

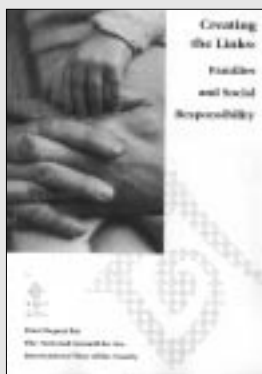
Kilmartin's discussion of the latter elsewhere in this issue).

On the more personal issue of public and private roles, expanded and innovative provision of education for family life was a subject of the report's submissions and recommendations. These avenues of human relationships education, marriage education, marriage counselling and parenting education were seen to underpin support to families and their caring roles.

The important role that families and other organisations such as business can play in creating a family supportive environment was acknowledged. Community submissions mentioned a desire for a sense of belonging to community/neighbourhood, and the Council noted the importance of encouraging social participation by family members in community institutions, with schools as a vital focal point.

**T**he Council recognised that its recommendations regarding the allocation and distribution of resources to families will have revenue implications. The report is emphatic: 'We must ask, not What does it cost? – but What does it cost *not* to make these social investments?' This is the question that will be addressed in the Government's 'Agenda for Families' and its response to the Council's report. It is also the question we all must ponder as individuals, family members and constituents of the wider social community.

The report provides an excellent background, statistically and philosophically, to the complex and interrelated issues of family, social responsibility and economic policy. The questions it raises are not new and the recommendations are familiar. The 'heart of the matter' is how we as a community wish to 'create the links'.



*Creating the Links: Families and Social Responsibility*, Final Report by the National Council for the International Year of the Family, AGPS, 1994 (320 pages). The report is available from the Family Services Branch, Department of Human Services and Health, Canberra. Phone: (06) 289 3736.

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# Children's Rights in Family Law Disputes

## Issues of Process and Outcome

**W**ithin the Judeo/Christian Old Testament the story is told of a dispute over the welfare of a child. Two women, resident in the same household, both claim to be the true mother of an infant. When King Solomon decrees that the baby should be cut in half, the real mother is prepared to give up her child, rather than see it die. The imposter is exposed as evil and at the same time, Solomon enhances his reputation as a wise ruler. A most satisfactory conclusion – one for which many family court judges would no doubt be prepared to give their eye teeth!

A more contemporary account of this story is told in Bertolt Brecht's *Caucasian Chalk Circle*. In this version, two women are asked to tug at the child over which they are in dispute. Whoever pulls the child across a chalk line will be deemed to be the true mother. Once again the 'real' mother relents rather than have her child injured or torn apart. Once again, the imposter is exposed.

### The Classification of Women and Children

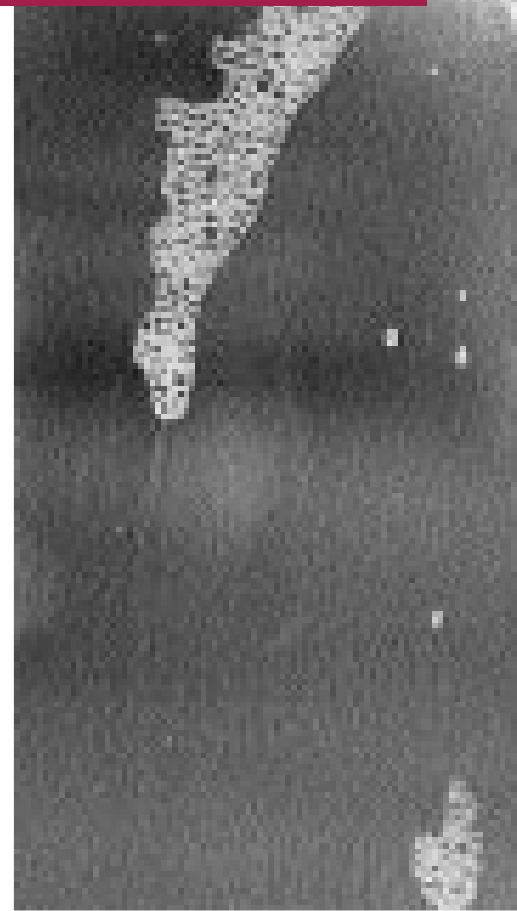
The story is of course archetypal. Like all good archetypal accounts, it invites a simultaneous consideration of several morals.

