

CHILDREN IN CARE – MEETING THEIR PARENTING NEEDS

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Workshop for the 7th Australian Institute of Family Studies Conference
Sydney Convention and Exhibition Centre
Sydney, NSW
24-26 July 2000

This paper is written in two parts. In the first half, Susan Diamond briefly explores how a theoretical framework might inform our understanding of the context for children's rights in Australia as impacting on the parenting experiences of children in care.

The second half of this paper is a constructed case study, undertaken by Sue Ash for the purpose of illustrating the implications, for children in care, of macrosystemic hesitancy in honouring children, and their carers, with the pre-eminence and place necessary to an environment supportive of healthy development.

The Constitutional and Legislative Context for the Parenting Experience of Children in Care

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An approach in which the constitutional and legislative environment is considered as a context for understanding the parenting experiences of children in care has its theoretical foundations in the interface of theories of child development and systems theory. In order to make transparent the conceptualisation of issues, this section of the paper is structured to provide:

- a brief theoretical background for establishing the responsibility of the executive and legislature for creating the macrosystemic environment necessary for both successful parenting and healthy child development
- an exploration of the rank and position of children in Australian constitutional and domestic law, and
- a discussion of the cumulative and compounding disadvantage experienced by vulnerable children in care, given the above context.

Theoretical frameworks

Child Development

A theory is a set of assumptions organised in a logical and systematic fashion, in order to aid our understanding of particular phenomena. Theories survive when they are found to be useful in the structuring and analysis of data, for the purpose of informing and explaining. By their nature, theories function as building blocks, in enquiry and discovery (Schickendanz, Schickendanz et al. 1993).

Theories of child development have helped to establish that the social childhood of the last century has particular associated developmental realities; that these are variously related to age and stage of development and that they include physical, social, psychological and neurobiological aspects [Schickendanz, 1993 #28; 2; 43-71].

The theoretical perspectives now informing our understanding of child development have underlined the importance of, amongst other things, attachment and bonding, a sense of belonging, and the development of self esteem and identity.

The theories of child development include those categorised as maturational, psychoanalytic, learning and cognitive-developmental theories. Each has a view of the child as an individual and to a greater or lesser degree describes the child's development in terms of limited interaction with his/her environment or in terms of interaction with limited aspects of his/her environment. It was the more recent development of ecological systems theory, locating individual child development within a dynamic systemic context, which puts child development on the broad socio/political agenda. This new paradigm in no way diminished the value of the older theories in explaining particular aspects of child development, but introduced new dimensions for consideration.

Ecological Systems Theory

Urie Bronfenbrenner, an American psychologist, had his 'eyes opened to the power of both phenomenology and social context' (Bronfenbrenner 1979: Preface xii), in the late 1940s. Over a period of fifty years he formulated, researched and tested a theoretical position addressing the lifetime development of the individual and accommodating the nexus of systems theory and [child] development. This is known as ecological systems theory and has been championed by the New York State College of Human Ecology at Cornell University.

Applying the principles of systems theory to child development, one sees the child as an interdependent member of a complex family system, which is constructed of interactive and interrelated subsystems, characterised by stability, transformation, fluidity and boundaries. Within this complex system, the child is simultaneously an individual, a member of various family subgroups, a member of the family as a whole and a participant/member of the family's ecological environment (Sundberg, Tyler et al. 1973; Minuchin 1985). Elsewhere, the family, *de jure* and *de facto*, has been widely recognised as a fundamental, naturally arising and consistently reliable social structure for rearing children successfully [Maley, 1999 #29;10; Hodgson, 1994 #30]. Recognition of the importance of the family, in the development of children, is transparently embedded in ecological systems theory.

In part, ecological systems theory describes the contextual parameters impacting on [child] development, as existing within a systemic hierarchy, the four-stage progression of which, from proximal to remote, is classified as including the microsystem, mesosystem, exosystem and macrosystem (Brim 1975; Bronfenbrenner 1979; Bronfenbrenner 1989). Each of these (sub)systems has a role in the development of the individual and is accompanied by a definition describing this role. It is Bronfenbrenner's definition of a macrosystem which is critical here, because of the way in which it places children and their carers at the highest level of their ecological system:

