disabilities regarding psychiatric hospitalization, see Michael L. Perlin & Naomi M. Weinstein, *Said I, ‘But You Have No Choice’ Why a Lawyer Must Ethically Honor a Client’s Decision About Mental Health Treatment Even if It Is Not What S/He Would Have Chosen*, 15 CARDOZO PUB. L., POL’Y & ETHICS J. 73, 78 (2016).

²⁰⁹ Powell, *Under the Watchful Eye*, *supra* note 85, at 2059.

²¹⁰ In the original “Disability-Rights-Based DSD,” therapeutic jurisprudence was part of the aspect of “resources.” Rothler, *supra* note 9, at 42–43. However, in the context of child welfare, it seems fitter to discuss it within the aspect of “process & structure.” *Id.* at 33–34.

²¹¹ See generally Mor, *supra* note 51 (discussing broadly the connection between disability and access to justice and its implications on the justice system). For a comprehensive analysis of how legal systems can adjust to be more responsive and human-centered, see Amir & Alberstein, *supra* note 92.

²¹² Michal Alberstein, *Judicial Conflict Resolution (JCR): A New Jurisprudence for an Emerging Judicial Practice*, 16 CARDOZO J. CONFLICT RESOL. 879, 889–90 (2015). For a similar argument regarding the complex blend of rights and interests in child welfare cases, see Shelley Kierstead, *Therapeutic Jurisprudence and Child Protection*, 17 BARRY L. REV. 31, 33 (2011).

For example, tribunals could adopt community court principles focusing on rehabilitation and ‘multidoor courthouse’ approaches.²¹³ This system routes cases based on their characteristics to the most suitable resolution method.²¹⁴ The tribunal can work with other institutional actors to address issues through alternatives to traditional trials,²¹⁵ such as family mediation and ‘Family Group Conferencing.’²¹⁶ This flexible design better accommodates diverse cases and disputes.

Additionally, the tribunal design can incorporate a multidisciplinary team including legal, health, social services, financial, and education professionals,²¹⁷ alongside people with disabilities who have direct child welfare experience, human rights organizations, and family members. These participants could serve either as court advisors or judicial team members, depending on case needs.

Particular attention should be given to the system’s dual socio-legal characteristics, such as emphasis on the court’s ecological and therapeutic capacities.²¹⁸ Indeed, every legal field has social implications;²¹⁹ however, in child welfare proceedings, social and legal aspects are often inseparable. This is because the legal case revolves around the state’s intervention in social aspects of family, relationships, and care.²²⁰

Importantly, child welfare cases (as well as other family-related cases such as divorce or legal capacity issues) are mainly *future-focused* as opposed to other legal cases (such as criminal law, torts, and contracts), which contain futural aspects but are primarily focused on the investigation of the past. The case’s “futuristic” character highlights the cruciality of social and therapeutic individual evolvment and family-oriented change.

This tight socio-legal connection is also portrayed — and enhanced — by the professionals who play essential roles in the proceedings, mainly social, therapeutic, and legal experts. Federal legal statutes also mention this socio-legal connection, which demands that child welfare social workers and legal professionals adjudicating child welfare cases collaborate more frequently.²²¹ Therefore, a socio-legal structure for the

²¹³ Frank E. A. Sander & Stephen B. Goldberg, *Fitting the Forum to the Fuss: A User-Friendly Guide to Selecting an ADR Procedure*, 10 NEGOT. J. 49, 51 (1994).

²¹⁴ AMSLER, MARTINEZ & SMITH, *supra* note 7, at 112.

²¹⁵ Alberstein, *supra* note 212, at 889–90.

²¹⁶ See Kierstead, *supra* note 212, at 34. For the advantages of involving children and parents in the decision-making process through such means, see Gal & Schilli-Jerichower, *supra* note 201, at 186.

²¹⁷ Such as the “parents advocates” described in Stephens, Katz, Pisciotta & Lens, *supra* note 1, at 495.

²¹⁸ For a thorough analysis of family court’s that promote family justice, see BARBARA A. BABB & JUDITH D. MORAN, *CARING FOR FAMILIES IN COURT: AN ESSENTIAL APPROACH TO FAMILY JUSTICE* (2019) (particularly Chapter 2 emphasizing the interdisciplinary paradigm through the court’s ecological and therapeutic capacities).

²¹⁹ BRIAN Z. TAMANAHA, *A GENERAL JURISPRUDENCE OF LAW AND SOCIETY* (2001).

²²⁰ Kathleen Coulborn Faller & Frank E. Vandervort, *Interdisciplinary Clinical Teaching of Child Welfare Practice to Law and Social Work Students: When World Views Collide*, 41 U. MICH. J. L. REFORM 121 (2007).

²²¹ See, e.g., Adoption Assistance and Child Welfare Act of 1980, Pub. L. No. 96-272, §422(b)(2), 94 Stat. 500, 517 (codified as amended 42 U.S.C. § 1397); Adoption and Safe Families

proceedings should be investigated. A brief discussion of the obstacles and suggested boundaries for such a structure follows.

The insufficiency of social and therapeutical content in family courts has been at the center of the family court's criticism. Critics have noted the failure to ensure essential services and treatment for parents and children:²²² they characterized courts as a harsh environment populated with multiple actors that makes it difficult for parents and their representatives to navigate.²²³

Others have found that although family and youth courts are officially supposed to portray a therapeutic setting, they usually run in an adversarial manner, enhancing conflict, inefficiency, and failure to seize opportunities.²²⁴ It was argued that contextual factors, such as trauma²²⁵ and bias, multiply the anti-therapeutic effects of family courts²²⁶ and that attention to such social and therapeutic content might not only help the families but alleviate some stress attributed to professionals such as lawyers, social workers, and judges.²²⁷

Research has suggested that this lack of attention to combining legal and social content results from differences in professional education programs between lawyers and social workers. This leads to obstacles in collaborating in their future professional lives and prevents the system from adequately meeting the needs of children and families.²²⁸ Kierstead elaborates on these inherent and substantial differences in the professional conduct of lawyers and social workers, focusing on their different approaches to defining and solving family-related problems.²²⁹ Coulborn Faller and Vandervort further explain other aspects of difficulty in collaborating, given their different roles in child welfare cases, ethical guidelines, approaches and methods of intervention, and social statuses.²³⁰

Those obstacles result in both “under-collaboration” and “over-collaboration.” As for “under-collaboration,” as mentioned above, child welfare cases require a very tight, often future-oriented, client-lawyer-social professional collaboration. Unlike a tort claim, where the lawyer interacts with the client mainly to receive the relevant documents and

Act of 1997, Pub. L. No. 105-89, 111 Stat. 2115 (1997) (codified as amended in scattered sections of 42 U.S.C.); Sarah Taylor, *Educating Future Practitioners of Social Work and Law: Exploring the Origins of Inter-Professional Misunderstanding*, 28 CHILD. & YOUTH SERVS. REV. 638, 639 (2006).

²²² Lens, *supra* note 22; Barbara A. Babb, *Family Courts are Here to Stay, So Let's Improve Them*, 52 FAM. CT. REV. 642 (2014).