First, real parenting is seen to be about biology. In each account, the real parent turns out to be the biological parent.

Second, the true biological link is between *mother* and child. In each account, the fathers have no stake in the action.

Third, the determination of custody necessitates the exposition of an imposter. Moreover, the imposter clearly has such evil intent that she is prepared to see the child killed or seriously injured.

Fourth, the sign of a true mother is that she is prepared to sacrifice all for the sake of her child. This spirit of sacrifice is rewarded by the wise and independent arbitrator who grants her possession of the child.



Fifth, the judge of the truth of the situation in each case is objective, detached and male. Parenting disputes may be resolved according to clear principles which are largely a contextual.

Sixth, the truth is viewed as an either/or proposition. One outcome excludes the other; only one claimant can be the true custodian.

Seventh, truth is arrived at by the use of clever devices via which an unsuspecting villain is tripped up and exposed.

Eighth, the subjects of the disputes, the children, need no special pleading or independent representation because in each case, a wise and benignly disposed system will take care of them. (Penelope



Picture: Rhonda Milner

**Changing family roles is a matter of extraordinary and ongoing complexity which has at its heart an assertion of the right to be treated as an individual. LAWRIE MOLONEY discusses the extent to which our legal system is capable of facilitating a socially responsible and relevant set of changing roles following parental separation – in particular, the developing role of children.**

Leach (1994) has characterised our dealings with children generally as one of 'benevolent authoritarianism'.)

Finally, the stories are strongly suggestive of a generalisable postscript: 'The wicked imposter was punished for trying to deceive the wise judge; the imposter was banished from the kingdom; mother and child lived happily ever after.' We are not encouraged

to ask awkward questions like how the heroes were coping a few years later or what happened to the anti-hero.

#### **Adversarial Processes**

In the bad old days of fault-driven divorce legislation, one spouse was forced to play the role of the anti-hero, sometimes losing

everything, including a chance to continue to be a parent to any children of the marriage. Although the 1975 Family Law Act dispensed with the examination of fault in determining grounds for dissolution of marriage, the continuation of an adversarial approach to dispute resolution has made it difficult to avoid a continuing assumption that the truth of the matter can be determined if

enough facts are assembled and cross examination is sufficiently comprehensive.

In politics, sport and law, adversarial processes are about winning and losing. Generally, defended hearings over the ongoing parenting of children continue to culminate in the awarding of the child(ren) to one parent, who is deemed to have 'won'. The other parent, normally granted visiting rights, is said to have 'lost'.

Although it may be argued that there cannot be two winners, I would make the simple point that outcomes are always, in part at least, a function of the processes through which resolutions are sought. It is theoretically possible that in each of the above stories, the two women may have challenged the assumptions being made and asked for time out to explain to the arbitrator, and to each other, the basis on which they claimed to have a right to parent the child. In each case however, the investigative process began with the assumption that one claimant was an imposter. Were the anti-heroes true villains, or were they caught up in the brutality of the investigative process? The question is not addressed.

From a feminist perspective, the judgements delivered with respect to the four women echo the sort of two dimensional roles – damned whores and God's police – which Summers (1974) claims have been assigned to women over the centuries. We have the self-sacrificing mother pitted against the woman who would seemingly do anything to get what she wants. But the judgements are also symbolic of the self-limiting roles assigned to all family members. The judgements are the culmination of an adversarial investigative process; and adversarial processes are not noted for their capacity to address the subtlety and complexity of family relationships.

Although the Family Court has tried valiantly to limit the inherently conservative and potentially destructive nature of legal adversary approaches, its formal commitment to this process also limits its capacity to articulate and respond to the changing roles and expectations of individual family members. Changing family roles is a matter of extraordinary and ongoing complexity. However, I would suggest that at its heart is an assertion of the right to be treated as an individual and not as a member of a class. An important question is the extent to which our legal system is capable of facilitating a socially responsible and relevant set of changing roles following parental separation. Of special interest in the remainder of this paper is the question of the extent to which our legal system can facilitate the developmental role of children.