'...A *macrosystem* refers to the overarching institutional patterns of the culture or subculture, such as economic, social educational, legal, and political systems, of which micro-, meso-, and exo- systems are the concrete manifestations. Macrosystems are conceived and examined not only in structural terms but as carriers of information and ideology that, both explicitly and implicitly, endow meaning and motivation to particular agencies, social networks, roles, activities, and their interrelations. **What place or priority children and those responsible for their care have in such macrosystems is of special importance in determining how a child and his or her caretakers are treated and interact with each other in different types of settings.**' (Bronfenbrenner 1977:515, my emphasis)

In his theory, Bronfenbrenner establishes clearly, the need for the child to be visible in all of his/her ecological [sub]systems. This quote however, establishes directly the conceptual link between the visibility of children at a constitutional and legislative level, and the relevance of this to the experience/s of parenting had by children generally, and by extension, by children in care. Understanding the relationship, between child development and the most remote of the hierarchical [sub]systems, is critical because of the enduring impact, on children, of such an association.

Rights of Children and their Carers; Obligations and Responsibilities of Adults and at a Systemic Level

The ecological systemic approach alerts one to the notion that an ecological environment, sturdy and responsive to the developmental needs of children, would include visible evidence of three principles:

- that children have unassailable rights to opportunities likely to support their positive development

- that carer's have rights to the necessary supports/opportunities to undertake their parenting function, and associated ongoing responsibilities to the children; and
- the macrosystem (the State) acknowledges its broad role in the parenting and development of children and as such carries responsibilities for, and obligations to, children and their carers, in the articulation, upholding, promotion and realisation of their individual and collective rights.

These principles are not new, but reflect eight decades of work, by the international community, which resulted in the adoption of numerous instruments impacting on human rights, including the United Nations Convention on the Right of the Child (UNCROC) in 1989. All international instruments subsequently developed are compatible with UNCROC.

In order to explore the Australian scene, some discussion is required, placing Australia in its international context.

There is a hierarchy of law within which 'the State', in its various guises, but ultimately as 'the international political community', operates. Forming and binding the international political community are diverse treaties, conventions, declarations, agreements and international laws, some of which either specifically or in general, provide for the wellbeing of children. It is within this context that the State may be understood to recognise its responsibilities towards children. The final, but not exclusive, expression of this State responsibility towards children is in individual jurisdictions accepting, or requiring, guardianship of children, whom the State believes have not been adequately protected by their parents, either because of unwillingness or inability on the parents' part.

Children's rights, in international law, is an area of great complexity. Children's rights are impacted not only by universal and regional instruments on human rights - both general and specific human rights such as political, religious, economic, civil and gender rights - but also by international instruments relating to children generally and to children in specific legal circumstances (ie adoption and abduction). In addition, the authorship of these instruments is diverse, including the United Nations General Assembly, the Hague Conference on Private International Law, the European Economic Council, The Organization of American States, the Commission International de L'Etat Civil and numerous specialist United Nations agencies such as the International Labour Organisation and the World Health Organisation (Saulle 1995).

In Australia, the United Nations Convention on the Rights of the Child, might be considered as the principal legal reference in regard to children's rights. The pedigree of this document dates back to the 1919 International Labour Organisation Convention which, for the first time, identified children as requiring protection in the form of restricted working hours. This convention then informed the first ever international statement of concern about the rights of the child, made by the General Assembly of the League of Nations in 1924 when the General Assembly adopted the Declaration of Geneva. The Declaration of Geneva included principles identifying children as having both special primary and special secondary needs which required satisfaction in order that normal development occur (Saulle 1995).

The concepts of human rights generally, and of children's rights specifically, were further developed in international dogma, consequent to the establishment of the United Nations, following the end of World War II, and with the adoption of the first international agreement to define human rights. Following the adoption of the Universal Declaration of Human Rights, by the United Nations General Assembly in 1948, the United Nations turned its focus to children's rights with the Declaration on the Rights of the Child being adopted in November 1959 [Saulle, 1995 #1].

The Convention on the Rights of the Child was developed between 1979 and 1989, with serious international interest shown from 1983 onwards. The Convention included two key principles. Firstly, it would be legally binding on member states. Secondly, the Convention on the Rights of the Child extended to children special protection because of their status, and as individuals separate from their parents, with a right to develop and express themselves actively as individuals. On 20 November 1989 the United Nations General Assembly adopted the Convention on the Rights of the Child. Australia ratified the Convention on the Rights of the Child on 17 December 1990, with it entering into force in this country on 16 January 1991 (Cohen 1995; Saulle 1995).

