# Child Protection, Morality and Social Justice

Rustom H. Kanga

Ph.D. in Philosophy

University of Kent 1992

Supervisor: Anthony J. Skillen

# Rustom H Kanga

# Ph.D. in Philosophy

# Child Protection, Morality and Social Justice

## ABSTRACT

This essay is based on the premise that some moral consensus is required in society for effective policies for the protection and care of children to flourish. The first part sets out perspectives on the notion of moral awareness, some aspects of Rawls' theory of justice and the concept of freedom; these are general arguments which lead to a defence of the notion of children's rights, and the role of the state in preserving and enforcing those rights. These arguments also seek to underpin the adequate resourcing of children's rights through the political process, and a critique of current inadequacies is offered in a later chapter.

The discussion specifically focuses on how parenting standards are assessed, and the assessment of parenting standards as a determinant of definable risk includes a survey of local authorities in England and Wales. A number of situations which might or might not trigger entry on the Child Protection Register are described, and each authority was asked to determine its own response. Views were also gathered on what the purpose of Child Protection Registers should be. A discussion of the rights of children in relation to the idea of dependency on the state is carried out with special reference to the Children Act 1989.

The essay concludes that the only universal way to offer children proper care and protection is to provide them with a bill of rights relevant to their lives. This should include opportunities for children to remain with their parents if at all possible. Adult citizenship presupposes that citizens have sufficient self-respect to enjoy the rights and freedoms afforded to them as citizens; children, therefore, need rights to ensure that the development of their own self-respect is not sabotaged.

Finally, a diary of one week's work I completed as a social services team manager is included as an Appendix. Although not part of the conceptual argument, it provides a view of the pressures on Child Protection services as they currently exist and supports the contention that children's rights are inadequately resourced.

# Contents


Chapter 1
**Introduction** 1

Chapter 2
**Moral Awareness** 14

Chapter 3
**Procedural Justice** 57

Chapter 4
**Freedom** 91

Chapter 5
**Children's Rights** 128

Chapter 6
**Parenting - the Right to Intervene** 176

Chapter 7
**Equality of Protection** 219

Conclusion
**Children - Citizenship and the Moral Community** 257

Appendix A
**Case Study Survey of Local Authority Attitudes to Registration for Child Protection** 279

Appendix B
**Survey of Local Authority Views on the Purpose of Registration** 283

Appendix C
**The Diary** 293

# Chapter 1

# Introduction

The purpose of this dissertation is to explore the philosophical basis of a statutory child protection system in a liberal democratic society, and also to use my own professional experience and the research which I have carried out to ground the discussion in the context of current practice.

A major part of the dissertation, particularly the first half, is concerned with general reflections on the 'basis' of society, and it is necessary at the very outset to say why these general deliberations are related to any rights of protection which may or may not be assigned to children. I want to offer four reasons.

On the face of it, our personal and private relationships do not seem to be directly related to our political links with other citizens and institutions. If, however, there is a state system of child protection, the political structure will have direct influence on those personal and private relationships which involve children deemed to be at risk of harm caused either by neglect or abuse. This is more than a practical interface where the authorities intervene in the 'private' sphere of family life. It also involves appropriate philosophical deliberation, because the extent and nature of public intervention into family life is a substantive political and moral issue.

Secondly, what counts as belonging to the private sphere of life is determined by how the boundaries between matters of strict mutual obligation and personal freedom are defined. The definition of the outer limits of permitted freedoms within a liberal democracy are based on how fully-fledged citizens, who are not dependent on others in the way that children are, will use them. Because the gradual development of the exercise of freedom in children requires paternalistic guidance, what freedom means for children is derived from the definition of freedom which is worked out in an adult context. Although freedom for a child will be more limited than that of an adult, (paternalism is needed to prevent self-harm and harm to others) the proper development of the child's capacity to use his or her rational faculty in the adult world, must be conceptually linked to how adults use freedom, otherwise the idea of 'development' is meaningless.

Thirdly, if children are to be regarded as persons belonging to a particular society, any system of protection for them must derive from the principles and structures which adult members devise to protect each other. This may seem fairly obvious, but the issue turns on whether personhood is dependent on how much capacity any individual possesses for rational action, or whether it is simply being a human which carries the primary status of being a person, and therefore invites an equal consideration of interests in relation to all other persons in society. I support the latter position, which means that even though the interests of children may be different to those of adults, equal consideration should be given to both groups. This equal force of consideration can be maintained even if the principles which relate to the protection of persons are applied differently. What is clear is that it would be unwise to examine the philosophy of child protection without first developing an overall perspective of adult interests and the systems which are devised to protect those interests.

Finally, however, the boundaries between strict mutual obligation and the extent of individual freedoms are set, the system which is set up to maintain the status quo requires a significant degree of consensus if it is to avoid becoming corrupt and falling into disrepute. This consensus does not need to be a full moral consensus, where everyone agrees on an arrangement as a matter of moral principle. Because there is a sphere of privacy and personal freedom which is acceptable within the terms of how society is organised, freedom can be used for many different purposes, including self-interested ones. It is conceivable that a system of liberal democracy can be justified for pragmatic or morally based reasons, and it follows that a mixture of motives is also possible, indeed, intuitively this seems to be most probable.

If, however, a child protection system is based on the idea that children require a minimum level of material resource and a minimum standard of affective or human care, then the substitute arrangements which are needed when the primary circumstances break down imply the existence of a moral consensus, where people actually *want* to provide a particular quality of care for children. This kind of moral consensus, where there is a voluntary interest in the level of care provided for children is different from the consensus referred to above where the organisation required for the exercise of freedom can be justified through a range of motives. It is, of course, possible that substitute carers can misuse their powers, in which case further substitute arrangements have to be made for the sake of the children in question.

What follows is that the extent to which the system of liberal democracy is supported by a genuine interest in the quality of other people's lives will be directly connected with the strength of the moral consensus required to underpin the child protection system, as identified through the provision of substitute care. Consequently, from the point of view of the philosophy of child protection, it is essential to have a means of evaluating the motivation which supports the system of liberal democracy in order to gain a measure of

how significant the voluntary moral interest in vulnerable people who require substitute care, actually is.

Having outlined these four reasons why the basis of a child protection system in a liberal democracy must be related to considerations about society in general terms, I want to present the argument in a way that I think will assist the reader.

It runs as follows:

1. If society legitimises a system of child protection, children are the holders of rights to protection, as defined through statute.

2. If there is to be a system of public protection for children, some concept of what the essential needs of children are is required so that they can be protected from harm or a failure to provide. Where needs are for activity the denial of opportunity to engage in such constitutes 'harm'. Protection must be not just of life and limb but of vital interests. The level to which those needs must be satisfied, through intervention by public authority if necessary, must be defined. It is then possible to answer the question "To what level should these needs be protected?"

3. The 'should' in the question has a relation with the structure of protection for everyone in society; to put it in the same way, "To what level *should* everyone in society be protected?"

4. This means that where the interests of children are equivalent with adults' needs, the same protections should be offered; and where they differ, appropriate protections should be offered so that children are not prevented from developing the adult capacities which are protected from harm as defined in the adult context.

This is to say that where the interests of children turn on the development of a capacity essential to participate fully in the adult world when they reach the age of majority, those interests must be protected with equal weight to those of adults, even though the interests as they stand may be very different to those of adults.

5. It is therefore necessary to take into account adult structures of protection, both in terms of how they are designed and how they are justified, when considering the basis of a child protection system.

It is one of my contentions that the way a system of liberal democracy is justified has implications for how the society is characterised beyond the limits of strict obligation through taxation and other direct debits which enable material redistribution to occur. This has an importance not only because a degree of moral interest in child care standards must be present for effective substitute arrangements to exist when primary situations break down, but also because certain affective or human qualities must be given voluntarily to children if they are to satisfy essential* developmental requirements. (This latter point is discussed in Chapter 5)

I want to examine two different types of justification for protecting persons in a democratic scheme to see how such justifications might characterise the society in question. The two types of motivation, pragmatic and moral, may appear to be somewhat polarised but the purpose of categorising them as such is to show that the same system of democratic freedoms and protection can be justified by either account.

[* 'essential' here is used in the sense referred to in point 4 above.]

## Pragmatic Reasons

This account says that society should be designed so that individuals can carry out their own purposes on condition that they do not unnecessarily hinder other people's purposes; and that the purposes in question can be self-orientated, or self-aggrandising as long as the condition of refraining from unjustified interference is adhered to. As such, the system is justified on pragmatic grounds, so that the individual can use the structure to focus on his own interests.

## Moral Reasons

The system of democratic freedom and protection is set up to ensure that the quality of every individual's life does not fall below a certain level; this is based on the presumption that there is an inherent value attached to each life, and that each person's experience should be of worthwhile value even though individuals will always have characteristics of their own. An acceptable quality of life for each individual in society is the goal, in the recognition that this may impose limits on self-orientated and aggrandising purposes.

The pragmatic category does not necessarily preclude all aspects of moral thinking, in that the rules which set up the limits of self-orientated actions, can themselves be justified on moral grounds. The theories of autonomy (Chapter 5), toleration (Chapter 3) and positive and negative freedom (Chapter 4) are all variations on the theme of designing conditions for the enhancement of independent and self-determined action. In that they contain conditions which apply to all, they contain moral elements; elements which attach value to everyone equally, because all are equally deserving of such conditions. A scheme which gives licence for selfish actions, but is underpinned by a

structure which is enhanced by the principle of equality for all, is likely to create some confusion and ambiguity when it is put into practice. I use Rawls' scheme to elaborate on this criticism in Chapter 3, and argue that a society which is framed in those terms will have great difficulty in knowing what the limits of mutual obligation are, without some more definite appraisal of the conditions and opportunities which might be available in any given situation; from such knowledge a more specific definition can be reached as to the real extent of mutual responsibility.

Turning to the moral justification for designing a scheme of democratic liberties, the constant placing of one's own self-orientated actions into a subordinate position below the value of other people's lives, is too great a burden for most people to be able to make sense of and therefore carry out. I argue that such a view presents moral life as being opposed to everyday inclination and desire, and therefore becomes impossible to integrate into the full range of social life. The sections on Kant, Bheeler and Singer are attempts to demonstrate some of these difficulties, and Hume's version of justice, although based on pragmatic lines, also shows the difficulties involved in prescribing the territory beyond which morality should not enter. I prefer Bernard Williams' approach, and construct an argument for what I call 'moral awareness' where the idea of the inherent worth of other people is integrated with other aspects of political, social and economic life. The idea of weighing the influence of differing factors on a decision or attitude is the means by which such integration is demonstrated, and an imaginary example is used to illustrate the point.

Rejecting the idea of separating moral action from the rest of the influences on people, I argue that a 'moral' element, namely the *consideration* of one's own needs in relation to other people's needs, is an essential condition for the operation of any society. This does not reflect on how well the society operates. It is whether the society can operate at all. If people like the Ik, referred to in the conclusion, only co-operate to survive (and

not all of them do) and keep such co-operation to a bare minimum it is not because they give no thought to the needs of others. Rather, they reject the needs of others as having significance to them as individuals. This is not to blame them for becoming so minded; the point is that even if the level of and motive behind co-operation may be completely self-orientated, it does not mean that other people's needs have not been evaluated. My argument, therefore, starts with the idea that to consider other people's needs in relation to one's own, involves moral consideration in that one may have to decide whether to fulfil some of those needs on the basis of the perceived worth of those persons, or whether to do the same for pragmatic reasons. Because I do not prescribe what can be counted as morally good, I take a step further back and describe the kind of evaluation which can lead on to behaviour which may be perceived as good or alternatively as bad.

In acknowledging that even very limited co-operation, as opposed to unbridled violence and destruction, is necessary for the continuance of any society, a prior condition, namely that of the ability to think, must be taken into consideration. If, as I will suggest, the ability to think is a necessary condition of adapting to a particular environment, then the opportunity to *consider* other people's needs in relation to one's own must be available in all societies. The dependence between ideas and the nature of social relationships means that any society has the opportunity to construct a set of social relationships which can range in character from the barely pragmatic to the morally enthusiastic. It is perhaps a way of preparing for the shock of realising that it is possible to reconstruct moral life in the way that Macintyre suggests:

> 'A crucial turning point in ... earlier history occurred when men and women of good will turned aside from the task of shoring up the Roman imperium and ceased to identify the continuation of civility and moral community with the maintenance of that imperium.

> What they set themselves to achieve instead - often not fully recognising what they were doing - was the construction of new forms of community within which the moral life could be sustained so that both morality and civility might survive the coming ages of barbarism and darkness. If my account of our moral condition is correct, we ought also to conclude that for some time now we too have reached that point'. [13]

The justifications for a system of democratic freedom in which people can pursue their own ends can range from the pragmatic to the moral. I have, however, taken a step backwards in pointing out how the evaluation of personal interest in relation to the interests of others implies the exercise of moral evaluation, regardless of the judgements which are made and acted upon. Nevertheless, once such evaluation has occurred, the nature of the judgements made will necessarily characterise the 'atmosphere' in any society, and the greater the emphasis on the worth and value of each member of society in justifying a democratic system of freedom, the greater will be the voluntary coming together of people to support each other in that society. If the voluntary provision of nurture and appropriate stimulation is necessary for a child to develop a sense of identity and a capacity to exercise choice, and, if a child protection system is dependent on voluntary action from those who offer themselves as sustitute carers, then the degree to which people want to come together in society for the purpose of mutual support will have implications for children; both in the quality of nurture given to children by parents in general, and more specifically in relation to the standard of substitute care provided in cases where children cannot stay in their families of origin.

Consequently themes of moral interest, how the limits of mutual obligation in society are

arrived at, and whether freedom for adults is the same as it is for children, are vital to the context of framing a child protection system. The nature of adult society where capacities are developed to the full inevitably affects how the rights of those whose capacities are still developing, are perceived. It seems to me to be impossible to make judgements about child protection without also making them about adult society, and because childhood is, at least in large measure, about developing into adulthood. It is important, however, not to confuse the obvious theoretical link between childhood and adult independence, broadly referred to as development, and the value attached to children when they are viewed as being of equal worth with all other persons in society. Children do not *only* qualify as persons if they reach adulthood. The status of being a person belonging to a particular society is not a retrospective assignation of personhood once the age of majority has been attained. To consider a child as a person deserving equal respect with all other persons in society, means that even if his or her life ends prematurely, the child's life was still valuable. This is the case even if the loss of full life is seen as a waste. The sense of waste is not knowing for certain that it would have been better for the child not to have been born; it is perhaps more to do with lost opportunity rather than thinking that because the destination was never reached, the journey should never have been started. I hope that my reasons for starting with the general and moving on to the specific are persuasive enough to encourage the reader through to the second half of the project where child protection issues are specifically reviewed.

## Child Protection

Before embarking on these general considerations I want to make some preliminary remarks about child proection in a liberal democratic society. Firstly, it is not part of my submission that child protection can be provided for all children with equal effect by means of voluntary interest alone. Even though standards of nurturing may largely depend on widely shared values about caring, supported informally by relatives and

neighbours, voluntary inclination is insufficiently effective as 'peer group pressure' on inadequate or violent parents. Such voluntary moral interest does not carry with it any right of inspection or the authority to intervene in the domestic matters of other families. Even if the concerned party is a relative not living in the household, the social and cultural restrictions on intervention are not necessarily overcome.

A minimum standard of parenting enforced by the state overcomes the theoretical defect of solely relying on the voluntary moral interest in society for the protection of children from harm or neglect. A critical question is therefore whether the standard of minimum parenting can be equivalent to the standards defined by the criminal law. A further question helps to clarify the point. Is it only through *criminal* intent that parents fail to provide or adversely interfere with their children, to the point of stunting development or perpetrating exploitation? The answer is that although definitions of assault and sexual exploitation can be made to fit in with a law based on criminal intent, a failure to provide sufficient stimulation to allow, for example, the development of speech or the ability to interact with other children of similar age may not necessarily turn on the criminal intent of the parents. The parents themselves may be mentally deficient to the point of being incapable of enabling their children to develop the capacity for independence at all, or hardly at all, or they may be unable to control their rages, or they may simply be indifferent to their children. Consequently if the aim of a child protection system based on minimum parenting standards is to offer equal protection to children's capacities to develop their use of independence and eventually democratic freedoms, the standards involved must be defined in relation to the expected *development of the child* and not the criminal intent of the parents. A standard of minimum parenting can therefore be defined through an assessment of what it is reasonable to expect a child to be capable of at varying stages of development, as well as through the boundaries which are defined through the criminal law. Obviously criminal assault on a child by a parent must have a bearing on whether that child continues to be safe, or is likely to be safe with that parent.

The existence of a criminal conviction alone, however, does not inform anyone as to what might be in the best interests of the child. Only when a fuller account of the severity of the crime, the attitudes of the parents and the possible effects of separation or maintenance of the child with the natural family have been taken into account can a judgement be made as to how the child can then be best protected and how the child's development can best be enhanced under the circumstances.

If those parents who fail to assist in helping their children to develop normally either by failing to provide stimulation or inflicting injury, are not amenable to reform, then protecting such children means that sustitute care must be organised. This sometimes occurs through the extended family of the child or alternatively it can be organised by the state. It cannot, however, be organised unless there are people who want to provide the essential nurturing which children require, and who want to provide it above the perceived minimum standards of parenting. Methods of measuring these standards are discussed in practical terms in Chapter 6 and theoretically in Chapter 5. Whether such nurturing can be given by compulsion so that parents or substitute carers are made to offer appropriate interest, attachment and consistency to the child is very doubtful. If nurture was a quality which could be engendered in a parent regardless of aptitude or inclination, then few if any children would be removed from their parents. To put it paradoxically, carers have to *want* to provide care beyond a 'minimum standard' of parenting if they are to come up to that standard. In Chapter 5, I argue that it is not possible for any parent or guardian to retain the necessary paternalism required for a dependent child's developing capacity for independence without possessing some degree of care informing the voluntary intent to achieve a successful outcome. Substitute carers, as such, seek to provide the kind of 'acceptable' parenting in question out of moral interest, rather than through legal obligation. Even if their intentions are often overtaken by the complexities and difficulties inherent in 'taking over' from another parent or guardian, their motivation in providing a certain standard of parenting is a

component of a moral consensus which seeks to support the limits implied by the idea of a minimum standard of parenting. Insofar as the children who need substitute care but do not receive it because there are not enough people prepared to take on such tasks are concerned, the moral consensus which supports the system is at times superficial and fragmented. The point remains, however, that for a system which seeks to enforce minimum parenting standards on the basis which I have outlined, some degree of moral consensus is required to support the substitute care arrangements which the implementation of that system will inevitably demand.

# Chapter 2

# Moral Awareness

I would like to begin by looking at how the concept of morality fits in with, for want of a better term, the rest of life. Bernard Williams argues that the division which moral philosophy has created between itself and the rest of the world is a false and ultimately self-defeating one.

> 'The purity of morality, its insistence on abstracting the moral consciousness from other kinds of emotional reaction or social influence, conceals not only the means by which it deals with deviant members of its community, but also the virtues of those means'. [1]

Williams argues that deviants should not be categorised through a fear which is underpinned by the idea of an unquestionable moral code; rather reflection should allow for a realistic participation by everyone in ethical and social life. By using morality as a deterrent its genuine qualities are concealed and, as a consequence, liable to be dismissed.

Moral considerations can easily be set apart from the world in a way that allows for caricature. They can be seen as an outdated relic of Victorian times no longer required for twentieth century life. These days people are sufficiently aware of political, economic and social spheres to make their own decisions as to whose interests they think the most important. They do not have to surrender their minds to an autocratic dogma called 'morality' whose sole function is to issue instructions without giving reasons. Were reasons to be offered, the dictate could be challenged and the pedestal on which the idea of pure morality is built might possibly be dismantled. Williams advocates taking this risk. The alternative is to allow the relic of morality in its 'pure' form to jeopardise the nature of ethical enquiry. He goes on to describe the predicament of modern moral philosophy.

> 'The resources of most modern philosophy are not well adjusted to the modern world. I have tried to show that this is partly because it is too much and too unknowingly caught up in it, unreflectively appealing to administrative ideas of rationality. In other ways, notably its more Kantian forms, it is not involved enough; it is governed by a dream of a community of reason that is too far removed as Hegel first said it was, from social and historic reality and from any concrete sense of ethical life - farther removed from those things, in some ways, than the religion it replaced. These various versions of moral philosophy share a false image of how reflection is related to practice, an image of theories in terms of which they uselessly elaborate their differences from one another'. [2]

The divorce between the peculiar institution of morality, as Williams calls it, and the web of emotions, chances and social forces which form the substance of living, emphasize 'morality' as a form of imposition which cuts across our normal desires and interests.

> 'morality makes people think that without its very special obligation, there is only inclination; without its utter voluntariness, there is only force; without its ultimately pure justice, there is no justice'. [3]

Williams rejects what is, in his view, the artificial polarity between moral systems which prescribe rules for every man and woman and, alternatively, the fabric of social life where luck, moral indifference, practical considerations and social distance are as equally relevant as ethical thinking. He seeks to place ethical thought within this latter framework, wanting it to be a *part* of life rather than a *prescription* for it.

Morality as a prescription for living, in the sense that Williams repudiates, can be imposed both from 'outside' the individual or from 'within' the person. I will attempt in the following sections on Hume, Kant, Bheeler and Singer to show some of the difficulties to which Williams refers. Hume's system of justice is most definitely concerned with an imposition from ' outside' the individual in order to restrain the more socially destructive elements of human ambition. Kant's exposition of a community of reason is the very opposite, in that it represents a pure form of internal rational awareness which places self-interested desire at a lower priority. Bheeler's view of moral feeling is also one that stems from within the person, but unlike Kant he suggests that reason is of peripheral importance to a basic sense of morality. Singer's views on evolution and reason combine influences from both outside and within the person, in a strange mixture of science and idealism.

In criticising some aspects of these theories my intention is to lead on to an example where moral considerations can be weighed against other influences, without the preconditions which restrict moral experience to the narrow pathways described within those theories. If the basis of ethical thought is the consideration of other people's needs against our own, there is in fact no need to circumscribe the way any individual approaches such considerations by providing an exclusive theoretical basis for his or her motivation. All that is needed is a way of showing how such consideration can be integrated with the other aspects of that person's life. Philosophical justification is perhaps more relevant in trying to show that such ethical consideration is a necessary part of a viable social life. I attempt such a justification in the latter part of the chapter.

## Hume

> 'No one can doubt that the convention for the distinction of property and for the stability of possession, is of all circumstances the most necessary to the establishment of human society, and that after the agreement for the fixing and observing of this rule, there remains *little* or *nothing* to be done towards setting a perfect harmony or concord'. [4]

Hume 's contention that once the rules of property are fixed there is little else to disturb social harmony is based on the idea that motives do not exist for being destructive and violent without there being some kind of material return. In other words it is pointless to be mentally cruel or physically destructive to other people with no other purpose in mind.

> 'There are three different species of goods which we are possessed of, the internal satisfaction of our mind, the external advantages of our body, and the enjoyment of such possessions as we have acquired by our industry and good fortune. We are perfectly secure in our enjoyment of the first. The second may be ravished from us, but can be of no advantage to him who deprives us of them. The last only are both exposed to the violence of others, and may be transferred without suffering any loss or alteration; while at the same time there is not a sufficient quantity of them to supply everyone's desires and necessities.' [5]

It seems immediately obvious that Hume's account of human motivation is too limited. Mental cruelty and physical abuse require public criteria to define what is unacceptable.

Imagine reading this in an evening paper:

> 'An elderly lady is admitted to hospital following a brutal assault by two unemployed youths of nineteen and twenty-one. The victim is a supplementary pensioner who lives in a council flat on her own. She had just collected her weekly pension of £40 from the post office when she was attacked.'

It is clear that the old lady has been exposed to more than the removal of £40. Her state of mind and physical health will have been severely impaired, at least on a temporary

basis. The youths did not have to beat her up to get the £40. They were motivated by more than the simple aim of relieving her of her money. It is not true then that the span of human attention and desire is only confined to gaining material wealth. Motives which lead to actions causing physical and mental distress also exist.

Despite this omission in his theory, Hume primarily maintains that the system of justice which society builds is based first on a lack of resources, and second on human self-interest.

> 'Tis only from the selfishness and confined generosity of men, along with the scanty provision nature has made for his wants that justice derives its origin.' [6]

Once we realise where our self interest can lead to if it goes unchecked, our rational attributes mean that some kind of effective safeguard has to be constructed. Mankind imposes 'on himself general *inflexible* rules', making property 'sacred and inviolable'. [7] We see that if there were no such rules, chaos would follow. The only principles we would follow would be 'natural and variable',[7] from which Hume infers that there would be a lack of any real order in society.

J.L. Mackie puts it like this:

> 'Among the factors which contribute to make things go badly in the natural course of events are various limitations - limited resources, limited information, limited intelligence, limited rationality, but above all, limited sympathies. Men sometimes display active malevolence to one another, but even apart from that they

> are almost always concerned more with their selfish ends than with helping one another. The function of morality is primarily to counteract this limitation of men's sympathies.' [8]

Mackie's point is that morality does not exist of itself. It has to be made. But it can only be made in the light of the fact that 'self love - is a quite ineradicable part of human nature'. [9]

The artificial nature of the moral system is, however, supported by natural inclinations in the shape of what Hume calls 'natural virtues'. Natural affection and the desire to protect our own families and friends provides us with an understanding of others with similar feelings. This sympathy or comprehension of how others might feel if their property is violated, creates moral support for the rules of property. We realize that those rules will enable us to keep hold of what is ours, whether it is gained through industry or good fortune should we become the victims of injustice. J.L.Mackie describes it in the following way:

> 'Although we may have some instinctive tendencies to develop these dispositions (he is referring to what Hume calls the natural virtues) and to act in these ways, and also to react favourably to some instances of these dispositions and actions (namely those that are close to us) the precise way in which we *approve* of them (namely interpersonally and impartially) must like the rules of justice, be understood as a system which flourished because as a system it serves a social function ... Though the psychology of sympathy may play some

> part, the natural virtues themselves, and the fully developed form of the recognition of them as virtues, will owe a good deal to conventions and reciprocal pressures.' [10]

Even if Hume's failure to acknowledge mental cruelty and physical abuse as requiring some public criteria of acceptability which is legally enforceable, is rectified, the basis of his system is still the need to hang on to one's property, regardless of what other people have or do not have. Hume's combination of self interest and human social convention results in an orthodoxy which denies redistributive justice any place at all. Were such an element to be included, the entire basis of justice would flounder, because self-interest would no longer be considered as the fundamental motive for establishing a system of justice. The inclusion of natural virtues as providers of moral support for a system of justice based on self interest is not a sufficient force to alter this priority. A caricature of the theory is that justice is a game in which the cleverest participants can take advantage of a morally approved notion in order to increase their wealth at the expense of others.

On Hume's account of justice, it would be perfectly just for me to keep large amounts of food in my house, at the same time as watch a man sitting outside my front gate starve. Whether I felt sorry or not, or even if I took pleasure in watching him die, I would not be committing an *injustice* towards him. In fact he would be committing an injustice against me if he tried to break into my house and steal food. Of course, I may be disposed to give him food, but I would be under no obligation to, and certainly would not be committing an injustice by refusing, even if my attitude displayed a viciousness and complete lack of benevolence.

Justice, like reason, in Hume's theory is an essential aid to the management of our inner sensations and feelings. Although his version of the moral motive is based on the idea

of it being an unavoidable fiction, he does not suggest that we can do without it.

> 'When I deny justice to be a natural virtue, I make use of the word 'natural' only as opposed to artificial. In another sense of the word, as no principle of the human mind is more natural than a sense of virtue, so no virtue is more natural than justice. Mankind is an inventive species, and where an invention is obvious and absolutely necessary, it may as properly be said to be natural as anything that immediately proceeds from original principles without the intervention of thought or reflection'. [11]

Although Hume did not design his theory with the specific aim of encouraging the kind of exploitation described in the case of the starving man outside the front gate, it seems a mistake to confine the basis of all moral motivation to the idea of an inevitable manipulation, required by society's participants for self-preservation. It is true that moral excellence and moral depravity are not evenly distributed, and that much of our moral thinking can be a form of bargaining, but it is not true to say that *genuine* tolerance, self-sacrifice and compassion without vested interest in the preservation of personal property and status does not exist. Hume cannot admit such characteristics to his scheme because they are incidental to his overall view.

> 'Public interest or extensive benevolence, Hume argues, cannot be the first or main source of justice because if it were strong enough to institute justice, it would make it unnecessary. Nor could justice be based on demonstrative reason or ideas; for then it would have to

> be immutable and universally obligatory, whereas we have seen that it depends on a conjunction of contingencies. Rather justice is based on concern both for our own and for the public interest.' [12]

By trying to *average out* human motivation, at the same time as trying to construct a scheme of justice which can apply to society*as a whole*, Hume pays the price of having to confine moral motivation within certain limits. He cannot therefore account for the full range of morally influenced actions, whether destructive or creative, and in so compressing the scope of human initiative he also reduces the incentive towards individuality. Williams' critique of a moral system which is blueprinted onto social life has some force, because Hume's system tries to 'cover everything' and in so doing predetermines the experience out of which individuals can make their mark. His conception of justice tends to aggregate all motivation into one single train of thought and is consequently claustrophobic in its character. Beehler, like Hume, believes that reason can never outwit feeling but takes a much more optimistic view of human nature than Hume. In doing so, he restricts the scope and nature of moral life to the non-rational and creates a different type of claustrophobia which I want to describe briefly.

## Beehler: Moral Feeling

Beehler starts by refuting the suggestion that moral judgements depend on the way we agree to use words. He distinguishes what he calls the moral form of life (caring about others) from the social form of life (language). Although he acknowledges that moral life would be unintelligible were it not for some means by which to express one's perceptions and feelings,[13] he argues that people form their 'judgements' in what he

calls logical privacy. Each sees colours, each experiences feelings for others *on his own*. It is *not* social life which makes it logically conceivable for people to see, or to experience moral concern. It is a social form of life (language) which makes it possible to express what *one* sees, or feels, or cares about. [14]

He goes on to say that 'the claim which morality makes on human beings is not ... accessible to any man solely by activity of his reason'. It is caring which is *generative* of moral reasons. [15]

> 'If someone does not care, to ask him to consider what we care about will not justify to him our caring, unless he is able to appreciate (to perceive) that these creatures do matter - unless he comes to care about them too.' [16]

Because Beehler does not acknowledge that our feelings and our capacity to reason influence one another, he is unable to explore properly the notion of a moral struggle. He does not accept Kant's notion of a struggle between personal inclination and reverence for the law[17] because he prefers the concept of reason to be dominated by an underlying form of life, which is described by our feelings and judgements. If he had to acknowledge that reason can assist in the evaluation of different aspects of a moral issue (for example whether to turn off a life support machine, or remove a neglected child from parents of low intelligence) and therefore assist in whatever moral decision was made, his adherence to the given, which is caring for others (not *thinking* about caring) would be under threat.

Decisions to act out of moral considerations are seen as the moral 'flowing onto' the world from within the 'human breast'.[18] They are not decisions so much as revelations or conversions.[19] Beehler's relegation of reason means that the force of any moral

*decision* is empty - the decision is only a representation of a form of life coming into flower. Not only does his account fail to assess the interplay of feelings and reasons, it also empties human dialogue of choice and decision. Moral life is inaccessible to reason, and consequently static. In trying to define moral life as feeling, Beehler has confused an aspect of motivation, namely feeling, with the form of life, the moral, it helps to produce and of which it is a substantial part.

## Kant

In contrast to the status which Hume and Beehler give to reason, Kant elevates it beyond the world of experience where it is not subject to contingent conditions at all. The laws of duty find their source in pure, but practical reason, which is a priori, that is, it is applicable to all actual and conceivable rational beings. In fact it may not be possible to find an example of pure reason in experience:

> 'Nothing can protect us against a complete falling away from our ideas of duty, or can preserve in the soul a grounded reverence for its law, except the clear conviction that even if there never have been actions springing from such pure sources, the question at issue here is not whether this or that happened; that on the contrary, reason by itself and independently of all appearances commands what ought to happen; that consequently actions of which the world has hitherto given no example - actions whose practicability might well be doubted by those who rest everything on

> experience - are nevertheless commanded unrelentingly by reason'. [20]

The supremacy of reason is demonstrated by its *internal coherence* without recourse to experience. It is immune from criticisms that it is ineffective or indistinguishable from feelings. We can therefore only try to imagine what the ultimate goodwill is like. A completely rational kingdom of ends, to use Kant's expression, would be a world where the wrong choices were never made, a utopia. Such would be the allegiance to duty that a continual feeling of reverence for the law would accompany the absolute will to duty. Kant was separating his experience of the senses from his access to reason, and therefore assumed that pure reason could never be part of natural experience; he associated the natural world with the notion of cause and effect which by implication must be conditional. An effect is conditional on its cause, which is itself an effect of some other cause, and so on. Reason, in its pure form, could never be conditional.

> 'Reason must look upon itself as the author of its own principles independently of alien influences.' [21]

Pure reason exists of itself, and it is only our recognition of it that enables us to act out of duty. Kant argued that to recognise the duty which pure thought entailed was the strongest kind of incentive for true moral action in human beings.

> 'Unmixed with the alien element of added empirical inducements, the pure thought of duty, and in general of the moral law, has by way of reason alone ... an influence on the human heart so much more powerful than all the further impulsions.' [22]

Reason is endowed with an inclining power of its own - it has a practical as well as theoretical influence and is able to implant the motive to duty, in spite of the ephemeral and erratic nature of our own desires and affections. There was no doubt in Kant's mind that pure reason had the practical ability to make an impact on the human heart. Consequently there has to be contact between the human mind and pure reason, which means that pure reason can be part of our experience. Kant's inference of pure reason was developed out of his own experience and this creates a dilemma if, like Kant, we want to say that pure reason has an existence of its own, and may possibly never have fully displayed itself in a human context? [20]

The same difficulty arises in respect of his notion of reverence. Although reverence is a feeling, it is not a feeling received through outside influence, but one self-produced by a rational concept and therefore specifically distinct from feelings of the kind, which can be reduced to inclination or fear. [23] Although he tried to separate the 'peculiar kind of contentment' belonging to pure reason from the 'purposes of inclination' he could find no access to a complete experience of pure reason which would validate his ideas.[24] He could only operate by inference, once the highest practical purpose of pure reason, namely the establishment of a good will, was assumed to be true.

Most of these difficulties arise from Kant's divide between the sensible world and the intelligible world. Kant deduces that if happiness is the sole aim of the human experience, instinct, or the laws of nature, are far better suited for the job than reason. Therefore, he takes the model of cause and effect found in the laws of nature and asks what the purpose of reason is, if it is not for something which instinct could achieve to greater effect? Or to put it another way, what effect is the cause (reason) really pursuing? His answer is a will, which is good, not as a means to some further end but good in itself. For the sake of this conclusion he is obliged to separate the intelligible world from the world of the senses. He also says, however, that 'the intelligible world

contains the ground of the sensible world and therefore also of its laws'.[25] Although Paton is not entirely sure what he means by this, [26] it may be that Kant thought reason contained some kind of absolute cause and effect within itself. It could have stemmed from his original questions about the purpose of reason in its pure form, and his accompanying answer that its purpose was self-revealing. Whatever he meant by it, he was certainly at pains to define the intelligible and sensible worlds separately in order to demonstrate the differences between them.[27]

It is now questionable whether he was fully justified in being quite so dogmatic about these two separate worlds. Our access to reason is by and large based on our own experience of thinking. (If we could not think, there would be no question of us understanding anybody else's thoughts.) One condition of our ability to think is the activity of our brains. The physical deterioration of the brain which accompanies senile dementia is certainly sufficient to show that there is involvement between our conceptions, memory and thinking processes, and the physical activity of the brain. It is therefore possible to argue that there are physical conditions which our own experiences of thought depend on, and consequently the absolute unconditionality which Kant accords to pure reason, is questionable. One theory which attempts to address the interplay between the physical world and reason is Singer's. I want to show that his account is as rarified as Kant's elevation of reason to an absolute status and existence of its own; an existence which prevails with or without a human presence.

# Singer - Genetics and Reason

Singer suggests that in human history ethics have emerged simultaneously with the development of reason. This emergence has come from a background of genetically based impulses where social animals are 'prompted by their genes to help and refrain from injuring selected other animals'.[28] 'The medium between animal altruism and modern ethics was a system of social customs'.[29] Singer sees the transformation into full blown ethical life like this:

> 'Altruistic impulses (which are genetically based) once limited to one's kind and one's own group might be extended to a wider circle by reasoning creatures who can see that they and their kin are one group among others and from that impartial point of view are no more important than others. [30]

He then goes on to imply that the emergence of reason from genetically powered altruism is enough of a revelation for us to elevate it into a pure, undefiled and honed form of reflection.

> 'There is a rational component to ethics. Taking an objective point of view involves seeing our own interests as no more important than the like interests of anyone else. This yields the principle of equal consideration of the interests of all. If this, and this alone, is the rational component of ethics, there should be a debunking explanation - biological or cultural - for every other aspect of our conventional ethical beliefs, from the trite

> moral rules against lying and stealing to such noble constructions as justice and human rights. If so, when the debunked principles have been scrutinized, found wanting and cleared away we will be left with nothing but the impartial rationality of the principle of equal consideration of interests.' [31]

Any altruism which is genetically based, is also genetically restricted if Singer's praise of unstained reason is to be believed. Reason is the one force which has the power to overcome genetic influence.

> 'We still have a lot to learn, but the knowledge we are now acquiring gives us, for the first time, a chance *deliberately* to deflect the tendencies in our genes. Understanding how our genes influence us makes it possible to challenge that influence. The basis of this challenge must be our capacity to reason.' [32]

There are obvious problems with reason being exempt from genetic influence. If evolution is used as the underpinning theory of Singer's arguments, how is it that reason itself did not evolve *specifically* through genetic influence?

Furthermore, on what basis is reason exempt from genetic influence? How can we be sure that reason is the *one* influence which can overcome genetic dominance? The example Singer gives is that people no longer have sex just to have children, even though procreation is *the* fundamental evolutionary purpose of sexual intercourse. He maintains that contraceptive methods do not make evolutionary sense even though sex may be related to secondary factors like the need for permanency in relationships.[33]

Reasoning beings are, therefore, *not bound* to do what makes sense in evolutionary terms. They are free to decide for themselves. His argument is suspect, because the quality of life children enjoy is to a large extent dependent on whether their parents want them. It makes perfect evolutionary sense when parents who will put a lot of effort into helping children become fit and strong, as well as assist in developing their abilities, choose to have them. A species does not survive simply through the production of large numbers of offspring if only a very few ever develop into healthy adults. It is quite possible to adduce some evolutionary purpose into the idea of parental commitment to the children they want to have. Singer's 'proof' that reason is the point where genetic influence loses its potency is mistaken within the terms of his own argument. His reasoning about the evolutionary purpose of sexual intercourse is itself suspect, and reveals the fallibility of his elevation of reason. One reason can be counteracted by another.

Despite these very considerable difficulties, it appears that his version of reason excludes all other accounts of ethical life including concepts such as justice and human rights. he describes such ideas, along with religious and moral law, as influences which reason alone can debunk. They all, according to Singer, suggest an immutability to ethical life which reason avoids. Reason, as defined by Singer, is therefore more adaptable to the circumstances of life and is the sole basis for proper ethical evaluation.

Singer's concentration on ethical reasoning by-passes the very thing which Beehler emphasizes, moral feeling. Being impelled by an inner sense to help someone is not the same as *deducing* whether an action satisfies an equal consideration of interests. Both moral feeling and moral thinking are part of ethical life, yet Singer has to see the former as a by product of the latter.

> 'Nevertheless if we can be motivated by a desire to eliminate inconsistency in our beliefs and actions, reason is no mere slave. We may use reason to enable us to satisfy our needs, but reason then develops its own motivating force.'[34]

Singer's hope is that the convincing nature of his argument will motivate people to act according to the ethical criteria he sets out. The problem as I hope I have demonstrated, is that his argument is not convincing.

His appeal to the authority of reason is not substantiated due to the indeterminate and mistaken way he assesses the relative influences of genetics and reason. His false elevation of reason, or his version of it, means that he cannot accept that reason can be a tool for the expression of a preference, whether that preference is a concept such as justice or love, or whether it is a feeling of concern which is primarily emotional. He does not understand that reasons can describe feelings, and that feelings can emerge from reasoning.

## Where Does Morality Fit In?

I began by asking where morality fits into the rest of life. Although it would be mistaken as well as arrogant to dismiss the moral philosophies of Hume and Kant, it is clear that there are definite problems with both viewpoints as to how comprehensively they are able to deal with the whole range of moral conceptions. Hume grounded morality in terms of a social arrangement while Kant sought to justify pure reason as the true source

of moral inspiration. In similar vein the ideas of Beehler and Singer end up as a kind of wrestling match between feeling and reason, when both have a vital part to play in ethical life and need not be in competition with each other.

Hume's account of justice referred to the limitations of sympathetic impulse as being the reason why a public system of justice is needed. Because in essence it is a necessary form of social manipulation, it contradicts any absolute belief in the substantive reality of 'moral goodness'. As such it harbours something of a repressive air by legislating for a 'divorce' between morality on the one hand, and religious belief and aesthetic inspiration on the other. Only a rather dogmatic psychology which measures the limit of human sympathy is allowed to accompany the conception of morality. Human behaviour is aggregated into a standardized form of motivation so that a standardized form of administrative morality can be rationally worked out. It is flexible in that it is not underpinned by any unchangeable belief; it is rigid in that it aggregates human motivation into a single form.

Kant's account on the other hand creates an enormous chasm between the pure reason of an unstained rational agent and the, by comparison, feeble experiences of frail human beings. Its self-professed omnipotence seems too distant to affect the web of emotional, political, economic and moral feelings which impinge on people living in a society far too complex for any one person to understand. Generally speaking and despite the simplification involved, Hume's concept of morality is based on a social arrangement, whereas Kant's categorical imperative is dependent on the individual realisation of pure reason. Hume took what might be regarded as a pessimistic view of the extent of moral sympathy, while Kant took a highly optimistic position as to the human capacity for implementing the dictates of reason above all else.

Motivation is not a question of logically eliminating factors which are theoretically redundant in the establishment of a clear and sharply defined notion of the 'moral'. We take action, or hold moral feelings through a mixture of intellect; reason, feeling, belief and tradition. Although there are many issues which are essentially moral, for instance discussing whether euthanasia should be made legal, or whether to torture prisoners of war, there are many other circumstances where a moral perspective, rather than a moral *monopoly* is appropriate.

To reduce the *content* of experience in order to clarify a concept is a mistake. Rather, the philosophical task is to show whether a particular quality or aspect of life is one that holds sense and consistency of meaning.

It could be said that it would be impossible to provide a philosophical explanation without also revealing some kind of personal preference and bias. Perhaps in the end we should expect philosophers to state their own preferences, whether they do it explicitly or covertly. Most philosophers, however, tend to begin with their philosophical explanation and conclude with their preferences. This does on occasion give the impression that the philosopher's moral views are more valid than anyone elses. Although philosophy is obviously one of the more reflective aspects of life, it should not be given a status which confers any sort of moral superiority, for no other reason than that such a status might interfere with the free development of the subject and consequently be open to political interference.

My own view is that there are a great many areas of life where moral perspectives are excluded, because the integration of a moral outlook into those areas is not thought to be relevant or desirable. One major reason is that morality is too often conceived as a monolithic force impervious to any other consideration. Considering other people's interests in relation to our own, which is the main sense of my own use of the word

'moral' in this essay, is not something we either do or do not do. We can quite easily give some weight to a moral perspective when considering an economic issue, or the use of a scientific discovery. This does not mean that we have to replace all economic issues with moral ones. This is obviously absurd, although not absurd enough to prevent many moral philosophers from mainly concentrating their efforts on separating the moral from the non-moral. The attempt to circumscribe the definition of morality, has prevented the permeation of an ethical stance into many parts of psychological and political experience. Morality has become a form of authority, albeit somewhat outdated by modern advances in knowledge, rather than a form of awareness which gains interest through a realistic integration with the social and political 'sciences'.

An objection to the kind of ethical permeation I am talking about is that all individual decisions about priorities can be referred to as moral decisions because there is almost always a consideration of whether one's own benefit will cause someone else difficulty or not, however distant or miniscule the ultimate effect might be. To this end it might be tempting to categorize all decisions about priorities as 'moral decisions in principle'. This makes nonsense of our experience, because we do not isolate and reflect on the moral content of every decision we face. If all our practical decisions were moral ones, the phrase 'moral decision' would have no meaning of its own, and therefore eventually become obsolete. Either that, or it would be a synonym for the word 'priority'.

Are we then thrown back simply to asking what the criteria are for separating moral from non-moral issues and likewise the political from the non-political and the economic from the non-economic? If the effect of this is to promote the conception of these spheres of social life as separate entities, the unintended consequence must be that relationships between them are of secondary importance to the precise definition of their limits. This seems to be as unsatisfactory as to suggest that any one sphere can subsume all the others.