²²³ Stephens, Katz, Pisciotto & Lens, *supra* note 1, at 1.

²²⁴ Gal & Schilli-Jerichower, *supra* note 201, at 185–86.

²²⁵ For a discussion on the trauma that characterizes many parents and children whose cases are heard in family courts, see Stephens, Katz, Pisciotto & Lens, *supra* note 1, at 505 (arguing that this trauma is not properly (or at all) addressed by the court due to a lack of attention to therapeutic content).

²²⁶ *Id.*

²²⁷ *Id.* (suggesting that judges have a key role in mediating contextual factors such as trauma and bias in family court, providing a supportive and therapeutic environment for adjudicating cases). For further reading on legal professionals' stress, see Carly Schrever, Carol Hulbert & Tania Sourdin, *The Privilege and the Pressure: Judges' and Magistrates' Reflections on the Sources and Impacts of Stress in Judicial Work*, 31 PSYCHIATRY, PSYCH. & L. 327 (2024).

²²⁸ Taylor, *supra* note 221, at 639–40.

²²⁹ See Kierstead, *supra* note 212, at 43.

²³⁰ Faller & Vandervort, *supra* note 220, at 143.

information, a lawyer handling a child welfare case usually must prove that the client's parental conduct will improve. Consequently, as the case evolves, the lawyer is involved in many care details, aiming to present the client's life to the authorities to yield favorable legal results (which often might ignore some unfavorable aspects of the client's life).²³¹ This requires much more client interaction and collaboration with their families and professionals such as therapists and social workers.

Therapeutic content and collaboration become essential for legal representation since the lawyer aspires to help the client act a certain way. However, lawyers are not trained in social or therapeutic professional conduct and do not know how to provide therapeutic counsel, which leaves room for the client's autonomic evolution. Without proper collaboration with social professionals, this complex mixture of legal and therapeutic content in the case can lead to unfavorable results. For example, lawyers representing parents might get too involved in their lives, trying to take over their tasks and ending up failing and frustrated.²³²

However, a lack of social and therapeutic training, combined with the importance attributed to children's best interests by the lawyers who represent their parents, can also lead to over-collaboration with social services: lawyers would be more inclined to collaborate with the welfare authorities, who play a dual role as providers of support for parents and as opponents.²³³

Overcoming these issues of under-collaboration and over-collaboration, focusing on the legal case's relevant social and therapeutic aspects instead of ignoring them or treating them as subtexts, will better serve parents, children, and professionals. The holistic approach mainly enhances collaboration between children's and parents' attorneys. While narrow models encourage viewing these roles in isolation, a collaborative framework identifies shared goals while presenting distinct perspectives to decision-makers. For instance, a child's attorney might advocate for school accommodation based on the child's academic and social development. In contrast, the parent's attorney emphasizes how the lack of such support impacts family stability and parental functioning.

Therapeutic jurisprudence (TJ) suggests such a balanced socio-legal approach. Accordingly, it was proposed as a favorable approach and structure for family courts that might help alleviate some of the flaws

²³¹ As explained by Kierstead, *supra* note 212, at 42–43, the lawyer will usually strive to develop a case theory based on the client's desired outcome, which may lead her to look for specific evidence and ignore others. Social workers and therapeutic professionals usually adopt a more comprehensive approach, integrating all the circumstances.

²³² Rothler, *supra* note 157, at 40. This kind of conduct of lawyers/professionals as "rescuers" who might later become aggressive is compatible with Karpman's "drama triangle." Stephen B. Karpman, *Fairy Tales and Script Drama Analysis*, 7 TRANSACTIONAL ANALYSIS BULL. 26, 39 (1968). The drama triangle is a social model of human interaction often used in psychotherapy. It comprises three characters: the victim, the persecutor, and the rescuer, as roles that people often adopt in interpersonal conflicts. *Id.* Lawyers might begin as rescuers, but when parents fail to follow their instructions, they feel like victims, which leads them to act aggressively toward their clients.

²³³ See Glennon, *supra* note 15, at 282–83 (explaining that this dual role might lead lawyers and parents to agree to support plans that do not fit their wishes or needs for fear of vexing the social worker whom they depend upon for a positive evaluation).

when dealing with cases of child neglect.²³⁴ TJ views the law and legal institutions as having the potential to be therapeutic agents. It examines the therapeutic and anti-therapeutic characterizations of the law, policy processes, and the structure of legal institutions, detecting which legal arrangements lead to successful therapeutic outcomes and why. Consequently, it aims to advance human dignity through legal events, using those events as benchmarks to enhance the participants' psychological wellbeing.²³⁵ According to TJ, in family disputes, the formal legal discussion of parenthood and child welfare can provide a therapeutic opportunity to assess relationships, detect strengths, provide the necessary support, and enhance the well-being of parents and children.²³⁶

As Stephens, Katz, Pisciotto & Lens suggest, a TJ approach in family court could more adequately fulfill the court's primary mission of helping families and the expressed need of parents who participate in the proceedings and their representatives. Such TJ approach includes being adequately treated by judges, reduced caseload that would help professionals form closer relationships with the parents, attention to parents' trauma, a collaborative environment that includes the parents and considers their opinions, assisting parents in preparing for court hearings, avoiding punishing attitude, and celebrating accomplishments.²³⁷

Stephens, Katz, Pisciotto & Lens and Gal & Schilli-Jerichower point to the crucial role of judges and the importance of adopting TJ style judging, including acknowledging the parents' emotional reactions and their individuality, building relationships over time, compassion, and support.²³⁸ Gal and Schilli-Jerichower add that a TJ-oriented definition

²³⁴ See generally, Stephens, Katz, Pisciotto & Lens, *supra* note 1; Gal & Schilli-Jerichower, *supra* note 201, at 185–86.

²³⁵ TJ was founded by David Wexler and Bruce Winick in the late 1980s and is considered part of the “comprehensive law movement.” See Susan Daicoff, *The Comprehensive Law Movement*, 19 *TOURO L. REV.* 825 (2004). It views the law and legal institutions as therapeutic agents. TJ strives to integrate treatment services with judicial case processing, provide ongoing judicial intervention, close monitoring of and immediate response to behavior, and create multidisciplinary involvement and collaboration with community-based and government organizations. *JUDGING IN A THERAPEUTIC KEY: THERAPEUTIC JURISPRUDENCE AND THE COURTS 7* (Bruce J. Winick & David B. Wexler eds., 2003). Different aspects of TJ are practiced in various “problem-solving courts,” and the desired outcomes include psychological well-being, health, dignity, and compassion, alongside the traditional legal considerations of due process, civil liberties and rights, and economic efficiency. David C. Yamada, *Teaching Therapeutic Jurisprudence*, 50 *U. BALT. L. REV.* 425, 431, 433 (2021). See generally Michael L. Perlin & Meghan Gallagher, *Why a Disability Rights Tribunal Must Be Premised on Therapeutic Jurisprudence Principles*, 10 *PSYCH. INJ. & L.* 244 (2017) (discussing the connection of disability rights tribunals, problem-solving courts, and TJ).