International treaties which have followed the Convention on the Rights of the Child have been within the principles articulated therein and have resulted in an emerging children's rights specialty in jurisprudence (Cohen 1995). It is in its legislative application by States Parties however, that the Convention on the Rights of the Child will make a difference – this is the obligation accepted by States Parties (Lane 1991).

The Convention on the Rights of the Child is possibly the primary legal reference document for children's rights in Australia. Despite this, there is continuing evidence of Australian federal governments' failures to meet, in full, their obligations under the Convention. In particular, active support of the Convention has been lacking, and there have been attempts to thwart the application of the Convention. There is no scrutiny of legislation to ensure its validity under the Convention, and where States and Territories, either deliberately or unintentionally, flout Australia's obligations, the Federal government is reticent to intervene (Nicholson 1996; Human Rights and Equal Opportunity Commission 1997; Breen 1999; Teoh and Turnell 1999; Human Rights and Equal Opportunity Commission 2000).

The Australian Human Rights and Equal Opportunity Commission (HREOC), established in 1986, has the Convention on the Rights of the Child cited in its legislation as a reference document. Whilst HREOC was established to monitor the application of the Australian Bill of Rights, and the Bill never eventuated, the Convention on the Rights of the Child is established as a benchmark for HREOC's business. Unfortunately, the implementing legislation for the Convention on the Rights of the Child, which became a federal government obligation as a result of being a State Party to the Convention, was never passed. As a result there are few rights to children arising directly from either the signing of the Convention on the Rights of the Child or the establishment of the HREOC (Carney 1990; Rayner 1996).

Children are largely invisible in the State and Federal Constitutions. Neither the States nor the Commonwealth has Children's Rights Charters (nor even generic Bills of Rights), and there are few laws positively supporting human dignity for children. Those children's rights which do exist are neither comprehensive nor definitive, but fall into two categories: those of choice and those of public interest (Lane 1991; Breen 1999). The rights of choice, such as those around schooling, living at home or away, and travel, are mostly in parental control for younger children. Other rights to food, clothing and housing, are prosecuted, as a matter of public interest, as parental breaches, rather than as children's rights. Furthermore, in prosecuting the parents there were until recently no reciprocal obligation on the State to standards in the provision of care for the children. Queensland alone, has introduced a Charter of Rights for a Child in Care with its current child protection legislation. Breaches of care by the State are likely to be understood in terms of failure to meet a duty of care, and are rarely prosecuted. Where children do have rights to resources such as free medical care, financial support and accommodation, these rights are subject to the vagaries of legislative and policy manipulation (Carney 1990).

Protective rights largely exist through the authority of Children's Courts in the individual States and the mandate of associated welfare legislation. This area of concern tends to be separated into welfare and justice. Welfare matters relate to offences against children by parents and carers (excluding the State) and justice matters relate to criminal activity by children. The age of criminal responsibility for children varies across the states from 8-10 years, with the possibility of serious charges being heard in adult courts. Depending on the particular state, sanctions against children may occur with or without the recording of a criminal conviction (Carney 1990).

The Compounded and Cumulative Disadvantage of Children in Care

At this point, it becomes relevant to consider three crucial and connected ideas. The first is of the importance, under normal circumstances, of healthy families in the robust development of children. The second, is Bronfenbrenner's conceptualisation of the roles of micro-, meso- and exo- systems, in the development of the individual [child], within which is contained the notion of the family as both a microsystem, and also as a moderator between the individual child and the other [sub]systems. The third is of the role of the State, not as a parent, which relies on having a relationship with the child and being part of the child's microsystem/s, but in having and understanding responsibilities and obligations to enrich the ecological possibilities for and on behalf of children.

In the last twenty years, the restructuring of service delivery by successive Australian governments has reflected changing conceptualisations of citizenship and the State's role and responsibility. Whilst there is no comprehensive theory which captures all of the issues, we can be usefully informed by many theoretical positions. In this paper ecological systems theory has been singled out as being particularly attractive, albeit that some obvious lacunae are not addressed.