What is the relationship between the economic, political and moral spheres of thought and action? To say they are separate and isolated forms of life, suggests that the whole of social life is unco-ordinated and therefore a random combination of competing, political economic and moral forces which can never be assessed in relation to each other. I want to try and show that the categories of economics, politics and morality are not immutable and *mutually exclusive* - they have a relationship with each other and *can compete with each other for superiority.* This is not to say that there cannot be dilemmas which are essentially moral, political or economic. The point is that those dilemmas do not prohibit the integration of political, economic and moral issues, even if in particular circumstances the dilemma in question is essentially a political, moral or economic one. I hope the following example illustrates the point:

## An Illustration

"I am an insurance salesman. It is certain that if I go to visit a client tonight I will definitely sell a policy, and very likely an introduction to a relative of the customer who may also want insurance. If I sell the policy I will be able to buy my son the bicycle he wants. If I sell a second policy there will be enough for a new squash and tennis racquet for me. I could spend the money on that as I recently put quite a lot of money into a second hand car which my wife has.

On the other hand I am pretty tired and would like to stay in and watch the television. If I put the visit off for a couple of days there will be less chance of success. My wife says it is up to me what I do, but if I do stay in she will probably go to a meeting of the local Save the Children Fund, where efforts will be made to get funding from the local council for a much needed day nursery."

**The Issues** - This is not an exhaustive list. It is limited for the sake of simplicity.

1. The economic decision

   How can I optimize my assets?

2. The political decision

   How can I exert maximum influence on the council?

3. The moral decision

   Should I put either my son's new bicycle or the need for a new day nursery before my own enjoyment (that is, either the chance of new sports equipment or an evening in front of the television)?

## The Options

1. **If I stay IN**

   Am I

   A. making a *purely* economic decision about whether to earn more money or not?

   B. making a *purely* political decision by allowing my wife to put pressure on the local council?

   C. making a *purely* moral decision

      (i) deciding that I can make do with my current sports equipment and that my son can do without a bike. What I want to do is sit in front of the television. In moral terms this is a negative decision in that I prefer to put my needs before the needs of others.

      (ii) a positive moral decision might be that I think my family has enough in comparison with others, so I think the most important factor is for my wife to attend the meeting about nursery provision.

2. **If I go OUT**

Am I making

A. an economic decision to optimize my assets?

B. a political decision, by preventing my wife contributing to the effort for more nursery provision. I might stress the fact that my son wants a bike, but also think that the deprived should be encouraged to find work rather than rely on state or charitable provision?

C. a moral decision by thinking that my chief responsibility is to my own son - a positive moral decision. On the other hand I might make a negative moral decision by deciding that the only way I am ever going to get my new racquets is by selling the policies regardless of everything else.

Although it is possible to analyse this example in terms of many different moral theories, the particular point I want to make is that the same actions (i.e. either going out or staying in) can be interpreted and justified in three different ways. The consequence is that any individual can give different *weighting* to the economic, political and moral factors presented in the example. The facility to compare different factors and assess their relative importance, is perfectly possible and indeed happens in everyday life. It is important, however, to point out that this comparability is not part of a process of historicism, that is, a progression out of which 'one grand theory of reality' [35] will arise. Peter Winch, whose phrase I have just used, puts it like this:

> 'On my view then, the philosophy of science will be concerned with the kind of understanding sought and conveyed by the scientist; the philosophy of religion will

> be concerned with the way in which religion attempts to present an intelligible picture of the world; and so on. And of course these activities and their aims will be mutually compared and contrasted. The purpose of such philosophical enquiries will be to contribute to our understanding of what is involved in the concept of intelligibility, so that we may better understand what it means to call reality intelligible' [36]

Now Winch's theory is very deep and based on the argument that 'the social relations between *men* ' and the relations between the '*ideas* 'which their actions embody are *one and the same thing* , considered from different points of view.[37] For the purposes of my discussion it is easier to say with Winch that 'a new way of talking, sufficiently important to rank as a new idea, implies a new set of social relationships'.[38] Comparing and contrasting a particular situation in political , economic and moral terms may lead to a different type of priority, and therefore a different type of social context. Winch argues that the

> 'only mode of life which can undergo a meaningful development in response to environmental changes is one which contains *within itself* * the means of assessing the significance of the behaviour it prescribes' [39]
>
> [ * I return to the justification for this later on.]

This is not to say that moral life is purely based on reflectiveness, and has no relation to tradition, belief, custom and law. It is simply to account for different forms of life

overlapping ( I used the examples of politics, morality and economics) and for different types of social relationships to arise out of such reflection and involvement.

## A Philosophical Justification

In part two of this chapter I want to put forward a justification as to why ethical thinking and experience is as valid a form of social life as any other and why there is no philosophical impediment, as far as I can see, to such an end. The discussion will start by asking whether thinking is simply a sophisticated expression of feeling or whether it has a quality of its own. I suggest that it does have trademarks of its own, and use the idea of rationality to express that view. I then argue that human survival is dependent on our ability to think, and furthermore that the ability and expression of thought reflects the type of social relationships we either enjoy or do not enjoy. In assessing the theoretical relation between the meaning and ideas expressed through language and the social relationships which those ideas embody, it becomes apparent that there are no restrictions to the kinds of ideas we want or do not want in social life. Moral awareness is one such idea.

## Motive, Rationality and Thought

Already it is clear that the significance of the ability to think for the moral form of life is seen very differently by different philosophers. Whereas Kant based his whole moral theory on the pure rational agent, Beehler discounts, in comparative terms, the significance of language and the social ideas which are conveyed by it. I have put

forward a form of moral perspective which although it includes feelings as an essential part of moral life, also depends very heavily on the ability to think. This is because the integration of a moral perspective with other types of understanding requires some kind of theoretical, and therefore articulated credibility if the emotional and instinctual aspects of the integration are to be acknowledged. However if thinking is simply an extension of the pattern of emotional and social influences which operate in and on us, it may be asking too much of the capacity to think, to regulate and change the precise nature of our feelings. The argument would go that moral thinking is perhaps only a reflection of our moral feelings, and therefore does not have the facility to open up new areas of life, allowing them to be permeated with moral consideration and perspective. Reason may play its part in articulating moral feeling, but has no power of its own to extend its domain.

Mary Midgley analyses thought and feeling in the following way:

> 'It will not do to analyse motivation once and for all into Thought as Form and Feeling as blank, contingent undifferentiated Matter.....All actual matter has a form; all actual forms fit a matter. For instance when Aristotle gave the name hyle wood to matter, he was thinking of a carpenter imposing form on wood by making it into a table. But of course the wood before that was not just neutral stuff. It was beech or pine, with a definite grain or structure. [40]

She is obviously right to interlink reason and feeling, and her examples of patterns of motives in higher social animals such as wolves [41] leave the reader in no doubt

that feeling does have a form. Her account of reason, however, is to do with the *level of sophistication* which we use in exercising our feelings.

> 'What is special about *people* is their power of understanding what is going on, and using that understanding to regulate it. Imagination and conceptual thought intensify all the conflicts by multiplying the options, by letting us form all manner of incompatible schemes and allowing us to know what we are missing, and also by greatly increasing our powers of self deception.' [42]

Rationality according to Midgley is not the sole property of human beings. It is an extension of 'deep lasting preferences' which are 'linked to character traits'.[43] The nature of the extension is to do with sophistication, or as Midgley puts it, cleverness.

> 'There are, I think, two distinct elements in rationality: cleverness and integration. By integration I mean having a character, acting as a whole, having a firm and effective priority system. The second is a condition of the first, not the other way round. For the full respect that we give to rationality , we need both. But integration alone is something of enormous value, and respect seems a suitable name for the recognition with which we salute it. And integration is not confined to people'. [44]

Midgley talks about rationality as if it were an extra bonus for the human species; a bonus which allows greater manoeuvrability, and without which we could survive. I want to discuss both of these points.

## Rationality: Sophisticated Preference or Creative Thinking?

Jonathan Bennett makes a claim for rationality which puts it in the category of creative thinking rather than an extended and articulated form of our pattern of motives.*

Bennett's claim is that:

> 'the exercise of dated and universal judgements is both necessary and sufficient for rationality and thus that linguistic capacity is necessary but not sufficient for rationality'. [45]

This on the face of it appears to be obscure and needs explanation. The whole thrust of his argument is that the peculiar quality of rationality is the ability to relate and unite particular information with other information in a way which does not depend on 'the present and particular environment of the behaver'. [46] He argues that dated (recall of

* Midgley describes some of these on p.283 of Beast and Man. They are for example aggression, need for company, long term enterprises, partners, curiosity, culture, etc.

specific events, experiences or observations in the past) and universal judgements (rules into which particular data can be subsumed) are the two types of judgement which single out the rational being from animals which although capable of intelligence and communication are not capable of *'extending . . .* intelligences'[47] through the competence of rationality. The following passage demonstrates what he is trying to get at:

> 'Suppose that a highly intelligent sheepdog showed itself able to understand a really complex system of whistles by the shepherd, and also showed itself to be master of a complex system of barking noises from which the shepherd could infer much useful information about the position of the sheep, the nature of the terrain and so on. This begins to sound like the story about a genuine, if primitive, language. But suppose it transpired that the dog would bark 'informatively' even when the shepherd was out of earshot; suppose it never passed on the informative barks of another similarly endowed dog; suppose it never learned that (say) when the shepherd removed his hat his whistles were always lies . . . in these ways the dog showed itself to be entirely unadaptable and thus unintelligent about many other things.' [48]

The dog shows intelligence through its understanding of the whistles; it also shows a capacity to understand a signal, an essential but not comprehensive component of language. The dog is unable, however, to extend its intelligences to the extent of being able to work without the shepherd. For that he would need Bennett's version of

rationality; the ability to fit the shepherd's past actions (a dated judgement) into the scheme of the shepherd's overall aim for the sheep (a universal judgement). If the dog were capable of this it would then be in a position to *decide* if he wanted to go along with the shepherd's aims or not. Bennett maintains that this is not so and that there *is* a huge gulf between the competence of dogs and humans,[49] with rationality being the suitable word to describe the missing element.

When Bennett says that linguistic capacity is necessary but not sufficient for rationality he is not suggesting that communication skills are equivalent to rationality, but that the special power of language to cope with correlations between past, present and future, general or particular, satisfies the conditions necessary for the making of rational judgements. Language allows the rational being to think and reason without having to depend on the stimulus created by a present and particular environment.

Bennett's analysis shows that human rationality and thinking is not simply an extension of our inner motives, affections and desires. It has a creative quality of its own. I now want to ask whether that creative quality is a luxury we could live without or whether it is essential, and therefore integrated into our survival.

## Thinking: Luxury or Essential

Inclinations to do with aggression, sex, dominance and the care of the young are all motives which man shares with the higher social animals. The higher social animals, however, do not have to *think* how they will adapt to their environment, in the sense that

they do not have to articulate to each other which alternatives will have to be considered if a suitable environment is to be created. Human beings on the other hand are obliged to do this if they want to survive.

Now it might seem an exaggeration to say that we have to think in order to survive, because it can be argued that mankind's ability to build shelter which is appropriate to the climate or to cook food which is digestible is simply an extension of the basic instinct for survival. Alternatively, it might be possible to say that such abilities are the result of learnt behaviour, through trial and error and not the consequence of creative intelligence. Take, for example, the need which human beings have to avoid exposure to the cold, and suppose that in a primitive society the children of that society die in large numbers because they do not have adequate protection from it. As the parents search for the materials and means to make adequate clothing, such behaviour, in my submission, cannot simply be accounted for in terms of instinct alone or alternatively learnt behaviour. Although the desire to keep warm may be described as physical rather than mental, the connection between the desire to keep warm and the means of making clothes is much more than a matter of sensation. Even if there is an element of learnt behaviour in discovering that I feel warmer when I have an animal skin wrapped around me, unless I can think, I may just as easily assume that it is the colour of the animal skin or the fact that it belongs to a particular animal which is the significant factor. The behaviourist has to argue that each further step of knowledge is gained by an accidental discovery of a pleasing sensation, through which the technology of clothing to use this example, is advanced. The human mind is essentially receptive rather than creative. This view, in my opinion, is unnecessarily imbalanced and I prefer Bennett's account which says that to link the desire to make clothes with the materials and means involves thought which is not solely dependent on the present and particular environment of the behaver. The following sequence explains the process;

1. I want to do something to keep myself and my children warm
   (a universal judgement in Bennett's terms)

and

2. I can remember that I felt warmth when I touched an animal skin (learnt behaiovur admittedly but also a dated judgement, again in Bennett's terms)

therefore

3. I will try and use animal skins to make "clothes" (rationality).

The combination of physical 'instinct' (to keep warm), learnt behaviour (discovering warmth) and rationality (in linking the dated judgement with a universal rule) has much more appeal than relying on any one of those factors alone. The point I want to emphasise is that thinking is not a luxury for human beings but an essential component of our survival.

The ability to create a protective environment wherever in the world people might live, is not something that has been achieved without the capacity to think. The example I have given demonstrates that because man can adapt to so many different environments he needs to exercise thought to exist in any *particular* environment. Mankind's innate motivational structure, of sense, perception and feeling, is not sufficiently flexible and adaptable to cope with any environment without using the capacity of reason. Animals survive by operating within particular environments. Mary Midgley quotes an illustration from Tinbergen's 'The Herring Gull's World' which shows what happens when no powers of reasoning are available to assist the animal to adapt to a different environment.

> 'One (example) shows a gull reposing, eyes closed and wings folded, the picture of fatuous parental contentment, on an empty nest while its eggs addle in the cold a foot away. Helpful ethologists have removed the

> eggs to see which the creature would prefer and it has settled for the nest'. [50]

Herring gulls, Midgley says, are not normally subject to the selection pressures of roving eggs, because normally there are no experimenters around. Once their environment is altered by an outside influence, they do not have the capacity to extend their intellingences to try to solve the problem presented. Although reason is not the champion of every environmental problem man is presented with, the point remains that without it the human species would be hard pressed to adapt to *any* environment at all.

## Thought and the Awareness of Ideas

I have argued that thinking is not just an extension of our motives which gives them added sophistication, but that it has a creative force of its own. In addition to this, I have suggested that reason and thought is essential to the *survival* of the human species, for the reasons stated above.

Now I want to look at a different, but related aspect of thought and rationality, that is the *social conditions* which are necessary for us to form judgements and link together ideas. Although Bennett defines rationality as the ability to link dated judgements and universal rules, and talks of language as the tool which allows thought to operate, he places particular emphasis on the *difference* between rationality and other forms of *intelligent* behaviour. He was not attempting to explore *all* the conditions required for the formation of rational behaviour. He referred to one condition, namely that

> 'linguistic capacity is a necessary but not sufficient condition of rationality'. [45]

I have already mentioned how he sees language as a tool necessary for the proper exercise of rationality in human relations. Linguistic capacity, in terms of a confined system of signals, for example between sheep dog and shepherd, may not involve rationality, but any linguistic system which involves meaning and reason, must in fact also involve rationality, as Bennett defines it. The ability to discern what is *meant* in a particular situation means we have to place that situation into a context. The link between a past event (the dated judgement) and the general context to which such an event might apply (the universal judgement) can then be understood, and Bennett's two sufficient conditions of rationality therefore apply.

What I want to explore is what the necessary conditions for making any judgements at all are, and what, similarly, are the social conditions required for there to be any understanding at all.

Peter Winch describes how any word depends on its context for meaning and shows how the removal of the context renders the word as being without sense.[51] I will construct an example of my own. Take the word 'house'.

The sentence makes sense:

'I want a house to protect me from the climate'.

This sentence makes no sense:

'I want a house to decide what the climate is'.

The latter does not make sense, because houses do not make decisions. When we talk about houses, we talk about them in certain contexts, for example their size, state of repair, attractiveness, effect on the environment. To ascribe the power of decision to a house would only make sense as part of a *fantasy* in a poem or story. What would allow

it to make sense *as a fantasy* would be the common understanding that houses in reality are inanimate and incapable of thought.

The difference between fantasy and reality reveals that there exists some common concept of what a house is, or to put it more precisely, what exactly in reality a house is. Of course the words 'in reality' are not immune from the analysis and it seems perfectly reasonable to ask what we mean by 'in reality'. Do we all mean the same thing? It is quite clear that many people have very different ideas of what reality means to them, just as many people have different ideas as to what a house is. A nomad in the desert may view his tent as his house, whereas a westerner may regard a tent as something to use on holiday but not suitable for permanent residence.

So we are left with the question as to what it is that gives sense to the word 'house' even though I can say 'he means by his house *the tent* he lives in' and also 'my house is the *brick building* in the street where I live'. The word retains a sense of its own even though it can be *sensibly* applied in different contexts, but not in *any* context. Where is the *logical* point at which words hold sense, and what are the circumstances where they hold none?

We do not, according to Peter Winch ascribe meaning to words by learning them parrot fashion, or by mechanically responding to appropriate stimuli. Our understanding of reality, as far as it goes, is promoted by words, contexts and reasons being the product of *rule-following behaviour.*[52] Such rules are inevitably social in that it is logically impossible for a rule to be separated from the idea of making a mistake, and making a mistake is 'a contravention of what is *established* as correct'.[53] Such a process cannot

exist in isolation; it has to be achieved between people.* Winch's point is that until some social interaction occurs there can be no logical check on what is *meant* by the uttering of a particular sound. This is another way of distinguishing between a system of signals and a language which involves meaning and reason. The former is akin to a parrot responding to a stimulus; the latter is about understanding between people. Parrots do respond to stimuli but do they *understand* what they are talking about?[54]

The point Winch is making is that rules of language are interwoven with the meaning they symbolize - and this is so because 'a man's social relations are permeated with his ideas about reality'.[55] Social relations and ideas (or language) are two sides of the same coin for the human species. Because some of those ideas are sufficiently broad to contain varying interpretations it does not mean that they are not subject to rules. Moreover, ideas may and do contain *within* them room for disagreement, conflict and even open war, all of which themselves are 'social ideas' in Winch's sense. They, that is disagreements or conflicts about ideas, are themselves ideas and do not invalidate the condition that language and ideas are the product of rule following behaviour in a social context. Winch is not talking about the conditions necessary for the *acceptance* of a particular set of ideas, but the conditions which must be satisfied if there are to be any criteria of understanding at all.[56]

* Strawson's 'desert-islander quoted by Winch (p34,35, Idea of Social Science) has 'never been brought up in a human society' and yet is the only individual who speaks a language which he has not *learnt* from other people. Strawson equips his desert islander with the benefits of a human upbringing without the experience of it. The problem for Strawson, according to Winch, is that the benefits do not accrue without the experience. This has to be the case if meaning as expressed through language can only be established in a social context.

# Moral Awareness

I have maintained that the capacity to think is a creative force, essential to human survival and adaptability, and an influence which permeates social relations. Its creative force also means that ideas and concepts are not static. In fact when ideas change, the nature of social relationships also change. Peter Winch expresses this:

> 'in discussing language philosophically we are in fact discussing what counts as belonging to the world. Our idea of what belongs to the realm of reality is given for us in the language we use. The concepts we have settle for us the form of experience we have of the world . . . The world is for us what is presented through those concepts. That is not to say that our concepts may not change, but when they do, means our concept of the world has changed too'.[57]

Moral awareness is a social idea and in one sense it is like any other idea that belongs to the world, a product of rule-following created in and between people. Social ideas, however, are not by definition static. They reflect the nature of the social relationships which they embody. The force of creative thinking can apply to morality as much as it can to any other form of life. There is no prohibition against considering other people's needs in relation to our own in any context. The moral question is whether we want to, not whether we can. We can if we want to, if the philosophical account I have tried to give is valid. Ethical life does not have to be restricted to a bureaucratic procedure designed to satisfy institutions rather than individuals. Neither does it have to be elevated out of the reach of all but the sacrificial few who put duty before all other

feeling. Rather, seen as a principle of awareness, it can permeate into areas of life where it was previously either perceived as irrelevant or redundant. Morality does not have to be a symbol of repression.

# Chapter 2 - References


| | | |
|---|---|---|
| 1. | Williams, B. | Ethics and The Limits of Philosophy<br>Collins/Fontana 1985 p.195 |
| 2. | Ibid | pp.197, 198 |
| 3. | Ibid | p.196 |
| 4. | Hume, D. | A Treatise of Human Nature 1888<br>Oxford 2nd Edition 1978 p.491 |
| 5. | Ibid | p.487/8 |
| 6. | Ibid | p.495 |
| 7. | Ibid | p.533 |
| 8. | Mackie, J.L. | Ethics, Inventing Right and Wrong<br>Penguin 1977 p.108 |
| 9. | Ibid | p.132 |
| 10. | Mackie, J.L. | Hume's Moral Theory<br>Routledge and Kegan Paul p.123 |
| 11. | Hume, D. | Treatise p.484 |
| 12. | Mackie, J.L. | Hume's Moral Theory p.84 |
| 13. | Beehler, R. | Moral Life, Blackwell, 1978 pp.32 and 95 |
| 14. | Ibid | p.95 |
| 15. | Ibid | p.138 |
| 16. | Ibid | p.138/9 |
| 17. | Ibid | See page 127 |
| 18. | Ibid | p.163 |
| 19. | Ibid | p.143 |
| 20. | Kant, I. | Groundwork of the Metaphysic of Morals, Translated &<br>Analysed by H.J. Paton, Harper Torchbooks 1964 p.75 |

21. Ibid p.116
22. Ibid p.78
23. Ibid See footnote in Paton's text on p.69
24. Ibid p.64
25. Ibid p.121
26. Ibid p.45-46
27. Ibid p.121
28. Singer, P. The Expanding Circle: Ethics and Socio Biology
    Oxford University Press 1981 p.91
29. Ibid p.34
30. Ibid p.134
31. Ibid p.150/1
32. Ibid p.169
33. Ibid p.130/1
34. Ibid p.143
35. Winch, P. The Idea of a Social Science
    Routledge & Kegan Paul 1958 p.19
36. Ibid p.19/20
37. Ibid p.121
38. Ibid p.122/3
39. Ibid p.64
40. Midgley, M. Beast and Man
    Methuen 1980 p.257
41. Ibid p.279-280
42. Ibid p.282-283
43. Ibid p.259
44. Ibid p.262

45. Bennett, J. Rationality
Routledge & Kegan Paul 1964 p.94

46. Ibid p.88

47. Ibid p.98

48. Ibid p.47

49. Ibid p.97/8

50. From Tinbergen, N. 'The Herring Gull's World' (p.145)
quoted in Beast and Man, Midgley p. 262

51. Winch, P. The Idea of a Social Science pp.24-33

52. Ibid p.27/28

53. Ibid p.46

54. Ibid p.35

55. Ibid p.23

56. Ibid p.21

57. Ibid p.15

# Chapter 3

# Procedural Justice

Having argued that ideas and relationships in society are, in principle, sufficiently flexible to incorporate the kind of moral awareness I have been discussing, I now want to look at Rawls' theory of justice which attempts to integrate the moral inheritances of 'equality' and 'freedom' with a 'political' conception of society. Rawls calls his system 'Justice as Fairness: Political not Metaphysical'.[1] In stressing the 'political ' context of his scheme of justice, he attempts to remain philosophically 'neutral' because as he says,

> 'in a constitutional democracy the public conception of justice should be, so far as possible, independent of controversial philosophical and religious doctrines' [2]

He acknowledges that complete neutrality is impossible, and suggests that the scheme of justice is *not* designed to dominate the whole range of moral interest in society, even though justice as a political concept is also a moral conception,.

> 'While a political conception of justice is, of course, a moral conception, it is a moral conception worked out for a specific kind of subject namely for political, social and economic institutions'. [3]

He goes on to point out that

> 'Justice as fairness is not intended as the application of a general moral conception to the basic structure of society, as if this structure were simply another case to which that general moral conception is applied'. [4]

The placing of a moral conception *within* the political framework is the basis of the principle of toleration, which I shall discuss after giving a brief pen picture of the theory. Because Rawls fails to set out clearly the dividing line between self-interest and social co-operation in terms of measuring personal gain against the needs of others, the moral constraints which he applies to the framing of the *whole* scheme are not persuasive, or so I shall argue.

## The Scheme - a pen picture

Rawls suggests that the fusion of the principles of liberty and equality (the two main strands of inheritance from the history of democratic thought) encompass acceptable standards of civil liberty as well as common agreement as to how institutions should deal with the allocation of social and material benefit.

He distinguishes two principles of justice from a hypothetical situation which is known as the original position or the initial situation . The terms are interchangeable.

> "The original position is defined is such a way that it is a status quo in which any agreements reached are fair. It is a state of affairs in which the parties are equally represented as moral persons and the outcome is not conditioned by arbitrary contingencies or the relative balance of social forces' [5]

In deciding on the principles, Rawls says

> 'No one knows his situation in a society nor his natural assets and therefore no one is in a position to tailor principles to his advantage'. [6]
>
> and
>
> 'Whatever his temporal position, each is forced to choose for everyone'. [7]

Rawls explains that, apart from the obvious advantage of principles being chosen in an atmosphere of impartiality, a balance with experience is made because 'Justice as Fairness' is a theory of our moral sentiments as manifested by our considered judgements in reflective equilibrium'.[8] In other words our moral experiences are rarified to the point of our not being able to take advantage of our more selfish instincts.

The principles of justice that Rawls imagines to come from such an experiment are as follows.[9]

1. Each person has an equal right to a fully adequate scheme of equal basic rights and liberties, which scheme is compatible with a similar scheme for all.

   The Liberty Principle.

2. Social and economic inequalities are to satisfy two conditions; first they must be attached to offices and positions open to all under conditions of fair equality of opportunity; and second, they must be to the greatest benefit of the least advantaged members of society.

   The Difference Principle.

The artificial moral atmosphere reaches an uneasy and very precarious balance at the point where inequality is justified by means of incentive but envy is ruled out because of mutual disinterest. First, the reasoning behind inequality:

> 'Thus the parties start with a principle establishing equal liberty for all, including equality of opportunity, as well as an equal distribution of wealth. But there is no reason why this acknowledgment should be final. If there are inequalities in the basic structure that work to make everyone better off in comparison with the benchmark of initial equality, why not permit them? The immediate gain which a greater equality might allow can be regarded as intelligently invested in view of its future return. If, for example, these inequalities set up various

> incentives which succeed in eliciting more productive efforts, a person in the original position may look upon them as necessary to cover the costs of training and to encourage effective performance'. [10]

And secondly the thinking behind mutual disinterest:

> The assumption of mutually disinterested rationality, then, comes to this: the persons in the original position try to acknowledge principles which advance their system of ends as far as possible.
>
> The parties do not seek to confer benefits or to impose injuries on one another; they are not moved by affection or rancour. Nor do they try to gain relative to each other; they are not envious or vain. Put in terms of a game, we might say: they strive for as high an absolute score as possible. They do not wish a high or low score for their opponents, nor do they seek to maximise or minimise the difference between their successes and those of others. The idea of a game does not really apply, since the parties are not concerned to win but to get as many points as possible judged by their own system of ends'. [11]

It is hard to understand why a system of inequality provides a greater overall net wealth because *incentive* makes for greater productivity, when at the same time individuals do not seek to surpass each other, but work only to reach the limits of their own potential.

Both of these conflicting elements seem to co-exist in the original position, and represent the ambivalence which is inherent in the Difference Principle. I shall return to this at the end of the chapter.

## Toleration

The system of equal liberty for all is based on the idea that a restriction to liberty only applies when the overall liberties of citizens are at risk of being reduced. The 'principle of toleration' prohibits any one scheme of ends from dominating the entire society. Whereas tolerance is a quality which some citizens might look on as an essential element of a good and healthy life, Rawls' principle of toleration is a political and social instrument which allows for different and sometimes conflicting views of the 'good' life to co-exist.

> 'The conception of the citizen as a free and equal person is not a moral ideal to govern all of life; but is rather an ideal belonging to a conception of political justice which is to apply to the basic structure. I emphasize this point because to think otherwise would be incompatible with liberalism as a political doctrine. Recall that as such a doctrine liberalism assumes that in a constitutional democratic state under modern conditions there are bound to exist conflicting and incommensurable conceptions of the good. This feature characterizes modern culture since the Reformation' [12]

> As *a practical political matter* no general moral conception can provide a publicly recognised basis for a conception of justice in a modern democratic state . . . a workable conception of political justice . . . must allow for a diversity of doctrines and the plurality of conflicting and indeed incommensurable conceptions of the good'. [13]

Toleration in Rawls' sense demands a certain kind of neutrality. That such neutrality itself derives its inspiration from the moral inheritance of liberty and equality as applicable to the institutions of society, is an example of the complexity and subtlety of Rawls' theory. He says there are certain intuitive ideas which are embedded in the political institutions of a constitutional democracy, and that interpretations of those ideas have their own public tradition.[4] In contrast, however, he aspires to the hope that his political conception of justice will receive support from an

> '"overlapping consensus" that is, by a consensus that *includes* all the oppposing philosophical and religious doctrines likely to persist and gain adherents in a more or less just constitutional democratic society'. [14]

As philosophically humble as the doctrine of toleration is, it seems that Rawls is hinting that the political conception of justice has the potential of *'including'*, not just accepting, *'all'* the philosophical and religious doctrines which are likely to persist in society. A religious person might say that no political system can fully embody the will of God and in the same mode a political philosopher might say that no one religious or moral conception can dominate a society in which different views are tolerated. Rawls,

understandably, seems to think that the political philosopher will prevail. It is worth remembering that coining justice in political terms rather than placing it in a metaphysical context, does not of itself remove 'justice' from controversy. The general conception of the political spectrum is as charged and contested as are the general conceptions of morality and religion. A philosopher may take refuge by transferring a key concept to another discipline (eg 'justice' from metaphysics to political philosophy) in order to escape from conflicts current in his own subject matter, but the public conception may be very different from his own. By calling justice 'political' Rawls is not bringing the concept into peace and tranquillity; the public conception of political justice is highly charged, as were the battles between Rousseau and Locke's writings from where Rawls draws the contrast between equality and liberty. [15] Rawls' theory seems to imply that the days of substantive disputes in philosophy are over. Even if the influence of moral relativity[16] has reduced the modern output of substantive moral and social theories, it would be illogical, given the environment of reductionism in which much modern philosophy is carried out, to assume that this is anything more than a current trend. This is because predicting the future of philosophical thought can only be speculative unless we assume that we are in possession of all relevant knowledge. Such an assumption cannot be substantiated.

In summary Rawls suggests that a political conception of justice will be independent of unnecessary controversy, but will still derive support from conflicting moral and philosophical perspectives by eliciting partial support from them. He hopes to find a common denominator in all of them which will look favourably on the supposedly non-controversial political conception of justice. He holds out no hope of finding a moral common denominator which could infuse the general conception of justice. In being seen as appropriate to a modern industrial society, the consensus around the specifically political nature of justice will acknowledge that no scheme of final ends,

whether moral, religious or philosophical is appropriate for the political and economic institutions of society. There will be a gentlemen's agreement to keep final ends and political institutions apart.

> 'The plan of each person is given a more ample and rich structure than it would otherwise have; it is adjusted to the plans of others by mutually acceptable principles. Everyone's more private life is so to speak a plan within a plan, this superordinate plan being realized in the public institutions of society' [17]

## Personal Ends and Political Community

> 'As free persons, citizens claim the right to view their persons as independent from and as not identified with any particular conception of the good, or scheme of final ends. Given their moral power to form, to revise, and rationally to pursue a conception of the good, their public identity as free persons is not affected by changes over time in their conception of the good. For example when citizens convert from one religion to another, or no longer affirm an established religious faith, they do not cease to be for questions of political justice the same persons they were before. There is no loss of what we may call their public identity'. [18]

The scheme of 'political' justice is designed, as Rawls says, to view persons as independent from any particular conception of the good. It is therefore able to accommodate

> 'a plurality of conflicting and incommensurable conceptions of the good'.[19]

Even if Rawls himself has his own conception of the good, it would be inconsistent of him to incorporate it into the scheme of political justice. The whole idea of incommensurability is that completely incompatible conceptions of the good can co-exist in a society where there is a general acceptance of political justice. For 'political' justice itself to represent an ultimate form of understanding would undermine the theory itself. Such a bias would invalidate the essential toleration required for equal liberty of conscience.

> 'Toleration is not derived from practical necessities or reasons of state. Moral and religious freedom follows from the principle of equal liberty; and assuming the priority of this principle, the only ground for denying the equal liberties is to avoid an even greater injustice, an even greater loss of liberty'. [20]

An important consequence of the principle of equal liberty is that it allows for the overall political structure to acknowledge the importance of the individual. One of Rawls' main claims for 'Justice as Fairness' is that it takes account of individual persons within a

scheme of co-operation, as opposed to viewing society as a kind of "aggregated individual".

> Implicit in the contrasts between classical utilitarianism and justice as fairness is a difference in the underlying conceptions of society. In the one we think of a well-ordered society as a scheme of co-operation for reciprocal advantage regulated by principles which persons would choose in an initial situation that is fair, in the other as the efficient administration of social resources to maximize the satisfaction of the system of desire constructed by the impartial spectator from the many individual systems of desires accepted as given. [21]

Rawls is very keen to emphasize the liberty and importance of the individual in his scheme of justice but his ultimate aim, and to a significant degree, requirement is that the theory should account for the values of community; a community based on a common conception of 'political' justice.

In his final remarks Rawls says this about the original position:

> 'Without conflating all persons into one but recognizing them as distinct and separate, it enables us to be impartial, even between persons who are not contemporaries but who belong to many generations'. [22]

Having stressed the importance of individuality Rawls then describes how rational persons can

> 'whatever their generation, bring together into one scheme all individual perspectives and arrive together at regulative principles that can be affirmed by everyone as he lives by them, each from his own standpoint'. [22]

The value of community, or the bringing together of all individual perspectives into one scheme, as Rawls says, is a logical consequence of choosing the correct conditions for the selection of the principles of justice in the first place. The context in which this is done is one which Rawls refers to as deliberative rationality.

Deliberative rationality is the making of plans, whatever they be, with full awareness of the relevant facts and after a careful consideration of the consequences.[23] It is not intended as a means of reducing people's lives to a predictable and bloodless orthodoxy, in which freedom is only a private sentiment. Rather it is a framework which those in the original position use to circumscribe the entire range of plans which will be available in real life, that is when the constraints of not knowing personal circumstances are lifted. It does not imply that each person will end up with the same plan of life.

> 'Since plans which it is rational to adopt vary from person to person depending upon their endowments and circumstances, and the like, individuals find their happiness in doing different things'. [24]

To emphasize the point that deliberative rationality is not an all consuming end which snuffs out individual preference Rawls places these constraints on its efficacy.

> 'The principle (ie deliberative rationality) will not certainly prevent us from taking steps that lead to misadventure. Nothing can protect us from the ambiguities and limitations of our knowledge, or guarantee that we find the best alternative open to us'. [25]

He goes on to say what the advantages are:

> Acting with deliberative rationality can only insure that our conduct is above reproach and that we are responsible to ourselves. [25]

> 'From the standpoint of the original position the relevance of responsibility to self seems clear enough. Since the notion of deliberative rationality applies there, it means that the parties cannot agree to a conception of justice if the consequences of applying it may lead to self-reproach should the least happy possibilities be realized. They should strive to be free from such regrets'. [26]

Although deliberative rationality is not the panacea for enjoying a trouble free and satisfying life, it is a source of pride in that it engenders a kind of self-respect through

the knowledge that the principles of justice were drawn up in conditions which reflected the best of intentions.

How, then, does the individualism which deliberative rationality in the original position enhances, translate into the value of community? The answer is to do with the kind of self-respect I have just mentioned.

> 'For reasons of clarity among others, we do not want to rely on an undefined concept of community, or to suppose that society is an organic whole with a life of its own distinct from and superior to that of all its members in their relations with one another. Thus the contractual conception of the original position is worked out first. It is reasonably simple and the problem of rational choice that it poses is relatively precise. From this conception, however individualistic it might seem, we must eventually explain the value of community. Otherwise the theory of justice *cannot* succeed. To accomplish this we shall need an account of the primary good of self-respect.' [27]

The self-respect which motivates the parties in the original position to draw up fair rules of play, under conditions of ignorance as to where each individual will end up in real life, comes into much sharper focus in what Rawls refers to as a well ordered society. A well ordered society is the kind of expressive realization that the notion of deliberative rationality is the one that best fits human nature both as individuals and in communal relations.

> 'Thus the prior collective agreement sets up from the first certain fundamental structural features common to everyone's plans. The nature of the self as a free and equal moral person is the same for all, and the similarity in the basic form of rational plans expresses this fact. Moreover, as shown by the notion of society as a social union of social unions, the members of a community participate in one another's nature: we appreciate what others do as things we might have done but which they do for us, and what we do is similarly done for them. Since the self is realized in the activities of many selves, relations of justice that conform to principles which would be assented to by all are best fitted to express the nature of each. Eventually then the requirement of a unanimous agreement connects up with the idea of human beings who as members of a social union seek the values of community'. [28]

One may be forgiven for feeling that Rawls is torn between self realization through the value of community under his own system, and self realization through whatever ends people wish to pursue. It is undeniable, however, that he does believe in a final end of his own, namely a society in which the sense of community is aroused by the concept of equal citizenship.

> 'When it is the position of equal citizenship that answers to the need for status, the precedence of the equal liberties becomes all the more necessary. Having chosen

> a conception of justice that seeks to *eliminate the significance of relative economic and social advantages* as supports for men's self-confidence, it is essential that the priority of liberty be firmly maintained. So for this reason too the parties are led to adopt a serial ordering of the two principles.
>
> In a well-ordered society then self-respect is secured by the public affirmation of the status of equal citizenship for all: the distribution of material means is left *to take care of itself in accordance with the idea of pure procedural justice*. Of course, doing this assumes the requisite background institutions which narrow the range of inequalities so that excusable envy does not arise'. [29]

The self-respect which helps to define the standards of thought used in the formulation of the Liberty and Difference Principles, comes into full flower when material inequality is no longer an issue of substance. Citizens are able to concentrate on the issues of conscience which are not related to the distribution of means. However, to imagine that the Difference Principle allows the question of how material means are distributed to take care of itself is in my view an over optimistic assumption. In the next section I want to explore the basis of that assumption.

# The Difference Principle

A reminder of the principle:

> Social and economic inequalities are to satisfy two conditions: first they must be attached to offices and positions open to all under conditions of fair equality of opportunity; and second they must be to the greatest benefit of the least advantaged members of society.

According to the Difference Principle, social and economic inequalities must be subject to conditions of fair equality of opportunity. A crucial problem is how to decide on the *point* when conditions of fair equality of opportunity no longer apply and mean that opportunities are not 'open to all'. Take the following example;

> Five jobs are vacant and ten people apply for them: it could be said that there is a validity to those positions being open to all. However, if five hundred people apply for the same number of jobs that *validity decreases dramatically. In fact it almost vanishes.* At what point does the phrase 'open to all' become worthless?

Rawls says this:

> 'Now primary goods . . . are things which it is supposed a rational man wants whatever else he wants.

> The primary social goods, to give them in broad categories are rights and liberties, opportunities and powers income and wealth.' [30]

It seems that one of the most fundamental 'powers' sought in a modern democratic society is the opportunity to work. And yet Rawls in his discussion on Fair Equality of opportunity avoids examining at what particular point equality of opportunity no longer applies. He does this by taking refuge, unsuccessfully, in the idea of pure procedural justice. It allows him effectively to disregard current circumstances in favour of optimistic future abstractions.

Pure procedural justice relies *solely* on properly completing a set procedure to gain a 'just' result. The example Rawls provides concerns the rules of gambling. As long as the bets are fairly laid, and the results accurately computed, the outcome is just whatever the actual material gain or loss incurred. [31]

> 'in pure procedural justice then, distributions of advantages are not appraised in the first instance by confronting a stock of benefits available with given desires and needs of known individuals. The allotment of the items produced takes place in accordance with the public system of rules' [32]

Rawls considers that as long as those rules are drawn up under fair conditions, nobody needs to or can question the material outcome of their implementation. They are rules which have been agreed on in a situation where circumstantial pressures have no influence, and therefore cannot be changed simply because uncomfortable individual

instances are brought to bear on them.

> 'Neither principle applies to distributions of particular goods to *particular individuals who may be identified by their proper names*. The situation where someone is considering how to allocate certain commodities to needy people who are known to him is not within the scope of the principles. They are meant to regulate basic institutional arrangements.' [33]

Rawls is quite clear about the role which pure procedural justice has to play when it comes to equality of opportunity.

> It is evident that the role of the principle of fair opportunity is to ensure that the system of co-operation is one of pure procedural justice. Unless it is satisfied, distributive justice could not be left to take care of itself, even within a restricted range. [34]

His acknowledgement of circumstances where, for example, a few jobs are applied for by hundreds of people is based on the hope that from within the context of existing institutional injustices there will be a *realization* that the Difference Principle can come to the rescue.

> 'In this complex of institutions which we think of as establishing social justice in the modern state, the advantages of the better situated improve the condition of

> the least favoured. Or when they do not, they can be adjusted to do so, for example by setting the social minimum at the appropriate level. As these institutions *presently exist* they are riddled with grave injustices. But there presumably are ways of running them compatible with their basic design and intention so that the difference principle is satisfied consistent with the demands of liberty and fair equality of opportunity. It is this fact which underlies our assurance that these arrangements can be made just.' [34]

As much as Rawls wants to be rid of 'grave injustices' he is equally sure that the Difference Principle, in the context of pure procedural justice, cannot be used to provide answers about specific problems of allocation.

> 'If it is asked in the abstract whether one distribution of a given stock of things to definite individuals with known desires and preferences is better than another, then there is simply *no answer* to this question. The conception of the two principles does not interpret the primary problem of distributive justice as one of allocative justice.' [35]

Given this, Rawls' inclusion of a social minimum feels like an afterthought for the purpose of prohibiting the most extreme effects of injustice as experienced in the modern world. The social minimum bears no relation to his main theme of pure procedural justice even though it is about allocative rather than distributive justice. In passing, he

suggests that in the real world there can be no absolute equality of opportunity because of the varying influence which families have on the aspirations of their children.

> 'If there are variations among families in the same sector in how they shape the child's aspirations, then while fair equality of opportunity may obtain between sectors, equal chances between individuals will *not*'. [36]

Rawls suggests that we should not be downcast by such differences, persuading ourselves that if it were not for the underlying structure of justice we would in fact be worse off with little hope of improvement.

> 'We are more ready to dwell on our good fortune now that these differences work to our advantage rather than to be downcast by how much better off we might have been had we had an equal chance along with others if only all social barriers had been removed. The conception of justice, should it be truly effective and publicly recognised as such, seems more likley than its rivals to transform our perspective on the social world and to reconcile us to the dispositions of the natural order and the conditions of human life.' [37]

The heights of Rawlsian optimism come into play when, in an attempt to surplant the utilitarianism which concentrates on the current distribution of resources, he is forced into saying that individuals *will* see the merits of deferred gratification. His optimism is perhaps highlighted by the intellectual gymnastics required to follow his argument.

Certainly anyone living in an area of high unemployment would be unlikely to comfort himself with the thought that things could be worse, even though there was no realistic prospect of getting a job. Yet Rawls clearly states that the public recognition of the Difference Principle from within a context of grave injustice[34] will cause us to view the future with an assured sense that things will improve.[37] A possible explanation emerges as to why the idea of a social minimum was not built into the Difference Principle as decided upon in the original position. Distributive justice is the central force required to keep inequality within acceptable bounds and consequently to have a social minimum as a necessary insurance against any possible manipulation of the Difference Principle, undermines the principle itself.

Rawls' emphasis on pure procedural justice is fundamentally to do with equating fair equality of opportunity with the *principle* that any change in the distribution of material assets should favour the least advantaged. In this sense, there is very little difference between the first part of the Difference Principle and the second; equality of opportunity is defined as being open to all, *because* everyone 'originally' took part in defining the rule that changes in resources would always benefit the least advantaged. He is left with a conception of fair equality of opportunity which primarily tallies with the original conditions under which the Difference Principle was drawn up.

Once agreed on, the principle would stand even when the true position of individuals in the real world was revealed. The idea that an immediate assessment of the way resources and opportunities are distributed should take place in order to decide whether conditions of fair equality of opportunity *currently exist* is not part of the Rawlsian concept of fair equality of opportunity. He puts it in this way:

> Infringements of fair equality of opportunity are not justified by a greater sum of advantages enjoyed by

> others or by society as a whole. The claim *(whether correct or not)* must be that the opportunities of the least favoured sectors of the community would be still more limited if these inequalities were removed.[38]

Rawls here is suggesting that inequalities can be sustained through the claim that things would be worse for the least advantaged if existing inequalities did not obtain; and not just that, but sustained regardless of whether such a claim is true or not. This philosophical rationalization of 'Better the devil you know, than the one you don't' has little appeal, and even less conviction. The main bias of the Difference Principle is towards the least advantaged in society being content with their lot, knowing that if the Difference Principle underpins the institutions of society the *chances* of improvement must eventually turn in their favour.