²³⁶ Susan L. Brooks, *Therapeutic Jurisprudence and Preventive Law in Child Welfare Proceedings: A Family Systems Approach*, 5 *PSYCH., PUB. POL'Y & L.* 951, 951–54 (1999); Kierstead, *supra* note 212; Stephens, Katz, Pisciotto & Lens, *supra* note 1, at 493–94; Barbara A. Babb, *An Interdisciplinary Approach to Family Law Jurisprudence: Application of an Ecological and Therapeutic Perspective*, 72 *IND. L.J.* 775 (1997).

²³⁷ Stephens, Katz, Pisciotto & Lens, *supra* note 1, at 493–94.

²³⁸ *Id.* at 294–95. For scholarship elaborating on TJ in family courts and child welfare issues, see, e.g., Kierstead, *supra* note 212, at 33; Gal & Schilli-Jerichower, *supra* note 201, at 187 (elaborating on the principles of therapeutic judging that have been developed in the context of problem-solving courts involving “(1) the expression of empathy toward family members, including

of child neglect examines the full range of the child's changing needs and how these needs are satisfied rather than focusing on the parents' behavior or omissions.²³⁹ Another TJ-related child welfare solution articulated by Brooks and Ronen is the practice of open adoption, as opposed to the more common closed adoption practice that does not answer the therapeutic needs of many children.²⁴⁰

Acknowledging the socio-legal nature of child welfare cases might also affect the prolongment of the proceedings for rehabilitation purposes, which is also one of TJ's characteristics portrayed in the conduct of community courts.²⁴¹ A socio-legal therapeutic jurisprudence approach would also challenge the practice of closing cases once parental care reaches a minimal threshold. Instead, it would require that proceedings conclude only after establishing and monitoring long-term support systems. This ensures parents with disabilities have sustained success, prevents cyclical system re-entry, and transforms institutions from reactive to proactive entities.

Despite TJ's apparent relevance to child welfare, its implementation requires caution given disability rights advocates' concern that therapeutic discourse can undermine rights advancement.²⁴² Arstein-Kerslake and Black propose guidelines for TJ implementation that protect both disability rights and individual wellbeing.²⁴³ Their approach aligns TJ with critical disability theory, prioritizing autonomy and preferences of people with disabilities while recognizing potential threats to dignity. In child welfare tribunals, this means balancing interdisciplinary collaboration with privacy rights — requiring attorneys to contribute to therapeutic outcomes while maintaining client confidentiality.²⁴⁴

While the tribunal's collaborative structure is valuable, its primary function remains dispute *management* rather than mere *resolution*, with parenting disability rights evolving through case adjudication. Given the fundamental rights involved, rights-promoting adversarial procedures should be the dominant approach, particularly for high-conflict cases, while maintaining other interest-based options.²⁴⁵

those accused of abuse or neglect; (2) using dialectic communication rather than lecturing; (3) involving relatives; (4) expressing satisfaction and happiness or disappointment and sadness according to the degree to which the parents achieved their therapeutic goals; and (5) addressing the family holistically").

²³⁹ Gal & Schilli-Jerichower, *supra* note 201, at 184.

²⁴⁰ Brooks & Ronen, *supra* note 17, at 31.

²⁴¹ Tali Gal & Hadar Dancig-Rosenberg, *Evaluating the Israeli Community Courts: Key Issues, Challenges and Lessons*, 62 INT'L ANNALS CRIMINOLOGY 104, 107 (2024).

²⁴² Anna Arstein-Kerslake & Jennifer Black, *Right to Legal Capacity in Therapeutic Jurisprudence: Insights from Critical Disability Theory and the Convention on the Rights of Persons with Disabilities*, 68 INT'L J.L. & PSYCHIATRY, 2020, at 1, 3 (broadly addressing the use of TJ in disability rights cases, particularly in legal capacity and finding that although TJ initially highlighted the importance of autonomy as enhancing wellbeing, over the years, legal capacity rights were often overlooked in the TJ process mainly due to the contradiction between therapy and disability rights, which is also relevant for child welfare cases).

²⁴³ *Id.* at 4.

²⁴⁴ *Id.* at 8.

²⁴⁵ Jennifer F. Lynch, *Beyond ADR: A Systems Approach to Conflict Management*, 17 NEGOT. J. 207 (2001).

Attorneys, especially, must maintain ethical obligations to clients, even when collaborating with court teams or addressing broader community issues.²⁴⁶ Given child welfare cases' tendency toward therapeutic interests and professional paternalism (as described in this Section above), the design requires careful checks and balances to prioritize rights promotion and establish specific ethical guidelines for legal representation that balance both legal and therapeutic objectives.

5. Resources

The fifth DSD component addresses *resources*. System design requires understanding available and potential resources for implementation and evaluation.²⁴⁷ Within disability-rights-based DSD, resource considerations encompass four key disability rights issues, beginning with accommodation cost justification.²⁴⁸

i. Legitimizing the Cost of Disability and the Necessary Accommodations

Since disability rights advancement necessitates resource redistribution,²⁴⁹ designers must establish legitimacy for associated costs. Implementing a new or revised child welfare framework encompasses legislative changes, funding allocation for parent support services, and court rulings on budgetary matters affecting accessibility and accommodations. This underscores the importance of building an ideological foundation that validates parenting disability rights and justifies the requisite financial investments.

The legitimization and need for resource-allocation to disability parenthood rights echoes Powell's writing on resource allocation for care.²⁵⁰ As she writes, as a result of current policy, many people with disabilities (and their family members) lack access to paid care, pushing them to "choose" institutional solutions and further distancing them from society.²⁵¹ In child welfare cases, this lack of access to care work within the framework of the family results in the removal of children from their homes.

Public consent is crucial for resource allocation. As Braswell explains, this entails altering the able-bodied conception of

²⁴⁶ Arstein-Kerslake & Black, *supra* note 242, at 4.

²⁴⁷ AMSLER, MARTINEZ & SMITH, *supra* note 7, at 35.

²⁴⁸ Rothler, *supra* note 9, at 34.

²⁴⁹ Mor, *supra* note 51, at 628, 645. See Ziv, *supra* note 165 (discussing distributive justice and disability).

²⁵⁰ Powell, *supra* note 52, at 1206. As Powell elaborated, supporting Fink's writing, Fink, *supra* note 135, this need to allocate resources addressing the needs of disabled people, their children, and care persons while advancing inclusivity and dignity is crucial for the next step in advancing disability rights in general. Powell, *supra* note 52, at 1201. Powell addresses explicitly the practice of institutionalizing people with disabilities and argues that allocating significantly more funding for "home and community-based services," making it accessible for more people with disabilities, is not only legally mandated, but tends to be more cost-effective for states, better meet people's healthcare needs, increase employment for family members, and reduce racial disparities. *Id.* at 1202. However, as she explains, acquiring these services is hindered by legal and bureaucratic impediments, placing significant burdens on people with disabilities, their families, and caregivers. *Id.*

²⁵¹ Powell, *supra* note 52, at 1192.