The evidence is that the children who rely most heavily on State care, are most likely to have disorganised and unstable families (fluid in configuration), and are also most likely to have disrupted and unreliable attachments to these families (Berrick 1997). In addition children who are either in and out of care, or who remain in care for longer periods, are likely to suffer multiple placements (carers). These two scenarios, of fractured families and multiple placements means that the vulnerable children do not have the dependable microsystems where, so necessary to healthy development, the child is treated as an individual with individual needs, and not as a generic child. Furthermore, in losing the individual recognition, arising from responsibilities and obligations to the child at the microsystemic level, particularly in the family, the child is exposed to other [sub]systems without the moderating and protective effect of the family. In an environment where there are few children's rights and few State obligations and responsibilities, and where the child has no family to champion his/her cause, the child could be forgiven for asking "Does anyone really give a damn?!".

Within a macrosystemic context which, in failing to commit to unassailable human and children's rights, leaves carers vulnerable and children largely invisible, the developmental disadvantages compound and accumulate for the most vulnerable children in the care system. Successive loss of family/ies and associated marginal systemic participation leaves these children not only disadvantaged, but at exponential risk of being disadvantaged in the future.

Whilst the relation between the research evidence and legislation is not always extant and/or obvious, the benefits arising from a more transparent association, are potentially enormous. Understanding the theoretical foundations and research evidence, in particular issues, would allow for better understanding of how these issues can be articulated, and legislation formed, in a way most likely to achieve the intended outcomes. In the absence of transparent conceptual links, legislative purpose and intent are unclear, with the lack of clarity rendering the systemic consequences difficult to anticipate and manage. In the case of UNCROC, and therefore in regard to the domestic legislative and judicial responses which may or may not follow, it is critical that we understand the research and theory which conceptually underpins the intent and purpose of the embedded principles. State and community awareness of the theoretical support for instruments such as UNCROC, would identify them as being not only admirable, but possibly critical to the wellbeing of children generally and most particularly to those experiencing a range of vulnerabilities.

Bronfenbrenner's theoretical position provides a useful framework for understanding the research evidence regarding increased risk in both parenting populations with poverty concerns, and children in care. Furthermore, ecological systems theory clearly establishes the responsibility of the State in maintaining the ecological environment necessary for sustaining families and supporting the healthy development of children. In using Bronfenbrenner's model, structural issues affecting families and children are clearly identified as a matter for state intervention, at the highest level. The corollary is that universalist interventions for families and children would be more appropriate, and have a greater likelihood of success, than approaches which, in the absence of constitutional safeguards, devolve responsibility to the lower levels of the systemic hierarchy and to individuals.

Using Bronfenbrenner's model, it becomes apparent that whilst the State has an obligation to support those who parent, the State itself cannot 'parent'. This raises questions about the meaning and usefulness of the recently coined 'corporate parent' terminology. The author is of the opinion that State resistance, to fully handing over to carers the reasonable activities of parenting and associated adequate resources, results in children in care, for whom the State is responsible, often being inadequately recognised in **all** of their ecological environments. The carers are not really able to provide parenting and the State never recognises that its own critical role is not in being a parent but in supporting parenting by others. Whilst **all** children are poorly recognised at a macrosystemic level; children for whom the State is responsible may be even further disadvantaged by their non-participation at the microsystemic level as well as their invisibility at the macrosystemic level.

Steven's Story – A Constructed Case Study

Author: Sue Ash

Steven is the second of five children

Voluntarily placed in care by his mother who was working as a prostitute soon after the birth of his third sister.

No facility could accommodate all four children so the two eldest were separated. They were placed in separate cottages but on the same campus.

Steven was a quiet, shy little boy of four. He had grown up in an environment of women with men visiting. He did not know who his father was, nor did his mother. For the last two years, his mother had worked the streets. She had, on occasions, come home bruised and battered.

The children had often been left alone. Steven was very withdrawn, was not speaking well, had few drawing and writing skills, ball skills and when offered food would eat lots and hoard the rest.

He soon became a slightly overweight, compliant child who did what was expected of him. This continued to be a pattern throughout his childhood.

By the age of six, decisions had been made that he should be fostered separately from his sibs. A placement was found and initial visits occurred. It was 1980.

Just as the placement was about to proceed, Steven's mother returned and indicated that she wanted the children back. Her life had settled down and she was ready to resume their care.

The children returned to her care.

Nothing more was heard from the family until the end of 1982, when the mother and the four children returned. This time she was required to sign a document seeking the State take care of the children. She had had a second son, six months before and he had a serious physical disability.