> 'Now to be consistent with the priority of fair opportunity over the difference principle it is not enough to argue, as Burke and Hegel appear to, that the whole of society including the least favored benefit from certain restrictions on equality of opportunity. We must also claim that the attempt to eliminate these inequalities would so interfere with the social system and operations of the economy that in the long run anyway the opportunities of the disadvantaged would be even more limited. The priority of fair opportunity, as in the parallel case of the priority of liberty, means that we must appeal to the *chances* given to those with the lesser opportunity.' [39]

The notion of 'chance' helps to make the Difference Principle advisory rather than prescriptive. I have already pointed out that the idea of pure procedural justice for Rawls provides the rule that any increase in inequalities should involve some benefit to the least advantaged. This rule is defined for application to institutions from a general point of view, and has no application to how resources should be divided up *now*. Because it has no prescriptive application to current questions of allocation and opportunity, the notion of the 'best bet' for the least advantaged is underpinned by the thought that the conception of justice originated in neutral territory. Therefore its inspiration should allow citizens, including the least advantaged, to remain unshaken if they are asked to endure hardship for the sake of future gain.

Supposedly, given the rider in the second principle concerning open positions, and the principle of liberty generally, the greater expectations allowed to entrepreneurs encourages them to do things which raise the long term prospects of the labouring class. Their better prospects act as incentives so that the economic process is more efficient, innovation proceeds at a faster pace and so on. Eventually the resulting material benefits spread throughout the system and to the least advantaged. I shall not consider how far these things are true. The point is that something of this kind must be argued if these inequalities are to be just according to the Difference Principle. [40]

Even when there is agreement to allow inequality for the sake of greater overall benefit there is no procedure within the context of the Difference Principle which describes the fairest way of achieving that benefit. Economic efficiency and growth in industry require predictive capacities in the forecasting of future market trends, and perceptions of which products are likely to be in greatest demand. Forgetting the wider issues of 'wasted' resources and the social costs of maintaining unemployed persons and their families, if management and the workforce agree to aim for efficiency, there are *different* options as to how that efficiency can best be achieved; if it means, for example, a

reduction in labour costs, different *entrepreneurial* options as to *who* and *how many* become redundant have to be considered. The Difference Principle advises us that we *try and find* the fairest way, but does not specify how it should be done. Brian Gould puts it like this:

> 'Compliance or otherwise with the difference principle would have to be decided, in principle, by measuring an actual outcome, not against other practical situations, but against a virtually limitless number of other hypotheses. This dealing in hypotheses creates obvious difficulties in reaching any agreed assessment of the merits of a particular arrangement.' [41]

Justice as Fairness allows individuals to pursue self-interest, but only as citizens who have a moral conception of society's institutions.[3] Selfishness, or that which ignores the plight of the disadvantaged, is not admitted to the scheme. However, without providing specific prescriptions for fair procedures, the Difference Principle allows, by default, the possiblity that justifications based on the principle can also *conceal* acquisitive aspirations which ignore the least well off. As long as attempts are made to persuade the disadvantaged that they will benefit in the long run, the question of whether such benefit actually materializes can be left to fortune.

Rawls' psychological test as to whether citizens are genuine in their conception of justice is coined in terms of the distinction between illegitimate and excusable envy. The test is framed so that the less well off have to justify why they feel envy.

> In addition to showing that a person's conception of justice is not itself founded on envy, we must determine

> whether the principles of justice cited in his explanation are sincerely held as this is shown in their being applied by him to other cases in which he is not involved, or even better in which he would suffer a loss from their being followed. [42]

It is not difficult to see how Rawls would apply the same test to the advantaged and well off in society. The test of whether their motives were based on self-interest which took the claims of the disadvantaged into account, or on selfishness which did not, would be based on asking them hypothetical questions about their own attitudes if they themselves were disadvantaged. Would they be prepared to suffer loss, knowing that the overall scheme of justice would eventually bring lasting benefit if they were in a disadvantaged position? For the well-off entrepreneur to answer 'yes' to such a question is in fact no test of the sincerity of his motives, because, as I have already said, the general nature of the Difference Principle allows citizens the opportunity to conceal selfish motives, whilst claiming to serve the conception of justice. Rawls' test does not overcome that problem, because once the nature of the questioning, namely asking the person to put themselves in a hypothetical situation, becomes known, the process of inquiry itself becomes open to manipulation.

The shallow quality of testing the sincerity of those who espouse inequalities acceptable to the Difference Principle, reveals Rawls' optimism that the self esteem of the disadvantaged can be preserved. The disadvantaged should maintain their self-respect because,

> 'no-one supposes that those who have a larger share are more deserving from a moral point of view'. [43]

Even if, to quote,

> 'a person's lesser positions as measured by the index of primary goods may be so great as to wound his self-respect',[44]

Rawls concludes

> 'that the principles of justice are not likely to arouse excusable general envy (nor particular envy either) to a troublesome extent'. [45]

His belief that the general conception of justice can overcome temptations towards large scale envy is a demonstration of his fundamental allegiance to the impartiality of the original position. That impartiality provides the chief source of motivation from which the vast majority of citizens derive their strength and stability. Curiously from within that impartiality comes a principle of inequality which at first provides the incentive for a greater net wealth, but then eventually becomes insignificant as liberties resume their rightful superiority. What is not taken account of is that inequalities existed prior to the Rawlsian formulation of deliberative rationality (or as I have said, impartiality) and that those inequalities were and are in part due to already existing 'grave injustices'.[34] To hope for a change of heart by the perpetrators of such injustices through a conversion to the good sense of deliberative rationality seems a little optimistic. Certainly the victims are left with nothing more than an intellectually purified form of encouragement as the hoped for means of change. To be left with a principle which itself is open to manipulation, and which does not contain a prescriptive remedy is tantamount to being left with a sophisticated form of rhetoric. Pure procedural justice is not a sufficiently powerful force to counteract the selfishness which perpetuates the grave injustices

existing outside the Rawlsian scheme. This is the weakness which prevents the self-respect obtained in the original position for a sense of impartiality, from developing into a fuller sense of citizenship where the significance of material inequality is of no importance. The distribution of material means cannot be left to take care of itself in accordance with the idea of pure procedural justice,[29] because an idea which has no prescription attached to it depends on individual responses as to whether future actions will or will not be based on the intention of giving some benefit to the less advantaged. If those who perpetrate injustices decide that they do not wish to adjust their motives to the requirements of the Difference Principle, there is little the Difference Principle can do about it. Rawls himself drew up the theory within certain moral limits. The initial situation is 'fair between individuals as moral persons' who are 'capable of a sense of justice'.[46] Our problem is that we know by Rawls' own admission that the original position is 'hypothetical and non-historical',[47] and we also know that we live in a much broader moral climate than those in the original position. Being outside of the original position we have no method of purifying the motives of those who operate the social, economic and political institutions of society, and are therefore left with having to use *the entire theory as a device of representation* in attempting to find the right balance between self-interest and considering the needs of others.

## Concluding note - A moral requirement

Perhaps the fanciful hope that the Difference Principle will melt the hearts of drug dealers, callous business men, and chauvinistic employers finds its origin from the confusion inherent in the initial situation. I have already referred to the 'impartiality' which gives rise to an economic system of simultaneous incentive and mutual disinterest. Under conditions when nobody knows his own eventual social and economic position

we decide to compete for unequal rewards at the same time as saying that what happens to other people is of no real interest to us. Consequently we have no reason to be envious of them. What is unclear in the original position is also unclear in the theory as a whole and opportunities for selfish actions in the economic, political and public spheres of life remain concealed within the theory.

The remedy is, in my opinion, to do with moral intent. What are the acceptable limits of personal gain and power, and the uses thereof? A consensus on this does not have to belong to one scheme of final ends; the issue of balancing the limits of personal gain against the needs of other people is a moral issue which receives attention in many different moral codes, philosophies and religions. After all, if Rawls can claim support from 'all the opposing philosophical and religious doctrines' in what he calls 'an overlapping consensus'[4] for his own political conception, he cannot rule out a similar eventuality in respect of this vital moral issue. Obviously complete consensus is impossible, but addressing the issue is not.

It is quite possible that those in the original position may choose to promote individual autonomy and the acquisition of wealth as being much more important than considering the needs of others. The point, however, is not about the *nature* of the decision they come to; it is that they *come* to a decision about personal gain in relation to the needs of others. They would ask questions and provide answers to such as the following: Who and how many others should we consider? What particular needs should be taken into account? Would they vary according to our relation to them and how should need itself be measured?

Why are such questions not asked in the original position? After all, if we do not know our eventual social and economic positions, the degree of obligation we have or do not have towards each other must be a very live issue. Is it reasonable to suggest that we

would be satisfied in leaving the scale of inequality as an unknown, in return for there being some benefit to everyone even if inequalities were to increase? I do not think so. Yet Rawls says that the parties in the original position would be satisfied with the Difference Principle. The reason he gives is based on a presupposition. The parties in the original position, although they do not know where they themselves will end up, seem to know where the whole of society is going to end up even before it has started.

> 'When it is the position of equal citizenship that answers to the need for status, the precedence of the equal liberties, becomes all the more necessary. Having chosen a conception of justice that seeks to eliminate the significance of relative economic and social advantages as supports for men's self-confidence, it is essential that the priority of liberty be firmly maintained. So for this reason too the parties are led to adopt a serial ordering of the two principles.'[48]

How strange that people under conditions of *impartiality* in the original situation are prepared to ignore how wide the scale of inequality is because such differences will not matter in the end anyway. For Rawls' political conception of justice to become clearly definable there must be some *measurable* limit on the nature and degree of self-interest, and conversely social co-operation, permitted by the Difference Principle, and those limits must stem from the original position. Inequalities, by Rawls' own admission, set up incentives.[10] If there are no limits on inequalities, save the requirement of justifying a benefit, however small, to the least advantaged then the idea of assessing how obligated we should or should not be to each other is side stepped. The facile optimism that inequalities will lose their significance as the 'conditions of civilization improve'[49] is a misunderstanding of human motivation and simply not true. In modern British society

people are less fatalistic about their lot than they were in Victorian Britain. Conditions have improved, and with that improvement has come an increasing awareness of social and economic inequalities.

In conditions of ignorance as to one's future economic and social state, people would want to determine the level of *material* obligation required of one another before being set free to improve their own material situation without restriction. Such freedom itself could have outer limits if the level of mutual material sharing was determined in relation to the extent of inequality; as the inequalities varied, so also would the outer limits of those freedoms. Without the establishment of a moral element where self-interest is compared directly and measurably with the needs of others the Rawlsian version of the original position remains torn between 'self-determination' and 'social co-operation'. Rawls' idea that in a 'well ordered society' there is most likely a trend towards greater equality'[50] is paralysed by the refusal of the people in the original position to assess the degree of material and therefore moral obligation required of each other. The obligation referred to *is* a moral one because, as I have said, it involves balancing the limits of personal gain against the needs of others. 'Do I care if what I have makes a difference to what others have?' is a moral question regardless of what answer we choose to give.

# Chapter 3 - References


1. Rawls, J. Justice as Fairness: Political not Metaphysical
   Philosophy and Public Affairs, 1985, Vol 14, No.3 p.223
2. Ibid p.223
3. Ibid p.224
4. Ibid p.225
5. Rawls, J. A Theory of Justice
   Oxford University Press 1973, p.120
6. Ibid p.139
7. Ibid p.140
8. Ibid p.120
9. Rawls, J. Justice as Fairness: Political not Metaphysical
   Philosophy and Public Affairs, 1985, Vol 14, No.3 p.227
10. Rawls, J. A Theory of Justice
    Oxford University Press 1973 p.151
11. Ibid pp.144,145
12. Rawls, J. Justice as Fairness: Political not Metaphysical
    Philosophy and Public Affairs, 1985, Vol 14, No.3 p. 245
13. Ibid p.225
14. Ibid pp.225, 226
15. Ibid p.227
16. Plant, Lessor, Taylor-Gooby - Political Philosophy and Social Welfare, 1980,
    Routledge Kegan Paul pp.5,6
17. Rawls, J. A Theory of Justice
    Oxford University Press 1973 p.528

18. Rawls, J. Justice as Fairness: Political not Metaphysical
Philosophy and Public Affairs, 1985, Vol 14, No.3 p.241
19. Ibid p.225
20. Rawls, J. A Theory of Justice
Oxford University Press 1973 p.214
21. Ibid p.33
22. Ibid p.587
23. Ibid p.408
24. Ibid p.409
25. Ibid p.422
26. Ibid p.423
27. Ibid pp.264, 265
28. Ibid p.565
29. Ibid p.545
30. Ibid p.92
31. Ibid p.86
32. Ibid p.88
33. Ibid p.64
34. Ibid p.87
35. Ibid p.88
36. Ibid p.301
37. Ibid p.512
38. Ibid p.302
39. Ibid pp.300, 301
40. Ibid p.78
41. Gould, B. Socialism and Freedom
MacMillan, October 1985, p.84

42. Rawls, J. A Theory of Justice
Oxford University Press 1973 p.540

43. Rawls, J. A Theory of Justice
Oxford University Press 1973 p.536

44. Ibid p.534

45. Ibid p.537

46. Ibid p.12

47. Rawls, J. Justice as Fairness: Political not Metaphysical
Philosophy and Public Affairs, 1985, Vol 14, No.3 p.236

48. Rawls, J. A Theory of Justice
Oxford University Press 1973, p.545

49. Ibid p.542

50. Ibid p.544

# Chapter 4

# Freedom

It could be said that if citizens became more aware of how the quality of their own lives affects others, then such awareness would inevitably filter through to the political choices they might wish to make; and because political success is dependent on public opinion, the democratic process would eventually respond.

Now this might look like an appeal to a sort of 'scientific compassion'; that because an argument for moral awareness can be given a sharp profile, such awareness will be the intellectual stimulus to bring about a more profound sense of community. Such appeals are often appeals to the values which the writer considers to be the most important, and once this is acknowledged philosophical argument turns unmistakably into idealism. Rawls' 'social union' seeking 'the values of community', Singer's elevation of reason as the arbiter of ethical life, and Hume's suggestion that rules defining ownership create near perfect harmony are all examples of idealism gaining the upper hand over philosophical argument. I cannot see how this can be avoided, if an understanding of what social life is and should be is to be an appropriate subject matter for philosophical investigation. Misconceptions perhaps occur when philosophers do not recognise that they are using their own philosophical skills as stepping stones for publicly affirming

what they believe to be important. Perhaps all they should claim is that valid philosophical argument provides a particular type of support for the value or belief which is being written about, allowing for broader discussion of why those values might or might not be important.

Notwithstanding any dispute about the status of any such appeal, there is a much greater practical philosophical problem to be faced before the ideas of personal moral awareness, and the political conception can be integrated. It is simply this; we do not all agree on what the limits of self interests in relation to the needs of others should be; therefore how can we ever reach agreement on how such an idea can be embodied into the common political conception (always assuming there is one, as Rawls does)?

To ask what the moral strength of a particular community is, is to ask what the bonds between the members of that community mean in relation to the other goals and aspirations which are held to be important; it is not, at least in philosophical terms, an assessment of whether the individuals who make up the community are 'good' people who have managed to quell their anti-social instincts. Such evaluation is relevant to religious and humanist enquiry but seems superfluous to philosophical enquiry if all one can do is to add up the quota of 'goodness' and weigh it against various socially and psychologically destructive elements; producing what might be euphemistically called a 'rational equation' of how well society is doing is something which has an immediate implication for the political arena, but in philosophical terms it presupposes a certain interest in social cohesion which might not necessarily be there. The presumption of a community suggests that all its members think and react within a *particular* range of expectation, which by its own limits defines that particular community. The more anonymous and fragmented a society becomes, the less the label of 'community' applies, and the need for procedural regulation of individuals and small groups increases.

> 'On a market theory of politics participation appears to the citizen as a cost that he incurs in gaining for himself some part of those private goods in the enjoyment of which his happiness consists.
>
> Participation accounts on the other hand regard.....such participation as a gain to the individual in that it hopefully increases his self -awareness, strengthens his sense of belonging to a community of moral equals and increases his sense of rational mastery over the environment.' [1]

Alan Ryan's argument is principally that the 'participant' and 'market' accounts reflect, 'two different images of human nature' which cannot be reformulated into a single conception of political life. When such conflicting priorities exist within the same society, the motives and values which lie behind those priorities must also be very different. Assessing the moral strength of such a society as a whole will inevitably lead to some kind of procedural justice whereby such incommensurable attitudes can be mutually tolerated. Toleration as Rawls describes it is a political conception based on a combination of privacy and autonomy whilst tolerance is a moral quality where personal ties are maintained despite radical differences in outlook and achievement. The two are not the same, and the former is the one which is theoretically capable of supporting the political ideal of liberal democracy, in which contradictory philosophies are allowed to press their respective claims under certain conditions. Rawls puts it like this:

> 'Thus liberty and the worth of liberty are distinguished as follows: liberty is represented by the complete system of the liberties of equal citizenship, while the worth of liberty to persons and groups is proportional to their

> capacity to advance their ends within the framework the system defines'. [2]

It seems that before we can even start to look at the relation between individual motivation and the moral content of a political scheme, the requirement that society should allow for varying outlooks, religious and political attitudes already means that the ties between the members of a society are formal and procedural unless spontaneous action, kinship or tradition dictate otherwise. A free society by means of its political system cannot instruct its members to stand in any particular *moral* relation to one another. If their taxes are used to support the weak and infirm, it is because a combination of political and administrative forces have decided on what the minimum standard should be in that society. It is not a condition of moral association whereby members of that society stand in any sort of moral *obligation* to each other. They are strangers who play by the same set of rules, and they should stay as strangers under the political system so they are free to combine if they wish and free to abstain from any direct contact if that is their preference.

The crucial and difficult word is freedom; crucial because it seems that freedom has to assume pre-eminence over moral association for no other reason than because moral association should be a voluntary and not a compulsory state; difficult because the word freedom can imply different conditions. Freedom from constraint is not synonymous with permission or freedom to act. I may be legally and politically free to participate in the democratic process, but constrained by intellectual limitation, pressure of work or a low income. If I feel hampered in a quest to exercise political freedom, I will not think of freedom just in terms of what I am constitutionally and legally *allowed* to do. I will also link it with the constraints of my own personal circumstances, and therefore the *idea* of freedom becomes intertwined with the idea of opportunity. Take an extreme example. In famine ridden Ethiopia there is presumably no law which prohibits the study of

classical music. However, the reason why there are no great talents in classical music emerging from that part of the world is because the opportunities for the appropriate studies are simply not there. There is freedom to learn music but no opportunity to do it. For such a freedom to become operative there would have to be some kind of social or political agreement to make the relevant resources available; namely teachers, instruments, schools, music. The obligations *between* people therefore have direct relevance for the kinds of freedom which are allowed within a social group, or more generally a society. In the making of such obligations the *awareness* that political intent can also be mixed with moral intent will have a bearing on the degree and quality of those obligations.

The argument of this chapter is that in assessing one set of freedoms against another, it is impossible to avoid the context of wider cultural obligations within which any functioning freedoms are able to operate. Freedom in other words is not a password which relegates social obligation into being a dispensable commodity. It is an aspect of individuality which fits in to a context of social relationships. What the level of those relationships are, and to what extent they should limit individual freedom is an open question. The point I want to make is that to argue for a freedom or set of freedoms without considering the social context in which that freedom or freedoms has play is theoretically untenable.

## Freedom and Community

I want to discuss some of the ways in which individuals put their thoughts together, and look at the implications of how those ways might affect the choices they make; choices

which in particular reflect the closeness or distance they wish to experience between themselves and other members of society

Is there such a thing as absolute freedom, a state where nothing impinges on an individual's consciousness and functioning? In Chapter 2 I argued that mankind's ability to adapt to particular environments depended on the ability to think, and that ability itself could not function outside a social context.* The argument suggested that human beings could not be entirely free from one another, and were committed to experience some sort of social contact. On a purely practical level a new born baby cannot survive without some sort of parental attention. We have to be influenced by our parents or guardians at a very young age whether we like it or not. Although existentialists and transcendentalists expound a philosophy of absolute freedom, they do not have any commitment to leaving new born babies unattended. The existentialist seeks to 'cut the painter to our own culture and invent or create new values'[3] If we are to 'cut the painter' there has to be something to *cut,* and that presumably is the sum of cultural influence which we cannot escape.

Also the transcendentalist:

> 'I have to realise that there is nothing whatsoever for me the existential being, for there is no such thing as a self which is a permanent identifiable entity. I, whilst I am alive, think and speak and act .... I have to grow out of separative self-consciousness into unitarily whole consciousness'[4]

* Winch's argument.

The influence here is of a temporary self, something out of which the individual has to *grow*. There is no suggestion that he or she can avoid growing into it in the first place. The Hindu Scriptures, the Bhagavad Gita also echo the realisation that the self is part of experience, even if it is temporal and finite.

> 'Arjuna asked: My Lord! Who is God and what is Nature; What is Matter and what is the Self; what is what they call Wisdom, and what is worth knowing? I wish to have this explained. Lord Shri Krishna replied: O Arjuna! The body of man is the playground of the Self; and that which knows the activities of Matter, sages call the Self
>
> Desire, aversion, pleasure, pain, sympathy, vitality and the persistent clinging to life, these are in brief the constituents of changing Matter.'[5]

It seems that even those philosophers and religions who venerate absolute freedom describe it as a pathway *out of* a context of cultural and human association.

The dilemma as to whether humans are blank, characterless entities at birth or whether they inherit certain traits and dispositions is an issue which interests socio-biologists as well as transcendentalists and existentialists.

Mary Midgley is very scathing of John Watson's declaration that man has no instincts.[6] She says this:

> 'Not only do people evidently and constantly act and feel in ways to which they have never been conditioned, but the very idea that anything so complex as a human being could be totally plastic and structureless is unintelligible. Even if - which is absurd - people had no tendencies but the general ones to be docile, imitative, and mercenary, those would still have to be innate, and there would have to be a structure governing the relations among them'[7]

Mary Midgley is keen and successful in showing that genetic factors, cultural and environmental influences are *all* elements which combine in the human species, as they do to one degree or another in other species, (some species concentrate on a mix between genetics and the environment, rather than culture).

> 'Sensible psychologists have accordingly tended more and more to admit that people do have some genetically fixed tendencies. What makes this admission hard, however, is the very strong impression still prevalent that we have to *choose* between considering these tendencies and considering outside conditions, that we must be either loyal innatists or faithful environmentalists. This polarization seems much like holding that the quality of food is determined *either* by what it is like when you buy it *or* by how you cook it, but not both.'[8]

Midgley is not suggesting that innate qualities and particular habits dictate the whole spectrum of human behaviour, only that such inherited traits do exist in different species.

'The power to read expressive movements and gestures is not acquired by conditioning, it is innate.'

She quotes a study by Eibl-Eibesfeldt:

'Rhesus monkeys isolated from birth prefer pictures of their own species which are projected on to the walls of their cage to other pictures. They emit contact sounds, invite them to play, and when the projection is switched off quickly learn how to project these pictures for themselves by pressing a lever.'

Midgley continues:

'The same sort of thing is clear in the response of a human baby, when only a few weeks old, to a smile, or even to the picture of a smile, and to other facial expressions and tones of voice, including unfamiliar ones .... They have a versatile power of responding across the whole range of expressions and movements typical of their species. The development of this is delayed somewhat while their sense and their motor co-ordination are coming into play.... What makes the change is simply the maturing of the faculties; hard experience is not necessary, and will not work if the baby is not maturing properly'[9]

Now the purpose in quoting this is to show how from such beginnings a range of responses develops appropriate to the species in question.

> 'Everyone starts as a receiver since this is the situation of every baby in a social species. And a receiver must not stop at a mere standard passive reaction, such as taking cover. He must become aware of the nature of feeling being expressed. This is the only way in which he can become educated in the range of response necessary for his species.'[10]

Midgley's point is that we choose *within* a range of alternatives appropriate to our species. 'Culture is necessary to make rational choice possible. It is the condition of freedom.'[11] She is not suggesting that human beings have only *one* culture, but that the range of cultures add up to a particular spectrum of feeling, reason and aspiration which is peculiar to the human species. It is not a closed spectrum but it does exhibit characteristic traits.

So where does this leave the notion of freedom? So far I have tried to show that the notion of absolute freedom is untenable, certainly from the point of view of the socio-biologist, and also from the most extreme religious and existential philosophies. Taking this into account the pertinent question about freedom is not 'How much freedom can I obtain from the range of available alternatives? but, 'what is the relation between the culture I live in (or would like to live in) and the area of self-mastery I want for myself? In other words where does individual freedom start and where does it stop?

You might wonder what I mean by freedom "stopping". Take the following passage from Berlin. He says:

> 'no society is free unless it is governed by at any rate two interrelated principles: first, that no power, but only rights, can be regarded as absolute, so that all men, whatever power governs them, have an absolute right to refuse to behave inhumanly; and second, that there are frontiers, not artificially drawn, within which men should be inviolable, these frontiers being defined in terms of rules so long and widely accepted that their observance has entered into the very conception of what it is to be a normal human being'.

He gives some examples:

> 'When a man is declared guilty without trial, or punished under a retroactive law; when children are ordered to denounce their parents, friends to betray one another, soldiers to use methods of barbarism; when men are tortured or murdered, or minorities are massacred because they irritate a majority or a tyrant.'[12]

This sounds and is indeed a *minimum moral code* which Berlin asserts is the inheritance given to all normal human beings. Rawls also draws a distinction between social agreement and the pursuit of individual ends. The initial situation from which the principles of justice are determined 'is fair between individuals as moral persons, that is,

KENT TEMPLEMAN LIBRARY UNIVERSITY

as rational beings with their own ends and capable I shall assume of a sense of justice.'[13]

Now any representative citizen, to use Rawls' term, who wishes to circumscribe the area over which he *alone* is master (self mastery is Berlin's notion of positive freedom) has also to ask what kind of stability, whether moral, political, economic or social he wishes to underpin his span of liberty. That is, in addressing the question 'how much liberty do I want?' I am at the same time, at least in logical terms, asking what type of society or group do I want to live in, or to use Midgley's broad expression, what is the culture I want to live in?

> 'Aspiring to be free from any culture is in one way like trying to be skinless (our skin does indeed come between us and the world - but it is what makes it possible for us to touch it). In another way it is like trying to be nowhere. And of course restriction to single place *is* a restriction; it stops us from being elsewhere. But being in any other particular place would do the same.'[14]

I may wish to have the freedom to spend my money as I wish, or I may seek artistic freedom to paint or write whatever I want. In these contexts without money or art, freedom would be a distant and unrelated idea, bearing no relation to the concept of self-determination. It is in the settling of the range of activities and attitudes which are amenable to the concept of freedom, that a balance between the 'taken for granted' and 'personal choice' is formed. Some cultures contain a greater degree of agreement than others as to what that balance itself is. For instance, to quote Midgley again, Western culture is 'not a single culture but a debating ground, not a monolith but a fertile confused jungle of sources - Greek and Roman and Jew, Celt and Viking, Arab and

Slav, Indian and American.'[15] This does not necessarily imply that there can be no recognition of such differences within a society. Rawls' conception of political justice is just one such attempt to describe the mix of different views that can be tolerated in a single society. He describes a culture where intelligible alternatives are tolerated. In the more 'democratic' cultures freedoms can grow out of a commonly acknowledged cultural and political framework, either fluently or in the face of opposition whereas in more autocratic and dictatorial societies such differences are more obviously repressed.

Berlin refers to the range of freedoms within a culture when he points out that positive and negative liberty are not the same thing. Positive freedom is about the quality of self-determination which is needed if freedom is to be genuine while negative freedom is about the *proportion* of one's life open to individual freedom. The extent of this proportion is determined through the political system.

'Should', he says, 'democracy in a given situation be promoted at the expense of individual freedom?'[16]

By linking democracy and individual freedom as being *in relation to one another* he is recognising that individual freedoms can impinge on the democratic process if they are not restricted to some extent. He refers to it in terms of a conflict between two types of liberty.

> 'If the claims of two types of liberty prove incompatible
> ... it is better to face this intellectually uncomfortable
> fact than ignore it.' 17

Imagine the following: I am a hill farmer on a low wage and I have to spend all my time and energy working to support my family. There are a great many political and

economic questions which affect my farm and income, but I cannot leave the farm for long enough to get sufficiently involved in the political aspects of my life.

This example provides an illustration of such a conflict. If the farmer wants to take part in the political processes which will influence his livelihood, and is compensated through the tax system for the time spent so doing, positive liberty is increased at the expense of negative liberty. Positive liberty is increased because people like the farmer are able to play a greater part in determining their own futures, whilst negative liberty is decreased because citizens have to pay more in taxes to enable this to happen and consequently control a lesser proportion of their incomes. If the farmer has an increased opportunity to influence his own life the taxpayer has less opportunity to determine how to spend his income after tax. Admittedly the new opportunity for the farmer to participate in a political process that has direct bearing on his own future is also an increase in his own negative liberty and therefore the equation is also about competing types of negative liberty in the sense that increased political influence for the farmer means a decrease in economic scope for the taxpayer including the farmer himself. The expansion of the farmer's positive freedom, however, (increasing the sense in which he feels master of himself) is made at the expense of somebody else's negative freedom (the non-involved taxpayer) and the uncomfortable clash between positive and negative freedom has to be faced.

The fact that the competition between these claims can only be settled through the political process, implies that individual voters are being asked to make a judgement as to what the *minimum* level of political and social involvement for *any* citizen should be. This is a judgement about the nature of society in the sense that the representative citizen is having to question how involved he wants to be in the lives of other representative citizens.

I argued in the chapter on Rawls that no clear judgement was made about the type of involvement citizens wanted to have with each other, in relation to the *degree* of political and social involvement they wanted in society. Simply to equate the sense of justice with the idea of procedural justice misses the point as to how much involvement each citizen *wants* with other citizens. Of course people *vary* in their opinions about this, but the representative citizen in the initial situation had too narrow a view of institutional justice because he or she did not build in a mechanism to account for *changing* tastes as to how closely or how far apart citizens might wish to be involved with each other.

It is not settled by Rawls' statement[29] that freedom of thought should not be sacrificed to the freedom to participate. Vetoing the debate as to how involved with each other citizens wish to be is itself a restriction on the freedom of thought which Rawls seeks to promote. John Stuart Mill has this to say:

> 'However unwillingly a person who has a strong opinion may admit the possibility that his opinion may be false, he ought to be moved by the consideration that however true it may be, if it is not fully, frequently and fearlessly discussed, it will be held as a dead dogma not a living truth.'[18]

Mill summarised his whole approach when he said 'we can expect no fresh start until we assert our mental freedom.'[19]

Suggesting that the question 'how much self-mastery, freedom and self-determination, do I want?' is linked to 'what type of society do I want to live in?' might seem self-evident because 'freedom' and 'obligation' are naturally in opposition as ideas. When we look at our experience of freedom, we are seldom *at the same time* evaluating

the type of society we would like to live in, apart from saying we want a society that allows us the freedom we enjoy. Once we realise that a society which tolerates different freedoms and varying lifestyles needs a cohesion of some kind to allow those freedoms to operate, the question of whether that cohesion is more of a procedural agreement than an opportunity for communal participation becomes a live issue. It is in the settling of what that cohesion should be, that participants in the political process need to consider more than the freedoms and opportunities they want for themselves. Those freedoms do not exist in a cocoon. The kind of social fabric from which they arise cannot be left to take care of itself. Tolerating different sets of freedoms is about more than setting out the ground rules for their formal co-existence. It is also about determining the level of social involvement and co-operation which people want; and however far apart or close to each other they wish to be *is* an expression of some of those freedoms. The overall aggregation will of course be a politically processed compromise, but each individual still has the freedom to decide what he feels and contributes to the political process on the basis of those inclinations.

As far as Mill was concerned open debate did not imply agreement between all rational people; he had a more humble approach to discovering truth based on human fallibility.[20] He did not even consider general agreement to be healthy.

> 'In politics, again, it is almost common place, that a party of order or stability, and a party of progress or reform, are both necessary elements of a healthy state of political life....
>
> Each of these modes of thinking derives its utility from the deficiencies of the other; but it is in a great measure

> the opposition of the other that keeps each within the limits of reason and sanity.'[21]

At the beginning of this chapter I referred to the 'market' and 'participant' models of politics described by Alan Ryan. For the marketeer, participation is a cost from which benefits accrue and from which goods can be enjoyed. For the 'participant' citizen the sense of belonging to a community enhances the sense of rational mastery over the environment. As Mill suggested, each model has a criticism of the other. The market theorist might suggest that the participant account is illiberal because it prevents people from using their talents to the fullest extent. This is based on the assumption that talent will only fully grow when there is sufficient incentive. Whether this assumption is true or not, the critique is that the participant account decreases positive liberty, that is self mastery and self-realisation.

The criticism of the market theorist by the participant model is that market accounts of political economy conceal the growth of monopolies of power which cannot be broken down by small groups of ordinary citizens. Those citizens can only survive by supporting those monopolies, and they suffer a loss of felt negative freedom; that is, opportunities for enterprise of a social and economic kind.

The respective critiques show that a different model of society is implied by each theory. The market economy is procedurally orientated while the participative model implies a system where workers are involved in the whole process of production. This is not to say that *elements* of the two models cannot co-exist in the same society. The Welfare State, for example is an expression of the need to participate and the need to compete, in that it allows people to compete in an imperfect market by providing them with a minimum income guarantee.

Such compromises do exist in our society, but they are not equivalent to a kind of philosophical reconciliation which suggests that everyone is satisfied. Everyone is not satisfied, philosophers included.

> 'Unless we can develop institutional forms which foster rather than atrophy 'bands of affection' among strangers, unless we go beyond alternating welfare mixed of mothers, markets and ministries, we shall travel further down the path now strewn with increased domestic chaos, increased poverty and increased cynicism about citizenship'. [22]

The account I have given tries to show that however freedom is defined it has to fit into a surrounding culture. This is not to say that different accounts of freedom can settle on what the common cultural base should be. It is to say that any discussion about freedom also invites comment on what the underlying social fabric should be, and that such views are amenable to the political process. A clear open debate about the level of social cohesion from which individual freedoms stem does not mean that everyone will end up with the same view. People will always differ as to how cohesive society should be. However, society will inevitably take on a more dynamic quality if the debate is acknowledged as being politically relevant.

## Freedom: Whose Definition?

In my introductory remarks I suggested that it is possible to be free to participate in politics because no law prevents us from doing so, but be restricted from doing so by physical, intellectual and material conditions. Such material and physical disadvantages

can be thought of as conditions 'affecting the *worth*'[23] of liberty and not liberty itself. When this is the case the ideas of constraint and opportunity are applied to the notion of freedom rigidly. Using these criteria we are constrained by law not to commit terrorist acts, but are free and have opportunity to participate in political activity. In this latter case the limit on freedom (ie stopping terrorism) is designed to promote the maximum equal distribution of political liberty throughout the population. Rawls says this:

> 'All the liberties of equal citizenship must be the same for each member of society'.[24]

His distribution of equal liberty, however, is *procedural* and not open to the empirical investigation of whether citizens are in a position to take *equal advantage* of their *equal liberty*.

> 'The inability to take advantage of one's rights and opportunities as a result of poverty and ignorance, and a lack of means generally is sometimes counted among the contraints defintive of liberty. I shall not however say this, but rather I shall think of these things as the *worth* of liberty the value to individuals of the rights that the first principle (liberty) defines'. [25]

Rawls makes a clear distinction between the principle of liberty and its worth when applied to various circumstances. What is at issue is not just the definition of liberty but also what can properly count as a constraint against the use or abuse of freedom. If, to use my first example, lack of intelligence and low income prevent me from taking an active part in the political processes, are these constraints which stop me enjoying freedom or which prevent me from experiencing an adequate level of educational

opportunity and material benefit? In other words, does the constraint apply to freedom or to social justice?

I want to approach this by first describing Rawls' definition of liberty and then applying Berlin's justification of why liberty should be confined, in its definition, to boundaries circumscribed by legislation, rather than social and material disadvantage.

> 'The general description of liberty . . . has the following form; this or that person (or persons) is free (or not free) from this or that constraint (or set of constraints) to do (or not to do) so and so'. [26]

Rawls goes on to define constraints as ranging from

> 'duties and prohibitions defined by law to the coercive influences arising from public opinion and social pressure.' [27]

It is important to point out that this is a discussion about what liberty is, rather than what quality and type of liberty a *good* society should foster. Isaiah Berlin justifies the limit of what a legitimate constraint on freedom is by suggesting that *coercion* and not *incapacity* is the appropriate measure.

> 'Coercion implies the deliberate interference of other human beings within the area in which I could otherwise act. You lack political liberty or freedom only if you are prevented from attaining a goal by human beings. Mere incapacity to attain a goal is not lack of political freedom.

> This is brought about by the use of such modern expressions as 'economic freedom' and its counterpart 'economic slavery'. It is argued very plausibly, that if a man is too poor to afford something on which there is no legal ban - a loaf of bread, a journey round the world, recourse to the law courts - he is as little free to have it as he would be if it were forbidden him by law. If my poverty were a kind of disease which prevented me from buying bread, or paying for the journey round the world or getting my case heard, as lameness prevents me from running, this inability would not naturally be described as a lack of freedom, least of all political freedom. It is only because *I believe* that my inability to get a given thing is due to the fact that other human beings have made arrangements whereby I am, whereas others are not, prevented from having enough money with which to pay for it, that *I think* myself a victim of coercion or slavery. In other words, this use of the term depends on a particular social and economic theory about the causes of my poverty or weakness. If my lack of material means is due to my lack of mental or physical capacity, then I begin to speak of being deprived of freedom (and not simply about poverty) only if *I accept* the theory.'[28]

Both Rawls and Berlin adopt the line that coercion and not incapacity is the benchmark of constraint which separates issues of freedom from issues of social justice (Rawls might call this latter category the province of the Difference Principle). In the quotation from Berlin just cited, I italicised the places where the disadvantaged person believed

himself forced by others into a position of weakness where it might be very difficult to exercise the liberties and freedoms technically available to him. Of course Berlin and Rawls would be the first to admit that adequate social care is a pre-requisite to the exercise of freedom. 'What is freedom to those who cannot make use of it?[29] The giving of extreme examples of poverty and deprivation will not clear up the questions of where freedom ends and where deprivation begins, and whether the two overlap. The point is made about *whose* definition counts. Remember the hill farmer's predicament again;

I am living on a low wage, spending all my time working to support my family, and because of that I am unable to get sufficiently involved in the political issues which affect my life.

Am I being forced, or coerced into political inactivity, *or* does my inability to participate reflect my incapacity to take part in a political process in which under statute I am entitled to take part? Berlin and Rawls' definitions say my liberty is not at stake because no one, either by law, or, as Rawls states, by 'public opinion and social pressure'[30] is *deliberately* forcing me not to attend meetings. If I were to attend a political meeting, leaving my farm unattended, I would not be breaking the law. The fact that I cannot attend is to do with other issues apart from freedom.

The problem is that *I feel* that I am being given no choice. At the very time when government quotas and market forces are making it very difficult for me to survive, I am under so much pressure that I cannot have my say when I feel my voice most needs to be heard.

Whose definition should be acknowledged? The philosopher determines the limits of

procedural freedom; the farmer gives his own account of what he feels. For Isaiah Berlin this is a very serious problem because his notion of positive freedom is based on the wish of the individual 'to be his own master'. He goes on:

> 'I wish my life and decisions to depend on myself, not on external forces of whatever kind . . . I wish to be somebody, not nobody, a doer - deciding, not being decided for, self-directed and not acted upon by external nature or by other men as if I were a thing or an animal, or a slave incapable of playing a human role, that is of conceiving goals and policies of my own and realizing them.'[31]

To read this passage you might be forgiven for thinking that Berlin is referring to predicaments such as the farmer's example just given. But this is not the case. Berlin's thesis is that the wish of the individual to be master of his 'self' has been corrupted into a false (as far as freedom is concerned) ideal of the real self beyond the reach of the individual's own feelings and awareness and consequently this 'real self' has been elevated into concepts of the social 'whole' of which the individual is an aspect.:

> 'a tribe, a race, a church, a state, the great society of the living and the dead and the yet unborn. This entity is then identified as being the 'true' self which, by imposing its collective, or 'organic' single will upon its recalcitrant 'members', achieves its own and therefore their 'higher' freedom'[32]

Berlin's ideal of freedom relates to very profound limits on its exercise by reason of

self-determination. He is writing about the nature of belief, ideology and group aspirations and pointing out where they *conflict* with the idea of positive freedom, or self determination. He is not talking about material disadvantage preventing self-realisation within a community.

The problem he faces, given his original distinction between incapacity and coercion being the difference between issues of social justice and freedom, is that if the person in question *feels* he is being coerced by circumstances, who is Berlin to contradict him, particularly as his ideal of freedom is bound up with self-knowledge? It is not just a question of philosophical analysis being more precise than the lay interpretation of a concept like freedom. Berlin is well aware that many people use the term freedom in many different ways[33] and makes no attempt to satisfy all of them. His difficulty is a logical one. How can someone, who emphasises above all else the autonomous aspect of freedom, the control of one's own life by oneself, 'bearing responsibility for my choices and able to explain them by references to my own ideas and purposes',[34] then suggest that someone who claims a lack of freedom by reason of material disadvantage is misunderstanding the notion of freedom?

If Berlin's message is that freedom is misused so as to persuade people that their own thoughts and observations are mistaken, illusory and self-deceiving, he is then in difficulty if he tries to persuade the poor farmer that his idea of coercion is mistaken and his concept of freedom inaccurate. Berlin's definition of coercion suggests that proof of intent, either by law, observation or statement is necessary before the case can be proved. The farmer's experience of coercion is not so legalistic. If his plight is *visible* to the authorities and they take no action to assist him, or even take other actions which hinder him, as far as he is concerned they are *aware* of his predicament and *prefer* not to alleviate it. To the farmer that *is* coercion.

Rawls' escape from this dilemma is to refer to the Difference Principle, and although his

scheme attempts to combine equality with liberty, and social co-operation with self interest, the difficulties of interpretation and ambivalence to which I referred in Chapter 3, make his procedural account of liberty unattractive to those, who like the poor farmer, need something more immediate.

It is the procedural account of liberty which helps to create the gap between the philosopher's view and the citizen's view of what coercion really is. I have already mentioned Rawls' view that, for freedom, constraints are defined by the law or influences from public opinion and social pressure. He goes on to say:

> 'For the most part I shall discuss liberty in connection with constitutional and legal restrictions. In these cases, liberty is a certain structure of institutions, a certain system of public rules defining rights and duties' [35]

Seen in this light, liberty is not a thing to be enjoyed by citizens. It is a set of *permissions* which make no statement as to how they might be taken up. They simply refer to what the permission is and who it applies to. No wonder that there is a difference between what the farmer *feels* and what the philosopher thinks he *ought* to feel.

> 'Of course, this scheme is always to be assessed from the standpoints of the representative equal citizen. From the perspective of the constitutional convention or the
>
> legislative stage we are to ask which system it would be

rational for him to prefer.'[36]

Now underlying the representative's rationality about the system of equal liberties is the priority which matters of liberty have over matters of social and economic import.

> 'a departure from the institutions of equal liberty required by the first principle cannot be justified or compensated for by greater social and economic advantages. The distribution of wealth and income and the hierarchies of authority must be consistent with both the liberties of equal citizenship and equality of opportunity'[37]

The reason for this priority*, reveals a paradox.

> 'Now the basis for the priority of liberty is roughly as follows: as the conditions of civilisation improve, the significance for our good of further economic and social advantages diminishes relative to the interest of liberty, which become stronger as the conditions for exercise of equal freedoms are more fully realised'[38]

The importance of liberty will only come into focus when there is no significant material deprivation. However while there is such deprivation the priority of liberty must remain because of the knowledge of this future Utopian state. Liberty will be justified as being *more important* than material deprivation when there is *no* material deprivation. This is a very strange position. If I feel that my freedom is restricted through my lack of material

* I mentioned this at the end of the chapter on Rawls.

advantage, according to Rawls' I cannot say that freedom has any relation to material disadvantage, because it is inexorably placed in a superior position to questions of poverty and ignorance, and will stay there because the pecking order is based on a future Utopian state.

The problem for Rawls is that this Utopian state is based on a *relationship* between liberty and economic and social conditions; not only that, but also, and significantly so, the priority of liberty over the distribution of economic and social advantages means that Rawls' considers liberty to be more important when the two are in direct conflict and comparison with each other. If such direct evaluation is possible in a Utopian State why is it not possible in a more realistic climate? Simply to refer forward to the decision reached in the Utopian State is not good enough. If their relative merits can *in principle* be compared then, why should an embargo exist on comparing them now?