parenthood²⁵² that requires an imaginary “super-competence” — a requirement that damages all parents, primarily parents with disabilities, who are perceived as inherently unfit for parenthood.²⁵³ As explained in Section II.B.2.ii., the false assumption regarding parental independence leads to a lack of public recognition for parental support, rendering parents who need or request such support incompetent and unfit. This approach primarily damages parents with disabilities.²⁵⁴ Additionally, as elaborated by Francis, parenthood was never at the forefront of the struggle to advance disability rights, which focused on issues that were considered more pressing, such as employment, health care, housing, and legal capacity. It, therefore, failed to challenge parents’ discrimination within the child welfare system.²⁵⁵

One way to achieve public consent is by adopting a different approach and definition of parenthood.²⁵⁶ This first phase of acknowledging the importance of parenthood disability rights by adopting an alternative view of parenting is crucial to justifying resource allocation. The allocation of these resources will entail two main benefits: first, their preventive nature might render the need for child welfare legal intervention unnecessary. Second, their existence will support parenthood disability rights legislation, creating practical accommodation, assistance, and universalizing parenting rights. Without them, legal statutes will remain a dead letter. Empirical findings regarding the importance of preserving relationships with birth parents, even in situations and phases when they are unable to care for their children,²⁵⁷ should also serve for the legitimization of parenthood disability rights.

Beyond explicitly recognizing resources needed for parenting disability rights, the design must address three additional components: support and assistance mechanisms, social and therapeutic resources, and disability-rights-oriented legal education.²⁵⁸ These elements transform the ideological commitment to disability parenting rights into practical implementation.

ii. Support and Assistance: Lessons from Legal Capacity

Support and assistance represent essential mechanisms for meaningful disability rights implementation, as recognized by the CRPD.²⁵⁹ While accessibility provides foundational access (as described

²⁵² Braswell, *supra* note 187 at 240 (addressing motherhood and arguing that the ableistic vision of parenthood mainly damages women).

²⁵³ *Id.* at 240; Harris, *supra* note 4, at 17; ROSEMARIE GARLAND THOMSON, EXTRAORDINARY BODIES: FIGURING PHYSICAL DISABILITY IN AMERICAN CULTURE AND LITERATURE 26 (1997).

²⁵⁴ Harris, *supra* note 4, at 17.

²⁵⁵ Francis, *supra* note 3, at 25.

²⁵⁶ *Id.* at 31 (noting that some organizations, such as the “Lurie Institute for Disability Policy,” have started to devote their attention to reproductive and parenting issues).

²⁵⁷ Vivek S. Sankaran & Christopher E. Church, *The Ties That Bind Us: An Empirical, Clinical, and Constitutional Argument Against Terminating Parental Rights*, 61 FAM. CT. REV. 246, 257–59 (2023).

²⁵⁸ Rothler, *supra* note 9, at 41.

²⁵⁹ CRPD, *supra* note 58 (including in Article 23, “Respect for Home and Family”).

in Section II.B.4.i.), comprehensive personal support systems are crucial for full participation and inclusion.²⁶⁰ This dual framework establishes both ‘negative’ protections against oppression and ‘affirmative’ rights to support.²⁶¹

The fact that parents with disabilities (like all other parents) require support and assistance in child-rearing is obvious. It was also acknowledged that for many parents, adequate support was the answer for acquiring parenting skills and caring for children²⁶² and that many times, support means are inadequate.²⁶³ As explained in Section I.B., the question regards the *kind* of support and its *extent*: while some narrow, parental support was considered legitimate, extended types of support were rendered illegitimate, resulting in a denial of support and consequently, the removal of children from their homes. Additionally, as Glennon explains, the very structure of support plans might prove unfit for parents with mental disabilities, and they might also be reluctant to seek support for fear of being stigmatized.²⁶⁴

Therefore, when redesigning child welfare systems according to disability rights principles, it is essential to acknowledge parents’ need for support and broaden our vision regarding the nature of this support.²⁶⁵ As Francis suggests, given the similarities in the importance of their

²⁶⁰ *Id.* at Arts. 12(3) (concerning legal capacity); 16(2) (fight against exploitation); 19(b) (independent living); 23(2)–(3) (family life); 24(2)(d)–(f), 3(a), and 4 (education); 27(1)(e) (work); 30(4) (participation in cultural life); and 29(a)(iii) (participation in political and public life).

²⁶¹ See Robert D. Dinerstein, *Implementing Legal Capacity Under Article 12 of the UN Convention on the Rights of Persons with Disabilities: The Difficult Road from Guardianship to Supported Decision-Making*, 19 HUM. RTS. BRIEF, no. 2, at 8, 9 (2012), for the salience of “support” as a disability rights mechanism throughout the CRPD. Abolishing the policing of families and replacing it with family support is a central claim made by Roberts, *supra* note 83, at 231.

²⁶² Researchers have reported that parents greatly preferred informal support, which is more emotional and flexible, over formal support, which they found overwhelming and confusing. Glennon, *supra* note 15, at 291; NICHOLSON, BIEBEL, HINDEN, HENRY & STIER, *supra* note 82, at 1482; Elizabeth Lightfoot & Traci LaLiberte, *Parental Supports for Parents With Intellectual and Developmental Disabilities*, 49 INTELL. & DEV. DISABILITIES 388 (2011); Elizabeth Lightfoot, Traci LaLiberte & Minhae Cho, *Parental Supports for Parents with Disabilities: The Importance of Informal Supports*, 96 CHILD WELFARE 89 (2018).

²⁶³ Sharyn DeZelar & Elizabeth Lightfoot, *Parents with Disabilities: A Case Study Exploration of Support Needs and the Potential of a Supportive Intervention*, 100 FAMS. SOC’Y 293 (2019) (pointing to the fact that the overall support networks of parents with disabilities were fragile); see also Sharyn DeZelar & Elizabeth Lightfoot, *Enhancing Supports for Parents with Disabilities: A Qualitative Inquiry into Parent Centered Planning*, 24 J. FAM. SOC. WORK 263 (2021) (elaborating on the benefits of parents-centered planning intervention); Mary Baginsky, *How Parents With Learning Disabilities Lack Support Before, During and After Care Proceedings*, COMMUNITY CARE (June 11, 2024), <https://www.communitycare.co.uk/2024/06/11/how-parents-with-learning-disabilities-lack-support-before-during-and-after-care-proceedings/>.

²⁶⁴ Glennon, *supra* note 15, at 282, 296–300 (providing examples for modifying support means to accommodate parents with mental disabilities); Elizabeth Lightfoot & Sharyn DeZelar, *Parent Centered Planning: A New Model for Working with Parents with Intellectual and Developmental Disabilities*, 114 CHILD. & YOUTH SERVS. REV., July 2020 (introducing “parent-centered planning,” which includes an individual’s parenting desires and goals, along with the needs of the parent’s child).