Like women, children have been classified in ways which for centuries allowed them to be largely ignored and sidelined. According to Hodgson (1992), until well into the eighteenth century, 'parents enjoyed absolute rights to their children's obedience, services and earnings, and full control over their person and property'. These rights reflected the pervading doctrine of '*patria potestas*' (paternal power) inherited from Roman Law (Jolowicz 1961).

Not until the nineteenth century do we see the beginnings of an articulation of

parental obligations to nurture and protect their children (Blackstone 1821). In modern family law, these notions have culminated in an almost universal acceptance of the 'best interest of the child' as the guiding principle in decision making about children. On the surface, it would appear that when parents separate, the welfare of any children would now be adequately addressed.

In 1989 however, the United Nations Convention on the Rights of the Child was ratified. To ensure the necessary 'realignment of priorities and values' demanded by the Convention, Hodgson (1992: 279) suggests that the best interests principle in family law finds itself in need of close and careful scrutiny. Those familiar with the practice of family law will not be strangers to the multiple examples of adult vindictiveness and



hatred peddled in the name of this well-intentioned tenet. In the more extreme cases, chanting the words, 'in the best interest of the child', can serve as a preliminary ritual to an all-out war between those upon whom the child is dependent – a war, once again, fed too easily by adversarial proceedings.

Children have gained much since the best interests of the child principle was formulated. But the principle also has a comforting ring, capable of downgrading any sense of obligation to engage formally with the child as an individual human being, or to go through a detailed process of ensuring that his or her interests are indeed fully represented. I shall return to the question of formally representing children in the penultimate section.

### Human Rights and Children's Rights

In the past three or four years, there has been an explosion of writing and thinking on the question of children's rights generally and children's rights and family law in particular. Australia is a signatory to the Convention on the Rights of the Child, adopted by the United Nations in late 1989. In 1992, 'Children, Rights and the Law' was edited by Phillip Alston, Stephen Parker and John Seymour. Late that same year, as noted above, Douglas Hodgson published an excellent historical overview of the development of the Children's Rights Movement. In 1993, Australia hosted a most successful conference on Children's Rights and Family law. And more or less concurrent with that Conference, the *International Journal of Children's Rights* was launched.

At the core of the UN Convention is the assertion that the approach to children's rights is fundamentally no different from

an approach to the rights of any other individual. The basis of all human rights movements is the struggle to assert the worth and dignity of every human being – a commitment to the concept of mutual respect amongst individuals and individual control of one's own destiny.<sup>1</sup>

Two major strands of discussion around human rights are generally in evidence. The first is about the tension which exists around the rights of an individual and the perceived rights of the collective – family, school, company, state. Generally speaking, the more ideologically driven – the more exclusive and the less democratic the collective – the greater this tension will be. The sign of a well functioning collective is that it succeeds in concurrently serving the aims of the group and the needs of the individual.

The second strand is the somewhat paradoxical process by which a group is identified or identifies itself as worthy of attention and possibly as the subject of discrimination, then simultaneously demands, or has demanded on its behalf, recognition of its special status and the right to be treated with equality. Edgar (1992) captures an important aspect of this tension with respect to children when he observes that the law is inclined to see children 'as a category regardless of their individual abilities ... which ... can violate children's rights of autonomous action'.

In the same article, Edgar suggests that 'it is important to look at how a particular society structures its money, its political laws and social rules to use children instrumentally for the broader social purpose defined by the age'. He refers to Qvortrop's (1987) use of the term 'adulthood' which seeks to articulate a common perception of children as semi-formed individuals. Along similar lines, Moira Rayner (1994) has suggested that the dominant view of childhood continues to be that of children as incipient adults.