The concession that the worth of liberty may be affected by poverty and ignorance, even if liberty itself remains intact, is not a sufficient guarantee to the materially disadvantaged. For as long as the idea of liberty remains intact, their complaints about their inability to use it will be of secondary importance. On the other hand there will be philosophical concern that, if freedom is to be defined by what people feel, it will become impossible to give any genuine philosophical account of it at all. However, procedural justice does not just have to be a set of permissions for a group of persons. It would be quite possible to build in a procedure to compare the range of permissions available, with the circumstantial and material constraints which citizens felt were restricting them from taking advantage of those permissions. This would allow an evaluation of *procedural* liberty *with* felt freedom. If the gap were so great for significant sections of the population, procedural justice could allow for political and material assistance to narrow it so that the vast majority of citizens were able to exercise their liberties. To return to the example of the poor farmer:

> I may be aware that under procedural justice freedom of thought and liberty of conscience [39] are mine. I might know that I am free to think whatever moral and religious ideas I wish to, and that there are no legal restrictions against that practice[40] of whatever religious or other interests I have.
>
> On the other hand what I may wish to think about most, and what may trouble my conscience the most is the plight of my farm, family and others in similar position to me. If I cannot leave my farm to fight for my cause, then my freedom of conscience is of no use to me.

Procedural justice could, if it were to incorporate permissions and *felt* restrictions, create a system of compensation whereby people like my farmer could be compensated in kind or money for time spent participating in a practice based on the liberty of conscience. There are obviously practical difficulties in such a scheme, but the issue is about what counts as the proper definition of liberty in procedural terms. The point to be made is that material circumstances can affect the value of liberty of conscience and freedom of thought to the point where the definition of liberty itself is put in jeopardy. Therefore it makes sense to account for the differences in available permissions and felt responses by including an appropriate evaluation of the differences within the system of procedural liberty.

Such a procedure may of course mean the inhibition of certain other freedoms. If the representative citizen has to pay more in taxation so that the least well off can be compensated for time off work, or where childminding arrangements need to be provided, when they participate in the political process, the representative citizen will

necessarily experience a decrease in his or her economic freedom. This however is not contradictory to either Rawls' or Berlin's understanding of the legitimate grounds for limiting freedom. Rawls' first:

> 'When lexical order holds* (Rawls' provides no exceptions as to when it doesn't hold) a basic liberty covered by the first principle can be limited for the sake of liberty itself that is, only to insure that the same liberty or a different basic liberty is properly protected and to adjust the one system of liberties in the best way.'[41]
>
> * Lexical ordering is Rawls' expression for the priority given to liberty over the principle governing social and economic advantage.

Berlin echoes this in saying 'We cannot remain absolutely free, and must give up some of our liberty to preserve the rest.'[42] If procedural justice takes account of the *experience* of liberty as part of the formal definition of liberty, a decrease in the non-taxable income of the representative citizen is consistent with a limitation on economic liberty for the sake of liberty in general. Even writers like Hayek who are against any form of distributive justice argue that legal and administrative enforcement is necessary for the operation of the free market. Restricting liberty for its own sake has been acknowledged throughout the spectrum of political philosophy.

Although Rawls' procedural system causes many problems for individuals who are as he puts it 'caught up in the complications of everyday life'[43] he did allow the implementation of the Difference Principle to be *criticized* 'from the standpoint of the relevant respective man.'[43] There seems no reason why the basic structure of liberties

cannot be also *criticized* from a general point of view, and that general point of view should take into account the experience of liberty as well as its formal content if there is to be any valid way of *assessing* and *criticizing* the basic structure of liberties as a whole. Otherwise opportunity arises for creating a system of formal liberty which bears little relation to its exercise.

## Permission and Opportunity: Adults and Children

I want to look at two ways of defining freedom; the first way is an embodiment of Berlin and Rawls' position as described above while the second is more akin to the notion of opportunity within agreed limits that I have argued for.

(a) This is where the maximum equal distribution of freedom to inviduals is enforced, without allowing anyone to claim that they have less freedom than others by reason of a lack of resources. They are unable to claim those resources, up to a certain level from the rest of society on the grounds of a lack of freedom.

The resources required to enforce such a system are taken from the members of society, that is for a police force, courts and other relevant public bodies. They are, however, only taken for the purpose of protecting freedoms and for providing remedies when freedoms are judged to be harmed by unjustified interference.

(b) To include all the freedoms which are admitted to the above category, on the basis of a maximum equal distribution of them, but also permit claims made by individuals for material or human resources which are judged to be necessary conditions for the exercise of freedom. Certain freedoms are therefore defined as

> existing if, and only if, there are sufficient resources available for their exercise in 'reasonable' measure. The limits of such measure will be the limit beyond which resources cannot be claimed by any individual from the rest of society. Where that limit is, as far as any particular freedom or opportunity is concerned, will necessarily be decided through the political process, but the provision of some of society's wealth and human resource against which individuals can claim as part of their individual freedom, implies that freedom is about the idea of opportunity as much as it is about the granting of permissions.

Traditionally, category (a) includes the freedom of thought, conscience and religion; the opportunity to vote, participate in the democratic process, hold property and be treated fairly by the due process of law. Category (b), in addition to all of these, incorporates material and human opportunities such as the reasonable chance of getting work, living in satisfactory accommodation, and receiving a certain standard of health care, education and material provision.

I want to argue that category (b) is just as much a component of how freedom *should* be perceived as category (a), because to exclude (b) from the realm of freedom would by implication put a limitation on both the freedom of thought and the range of matters allowed into the political process. If I want to think about freedom in terms of providing reasonable opportunities for everyone to gain employment in their own regions I have to include the subject matter of (b) as part of my own thinking. Otherwise, I would only be free to think about things which had no bearing on (b). The answer may be that we are free to think about anything we like, as long as we do not imagine that we can put anything we want to think about into practice. This implication of this, to use my example, is that I may be free to think about employment opportunities in terms of 'freedom to work', but that I can never legitimately use such a term in any political context, where I might be seeking to influence policy on employment and that if I should

I can be justifiably censored for using the term irresponsibly regardless of however long unemployment in a particular area had been prevalent. Nevertheless, if I genuinely believe that longstanding unemployment is destructive to basic human freedom, I cannot be accused of *mistakenly* exercising my conscience. Conscience can be described as a belief in the moral rightness of a particular viewpoint and cannot be censured because its expression contains concepts or words which some philosophers may find invalid. Consequently, freedom of conscience must be applicable to the basic human opportunities covered in category (b), if it is to be counted as *genuine* within the limits defined by category (a). A necessary condition, both for freedom of thought and freedom of conscience, is the provision of a certain level of education as well as access to information, and this again suggests that freedoms described in category (a) are dependent to some extent on the material and human resources referred to in category (b). The consequence of my argument is that freedom has to include a level of opportunity, requiring resources of a material and human kind. The level at which such resources can be claimed from society by individuals must of course be a political and moral decision which is in turn the political property of the whole of society. My contention is that there must be a level of some kind.

Broadly speaking then, I am describing category (a) as permissions, that is permissions to do the kinds of things already mentioned, and category (b) as opportunities which require the provision of certain resources if they are to be realised. Procedural evaluations of how far apart permissions and opportunities are in any given situation prevent 'freedom' from being equated with any conceivable desire. Conversely, equating freedom with 'permission' alone carries with it the implication that breaches of liberty can only be caused to others by active interference because the giving of permission to carry out certain acts or hold particular freedoms, makes no sense if the receiver of those permissions is not capable of taking advantage of them. Interference is interference with the exercise of the capabilities necessary for taking advantage of the

available permissions. Hence, when freedom is held to be synonymous with the giving of permissions, the capability for independent action and thought by the subject is assumed.

If, however, the concept of freedom is made up of *both* 'permissions' and 'opportunities' the situation alters dramatically because to deprive someone of an essential opportunity to exercise freedom causes harm by *neglect* and not by active interference. People whose freedom is harmed by the deprivation of essential resources, are able to exercise freedom only if those resources are made up. Nevertheless, once they are made up to any individual, such individuals can once again only harm others by active interference rather than by neglect. Those who are deprived of the essential resources needed to exercise freedom can only legitimately make claims against society because it is society which determines the balance between permissions and opportunities when it comes to settling what freedom means. The consequence of this whole line of argument is that any individual in possession of the resources required to exercise permitted freedom cannot harm *another individual* through privation.

This leads to a further point and it is this particular one that provides the fulcrum between adults and children as far as freedom is concerned. It is that freedom can *only* be assumed by individuals who are already capable of independent action; that is, persons who are capable of making plans which are not impossible to fulfil, and who are able to carry them out knowing what the possible alternatives are. If essential resources are not made available what is harmed is not the person's capability for independent action, but the opportunity to *exercise* that capability. No such assertion can be made, however, in the case of children, whose capacities for independent action are *developing* capacities where no prior assumptions of competence can be made. Harm to children can be caused both by active interference, for instance by the causing of injury to, or the carrying out of an assault on a child, and also by the deprivation of essential resources,

or failure to provide. An obvious example of the latter would be the failure to provide food. It is just conceivable, though hardly likely, to imagine a parent who has sufficient food but deliberately fails to give the child any; perhaps it is easier to visualise the same parent providing an extremely meagre ration rather than nothing at all. In either case harm is caused even though no active interference is taking place.

Even though no active interference may be taking place through a failure to provide food, such inattention harms the growth of the child. The deprivation is not one which applies to an already formed capacity; it actually damages the forming of it. Providing essential resources for a child's development is not confined to the giving of food. A child's emotional maturation and social development depend heavily on how parents or guardians exercise the paternalism which falls to them as a consequence of the dependency which children have. Whether the adults involved must provide an appropriate level of stimulation, consistency and affection on a voluntary basis for such characteristics to be effective is a question which is taken up in the next chapter and has a bearing on why the concept of a minimum standard of parenting has implications for the development of capacities essential for the full enjoyment of freedom in a democratic society.

The point here is that if the balance between permission and opportunity, as far as the meaning of 'freedom' is concerned, is contestable for adults, it is not in relation to children. To remove the idea of opportunity from adult freedom might allow for freedom to be defined as the potential in any individual for independent thought and action, even if the absence of relevant resources prevent the proper exercise of that freedom; however, removing the idea of opportunity from the context of a child's developing capacity for independence and the application of that independence to a set of freedoms, actually *stunts* the developing capacity to use 'freedom' effectively. Therefore, the combination and balance between 'permission' and 'opportunity' is

crucial to any developing capacity to make use of freedom and cannot be set aside on the grounds that procedural and statutory permission preserves freedom for those who have the capacity to act independently.

# Chapter 4 - References


| | | | |
|---|---|---|---|
| 1. | Ryan A. | Two Concepts of Politics & Demōcracy: James & John Stuart Mill in Machiavelli and the Nature of Political Thought. Edited by Martin Fleisher. Croom Helm London 1973 p.112 | |
| 2. | Rawls, J. | A Theory of Justice Oxford University Press 1973 p.204. | |
| 3. | Satre, J. | Existentialism & Humanism Eyre, Methuen 1974 p.54 | |
| 4. | Mehta, P.D. | Zarathushtra The Transcendental Vision Element Books 1985 p.103 | |
| 5. | The Bhagavad Gita | Faber & Faber 1978 p.127 | |
| 6. | Midgley, M. | Beast & Man Methuen 1980 p.19 | |
| 7. | Ibid | p.19 | |
| 8. | Ibid | p.20 | |
| 9. | Ibid | pp.310-311 | |
| 10. | Ibid | p.314 | |
| 11. | Ibid | p.317 | |
| 12. | Berlin, I. | op cit | pp.165-166 |
| 13. | Rawls, J. | op cit | p.12 |
| 14. | Midgley, M. | op cit | p.291 |
| 15. | Ibid | p.295 | |
| 16. | Berlin, I. | op cit | Introduction p.xIix |
| 17. | Berlin, I. | op cit | Introduction p.i |
| 18. | Mill, J.S. | Utilitarianism, Edited by Baroness Warnock Collins, Fount Paperbacks 1979 from 'On Liberty' p.161 | |

19. Mill, J.S. op cit p.161

20. Mill, J.S. op cit p.147

21. Mill, J.S. op cit p.175

22. Skillen, A.J. Welfare State versus Welfare Society
Journal of Applied Philosophy Vol 2 No1 1985 p.15

23. Rawls, J. A Theory of Justice
Oxford University Press 1973 p.204

24. Ibid p.204

25. Ibid P.204

26. Ibid p202

27. Ibid p202

28. Berlin, I. Four Essays on Liberty
Oxford University Press 1969 pp.122-3

29. Ibid p.124

30. Rawls, J. op cit p.202

31. Berlin, I. op cit p.131

32. Berlin, I. op cit p.132

33. Berlin, I. op cit p.121

34. Berlin, I. op cit p.131

35. Rawls, J. op cit p.202

36. Rawls, J. op cit p.204

37. Rawls, J. op cit p.61

38. Rawls, J. op cit p.542

39. Rawls, J. op cit p.201

40. Rawls, J. op cit p.203

41. Rawls, J. op cit p.204

42. Berlin, I. op cit p.126

43. Rawls, J. op cit p.88

# Chapter 5

# Children's Rights

## Introductory Remarks

I have argued in Chapter 4 that 'opportunity' is an essential component of freedom. I want now to suggest that the idea of opportunity is of even greater significance for a child's developing sense of autonomy than for an adult who may have the capability to act independently but not perhaps the means. This is because for a child the absence of appropriate physical, emotional and social opportunity could stunt the growing capability for independent action beyond repair, so that even a massive input of resources later on would not counteract the full extent of the damage. If an adult has the capability for autonomy but is denied the means to act independently, in say for example, the field of employment or housing, there may be profound implications for his or her freedom as I argued in Chapter 4, but the context of such deprivation is amenable to change.

The opportunities which are essential to developing the child's capacity to act independently and to exercise rationality can be called 'freedoms relevant to the needs of children' if my account of the connection between 'opportunity' and freedom in Chapter

4 is valid. Freedom in an adult context is, amongst other things, the capacity to act independently; it is about what an individual is capable of doing. Consequently when some writers talk about freedom as applied to children they talk about children's capabilities in terms of their limitations rather than what is required for them to develop into mature agents capable of independent action. Both Gewirth and Wringe are susceptible to such criticisms and I will discuss this in more detail later on in the chapter. The balance, however, between a capacity for independent action which is developing, and one which is fully-fledged, is crucial to any applicable theory of human rights. Before addressing the issue of balance, I need to say something about independent action itself. One reason why the capacity to act independently is said to attract universal accord is because the conditions which can be constructed to create opportunities for individuals to act independently can also be applied to everybody with equal force in principle. Hence independent action can be the fulcrum on which a theory of human rights can be built, and rights in this context are universal in their application rather than specific to a particular situation or role in society.

One of the assumptions within the idea of action, is that capability is presumed so that an individual who is capable of action is more concerned about the conditions which are necessary for the exercise of autonomy than developing the capacity itself. However, if the status of an individual as a holder of a 'universal' human right *varies* according to that person's capacity for independent action, (that is, between those whose capacities are fully mature and those whose are not,) independent action, as it is described, is not the focal point from which *every person* in society can be viewed as a *universal* holder of human rights. If, as Gewirth and Wringe suggest, the rights enjoyed by children are proportionately less than those of adults, the implications for the status of children as persons belonging to that society are profound. I shall argue that there should be no difference between children and adults as persons belonging to a society, and that in a liberal democracy, universality as expressed through the notion of human rights, must

accord the same status to adults and children as right holders, even if the rights which they hold vary according to their respective needs and capabilities. This has two immediate implications.

Firstly, even if a child's life is likely to be foreshortened by illness or hampered by disability, the idea of the child's life being less worthwhile than another child's must be discarded. The alternative would be to construct criteria of physical and mental suitability, inventing a pecking order of superiority between individuals, legitimated by the political structure of the society. This has echoes of a super-breed of people and surely contravenes the principles of equality and freedom which liberal democracies seek to espouse.

Secondly, adults cannot justify the misuse of their 'paternalism' on the basis that they have more important rights than their children and are therefore superior to them. This is not to say that legitimate paternalism, justified by the need to prevent children from harming others and themselves, is unnecessary. It is simply to restrict the ambit of paternalism to actions and attitudes which are based on the child's needs in relation to his or her developing capacities.

I contend that the development of autonomy in a child is a gradual process which requires more than the provision of physical support, and emotionally detached policing to prevent self-harm. The combined stimulation, affection and control which parents exert is crucial to the growing confidence and identity of children who eventually develop a fully-fledged capacity to act independently. In justifying this view of paternalism I discuss three elements of what Gewirth calls 'unforced choice', a quality which his independent agents, who are adults, exercise under appropriate conditions which they have a right to under his scheme. I show that initiative, participation and communication are qualities which parents require in order to facilitate the proper

development of autonomy in a child who is dependent upon them. In doing so, I demonstrate that the paternalism required for developing a sense of autonomy in a growing child is a paternalism which must have a very strong element of unforced choice amounting to spontaneity, age appropriate stimulation and a general disposition of nurturing if it is to successfully engender the desired sense of self-awareness, confidence and independence.

Although such voluntariness and lovingness cannot be measured in any objective sense *while it is being expressed* by the parent, the effects of it, or more importantly of its absence can be detected through observations, of how well the child is developing. An assessment of parental attitudes can also help to support or question the results of such observations although such assessments can be jeopardised by the intrusion involved in obtaining them. Nevertheless it is possible to form a view as to whether a child's developmental needs are being properly met or not even though this is by no means an easy or clear-cut task.It is always much easier at the extremes than at the margins of 'unacceptability', however such unacceptability is defined.

The question therefore arises as to how a child's otherwise *unmet* developmental needs can be met through the notion of a right to a proper development, if the necessary parental characteristics of stimulation, emotional involvement and lovingness can only be given freely. It is not possible to demand something which can only be given freely; such a demand is a contradiction in terms. If, of course, a child's need for a suitable environment of love, care and stimulation in which he or she can develop normally cannot be demanded as of right, then the balance between the right to independent action which is fully-fledged and the right to the meeting of developmental need which is not, is uneven. As mentioned before, if this is the case, the notion of rights as allied to independent action must be questioned as a means of meeting basic human need on a universal basis especially as the status of being a person applies equally to children and

adults. However, there is a solution, and it is that the child, who as a person deemed to be a full member and holder of human rights in that society and therefore represented by an agent, has the right that the society organise a situation where appropriate care is provided. The right of the child to have such an agent, 'someone', with his or her considered interests at heart must be a consequence of having an equal status as persons with everyone else in society. The consequence of such rights, providing they are enforceable, may mean the provision of extra support for natural parents, or in some cases the finding of substitute parental figures. In saying that a child has a 'right' to loving care out of which his or her proper development can be safeguarded, the claim is not made merely against the natural or the surrogate parents. It is made against the society of which the child is a member, and which, amongst other things, acknowledges that a particular standard of parenting, as measured through the common criteria of acceptable developmental stages for children, must exist in order to allow individuals to exercise their capacity for autonomy on reaching adulthood. If society acknowledges the need for such a standard to be enforced through the political system, then the organisation of substitute care for children removed from their families, and supportive arrangements for children who remain with their families but are thought to be in need of extra help, depends on the existence of a consensus around a minimum standard of parenting. The personnel required to fulfil these tasks, like parents who appropriately exercise unforced choice in order to enhance the development of autonomy in their own children, must want to express the lovingness considered to be appropriate for children who are deemed to be in need of help. If they do not show these qualities the right of the child to be placed in a more satisfactory situation will be exercised again by the child's agent. If such a consensus is to be described as a moral consensus because of its voluntary qualities, then it can also be justified as a consensus which seeks to enhance the exercise of autonomy in the adult world, by ensuring that its proper development has been safeguarded in childhood.

The right of a child to a proper development is made out in the Children Act 1989 (please note that this Act was implemented on 14th October 1991 but all references to it are made as to the Children Act 1989).

The Act says that when a court determines any question with respect to the upbringing of a child (Section 1(1)(a)) the child's welfare shall be the court's paramount consideration. In such circumstances the court in question must have regard to the following factors (Section 1(3)):

(a) the ascertainable wishes and feelings of the child (considered in the light of his* age and understanding);

(b) his physical, emotional and educational needs;

(c) the likely effect on him of any change in his circumstances;

(d) his age, sex, background and any characteristics of his which the court considers relevant;

(e) any harm which he has suffered or is at risk of suffering;

(f) how capable each of his parents and any other person to whom the court considers the question to be relevant, is of meeting his needs;

(g) the range of powers available to the court under this Act in the proceedings in question.

* The Act uses 'his' to cover both male and female children.

In the last section in Chapter 4 I argued that a necessary condition for freedom of thought and freedom of conscience is the availability of a certain level of education. In this chapter I am going to argue, amongst other things, that satisfying children's emotional needs up to a certain level is a necessary condition for them to become free and rational agents in adulthood. The welfare of a child, according to the Children Act 1989, may be dependent on the meeting of emotional needs (Section 1(3)(b)) and, consequently, also

on the capability of parents or guardians to meet those needs (Section 1(3)(f)). Thus, not only are emotional needs fundamental in themselves as implied by the Act, but also the meeting of such needs is critical to the attainment of autonomy in thought and action.

The Act says it is the general duty of every local authority to safeguard and promote the welfare of children who are in need within their area, and, so far as is consistent with that duty, promote the upbringing of such children by their families (Section 17(1)). A child is considered to be in need if he is unlikely to achieve or maintain, or have the opportunity of achieving or maintaining, a reasonable standard of health or development without the provision of certain services from the local authority (Section 17(10)(a)). The likelihood of the same, and disability are also considered to be indicative of need.

In this chapter I am going to discuss the notion of children's rights to proper development; Chapter 6 will focus on how professional social workers view their role through the operation of child protection services, and Chapter 7 will concentrate on whether available resources can match the legal rights to reasonable development which children now have under the Children Act 1989. This Chapter will follow the pattern of these introductory remarks.

## Human Action

In my opening remarks I have suggested that universality in a liberal democracy should be expressed through all persons having an equal status as rights holders, even if their respective needs and capabilities mean that there is a variation in the particular rights which they hold. Alan Gewirth's theory of human action is an attempt to find a common denominator, namely human action, in all moralities from which a system of universal

human rights can be developed. I want to show, in this section, that his claim for universality does not tally with what he refers to as The Principle of Proportionality, where the degree to which a person can claim to have the fullest human rights available depends on their rational competence. Gewirth puts it like this:

> 'the reason for this proportionality is found in the relation between the generic abilities of action and the having of purposes one wants to fulfil. The less the abilities, the less one is able to fulfil one's purposes without endangering both one's own and others' purpose-fulfilment'.[1]

Although Gewirth makes some provisions, which I will refer to later on, for those who are not fully capable of rational planning and choosing, such as children and the mentally deficient, his criterior of equality, in terms of according full human rights to 'each person', is nevertheless a restricted one. All persons are not equal as holders of universal human rights, even though those persons who *are* capable of rational action in a purposeful and voluntary sense hold their rights equally, with no bias by reason of intelligence, race, culture or any other characteristic. This is an equality of rights for all, beyond-a-certain-point-of-capability. Gewirth puts it in this way:

> 'there are degrees of approach to being prospective purposive agents ..., but there are not degrees of actually being such agents, at least in the respect in which this quality is relevant to the justification of having the generic rights. That there are degrees of approach ... can be seen by returning to my previous considerations about children, mentally deficient persons, and lower animals. To be ... a prospective purposive agent, requires having the practical

> *abilities of the generic features of action: the abilities to* control one's behaviour by one's unforced choice, to have knowledge of relevant circumstances, and to reflect on one's purposes. These abilities are gradually developed in children, who will eventually have them in full; the abilities are had in varying impaired ways by mentally deficient persons, and they are largely lacking among animals, although some animals may have some of them in rudimentary forms.
> ... according to the Principle of Proportionality, ... although children, mentally deficient persons, and animals do not have the generic rights in the full-fledged way normal human adults have them, members of these groups approach having the generic rights in varying degrees, depending on the degree to which they have the requisite abilities'.[2]

This does not concur with Gewirth's principle moral purpose for grounding human rights in a theory about human action. He lists a number of reasons before coming to what he calls the 'ultimate purpose' of human rights.

> 'A fourth very important reason for grounding human rights in the necessary conditions of human action is that this serves to emphasise that the ultimate purpose of the rights is to secure for each person a certain fundamental moral status'.[3]

To classify normal adult humans differently from children, mentally deficient persons

and animals must radically affect the status of children in relation to adults (I am not dealing with the mentally deficient here, although some of the criticisms in relation to children must apply to them). I doubt whether Gewirth's theory can in fact secure for each person a certain fundamental moral status, if children, as they surely must, are to count as persons. Once a qualifying standard is introduced into the notion of rights, the rights are surely no longer universal, and consequently, in Gewirth's own terms it would seem that they are no longer 'human rights'. He says this:

> 'Human rights are a species of moral rights: they are moral rights which all persons equally have simply because they are human ... Since human rights have the egalitarian universality mentioned ..., the moral principle through which they are justified must also require that the interests subserved by the rights be those of all persons equally'.[4]

The problem for Gewirth is that if children have less rights than 'normal adult humans',[2] by reason of their reduced capacities for voluntary and goal directed behaviour based on a reflective understanding of the alternatives, they will also have a reduced access to the system of rights when their interests, as 'potential agents' are denied or abused.

It might be said, however, that Gewirth's Principle of Generic Consistency means that all children should be treated with equal respect even though their needs and interests are different to those of adults. First, the principle itself:

> 'Addressed to every actual, or prospective agent* it says:
> Act in acccordance with the generic rights of your recipients as well as yourself'[5]

* Normal adults are actual or prospective agents, children are potential agents.

> 'In general, the Principle of Generic Consistency requires that each person be left free to perform any actions he wishes so long as he does not threaten or violate other person's rights to freedom (by co-ercing them) or to well being (by harming them). The criteria of "harm" are quite definite. On the personal level harm consists in removing or threatenting the basic, non-subtractive, or additive goods to which all persons have rights of well-being. On the socio-political level, harm consists in violating laws that provide for these goods, including the public goods whose benefits necessarily accrue to each and all members of a territorially circumscribed society'...[6]

Gewirth defines the goods referred to in the following way:

> 'Basic rights have as their Objects the essential preconditions of action, such as life, physical integrity, mental equilibrium. Non-subtractive rights have as their Objects the abilities and conditions required for maintaining undiminished one's level of purpose-fulfillment and one's capabilities for particular actions. Additive rights have as their Objects the abilities and conditions required for increasing one's level of purpose fulfillment and one's capabilities for particular actions'.[7]

Now it seems clear that Gewirth is suggesting that as children develop, their rights to basic, non-subtractive and additive goods will grow in that order, ie basic first, then non-subtractive and finally additive; things may not be as rigid as that but it seems to

follow in general terms from his observations about the reduced capabilities of children as far as their rational competence is concerned. Now it can be argued that the Principle of Generic Consistency provides rules and guidelines which require that all children be brought up on an equal basis, and given as much freedom as befits their age and capability without prejudice. This indeed is the point that Gewirth makes in the following passage:

> 'Children are potential agents in that, with normal maturation, they will attain the characteristics of control, choice, knowledge, and reflective intention that enter into the generic features of action. A potential agent is not the same as a prospective agent, for the latter already has the proximate abilities of the generic features of action even if he is not occurrently acting. Insofar as children are not such prospective agents, they are not among the recipients whose rights to freedom the Principle of Generic Consistency requires agents to respect fully. But insofar as children are potential agents, they have rights that are preparatory for their taking on the generic rights pertaining to full-fledged agency. In keeping with these preparatory rights, the Principle of Generic Consistency requires that children be given a kind of upbringing that will enable them to become both agents who can make their behaviour conform to the Principle of Generic Consistency and prospective rights whose generic rights must be respected by agents. The preparatory rights include as much respect for freedom and well-being as is consistent with the goal of agency.

> Hence, children must increasingly participate actively in decisions affecting themselves as they increase in maturity. Rules for providing education, parental guidance, and other policies and institutions affecting children are justified and indeed required because of their contribution to such fostering of children's fully having the generic abilities and rights of action'. [8]

Now if such rules, guidelines and policies are instituted, the result should certainly be, at least in principle, that all children are treated equally in relation to each other. The problem is that in relation to an adult a child would appear, by Gewirth's rules, not to be treated as an equal if the rights of the adult were in conflict with the interests of the child. If there are differences in the capabilities of an adult and a child in fulfilling rational purposes, then these differences are reflected in the degree of generic human rights which are respectively accorded to them. For example, if a young girl wished to stay with her mother but the mother wanted the child to live with her estranged husband so she could get on with the writing of a book, the child, even if she didn't want to live with her father, would not, in Gewirth's terms, have a right equal to her mother's to pursue her aim. This would be justified because the mother qualified as an agent who could participate more fully in the generic features of action - voluntariness and purposiveness - whilst the child would still be forming the relevant abilities and therefore her rights would be proportionally less. The adults right to 'additive well-being', to use Gewirth's terminology, would be greater than the child's preparatory right to freedom; in this case the freedom of movement as to which parent she wanted to live with. Of course it may not be in the child's interests to accede to her wishes anyway, but the point is that as far as the respective wishes of the individuals are concerned, the mother's wish has greater influence under Gewirth's theory of action, only because she holds the greater capacity to achieve purposes which are rational and unforced. What is at stake

here is not the merits of the respective wishes of the two participants, but whether the wishes, irrespective of their merits, should be treated differently because of the differences in rational capacity of the participants. Consequently the mother's status as a person, and therefore as a holder of human rights, is greater than that of her daughter and Gewirth's aim of a fundamental and equal moral status for each person is flawed.

Take the example of a very young baby who has no rational capacity to choose or reflect on different courses of action at all. The baby's rights are proportional to his or her capacity to act in a rational way. As a potential agent the baby's basic rights must be met, but it is hard to see, according to the Principle of Proportionality, how its non-subtractive and additive rights can be met at such an early age. Imagine the case of a young child who is passed from one carer to another on a frequent basis. What is the effect on a child's ability to form secure relationships and develop a sense of emotional security in such a situation? Michael Rutter says this:

> '... we noted the importance of the child developing emotional bonds. We need now to consider the circumstances in which there may be failure of bonding and the consequence when this occurs. In spite of a strong psychiatric interest in this question over many years there is little good evidence on the subject. However, the findings seem to suggest that bond formation is least likely to occur in a non-stimulating environment, where there is only low intensity of personal interactions, where care is provided at routine times rather than in response to the infant's demands and where there are multiple care-takers, none of whom have regular interaction with the child over a period of many

> months or longer. This can occur in an ordinary family setting but it is probably most likely to occur in an old-style institution or in circumstances where the child has gone from pillar to post in early childhood with multiple separations and periods of substitute care without continuity. The very limited findings available suggest that these circumstances may lead in early and middle childhood to disinhibited, attention-seeking behaviour with indiscriminate friendliness, so that strangers and parents are treated alike in a non-discriminatory fashion. Later on this may lead to a personality characterized by a lack of guilt, an inability to keep rules and a failure to form lasting relationships.' [10]

The baby cannot articulate his or her needs, but it is quite clear that young babies need to be brought up parents or guardians with whom they can form a secure attachment, and therefore not be passed from one person to another. Under Gewirth's scheme the baby only appears to have a right, as a potential agent, to the basic rights of life and physical integrity. If the guidelines[8] for parental influence which Gewirth advocates are to encourage permanent and sustained care by parents for their young children, they can only be justifed in *anticipation* of the child's later development of voluntary and purposive rationality. This is because, on behalf of the child, rights to mental equilibrium (a basic right), non-subtractive and additive rights, cannot be justified on grounds of the actual rational competence of the baby, but only on the assumption that a secure bond with a parent will allow for enough emotional stability to be occurrent for a proper rational facility to operate later on. However, were Gewirth to acknowledge this, it would undermine the entire basis of the Principle of Proportionality, because each person's interests would be based on the assumption of a fully mature rational

competence regardless of what stage of development they had actually reached, and therefore the relative status of potential and actual agents would be the same both as persons and as holders of human rights. He is unable to take this step, however, because of the differences in rational capacity betwen children and normal adults, and it is to these and other differences that I now want to turn.

## Children and Adults: The Differences

The question put simply is whether potential agents or actual agents, to use Gewirth's terminology,* both have rights to the *same* goods and opportunities. The answer which both Gewirth[1] and Wringe[9] give is that children's rights are modified according to their rational capacity and ability to use freedom without harming themselves or others.

In Wringe's words,

> 'If the grounds on which rights are attributed to others are applied consistently, the rights of children are modified by such consideration as their limited capacity and experience, their need for protection, and their condition of material and social dependence. They are not, however, *entirely* [my italics] negated'. [11]

* See reference 8.

It is questionable as to what Wringe means by children's rights not being 'entirely negated'. He explains his position in the following way.

> 'it will be clear that children are persons with rights, and not simply future persons or potential right holders who will eventually possess the full range of adult rights, but at present have none at all. If children's rights differ from those of adults, it is not because children are any less persons or entitled to less consideration but because their needs and capacities, and consequently their interests differ from those of adults in ways that have important consequences for their rights of freedom and democratic participation as well as for their welfare rights'. [12]

In saying that children's rational capacities are not developed enough to make full use of adult democratic freedoms, and in acknowledging that these limitations also mean that they have welfare rights to such things as education, food, shelter and clothing, Wringe is genuinely describing some obvious differences between children and adults. He concentrates on the need to safeguard children from a lack of parental interest in offering sufficient protection and material support.

> 'The individual is threatened by gross and substantial harms not only by the physical and animal world, but also by the malevolence or self-interest of his fellows. In considering the child's welfare rights to protection from such harms, much applies that was said on the question of his right to material support on account of his

> lack of physical strength, knowledge of the world and understanding of others. Consequently, the child is necessarily thrown on the aid of his elders, not only for his material support, but also for his protection. If this is not forthcoming from those against whom he has special rights, it must be provided by the community as a whole'. [13]

It has to be said that Wringe is more concerned with participation and liberty for children within educational settings and does not really turn his attention to the question of appropriate nurture for the purpose of developing autonomy. His generalised comment in relation to protection, however, reveals the very important distinction he makes between what he calls active and passive claim rights of freedom. Active rights are rights to the freedom of movement, choice of occupation and pursuits, as well as opportunities to make use of belongings, seek information and give opinions. They are rights to act, in the basic sense of having freedom to act at all,[14] but also contain protective clauses which ensure as equal a distribution of liberty as possible.[15]

Passive claim rights of freedom are rights not to be interfered with or harmed. They include rights of security of the person, the right not to be molested, the right not to have one's belongings taken or damaged, the right not to be spied upon or have personal information communicated to others, not to have one's character blackened by slanderous reports or suffer forcible intrusions into one's home or family life.[16]

When Wringe refers to a child having the right to material support[13] in relation to the need for protection he is referring to the child's right not to be harmed or have pain inflicted gratuitously. He says this:

> 'The right of children not to be subjected to cruelty, assault or abuse is justified in essentially the same way as that of adults. Like an adult, he feels pain, fear, and as he grows older, embarrassment and humiliation. Whereas children's active rights of freedom may be affected by their incomplete rationality, the right not to be subjected to pain and fear is not, since they have a clear interest in not being subjected to them, whether they are rational or not'. [17]

The major difference between children and adults in Wringe's view turns on their ability and understanding in making use of *active* claim rights of freedom.

> 'it may seem that the child has few active claim rights of freedom, since these are limited by both his incomplete rationality and by the justifiable protection of the rights of others. To suppose that he has no such rights at all, however, would be a mistake.' [18]

He goes on to say:

> 'One does not, however, have to be rational at the level of prudence in all things before one can have freedom in any. A four year old may not be able to choose a marriage partner or decide for himself whether to have a polio injection, but he can decide whether he wants to play with his toy train or his scooter ... Nothing may turn on what game the child plays, on what book he

> reads, whether he stays in or goes out, whether he plays alone or with others, and so on ... The point being made here is that, in addition, adults ought to refrain from using their power of coercion to limit the child's freedom in these areas without good reason, for purposeless restrictions are unjustified in parent-child relationships as elsewhere.
>
> ... restriction is only justified up to the point where protection is achieved. Beyond this is a considerable area of freedom and legitimate choice may remain open to the child or young person concerned, and it is difficult to see how one could justify restricting this freedom for the sake of the minor convenience or personal idiosyncracies of adults'. [19]

When Wringe says that adults ought to refrain from using power to coerce without good reason, and that beyond that they should allow the appropriate freedoms to their children, he does not say how such an 'ought' is make into a 'can' when the principles he is espousing are totally disregarded by adults. Nothing may turn on whether a child plays with a toy train or a scooter, but a lot turns on whether the child is allowed to play at all. A child may be told to stop talking because his father is watching the television and this may be part and parcel of everyday life for the child - not much may hinge on it - however, if no-one ever speaks to the child except to intimidate the child, then a great deal is a stake.

Wringe does not develop his argument any further, save for the general comment on child protection already quoted. In not assessing whether a child's rights come into

operation when adults contravene his advice to refrain from using coercive power arbitrarily, he falls into the trap of equating active claim rights of freedom for the child by measuring the child's capacity to use them in terms of how an adult would use them. What he fails to acknowledge is that if a person has a right to exercise an active claim right of freedom, he also has the right to *learn* how to exercise that right. How such a right can be enforced will, hopefully, become clearer as the chapter progresses.

## Children as Persons

Even though potential agents (children) and actual agents (adults) may have differing interests and needs, the status of each group as holders of inalienable human rights does not depend on the mechanics of exercising autonomy, or on whether each group has exactly the same *set* of rights, but on whether they have equal status as persons belonging to that society. There are questions as to whether the development of autonomy is a subject which can be fitted in to the notion of a right, but these, in my submission, should not be used to determine the degree to which children count as persons, given that all holders of human rights are, by definition, persons. I will come on to some of the technical problems further on.

Both Gewirth and Wringe, as part of their overall perspectives on rights, ask parents to oversee the limits beyond which children should not be allowed to exercise certain rights, particularly rights of action. These restrictions are paternalistic in the sense that adults are accorded a responsibility to protect children from themselves and from harming others. This exercise of power is, however, specifically intended so that children, in their minorities, should develop their rational capacities up to the time when they themselves can enjoy the opportunities which autonomous action can bring. This is

derived from the principle that the only legitimate restriction on autonomy must be for the sake of autonomy itself. Gordon Graham puts it like this:

> 'According to Kant, any reflective human action aspires to rationality and hence presupposes that freedom is both possible and desirable. Thus all deliberation lends individual autonomy intrinsic value, and consequently the onus of proof is upon anyone who wishes to use coercion (that is, the forcible overriding of self-direction) to justify its use. But if autonomy is the most important value for human agency, any such justification must itself make appeal to autonomy, and so the only justification we could countenance is one which shows coercion to be necessary for autonomy.' [20]

Placing any prior condition on the use of autonomy removes the efficacy of the principle by subordinating it to some other principle. The only legitimate restriction can be one which is designed to enhance autonomy, by offering protection against forces and influences which attempt to render it as being of limited value.

If we should not hinder adult autonomy unless the other person is unjustifiably, according to the same principle, hindering ours, then presumably it follows that we should not hinder a child's developing capacity for autonomy unless he or she is misusing that capacity for self harm or harm to others. If children are included in the principle that autonomy can only be restricted for the sake of autonomy itself, then their status as persons must be equivalent to the status which adults confer on each other as agents of autonomous action.

Although this argument integrates the status of children as persons with the status which is similarly accorded to adults, it is still the case that some people are excluded; they are those who by reason of mental or physical disability have no potential for developing the capacity for autonomous action. Here the rationale becomes slightly less secure but such people can be included as fully-fledged rights holders and consequently persons of equal worth and status with all others if it is accepted that their design is one *intended* for autonomous action. Through circumstances beyond the control of such unfortunate people, their capacity for autonomous action is irrepairably damaged. Consequently their needs are not justified as requirements for the development of autonomy, but rather as requirements for bringing about as much fulfilment and satisfaction as is possible within the perceived constraints of their condition. The concept of universal rights can be employed to uphold such needs because those in receipt have no control over the damage to the potential for acting autonomously inherent in the structure of their own species.

Gewirth tends to sidestep these difficulties by concentrating on a definition of 'persons' which is dynamic and undamaged:

> 'Although persons differ in their capacities for purpose-fulfilling actions and in their abilities to develop these capacities, their differences in intelligence and in effort do not derive exclusively from causes over which they have no control. The hard determinist thesis is as little to be credited here as in connection with the general causation of choices. The concept of a person is not to be resolved solely into a locum of forces impinging from without, as if the person himself made no contribution to what he is, does, and becomes, so that he does not

> deserve anything for this contribution and for its beneficial effects on the well being of other persons. On the contrary, each person is himself a source of his own energizing activity; unlike Cartesian inert matter, he can develop himself from his own internal resources to whose structure and contents he can make his own effective contributions'. [21]

The problem with Gewirth's definition of persons is that the weak, disabled, simple-minded and dependent are somehow stigmatised and marginalised through omission. Gewirth's concentration on the majority who are rationally competent to the point of being self-directing with an awareness of various possible alternatives, creates the impression that the others are left with a sense of being peripheral to the central meaning of being a person. A child who is ill may only, in some circumstances, have a year or two to live. Such a child will always be dependent, both materially and rationally. The child's own rational powers will never reach maturity, but should the child be counted as a lesser person for such a reason? The specific rights accorded must be contingent upon the extra difficulties which such a child would have to bear, rather than with an assessment of potential for achieving a mature rational competence. Apart from any intuitive reasoning in support of this, the alternative can be used to justify the subjugation of the weak by the strong on the pretext of their being superior human beings through having achieved a certain level of rational mastery. Gewirth would not wish his theory to be misused in such a way, but as it stands it is open to just such an interpretation. If a child, say, through a traffic accident, does not reach the destination of rational maturity which Gewirth hopes all children will, then, even though his or her premature death may be thought of as a 'waste', such a sentiment does not imply that the child's life was a waste of time. The sense of the worth of the life is in fact heightened by the poignancy of a premature end even though and the idea of waste is aligned with

attachment and identification with what the child could have experienced and achieved. To suggest that such a life can be written off in the sense that a bad debt is forgotten is a misunderstanding of where the sense of being a person starts from. If Gewirth is suggesting that the latter is the preferable option he would certainly find himself alone amongst philosophers of liberal democratic thought, because his theory would sacrifice the basic tenet of equal respect for all.

## The Development of Autonomy

The argument which says that children and adults have the same status as persons in a particular society, is not designed to sidestep the issue of whether rights can be claimed for the development of autonomy. Once it is established that rights to the proper development of autonomy can exist without contradicting the basic notion of a right, any technical objection to the differences between adults and children, as affecting the rights they are able to hold, can be addressed.

The history of thinking about rights has always drawn a distinction between obligations which demand the fulfilling of a duty by a person or persons, and those obligations which individuals may or may not choose to carry out. To use Mill's expression, it is the difference between benevolence and justice:

> 'It seems to me that this feature ... - a right in some person, correlative to the moral obligation - constitutes the specific difference between justice and generosity or beneficence. Justice implies something which is not only right to do, and not wrong to do, but which some

> individual person can claim from us as his moral right. No-one has a moral right to our generosity or beneficence, because we are not morally bound to practise those virtues towards any given individual '... Wherever there is a right, the case is one of justice, and not of the virtue of beneficence: and whoever does not place the distinction between justice and morality in general, where we have now placed it, will be found to make no distinction between them at all, but to merge all morality in justice'.[22]

John Stuart Mill is emphatic here that no-one has a right to generosity or beneficence - what is given by free choice is completely different from what can be claimed as of right. It is therefore impossible to claim as of right something which can only be given by free choice. Does this mean that if a child is judged not to be receiving adequate care or stimulation from parents or guardians that no rights can be exercised on his or her behalf even though the deprivation of need may be as great as that suffered by an adult deprived of the freedom necessary for autonomy? This would be a very distressing and inegalitarian consequence of the distinction between rights and beneficence, and one that Mill, given his interest in proper education for children, perhaps did not intend.* The irony is that if you need something which has to be given voluntarily in order to develop the capacity to act in a voluntary way and you are deprived of the need, you are

* It is perhaps in connection with just this problem that Mill insists in 'On Liberty' on the statutory obligations of parents and seeks to make parenthood a matter of considered choice to incur such obligations. (See reference 2 in Chapter 6.)

then the victim of a particular voluntary and purposive action. The opportunity you need to exercise the right of autonomy is taken away from you by your parents' or guardians' application of their own capacity to act autonomously. Now, even if it can be shown that a certain kind of parental behaviour is detrimental to the development of autonomy in a child, the restriction of parental actions and behaviour to acceptable limits, assuming for the moment that this is practically possible, only *stops* particular behaviours; it does not by itself promote other behaviours which are perceived as being essential to the development of independence. Children obviously need to survive physically and receive adequate food, shelter and health care. What is much less clear is how children develop into what Gewirth calls fully-fledged agents capable of 'human purposive action'.[23] The passage already quoted by Michael Rutter[10] refers to how a lack of consistent emotional care (bonding) can lead to a lack of conscience, an inability to keep rules and a failure to form lasting relationships. Rutter goes on to talk about the effects of a lack of stimulation:

> 'Meaningful stimulation and an adequate range of experiences have been found to be essential ingredients for optimal intellectual development and the normal growth of language. This means an adequate provision of toys and play activities, but most of all it means that the parents should talk and do things with the child in a way which is understandable and enjoyable for him. In the past, poor quality institutions have provided the environment where lack of stimulation has been most evident.
>
> ... there are personal reasons why parents may give less than the optimal play and conversation needed for their child's development. For example, parents who are

> seriously depressed frequently interact less with their children. Also to some people parenting skills do not come naturally and they may inadvertently be neglectful'.[24]

Contrast the possible effects of a lack of bonding and a lack of stimulation for a child with the capacities and qualities which are required, in Gewirth's terms, for effective human action.