²⁶⁵ Scholarship has elaborated on the necessary support for parents with disabilities within the child welfare system. See Powell, *Under the Watchful Eye*, *supra* note 85, at 2061–64; Powell, *Abolitionist Approach*, *supra* note 85, at 97; Powell, Parish, Mitra, Waterstone & Fournier, *supra* note 6, at 210; Melissa M. Ptaceka, Lauren D. Smitha, Robyn M. Powell & Monika Mitra, *Experiences With and Perceptions of the Child Welfare System During the Perinatal Period of Mothers With Intellectual and Developmental Disabilities*, J. PUB. CHILD WELFARE, June 3, 2024 at 1, 15–22; Sasha M. Albert & Robyn M. Powell, *Supporting Disabled Parents and Their Families: Perspectives and Recommendations from Parents, Attorneys, and Child Welfare Professionals*, 15 J. PUB. CHILD WELFARE, 530, 534 (2021).

depiction as constitutional liberties, the change that the field of *legal capacity* has undergone can and should inspire recognition of parental capacity and the provision of support for parental actions and decisions, as follows.²⁶⁶

The human right to legal capacity encompasses both legal personhood and legal agency, allowing individuals to participate in undertakings, transactions, and decisions about their lives. Following recent national and international policy and legislation reforms, the right to receive the necessary *support* in making those decisions has become inherent to the right to legal capacity.²⁶⁷ “Support” is a broad term encompassing arrangements of varying types and intensities, aiming to enable legal capacity while respecting people’s rights, will, and preferences.²⁶⁸ Additionally, support systems must include safeguards to protect against abuse equally from others.²⁶⁹

As Francis articulates, while legal capacity is the person’s right to make decisions regarding her life, parenting essentially entails a person’s right to make decisions regarding *her child’s* life.²⁷⁰ Adopting the new paradigm for legal capacity for all, will, therefore, broaden the legitimization of disabled parenthood. Accordingly, Francis suggests that parenthood capacities should be viewed on a spectrum. As contemporary courts should favor limited guardianship, supported decision-making mechanisms, and tailored safeguards over plenary guardianship,²⁷¹ so should the child welfare system allow for a limited exercise of parental duties rather than terminate parental relations.²⁷²

Currently, child welfare proceedings offer limited ‘permanency’ options for removed children: return to parent, adoption, placement with kin, or continued Social Services care. This binary approach — either full parental care or removal to foster care — fails to address the nuanced needs of parents with disabilities and their children. The system requires

²⁶⁶ Francis, *supra* note 3, at 32.

²⁶⁷ CRPD, *supra* note 58, at Article 12(3); U.N. COMMITTEE ON THE RIGHTS OF PERSONS WITH DISABILITIES, GENERAL COMMENT NO. 1 (2014) [hereinafter General Comment No. 1]: ARTICLE 12: EQUAL RECOGNITION BEFORE THE LAW, ¶ 16; Anna Arstein-Kerslake & Eilíonóir Flynn, *The General Comment on Article 12 of the Convention on the Rights of Persons with Disabilities: A Roadmap for Equality Before the Law*, 20 INT’L J. HUM. RTS. 471, 476–477 (2016) (defining means of support to exercise legal capacity).

²⁶⁸ Arstein-Kerslake & Flynn, *supra* note 267, at 478. This broad definition of support includes formal state-operated support and informal support by family members or friends. Accordingly, a person should be able to choose one or more support persons to assist them with certain decisions, peer support or advocacy, including self-advocacy support, for other kinds of decisions, and assistance in communication in other instances. Given the pros and cons of each type of support, Arstein-Kerslake and Flynn suggest that best legal capacity systems should include a variety of supports, both formal and informal and that according to the General Comment’s principles, the support will be tailored to each person’s needs, or at least meet a range of different needs. *See also* General Comment No. 1, *supra* note 267, ¶ 18. Close attention should be given to implementing supported decision-making mechanisms, ensuring they provide genuine choice and control rather than serve a bureaucratic purpose. Anna Arstein-Kerslake, Joanne Watson, Michelle Browning, Jonathan Martinis & Peter Blanck, *Future Directions in Supported Decision-Making*, 37 DISABILITY STUDS. Q., no. 1, 2017, <https://dsq-sds.org/index.php/dsq/article/view/5070/4549>.

²⁶⁹ General Comment No. 1, *supra* note 267, ¶ 20; Determining adequate safeguards is a delicate task since the protection must respect the person’s rights, will, and preferences (or at least, their best interpretation), *id.* ¶ 21, including the right to take risks and make mistakes, *id.* ¶ 20.

²⁷⁰ Francis, *supra* note 3, at 31.

²⁷¹ Arstein-Kerslake & Flynn, *supra* note 267, at 479.

²⁷² Francis, *supra* note 3, at 32.

more creative, individually-tailored solutions that could include supported parenting arrangements or maintaining meaningful parental roles even when children reside elsewhere.

As mentioned above, a critical aspect of the new legal capacity paradigm is the right to receive support in exercising one's legal capacity. This aspect is vital to parenting since, as Francis notes, courts tend to consider parenting as a "solo operation" and, therefore, evaluate the skills of parents with intellectual disabilities without regard to the support that is available to them. Based on these assessments, they might terminate parental relations, stating that it is unreasonable to provide long-lasting support.²⁷³

Similarly, recent British research has brought to light the court's and professionals' tendency to define situations of "substituted parenting" as one that justifies the separation of children from their parents. It happens when the authorities seem to think the support they have identified as necessary is too extensive. They consider the high level of support required to equate to "substituted parenting," which, they say, is detrimental as it confuses children as to who the parent is.²⁷⁴

Answering this difficulty is the path legal capacity legislation has paved in recent years. It prioritizes people's right to exercise their legal capacity according to their will and preferences while acknowledging their right to support in all aspects of their lives. It focuses on people with intellectual and mental disabilities, broadening the scope of instrumental and non-instrumental support. Since support — broadly defined — was determined as inherent to legal capacity, new support means can be legitimized for parenting, extending their scope from limited instrumental support usually provided for parents with physical disabilities to broad care that includes emotional aspects and formal recognition of other significant adults such as family and caretakers, without jeopardizing the original parental connections.²⁷⁵

As Francis notes, supportive arrangements for parents might include extensive instrumental support of care, such as daily home services and communal living arrangements, opening new possibilities for meaningful parental involvement.²⁷⁶ They can also include broad care support, such as acknowledging other adults' participation in child-rearing. Therefore, it holds the promise to influence the legitimization of disabled parenthood, broadening the definition of support to realize it, and opening opportunities for delegating the exercise of parental decisions.²⁷⁷

²⁷³ *Id.* at 26, 28 (noting that the press of time, common in these kind of cases, may be particularly difficult for parents with intellectual disabilities, who may need more services, take longer to access these services and take longer to benefit from them).

²⁷⁴ TILBURY & TARLETON, *supra* note 29.

²⁷⁵ Francis, *supra* note 3, at 33.

²⁷⁶ *Id.*

²⁷⁷ As Harris, *supra* note 4, at 14, explains, this delegation should not be viewed as different from the "conventional" delegation of the exercise of parental decisions to other people who care for the house and children, such as nannies or housecleaners. Consequently, parents with disabilities would not be stripped of their parental status if they cannot execute the tasks associated with that role.

iii. Social, Therapeutic, and Care Resources

Therapeutic, care, and social resources are crucial in implementing disability rights within child welfare design. While acknowledging tensions between therapeutic approaches and disability rights,²⁷⁸ therapeutic support often plays a significant role for parents with disabilities and their children. Therefore, system design must ensure accessible therapeutic and social resources aligned with disability rights principles.²⁷⁹ Some of these resources can be accessed through existing public health and social institutions, minimizing additional budgetary impact.