Such views erode the assumption that children are entitled to the full range of human rights. Indeed, we can see in terms such as 'adulthood' echoes of some of the mechanisms behind all prejudice, in which the perceived failure of a group or individual to live up to the expectations of a dominant group becomes, via a process of circular thinking, a reason to relegate them to an inferior status. In my own discipline of psychology for example, the process is alive and well within the debate on so-called intelligence testing. The fact that black Americans perform less well on a pencil and paper test designed by a Frenchman around the turn of the century and refined by white middle class psychologists is viewed as

proof of their intellectual inferiority. Gould (1988) has described how in the light of such 'evidence', it has been argued that educational catch-up programs are a misguided waste of resources.

From this perspective, the plight of children is perhaps not as hopeless as the plight of blacks. Children are at least perceived as being on their way to full human status (unless of course they are black or disabled or poor or of a particular religious sect or, worst of all in some cultures, born female!). But even putting these issues aside, we are left with the question of why children must still wait to be afforded this fully human status. As noted, the real challenge contained in the United Nations Convention on the Rights of the Child is the notion that children possess the *same* rights as adults. These



Picture: Rhonda Milner

## **The real challenge contained in the United Nations Convention on the Rights of the Child is the notion that children possess the same rights as adults. These include the right to be informed, the right to freedom of expression and the right to participation in decision-making procedures.**

include what I have referred to as process rights, such as the right to be informed, the right to freedom of expression and the right to participation in decision-making procedures (Convention Articles 12, 15, 17).

In addition, the Convention addresses the rights of children to certain outcomes. Two important rights in the context of family law are the right to know and be cared for by their parents (and I would emphasise that this word is in the plural) (Convention Article 7) and, under normal circumstances, the right to not be separated from their parents against their will (Convention Article 9).

### **Children and Family Law**

Ultimately, the law's understanding of children and the status of children in our society is best judged through its actions and its non-actions in relation to children who come within its ambit. With this in mind, I wish to present a few case vignettes which raise questions about the legal and social assumptions we sometimes make about the participation rights of children, and about their status when there are apparent conflicting interests with respect to outcome. The six cases are not randomly selected, and it should not be taken to imply that they represent a norm in family law. They are real cases however, generalised sufficiently to ensure the maintenance of confidentiality.

### **Case one**

Recently, a Family Court Judge decided that the surname of two children must revert to that of their father. The children did not wish the change of name and had been at school, under the name of their mother, for approximately two years. The main reason for the judgement appeared to be that the mother was deemed to have had no right to change the name in the first place. The children were not represented. Nor were they consulted about the process or about the decision.

### **Case two**

A supervisee has been working as a therapist with two girls aged seven and nine at their school. The girls' father has disappeared.

They live with an aunt because their mother is in prison. My supervisee sees the children weekly. The school is concerned that one of the children is withdrawn and possibly depressed; and the other has bouts of seemingly uncontrollable aggression. The pictures the girls draw

during their sessions with the therapist are full of red and black backgrounds and caged animals. A highlight of their week is the opportunity to have a contact visit with their mother. Some weeks ago, my supervisee reported that the girls' behaviour had deteriorated. It transpired that their mother had been involved in a breach of the rules at the prison. Her punishment was the indefinite withdrawal of contact visits with her children. The children were distraught. To my knowledge, they have no formal right of redress.

### **Case three**

A few years ago, a man was apprehended in Queensland and charged with having abducted his seven-year-old son, six years earlier. The man was living quietly in a suburban house and the child was regularly attending school. They were well integrated into the community and, apart from his initial actions, there was no question of neglect or ill treatment by the father. The child was immediately removed and returned to his mother in Melbourne, of whom he naturally had no memory. The man was charged and subsequently received a jail sentence. To my knowledge the boy never saw his father again.

### **Case four**

Some time ago, a father discovered the whereabouts of his former partner and their

daughter. She had left Victoria with their infant daughter approximately four years earlier. She had re-partnered and told her daughter that her partner was her father. The Judge hearing the case ordered that the daughter be told the truth of the situation and this should be done sensitively through a local counselling service. The Judge also decided that it would be too disruptive for the father to exercise 'access' after all this time and left the question open until the child was deemed old enough to make up her mind about what she wanted to do.