> 'Human action, as an empirically ascertainable phenomenon, has the generic features of voluntariness (whereby the agent controls his behaviour by his unforced choice with knowledge of relevant circumstances) and purposiveness (whereby he aims at certain goals he wants to attain and can reflect on his goals). By virtue of the voluntariness of his actions, the agent has a kind of autonomy or freedom. And by virtue of his action's purposiveness, he regards his goals as good, as worth attaining'.[25]

In order to oversee the development of such capacities in children Gewirth asks parents to allow as many basic, non-subtractive and additive goods, and as much freedom of movement and action as is consistent with the goal of agency,[8]* and also to gradually increase the opportunities for children to participate in decisions which affect them. In the light of Rutter's account, as well as from an intuitive point of view, it

* See reference 6 for the link with basic, non-subtractive and additive goods.

seems clear that children need more than Gewirth's preparatory rights. They need not only more than the meeting of their physical needs, but also more than a regime of rights and duties as 'potential agents'. Childhood is much more than just a preparation for adulthood, let alone an adulthood thought of solely as a system of actions; it is an experience in itself. The point about preparation is that the nature of that experience has massive implications for the quality of life in adulthood. I am arguing that children need a degree of voluntary lovingness in order to develop a sense of security and social identity as well as the confidence and ability to articulate attitudes and express feelings. Gewirth's 'rules for parental guidance'[8] carry the sense of parents being gatekeepers of their children's propensity to misuse freedom, and as such they are 'controllers' rather than catalysts or providers of stimulation and affection.

Nevertheless parents do retain control in that they may legitimately use coercion to prevent their children from harming themselves or others. Such legitmated paternalism means that parents are able to use the capacities, which they employ for the exercise of autonomy, in relation to their children over whom they maintain a superiority of power and rationality. Gewirth asks parents and guardians to administer reduced rights to their children according to the particular child's ability to use freedom in a responsible way. I want to demonstrate that the administration of such reduced rights requires behaviour by the administrator which is unforced, and therefore, by definition, voluntary. This is not only about a parent using powers of autonomy to enhance the development of autonomy in a child; it is also about the means which are employed to achieve such an end. If voluntary and purposive parental behaviour is required to facilitate the development of autonomy in a child, the voluntariness is complementary to, and indicative of, the lovingness and stimulation required for the development of emotional stability and language.

I want to start by briefly outlining the characteristics of unforced choice applicable to adults who are, in Gewirth's terms, mature agents, having the generic abilities and rights of action.

> 'Forced choice thus has at least three interrelated aspects: compulsoriness, undesirableness and threat. We may extend the concept of 'control' here: Smith is not in control of the situation (Smith is faced by a gunman who says "Your money or your life") whereby he must choose one of the two alternatives: if it were left to his own control, he would choose neither. When one's choice is unforced, on the other hand, one chooses on the basis of one's informed reasons that do not include these compulsory and other features'.[26]

Gewirth goes on to say that forced choices may vary in degree and in explaining how this happens he also explains what he means by undesirability, compulsion and threat.

> 'Three bases of this variation may be distinguished, reflecting the criteria of forced choice previously indicated: first, how bad, in the eyes of the chooser, is the worse of the two alternatives between which a choice must be made (undesirableness); second, whether any further alternatives may be opened up (compulsoriness); third, and especially important, to what extent rational procedures are made available to the coerced person or group (threat)'.[27]

The absolute opposite of a voluntary action is an action which is carried out with a complete absence of any positive inclination towards the act in question. If, as I will argue, it is essential that parenting should entail emotional interaction with children which is unforced, it seems to follow that it is impossible to 'compel' someone to be an adequate parent. If such compulsion is impossible, is it accurate to then refer to qualities of parenting as 'voluntary'? Might it not be better to suggest that they are either naturally present or not, and that the idea of choosing to be a reasonable parent is a misnomer?

In answering this question it is important to draw a distinction between absolute and partially forced choices. Consider an example of a partially forced choice:

> I want to keep my child but the state says my parenting capacity is defective and if I do not accept advice and help I may lose him. I do not want them interfering with me, but if there is no other way to keep my child, I will go along with it. Even then they might say I am not good enough.

If this parent 'accepts' the 'help' on offer, is he or she acting voluntarily? It seems reasonable to say that there is an element of 'forced choice' present as well as a degree of voluntariness. Gewirth maintains that there are degrees of voluntariness, and I want to suggest that it is theoretically and practically possible for standards of parenting to be improved under conditions of contract or even threat. Much depends on the nature of the help offered, and if it is appropriate and effective the parent will engage in the process and standards of child care will improve under the terms of the contract. The actual process of improving the quality of the parenting will be equivalent to the bridling of inappropriate emotions and responses and the encouragement of appropriate ones

through supervisory processes. The parents themselves will be subject to a form of 'parental' guidance.

In contrast, if there is no realistic capability for parental improvement, as in the case of the seriously mentally defective, and there is no 'help' which the parents can make use of, then the parental contribution to their children's development must be described as involuntary. If the parents are judged as incapable, the issue of what happens to their children is, for the parents, one of absolute forced choice.

A variation on such absolute forced choice is when only a slim chance of parental reform exists, and parents who choose to accept help are judged after a short period to have failed. The voluntariness which they initially exercise is outweighed by a judgement about their incapacity and in effect negated.

For the majority of parents, however, there are no concerns about their parenting capacities, and they are never confronted with a choice whether to refuse or accept 'help' of the kind I have been discussing. Here I want to suggest that the expected emotional spontaneity from parent to child can be taken 'as voluntary', even though it may not feel like a perpetual mode of decision-making. Were it to be challenged, most parents, in my submission, would choose to accept the help on offer, even if it meant significantly adjusting the nature of their parenting in order to keep hold of their children. Spontaneous giving to children is not a perpetual decision-making process, but neither is it possible without perseverance, energy and a will to nurture the child; these latter qualities allow for the more spontaneous elements to flourish. It of course true that, within a fundamentally voluntary and spontaneous relationship, for example a marriage, one partner might claim 'as of right' that the other owes them attention that they are failing to pay. I would argue that here the claim is functioning as a forceful reminder of the values inherent in the idea of a marriage. If we take it that one partner is quite *simply*

demanding the other giving something as an obligation or requirement, it is clear that the marriage is defective, lacking the love that is its ideal essence. Similarly, though a child frequently does demand attention as of 'right', to the extent that the parent responds merely as obligated, this parental relationship is defective.

Social workers are often reminding parents of their childrens *'rights'* to their loving attention. But if the parents' response to such reminders is solely that of a coerced 'truant' the family situation is direly impoverished. Of course there are things that parents can provide or fail to provide that are not in this situation: shelter, food, clothing, physical integrity and protection. But clearly these are not all that a child needs from its parents.

I want to look at Gewirth's three criteria of forced choices and show how their absence, to a significant degree, is essential to parenting which seeks to enhance the development of autonomy. Such enhancement is dependent on control as well as the provision of appropriate stimulation and emotional involvement.

## Undesirability

The opposite of undesirability, in Gewirth's terms, is to have a range of options, some of which the person making the choice wants to pursue. Desirability is not, for Gewirth, synonymous with pleasure. Wanting to do something can be a combination of desire or intention, or even only intention.[28] Even though the reason for pursuing a goal will not always be pleasurable in itself, the sense in which being the author of an action is satisfying, has a separate value. In order to encourage a young child to take *initiative* in pursuing aims or objects the parents not only have to protect the child from pursuing harmful alternatives; they have also to provide some options which their child will want

to follow. At a very early age wanting to do something may well be synonymous with pleasure, but only through that avenue of pursuit will the child develop the capacity to take independent action. Expressions in child psychiatry such as 'frozen watchfulness', 'dependency' and 'detachment'[29] are all examples of the dramatically stultifying effects which can occur when babies are left to grow up in their cots, and given no stimulation or attention. The point I am wanting to elicit is that such stimulation depends upon the parents or carers *wanting* to give the child positive and enjoyable things to do. Such concern over a child's environment and the relationship with a parent, through which the child learns to respond and initiate contact is indeed the result of unforced choice by the parent.

Rutter has pointed out that the involvement and stimulation given by parents to children for the development of language is essential.[24] Although the study of language development is an academic discipline in itself, no serious expert would suggest that children can develop language without the involvement and stimulation of their parents or carers.

There are cases where children have not learnt to speak, or where language is significantly delayed, and where no identifiable physiological reason is apparent. In my own professional experience I have observed that such cases almost always occur when parents are either very depressed, or simply do not talk to or stimulate their chidren either through their own learning disability or because their relationship with their children is one of complete domination, power and control.

I would argue that there is a significant element of voluntary parental intent involved in the development of language, and that any reasonable parent would choose to enhance communication skills and language development in their own child, for the sake of the child. Once the basic means of communication are established the degree to which

children participate in family life and decisions which are pertinent to them is obviously variable from individual to individual. It is clear, however, that if children are to enjoy a gradually increasing ambit of freedom of thought and action, they must also be given the means through which they can express their aims and interests.

## Compulsion & Threat

Gewirth defines compulsion (or compulsoriness) as the prevention of alternatives being opened up for the person who seeks to exercise powers of agency, and threat as the absence of rational procedures available to the coerced person or group. He says that when a child's freedom of movement and action is restricted by a parent it must be on the basis of protection for the child and others, and this judgement is made by the parent in accordance with the child's maturity. In order to relax gradually, the constraints on a child the parent must be prepared progressively to diminish their own coercive powers over the child. The process, however, is not mechanical, in that the child will place demands on the parent and seek opportunities which the parent will not always accede to. There will be occasions when the child acts irresponsibly, and often parental control will be about the art of the 'possible' rather than about choosing the preferred option. All of this means, in the context of this discussion, that the gradual release of control is both something which the parent may want for the sake of the child, as well as being a result of a dynamic and emotionally involving relationship. If a parent never releases coercive powers over a child and remains wholly restrictive and unchanging the result will almost certainly be damaged capability to make use of agency in adulthood. Children might react in many different ways to such an upbringing, but it seems reasonable to suggest that a severe lack of confidence, a frequent inability to prevent oneself from becoming angry and out of control, and an identity dominated by guilt and

fear and sheer inexperience in making choices, would be fairly predictable outcomes for such unfortunate children in adulthood.

Parents have the power overwhelmingly to determine the degree of freedom which their children experience, such determination being instrumental in the children's development of autonomy, or agency as Gewirth refers to it. I have argued that adequate parenting involves the exercise of 'unforced choice' in providing a level of stimulation and emotional contact for the child within a controlled environment. Such parental guidance and involvement is 'unforced choice', because in Gewirth's terms it entails voluntariness (whereby the agent *controls* his or her behaviour with knowledge of the relevant circumstances).[25] Such voluntariness is, as Gewirth says, a kind of autonomy or freedom.[25] Consequently the parents exercise their own autonomy to enhance the development of autonomy in another person, their child.

What does this mean in terms of the rights of the child? I am suggesting that a substantial part of a child's need to develop the capacity to act in a voluntary and purposive way is dependent on the voluntary action and intent of parents and guardians. The crux of the problem now emerges. If a child is dependent on a combination of physical care, emotional involvement and mental stimulation which can only be given if they are in great degree spontaneous then what rights can be exercised on behalf of the child if those qualities are not forthcoming? How can we speak of enforceable rights to something which appears to be essentially unenforceable?

The yardstick by which the representative of a child [it is worth pointing out that any claims on behalf of children must, for the purposes of this argument, be made by representatives who appreciate the developmental needs of children in relation to them becoming fully fledged agents] can base a claim must be the rough developmental milestones which are anticipated for the exercise of autonomy to be functional on

reaching adulthood. If the milestones are not reached, then the child, through a representative, is then able to claim for an appropriate remedy, and such a claim can be justified in terms of the right to the conditions necessary for the proper development of autonomy [see the next section on the measurement of developmental need]. An added irony here is that the more disabled a child is from autonomy or agency the less they will be able to advance their case on their own behalf and the more dependent they are on representatives. If certain qualities essential to the proper development of autonomy in a child, depend on being freely given, they cannot be claimed against any individual such as the parents or any other surrogate as of right. The right to proper developmental conditions can only be claimed against society in that a representative of the society can and must see to it that the appropriate needs are provided. In essence this will require such a representative to seek out people who appreciate the developmental needs of children, and who, with the appropriate arrangements, want to provide it in particular circumstances. Needs do generate rights when something *can* be done to meet them, and are not confined to only being material objects or financial benefits. They can equally be human qualities and capacities as long as those capacities can be harnessed to meet the needs in question. The justification for there being a sufficient pool of surrogate and 'assistant' carers depends to some extent on the idea of the population being generally aware of the developmental needs of children in relation to the adequate functioning of autonomy in adulthood. Such an awareness is constituent of a moral consensus around minimum parenting standards because it is a reflection of the voluntariness which I have referred to as essential for proper parenting. It is also indicative of the conditions which are needed for autonomy to develop without hindrance or damage. The theoretical derivation of the moral consensus can be traced back to the principle of autonomy, for if the aim of individuals is to achieve as full a sense of autonomy as possible, then it follows that those who enjoy it ought to want to foster its proper development in children whose rational capacities are not sufficiently advanced to make full use of it.

It may also be said that the satisfaction of emotional needs as a condition of autonomy has an added virtue in a multi-cultural context where the 'liberal consensus' cannot be assumed. All cultures, however they may differ on 'permissiveness', recognise the value of 'family' love to the child's development. The Children Act 1989 reflects this in asking local authorities to "have regard to the different racial groups to which children in need belong", particularly in relation to fostering services and day care provision (Children Act 1989, Schedule 2(11)).

## The Measurement of Developmental Need

If, as I am suggesting, a child's active claim rights of freedom are different to those of adults, then how is it possible to measure what a child needs to grow to fulfil them in adulthood as well as to enjoy and benefit from their being met in childhood itself? If for example, love and attachment are means by which children learn how to relate to other people (as adults they will then have some choice in who they relate to, whereas if they never learn to form relationships with other people, they will be abandoned, or live solitary lives) how is such love and attachment assessed?

Authorities who have to make judgements as to whether children's needs are being met certainly attempt to measure it. The London Borough of Barking and Dagenham's Child Care Policy published in December 1989 refers to what they consider to be the principle needs of children. Amongst others they include the following two:

(1) Appropriate environment to learn to care, respect and be interested in their surroundings and to become self reliant adults able to lead a full and independent life.

(2) To be loved by adults who would allow them to develop a healthy attachment in a meaningful way; adults who would listen with sensitivity'.[30]

While it would be ludicrous to try and replace imagination, intuition and common sense with a bureaucratic 'criterion' it is possible to assess the degree of attachment which a child has to its carer and there are a number of developmental milestones and attributes that indicate whether a child is developing normally, in both a physical and social sense. One of the most well known has been drawn up by Mary Sheridan and is reproduced in the Department of Health's 'Protecting Children'.[31] It covers four areas of development. They are posture and large movements, vision and fine movements, hearing and speech and lastly, social behaviour and play. One extract will provide the flavour of how development is approximated. This is, according to Sheridan, the normal expectation of a two year old in respect of social behaviour and play.

Lifts and drinks from cup and replaces on table.

Spoon-feeds without spilling.

Asks for food and drink. Chews competently.

Puts on hat and shoes.

Verbalises toilet needs in reasonable time.

Dry during the day.

Turns door handles, often runs outside to explore.

Follows mother around house and copies domestic activities in simultaneous play.

Engages in simple make believe activities.

Constantly demanding mother's attention.

Clings tightly in affection, fatigue or fear.

Tantrums when frustrated but attention readily distracted.

Defends own possessions with determination.

As yet, no idea of sharing.

Plays near other children but not with them.

Resentful of attention shown to other children.[32]

From this extract one can see how to measure the progress (allowing for anomalies and special cases) a child is making and evaluate whether the care the parents are offering is affecting the child in any avoidable and significant way.

The 1989 Children Act, Section 31(10) says:

> Where the question of whether harm suffered by a child is significant turns on the child's health or development, his health or development shall be compared with that which could be reasonably expected of a similar child.

White, Carr and Lowe in their guide to the Children Act 1989 say this:

> Comparison with the health or development of a hypothetical similar child should help the court decide whether the particular child has the standard of health or development that he should have, and, if not, whether the harm he is suffering is significant.[32]

The Act itself defines 'harm' as ill-treatment or impairment of health or development; 'development' is defined as pertaining to the physical, intellectual, emotional, social or behavioural (Section 31(9)). The likelihood or presence of significant harm which is attributable to the absence of adequate parental care is ground for public intervention in family life according to the Act (Section 31(2)).

If a social worker visits a two year old child and sees that, over a period, the child never goes to the mother, is always in nappies, never explores, and never drinks from anything except a bottle, it will be obvious that something is wrong, and that the child is probably not being properly stimulated and nurtured. (There is, of course, the possibility of mental handicap which is innate and this is the force of the Act's reference to 'a similar child'.) If in addition to this the mother is frequently in bed when the social worker arrives, and goes through bouts of depression, it might not be difficult to work out why the child is not developing appropriately. Various cameos of concerning cases will be presented in the next chapter. What I have tried to show in this account is that it is possible to apply standards of need fulfillment to the individual circumstances of particular children, without having to formulate an 'index of love'. The adjudication of whether a child's basic needs are being met - in this context needs which are essential to the development of autonomy - is something which can be approached in relation to a common standard. Consequently, the right to the fulfillment of those needs is something which is practically possible to claim for, on a child's behalf. Even though a child will not be in the position to make the claim to such rights, the existence of commonly defined standards of need according to age, health, and the presence or absence of disability allows an agent to represent a child in any dispute concerning the best interests of the child. In the introduction to this chapter I quoted the factors which are relevant to any court's consideration of a child's welfare under the Children Act 1989. A child's ascertainable wishes and feelings (considered in the light of age and understanding) is defined separately from the category of physical, emotional and educational needs (Section 1(3)(a) and (b)). In this chapter it has been argued that if a child's emotional needs are not satisfied up to a certain level then the ability to express wishes and feelings will subsequently be damaged and very possibly carried into adulthood. A child's ability to express wishes and feelings *is* to a significant degree dependent on the satisfaction of emotional need, and the differentiation between the two

elements in the Children Act 1989 helps to show that in an emotionally hostile and barren environment children do not learn properly to articulate their wishes .

## Consensus - A Footnote

Rights are often perceived as the best way of providing resources for those who autonomy is under threat, because they do not rely on personal whim or caprice, and avoid the stigma which charitable giving also creates. Instituting the transfer of resources into the necessary goods required to fulfil the relevant needs to which people have a right requires support from the majority of people in society. In the case of children's rights to proper development, a system of monitoring child development, guidance and material support for families, and the finding of substitute carers whether temporary or permanent, are all essential to such rights and require a certain level of consensual support if they are to be legitimated and resourced by the state. I want to suggest that the extent to which an electorate will subsidise and support such services depends on at least two interrelated factors which are relevant to children.

Firstly, parental voluntariness required for the acceptable nurture of children has to be prevalent in order for an acceptable standard of child development to be commonly acknowledged. If such voluntariness is not understood as being integral to the development of stability, emotional identity and autonomy in children, then parental behaviour, other than that which can be statutorily required of them will not be seen as having a direct bearing on children's development. Consequently, cases of problematic development in children would be seen as completely unrelated to any 'informal' influence which parents may or may not exert. This is not to suggest that all developmental delay is due to parental mismanagement, coldness or malice. It is only

to say that an appreciation of appropriate parental involvement can make the difference between normal and abnormal development in certain cases.

Secondly, the range of obligation between strangers in a society needs to be determined, so that those in need of protection or intervention by a third party can be assured that their particular situation is one which will be catered for through the democratic structure of the society to which they belong. Establishing the range of obligation between strangers in society is vital to a system of substitute care for children who are judged to be at too great a risk if they are left with their parents. In risk, I include both active abuse and neglect which significantly affects normal development and maturation. The reason is that children who are placed with substitute carers start out as strangers and end up, to one degree or another, as part of the family. Of course, abandoned children are strangers with a difference, in that they carry with them a sense of being wholly in a world of strangers, and the patience and commitment required to settle a disturbed and frightened child into a substitute family is often over and above the problems which natural parents may encounter. Placement in a family, however, is the usual aim for children who cannot return home, although some are so emotionally damaged it is difficult to contain them in a normal family setting.

The voluntariness involved in nurturing children along with a commonly accepted perception of the range of where obligations to strangers begin and end is crucial to the provision of substitute care; both are required if representatives from the state are to successfully recruit surrogate parents. The majority of people prefer only to subsidise a system of rights to proper child development through taxation, while others choose to become more directly involved and are paid for doing so. The variation between servicing the rights of children, through either an uninvolved transfer of personal

resources through the strict obligation to pay tax, or a more personal involvement, is perhaps the practical outcome of the moral flexibility which was argued for in Chapter 2.

It could be said that such a variation of possible responses is catered for by Rawls' 'toleration' where people live as citizens in a society which admits and fosters differing conceptions of the good.

Rawls describes the usual pattern of intergenerational bonds in the following way:

> 'The question arises, however, whether the persons in the original position have obligations and duties to third parties, for example, their immediate descendants ...
>
> I shall make a motivational assumption. The parties are thought of as representing continuing lines of claims, as being so to speak deputies for a kind of everlasting moral agent or institution. ... their good will stretches over at least two generations. For example, we may think of the parties as heads of families, and therefore as having a desire to further the welfare of their nearest descendants'.[33]

Rawls' 'motivational assumption' is one which applies to the original position where all persons are recognised as 'distinct and separate'.[34] The identification of persons as separate entities seems to contradict the assumption quoted here of 'good will' which stretches over 'at least two generations'. Rawls would have been far more consistent if he had included information as to the generational membership of signatories behind his

'veil of ignorance'. There is a measure of science fictional absurdity here, but at least it guarantees the sort of direct concern that is Rawls' aim.

Nevertheless, he does recognise that some form of insurance is needed when the motivational assumption of goodwill between generations is found wanting.

> 'Once the ideal conception is chosen they will want to insure themselves against the possibility that their powers are undeveloped and that they cannot rationally advance their interests as in the case of children ...'

> 'the principles of paternalism are those that the parties would acknowledge in the original position to protect themselves against the weakness and infirmities of their reason and will in society. Others are authorised and sometimes required to act on our behalf and to do what we would do for ourselves if we were rational, the authorisation coming into effect only when we cannot look after our own good'. [35]

When Rawls' motivational assumption is upturned, as in the case of a child who is abused or neglected to the point of an infringement of the development of autonomy, there is a system of representation available to the child. The problem is that the remedy may involve substitute care, involving the kind of voluntariness I have referred to as essential for proper parenting. In Chapter 3, I argued that Rawls' version of the original position was torn between self-determination and social co-operation and that the trend towards greater equality in his well-ordered society is undermined by the refusal of the

participants in the original position to assess the degree of moral and material responsibility they would wish to have for one another.

In the case of children who need surrogate care, or better care brought about by appropriate support and guidance for their own parents, the Rawlsian scheme of justice offers no guarantee that such human resources will be available. The scheme of justice with its emphasis on the toleration of incommensurable conceptions of the good is based on a political conception of the citizen in which each person's moral interest is principally their own affair. If there are moral interests common to all, those interests are to do with the structure of institutions belonging to that society, and not the relationships between the members of society. Although it can be argued that the Rawlsian model of justice does not prevent the kind of moral flexibility I advocated in Chapter 2, the point is that such flexibility is, in Rawls' scheme, a possibility which cannot be ruled out. It is not a necessary consequence of the structure of the scheme. Because it is something for which room has been created, it is of secondary importance as to whether that 'room' is actually occupied or not.

In my submission, it is essential that some of that 'room' is filled by 'strangers' who appreciate the developmental needs of children and also have the moral flexibility to use their own personal resources in nurturing such children who have been significantly damaged in their development. It is only if some degree of consensus around a minimum standard of parenting can coexist with Rawls' scheme of citizenship that an opportunity to develop autonomy can be equally offered to all children in society.

# Chapter 5 - References


1. Gewirth, A. Reason and Morality
   University of Chigaco Press, London, 1978 p.141
2. Ibid p.122
3. Gewirth, A. Human Rights
   University of Chicago Press, 1982 p.5
4. Ibid p.1
5. Ibid p.3
6. Ibid p.17
7. Ibid p.8/9
8. Gewirth, A. Reason and Morality p.141
9. Wringe, C.A. Children's Rights, A Philosophical Study.
   International Library of the Philosophy of Education,
   General Editor R.S. Peters.
   Routledge and Kegan Paul 1981, p.152
10. Rutter, M. Helping Troubled Children
    Penguin 1975 p.174
11. Wringe, C.A. Children's Rights p.162
12. Ibid p.151
13. Ibid p.136-7
14. Ibid p.46
15. Ibid p.52
16. Ibid p.52
17. Ibid p.58
18. Ibid p.110
19. Ibid p.111

20. Graham, G. Politics in its Place - A Study of Six Ideologies. Oxford University Press, 1986 p.98-9

21. Gewirth, A. Reason and Morality p.248

22. Mill, J.S. On the Connection Between Justice and Utility, in Utilitarianism. Edited by Mary Warnock. Collins Fount Paperbacks 1979 p.305-6

23. Gewirth, A. Human Rights p.28

24. Rutter, M. Helping Troubled Children p.182

25. Gewirth, A. Human Rights p.281

26. Gewirth, A. Reason and Morality p.32

27. Ibid p.34

28. Ibid p.39-41

29. Cooper, Christine 'Good-enough', Borderline and 'Bad-enough' Parenting in Good-enough Parenting, edited by Margaret Adcock and Richard White. British Agencies for Adoption and Fostering, January 1985 p.68-73

30. Child Care Policy, London Borough of Barking and Dagenham, December 1989 Section 2(V)(VI)

31. Protecting Children, Department of Health, 1988, p.88-93

32. White, R., Carr, P., & Lowe, L. A Guide to the Children Act 1989, Butterworths London 1990 pp.79-80

33. Rawls, J. A Theory of Justice Oxford 1972 p.128

34. Ibid p.587

35. Ibid pp.248-9

# Chapter 6

# Parenting - The Right To Intervene

## The Political Context

The family, by which I mean any arrangement where adults have the prime responsibility for the care and upbringing of children, is generally regarded as a sphere of private obligation but most people also take Locke's view that parental rights are not absolute and depend in some sense on the benefit to the child. Hobbes' notion that parents have the right of life and death over their children is generally rejected. As long as some value is attached to the idea of children remaining with their natural parents if at all possible, then the removal of a child from its family of origin will involve balancing a gain against a loss. This is not always an easy equation to solve, as Margaret Adcock explains.

> 'there may be no difficulty in identifying where there are serious breakdowns in parenting which are characterised by physical abuse, gross neglect, overt rejection or abandonment. The problem lies in the 'grey' cases - in defining the point at which parenting failures warrant

> intervention and possibly legal action to impose a separation.' [1]

The definition of acceptable parenting is necessarily related to how the family is perceived, and what the acceptable justifications for intervening to protect individuals within families are. The following four views of the family demonstrate how both levels of support for inadequate parents and the identification of acceptable parenting standards can be influenced by any particular view about the family and the state.

First, if the family is perceived as the central institution of society then its defects can be tolerated because to undermine its operation in individual cases through state interference weakens its perceived importance as a source of obligation and feeling. The family thrives as an undisturbed unit which should not, except in extreme cases, be interfered with. This laissez-faire approach to state intervention reflects a view of the family as a private sphere where intervention is only justified if an extreme act of criminality is perpetrated. It can also be argued that when the State removes children from their families of origin it makes a poor job of providing successful alternatives, and therefore it may be better to leave all but those in extreme danger where they are.

Secondly, there is the view that although the family is a despotic institution because of the slow pace of children's mental development, it contains the potential for great harm, as well as great benefit. John Stuart Mill took this view:

> 'to bring a child into existence without a fair prospect of being able, not only to provide food for its body, but instruction and training for its mind, is a moral crime, both against the unfortunate offspring and against society; and that if the parent does not fulfil this

> obligation the State ought to see it fulfilled, at the charge as far as possible of the parent.' [2]

The risk of harm justifies intervention according to Mill, not only to warrant removing the child but also to provide adequate substitute arrangements for the child's future needs.

Thirdly, a view exists that the state is not primarily there to scrutinize parents, but to provide them with support, particularly as socio-economic entities. This means governmental income guarantees, tax allowances, child benefits, training schemes, support for inadequate parents, pre-school and workplace nursery provision and the like. Here there is a reduced emphasis on individual responsibility for child welfare because society takes on a larger share of the parenting role.

Fourthly, there is a view which stresses the importance of high standards of moral behaviour within the family where it is not sufficient to allow defective standards of parenting on the basis of non-interference by the State. High standards of parenting must be encouraged, and enforced by law if necessary, without allowing people to become dependent on the State. The following clutch of quotes in an essay by Pamela Abbott & Claire Wallace demonstrate the point:

> 'The origins of crime lie deep in society: in families where parents do not support or control their children, in schools where discipline is poor; and in the wider world where violence is glamourised and traditional values are under attack' (Conservative Party Manifesto 1987:55).

> 'It's at home that children first learn right from wrong'
> (speech by Mrs Thatcher, 1985).
>
> 'Hence, the problems of the inner city will be solved not only by Government spending but by bringing back personal responsibility (through ownership), security (through law and order) and stability (through strengthening a sense of personal obligation, most notably within families) (Tebbit 1985) [3]

There are, therefore, varying views of how the family may be seen in relation to the state. Taking the ideas of support and interference and applying differing combinations of the two ideas to the state's relationship with the family, several variations in the state's possible role become clear.

The first view saw the family as a natural institution functioning as an inevitable consequence of human nature. The family is not something the state should repair or prop up; only those children in very obvious and extreme danger should be rescued but otherwise there is no obligation to support inadequate families or to impose a particular moral standard of parenting on families.

J.S. Mill took the opposite view, a view which curiously is based on the concept of liberty, the principle being that people should be free to do and think as they wish as long as others are not harmed. In Mill's view, children can be susceptible to harm and should be brought up in an atmosphere where they are stimulated and encouraged to think. This demands a positive attitude of mind on the part of the parents, and Mill suggests that to bring children into the world without thinking of how their needs might be met is a moral crime. This implies that if parents are concerned but inadequate they should receive help

to enable them to provide proper care for their children, but if they are unconcerned the State should ensure by some means that the child's physical and mental development is safeguarded. The state is entitled to interfere by making education compulsory. Even though coercive interference is not neutral in terms of being harmless in itself, the greater harm would result if education were not provided at all.[4] Mill advocated high standards of parenting, and the provision of support for children who are understimulated and neglected. In essence his requirements were a high level of monitoring and if necessary strong interference with family life, as well as the provision of adequate levels of support for children in need.

The third view saw the state as provider and not policeman to the family. It is based on the idea that individuals respond in large measure to the social and economic conditions in which they live and therefore the role of the state is to *provide* rather than punish. To penalize families for not properly caring for their children is just as much an admission of there being inadequate support structures for the family as it is a demonstration of individual failure. The emphasis, therefore, is towards tolerating lower standards of parenting, whilst seeking to reinforce 'naturally' and improve parenting ability through the provision of adequate economic and social guarantees.

Fourthly, when the family is seen as the source of society's moral strength, standards of parenting are perceived as relevant and demand enforcement by the state, but such standards should be the responsibility of individuals and not the burden of society at large. For society to take over such a role necessarily weakens the motives of those very individuals who should be taking their responsibilities seriously. Consequently the state has the authority to interfere with the family but intentionally offers minimal support to parents who do not take their responsibilities seriously before reaching the point of intervention.

# The Professional Response

Standards of parenting are influenced by political, religious and personal interests, and there is no cultural or legal imperative which obligates prospective parents to understand the normal pattern of emotional and physical development for children before they have them. The meeting point between what is taken for granted as basic care and protection for children, and what individual families are free to do is articulated by the state when seeking legal sanction to intervene in family life.

The professional response in social service agencies has centred around the needs and rights of children since the recent plethora of enquiries following child deaths, especially those of Jasmine Beckford, Tyra Hendry and Kimberly Carlile, as well as the Cleveland, Rochdale and Orkney cases where it was judged that some children were precipitously removed from their families.

The Department of Health and Social Security Guide for Social Workers published in 1988 called 'Protecting Children' makes the point:

> 'Children and young persons are now often seen as having rights of their own, *independent of those of their parents*. These rights relate essentially to the meeting of basic needs and the freedom and protection from harm and abuse.' [5]

and from the same section, concerning the philosophy and principles of child protection:

> 'All adults, not only parents, have a responsibility to assert and protect the rights of children. Where there is a

> conflict of interests between the parents and the child, *the child's interest must be given 'first consideration'*.[5]

This on the face of it appears to be a simple formula. The difficulty lies in defining the 'child's interest'. If the rights of children are determined by people other than the child, the agent who defines those rights, in this case the Department of Health and Social Security, may have to decide *between* what the child wants, and what is considered to be in his or her best interest. In other words the rights of children are not simply reflected in what children say they want.

> 'separating children from attachment figures is likely to engender in them acute fear. The most frightening thing for children is to be simultaneously afraid and separated from their attachment figures. This, Fahlberg (1981a) suggests, is what makes moves into care so frightening. It also explains why some children who have been abused by their parents are reluctant to separate from them.' [6]

It might seem obvious that a child who wants to stay with abusing parents is not capable of independently exercising his or her own right for protection. It is, in a way, self-evident that children are vulnerable to both abuse and emotional manipulation because they are children.

Focusing on the child's needs at first glance appears to provide a professional solution to the political dilemma of which particular view of the State's relationship with the family is correct. The problem arises in deciding on how to define a child's needs apart from

simply following the child's wishes. Martin Hollis and David Howe sum up the difficulties involved:

> 'On the one hand, then, there have been many clinical and social studies of child abuse and neglect. The clinical ones focus on the physical conditions of the child, the social on the material circumstances of the family and on the state of its interpersonal relationships. Their aim has been to generate a list of indicators, which, when enough are present, signal a high risk of physical abuse, sexual abuse, neglect and a general failure to thrive. For example Kellmer Pringle has reviewed eight leading studies and extracted these ten common features found in the families of abused or neglected children.
>
> 1. One or both parents have, when young themselves, been subjected to violence.
> 2. One or both parents have had an unhappy, disrupted and insecure childhood.
> 3. One or both parents are addicted to drugs, alcohol, or are psychotic.
> 4. There is a record of violence between the parents.
> 5. Another child has already been abused, or suffered an unexplained death.
> 6. The pregnancy was unwanted; the baby was rejected at birth or soon after.
> 7. There has been failure of early bonding.

8. Both parents are under 20 years of age, immature for their years and socially isolated.
9. The family live in poor housing and on a low income.
10. The family is suffering from multiple deprivation.

They constitute a strong pressure to remove the child when in doubt.

On the other hand studies focused on children's personal development in a longer time span conclude, like Goldstein, Freud & Solnit, that children are nearly always better off with their natural parents. Separation damages mental growth. Breaking the maternal bond is profoundly disturbing and disrupting. Also, for many of those who do come into public care, there is much evidence that their troubles are far from over. Insecurity and instability bedevil their progress. They are liable to suffer repeated moves of home and changes of caretaker. They may experience institutional environments where emotional links are hard to forge. Removal carries definite risks and is to be avoided where possible. These studies constitute a contrary pressure not to remove the children, when in doubt.' [7]

The dilemma, which the current state of social work knowledge reflects, means that statements which simply refer to the needs of a child require qualification. Evaluations of proven risks against possible concerns, conflicting accounts of alleged abuse, divergent

medical opinions and unexplained injuries all add to the complexity and uncertainty of a secure prognosis for children at risk.

## The Child Protection Register

The Child Protection Procedures are now the channel through which standards of parenting are assessed by local authorities. They define the categories of abuse and potential abuse indicating where parenting standards are not thought to be adequate. If the situation of a child fits into any one of the categories, in the opinion of the Child Protection Conference, then the names of the relevant children are added to the register. Other recommendations and actions may also be made by the Conference. For example a recommendation may be to assess the standard of parenting over a period of months, and then report back to say whether in the opinion of the assessors the children's long term future can be safeguarded in the family or not. Immediate removal can sometimes be recommended, but in the majority of cases which come before the Child Protection Conference, the names of the children are either put on the Register or not. If they are, regular review conferences are held, and a key worker, usually a social worker, is appointed if available.

The Child Protection Conference is composed of people from different professional disciplines. Conferences are chaired by managers within social service departments (some departments have Child Protection co-ordinators who specialise in operating the procedures). Other professionals generally involved are teachers, health visitors, school nurses, nursery workers, representatives from the police youth and community service or child protection teams, and community health physicians. Other attenders can be probation officers and general practitioners. Social workers will also attend, either

having had some initial involvement, or as potential key workers. Team managers or duty managers are also usually present.

When assessments are made as a result of conference recommendations the DHSS guidelines favour a 'systematic approach, based on a comprehensive assessment of the child and family'.[8]

A full assessment includes the following:

- the nature of the cause(s) of concern for the child;
- the child's physical and emotional development, health and personality, highlighting any problems;
- the composition of the family and its stage in the family life cycle;
- the financial resources and physical environment available to the family;
- each parent's (or partner's) background, personality, strengths and problems;
- family interactions, including the couple's relationship with each other and with the child(ren), with particular attention being paid to their ability to meet the child(ren)'s needs;
- the nature of the child's and family's networks of relatives, friends and links with professional or other organisations;
- the factors which appear to have led to the causes for concern;
- the parents' degree of acceptance of responsibility for the concerns about their child, their wish to bring about change and their ability to do so;
- the help the family will need and the likely timescale for changes to occur. [9]

Although decisions to put children's names on the Child Protection Register are hardly ever based on such wide ranging assessments, the aim is to focus work by adopting a

systematic and structural approach to intervention. The absence of such method and approach is felt to be dangerous. [10]

As far as initial investigation of suspected abuse is concerned the general expectations from the DHSS guide are as follows:

> 'The essential feature of this stage (ie initial investigation) is the assessment of whether there is immediate risk to the child. A first requirement, therefore, must be speedy action to see, examine and where appropriate interview the child. It is important that the child's perspective and views about the situation are sought and understood.
>
> Parents will equally need to be seen and interviewed, and the social worker is responsible for exploring the circumstances of the alleged or suspected abuse with them, and explaining the reasons for concern about the child, and the responsibility and powers of the local authority in the situation.' [11]

I have outlined all this by way of explanation as to how investigations and assessments of family situations fit into the operation of the Child Protection Procedures.

I now want to discuss the categories of registration which indicate that conferences of professionals do not think that parenting for certain children is good enough, and therefore a category of risk is then attached to the case. Being put on the child protection register does not mean automatic removal from home. Removal depends on other

factors such as the severity of risk, degree of injury and likelihood of further abuse.

The following categories are typical of those currently used by local authorities, although each authority is responsible for producing its own precise version.

# Categories - Definitions

## Physical Abuse

Any form of physical injury, including deliberate poisoning, where the nature of the injury is not consistent with the account of how it occurred or where there is definite knowledge or a reasonable suspicion that the injury was inflicted (or knowingly not prevented) by any person having custody or care of the child.

This will include forms of punishment which severely hurt, humiliate or frighten the child.

## Physical Abuse

These criteria are open to a wide variety of interpretations, they may be used either very cautiously or too loosely. Whether they are is a matter I will try to explore through the answers to a questionnaire sent to a large number of local authorities. This I will explain after some initial comments about interpretation.

The definition in this category starts with this sentence 'Any form of physical injury, including deliberate poisoning, where the nature of the injury is not consistent with the account of how it occurred . . .

If a child is found to have an injury on his neck, he might say that he fell down the stairs at home. Parents might deny all knowledge of such an incident, and medical examination could reveal that such marks on the neck could not have occurred in a fall down the stairs without other injuries also occurring. The child has an injury, which is inconsistent with the account given. At the point of the child protection conference this could be all that is known. The medical account may be unclear as to the type of blow, except to say that non-accidental injury could not be ruled out. On the basis of this, and perhaps other concerns which in themselves would not be sufficient to register a child, the criteria for physical abuse would have been satisfied and the child's name could be added to the child protection register. The parents could be told that the nature of the injury was too severe for there to be no feasible explanation and that their not knowing how it happened was not a sufficient reason for the situation to be dismissed as unimportant.

An explanation:- that the marks were love bites which had been received on the way home from school. The child was frightened of his parents' reaction to finding out the real cause and therefore he had to think of another explanation. He said he had fallen down the stairs as it was the only explanation he could think of.

The definition carries on with . . . 'or where there is definite knowledge or a reasonable suspicion that the injury was inflicted (or knowingly not prevented) by any person having care or custody of the child'.

Alternatively, staying with the same situation, the conference may decide that it was obvious that the child was not telling the truth but also quite possible that the parents were, in that they might genuinely not know the reason for the injury. Although there was inconsistency in the child's own account, there were insufficient grounds to suspect deliberate abuse or very lax parental supervision. The parents might be told that should further unexplained marks appear the conference would consider registration, but as the mark could not be definitely categorised as accidental or non-accidental, the child's name would not be added to the register on this occasion. Concern would be expressed that no further incidents of this type reoccur and parents would be advised to take responsibility for this.

An explanation:- The marks were caused by the father pressing his thumb against the boy's neck after discovering that the boy had broken his fishing rod which was normally kept locked away. The father had told the mother about the incident. The mother had told the boy not to tell anyone what really happened in case he was taken away but to claim he had fallen down the stairs. The boy had said this because he did not want to leave home. He was upset by his father's temper but nothing similar had happened before, and the boy wanted to stay with his mother.

If a child is injured without the parents being aware of it, it could have implications in terms of the level of supervision they offer, or it may be a peer group influence on the child over which they have no control. On the other hand injuries can be inflicted and not be recognised through familial collusion or intimidation. The criteria for registration cannot cope with all the nuances of each particular situation and therefore are open to differing interpretations.

## Physical Neglect

The definition: the persistent *or* severe neglect of a child, for example, by exposure to any kind of danger including cold and starvation, which results in or could reasonably be predicted to result in the impairment of the child's health and development but for the intervention of another person.

A child is taken to hospital with a serious burn. The mother says the child pulled a kettle off a work surface and the very hot water caused the injury. She had not realised that the flex was hanging down allowing the child to reach the wire.

This constitutes child neglect under the criteria of physical neglect because the danger was indeed severe, and depending on the nature of the injury could have caused permanent damage. The situation could be thought to be predictable as a parent should be aware of the dangers for the child. If the facts are looked at in this way, registration could be possible. Any accident that could be reasonably foreseen and which is severe can be defined as neglect.

On the other hand it might reasonably be argued that parents do not keep their children in view every minute of the day, and that although keeping an eye on what the child is doing becomes a way of life no one could be expected to bring children up without accidents of one kind or another happening. If a series of accidents took place, that would be a different matter, in that the quality of parental supervision and awareness would come into question. However, in this case a single accident which the mother would have prevented had she realised the kettle flex was within the reach of the child could not be construed as child abuse and should not be registered.

It might seem quite absurd that accidents of this nature can come within the compass of

the Child Protection Register and it might be hard to imagine that anyone would seriously consider using it to cover the sort of example I have described. Imagine that the mother was a young single parent whose boyfriend was in prison for burglary, and that she had no support and was under considerable financial pressure. There might be a greater pressure to put her child on the Child Protection Register than if the child were from a middle class family, with no financial difficulties. The former would certainly influence professional thinking towards registration rather than away from it, and yet the children of single parents with boyfriends in prison are equally likely to have blameless accidents as are the children of middle class housewives.

## Emotional Abuse

The definition: the persistent or severe rejection of the child or the neglect of his/her emotional needs, which results in or could reasonably be predicted to result in severe adverse effects upon the child's behaviour and emotional development, but for the intervention of another person.

Measuring the degree of emotional damage to a child is not a purely subjective activity as there are indicators of normal patterns of development. Christine Cooper lists some of the signs. For example, favourable signs in the later months of the first year of life and the toddler years are things like:

- play with the mother's clothes and body;
- referencing back during play;
- interactive games;
- general liveliness and exploring;
- anxiety at the approach of strangers.

Worrying signs can be:

- self-comforting like rocking;
- head banging;
- frozen watchfulness;
- lack of exploratory behaviour;
- wailing;
- chaotic hyper active play. [12]

There are many other indicators and trained and experienced paediatricians are usually able to provide a guide as to how seriously the emotional develoment of a child is impaired. It is harder, however, to define emotional abuse than physical abuse.

> A depressed woman has a two year old son. There are no problems with his physical care, but his mother seems to ignore him a lot of the time. He has a speech delay which is not apparently due to any physical difficulty, but results from a lack of the stimulation of other children's company. His mother takes him to a nursery/playgroup sometimes, but often she is too apathetic and depressed to go.