This exhaustion of benefits and rights has the potential to have an immediate effect on parenting. For instance, housing benefits will help parents better care for their children. A father entitled to weekly counseling sessions will acquire more skills that reduce the need for intrusive actions. Similarly, disability benefits or other means of support for *children* help to alleviate the burden and stress from their parents.

Social and therapeutic supports form vital infrastructure for child and family wellbeing. These include parental leave policies, healthcare access, social services, and benefits that ensure children's rights to proper nutrition, healthcare, parental care, and living conditions.²⁸⁰ As Gal explains, support networks and institutions can provide parents with information, education, and assistance accessing rights and benefits.²⁸¹ Importantly, these services should be delivered respectfully, recognizing parents' capacity for growth and changing resource needs over time.²⁸²

However, while the exhaustion of therapeutic services for children within the child welfare system is trivial, suggesting those services for parents is more complicated. For example, as mentioned in Section I.B., parents might be reluctant to admit to having a disability, (rightfully) fearing that this might damage their chances of keeping their children. This practice of hiding the disability does not provide grounds for seeking and accepting assistance. Second, therapy for parents within the framework of a child welfare case might seem coercive, raising

²⁷⁸See discussion *supra* Section II.B.4.iv.

²⁷⁹The lack of disability rights implementation in mental health systems was addressed by the World Health Organization (WHO), encouraging governments and policy-makers to transform mental health systems and base them on recovery, rights, and inclusion. The report focuses on policy reform, law, services, and building the capacity of stakeholders and groups to address stigma and discrimination and to implement rights-based approaches in mental health services and the community. WORLD HEALTH ORG. & OFF. OF THE HIGH COMM'R OF HUM. RTS., MENTAL HEALTH, HUMAN RIGHTS AND LEGISLATION: GUIDANCE AND PRACTICE (Oct. 9, 2023), https://www.ohchr.org/sites/default/files/documents/publications/WHO-OHCHR-Mental-health-human-rights-and-legislation_web.pdf; Glennon, *supra* note 15, at 283 (noting that parents with mental disabilities might encounter labor problems, which might lead to difficulties in attaining welfare assistance).

²⁸⁰Tali Gal, *A Socioecological Model of Children's Rights*, in THE OXFORD HANDBOOK OF CHILDREN'S RTS. LAW 119 (Jonathan Todres & Shani M. King eds., 2020).

²⁸¹*Id.* at 130.

²⁸²Francis, *supra* note 3, at 27 (noting a significant theme in the case law is viewing intellectual disabilities as unchangeable despite evidence that supports their abilities to learn and develop capabilities with appropriate services).

dilemmas regarding combining legal and therapeutic aspects, as discussed in Section II.B.4.iv.²⁸³

Finally, social and therapeutic resources should also consider parents whose children were already removed from their care. Research has shown that those parents felt abandoned by the system, feeling angry, shocked, confused, and grieved, even suicidal and self-harming, over the removal of their children. Proper attendance to their needs would help to alleviate at least some of these negative consequences.²⁸⁴

iv. Disability-Oriented Legal Education and Professional Training

The final resource component in Disability-Rights-Based DSD is *legal education and professional training*. While legal representation is crucial for accessing rights within child welfare systems,²⁸⁵ effective advocacy requires disability-conscious representatives committed to removing physical, communicational, and stigma-based barriers.²⁸⁶

Therefore, disability-sensitive legal education and rights training²⁸⁷ for legal professionals (lawyers and judges)²⁸⁸ represent a crucial resource for advancing parental disability rights. This education, deliverable through law schools and legal clinics,²⁸⁹ should encompass disability studies theory, the evolution from medical to social approaches, disability rights principles, legislation, and an understanding of how people with disabilities interact with justice systems.²⁹⁰

²⁸³ Stephens, Katz, Pisciotta & Lens, *supra* note 2, at 493–94; Babb & Moran, *supra* note 218, at 37, 43 (suggesting that therapeutic attention should also be given to the parents and not only the children within the framework of TJ).

²⁸⁴ HUNTER, THOMAS & CAMPBELL, *supra* note 19.

²⁸⁵ Ravit Alfandari, *Legal Advocacy for Parents in Child Protection: Not a Question of If, But a Question of How*, 49 BRIT. J. SOC. WORK 1601 (2019). While highlighting the legal advantages of being represented by a council, the research has also found the key role lawyers had in providing parents with emotional support and the positive evaluation of the representation by the welfare authority professionals. *Id.* at 1608.

²⁸⁶ Mor, *supra* note 51, at 637. According to the American Bar Association (ABA) Model Rules of Professional Conduct, when an attorney represents a client “with diminished capacity,” they “shall, as far as reasonably possible, maintain a normal client-lawyer relationship with the client” MODEL RULES OF PRO. CONDUCT r. 1.14 (AM. BAR ASS’N 2002). For recent comments regarding applying this provision and suggesting a revision in drafting legal ethics rules about the representation of clients with disabilities and mental health issues, see David R. Kanter, “Normal,” 33 S. CAL. REV. L. & SOC. JUST. 427 (2024) (pointing to the need to involve therapeutic professionals in the drafting process, distinguish between different “diminished capacity” situations, and provide more meaningful education on this matter for law students as future lawyers, moving towards a “client-centered-representation”).

²⁸⁷ EILIONÓIR FLYNN, *DISABLED JUSTICE? ACCESS TO JUSTICE AND THE UN CONVENTION ON THE RIGHTS OF PEOPLE WITH DISABILITIES* (2015).

²⁸⁸ Stephanie Ortoleva, *Inaccessible Justice: Human Rights, Persons with Disabilities and the System*, 17 ISLA J. INT’L & COMPAR. L. 2 (2011) (discussing the importance of training professionals, community education, and awareness); Powell, Parish, Mitra, Waterstone & Fournie *supra* note 6, at 203 (discussing further claims regarding professional training).

²⁸⁹ See generally, J. Damian Ortiz, *The Need to Make Clinical Teaching Mandatory as Part of the Experiential Methodology to Prepare Students for the Practice of Law in the Twenty-First Century*, 57 UIC L. REV. 697 (2024).

²⁹⁰ Several authors have elaborated on disability-oriented lawyers and law students. See, e.g., Rothler, *supra* note 157, at 36–40; see also Boulding & Brooks, *supra* note 207; Voula Marinou & Lisa Whittingham, *The Role of Therapeutic Jurisprudence to Support Persons with Intellectual and*

Disability-oriented legal representation rests on fundamental knowledge of disability rights ('hard' knowledge) and expertise in managing client-lawyer relationships when disability is present ('soft' knowledge).