### **Case five**

A mother was opposing her husband's 'access' to the two children of the marriage. The father persuaded her to see a mediator. In the course of the discussions, the mother admitted that she had wanted to exert pressure on her husband to return to the marriage. She was ashamed of what she was doing but she was not prepared to make it easy for him to see the children. She felt the children represented her only negotiating card at that time. Under such circumstances, the case was not suitable for a continuation of mediation and was referred to a court hearing. The Family Court ordered 'access' but the father discovered that there were effectively no mechanisms by which the orders could be enforced. He has remained unable to parent his children.

### **Case six**

A couple who had been separated for three years in England, had an arrangement whereby their son, aged eight, spent approximately three days a week with his father and four days with his mother. The mother wanted to visit a relative in Australia and take her son with her. The father agreed and waived his rights to spend time with his son between specified dates. Whilst in Australia, the mother met up with a friend who had lived next door while she was married in England. He proposed marriage and she accepted. She wrote, informing her former husband that she planned to remain in Australia, that their son's wish was to live with her and that she wanted to negotiate some holiday time for father and son in England. The father was not prepared to accept these arrangements, believing, probably with some justification, that he had been 'set up'. The matter was heard in the Family Court in Melbourne and the end result was an order that the mother and son return to have the dispute resolved in the English courts. When she arrived in England, the mother was immediately arrested. She and her son were driven from the airport in a divisional wagon and placed in custody. I received a sad letter from the child, whom I had interviewed in Australia, telling me amongst other things that it wasn't fair that he had been placed in jail, because *he* had done nothing wrong.

### **Children and the Processes Related to their Futures**

As noted, Articles 12, 15, and 17 of the Convention bestow upon children the right to be informed and to participate in decisions about their own future. As none of the

children in the above cases was formally represented, it is useful to reflect on some of the societal constraints which too often deny children those rights.

Within the legal profession, representing children has generally been considered a low status brief. Typically, for example, when children *are* represented in family law, each adult has access to both a solicitor and a barrister. However, the separate representative is normally expected to perform both roles. In a complex case in Melbourne for example, the father was represented by a QC and junior counsel (costing approximately \$7000 per day) as well as by his solicitor. The mother also employed a solicitor and senior counsel. The children relied on a lawyer from the Legal Aid Commission to represent their interests in and out of court. The separate representative in this case was hard working, dedicated and competent. But the systemic imbalance in this process is striking.

Representing children sits awkwardly in our adversarial system. Indeed, some respected legal commentators such as Malcolm Broun (1985) have argued that within this system of law, there can be no logical place for such a process. But if it is to be taken seriously, Article 17 of the UN Convention requires: first, that there *must* be a place for representation of children in family law (to suggest otherwise puts the system before the very children whose best interests are allegedly being served); second, that representation should be available whenever a dispute over children leads to or is heading for litigation<sup>2</sup>; and third, that the quality of and resources available to the representative should be at least equal to that enjoyed by the adult litigants.

Eidleson and Papaleo (1995) have reported on a High Court judgement (Re:K) which has identified 13 guidelines that might inform the appointment of a separate legal representative for children. They note that since this decision, 'there has been a significant increase in the number of orders that the Family Court of Australia is making for the separate representation of children'. Perhaps the judgement in Re:K represents a new beginning. It is, however, a somewhat unplanned beginning and there is clearly a long way to go. For example, at the present time, there is no specialised training and no form of accreditation for lawyers who would wish to try their hand at representing children.