The child is obviously understimulated and as a result behind with his speech development. With development issues, it is necessary to monitor 'progress' over a period of time but the difficulty arises, however, in judging how long to wait before deciding on the use of the Child Protection Register. In the above example there is obviously some emotional deprivation present, but it may be that in six months the mother will not be so depressed and the child will be making more progress with his

speech. Whether the register should be used is a matter of interpretation given that what is at stake is a *minimum* standard of acceptable parenting.

> 'Very few parents meet the needs of their children all the time but the majority of parents in our society would appear to provide 'good-enough' parenting in that they do not seriously prevent or hinder their children's development' [13]

The problem with emotional abuse is that it is measured against imperfect standards of parenting on *a sliding scale*. Interpretation is unavoidable. The same consideration applies to the category of **Potential Abuse** only more so:

> Children in circumstances where they have not been abused, but where social and medical assessments indicate a high degree of risk that they might be abused in the future . . .

The whole range of alcoholic problems and marital difficulties which involve violence between the adults but not the children are examples of the types of situation which can be covered by this category. The range of possible interpretation is very wide because the category itself is based on *opinion* as to whether risk will occur in the future. A 'social assessment' is an opinion based on the *available* facts.

## Sexual Abuse

The definition: the involvement of dependent developmentally immature children and adolescents in sexual activities they do not truly comprehend, to which they are unable to give informed consent and which are for the gratification of an adult.

> A seven year old boy is displaying a lot of sexualised behaviour at school, drawing pictures of adults having sex, and making provocative remarks to other children, but no-one in particular. His knowledge is too detailed and explicit for there to be no concern, but there is no suspicion that any of his family have abused him. He lives with his mother and younger sister. There are no concerns about his physical care.

Has this boy been sexually abused or not? If from the information available the professionals think that he has been abused, then his name should be put on the child protection register.

As with the example of physical abuse, the problem of interpreting the criteria of sexual abuse is having to interpret the criteria on the basis of a limited amount of information. Allegations of sexual abuse which are denied, and for which there is no medical evidence, demand the formulation of an opinion as to whether abuse has or has not taken place. The usual pattern is to believe the child unless it is obvious that the allegation is a lie. Even though the police cannot prosecute in such circumstances, children's names can be added to the register on the basis of what the child says or does.

# The Child Protection Register - A Survey

## Part 1 - A Common Standard of Risk?

I sent out the following survey to discover how Local Authorities use the Child Protection Register, and whether there is a variation in the application of the criteria for registration between the Local Authorities. A questionnaire was sent to every Metropolitan District, County Council and London Borough in England and Wales. Of the 114 questionnaires sent, 48 replies were received. The survey was sent out in December 1989 and replies were received up until June 1990.

## The Questionnaire (Part I)

The first aim of this questionnaire is to gather some preliminary information about the interpretation of criteria used for registration under child protection procedures in different local authorities.

Because I understand the pressure which Child Protection Co-ordinators and area managers work under, each situation is described briefly and you are requested to tick the appropriate box on the understanding that in an actual situation more detailed information would be available. Tick the box which you, yourself, would favour.

### Situation No. 1

An eleven year old boy tells his teacher that his dad locks him in his bedroom when he is naughty and sometimes hits him round the head. When interviewed by a social worker the father says he sends the boy to his room when he has behaved badly and in sending

him he might put his hand on his head and gently push him. The room can be locked from the outside but the father denies ever locking the boy in. It is known that the marital relationship is occasionally stormy and that the father has hit the mother in the past. The boy occasionally wets the bed and has been rather quiet and occasionally withdrawn at school over recent months. A school medical reveals a 2" x 1" old bruise on the boy's back which neither parents nor child have any explanation for. Otherwise his physical development is normal.

- ☐ Registration
- ☐ More likely to register
- ☐ Less likely to register
- ☐ Not register
- ☐ Uncertain

**Situation No. 2**

A woman has a fourteen year old daughter and two younger boys aged five and three. The father of her eldest girl left seven years ago when the child alleged that he had been sexually interfering with her. He has had no recent contact with the family. The father of her two boys is also not in contact with the family. Currently the mother has a boyfriend who does not live with her, but babysits two evenings a week when the mother goes out to work.

Recently the health clinic discovered a number of anal warts on the youngest boy and the clinic doctor was highly suspicious of sexual abuse. However, when seen by a dermatologist, it was felt that the warts were not necessarily indicative of sexual abuse, and that there was no clinical method of establishing whether sexual abuse had definitely taken place or not. Disclosure interviews did not reveal any substantial evidence in respect of sexual abuse, but the younger boys do not like mother's boyfriend and hoped

he would leave. Mother says she does not believe her boyfriend would abuse her children and says that they are not left alone with other men.

- ☐ Registration
- ☐ More likely to register
- ☐ Less likely to register
- ☐ Not register
- ☐ Uncertain

**Situation No. 3**

A seven year old girl spends a great deal of time missing from her house, sometimes not coming home after school and staying out till eight o'clock.

Her mother, in particular, has always found her difficult and admits that she did not really want her. The mother is torn between giving up with the girl, and trying to keep the family and her marriage together.

At home the girl can often be withdrawn, and also sometimes throw tantrums. She also gets up early and on occasions has been destructive. Recently she opened the back of the television and attempted to set fire to it.

She has told a social worker that she only wants to live with her father and that if her mother does not leave she will run away and not come back. Mother is not prepared to engage in family therapy but is quite happy for the child to receive treatment from a psychiatrist.

- ☐ Registration
- ☐ More likely to register
- ☐ Less likely to register
- ☐ Not register
- ☐ Uncertain

**Situation No. 4**

Three children, aged nine, six and four have been living back with their mother for two years. They were in care for a year prior to this due to physical abuse by the father and neglect by the mother who was caught up in a violent and preoccupying marital situation. The father left and after a period the children were rehabilitated at home with mother under a supervision order.

In general, mother has coped well with the three of them, although the middle child is exhibiting behavioural problems at school, and has been referred to an educational psychologist. Schools report that mother is a concerned if limited parent who takes an interest in her children. Their physical development is normal.

A week ago the children were found wandering in the road at ten o'clock at night. It transpired that the mother had been on a binge drinking bout and was asleep in bed. She had been in bed all day, according to the children. She recovered over the next two days and admitted to occasional drinking bouts when she is feeling low. She said this was the first time it had happened for about six months.

- ☐ Registration
- ☐ More likely to register
- ☐ Less likely to register

☐ Not register

☐ Uncertain

**Situation No. 5**

A fourteen year old girl lives with her mother, and her mother's cohabitee. The girl reveals that on a few occasions over the last six months the cohabitee has approached her trying to touch her sexually. She says that she has been too frightened to resist. She says it has only been touching, but she is worried that it might get worse.

Her mother, on being told of this allegation, says the girl is making it up and that she does not believe her cohabitee would do such a thing. She says he has no need to seek sexual gratification from her daughter.

The cohabitee's account is that he never made any sexual approaches and that the girl is jealous of the attention he gets from her mother. He has tried to be friendly with her, and has tickled her when 'rough and tumbling' with his own children who visit at weekends, but nothing more.

The School reports that she is a difficult girl, and her teacher feels she craves attention and is concerned that within her peer group her behaviour can be sexually provocative. The cohabitee has no criminal record of offences against children and medical examination has not provided evidence of sexual abuse. The cohabitee's own children live with their mother and there are no concerns about them.

☐ Registration

☐ More likely to register

☐ Less likely to register

☐ Not register

☐ Uncertain

---

The results were as follows:

| | Situation (Case Study) | | | | |
|---|---|---|---|---|---|
| | **1** | **2** | **3** | **4** | **5** |
| Register | 6 | 1 | 7 | 14 | 19 |
| More likely to Register | 19 | 8 | 10 | 11 | 22 |
| Less likely to Register | 10 | 18 | 10 | 16 | 4 |
| Not Register | 9 | 18 | 18 | 4 | - |
| Uncertain | 3 | 3 | 3 | 3 | 3 |
| Total Replies | 47 | 48 | 48 | 48 | 48 |

Five local authorities added comments to their answers. Please see Appendix A for these. They do not susbstantially alter the above results. Two local authorities would not make any decisions because of lack of information, and would have deferred any decisions concerning registration pending the provision of a fuller background. One other local authority only felt able to complete case studies 2 to 5 for the same reason.

These are, albeit under restricted information, representative opinions from forty-eight local authorities in England and Wales. They show that professional opinion as to whether children's names should be added to the Child Protection Register is very wide ranging and that there is no common professional standard of risk. The only case study which approached a consensus of opinion was case study number 5. These findings do not accord with the more systematic approach hoped for by the Department of Health and Social Security in 1988.

> 'Child protection work can never be risk-free and there can be no guarantee of success. However, a more systematic approach, based on a comprehensive assessment of the family should not only provide a better basis for decision-making but also allow for more effective evaluation of the models of intervention used'.[14]

The survey indicates that there are marked variations in professional views of risk. If professionals cannot rely on each other for a standard response, then it is difficult to see how a publicly recognised standard of parenting can emerge. It seems to be asking too much, given current levels of knowledge, to predict accurately where the high points of risk exist across a given population. Margaret Richards points out the odds against precise prediction.

> 'Raymond Starr, Editor of a collection of research studies in America indicates that if we were to use our *current state of knowledge* of the specific factors involved in Child Abuse to screen a given population we would get our predictions wrong three times out of four.

> This would be both in terms of families 'missed' because they did not carry the right predictors, as well as those wrongly suspected. For example the majority of abused and neglected children do not have abused parents and many children who have been abused grow up to be adequate parents.' [15]

The clear message is that indicators of possible abuse in families are guides and not predictors. Michael Rutter says this:

> 'a variety of investigations (see Spinetta and Rigler 1972) have found that parents who batter their children tend to have had a seriously disturbed upbringing themselves, often associated with neglect, rejection or violence . . . The links are quite strong in that at least half and probably some three quarters of battering parents have experienced an unhappy, rejecting, cruel or violent upbringing. Even so, a substantial minority do not have this adverse background and a few seem to have had quite unexceptional childhoods. Also, it is necessary to recognise that the links are far stronger looking *back* than they are looking *forward.* That is to say, although more battering parents come from unhappy, affectionless and sometimes violent homes, it is likely that only a tiny minority of youngsters from such homes go on to physically abuse their children.' [16]

In considering the *detection* of child abuse it is clear that all abused children do not

necessarily become abusing parents, and all abusing parents were not necessarily abused themselves as children, although a large proportion evidently were. How does this apply to the evaluation of risk to a child? Discovering that a parent was abused as a child is not in itself a predictive device which tends to the conclusion that the children of that parent will most probably be abused. It is only an indicator that the *chances* of abuse are higher than they otherwise would be. *Possible* abuse is very different from *probable* abuse.

*Prediction* is not a tool which is readily available for Child Protection Conferences, and this state of professional knowledge accounts in some measure for the wide variety of decisions made by local authorities as reflected in the survey I have carried out.

In sharp contrast with the current state of professional knowledge are the expectations created by inquiries such as the one undertaken following the death of Kimberley Carlile. The report suggested that social workers should have the ability to divine psychologically the potential for abuse:

> 'To deal with this family, any worker would have to have had to be clear sighted and aware of the manipulation practised by abusing parents. It is well known that such parents are adept at fobbing off the attempts of Public Authorities, likewise the Social Worker must be determined and assertive. To achieve this it might well have been necessary for workers to recognise the psychopathology of the Carlile family.
>
> A social worker needs to have his antennae in working order to pick up the signals of child abuse.' [17]

Multi-disciplinary assessments which are often available to child protection conferences help intuitive ideas about families to become more focussed and systematic than would otherwise be the case. What they do not do is to remove uncertainty. Louis Blom-Cooper's statement that social workers should have antennae picking up signals of child abuse is a misunderstanding of where the limits of detecting child abuse currently lie. However, his position reflects the growing feeling in professional social work, that a systematic approach covering, for example, developmental issues, educational progress, parental and child viewpoints will result in being able to predict and detect where abuse will occur. The variation of responses given in my survey is a simple way of demonstrating that this assumption is not true. Opinion and sometimes suspicion still play a major part in the assessment of risk. I want to use the second part of the survey to discuss whether the notion of uncertainty is acknowledged in the assessment of risk, by looking at how local authorities view the purpose of registration under child protection procedures.

## Part II - The Purpose of Registration

## The Questionnaire (Part II)

The second aim of the questionnaire is to discover your views on the purposes of registration.

Number the boxes which you think are relevant in order of priority and leave the others blank. If you wish to add your own comments please do so at the end. If you think two items deserve equal priority insert the same number in both boxes.

**The purpose of registration is:**

(a) To establish a common standard of risk.

(b) To offer protection to children at risk through a professional network set up to monitor the situation regardless of any effect registration may have in reducing co-operation from, and access to, the family.

(c) To make the parents aware that the department and other associated professionals are concerned about the welfare of particular children.

(d) To use it as a forum for reviewing children in conjunction with parents, so that review conferences can be used as tools for effecting changes in parental attitude and behaviour.

(e) To share responsibility between professionals for decision-making.

(f) To create a reference point at which decisions regarding removal and long term planning can be made.

(g) To monitor the quality of child abuse investigations.

(h) To consult other agencies before decisions on unsupervised access or trial periods at home are made.

---

Although the section on the purpose of registration was multi-choice, it was not intended to confine professional opinions into a process of strict ordering. The aim was to discover where the emphasis of professional priority lay, and to gather in additional

opinion. The option of adding comments and giving items equal priority was included. Appendix B contains each written contribution and is illuminating as to how different professionals view registration.

The following table aggregates the responses received from the local authorities who replied:

| Purpose | Priority 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 |
|---|---|---|---|---|---|---|---|---|
| a) | 3 | 1 | 6 | 5 | 4 | 3 | 1 | |
| b) | 35 | 1 | 1 | 1 | 1 | | | |
| c) | 11 | 13 | 8 | 5 | 1 | | | |
| d) | 2 | 17 | 7 | 6 | 1 | | | |
| e) | 1 | 8 | 11 | 5 | 2 | 3 | | |
| f) | | | 3 | 8 | 3 | 2 | 3 | |
| g) | | 2 | 1 | | 5 | 2 | 1 | 3 |
| h) | | 1 | 3 | 5 | 4 | 1 | 2 | 5 |

If you look at priority number one, it is clear that the majority (35) felt that protection for children as designed by the *professional* network was of prime importance. An important minority (11) however, felt that the idea of relating to and influencing parents about professional evaluation of risk was the top priority.

Priority number two centred around the idea of exerting professional influence over parents through a sense of partnership. Categories (d-17) and (c-13) indicate this emphasis.

The idea of sharing professional responsibility was given emphasis as being the third most important priority (e-8- priority 2 and 11 for priority 3).

Further evaluation of the other categories is not possible given the number of responses, and because there are no categories which particularly stand out in relation to the others. It is noteworthy that the idea of establishing a common standard of risk is not seen as deserving a high priority. This could either be because it is assumed, or because local authorities operate in isolation to one another, and are primarily concerned with keeping their own houses in order. Whatever the reason it is clear that professionals see themselves as being able to identify risk in a manner which permits them to devise child protection plans which may involve disregarding the views of the parents concerned. This is obviously necessary in extreme cases, but it has implications for the many borderline cases of neglect and deprivation where a sense of partnership with parents is preferable to alienating them through the defensive way professional concern is sometimes expressed. The questionnaire shows that on the whole professional power properly exercised, is considered to be of greater importance than establishing a sense of co-operation with parents. The two elements were certainly not given equal priority in the answers received.

## Conclusion

The survey comes after ten years of Thatcher government where high expectations of parenting standards have been coupled with the desire to make families less dependent

on the state. Society bases its moral strength on the family but does not *as a rule* attempt to share responsibility with parents. The emphasis on professional networks taking priority *over* working alongside parents reflects the trend towards policing families as opposed to supporting them in order to protect children. Although the social work profession would be hard pressed to acknowledge publicly an affinity with the Thatcherite model of the state and the family, the increasing emphasis on child protection as the first priority, has indeed gone some way towards polarising the relationship between the state and the family as one of scrutiny and accountability. Within the social work profession the contribution towards Thatcherite morality has come about, unwittingly to some extent, because limited resources have meant a transfer of effort to child protection at the expense of family support. Appendix C demonstrates this. It describes one week in my own professional life as a team manager in a social services department.

Putting the two parts of the survey together, it seems that although there are large variations in the professional evaluation of risk to children, as expressed through the registration process, there is a significant emphasis on the separation of professional opinion from other influences. Although there are obviously many local variations, the overall picture is one of professional agencies *distancing* themselves from the community in order to preserve the exercise of professional intervention in families.

This separation from the community by professionals is also reflected in public opinion as to where the responsibility for protecting children at risk lies. Martin Hollis and David Rowe argue that social workers take on the task of protecting children even though the science is very inexact, and because they do so knowingly, they bear responsibility. Social workers are both foolhardy and courageous.

Hollis and Rowe put it like this:

> 'a bomber pilot with a target needing complete precision, if nearby civilians are not to be killed is not excused inaccuracy just because his equipment was incapable of the precision required. If he knew that he could not perform within the margin of error set, there is a question about his acceptance of orders . . . ' [18]

Even if public opinion is sympathetic to the predicament which faces the social work profession, as Hollis and Rowe are, the responsibility in their view still belongs to the people who take on the task. If the responsibility is primarily one which belongs to professionals then the distance between those professionals and the community at large must remain.

When asked about the purpose of registration, substantially more professionals felt that monitoring and assessment within the professional community, regardless of any effect on co-operation from parents should be the first priority, while fewer felt that sharing concern with parents was of prime importance. The opposition between the ideas of supporting and policing is one that is relevant to the professional community, and what seems clear is that there is considerable variation in how their relative importances are perceived. Remembering the four models of the state's relationship with the family, sketched at the beginning of this chapter, it is easy to see how the balance in professional social work between the provision of support and the exercise of authority can veer towards one model or the other. Recent developments in social work demonstrate the point.

Late in 1980 the National Institute for Social Work, at the request of the Secretary of State for Social Services, set up an independent working party to review social work roles and tasks. The report became known as "The Barclay Report". It concluded that social work should focus its attention on the community, and put forward a model of state intervention very much akin to the third model, the state as an enabler, sketched at the beginning of the chapter. The intended relationship is outlined in the following section of the report:

> 'Community social work requires of the social worker an attitude of partnership. Clients, relations, neighbours and volunteers become partners with the social worker in developing and providing social care networks. We have already referred to the description of the relationship by one respondent as one of people 'equal but different'; we might be prepared to go further and describe social workers as upholders of networks. This may make clear our view that the function of social workers is to enable, empower, support and encourage, but not usually to take over from social networks'.[19]

This view of social work very quickly evaporated with the ensuing reports into child deaths such as those of Jasmine Beckford, Tyra Henry, Kimberley Carlile and Doreen Aston. The concept of 'professional dangerousness' gained credibility and was legitimated in the official Department of Health and Social Security publication 'Protecting Children' 1988 (pp 12-13). It is described in this passage from a recent social work text:

> 'the 'dangerous social worker' may be best illustrated by the picture of a worker operating alone and in isolation, attempting to make contact with an unenthusiastic or hostile family in respect of some expressed concerns that the children may be in some way 'at risk'. Such approaches may be made by focusing on more mutually acceptable problem areas such as housing or material benefits, as neither the worker nor the family feels comfortable with an open statement of the real concern ...
> A 'relationship' which can be damaged in such a way is in fact only a relationship of enmeshment and collusion: the antithesis of any therapeutic or supervisory contact. A professional relationship which cannot include the discussion of real concerns inevitably reveals itself on examination as not a relationship at all, but an avoidance of conflict and difference'.[20]

Here, there are certainly similarities to the fourth model of state intervention with the family, sketched earlier, ensuring that professional distance allows room for an investigative stance if such action is thought to be necessary. Now, if sufficient resources are available, it might be thought that material and affective, that is human, support, can be distributed generously at the same time as giving the policing and monitoring role for children at risk to those who are responsible for the distribution of that support. In such a way, the two contradictory roles can be reconciled, as long as the recipients understand that such agents of the state have two very different functions; namely, the giving of support and policing. What makes this possibility difficult is both the fact and the perception that resources are restricted. Professionals therefore feel it is

incumbent on them to prioritise the resources at their own disposal, as well as their own time. Although individual practitioners may not be faced with such stark choices every day, they often are and social service departments as a whole certainly are. They are receivers of a whole spectrum of demands and have to tailor limited resources to what they consider to be the most important avenues of need. This again is demonstrated in Appendix C. In this culture the idea of choice between providing more support services and putting more energy towards effective policing and assessment of risk is often present in the minds of practitioners and managers. They are constantly choosing what they consider to be the most important priority.

So it can be seen that the Barclay Report's view of the state as provider dramatically altered through the 1980s to a view which held up professional distance and 'objectivity' as being essential for the protection of children at risk. High parenting standards were expected in a climate of limited support services for disadvantaged families. The Cleveland affair played a large part in framing the increased accountability which social workers now have towards the courts for decisions they make in relation to child abuse, or suspected abuse. This has been translated into statute in the 1989 Children Act which was implemented on 14th October 1991 but there is no lessening of the multi-agency system of child protection which I have described in this chapter.

In the second part of the survey, opportunity was given to prioritise more than one option equally; so it could have been quite possible for the participative options (c and d) to have been equally weighted with the option which stressed policing and protection (b). Yet in a survey which made no explicit reference to available resources* the idea of protection by means of professional power was held up as being of greater importance.

* The participative options require more time and effort than conferences where parents take no active part, but none of the written comments received suggested that this was an inhibiting factor in the choices which were made.

This trend is now due to be reversed by outside pressure and the following extract from the Open University 'Focus on Practice Workbook' for the Children Act 1989 shows how:

> 'the Act (ie the Children Act 1989) directs that parents must be allowed reasonable contact with their children (other than when it would be contrary to the child's welfare) and given help to maintain contact where this is difficult, even when an emergency protection or care order is in force. The Act also directs that, irrespective of a care order, parents must be consulted about where the children are to be placed, and about all other decisions taken about them. The 'Care of Children' (Department of Health 1990) states that it should be the exception for them not to be invited to reviews and case conferences'.[21]

There has been a bombardment of influences on the activity of social work in the last ten years, and what seems to have happened is that the 'state as provider' has been overtaken by the 'state as protector'; but a protector which itself needs to be accountable, both legally to the courts for its decisions, and financially to its managers and political masters as to how it uses resources. Consequently the social work profession has become a vehicle for a number of competing, and sometimes conflicting ideologies. This is what makes it difficult for practitioners to adopt a single ideology like Mill's. He advocated the safeguarding of children's physical and mental development through state support if necessary. As I mentioned earlier, his position on education for children could be extrapolated to justify the provision of support, for those parents who were inadequate but willing, and interference with those who were capable but unwilling.

Although it can be argued that the state as protector is also a provider which is accountable to managers and politicians for stewardship, a problem arises as to how the priorities of support provision are justified. If support is provided on the basis of children having a right to it, for the sake of their own development, then such support must be distributed so that all children equally experience as proper development as possible. If on the other hand the provision of support is based on the idea of making adults more responsible so that they can then contribute more to their own children's welfare, the 'market' of support is unlikely to ever equalise the opportunities for proper development which all children are supposed to have a right to.

When the circumstances regarding abuse or potential abuse are unclear, judgements about the chances of making the 'irresponsible' into responsible parents can only be made in relation to an assessment of the child's development when the parents are put under scrutiny. The courts are there to ensure that those processes of scrutiny are fair. If judgements about parental responsibility are always made apart from children, the variation in professional and legal views about the potential for reform is unlikely to equalise the opportunities which children who are subject to indifferent and sometimes abusive parenting deserve. The study by Goldstein, Freud and Solnit[7] referred to earlier indicates that there is a cost to breaking the bond between children and their natural parents. Obviously when abuse is severe and rife such a cost is outweighed by the need to rescue the child from assault and cruel treatment. When situations are not so clear cut and support offered can effect a change in parental attitudes the conflict between trying to preserve the familial bonds for the sake of the child and providing resources for parents who are perceived as feckless and irresponsible comes into sharper focus.

It will be seen in the next chapter that children's rights to proper development *cannot* be properly served primarily through the delegation of such rights to the idea of parental responsibility. When this is attempted the spread of resources available to make

irresponsible parents *more* responsible is itself too closely linked to the idea of political accountability between departments within organisations, as well as between central and local government, to achieve the greatest possible equality of developmental rights for children. This is demonstrated through the recent history of planning and resource allocation in the personal social services. The consequence whether intended or not is that a deprived child will not receive the same level of help in one area of the country as another. This whole matter is taken up in the next chapter.

If there is to be a market model for the provision of welfare support for children, demand for resources, in my submission, should not be seen in the currency of social work assessments as to how responsible or irresponsible parents are; rather they should be based on every child's right to as proper a development as possible. [Some of the issues as to what is meant by 'proper development' were discussed in the last chapter.] Only then will there be a chance that the language of rights will eventually be matched by the appropriate material and affective resources. As long as children's rights are primarily perceived through the assessment of whether individual parents are responsible or not, a reluctance in the wider political community to give state money to 'irresponsible' parents is likely to persist; and if it does then the inequality of provision for children who face the risk of being permanently separated from their natural parents will also persist.

# Chapter 6 - References


1. Adcock & White (ed) Good Enough Parenting BAAF 1985. Assessing Parenting; the Context. Margaret Adcock p.17
2. Mill, J.S. On Liberty: Applications in Utilitarianism. Ed. Warnock Collins, Fount Paperbacks p.239
3. Abbott P. & Wallace C. The Family in Beyond Thatcherism Ed. Phillip Brown & Richard Sparks, Open University Press 1989, p.81
4. Mill, J.S. op cit p.240
5. Department of Health & Social Security, Protecting Children 1988 p.9
6. Aldgate & Simmonds Direct Work with Children, Batsford 1988. 'Work with Children Experiencing Separation and Loss: A Theoretical Framework p.38
7. Hollis M. and Rowe D. Moral Risks in Social Work, Journal of Applied Philosophy, Vol 4, No 2, 1987 p.125-6. The texts they quote are the following:
   M. Kellmer Pringle (1980) Towards the prediction of child abuse, in: N. Frude (Ed.) Psychological Approaches to Child Abuse, p.217 (London, Batsford Academic)
   J. Goldstein, A. Freud & A. Solnit (1979) Before the Best Interests of the Child(New York, Free Press)
8. Protecting Children DHSS p.3
9. Protecting Children DHSS p.20
10. Protecting Children DHSS p.12
11. Protecting Children DHSS p.19

12. Cooper, Christine — Good-enough parenting, British Agencies for Adoption and Fostering 1985. ed. Adcock & White, 'Good enough, Borderline and Bad-enough Parenting', p.67, 69.

13. Adcock, Margaret — Good-enough parenting, British Agencies for Adoption and Fostering 1985. ed. Adcock & White 'Assessing Parenting: The Context' p.13

14. Protecting Children — DHSS p.13

15. Richards, Margaret — Social Work Today January 1988

16. Rutter, M. — Maternal Deprivation Reassessed, Penguin, Second Edition 1981, p.199

17. Child in Mind — The Report of the Commission of Inquiry into the circumstances surrounding the death of Kimberley Carlile, London Borough of Greenwich 1987 p.193

18. Hollis & Rowe — op cit p.131

19 Social Workers, Their role and tasks, National Institute for Social Work, Chair Peter M. Barclay, Bedford Square Press, 1982 p.209

20. Dale, P., Davies, M., Morrison, T., Waters, J. — Dangerous Families, Assessment and Treatment of Child Abuse, Routledge 1986 pp.34-35

21. Open University, The Children Act 1989; Putting it into Practice, Focus on Practice Workbook p.27

# Chapter 7

# Equality of Protection

## Incentive and Dependency

The last chapter included the claim that children should not be removed from their families if there is a realistic possibility that extra support might secure their beneficially staying with their parents. In essence, part of protecting children from the long term psychological damage which can occur when permanent separation takes place, is to attempt to support poorly motivated parents through the providing of day centres, residential units, outreach workers and the like. In the Children Act 1989 the likely effect of any change in the circumstances of a child must now be taken into account when that child's welfare is under consideration by the court (Section 1(3)(c)). The Act says that local authorities must make some provision to enable children to stay with their families. If such a policy is pursued and *justified* in terms of the right of the child to protection from abuse and deprivation including emotional neglect, the natural consequence is that inadequate parents can at least in part rely on outside support for the fulfilling of their parental responsibilities. The question arises as to whether by providing support for inadequate or poorly motivated parents, such parents are being

socialised into a dependency culture which prevents them from assuming a greater sense of responsibility. The answer must to some extent depend on the 'character' of the support offered and the subsequent perceptions of the recipients. If the process of support is one which actively seeks to make the recipients stigmatised, then there will be a disincentive to receive the 'help' on offer. Alternatively, if attempts are made to reduce stigma, those attempts may help to soften the blow for some who feel insulted as subjects for 'help', which they have no option but to accept. They know that if they do not accept help, further inroads into their family will be made by the agencies responsible for the child's welfare. As far as dependency is concerned it can be argued that too generous a support structure will reduce the incentive for parents to carry out their responsibilities. This is because a change in the general perception of where parental responsibility lies will allow a certain proportion of parents to fall back on other people too easily. Whether the right of the child to stay with his or her family of origin is more fundamental than the need to make parents *feel* responsible for children affects how people view the sharing of responsibility between the state and the family. If poorly motivated parents are thought to take advantage of state structures set up to assist inadequate families too quickly, then the idea of 'shared responsibility' for children is in fact a euphemism for the encouragement of a culture which creates dependency.

The Children Act 1989 is a comprehensive rewriting and reform of both public and private child care law. The Act contains several principles of importance, but put in concise form, a child's welfare is seen as paramount and this is enacted through the ideas of 'parental responsibility', partnership (where parental responsibility is shared between parties, including public authorities) and protection (the assumption of authority by the state through the courts). The idea of parental responsibility is the main support of the idea that the child's welfare is paramount. The Introduction to the Act says this:

> 'The Act uses the phrase 'parental responsibility' to sum up the collection of duties, rights and authority which a parent has in respect of his child. That choice of words emphasises that the duty to care for the child and to raise him to moral, physical and emotional health is the fundamental task of parenthood and the only justification for the authority it confers'.[1]

The notion of parental responsibility is extended to include the possibility of it being shared out between various parties, the idea being that the child's needs are the focus of attention and should be catered for in any variety of flexible arrangements. The Open University, Focus on Practice Workbook puts it like this:

> 'Parental responsibility may be *shared*, for example, by grandparents and the child's mother or by the local authority and the child's natural parents, although there are usually limitations which restrict how parental responsibility may be exercised. Parental responsibility, however gained, entitles a person to have contact with a child subject to a care order, and to be consulted about decisions regarding the child'.[2]

The Guidance and Regulations on Family Support outline the principles which should underpin shared arrangements between families and local authorities. This particular extract is about the provision of accommodation for children, but the principles apply to other kinds of support, such as nursery provision, help in the home or counselling.

> 'In the provision of services the emphasis will be on partnership with the child's family so as to provide for

> the child's needs by voluntary arrangement, build upon the family's strengths and minimise any weaknesses .... Review of the service provision will be necessary to check that the objective is being met. Every effort should be made to enhance the parents' capabilities and confidence so that they may provide effectively for the child's welfare'.[3]

The purpose of shared responsibility between the state and families in situations where children are judged as being in need, is to encourage parents to take on as much of the parental responsibility as possible. A child's needs can be met, according to the Act, in partnership between parents and local authorities, the representatives of the state. So far the scheme sounds uncontroversial. The situation, however, changes in the very next sentence of the last quoted section which says:

> 'However, the nature of the voluntary arrangement should not prevent a continuing assessment of any risk to the child; and where the circumstances require it, the child protection procedures should be brought into play immediately'.[4]

Section 47(1)(b) of the Act says that a local authority has a duty to investigate when there is reasonable cause to suspect that a child living in its area is suffering, or is likely to suffer, significant harm. This is for the sake of determining whether any legal or other action is necessary to protect the child. From the point of view of the parent, the supporter and partner who comes from the state can very easily turn into an investigator and policing agent. In some cases they can 'metamorphose' into authority figures who actually take over the control of their children.

One way this dual role is justified is by saying that the provision of support for children in need in the community is made for the purpose of enhancing the individual sense of responsibility for their children which parents should have. Recipients of help should not see the help as their right, or as a result of their own deprivation but as a *means* to becoming more responsible for the upbringing and welfare of their children. The Lord Chancellor, Lord Mackay, emphasised this in a speech prior to the implementation of the Act on the 14th October 1991.

> 'The welfare of children, both as a class and as individuals, needs to be kept at the very centre of our thinking. And joined with it, the recognition that it is in the interests of children, families and the wider community that parents should be seen and treated as having the primary responsibility for securing the children's and the family's welfare, and that the state, in its many guises, should act only as a helpmate and on request and not seek to take over the parental role.' [5]

Consequently the two roles of supporter and authority figure can be integrated into what might be called a 'market welfare' model of the social worker; when parents fail to act responsibly, and make inadequate use of any help on offer, in other words act as bad consumers, the providers of support can then legitimately assert their authority over the family through the law, or threat of legal sanction.

One major difficulty with the market welfare model of social work is that somehow the rights of the child appear to be in direct competition with the notion of parental *irresponsibility*. How much support should be given for the sake of maintaining the natural familial bond in an attempt to make an 'irresponsible' parent 'responsible'? One

answer might be as follows:

What is required is a method of protecting the rights of children to stay with their parents if at all possible, at the same time as putting sufficient pressure on parents to ensure that they know what the alternatives are if standards of care for their children do not come up to an acceptable level. Those alternatives can, in extreme cases, mean the loss of their children or may mean trial periods at home to see if problems can be contained. Poorly motivated parents will respond in the main, if they know that ultimately they might lose the care of their children. If levels of risk are too unpredictable while the child remains at home, the process of assessment can take place with the whole family in a residential setting supervised by professional therapists and care staff. Parental incentive is maintained through the fear of losing the care of their own children, while the rights of the child are protected through being given the opportunity of staying with their parents if possible. Obviously it would be very wrong to house extremely violent or sexually abusing parents with their children, but sometimes such abusers have passive or reluctant partners. Residential assessment for such partners with the children can on occasion show whether there is sufficient parental commitment to the future protection of children, or not as the case may be. It is possible to protect the opportunity of a child to stay with parents who are under scrutiny, without undermining parental incentives, if the parents know under what conditions support is being offered. If those conditions involve the possible loss of their children, offering support is less likely to promote a culture of dependency. In reality most parents, regardless of their capacity, motivation and attitude prefer to be independent of social services, when the question of their children's future is at stake. At root, assessment of parenting is an intrusion into privacy, and as such is not normally welcomed in the same way as opportunity for employment, better housing and nursery provision.

As far as the rights of children are concerned this seems like a very good answer, and it might well be supported by many people. The problem, however, is that different local authorities have differing amounts they can spend on seeing if the 'irresponsible' can be made as 'responsible' for the sake of their children. Therefore where there is serious concern about the effects of parenting on specific children, the rights of all children in that particular category are not equally distributed. The practical problem which besets many local authorities is how to decide who will receive the limited services on offer.

Under the Children Act 1989 (Section 17), every local authority has a general duty to safeguard and promote the welfare of children who are designated as being in need by reason of impairment, or likely impairment of their health and development. The kinds of services which are considered relevant to the health and development of children are foster homes and residential facilities, day nurseries, playgroups, childminding, out of school clubs, holiday schemes, befriending schemes for parents, parent and toddler groups, toy libraries, family centres and the provision of advice, guidance and counselling.[6] In addition, local authorities are asked to provide occupational, social, cultural or recreational facilities, home help and laundry services, help towards holidays and travelling expenses.[7] A local authority can also pay for an abusing parent to move to alternative accommodation.[8]

In Chapter 5 in the section on 'The Measurement of Developmental Need' it was argued that it is possible to define standards of child development in a relatively impartial way. It must be borne in mind that culturally appropriate criteria are necessary for children who come from ethnic minorities. Nevertheless if all children with health or development below that considered reasonable for a similar child (Section 31(10) of the Children Act 1989) were in receipt of provision tailored to address the problem in question, then the number of children requiring permanent substitute care would substantially decrease.

Unfortunately, this eventuality is not likely because the provision of such support is not based on the need of every individual child whose development is being avoidably hindered or harmed, but rather on what is available when resources are scarce and priorities have to be subsequently determined. Under 'Meeting Needs' the Children Act guidance says this:

> 'Local authorities are not expected to meet every individual need, but they are asked to identify the extent of need and then make decisions on the priorities for service provision in their area in the context of that information and their statutory duties. Local authorities will have to ensure that a range of services is available to meet the extent and nature of need identified within their administrative areas.' [9]

Now this may sound hopeful, if somewhat unclear. Are hard-pressed inner city local authorities bound by law to provide the relevant resources to any child who is assessed as being in need of specific provision in order to experience a reasonable level of health or development? Could, in other words, a child's representative force a local authority to pay for a specific service through judicial appeal on the grounds that the child's experience of reasonable health or development depended on it? It seems not because under Section 17(1) of the Children Act 1989 local authorities have a *general* duty to provide a range and level of services appropriate to the children in their area who are 'in need'.[10] They are not obliged to identify and provide resources for specific children because they are only asked to 'take reasonable steps to identify the *extent* to which there are children in need within their area.[11] The only children who are imperatively in need and who must be identified by the local authority are disabled children.[12] All this means that if a local authority, for example, assesses and child as being in urgent need of a day

nursery in order to counteract a non-organic speech delay, the authority is not breaking the law by keeping the child on a nursery waiting list for six months or more. Consequently, the Children Act 1989 will not herald a new era of provision for children in need, because the resources available to local authorities will continue to be determined by factors other than the numbers of individual children in need of specific services. At the Social Services Conference, 25-27 September 1991, Rupert Hughes , the Department of Health official responsible for the implementation of the Children Act 1989, confirmed this very point. He said in talking about the definition of need:

> 'it is not a duty to every child, but a duty to provide an appropriate service in your area. There has to be some prioritising in deciding the level of service to be provided'.[13]

Were each authority to assess the service provision required to bring all the children in their area up to a reasonable level of health and development, then the total resource necessary to give effect to children's rights to a reasonable developmental level could be calculated for the whole country. Such a calculation would have to include facilities for assessing whole families in residential accommodation, and projections by area would have to be made according to previous demands. Only if resources are calculated and provided on this basis can the claim to proper developmental rights for children be fully enforced.

Now it is the government's contention and stated policy that the determination of how much money local authorities receive from central government in order to carry out statutory functions is based both on local conditions and the need to run services at a standard level. The system was overhauled in 1989/90 and is now known as the

Standard Spending Assessment, SSA for short. The following passages are from the relevant Department of the Environment publication.

> 'An SSA represents the government's view of the amount of revenue expenditure which it would be appropriate for an authority to incur to provide a standard level of services consistent with the Secretary of State's view of the appropriate amount of revenue expenditure for all authorities [currently poll tax or community charge]. It takes account of each authority's social, demographic and geographical characteristics, and the functions for which it is responsible.'[14]

> The SSA for social services for children includes provision for residential, foster and nursery care; the assessment formula consists of three elements
>
> - an estimate of the number of children 'at risk' in each area;
> - a unit cost adjustment which takes account of the different social backgrounds from which these children have come; and
> - an area cost adjustment which allows for variations in costs facing authorities in different parts of the country.[15]

The intentions of the SSA system as described here do not concur in the least with their actual outcome. The following passage is taken from the Policy Forum Paper No.1, 'Great Expectations ... ... and Spending on Social Services'. It shows how several

London boroughs with similar social conditions are assessed very differently one from another. The Childrens Social Index is equivalent to the second of the three elements described above:

> 'The outcome of the SSA calculations are not felt to be equitable by the local authorities concerned. Some authorities feel they are seriously disadvanted by comparison with others with similar social conditions. Greenwich's allocation under the Childrens Social Index formula is £43 per child, compared to £171 in Lewisham, £242 in Wandsworth, £66 in Ealing, and £89 in Waltham Forest - the other authorities in the same 'family'.[16]

The report continues:

> 'Yet deprivation indicators, such as the number of children in care and infant mortality rates, show that Greenwich has problems not acknowledged in the SSA'.[17]

Turning to the first of the variables, the estimate of a number of children 'at risk' in each area, the report describes the method which was used to determine this.

> 'The Personal Social Services Research Unit team collected information on the characteristics of children entering care from a sample of thirteen Social Services Authorities during the period June to November 1987. These data were compared with information on a

matched sample of children not in care which had been collected by the 1987 General Household Survey. Four factors were identified which clearly increased the probability of a child being taken into care. These were whether the child came from a household:

- in receipt of Supplementary Benefit (now Income Support); or
- containing only one adult; or
- living in rented accommodation; or
- living in accommodation where there was at least one person per room.'[18]

Hollis and Howe have referred to Kellmer Pringle's review of eight leading studies from which ten common features found in families of abused or neglected children were identified (I discussed this in Chapter 6). The list was as follows:

1. One or both parents have, when young themselves, been subjected to violence.
2. One or both parents have had an unhappy, disrupted and insecure childhood.
3. One or both parents are addicted to drugs, alcohol, or are psychotic.
4. There is a record of violence between the parents.
5. Another child has already been abused, or suffered an unexplained death.
6. The pregnancy was unwanted; the baby was rejected at birth or soon after.
7. There has been failure of early bonding.

8. Both parents are under 20 years of age, immature for their years and socially isolated.
9. The family live in poor housing and on a low income.
10. The family is suffering from multiple deprivation.[19]

Of these ten factors, only one, namely living in poor housing and being on a low income has any similarity to the categories identified by the Personal Social Services Research Unit. In fact, three of those four factors can be compressed in to being 'in poor housing and on a low income'; that is, being in receipt of income support (Supplementary Benefit) is an indicator of low income, and secondly, having at lease one person per room, and to a lesser extent, living in rented accommodation, are indications of living in poor housing.

It is more than pertinent to ask why the other nine factors which Kellmer Pringle identified as relevant to the assessment of risk in children do not appear in the Personal Social Services Research Unit's calculations. The answer is apparent in the passage already quoted from the Department of the Environment Report. The comparison of characteristics belonging to children in care was taken from the General Household Survey of 1987. The kinds of factors revealed by Kellmer Pringle's review would not have been relevant to such a study, and consequently the Research Unit's criteria of assessing 'risk' were narrower than Kellmer Pringle's and avoidably inaccurate. All of the four SSA indicators are examples of the kind of information gathered through taking a census. As such they are unlikely to lead to an accurate prediction of the resources required by local authorities if they are to carry out their function of providing appropriate services for children in need. If, as the government claim, the system of Standard Spending Assessment is 'fair',[20] the following document demonstrates that the claim is fatally floored. It is a memorandum sent out by a London Director of Social

Services to staff in November 1991, and the particular authority in question is the same one as described in appendix C, where the level of deprivation is very high.

'To All Staff

From the Director of Social Services

November 1991

BUDGET POSITION 1992/93

The annual budget process is well underway and the outlook for next year is not encouraging at this stage. The Council is facing a budget gap of around £11m between what it will need to spend, if current trends continue, and the resources it is likely to have from Government grants, Poll Tax and so on.

Although the position may well improve as some of the assumptions made about next year's budget are re-assessed and further information becomes available (for example, the level of Revenue Support Grant from the Government and the cost of dealing with the homelessness problem in the Borough) it seems clear that the Council will have to make significant spending reductions to balance the books.

All Departments were therefore required to prepare reduction lists equivalent to 5, 10 and 15% of their total budgets. The Council has also identified a number of areas which are the subject of more fundamental reviews to achieve savings.

We have obviously had to prepare our own reduction lists. These have just been provided and are currently being considered by the Management Board, which is made up of the Directors of all the various Council Departments together with the Chief Executive, the Head of Personnel, the Assistant Chief Executive, the Solicitor to the Council and the Head of the Women's Equality Unit.

Although I do not expect to have to make cuts of anything like 15% - indeed I hope that Social Services will have some protection relative to other Departments - I anticipate that we will have to make reductions.

The approach which has been taken in drawing up Social Services' reduction list has been to try, so far as possible, to protect front line services and, where possible, to improve the value for money. It follows therefore that the Management Division is, relatively speaking, more vulnerable than other parts of the Department. In a staff-intensive service like ours, it is almost inevitable that if reductions have to be made, there will be an effect on staffing levels. However, I would like to emphasise that I am not envisaging that in the overall scheme of things, there will be a large number of posts deleted.

The other point which I would like to make is that, as a general principle, if any occupied posts are deleted, the first line of approach will be to consider whether individual members of staff can be redeployed to another suitable vacancy either inside or outside the Department. Redundancy would be very much a last resort, although I acknowledge that it would become more likely if major reductions in expenditure had to take place in the Council overall.

As far as the timescale for decision-making is concerned, the position will not be absolutely clear until the end of January 1992, although by early January I would expect to have a rather better indication of next year's budget than I have now.