Powell broadly addressed the first, claiming that although the ADA has, so far, done little to protect disabled people's parenting rights (as elaborated in Section I.B.), when used correctly, it can serve as an essential tool for family law attorneys. Hence, she contends that family law practitioners must comprehensively understand the ADA's strengths and limitations.²⁹¹ This includes ensuring full and broad access to the courtroom, including physical access,²⁹² communication access, and nondiscriminatory conduct.²⁹³ Additionally, lawyers must provide accommodations for clients in their offices to ensure the client's full participation in the representation.²⁹⁴ Powell concludes that attorneys should use three main strategies to ensure that the rights of parents with disabilities are protected: raise the ADA early and often, educate the courts by providing social science evidence regarding misconceptions about parents with disabilities, and make sure that judges base their decision on the individual's circumstances as required by the ADA and not on prejudice and bias;²⁹⁵ and partner with disability rights organizations.²⁹⁶ As Powell elaborates, attorneys should advocate for more training on parents with disabilities and the ADA for judges and court personnel.²⁹⁷ The importance of educating child welfare professionals and developing coordinated and comprehensive treatment services was also addressed by Glennon²⁹⁸ as a means to diminish discrimination and prejudice against parents and the misapplication of the ADA in the child welfare arena.

This professional education is particularly crucial given children's frequent interactions with foster parents, welfare officials, attorneys, and judges. When these actors maintain ableist perspectives toward parents with disabilities, their attitudes may influence children's views, creating additional barriers to reunification and undermining disability rights-based solutions. This concern extends to cases involving young children whose attorneys may present positions on their behalf, making it essential that these legal representatives embrace disability rights frameworks to prevent perpetuating systemic discrimination.

Developmental Disabilities in the Courtroom: Reflections from Ontario, Canada, 63 INT'L J.L. & PSYCHIATRY 18 (2019); Henry Dlugacz & Christopher Winner, *The Ethics of Representing Clients with Limited Competency in Guardianship Proceedings*, 4 ST. LOUIS U. J. HEALTH L. & POL'Y 331 (2011).

²⁹¹ Powell, *supra* note 2, at 38.

²⁹² *Id.* at 44.

²⁹³ *Id.* at 45.

²⁹⁴ *Id.* at 46. Powell mentions the National Council on Disability, NCD ROCKING THE CRADLE, *supra* note 2, finding that even though Title III of the ADA mandates private attorneys to provide clients with disabilities reasonable accommodations since attorneys are generally required to absorb the costs of accommodations, they may decline these kind of cases, justifying the declining on other grounds. Powell, *supra* note 2, at 46.

²⁹⁵ Powell, *supra* note 2, at 44, 47.

²⁹⁶ *Id.* at 46.

²⁹⁷ *Id.* at 47 (citing NCD ROCKING THE CRADLE, *supra* note 2).

²⁹⁸ Glennon, *supra* note 15, at 292-93.

The second foundation of a disability-oriented representation is “soft” knowledge regarding the client-lawyer relationship in the presence of a disability. Boulding and Brooks addressed this issue broadly and asserted that representation in disability-related legal systems²⁹⁹ should aim to foster positive and relationship-centered lawyer-client relationships³⁰⁰ based on accessibility, with particular attention and respect to the client’s wishes regarding the legal procedure.³⁰¹ Powell, Parish, Mitra & Nicholson further elaborate on attorneys’ need for a profound understanding of mental health, including assisting clients beyond litigation and their role in access to additional legal services that the parents may require.³⁰²

Rovner³⁰³ shed light on the way litigation, which is aimed at defining and shaping the disability in a way that is compatible with the ADA (or other relevant legislation) and the theory of the case, may be antithetical to the way the client sees herself, and therefore harm the genuine identity of disabled people.³⁰⁴ Applying her scholarship on child welfare cases draws two main conclusions: the first, that parents should be given complete information and be consulted regarding the way their disability is portrayed in the litigation; the second, that child welfare cases (as opposed to cases where compensatory damage is at the focus) may provide grounds for litigation that acknowledges the disability and the difficulties that might arise from it, on the one hand, while still stressing positive aspects regarding the person, not just for the sake of being politically correct but as the case’s strategy, which requires putting the parents’ strengths at the front.

Given the intersectionality of disability and poverty,³⁰⁵ lessons of representation can be learned from the practice of “poverty-informed social work” and poverty-informed lawyering. This paradigm calls for professionals to stand alongside their clients and empower their fight. It calls for culturally sensitive representation, acknowledging the power differences between the lawyers and their clients. This kind of sensitivity sheds a different light on clients’ behaviors, such as reluctance to cooperate, delay, or hiding information. It views the professional-client

²⁹⁹ Boulding & Brooks, *supra* note 207, at 451. *See generally* Brooks & Madden, *supra* note 157.

³⁰⁰ Boulding & Brooks, *supra* note 207, at 451.

³⁰¹ *See* Perlin & Weinstein, *supra* note 208, at 78. Litigating and judging in child welfare cases can also be very stressful and expose professionals to vicarious trauma. For a recent special issue on judicial and lawyer well-being and stress, *see* JUDICIAL AND LAWYER WELLBEING AND STRESS, 31 *PSYCHIATRY, PSYCH. & L.* 315–586 (2024).

³⁰² Powell, Parish, Mitra & Nicholson, *supra* note 29, at 95–105 (noting that such assistance includes taking more time to explain the legal process, assisting with administrative tasks, and coordinating with other supports and services, including access to legal assistance in other areas).

³⁰³ Laura L. Rovner, *Perpetuating Stigma: Client Identity in Disability Rights Litigation*, 2001 *UTAH L. REV.* 247.

³⁰⁴ Drawing from Martha Minow’s writing on the way identity is shaped through relationships. *See* MARTHA MINOW, NOT ONLY FOR MYSELF: IDENTITY, POLITICS, AND THE LAW 30–58 (1997); Martha Minow, *Identities*, 3 *YALE J. L. & HUMANS.* 97 (1991).

³⁰⁵ *See, e.g.,* Glennon, *supra* note 15, at 292 (explaining that poverty (and race) are risk factors for parents with mental illnesses who are involved in the child welfare system because they must turn to the public system for assistance, thus risking separation from their children); DOROTHY ROBERTS, SHATTERED BONDS: THE COLOR OF CHILD WELFARE 16–19 (2002); Powell, *Abolitionist Approach*, *supra* note 85, at 92.

relationship as an arena that can enhance these power differences or social justice and asks lawyers to choose the latter.³⁰⁶

As elaborated in Section II.B.4.iv., apart from these aspects of representation, it is vital to address the unique position of parents' attorneys in child welfare cases, which sometimes call for enhanced collaboration with the welfare authorities for the overall well-being of the family — parents and children alike. It is, therefore, essential to develop special ethical rules that will allow lawyers to collaborate with the welfare authorities, therapeutic professionals, and guardians regarding the children, keep parents' authentic voices at the forefront of the case, and follow rules of zealous advocacy.

6. *Successfulness, Accountability, and Learning*

Aligned with its practice-oriented approach, DSD concludes with an evaluation component: its sixth element centers on *successfulness*, *accountability*, and *learning*. For stakeholders to develop confidence in and utilize the dispute system, they require comprehensive information about its effectiveness.³⁰⁷ The evaluation must encompass and critically examine all five preceding elements: goals, stakeholders, context and culture, process and structure, and resources³⁰⁸ while progressing beyond mere conceptual translation to a dedicated commitment to achieving its multifaceted objectives.³⁰⁹

Essentially, an effective system accomplishes its intended goals. Consequently, the evaluation will be intricately linked to the system's specific objectives, assessing their impact on addressing individual child welfare conflicts, including prevention, management, and resolution.³¹⁰ However, by disability-rights-based DSD guidelines,³¹¹ *successfulness* extends beyond immediate conflict resolution. It should also be defined by the system's capacity to achieve broader parenting goals, such as developing supportive mechanisms for parents, strengthening parental relationships, elevating public understanding of disabled parenting's advantages and significance, and dismantling the pervasive stigma and bias prevalent in this domain.