The eldest children were proving too demanding for the mother and her partner. They were committed to caring for their child and the demands were such that the eldest children had to go into care. The children were placed separately and have had little contact with each other since and none with their mother.

Steven continued in his placement until he was 16 years. He performed at just a pass level at school, was rarely in trouble at school or home, was always shy and retiring. In the time he was in care, he had a change of carers every two to three years, a change of social worker three times, had one Director of the agency and two education officers. He had a change of Departmental Social Worker, on average, annually.

He was case conferenced and reviewed regularly. Essentially, he had as good an experience of care as a child of those needs could have.

At 16 years he left school and transitioned into the work force.

He worked on stations alone mostly. He came to Perth – bought a motor bike and joined a Bikers group. That's where he learned his values about women, commitment and sex.

He met a girl and had a child ... but didn't stay.

And at the age of 24, had an accident that caused him long term and severe physical and brain injury.

Who cares for him? He has no one .. no parents, no family, no lasting friends.

His living reality for the whole of his life, is that people will meet his obvious needs but no one cares for HIM.

In the first part of this paper three specific rights of children were discussed. There is some important learning to be gained by applying these rights to Steven's situation and life story. These were

- That children have unassailable rights to opportunities likely to support their positive development

Steven had little support for his positive development. This young man, because of his compliant behaviour, his average ability and his early learning that came from being hidden in society in order to ensure your basic needs are met, was essentially forgotten by the care system. Proactive support for his positive development was not part of his life experience. No one fostered in him a sense that he could make a mark on society, no one dreamed dreams with him.. being a space scientist, a fire fighter, a pilot or whatever it was that he needed to think about in order that he form his own identity.

No one stayed around long enough or had sufficient vision for this young man. The message he got, long and loud, from all those well meaning people around him was that people thought you were "OK" if you didn't cause problems.

Young people in care are, in practice, categorised by the degree of difficulty they are to the people involved with their care. The goal is to ensure that the child is attending school, understands basic societal mores and has sound behavioural skills. It is the rare child in care who experiences positive developmental opportunities that facilitate their achieving their potential. It is a fundamental difference between a child receiving adequate services and competent parenting.

- That carer's have rights to the necessary supports to undertake their parenting function, and associated ongoing responsibilities to the children

Carers are part of a complex system of people who undertake some or all of the parenting of children in care. In an environment of "purchased services and contracts" this role is often diminished to cover the provision of supervised accommodation and nutrition. In Maslow's hierarchy of needs, the role meets the first two needs – food and shelter. The three higher order 'needs' – belonging, esteem and self actualisation are not identified in many care contracts. It is as if children in care somehow manage to have these needs met, when no one in the care system is resourced or acknowledged to meet these needs.

It is also recognised that young people leaving the care system also have these needs. In Steven's case, there was no one there for him to work through what it means to be a 'man', how to be an employee, how to manage finances, access income security placements etc. For Steven, his carers had no expectation that he might be an ongoing part of their lives. This was cruelly illustrated when he was hospitalised with head injuries. Even today, he has no one, apart from the anonymous and every changing State, to take care of his needs. He is not visible in the system, and therefore his fundamental rights – consultation, self determination - are often infringed.

The carer's role, or something similar is often the role that ensures that there is continuity of care for such people. In the situation of a child in care, this is not available, and there are no systems in place to consistently ensure that this continuity of care continues.

- The macrosystem (the State) acknowledges its broad role in the parenting and development of children and as such carries responsibilities for and obligations to, children and their carers in the articulation, upholding, promotion and realization of these rights.

The UN Charter of rights extends special protection because of their status and as individuals separate from their parents with a right to develop and express themselves actively as individuals. No where is this more important than in the lives of children in care.

However, there is often State resistance to fully handing over the reasonable activities of parenting, and of resourcing these activities. This results in children for whom the state is responsible, often being inadequately recognized in all of their ecological environments. The carer is not really able to be a

parent and the State never recognises that it has a role as parent. Whilst all children are then not well recognised at a macrosystemic level: State children may be even further excluded by their non participation at the microsystemic level as well.

Steven is a classic case. He became invisible in the microsystem and the macro system was so fragmented and unable to adequately address and support all of his needs that he was and is unable to achieve more than his basic needs being met.

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