I realise that the uncertainties around next year's budget, and the possibility of reductions, are causing and will continue to cause tremendous anxieties for the staff. This is the first time I can recall when a reduction in our number of posts has been a

possibility for Social Services in ..... Given the extent of need in the Borough, I do not relish the prospect of cuts any more than anyone else. However, it may be a reality which we all have to face.

There will be a briefing with the Leader, the Chief Executive and the Director of Finance for recognised Trade Unions on 25th November. I will ensure that staff in this Department are briefed about any definite decisions, as soon as they are taken.

DIRECTOR OF SOCIAL SERVICES'

It would be too simplistic to suggest that the lack of appropriate resources given over to children in need is simply caused by mistakes as to how the assessment of risk to children is used to calculate resource allocation. The unwillingness to distribute sufficient money is, in my opinion, to do with a deeper philosophical dilemma. The idea of irresponsibility is alien to the concept of self-reliance, the trademark of democratic aspiration, and as such, deciding on the *extent* of opportunity which children should be given to stay with 'irresponsible' parents is not a neutral process. The political connotations attached to notions of personal responsibility and incentive have a bearing on professional and political attitudes towards parental responsibility. Such considerations can affect how limited resources are allocated and it is to this that I now want to turn.

## Incentive - A Conflict of Interests

If, as I am suggesting, some children at risk in particular have the right to remain with their parents if the risk is abated with the help of affective and material resources the

public expenditure required to give an evenly balanced standard of opportunity across the country for all children would undoubtedly be higher than current levels. Perhaps more significantly the level of 'expenditure would be *perceived* as higher than it currently is.

> 'Despite the regretful pronouncements of Labour politicians and the more enthusiastic rhetoric of the 1979 and 1983 governments, substantial real cuts in welfare spending have not been realised (the sole exception being council house building)' [21]

Peter Taylor-Gooby is commenting on the period from the mid 1970s to 1985. His observations show that political statements about the need for cuts have more of an impact on the public mind than official statistics do. The point, however, is that if the right of children at risk to stay with parents where at all possible, were to be acknowledged as a universal right, the tone of political rhetoric would have to change from one of economic restraint to the call to recognise a basic human right. More than this, paying for resources to fund such rights would entail paying for incentives for poorly motivated parents to keep hold of their children. Even if the rights referred to are acknowledged as belonging to children, the combination of *increasing* public expenditure for the sake of *increasing* incentive for parents also applies. The combination is curious because the idea of incentive is usually applied to the taxpayer paying *less* in order to increase his or her private wealth. The thought of contributing more towards public expenditure in order to increase opportunities available to poorly motivated parents, is a contradiction in terms under traditional notions of incentive.

Mrs Thatcher summed up the outlook in her address to the Church of Scotland on 21st May 1988:

> We are told we must work and use our talents to create wealth. "If a man will not work he shall not eat" wrote St Paul to the Thessalonians. Indeed abundance rather than poverty has a legitimacy which derives from the very nature of Creation.
>
> Nevertheless, the Tenth Commandment - "Thou shalt not covet" recognises that making money and owning things could become selfish activities. But it is not the creation of wealth that is wrong but the love of money for its own sake. The spiritual dimension comes in deciding what one does with the wealth.'.[22]

The two elements of working hard for wealth, and then being in a position to decide how to use it for others suggest that the idea of incentive is not solely based on self-interest. The implication is, rather, that when the citizen who has accumulated wealth for himself chooses to distribute some of it, he will give it to those who firmly believe in the ethic of personal responsibility.

> 'We must ... restore a clear ethic of personal responsiblity. We need to establish that the main person to blame for each crime is the criminal himself. But if anyone else is to blame, it is the professional progressiveness among broadcasters, social workers and politicians who have created a fog of excuses in which

> the mugger and the burglar operate (Thatcher, Speech to the Conservative Central Council, 19th March 1988)'.[23]

The follower of Mrs Thatcher is unlikely to want to distribute accrued personal wealth to morally unworthy parents, if this last sentiment is to be believed. Neverthless, it is not true to say that the incentive to accumulate personal wealth is confined only to conservative thinking. Brian Gould says this:

> 'The socialist would ... agree ... that there are or might be some inequalities, even those which are socially rather than naturally created, which he ... would be prepared to tolerate. The socialist would accept limited inequalities which were not prejudicial to others, since he would not regard them as affecting questions of power and freedom. He would distinguish between, for example, the accumulation of personal property for private enjoyment and the accumulation of private property as an instrument of economic power. The former he would regard as a non-prejudicial privilege, requiring no social regulation, until it reached such proportions as to deny to others that equality, including an equality of self-respect, which is the essential element of a free society.'[24]

The problem for Gould is in trying to define the point at which inequality becomes socially harmful. Although he makes a genuine attempt to integrate the principle of equality into a market economy, his analysis underplays the controversy which would be created if the better-placed in society were to be dispossessed of goods by reason of poorer citizens claiming a loss of self-respect.

Because it is not clear where in the sliding scale between private enjoyment and economic power self-respect is lost, the notion of incentive being tied to the accumulation of wealth receives a more covert support than the conservative exposition of the same. Nevertheless, it is spoken of as a morally approved notion, and as such is part of democratic socialist thinking.

In conservative thinking the telling and historical objection to the state redistributing opportunities on an equal basis is not an objection based on selfishness but moral fallibility. Quentin Hogg says this:

> 'The plain fact about unemployment, war, poverty, persecution and most disease, is that they are caused by a deliberate disregard of the natural law which in its simplest and most universal form teaches man to love his neighbour as himself. This view is in my judgement inseparable from the religious view of life'.[25]

Ideals, according to Hogg, produce political systems which cannot be changed because they were set up by reference to ideals. The result is inflexibility, repression and at worst, tyranny. The conservative cannot give equal status to political reality and moral ideals. Moral authority has a more fundamental significance.

The fallibility of human nature, according to Tory tradition, is the reason why the state cannot impose a moral ideal on society such as the equal distribution of material and social opportunities. However, and this is where the dilemma arises, it is also the reason why individuals can take advantage of their freedom to acquire wealth. Hogg's reverence for the moral law suddenly vanishes behind a conscious desire to exploit commercially the negative side of human nature.

> 'The greatest fortunes of the twentieth century have been made, almost one and all, by thinking of something the poor would enjoy if they could afford it, and supplying them with it at a price they can afford - and if what they like is not always good for them, the reason is primarily neither their poverty nor their want of education, but a quality - original sin - which is not abolished either by riches or by Socialism.'[26]

The producer, who presumably is not in want of education, does not, according to the above, have a moral responsibility as to what should or should not be produced. The moral onus is fairly and squarely on the consumer.

To say that the fallibility of human nature prevents us from organising a fair distribution of social assets through the democratic process, but allows us to take commercial advantage of those who do not know or do not care what is good or bad for them is not just to betray a moral loophole. It also presents a contradiction. When offered as a reason to prevent government from redistributing wealth for the sake of more equal self-respect, it is proffered as justification for preventing a worse form of moral harm: namely the rigid enforcement of an ideal to which fanaticism and subsequent oppression apply; but when put forward as a restraint on the nature of commercial activity so as to prevent the exploitation of poor people who also have fallible characteristics, it is brushed aside as inevitable, and the moral consequences are ignored. This latter approach to making money cannot be reconciled with the principle of loving one's neighbour as oneself. Mrs Thatcher herself admitted that she had always had problems understanding that particular principle, when she spoke to the Church of Scotland, and strove to reinterpret it by placing the primary emphasis on loving oneself:

> 'I confess that I always had difficulty with interpreting the Biblical precept to love our neighbours 'as ourselves' until I read some of the words of C.S. Lewis. He pointed out that we don't exactly love ourselves when we fall below the standards and beliefs we have accepted.'[23]

There is no doubt that notions of incentive contain elements of self-interest as well as genuine ideas about the moral harm caused by an ethic of material redistribution organised by the state. Nevertheless the stated justification for inequality is based on a fear of political inflexibility and, at the extreme, fanaticism. Now if such concern about the moral harm caused by redistribution of wealth is to be taken seriously, it must be asked whether providing assessment centres and support structures for children at risk to be given the opportunity to stay with their parents is a question primarily linked to the responsibility of the parents rather than the rights of the children involved. If it is fundamentally to do with avoiding a dependency culture by concentrating on the responsibility of the parents, then it can be argued that the children involved must necessarily be deprived of many opportunities including the right to stay with their own parents. There is, therefore, no obligation on society to pay for such resources as family assessment centres. If on the other hand the issue is primarily understood as being connected with children's rights the resources needed to protect and express those rights will not be seen as stemming from a political viewpoint about redistribution orchestrated through the state, but as a necessary counterpart to the existence of those rights. An equivalent example is the legal aid system in England and Wales. It is generally the case that parents of children at risk, who are on state benefits or low incomes are given legal aid so that their rights can be properly represented in courts when issues surrounding the welfare and future of their children are at stake. In a speech given on 12th June 1991the Lord Chancellor said this:

> 'The third route [to legal aid] is one which is to be introduced specially for children and parents (or those with parental responsibility) in new care and emergency protection proceedings. In such cases we have decided that the usual legal aid means and merits tests should be waived so that legal representation is available as of right and there is no possibility of delay in providing legal aid in these most difficult of cases where children and parent are at risk of separation' [27]

A great deal of money is spent for this purpose, but the suggestion that parents do not deserve proper legal representation because of their own irresponsibility is not countenanced. The principle of equality before the law is not even approachable if some are deprived of adequate representation, and therefore a fair hearing, by reason of how much money they have. The use of public money in supporting the principle of equality before the law is generally perceived as of secondary importance to the principle itself.

If as I am suggesting, children, amongst their other rights to care and protection deserve the opportunity to stay with their parents if at all possible, as a matter of *right*, then those rights are of greater significance than the need to maintain a culture of strict parental liability, where further opportunities to keep families together once standards are breached are not offered.

## Good Practice or More Resources

I want to show briefly that resources for children are not distributed according to numbers of children perceived to be at risk across England and Wales as would be

necessary if they were treated as having the kind of rights which I have suggested. Although children have rights to the protection afforded by good professional practice, they do not have the right to support in accordance with levels of risk in particular areas, even though Standard Spending Assessments are supposed to provide this. (Compare the notion of a right to health care in accordance with need.) In this sense their rights are left on one side in favour of perceived economic and political choices about levels of public expenditure and local taxation .

The Report 'Social Services for Children in England and Wales 1985-7' published in December 1988 made it clear that deficiencies only in practice and procedure must be identified when children known to the Statutory Services die or are severely injured.

> 'Where a child known to the statutory services has died or has been severely injured, it is essential that the authorities concerned carry out an investigation as soon as possible to identify any deficiencies in procedure or practice'.[28]

This refusal to look at the resource implications of child protection policies is not just an omission, it is a deliberate policy. The draft DHSS Circular "Child Abuse - Working Together for the Protection of Children" made the following observation about the resource consequences of child protection work:

> 'The guide does not propose any additional responsibilities for authorities. The recommendations described in the circular and guide call for a restructuring of effort and should not have any significant overall

> financial or manpower consequences; though it may call for revision in current policies and procedures and reassessments of priorities, for example on training expenditure'.[29]

The Kimberley Carlile Inquiry 'A Child in Mind' took the same approach, emphasising shortcomings in practice whilst minimising the problem of resources. The following were two recommendations which the Inquiry made concerning resource allocation:

> 'Given the national explosion in reported cases of Child Abuse, we recommend that all Social Services Departments fundamentally review the organisation of their services and the distribution of their resources to make sure that they are as well equipped as possible to respond to this trend'. [30]

> 'We recommend that the DHSS and CCETSW come speedily to a decision on the minimum period of basic training for Social Workers and that Central Government makes the necessary resources available'. [31]

Although reference is made to the joint responsibility of central and local governments to provide adequate provision for child abuse work, the *onus* is on local authorities to determine priorities. Local authorities are asked to put their "own house in order" [32] in other words, be efficient before they can effectively ask central government for more resources to deal with child abuse.

In sharp contrast is the acknowledgement that professional social work courses contain inadequate teaching of "Child Care in general and Child Abuse particularly".[33] The unequivocal demand is made for central government to make resources available to educational establishments should the length of courses be extended as advised by the report..

When it came to the specific circumstances surrounding the death of Kimberley Carlile the report was quite clear that lack of resources was not a significant factor which contributed to the tragedy.

> 'None of those most closely involved with Kimberley
> were blaming lack of resources for all that went wrong,
> clearly not' [34]

The individuals who had their professional practice scrutinised by the Inquiry as well as the press and the public, from whom they received many threats and constant abuse were not the best people to ask about resources. They were under too much personal pressure to evaluate objectively how resources affected their own decisions. Consequently, the Report made a crucial misjudgement about the available resources at the time.

> 'Resources were available in this case; Kimberley had a
> Health Visitor and a Social Worker; the Carlile family
> had a Health Clinic and a General Practitioner etc ...' [34]

Kimberley did not have a social worker. She had a team manager who was trying to hold a great deal of unallocated work. The report does not acknowledge the difference and gives no insight as to why the difference is fundamental (see Appendix C). If Kimberley had been on the caseload of a social worker, there is no doubt that the case

would have been dealt with in a more continuous manner. However, the focus of concentration, even when a case is allocated, significantly depends on whether the social worker has too much difficult and demanding work, as well as whether he or she is receiving support from a manager who is not under too much pressure to give it. Overloading a worker with child abuse cases increases the likelihood that some cases will not receive the attention they need. Resources were crucial in the Kimberley case as they are in hundreds of other cases.

The 1987 Doreen Aston Report, an Inquiry by three London Boroughs into a child death took a more balanced view about resources. The following two passages show that the experience of staff and the quality of supervision are contributory factors to the level of service which local authorities offer. First, the description of how the case was allocated:

> 'The case was then allocated to the Southwark Social Worker. As we have discussed elsewhere she had no formal training in child abuse, she had no experience of dealing with complex child abuse cases and she had no appetite at that stage as far as we could detect to do 'heavy-end' child abuse work. Certainly she did not wish to take on this case. She had been given the impression from colleagues that it was so complex that even the more experienced workers in the office had preferred to avoid it. Her Team Leader felt the case was beyond her competence to such an extent that she told the Area Manager she would refuse allocation unless he directed it. He did so on the basis that everyone had to have a complex child abuse case and she had space on

> her case load. The Team Leader indicated that she would give the Social Worker whatever support was necessary.'[35]

Secondly, the observation on supervision:

> 'Supervision has constantly attracted comment in earlier inquiries into child deaths, and it is necessary to focus on it again. In Doreen Aston's case we heard from the Southwark Social Worker her anxiety about her work with the family was not allayed by the type of supervision she received. During the early stages of her involvement her first Team Leader, though supportive, seemed to concentrate on short-term tasks and the Southwark Social Worker felt the lack of an overall plan or frame-work in which to slot them. When her second newly appointed Team Leader arrived in September 1986 she experienced him as distant from her concerns.' [36]

Although the dynamic between a supervisor and a social worker always contains a personal and a professional element, the structure of resources available to team leaders in fieldwork departments has a considerable impact on the energy and time devoted to supervision. The supervisor, in the Doreen Aston case gave details of her working circumstances to the Inquiry.

> 'In terms of setting priorities, the Team Leader whom we interviewed told us that the volume of child abuse work in Area 8 and the bombardment of the duty system

> dominated all other considerations. Everyone was engulfed by the level of demand so that low priority was given to training, professional development, innovative social work methods or planning changes in the team system for covering duty. Efforts were made to keep up with the annual schedule of staff appraisals.'[37]

The Doreen Aston Report quite clearly shows that levels of service provision do affect the quality of intervention which children at risk receive. I have not discussed the extensive review of practice surrounding the deaths of either Doreen Aston or Kimberley Carlile because I am attempting to show that resource considerations as well as professional expertise affect the rights of children. The quality of professional input has been thoroughly addressed in these inquiries, and it is acknowledged that a high level of inter-agency co-ordination and professional expertise is required to successfully intervene in such situations. The point I am stressing is that such expertise in part depends on the experience of workers employed and that in itself is a resource consideration, not just a professional one. In addition, if agencies are overrun by demands, the support structures within them cannot meet the needs of workers, particularly those who are inexperienced. Resources are not simply a question of deciding whether a social worker is allocated to a case or not. It is about recognising the numbers of families where children are perceived to be at risk, and evaluating whether *sufficient* workers with *sufficient* experience are available to work with those families. Not only should fieldwork and community health posts be filled by experienced workers, but day and residential facilities where families can be observed and counselled are also necessary. Outreach workers from these establishments are needed to support and advise when rehabilitation programmes including home stays are devised. Also included is the need for specialist foster families who can offer the relevant care to children, but also understand and fit into the whole process of assessment. This should

include natural parents learning parenting skills from foster parents. Such foster parents need adequate professional support, proper training and sufficient pay, based on the concept of their being professionals as well.

## The Right to Resources

I want to conclude this chapter by showing that children's rights, as I described them earlier, are often buried beneath a number of other considerations which leave children at risk in a vulnerable state. Their rights to protection and security with their own parents or guardians are subject to the varying environmental and political circumstances of different areas.

Consider the following press statement issued by the Association of Directors of Social Services on 2nd August 1989:

> Embargoed until: 00.01 am Wednesday, 2nd August 1989
>
> Child Protection Figures 1988/89
>
> A survey conducted by the Association of Directors of Social Services has shown that there are more than 40,000 children on child protection registers in England and Wales. This survey gives the most up to date picture of the extent of child abuse and the workload facing local authorities. It shows that:-
>
> 1. At the end of March 1989 there were 41,600 children recorded on child protection registers in England and Wales.

2. The names of 23,700 children had been added to the registers in the previous 12 months.
3. In more than 95% (40,215) of cases, the social workers responsible for the children's wellbeing were employed by local authority social services departments. The responsibility for the remaining 5% rests with other agencies.

Between March 1988 and March 1989 the numbers of children on child protection registers more than *doubled.* The effect of increasing public and professional awareness of risk to children must inevitably have had some bearing on this dramatic increase, and one would imagine that a concerted effort to plan for a proper distribution of professional resources would have been undertaken. Sadly this has not taken place. In May 1989 the Association of Directors of Social Services and the Local Authorities Conditions of Service Advisory Board jointly published a survey of Social Services Employment taken in May 1988.

> Data for this survey were extremely difficult to collect. There is no national classification of posts in local authorities and social services departments and no systematic and fast way of collecting data and analysing it. Local Authorities need to give urgent consideration to establishing a proper workforce data base and to ensure that Social Service Committees are aware of workforce data issues as they are of service data issues. A continuing lack of workforce data cannot have anything other than a significant impact on the future abilities of local authorities to provide effective social services'. [38]

The survey revealed that differences in staffing provision across the country had implications for the type of work undertaken by different authorities.

> 'Problems appear to be worst in South Eastern areas, namely South Eastern, Eastern Essex and Herts and London provincial areas. It seems as though problems were very much less in Wales. The most widespread problems experienced are stricter definitions of work priorities, more high priority complex cases and higher caseloads.'

> 'Staff supervision seems to be reduced as senior social workers take on a greater number of complex cases which can also lead to other problems such as slower response to referrals'. [39]

> 'The survey showed that every area in England and Wales was under some pressure to exercise stricter definitions of work priorities. Of the twelve regions in the area, two felt the problem to a small extent, eight to a medium extent, and two to a large extent.' [40]

These difficulties were not acknowledged by the HMSO Report 'Social Services For Children in England and Wales 1985-7' (published in 1988) referred to above. The following passage implies that there is no variation in service provision across the country.

> 'Social Services Departments, however, have a specific preventive function in that they have a duty under Section 1 of the Child Care Act 1980 to promote the welfare of children by diminishing the need for them to come into care, to be kept in care, or to be brought before the Courts. Cash payments may exceptionally be made under this provision but form only a small part of the total expenditure of local authorities on preventive services. These include intensive field social work to support individual children and families and the provision of day and family services'. [41]

The impression given is that services such as those described in the last sentence of the above passage are available to all. The increase in thresholds of perceived risk to children, the lack of planning and differing impacts of staff shortages on service provision are all factors which combine to show that this is not true. Indeed the HMSO publication 'Patterns and Outcomes in Child Placement' which has accompanied the implementation of the Children Act 1989 concluded that:

> 'There is an urgent need for improved national and local childcare statistics which would give details on the turnover of children and their care careers, provide a basis for monitoring changes and developments and reduce the risk of misperceptions about what is going on. It will be most important that authorities co-operate fully with the Department of Health's plans to introduce new annual statistical returns.'[42]

The following passage clearly shows the disparities in service provision from area to area. It is from the same report and quotes the 'Childcare Now' research which was published in 1989 (see reference):

> 'Patterns of placement reported in 'Child Care Now' show considerable variation from one authority to another and the researchers point out that children certainly do not have similar care experiences. Two of the six authorities in this study showed particularly striking differences in the way they were providing for their children. A primary school child in 'District' was four times as likely to have had a placement in a residential establishment as a child of the same age in care in 'Midshire'. As great or even greater contrasts were found in 'home on trial' placements for pre-schoolers - 2% in 'District' and 14% in 'Midshire' - and in use of observation and assessment centres for adolescents - 26% of teenage placements in 'District' and only 3% in 'Midshire'. Lodgings were used for 13% of teenagers in 'Midshire' but only 2% in 'District'. Similar though less extreme differences were found between the other authorities.
>
> Other researchers, examining specific types of placement, report equally varied patterns, especially 'home on trial' (Farmer and Parker) and teenage fostering (Lowe 1990, Shaw and Hipgrave 1989)'.[43]

The following information taken from the Doreen Aston report illustrates the plight of many social services departments. In Area 8, in Southwark, in November 1985 there were over 90 families on the Child Protection Register. There were fourteen out of a possible seventeen social workers in post. Given that in 1986 nine of the fourteen social workers in post had between 2 and 14 months experience, any attempt to shield inexperienced workers from heavy-end child abuse work would have meant that the remaining five social workers (ie with over 14 months experience) would each have eighteen families on the Child Abuse register.[44] Even if it were possible to persuade or pressurise workers to take on such numbers, it would be impossible for them to adequately deal with such a large caseload. The personal strain would be too great, and the time available too short. It would lead, as it often does, to workers putting in very long hours, and still being unable to do the necessary work. The current extent of the variance in service provision means that even the required staffing for enforcing an ethic of strict parental libability is inadequate in certain areas. The lack of central planning indicates that no political will currently exists to redress the imbalance. It seems that until children are given a Bill of Rights equivalent to the rights and liberties available to adult citizens, not only will levels of social policing vary from place to place, but also the right of children at risk to have fair opportunity to stay with their parents or carers will be subject to avoidable variations.

# Chapter 7 - References


1. An Introduction to the Children Act, Department of Health HMSO 1989 p.1
2. The Children Act 1989: Putting it into Practice, Open University Focus on Practice Workbook 1991 p.24
3. The Children Act 1989 Guidance and Regulations Vol. 2. Family Support, Day Care and Educational Provision for Young Children HMSO 1991 p.11
4. Ibid
5. The Lord Chancellor, The Rt Hon. the Lord Mackay of Clashfern: Speech at the Professional Associations Parliamentary Support Group Seminar on the Children Act 1989, 12th June 1991. Text made available by Social Work Today, pp. 4 and 5
6. The Children Act 1989 Guidance and Regulations Vol. 2. Family Support, Day Care and Educational Provision for Young Children HMSO 1991 p.15-23
7. The Children Act 1989, Schedule II Part I paragraph 8
8. The Children Act 1989, Schedule II Part I paragraph 5
9. The Children Act 1989 Guidance and Regulations Vol. 2. Family Support, Day Care and Educational Provision for Young Children HMSO 1991 p.7
10. Ibid
11. The Children Act 1989, Schedule II Part I paragraph 1.1
12. The Children Act 1989, Schedule II Part I paragraph 2.1
13. Community Care, 3rd October 1991
14. Standard Spending Assessments Background Underlying Methodology - Department of the Environment, Local Government Finance and Policy Directorate 1990 p.1
15. Ibid p.19
16. Policy Forum Paper No.1 'Great Expectations and Spending on Social Services' National Institute for Social Work, January 1992, p.13

17. George, 1991 'Fair or Foul'. Community Care 1.8.91 quoted in 'Great Expectations and Spending on Social Services', p.14

18. Standard Spending Assessments Background Underlying Methodology - Department of the Environment, Local Government Finance and Policy Directorate 1990 p.19

19. M. Kellmer Pringle (1980) Towards the Prediction of Child Abuse in: N. Frude (Ed) Psychological Approaches to Child Abuse (London, Batsford, Academic) p.217

20. Standard Spending Assessments, Department of the Environment 1990 p.2 para 5

21. Taylor-Gooby, P. Public Opinion, Ideology and State Welfare, 1985 Routledge and Kegan Paul, p.76

22. Thatcher, M. Address to the Church of Scotland 21/5/88 quoted in The Observer 28/5/89

23. Thatcher, M. Speech to the Conservative Central Council 19/3/88 quoted in Beyond Thatcherism, Social Policy, Politics and Society ed. Brown and Sparks, Oxford University Press p.109

24. Gould, B. Socialism and Freedom, Macmillan 1985 p.93

25. Hogg, Q. The Case for Conservatism, Penguin 1947 p.22

26. Ibid p.152

27. The Lord Chancellor, The Rt Hon. the Lord Mackay of Clashfern: Speech at the Professional Associations Parliamentary Support Group Seminar on the Children Act 1989, 12th June 1991. Text made available by Social Work Today, p22

28. Social Services For Children in England and Wales 1985-7, Ordered by the House of Commons to be printed 14th December 1988. HMSO p.11

29. Child Abuse - Working Together For The Protection of Children, April 1986 - Draft DHSS Circular p.10 paragraph 18. Resource Consequences

30. "A Child in Mind" Protection of Children in a Responsible Society, The Report of the Commission of Inquiry into the circumstances surrounding the death of Kimberley Carlile, London Borough of Greenwich 1987, ch.11 p72
31. Ibid ch.29 p 183
32. Ibid ch 11 p.78
33. Ibid ch 29 p.181
34. Ibid ch 11 p.65

35. The Doreen Aston Report - Area Review Committee Lambeth, Lewisham and Southwark London Boroughs, July 1989, p.17
36. Ibid p.70
37. Ibid p.68
38. Survey of Social Services Employment 1988
    Local Authorities Conditions of Service Advisory Board
    Association of Directors of Social Services May 1989 p.7
39. Ibid p.54
40. Ibid p.55
41. Social Services for Children in England and Wales 1985-7 HMSO 14/12/88 p.8
42. Patterns and Outcomes in Child Placement, Messages from current research and their implications, HMSO 1991 p.74
43. Ibid p.61
    'Child Care now BAAF Research Series 6, 1989, Rowe, J., Hundleby, M. and Keen. A large scale survey of over 9,000 placement starts and endings in 6 authorities based on questionnaires completed by social workers.
44. Doreen Aston Report p.63

# Conclusion

# Children - Citizenship and the Moral Community

Michael Ignatieff summarises modern citizenship like this:

> 'The twentieth century history of the welfare state can be understood as a struggle to transform the liberty conferred by formal legal rights into the freedom guaranteed by shared social entitlement. Given the inertial tendency of markets to generate inequality the state is called upon, by its own citizens, to redress the balance with entitlements designed to keep the contradiction between real inequality and formal equality from becoming intolerable. From this history of struggle has been created the modern social democratic polity; formally neutral on what constitutes the good life, yet committed to providing the collective necessities for the free pursuit of that good life, however individuals conceive of it'. [1]

As Ignatieff shows, the tension between personal freedom and communal obligation is crucial to modern ideas about citizenship. The point at which shared social entitlements stop is also the point where individual freedom begins. The problem which modern citizenship faces is in the determination of where that point should be; or to put it in Ignatieff's terms, where the contradiction between real inequality and formal equality reaches the point of unacceptability. In Chapter 4 on 'Freedom' I spent the first half arguing that the scope of personal freedom is theoretically intertwined with what might be called a set of collective permissions; in essence the areas where we can attempt to be masters of our own selves are circumscribed by collective limits and legally enforceable restrictions. Of course within those restrictions we are free to climb to whatever heights of excellence we may aspire to; we are also free to fall to whatever depths of despair we may reach. I tried to suggest that an understanding of other people's views on the scope of personal freedom should also lead us to an understanding of what they consider to be the collective basis of society. In so doing views of what the 'collective necessities' in a pluralistic society should be inevitably will become more complex and open to question. It follows that 'personal freedom' as an idea should not obscure questions as to the nature of the collective basis of society, simply by referring to its own pre-eminence.

Establishing a link between 'personal freedom' and the collective basis from which such freedom is supported, does not in itself create a social and moral consensus to which all members of society will necessarily adhere. Take, for example, the following two views on the collective functions of society.

Hayek's view of the political collective is one that simply enforces the legitimate operation of the market.

> 'In defending a market as a social order in which men are free to pursue their own ends in their own way, Hayek argues that there should be an enforcement of what might be called the 'rules of the game', that framework of rules of mutual non-coercion that is a necessary condition for each man to pursue his own ends. This state-imposed order is morally justified because it is required as necessary for men in order for them to pursue whatever their ends are.' [2]

Hayek does not justify his almost total allegiance to the market by a philosophy of the survival of the fittest. Rather he applies an argument which says that the market is the only way to unite the many different pockets of knowledge present in society. He says this:

> 'only because the market induces every individual to use his unique knowledge of particular opportunities and possibilities for his purpose can an overall order be achieved that uses in its totality the dispersed knowledge which is not available as a whole to anybody.' [3]

In complete contrast, Robert Beulah describes self-realisation as being discovered through identification with a corporate polity.

> 'Politics ... is a forum within which the politics of community, the politics of interest, and the politics of the nation can be put into a new context of wider possibilities for accommodation and innovation. This

> view of politics depends on a notion of community and citizenship importantly different from the utilitarian individualist view. It seeks to persuade us that the individual self finds its fulfilment in relations with others in society, organised through public dialogue'. [4]

The clash of such competing views has driven some political philosophers into defining the state as a kind of procedural referee, where differing moral and political conceptions can be held in check should they get out of hand. It is considered that since different people vary in their perceptions of what the good life is, the government cannot show particular preferences if it is to treat everyone as equals. What underlies this cautious retreat away from idealism is a lack of confidence in asserting what central human purposes and needs are. Because people's beliefs about the central purposes of life and society differ widely, the perceived requirement for the state is to design rules of order within which individuals can, with some limits, pursue their own ends. Those limits are usually restrictions on one person's liberty being used to interfere unfairly with the liberty of another. The emphasis on toleration, as Rawls refers to it, of differing conceptions of the good, brings with it a scepticism as to whether there are any immutable values in life at all. The sophistication which Rawls adds to this view is that the rules of order which characterise the social and political institutions of society derive their character from what he takes to be the two enduring principles of the democratic inheritance, equality and liberty. This allows him to combine the principle of toleration with what might be called procedural idealism. As long as the rules of order are understood as embodiments of the main tenets of political morality, then the freedom to hold widely differing and perhaps incompatible views is available to all citizens.

The freedom to hold such widely differing views is, in Rawls' view, however, circumscribed by an awareness of how the procedural rules of society ultimately are of

greater authority than any individual's conception of life. This leads to a tension between the limits of individual freedom and the management of a culture in which freedom is subject to the constraints of political organisation. Rawls acknowledges this tension without being able to resolve it:

> 'We adopt a conception of the person framed as part of, and restricted to, an explicitly political conception of justice. In this sense the conception of the person is a political one'. [5]

In contrast citizens

> 'may regard it as simply *unthinkable* to view themselves apart from certain religious, philosophical and moral convictions, or from certain enduring attachments and loyalties'.

> 'These convictions and attachments help to organise and give shape to a person's way of life, what one *sees oneself* as doing and trying to accomplish in one's social world.[6]

The contradiction between being *unable* to separate oneself from one's enduring attachments and particular convictions at the same time as having to see that they are *only* part of one's own 'social world' is clear. Rawls is unsure whether everyone is prepared or even capable of perceiving society as a scheme of political justice which is paramount, but hopes that his conception will enable 'us at least to conceive how social unity can be both possible and stable'. [7]

I am not suggesting that Rawls is being unreasonable in using toleration to place limits on individual belief and action but it is clear that the limits he imposes have implications as to how he views human nature. His retreat into procedural justice where the principles of liberty and equality are incorporated into society's arrangements for the management of freedom does not create a moral vacuum in which people are free to pursue their own ends. The detachment of the state from the community does that, but the rules which define the limits of freedom have moral characteristics of their own. It is, in my opinion, impossible to remain neutral about human nature when framing a system in which it may flourish. The discussion which I conducted in Chapter 2 suggested that all human societies require some element of deliberative thought in order to survive, and that there is no theoretical embargo on how we think about other people's needs in relation to our own. The inference which I want to draw is that moral consideration about the needs of others is not a philosophically superficial option which can be relegated behind the more acceptable forms of social analysis - like 'politics' and 'economics'. It is as fundamental to social 'science' as any of the more 'rationalistic' disciplines. Just because there are a variety of political conceptions of society we do not conclude that politics is of secondary importance to some other more 'objective' discipline. We do not attach the 'relativity' label to the subjects of politics or economics as easily as we do to 'morality', and yet moral relativity is the basis on which objectivity is disclaimed. If it is disclaimed for morality, then perhaps it should be for other disciplines like politics and economics, on the grounds that there are various views of economic and political reality, none of which have complete supremacy over the others. Subjects like economics are not, however, held as being of limited value because they cannot prescribe one theory which subsumes all others. Because there are various accounts of economic reality, the inference is not drawn that no economic reality exists at all.

I have sought to argue that the same should apply to moral considerations of the type which take the needs of others into account when looking at our own. In suggesting that such consideration is necessarily undertaken as an integral part of the organisation and fabric of society, I am not prescribing the weight which should be given to such considerations - but I am saying that at one level or another they cannot be avoided. Neither am I wanting to define exactly what criteria should be used in assessing other people's needs in relation to our own. I would prefer to describe the evaluation of such criteria as the essence of moral relativity, in the same way that differing economic accounts of economic reality might be described as 'economic relativity'. Where the difficulty lies is not in recognising that there are many different conceptions of the good, but in assessing the significance of such variety. I presented a view described by Peter Winch, wherein social relationships and ideas are seen as two sides of the same coin, principally because 'ideas' only take on meaning in a social context, and therefore reflect the contexts in which they are used. Moral issues are part of such contexts, and if social contexts exist where the term 'moral' does not have a use, it is almost impossible that people in such societies would never have occasion to consider their own wishes and needs in relation to those of other people.

Take for example Colin Turnbull's study of the Ik, a nomadic tribe in Northern Uganda who were excluded from their main hunting grounds just before World War II, through the creation of a national park. The area into which they were forced was subject to long periods of drought and famine. The Ik were transformed from a closely knit hunting tribe to a people who were barely able to survive and where survival of the fittest became the fundamental value in life. Christine Battersby describes the way in which the society survived after the exclusion from their homelands.

> 'In the case of children the pattern is more complex.
> They are - ungraciously, carelessly, but in such a manner

> that some survive - breast fed by their mothers for about three years and then simply abandoned to their own devices. Many die, but survival of the fittest is ensured by the fact that the children group together into age-bands which search for food together. What they lack in strength is made up for in numbers. There are two age bands, the senior and the junior, and the children remain in these bands until they are bigger than the others and the leader, at which point the other children band against them to turn them out ...[8] Turnbull says that by the time the child enters adult society, 'he has learned the wisdom of acting on his own, for his own good, while acknowledging that on occasion it is profitable to associate temporarily with others'.[9]

The Ik had become a society with little or no moral feeling, and yet some mothers breast fed their children up to the age of three rather than release them and concentrate on the search for food without the burden of childcare; also children within their age bands co-operated for the sake of survival. All of these actions were not necessarily selfish, especially bearing in mind that the women did not receive any additional help in the search for food because they were looking after their babies and that fathers took no part in the rearing of children but concentrated only on finding food for themselves. Most societies have not been brutalised to the extent that the Ik were, but even the Ik needed some sort of supportive function (that is, between mothers and babies and between children in their respective age bands) to survive.

There are of course many different views and degrees of importance attached to the notion of co-operation but if morality can be defined as the consideration of our own

needs against those of other people, if politics can be defined as being about the use of organised power; and if economics can be defined as the study of material value, then all three have a substantive place in the analysis of society.

## Child Protection and the Community

The argument that morality is, and should be a substantive issue in the analysis of any democratic society is not designed to encourage the obscuring of class, gender and cultural divisions which may be overlooked if it is thought that the state can embody the views of the 'moral majority'. The dangers of state power being used to force and impose a 'moral will' onto society at a deep level are very obvious to those who have suffered under or have knowledge of totalitarian regimes.

In one area, however, it is very clear that the state in Britain does exercise a 'moral will'; that is in the area of child protection. The Children Act 1989 is the most recent legislative expression of this objective. There is no real dispute that the state has an obligation to offer protection to children, delegated to it by the electorate. Public opinion supports the basic idea, even if there are severe criticisms of the way it is sometimes implemented by professionals. All the major political parties accept child protection as a necessary state function. What the survey of Child Protection Registration showed was that local authorities have varying standards of risk, and that the Child Protection Register is not used in the same way from authority to authority. In this restricted sense the dangers of discretionary state power used to impose a moral standard of child rearing are apparent.

It is in the theoretical and economic interests of both socialist and conservative politicians

to want the numbers of children removed from their families to be kept to a minimum. If the Tory emphasis on personal responsibility is not adhered to, then the numbers of parents who do not seriously undertake their parental duties will increase. This will not only increase the numbers of children coming into care; it will, according to the Tory viewpoint, also create an unhealthy dependency on the state. Moreover, the extra cost of looking after more children in care will increase taxation levels and therefore will reduce the opportunities for citizens to use personal income to their own advantage.

Socialists will argue that the economic and social benefits of providing adequate support services for children in the community outweigh the demoralisation and expenditure which results if large numbers of children are taken into care. Even if the initial financial outlay for community support services is very high, the expenditure is seen as an investment which reduces the long term costs of having more children in care than necessary.

The long standing Tory objection to the creation of a group of dependent people by sustaining them with state assistance, is not an objection about the lack of social cohesion which such dependency might encourage. It is rather a criticism that such a policy removes the incentive which people need to improve themselves. This has the unfortunate effect of trapping the children of families who are dependent on the state for support and assistance, or have to live in even more neglectful conditions, if that support and assistance is withdrawn. Although the Tory objection to the state diluting the sense of personal responsibility is well documented[10] a socialist realisation that 'a structure of entitlements does not necessarily increase social solidarity' is now emerging. Ignatieff says this:

> 'When, for example, social workers take over the caring functions formerly discharged by family members, there is both a gain and a loss: dependent individuals may be better cared for in institutional or public settings, and family members, particularly women, will be freed to enter the labour market or otherwise use their time as they wish. But it is occasionally the case that a sense of family obligation suffers, and community ties among strangers may be weakened when everyone comes to believe that 'it's the council's job'. The welfare state did encourage the emergence of new styles of moral self-exculpation, not only among welfare dependents but among the tax paying public. "It's the council's job' became everyone's first line of defence when confronted with vandalism, the neglect of civic property, or more seriously, abuse of children or abandonment of the aged'.[10]

In his phrase 'it's the council's job' Ignatieff shows how a philosophy of entitlement can easily foster a sense of alienation.

> 'It is no accident that the citizenship ideal of post-war liberals and social democrats stressed the passive quality of entitlements at the expense of the active equality of participation. The entitled were never empowered because empowerment would have infringed the prerogatives of the managers of the welfare state. Housing estates were run 'in the name' of the citizens,

> by council housing departments who had no desire to surrender any of their delegated powers. Tower blocks were run up 'in the name of' working communities whose wishes, had they ever been consulted, would have been for the repair and refurbishment of their existing low-rise housing.' [11]

In the case of public housing it is easy to see that systems could be devised for the release of power if the political will were forthcoming. Protecting children from abusing parents, on the other hand, needs a significant degree of intervention by a third party and it is, on the face of it, difficult to see how such powers could be released into the hands of the community. The problem can, however, be solved to a considerable degree. Not all children of inadequate or neglectful parents have to be removed. If there are ways of supporting such children, by the provision of after school projects, daycare and family centre services, it is quite possible to devise a system where local people are responsible for managing such services. For example, releasing money to a properly constituted group of local people for the setting up of an after school project, could include salaries for professional staff. Local people in a management role would be responsible for ensuring an adequate and acceptable level of staffing in the project and be accountable to elected councillors if they failed in the proper exercise of their responsibilities.

The Tory objection to state provision which reduces incentive is that a vicious dependency arises. Socialist thinkers are beginning to realise that entitlement without participation produces alienation. When children are on the receiving end of the Tory demand for effective personal responsibility, they suffer if their parents fail to respond; and when they are at the receiving end of provision which alienates the involvement of other local families they become separated from positive influences which they could otherwise have access to and benefit from.

The Tory view of 'personal responsibility' as the key to avoiding dependency is an inadequate safeguard on its own. The more unequal, and lacking in social cohesion society becomes, the greater the number of miserable children there are likely to be. If children lack self-respect, the less likely they are to be able to climb away from their environment when they become adults and the more likely they are to survive on state benefits whatever the levels of payment are. What increases dependency is entitlement without involvement, and because the state has often preferred the former against the latter, alienation and unwanted dependency has sometimes been the result. The ethic of personal responsibility should not allow for an abdication of state involvement in deprivation, unemployment and child abuse. It should, on the contrary, inform the misguided, or even the power seeking collectivist to tailor the involvement of the state so that communities become involved in controlling as great a proportion of local welfare resources as possible.

> 'the official paternalist forms of welfare, funded through taxation, insurance payments and nothing else, atrophy and block a society's capacities for generating more direct mutual and common values and responsibilities. The alternative to statism is not capitalism (which anyway secures its own welfare handouts from the state) but a form which, though it does not do without states as authoritative central institutions, or for that matter without markets as communicators of demand, *opens up spaces for*, institutionalises and supports, community networks and facilities with appropriate territorial and functional definitions.' [12]

Children with inadequate, neglectful or rejecting parents need more support than they receive from their own parents, even though their problems may not be sufficiently intense to warrant their removal from home. In areas where many families have such characteristics, the type of support services needed are under fives centres where both children and parents can go, after school projects, detached youth workers, drug and sex education projects and counselling services.

Imagine for a moment a deprived area where a large number of such resources are required. Currently they are funded by local authorities and voluntary associations and run by professionals with some assistance from volunteers on occasion. What if local people were asked to become more involved? How could this be achieved?

Take, for example, the setting up of a day nursery catering for a relatively small number of children in dire need of stimulation, and run by professional staff. Obviously such nursery places would be in great demand in our deprived area. The council, however, could choose to spend the money differently; small groups of roads might each have one property available for mothers and toddlers to go to at any time between nine and five; each house would have one paid member of staff who would be responsible for the property and offer support and reference to a professional if problems arose between parents or if children were being mistreated. Such a scheme combines the use of parental responsibility with a significant degree of local involvement and input of resources; parents remain responsible for their children but are less isolated from one another in the community. One example of a scheme run along these lines is 'NEWPIN' which was started in South London in 1980. The following quote is from an article written about the scheme.

'Mistreatment of a child is seen as a sign of inner turmoil

and need for intensive support. Mothers may be visited daily by a befriender or encouraged to attend the drop-in so that at the level of simple surveillance or monitoring both mother and child are protected from further abuse. Each member has a list of everyone else's address and telephone number and can phone for support at any time of the day or night. As several women told us in our study 'there is somebody always there for you'. Angry shouting, slapping or 'putting down' of children is dealt with by other women taking over care of the child and giving the mother time to talk about what has disturbed her. More generally, there is a 'tightening of the networks' when women are losing control with their children, with increased visiting, counselling by staff, and building up of friendship networks to support the mother. Some mothers are aware of using NEWPIN as a refuge - 'I felt like murdering him this morning so I put him in his pram and brought him down to NEWPIN'. If despite all the extra support, referral to social services is considered, it is discussed at length with the mother and done in the way she wishes - with the support of her befriender or staff, or alone, as she chooses. Social workers and other professionals are kept in touch with developments, but again only in collaboration with the mother, who has access to her records and to all communications about her.' [13]

Take another idea which requires resource input but hopefully does not alienate people

through the message that only state professionals can 'do the job'. One paid employee, attached to a school, could co-ordinate after school care by having a budget to pay some parents to look after children whose parents worked, or were not coping well. The professional task would be to select parents able to care for other people's children through an assessment of their capability, accommodation and any other relevant factors. The professional would also support the families involved, as well as organise the numbers of children going to particular families.

There does come a point where professionals have to become involved when children are thought to be at risk of physical or sexual abuse, or severe emotional neglect. This does not mean, however, that the community cannot become involved in supporting children, through the kind of schemes I have just described. The more support offered to deprived children and their parents, the less likely will be the need to remove children from their families, although it is almost certain that a certain proportion will not be protected unless they are removed. Sensitive community involvement, prompted by state resources, will improve the welfare of children and therefore reduce the numbers who have to be separated from their parents and placed in substitute care.