The assessment must thoroughly investigate the design's universal applicability and accessibility, particularly for parents with diverse disabilities, with special attention to those with mental and intellectual disabilities. It should ensure that beyond resolving specific disputes, the system contributes to developing constructive and positive approaches for the future collective benefit of individuals with disabilities. The evaluation should examine whether each dispute is comprehensively settled and serves as a learning opportunity, ultimately aiming to advance parenthood rights. An additional critical aspect of a successful

³⁰⁶ MICHAL KRUMER-NEVO, *RADICAL HOPE: POVERTY-AWARE PRACTICE FOR SOCIAL WORK* (2020).

³⁰⁷ AMSLER, MARTINEZ & SMITH, *supra* note 7, at 86.

³⁰⁸ Smith & Martinez, *supra* note 8, at 132–33.

³⁰⁹ ROGERS, BORDONE, SANDER & MCEWEN, *supra* note 7, at 320.

³¹⁰ AMSLER, MARTINEZ & SMITH, *supra* note 7, at 88 and 130 (noting that measuring conflict prevention is challenging).

³¹¹ Rothler, *supra* note 9.

design is incorporating disability rights and disability consciousness within judicial discourse.

All parenthood policies, legislation, and tribunals should undergo rigorous evaluation through the lens of disability rights principles. The assessment team must include parents with disabilities who have personally navigated child welfare legal proceedings alongside other pertinent stakeholders. The evaluation should systematically and comprehensively scrutinize the system's success in achieving disability rights and parenthood goals while adhering to broader DSD considerations. These include minimizing transaction costs, ensuring outcome satisfaction across participants, fostering disputant relationships, and addressing dispute recurrence.³¹² The system should implement continuous assessment mechanisms that enable judges to re-evaluate periodically and, if necessary, correct their decisions.

Addressing the *accountability* dimension of the DSD assessment requires a deep examination of the willingness to accept responsibility and be answerable for actions. This involves exploring the intricate relationships between the system's designer and its oversight body and between system managers and stakeholders.³¹³

Effective system accountability demands a balanced and equitable approach to responsibility across all participants in child welfare proceedings. It requires that the mechanisms for ensuring compliance and adherence apply uniformly without privileging any group of actors. When accountability is used inconsistently, it undermines the fundamental integrity of the dispute-resolution process, creating power dynamics that can obstruct meaningful engagement and comprehensive problem-solving. The ideal system should establish a framework where all participants — parents, institutional actors, professionals, and support services — are equally subject to the same accountability standards, fostering a more just and transparent approach to addressing child welfare challenges.

On a functional level, equitable accountability will dramatically diminish existing power imbalances and help alleviate feelings of marginalization and unequal treatment among parents, avoiding their systematic disengagement, feeling unheard, disempowered, and increasingly alienated from the system designed to support them.

Initially, the child welfare system's diverse operators — including professionals, policymakers, and parents with disabilities — must verify that child welfare cases are handled in strict accordance with disability rights principles. This verification must now explicitly include mechanisms to ensure institutional accountability, creating reciprocal responsibility among all system participants. Subsequently, system designers must identify opportunities for continuous improvement, drawing insights from accumulated case-by-case knowledge. Furthermore, designers should facilitate user understanding by disseminating information on system operations to people with

³¹² AMSLER, MARTINEZ & SMITH, *supra* note 7.

³¹³ *Id.* at 75.

disabilities and professionals in an accessible manner,³¹⁴ ensuring transparency in information processes.³¹⁵

These strategic steps aim to enhance the system's credibility, foster trust in its processes, amplify the cooperation and participation of people with disabilities and professionals, and encourage ongoing feedback.³¹⁶ When executed effectively, these measures would justify the continued resource investment in system development and promote a more comprehensive realization of parenthood disability rights and support measures.³¹⁷

The learning component serves as the concluding element of this final DSD stage. Guided by learning principles, the system should transcend mere dispute processing. It must incorporate an educational and training mechanism for all stakeholders, generating a dynamic learning process from accumulated knowledge to advance parenthood disability rights.

CONCLUSION

This article addresses the persistent challenge of implementing disability rights within child welfare proceedings, offering a novel, practical framework for systemic reform by applying the Disability-Rights-Based Dispute System Design. The analysis reveals how current child welfare systems often fail to meaningfully incorporate disability rights principles despite existing legal protections, leading to discriminatory outcomes for parents with disabilities.

The article's primary contribution is bridging the gap between theoretical disability rights and practical implementation in child welfare settings. Applying the Disability-Rights-Based DSD framework provides a structured reform approach that addresses preventive measures and judicial proceedings. This comprehensive framework encompasses several key innovations.

A fundamental aspect of this framework is its reconceptualization of parenting and disability. It moves beyond the traditional focus on functional care to embrace broader concepts of interdependence and relational parenting. This shift challenges the prevailing tendency to view parents with disabilities in isolation and instead recognizes the legitimate role of support networks in all parenting contexts.

The framework provides practical guidance for implementing disability rights at multiple levels of the child welfare system. It emphasizes developing early intervention and support mechanisms to prevent unnecessary court involvement while restructuring court processes to ensure meaningful accessibility and accommodation. It calls for creating comprehensive support systems that legitimize various forms of assistance without stigmatizing parents, establishing disability-conscious professional training and education, and implementing robust accountability measures to ensure ongoing system improvement.

³¹⁴ *Id.* at 37.

³¹⁵ Smith & Martinez, *supra* note 8, at 132–33.

³¹⁶ *Id.*

³¹⁷ AMSLER, MARTINEZ & SMITH, *supra* note 7, at 74.

Notably, the framework addresses the complex balance between therapeutic and rights-based approaches in child welfare. It demonstrates how therapeutic jurisprudence principles can be incorporated while maintaining strong protections for parental rights and avoiding the pitfalls of medical model approaches to disability.

The implications of this redesign extend beyond parents with disabilities. By adopting universal design principles and emphasizing accessible, supportive approaches to family preservation, the framework has the potential to benefit all families involved in the child welfare system, particularly those from marginalized communities. It promotes a more nuanced understanding of family support needs and challenges the binary thinking that often characterizes child welfare decision-making.

This framework provides a roadmap for concrete policy reform and system redesign. Its emphasis on prevention, support, and rights-based intervention offers a promising path toward a more equitable and effective child welfare system. The ultimate goal of this redesign is to create a child welfare system that truly serves its intended purpose: supporting families and maintaining children's well-being while respecting the fundamental rights and dignity of parents with disabilities. This article contributes to the broader project of creating more just and inclusive social institutions by providing practical tools for achieving this balance.