There are recent good attempts (see for example Lindenmayer and Doolan 1994) to clarify the legal and procedural issues that separate representatives have tended to find so frustrating and inhibiting. But to be effective, the education of separate representatives must also go substantially beyond legally oriented training regarding proper litigation protocol. It must include studies aimed at better understanding the needs and rights of children in our society (indeed a children's rights based curriculum for separate representatives combined with input on major child development questions would signal a real commitment to the best interests of the child). It should also address questions of effective interface and liaison with other relevant professionals, such as paediatricians, health workers, psychologists and teachers.<sup>3</sup>

The regular engagement of separate legal representatives requires a clear philosophical commitment combined with a strong resolve towards the provision of ongoing expenditure. With regard to ongoing funding, it is difficult to see how in the light of Legal Aid's current constraints on family law expenditure, money will be found to fund the increased rate of ordering, should that ordering be sustained. But perhaps legal aid is not the only answer. For example, we need to ask why parents who are prepared to fund their own litigation over children could not or should not in appropriate circumstances be required to contribute to the funding of separate legal representation. (The broad proposal here is essentially that if a parent were eligible for legal aid for himself/herself, then legal aid would also be expected to fund separate representation. If a parent were not eligible, then he or she would be expected to pay up to 50 per cent of the cost of separate representation.)

It is also important to keep in perspective the fact that, regardless of any increase in the rate of orders, separate representation will always account for a minority of disputes affecting children in family law, even if the 13 guidelines suggested by the Full Court in Re:K are all adhered to. Litigation does not affect the majority of children directly. However, it tends to set a direction for much of the less formal negotiating over children. It is not simply accidental that the 'bargaining in the shadow of the law' (Mnookin 1979), which continues to inform a good deal of the dispute resolution processes effecting children, remains an essentially adult-oriented set of activities in which children's needs and interests, when acknowledged, are represented more by default than by design.

It follows therefore that giving children the sort of participatory voice envisaged by the UN Convention also requires practical and attitudinal changes to processes which take place outside of formal litigation. It should require, for example, giving children both direct access and the *right* to be present at discussions with lawyers, and at counselling sessions, mediation sessions and conferences conducted in the name of their welfare. We need to ask ourselves why we exclude those children who are perfectly capable of expressing a view from so many of the processes in family law which intimately affect their future. Are we embarrassed by or ashamed of what we do in the name of their best interests? If we are ashamed or uncomfortable, perhaps we should reassess our adult-oriented values which support such exclusion.

Returning briefly to the issue of litigation, the question also arises as to why children are, in effect, excluded from those Family Court hearings which directly effect their futures. The practice of excluding children from court hearings is again indicative of our tendency to see children as a class rather than as individuals.

It might not be appropriate to have a child present throughout the whole of a court hearing. But the issue of when it might be proper to include children and when their absence would be preferable, is not an especially difficult one. Indeed it is an issue faced on a daily basis by other professionals

such as family therapists. Guidelines to assist in exercise of judicial discretion could be drafted with relative ease, and when necessary, argument could be heard from the separate representative.

Although not the primary objective of the exercise, it is possible that the presence of children in court for those parts of hearings which related directly to their future, would do more to temper the excesses of the adversary system than any other single initiative. Such a result, if achieved, would almost certainly have a positive influence on the capacity of separated couples to continue to cooperate in the parenting of their children.

## Children's Rights and Gender Equality

The above arguments concerning participation of children have focused on process issues for individual cases. However in the name of children's rights, we also need to know much more about the efficacy of post-separation parenting arrangements as seen from the children's point of view.

After completing a comprehensive longitudinal follow-up study of parenting arrangements after separation and divorce, Maccoby and Mnookin (1992) noted the need for such research in the closing paragraphs of their book. Similarly, a research report by the Family Court of Australia (McDonald 1990:10) suggests that: 'While adult views on children's adjustment and the role of post-separation access have been



widely canvassed, children's own feelings about divorce and their perceptions of current access arrangements have rarely been sought in any depth.' (There are of course important exceptions to this generalisation, such as the work of Ochiltree and Amato 1985).

The study reported by McDonald concludes with the following observation. 'Children's wishes regarding future relationships with both separated parents are often disregarded by adults who conclude that *they* are cognisant of their children's feelings. Research to date does not support that view.' (p.45)

Child-oriented research on the needs and perceptions of children of separation and divorce raises important questions of outcome. Another Family Court of Australia study (Gibson 1992) suggests that the majority of children of separating parents want to see more of their 'other parent' (usually the

father), and that most fathers want to see more of their children. On the other hand, the parent charged with the major child care duties (usually the mother) frequently reports feeling overburdened by the responsibilities.

In her keynote address [IYF Conference, 'Australian Families: The Next Ten Years', November 1994] Bettina Cass asked: 'How can men be given social permission to express their care?' This is a critical issue to resolve if we are to move towards genuine gender equality and if we are to model gender equality for our children. For one thing, without such social permission, mothers' career opportunities will continue to be limited (Disney 1993). And is it drawing too long a bow to suggest that without such social permission, too many men will continue along paths of macho violence and stunted emotional growth? Graeme Russell's address [to the IYF Conference 1994] and the research he has both conducted and reviewed (Russell 1994), suggests a continuing entrenched pattern of gender roles, which overburdens women and keeps men on the emotional periphery of family life.

Russell distinguishes between 'responsibility' for children and domestic tasks, usually undertaken by women, as opposed to 'helping out', usually seen as the role of the man. In my experience, this imbalance is one of the core issues brought by women into the couples counsellor's office. The tragedy is that this inequitable division of labour is ultimately alienating for both sexes. Significant attitudinal and practical changes are required, therefore, to ensure that children see *both* their parents as nurturers who are also competent people in the world outside the family.

## Under normal circumstances, children of divorce have a right to a relationship with both their parents, not to a relationship with one and a visit from the other.

Separation and divorce, the business of family law, are times of family crisis. Crisis, as the Chinese say, is a time of dangerous opportunity. To what extent therefore, can we turn the shattered dreams of family break-up into a positive re-distribution of caring which would benefit both parents *and* the children? If gender equality means anything, then under normal circumstances, children of divorce have a right to a relationship with both their parents, not to a relationship with one and a visit from the other.

A Bill presently before Parliament aims to dispense with proprietorial notions of custody and access and speak instead of parenting plans and parenting orders (in the form of residence and contact orders). The Bill closely follows recommendations contained in the Family Law Council's 'Patterns of Parenting after Separation' report and a subsequent 'Letter of Advice to the Attorney General', published in March 1994. The philosophy behind the Bill closely resembles that of the (UK) Children Act 1989 which places emphasis on the ongoing

responsibility of *both* parents for their children following marriage breakdown. The word 'responsibility' is critical to understanding these reforms and echoes Russell's distinction noted above. It is suggested that the notion of ongoing responsibility being vested in both parents represents an important challenge to an increasingly unbalanced, unsatisfactory and unworkable status quo in both nuclear and (to use Constance Ahron's term) bi-nuclear families.

The proposed legislative changes have been described by some as amongst the most far-reaching ever incorporated into the Family Law Act. and by others as mere window dressing (see Harrison 1994). We need to monitor their impact as comprehensively and as carefully as we can. But wouldn't it be interesting if the research over the next few years began to show that the rights of children to be informed and consulted, and the rights to a caring relationship with both parents, were being most clearly attended to during, and following upon, the very time at which their parents were separating?

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### Notes

<sup>1</sup>In a paper delivered to the First National Conference on Children and Family Law (see review by Moloney 1985), Charlesworth (1985) claims that anglo-saxon approaches to juvenile justice have been 'meta-ethical'. Charlesworth went on to search for a more satisfactory theoretical underpinning by teasing out the philosophy of fairness contained in Rawls's Theory of Justice. The UN Convention on the Rights of the Child seems to capture, in more concrete fashion, much of what Rawls is expressing.

<sup>2</sup>This basic position was espoused by Goldstein, Freud and Solnit as early as 1973. Although most of the recommendations contained in their book have remained controversial, it has been claimed by Anna Freud's biographer (Young-Bruehl 1991) that *Beyond the Best Interest of the Child* remains the most widely read book ever written on the interface between psychology and family law.

<sup>3</sup>Mr Rod Burr, Chairman of the Family Law Section of the Law Council of Australia has noted that this difficulty has been recognised and that plans are in place to offer appropriate training for the representation of children.

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