## Self-respect

I have argued that if children are to be given the benefit of public interest and spending for support in the community and the opportunity to stay with their parents when at risk, they must be seen as citizens in their own right; that is, having rights which are relevant to their lives. What rights and freedoms are conceivable for children. I suggest the following: As a child I would want proper physical care, security and an opportunity to develop normally. I would also want to be free from exploitation of a sexual or

economic kind, protected from physical assault and neglect. I would want to be protected from slavery, being sold as a commodity for employment, and arbitrary removal from my parents or guardians. I have argued that the quality of care which children receive affects their ability to participate as fully fledged members of the adult community when they reach the age of majority. I have used Rawls' Theory of Justice as a model of citizenship in this essay, and finally want to comment on his view of self-respect and how its development is linked with a satisfying experience of liberty. First a reminder of the basic liberties:

> 'The basic liberties of citizens are, roughly speaking, political liberty (the right to vote and be eligible for public office) together with freedom of speech and assembly, liberty of conscience and freedom of thought; freedom of the person along with the right to hold (personal) property; and freedom from arbitrary arrest and seizure as defined by the concept of the rule of law'. [14]

Now one can see that to take advantage of these liberties or active claim rights of freedom, a level of maturity and intelligence is required. Although arguments have been put forward for extending the franchise to all ages[15] it has been motivated by the adult conception of equal liberty for all, rather than through the exertion of political pressure from children themselves. Staying with the more moderate view that children require agents to act on their behalf when their rights are in jeopardy[16] it seems that in order to *develop* the capacity for exercising the citizen rights as described by Rawls, certain pre-requisites are necessary. Rawls referred to these as primary goods, the most important of which is 'self-respect'.

> 'On several occasions I have mentioned that perhaps the most important primary good is that of self-respect ... We may define self-respect (or self-esteem) as having two aspects. First of all ... it includes a person's sense of his own value, his secure conviction that his conception of his good, his plan of life, is worth carrying out. And second, self-respect implies a confidence in one's ability, so far as it is within one's power to fulfill one's intentions. When we feel that our plans are of little value, we cannot pursue them with pleasure or take delight in their execution. Nor plagued by failure and self-doubt can we continue in our endeavours. It is clear then why self-respect is a primary good.' [17]

It seems more than clear from Rawls' account of self-respect that a sense of our own worth is essential to our ability to function as citizens. Rawls does not focus on how a sense of worth primarily comes from the type of relationship we have with our parents. This is not to say that children who are neglected can never develop a sense of self-esteem but it is to say that in general the giving and receiving of love, attention and stimulation is what allows a young child to develop confidence, identity and emotional stability. Rawls in contrast places his emphasis on the basic structure of society.

> 'The primary subject of justice, as I have emphasised, is in the basic structure of society. The reason for this is that its effects are so profound and pervasive, and

present from birth ...

> Now as far as possible the basic structure should be appraised from the position of equal citizenship. This position is defined by the rights and liberties required by the principle of equal liberty and the principle of fair equality of opportunity. When the two principles are satisfied, *all are equal citizens*, and so everyone holds this position.' [18]

If the scheme of citizenship ignores the variation in primary goods, particularly self-respect, which children experience, it also ignores the principle of equal liberty. If self-respect is a pre-requisite for the proper exercise of citizenship, then those future citizens (children) who have varying enjoyment of it will not all be in the same position when they reach the age of majority. Their capacities as citizens will vary, in part, with their ability to enjoy self-respect. The type of care which children receive from their parents *can* be influenced by other forms of support, and therefore the system of justice can take into account the opportunities available to all children as citizens who will enjoy the full range of liberties when their minorities are completed. Children are not an insignificant group in society. 'In Britain ... 11.7 million children constitute nearly one fifth of the population'.[19] The effort which is given to the formation of their self-respect has inevitable consequences for their ability to participate as adult citizens when the time comes.

In Chapter 4, I discussed the distinction between permissions and opportunities in relation to how freedom is understood. Children, if they are to develop into mature adults capable of a sense of citizenship need more than just permission to develop in an

atmosphere of stability understanding and stimulation. They need the reality of it. If society is to adequately protect its children, it has also to support them adequately, and if there is 'no such thing as "society"'[20] then some of the children of that non-existent society must be left to suffer in silence.

# Conclusion - References


1. Ignatieff, Michael 'Citizenship and Moral Narcissism' Political Quarterly Vol 60 No1, January 1989 p.65
2. Plant, Raymond Political Philosophy & Social Welfare Routledge & Kegan Paul, 1980, pp.61-62
3. Hayek, F. 'The Confusion of Language in Political Thought Occasional Paper No.20, Institute of Economic Affairs London 1968, p.30
4. Beulah, R. Madsen, Sullivan, Swindler, Tipton Habits of the Heart (Berkeley: University of California Press 1985) p.218
5. Rawls, J Justice as Fairness, Political not Metaphysical, Philosophy & Public Affairs, 1985, Vol 14, No.3 p.245
6. Ibid p.241
7. *Ibid* *p.251*
8. Battersby, Christine Morality and the Ik in Philosophy, Journal of the Royal Institute of Philosophy, Cambridge University Press, April 1978, Vol.53 no204 pp.204-205
9. Turnbull, Colin The Mountain People Picador, 1973, p.116
10. Ignatieff, Michael op cit p.70
11. Ignatieff, Michael op cit pp.68-69
12. Skillen, A.J. Welfare State versus Welfare Society? Journal of Applied Philosophy Vol 2, No1 1985 p.14
13. Pound, Andrea NEWPIN and Child Abuse, Child Abuse Review, Vol.5, No 1. Spring 1991. p.9.

14. Rawls, J. A Theory of Justice
Oxford University Press 1972 p.61

15. Franklin, B The Rights of Children
Basil Blackwell 1986, Chapter 2, p.45

16. Rawls, J. Theory p.249

17. Rawls, J. Theory p.440

18. Rawls, J. Theory p.97

19. Franklin, B. op cit p.6

20. Thatcher, M. Women's Own Magazine, 1987, quoted in
Beyond Thatcherism, ed. Brown and Sparks,
Open University Press, 1989, p.9

# Appendix A

## Case Study Survey of Local Authority Attitudes to Registration for Child Protection

### Specific Comments on the Case Studies

**Situation No 1**

One local authority attached the word 'monitor' to a decision not to register. One local authority attached 'warning to parents' to a decision not to register.

**Situation No 2**

One local authority ticked 'uncertain' but added 'ask for two medical opinions'.

**Situation No 3**

One local authority added the words 'grave concern' to the box 'more likely to register'.

One local authority ticked 'less likely to register' and added the following:
'would see it as more important to engage a child in one to one work or in regular activities outside the home. May register on grounds of failure to protect'.

**Situation No 5**

One local authority made a decision to register but added the following:

'Registration in this case would rest on whether the fourteen year old was believed by those who interviewed her - if they believed her we would register. If there was doubt ie, because of the way she made her statement and it was questionable, then registration would not take place'.

## General Comments

In the space provided on the questionnaire for further comments, whether of a very general or specific kind, the following sentences were added by various local authorities.

'The answers to Part I are my own opinions based on the information given. I cannot vouch that the same conclusions would be reached by a multi-disciplinary conference in -- '.

'I found it very difficult to decide on registration from the information provided. Before reaching a decision I would request more information.'

'Still no uniformity between one area and another. It still feels dependent on the Social Services response and interpretation of the situation.'

'The examples you have given in this document would not necessarily mean the convening of a CP Conference. We would endeavour to investigate and assess more thoroughly each situation to ascertain what other information was available re child/children and family. These would include joint investigation with members of the Police CP Team and only after completion would decision be made to convene a CP Conference. I am aware that you acknowledge this point but felt I should reinforce this.'

'Thank you for sending your questionnaire on registration. I haven't completed the questionnaire because the description of the cases would not necessarily warrant a Case Conference being convened, therefore I felt the information would not be accurate.
In order for a decision to be made on registration, there would have to exist a social work assessment and information from other agencies. I thought the case studies reflected the need for a child protection investigation, but there was not enough information to decide on registration.'

'I found the questions 1-5 extremely difficult to answer. On the whole I would want a great deal more information before deciding on registration.'

'Difficult to decide the Registration Question on the information provided in the scenarios.
Taken into consideration:

Abuse/Risk of Abuse - Has the child been abused, or is there an inter-agency assessment which indicates high risk of potential abuse.

Is child protected? - Are the carers/parents of the child protecting the child adequately.

Does the child need an Inter-agency Protection Plan to ensure protection

- if parents/carers are not protecting, can an inter-agency agreement be made involving the parents/carers which would ensure protection.'

'I do not always find the concept of risk helpful. There are many situations where an identified abusive incident be it physical, sexual or an example of neglect, is a symptom of a wider problem. The 'abuse' that the child suffers living in such a family can be more damaging to their future development than the incident which professionals have highlighted.
However the risk to the child is seen to be the possibility of a reoccurrence of the abusive incident. The word does not encapsulate the child's whole situation and does not direct professionals to consider the relationships surrounding the child.'

'I enclose your questionnaire which I received last month. I would wish to point out that although in some cases we have indicated "less likely to register", this does not mean that we would not be concerned about a family. Often when we are concerned, but feel there are no immediate criteria for registration we will place a child's name in a 'pending' category and arrange a follow-up review in 3-6 months time. Thus the child is not officially on the register, but our concerns are recorded.'

'This kind of questionnaire is always difficult and I would expect to base any decision, additionally, on a family history and an assessment of family interaction.'

# Appendix B

## Survey of Local Authority Views on the Purpose of Registration

This section sets out comments received in response to the second part of the questionnaire which was worded as follows:

### Questionnaire

'The second aim of the questionnaire is to discover your views on the purposes of registration.

Number the boxes which you think are relevant in order of priority and leave the other blank. If you wish to add your own comments please do so at the end. If you think two items deserve equal priority insert the same number in both boxes.

**The purpose of registration is:**

(a) To establish a common standard of risk

(b) To offer protection to children at risk through a professional network set up to monitor the situation regardless of any effect registration may have in reducing co-operation from, and access to, the family

(c) To make the parents aware that the department and other associated professionals are concerned about the welfare of particular children

(d) To use it as a forum for reviewing children in conjunction with parents, so that review conferences can be used as tools for effecting changes in parental attitude and behaviour

(e) To share responsibility between professionals for decision-making

(f) To create a reference point at which decisions regarding removal and long term planning can be made

(g) To monitor the quality of child abuse investigations

(h) To consult other agencies before decisions on unsupervised access or trial periods at home are made'

---

# General Comments

One local authority added to point (b) that it is 'not desirable but sometimes has to happen', at the same time as giving it a priority, and added to point (e) 'and formulating protection plan'.

Another local authority changed point (e) to say 'to ensure decision-making is as informal as possible - decisions are made by agencies after recommendations'.

One reply stated that (i) 'I feel some of the questions refer to case conferences rather than 'the purpose of registration', and (ii) case conferences do not make decisions, they make recommendations'.

One local authority answered as follows: 'I reply on behalf of the Director of Social Services to your recent letter requesting that an Area Manager or Child Protection Co-ordinator complete the enclosed questionnaire. I regret that due to work pressures we are unable to assist you in this project.
However, in passing I will offer some comment on practice in --. First, the categories of abuse which are used in -- for registration purposes are those recommended on page 26 of the Government publication "Working Together", namely Neglect, Physical Abuse, Sexual Abuse, Emotional Abuse and Grave Concern. Secondly the decision to recommend entry to the Child Protection Register is reached by a multi-disciplinary case conference after full discussion of the individual case. In these circumstances, no one individual's subjective interpretation of your questionnaire would be of much value.'

One local authority added a further point after (h): 'To identify the children who are at risk and make this knowledge available to all professionals from "Caring agencies".

Comments added by one local authority are as follows: 'the last item on the purpose of registration I found particularly difficult. I don't really agree that a, b, f, g or h are purposes of registration at all. d, e, f and h seem to me to be the purposes of case conferences, rather than registration. c seems to be the only relevant one.
This local authority does not have a 'grave concern' category on its register yet: it will do so as of April 1990. Also, we do not automatically hold regular 'review' case conferences for children who are on the register.'

One reply stated 'I have some problems about the way in which these multiple choices are worded viz:
(a) Does this mean something like the following? That in cases where there are worries that children may be being abused or may need protection, one of the purposes of the child protection system, including the case conference and registration, is to gather all available information together, analyse it and reach a judgement as to whether it is believed that this particular child needs protecting or not. The child protection system is, in my view, designed to help those involved to move from ill formulated worries to as clear a judgement as possible about the care being received by a child. In short, the framework of registration (with the other procedural and practice elements of the child protection system from which it can't be separated) should help people to answer the question: "Do I need to be worried about this child and if so, why?
(b) Does this mean the following? That registration decisions are or should be made on the basis of the "Working Together" criteria alone and not on attempts to double-guess the parents' possible response to the registration decision.
This particular sentence (b) is inadequately phrased and not in line with the thinking of "Working Together" because it does not mention the concept of the child protection plan which is not just for monitoring children but to attempt in co-operation with their carers to put together a package of actions - some by carers, some by professional networks -

to safeguard and pursue the welfare of the child.

A false dichotomy is implied in the way this is phrased which suggests that you either register on the basis of outside criteria and content yourself with monitoring from the outside without parental involvement or you informally attempt to reshape parental attitudes and fudge the issue on the care the child receives. Neither are acceptable.

The phrasing of (d) too is, in my view, flawed. It implies an attitude to parents which falls far short of what we would wish. One purpose of parental involvement is to invite them to thnk of contribution they could make to better protecting their child. Another purpose is to recognise their right to a say. Another is to improve the quality of information presented to case conferences.

In view of all these reservations I feel I cannot complete this exercise without the results being completely misleading and unhelpful to your research.'

One local authority added 'the purpose of registration is to establish a record of a child who is believed to have been abused or at grave risk and who is the subject of a protection plan. Any greater "purpose" is a reflection of wishful thinking'.

One local authority would prefer the following points:

- To be able to monitor incidence and trends of child protection and to report these to ACPC to influence policies, resource allocation, etc.
- To provide an information bank in and out of office hours at the commencement of enquiries eg police, Casualty Departments, etc. SSD.
- To monitor the effectiveness of child protection plans (similar to (b))'.

One local authority set out three general purposes for registration:

1. To establish a plan to ensure the child's protection and to provide for independent monitoring of the effectiveness of the plan.

   (This is by far the most valuable aspect of the registration process.)

2. To alert professionals to the fact that children in a particular household are 'at risk'. (In practice the value of this element tends to be over-rated and there is the danger that children not previously identified as being 'at risk' may be overlooked or concerns may be down-rated because there is no history of abuse.)
3. To provide a source of statistical data to identify trends and plan resources. (Though it should be noted that registration statistics only provide a very limited indication of the scale of child protection service needs.)

Registers are simply lists of names - what is important is the action that follows registration. Registers need to be actively managed if they are to be effective and large-scale 'at risk' registers can be positively dangerous.'

One local authority added four points:

1. Registration only takes place following case conference.
2. The case conference is a key element in registration and subsequent review.
3. The register to identify children at risk and to monitor the risk through ongoing review.
4. Parents are usually informed of the registration - very exceptionally a parent might not be told - perhaps if felt access to the family might be denied.'

One local authority stated 'the existence of registers makes us make a choice between children 'at risk' and those that are not. I do not believe that this reflects reality and that we often get pre-occupied with registration when what we should be doing is establishing protection plans at a level relating to a 'continuum' of risk. Ideally I would like to abolish registers but maintain the conference system in order to plan and review as appropriate.

I appreciate the counter arguments though, ie loss of structured approach leading to lack of protection etc but I really wonder whether registers protect children or are simply a bureaucratic response.'

One local authority added 'while (h) is a vital part of such a process I do not cosider it part of registration purpose. It is part of good child care practice especially related to children in care. Children in care and registration are not synonymous. What the child says and the child's perception of events (eg hurtful, unfair, bad) etc are particularly important weights in the balance of registration/non-registration factors.

At one end of the spectrum of abuse, children, according to their context, would view events differently. At the other end of the spectrum are absolutes that regardless of the child's perception, professionals regard as abusive, eg against the law, obvious and serious injury.

Parents' willingness to work on problems, remorse etc are not factors that affect the registration. Criteria are either met or not re the child. Motivation etc affects the way the situation is worked with towards deregistration.'

One local authority 'thinks it is important to balance the usefulness of registration against the deficiencies in registration in protecting children. At best, registration can only be one of several 'tools' to monitor children at risk of abuse, it is not a catch-all safety procedure. In this context registration has to be considered in fairly black and white terms in order to avoid blurring issues.'

One local authority felt that 'the purposes of registration are mainly

- To identify children at significant risk of abuse and to co-ordinate multi-disciplinary services to monitor and review these children's situation.
- To identify stresses giving rise to risk and the help needed to overcome these stresses.'

Registration is one option. Registration in itself does not save children's lives - it is only part of a child protection plan.
There is a danger of over-zealous registration, a two edged sword - 'register just in case to cover our backs' but, as one point in the questionnaire suggests, registration has a knock-on effect on families and professionals.'

One local authority commented 'have left second aim (d) blank, as currently parents do not attend reconvened case conferences; they will from 1.4.90.
Secondly, in our authority all cases are reviewed by an external Panel every quarter; they are the only body which can agree deregistration. They can also query the grounds for registration, if they see fit.
Thirdly, only my Unit chairs case conferences and if anyone chairs (rarely) from outside the Unit they do so on an agreed format, to which they are required to keep.'

One reply stated 'my feelings are that the Protection Register is a device used primarily to reduce people's anxieties about a particular situation, rather than as a positive protection measure. Because of this tendency to blindly follow bureaucratic procedures, often suspending professional judgement and opinion, the whole process can become a dangerous one. In reality, agencies are often not informed that a child is on the Register, the Register itself is not as accessible as we are led to believe, and is sometimes inaccessible and out of date.
Its primary function seems to be one of providing statistical information.'

In a letter from one local authority various points were set out:
'Thank you for your recent letter and questionnaire which the Director passed on to me to complete.
The first point would be that my response has to be based largely on my own experience and perception. One of the major difficulties within a large decentralised authority is the

attainment of a consistent approach. Here in -- my colleagues and I are working hard to achieve consistency as regards issues such as registration on an area basis.

There do of course exist County wide procedures, together with standard training and information to staff. One element of this related to your research is a requirement that Case Conferences are chaired by Senior Managers, outside of the line management arrangements for the case. This practice, now established for nearly 4 years, has I believe led to a much greater consistency in chairing, a higher standard of case conferences, and critically, a willingness to consider the child's position. This last part should mean that we avoid the pitfalls of not registering children because of other pressures, eg workload or staffing shortages.

My experience of chairing conferences in -- (and I chaired 90 in the last 4 month period) indicates that there is little dissent around the issue of registration. The decision to register can only be made at a case conference and a lot of work has gone into ensuring agencies understand the Child Protection Register, protection plans etc. -- also has a policy for the joint investigation of referrals of abuse between ourselves and the Police.

As regards the purpose of registration, I believe that this has to be about signalling the existence of active plans for the protection of the child concerned. A lot of decisions within that remain the province of Social Services although there is an increasing tendency to share these with other agencies. It is therefore common practice for case conferences here to consider the type of order that should be made in respect of a child, the long-term plans etc. I debated with myself whether this constituted a minor purpose of registration, but concluded it instead reflected good practice.

One of the concerns of the -- Child Protection Committee has been the isolation of CPC's from each other, both on a regional and national basis. This must mean that issues such as the one you are considering remain a matter for local areas and risk becoming very diverse.'

One local authority stated 'the purpose of registration is 'to provide a record of all children in the area who are currently the subject of an inter-agency protection plan and to ensure that the plans are formally reviewed at least every 6 months" (Working Together, HMSO (DOH) 1988).

- The above are better described as possible case conference functions, rather than registration functions. Many are also partially correct or part of the function of the conference. I would not wish to weigh them against each other as constructed.'

One local authority discounted points (a) - (h) and stated that the purpose of registration is

- To share information between agencies.
- To share experience of agencies in forming a view of risks.
- To use experience across agencies to design protection plans, including later monitoring.'

One local authority felt that the first part of point (b), 'to offer protection to children at risk through a professional network set up to monitor the situation' appears to be the main purpose of registration, but would not agree with the second part of (b), and added 'none of the others provide the purpose of registration but may be an effect of registration'.

One local authority stated that (a) is established in their county guide, and amended (b) to say 'to offer protection to children at risk through a professional network to work with the family and monitor the situation'. Also added was: 'this question confuses the purpose of a child protection case conference eg (h) and the purpose of registration. Also case conferences can only make decisions whether to register or deregister. Otherwise it can only make recommendations to the constituent authorities'.

# Appendix C

## The Diary

In this section I want to describe the reality of a social services office by giving a picture of the work I did in one week in the middle of 1989. I kept notes at the end of each day and wrote out the diary at the end of the week in question. It will, I hope, show that the popular conceptions of what social workers and team managers do, are generally superficial.

I was employed by a London Borough as a team manager for a group of social workers, and home help organiser. As you will see from the diary there is a great emphasis on child protection work, and the idea of departmental rather than individual responsibility now prevails. To begin with, I want to describe how the focus of social work intervention in child protection has changed over the last couple of years. Then I will describe the structure of the office, and how priorities are evaluated both in terms of incoming and ongoing work. Before I write out the diary I will provide an idea of the type of area my team covers.

# Success, Failure and Survival

> 'The relationship is the soul of casework. It is a spirit which vivifies the interviews and the processes of study, diagnosis, and treatment, making them a constructive warmly human experience.' [1]

When "The Casework Relationship' was first published in Britain in 1961, social work practice reflected the writer's emphasis on the relationship between the worker and client. The professional social worker used his or her *relationship with* the client to unravel the complex of needs, incentives and experiences *of* the client. Through this expertise, derived through the assumption of professional status, the knowledge held by the social worker afforded him or her with the power to make appropriate decisions. Where the specialized knowledge was held was also where the power over clients and families lay.

Both in cases where legal powers for children were delegated by the courts to local authorities, and where no statutory obligation existed, the power to decide on whether clients were at risk to themselves or others lay in the *minds* of the professional social worker and supervisor. Supervision itself could often focus on the relationship between worker and supervisor. Success was therefore defined through the exercise of professional power and knowledge, to the extent that situations were influenced by it. However, the professional could *decide* on what constituted a successful intervention. If the client agreed, so much the better.

The change which then occurred was based on the realization that the use of social casework to sustain vulnerable families and individuals was also a method of ignoring

their economic and political impotence. The growth of community work tried to professionalize the ideal of community, by a process of democratization which underplayed the policing role of welfare services, and emphasized the shared nature of society.

> 'The solution, easing or prevention of individual or family problems is and remains the reason for the existence of personal social services agencies. But the focus (that is of community social work) will be upon individuals in the communities or networks of which they are part . . . . Community social work demands that the people who form a clients' environment are seen for what they are or may be - an essential component of the client's welfare.' [2]

The Barclay Report, here quoted, was published in 1982. Between 1985 and 1988 reports on the deaths of three children, Jasmine Beckford, Tyra Henry and Kimberley Carlile and the Cleveland Inquiry on Child Sexual Abuse were written. These reports have resulted in the concept of social policing taking priority over what the Barclay Report calls social care planning, that is, the co-ordination of statutory and voluntary caring networks. The pendulum is now trying to swing frantically between the extremes of child protection and support for other client groups such as the elderly, disabled, and mentally ill. Being a good policeman is as difficult as being a good priest. Being both at the same time is virtually impossible. The emphasis on the providing of support services is counterbalanced by the need to ensure that child protection resources are operating adequately. The balance between the two demands varies according to area, local budgets, management philosophies, and political climate. Where there is a conflict of interests, however, between offering psychological support to the vulnerable, and operating child protection network, the latter takes priority. If a social worker has to

choose between running a group for mothers and toddlers or spending time investigating suspected neglect or possible abuse on those children, the latter will always be preferred by managers in social work departments, even if the families involved in the investigations would be suitable candidates for the proposed group. This is a matter of giving the prevention of harm priority over the promotion of wellbeing.

The network of Child Protection which is co-ordinated in Social Service departments has changed the extent to which individual social workers and their supervisors can make decisions about particular cases. Joint investigations with the police, multi-disciplinary conferences involving police, schools and health services, all mean that decisions about children are not made by individuals. Managers or Child Protection co-ordinators play a large part in determining the outlook of a particular area office. The social worker is no longer in a position to form a relationship with a family and then hold the upper hand in respect of the decisions which are made. There is less flexibility in the role; the client can no longer hope to persuade one person of their innocence; the social worker still has to engage the client but only as a representative of a departmental and inter-agency network. In short, the role of the social worker has changed from that of a counsellor with legal responsibility for the safety and security of children, to that of an assessor of families with a responsibility to inform planning meetings and conferences composed of other professionals. The legal and bureaucratic responsibilities for children lie within those meetings and internal structures. Inevitably the distance between the worker and the family has increased as the whole screening process has moved into a higher gear over the last couple of years. If there is any doubt as to the acceleration of child protection network the figures confirm the experience. From the press statement of 2/8/89 issued by the Association of Directors of Social Services already quoted in Chapter 5:

'At the end of March 1989 there were 41,600 children recorded on child protection registers in England and Wales.

The names of 23,700 had been added to the registers in *the previous 12 months*'

To suggest that between March 1988 and March 1989 families suddenly started abusing their children to the extent that child protection figures doubled in one year is a fairly ridiculous assertion. The system has changed, and at least in part the figures must represent that change.

'Success' in social work, certainly in child protection, is no longer about the social worker working with a family to achieve stability or change as a professional in their own right. It is about facing parents with certain standards, investigating the feelings and condition of children involved, and working according to plans and directions from agency and inter-agency structures.

## The Area Office - The Structure

In the borough there are three area offices. This is a description of the one I was employed in. The area is divided up into geographical patches, three of which use the office as their base. The other team has two smaller sub-offices where they operate from. On average each team has seven social workers, one social services officer (whose work is mainly concerned with the elderly) a family aide (who assists with the

practical and child care tasks in conjunction with a social worker), a home help organiser and an under fives worker. Each team is managed by a team leader, and each team also has a clerk who co-ordinates the administrative work of the team .

In addition to the four 'patch' teams as they are referred to, there is also a child care team. The child care team focuses on children who are to be permanently separated from their natural families, either by remaining in long-term care or by being prepared for adoption. The other teams also do a lot of this work, as there is too much of it for the child care team to do alone.

The administration of the office is managed by an area administration officer, who has a deputy, telephonist, receptionist, and three typists. In addition the clerks are also part of the administration team.

The duty senior is a separate post responsible for the co-ordination of all incoming work. This includes work which cannot be allocated to a social worker but requires some input, and work which requires cover when social workers are on leave or unavailable. The duty rota is made up of a representative from each social work team every day. Each person tries to do two consecutive duty days to provide some continuity. There is also a separate duty clerk.

The whole area is managed by someone with the ominous title of 'area controller'. He supervises the team managers, is involved in the formulation and reformulation of departmental policy, recruitment, disciplinary problems and the overall running of the office. He has a deputy whose main role is the co-ordination and monitoring of child protection work within the area. She chairs the initial conferences which are held when child protection cases require immediate planning, and presides over the reviews which are held regularly on children whose names are on the register. She also monitors all

incoming child protection referrals, and supervises two senior practitioners who work with the patch teams.

The area management team is made up of the area controller, deputy, team leaders and area administration officer.

The area controller is what is known as a principal officer, and has the same status as other principal officers in headquarters, who are responsible for categories such as disability, mental health, fostering, child protection, under fives provision, children's residential care, homes for the elderly and racial monitoring. All of these officers are based at the central head office and relate to the assistant directors and director of the department. Senior management are directly responsible for financial approvals which have substantial implications. This can include payments to keep children out of care, which amount to over £200 per child in any one financial year, or approval for out of borough children's residential establishments, the creation and funding of new posts, and the education and training of staff. The role of the senior management team is obviously wider than this, in that it provides the interface between professional staff and ward councillors as well as the council as a whole. For the purposes of understanding the working of the area office, however, I hope this will be sufficient. The only other point to mention is that there are some social work teams set up on a specialist basis at central office. They deal with the disabled, fostering and intermediate treatment (a term which means the provision of educational resources for young people at risk of, or with a record of, criminal involvement). A team also exists for mental health work, but this type of work may also be dealt with by the area offices, because there is too much for one team alone to deal with.

# Priorities - The Duty Senior

The duty system in the office I am describing works on an appointment system. Each team has four slots per day and these are filled up in advance or on the day if space is available. In the main area office there should be three duty social workers on each day. Sometimes there are less if cover for sickness cannot be found or a worker has a prior commitment for part of the day. Also there are two unqualified workers in the office who are not allowed to lead child protection investigations.

The duty senior has to make decisions about the immediacy of risk, usually to children, but also to the elderly and mentally ill, in the light of limited resources.

As far as children are concerned, he or she has to determine if immediate investigation is necessary, whether medical examination will be required, and after interviews with children and parents whether removal is appropriate. He does this in conjunction with his duty social worker, and often with a police officer from a local unit designated for child protection. The process might sound easy. The problem is that according to the severity of concern, the decision has to be made as to how long the investigation can wait, or how much time it can be staggered over.

For instance, if an injury is observed on a child at school, what sort of injury is it and what explanation has been offered? Is it very unusual such as a bruise across the shoulder, or are there just a lot of grazes and cuts across the lower legs? What is the age of the mark and are there other concerns about the child? There are a whole range of circumstances which are reported and it is not unusual for there to be three or four which need attention at any one time. The duty senior, in practice has to decide which are the most important and which cannot wait. Other common concerns are to do with hygiene,

rejection, withdrawal, aggressive or sexualized behaviour - all symptoms which show that a child may be on the receiving end of poor parenting or possibly some form of abuse. Reports are often received from other authorities that children who have moved into the area are on their child protection register, and that there have been concerns about the care the children receive from their parents. Health visitors who see many families often relay their worries about children who do not seem to be thriving or wanted by their parents. All of these have to be evaluated and acted on in some way or other, either by direct contact or monitoring through schools and health services. Apart from other agencies all sorts of referrals are received from the public, ranging from reports of domestic violence to children being left on their own.

Given the massive input of child protection work, the duty senior also has to weigh up the needs of the elderly, a great many of whom are physically frail, socially isolated and mentally confused. Sometimes emergency admissions to old people's homes are necessary, often old people are discharged from hospital because there is no medical reason to keep them in, but equally they are not capable of surviving in the community even with domiciliary support.

Only approved social workers under the Mental Health Act can be involved in compulsorily admitting people to hospital. Should the duty senior send out a worker for this purpose, he may also need to send a second worker in support. Two workers are often required for home visits to difficult and aggressive people. Such assessments and visits leave the office with little duty cover and the duty senior has to then prioritise the remaining work, or re-schedule it. However as long as the doors are open the public come in, sometimes with problems which cannot wait, such as mothers who have no money to feed their children with. All in all, the lot of duty social work both for the social workers and their senior is not an easy one.

# Priorities - The Patch Team

Every social worker carries a number of cases, referred to as a caseload. What is allocated depends to some extent on the experience, qualification and capability of the worker; however the equation is usually more heavily weighted by the demands of the case itself, and the pressures of the management structures and legal context which are brought to bear. The pressures which have exerted themselves on my team over the last year (summer 1988 to summer 1989) have fallen into the following categories:

1) Children who have been removed from their parents care through the courts, where there is a dispute between the views of the local authority and the parents. Work has to be undertaken to show what the problem is, how it might be solved through attempts to alter parental attitudes and behaviour, and then a view formed as to what the best interests of the children are. The court then decides if they need to stay in local authority care or not. The decision to place children permanently in care is *not* made at the start of the legal process. The decision can only be made after a short or intermediate period has been allowed for the assessment of the problem.

2) This is about children in need of support and help, but who are living at home. Often these are children on the child protection register who have been, for example, victims of sexual abuse from someone outside the home, or emotionally deprived by parents too insecure and immature to give the basic care needed. Children who have received minor physical abuse, are sometimes included in this category.

3) Children in care, where there is no prospect of return to their families, need planning for, both in terms of their education and independence. Often they are

left in care with no social worker attached, and their launch into the adult world is dependent on the strength or weakness of their relationship with their day-to-day carers.

4) Children who are not being abused or deliberately deprived but who are likely to come into care because of marital separation, parental disability, housing or financial problems, need social work advocacy to help keep them secure.

5) The elderly are a large group requiring physical, social and domestic support. Where situations are extreme, as in many instances, medical and residential care is also necessary.

6) Some children are subject to supervision orders via the matrimonial courts. Social workers are the ones required to carry out the supervision.

7) Isolated adults subject to learning difficulties are dependent on social work for many of their needs.

8) Many families are under severe stress through lack of adequate housing,under fives provision and opportunity for employment. Social work is the element which can sometimes help them to find the appropriate resources.

Over the period from July 1988 to August 1989 the only category from my team which received more or less immediate attention to the point of a social worker being allocated was the category one. It is worth pointing out that children who came into care at the request of their parents, and without the involvement of the courts, did not always have a social worker allocated to them.

At any one time there have always been at least twenty unallocated cases. In the summer of 1980 there were in effect two qualified workers and two unqualified workers (unqualified workers cannot deal with child protection matters, and only should deal with statutory child care work under strict supervision, in this particular department). At this stage the unallocated list of cases was over forty. It included a boy who needed to be placed for adoption, an adolescent in care who was threatening suicide, and a family where out concerns about severe emotional and possible physical abuse were heightened by their lack of co-operation and refusal to allow access.

As the staffing situation improved the number of unallocated casaes was reduced to something over twenty. The list still included families where children have been sexually abused by a perpetrator outside the family, or where children have witnessed severe domestic violence, emotional rejection, and inappropriate sexual bahaviour. With a virtually full team (six and a half social workers out of seven) and all other posts filled there was still a substantial degree of high priority work, such as the type I have just mentioned which remained unallocated. The cases wait until someone has space to take one, and if a crisis occurs which requires immediate action then it is referred to the duty officer. However a lot of unallocatedwork was dealt with by me, the team manager. This applied both to unallocated cases where plans for children in care need to be made, and to families in the community where there are concerns which need to be collated and acted on.

Very few families in categories six to eight receive danything except possibily referral to other agencies. However the counselling agency based in this area also has a waiting list. Categories two to five received quite a lot of attention but the volume of work was too great to cover the need properly. In effect the prevention of children coming into care through effective group work, or even individual casework was relegated in order to provide a more rigorous monitoring of children on the child protection register; and even

though these functions can sometimes overlap the detection of abuse necessarily takes precedence over the provision of support for inadequate and deprived families. Available resources did not allow for both.

## The Patch - A Description

Because I intend to preserve confidentiality throughout this chapter, I do not want to reveal the location of the patch or the idenity of the borough in question. However I think I can give some ideas about levels of deprivation through statistics which were compiled in a report submitted to the council in 1988. Each sub-heading will refer to a particular aspect of social provision. All the figures are for 1987 or after unless specifically stated.

## Poverty

Unemployment in the patch is approximately at 27% for men and 12% for women. The average is around 20%, which is 6% higher than the rest of the borough. The largest group of unemployed are between 16 and 24 years old. Over 60% of council tenants claim housing benefit and rent arrears for the area are high. Over 7% of families are one parent families compared with 3% for the rest of the borough. At three of the five primary schools in the area over 60% of children have free schools meals.

# Housing

In 1981 95% of housing was owned by the council, compared to an average of 40% for the rest of the Borough. Over 70% are maisonettes and flats where access and refuse arrangements are shared. Few households have their own gardens. There are damp and heating problems in the old estates and poor sound insulation in the new housing stock. Families cannot move unless there are extreme medical grounds. It is not uncommon for families awaiting rehousing to be in bed and breakfast for over a year, and often longer.

A survey of women in the area revealed that they all feared for their safety when they went out. Sexual and racial violence is commonplace.

# The Under Fives and Childcare

9% of the population is under five, and 30% of under fives in the area are from single parent families. There is no day nursery and one after school project for ten to twelve children. The 480 nursery places attached to schools offer half days to many over threes - some also receive a morning and afternoon session. Lunch is not provided, however, and the facility is not available in the school holidays when it is most needed. There are a few parent and toddler groups. Nursery places are limited at other nurseries in the Borough, and there are very few registered child minders (under fifteen).

One detached youth worker and some voluntary groups run projects for older children in the area, especially in the summer, but this is against a background of deprivation, violence and drug abuse. The borough as a whole has one of the lowest educational

attainment ratings in London, and this is even more pronounced in the attainment and attendance statistics for schools in the patch.

## The Diary and Its Implications

I hope the introduction I have given will make the following diary self-explanatory. At the time of writing the duty senior was on leave, and his work had to be covered. Before he came to the area, however, it was normal practice for patch team leaders to cover duty in rotation. Since his arrival the pressure has not eased, simply because the overload of work is so great that the demands do not slacken.

Working under the kind of pressure I describe means that it is not really possible to feel any distinction between success and failure in professional terms. Success for me has been equivalent to survival. Even improved team staffing levels have not resulted in a widening of the scope of social work practice. Most of the categories I described in the section on the priorities of the patch team are still sorely neglected.

Looking over the diary, I found Monday to be characterized by sheer inundation, and Tuesday by not having enough time and mental space to properly support and supervise; Wednesday was a day when some pressure was exerted on me from my own managers to allocate cases, and Thursday was a salvage operation trying to pick up things which had spilt over from earlier on. Friday was the day before the weekend. If it is tiring to read, it was tiring doing it.

## Monday 24th April 1989

9.00 Duty

Today I am duty senior. I spend most of the day with the duty team which deals with incoming work, emergency action and matters which need attention in the absence of an allocated social worker. One of my duty team is sick, and there are six messages left for me by the last duty senior. I do not have the time to read them before I go into the management team meeting which is normally held on a Monday morning. Before I go in, I see one of my social workers to ask about the results of a medical examination on a child abuse investigation. It is important not only in terms of the case itself but also because I was so busy last week that I did not have sufficient time to talk to her about it, and she felt no-one was listening to her. Because I was put down as duty senior today when I was on leave, I have to rearrange supervision with another team member planned for this afternoon.

9.30 The Management Meeting

The two items which I wish to raise today are about the policy for advertising for vacant posts, and problems over equipment in relation to the storing of files. I want to advertise for a vacancy in my team by using a team advertisement. I am keen to do this as we recruited four people, two of whom came to our team last summer, when I joined the department. The area manager says that the senior management team have ruled that a block advertisement for the area has to go out first because it is felt that teams with higher vacancy levels should get priority. This is frustrating because block advertisements are less successful, and the net effect for my team is that we will have to wait longer before we can fill our vacant post. It seems that one of the other areas have managed to evade this and are putting team advertisements out.

I point out that the cupboard we keep our files in is broken and that files are on the floor, and not properly secured at night. This is particularly risky in that one of our administrative staff is blind and could easily trip over files lying on the floor. The area manager asks the administrator of the area if she has sent out a relevant memo. She says she has had too much to do and he gets angry with her as it should have been sent a month ago.

The area manager then feeds back some information from the senior management team. He tells us that the head of personnel has been suspended and that the structure of personnel has been reorganized over the weekend! Next he says that in January between six to eight people were offered jobs as under fives workers. (They co-ordinate nursery and childminding places, and also register new childminders.) Only two are coming into post, however, partly because appointment letters were not sent out. He tells us that one of these will go to one of our teams in the area (not mine).

Although there is no secondment for social work training in the fieldwork division this year, that is for unqualified workers of whom there are still a few to go for professional training, some money from the DHSS has become available. This will allow one person to go for one year. (One year courses are designed for people with social administration or other relevant degrees.) This will not apply to most of the unqualified in the department who would need to undertake two year courses.

There is now a form for applications for out-of-borough residential placements for children. The hospital and area teams may arrange duty days to be swopped

in order to widen knowledge of what is happening in the area. Representation on the fostering panel was also discussed.

We then have visits from the fostering team followed by one from the legal section. The discussion around fostering involves how the link worker can best liaise with the area and what sorts of conferences she might attend. The team is just reforming and it is known that no referrals for teenage fostering can be dealt with for at least six months.

The solicitor in charge of legal section then arrives. The visit has been prompted by the feeling that legal section are asking social workers to do too much in the preparation of legal reports (affidavits) for High Court. The head of legal explained that the director had put a ban on the use of outside solicitors because of the cost of their services but that in fact there are only two qualified and experienced people in her section. The rest, about six others, require a great deal of supervision and sometimes can only report back to her. A format for preparing affidavits was discussed and the use of the Juvenile Court in preference to the High Court was also raised as an issue by the Child Protection Co-ordinator. A discussion followed regarding the merits of each court. The head of legal explained her resource problem as stemming from the fact that local authority pay scales do not compare with those of private practice.

At this stage a phone call was received and I was asked to return to the duty room.

11.30 Duty

There were two workers on duty and one of them wanted to go to a union meeting so I remained, and did not return to the management meeting which had

almost finished.

Two or three files had been put on my desk. One was a letter from a school saying they had noticed a cigarette burn on the stomach of a girl a week ago, and although they felt it was probably accidental, they thought we ought to know. Although the girl herself said it was an accident she had said something which might imply the use of force against her. I knew we would have to investigate this properly so I arranged for one of the afternoon appointments to be given over to seeing the child and mother, and I had to ask for duty support from the team whose duty officer was sick, as two people would be required to do the visit. I wrote out some instructions.

Following this I had a phone call from a health visitor who had made a visit to a family where an allegation of the boyfriend hitting the children needed investigation. She had interviewed the mother and seen the child and felt there was no basis for concern. I wrote this out and passed it over to be linked to the papers.

A message had been taken earlier about a history of concern about sexual abuse in another part of the country and that the child in question was now exhibiting behaviour of a disturbed nature at school. I did not find this again until the end of the day when I passed it over to the follwoing day's duty to get a fuller referral.

Another letter concerning another family arrived about sexualised and disturbed behaviour being observed at school. I did not have time to look at the papers straight away. I received messages to phone two establishments and read through the report of a child abuse investigation which had taken place on the

previous Friday. One of the duty officers came back from the union meeting and we had a brief talk about her pay and a case which has been worrying her. We arranged to discuss it more formally on Wednesday in supervision. She went out and brought me a sandwich. Over this period from around twelve to two I also went through seven or eight items which had come back from typing, sifting which ones needed further action or discussion with the Child Protection Co-ordinator. I re-scheduled an appointment for tomorrow as the papers had not come back in time; it was for a visit to a depressed mother who felt she was at the end of her tether with her children and was worried about doing something she might regret.

2.00 At two o'clock when the duty service resumed after closure for lunch, we realised that one of the appointments booked was a home visit needing two people. It involved assessing a mentally ill person whom a doctor had recommended for a hostel place. His mother had had to leave home because of his aggressive attitude towards her and we were not sure if she was going to return to the house in anticipation of the duty officer arriving. We did not have two people to go, however, as we had the investigation on the child with the cigarette burn to do, and that also needed two people to go out. In any case one of the social workers should ideally have been a warranted officer under the Mental Health Act, and none of the duty officers were. We decided to write to the mother and ask her to come into the office on Friday.

I then read a night duty report concerning a custody battle over a child whose mother had died. The child's grandmother and uncle were both seeking the care of the child. I spoke to the uncle and had a job to persuade him that social services would not get involved unless there was a risk to the child. I advised him to obtain immediate legal advice.

3.00 I then received a very indistinct anonymous telephone call from someone who said he had information about a girl in care. As he would not give his name, I could not give him any information. After establishing that the information related to something that happened a month ago and that the caller's confidence would be kept, I advised him to contact the appropriate social worker when she came back from sick leave.

4.00 Conference

At four o'clock I had to attend a conference and checked the social worker's report, writing a short conclusion beforehand. As I was about to go in we had a very anxious and neurotic lady come into reception who needed persuading that there was nothing we could do to obtain a prescription immediately and that she would have to see her G.P. when the surgery opened later.

The conference at four was to do with children who had been compulsorily taken into care the previous week when suspected burns had been noticed on them. The initial concern had been whether burns had been deliberately inflicted or not. Medical examinations (of which there were five in total on the two children, who were placed with different foster parents) proved inconclusive and assessments of the children and the parents were made. The children, who were already on the Child Protection Register before being taken into care, were allowed home. Concern was expressed about the illegal childminders the children had previously been left with, and the parents were invited in to discuss and hear the decisions. The mother had threatened to hit the social worker last week and I had intervened, and dealt with her for a while until she calmed down. This had caused problems for the social worker who felt excluded, and unable to find an opportunity to talk to me due to the pressure I was under.

5.15 Duty

The conference finished around five-fifteen and the two workers who had been out on the cigarette burn investigation returned. I briefly discussed this, and was told that the duty workers felt it to be accidental. A fuller discussion then took place with the Child Protection Co-ordinator. The child had run into a fifteen year old girl (the next door neighbour) who was holding a cigarette. The mark was very slight and the reason for the place of the mark was that the girl had just had a bath. Although the family were fairly chaotic, and the mother and child did not seem to be very bright, it was not thought to be a deliberate injury. The Child Protection Co-ordinator asked for a duty officer to phone the school for a picture of the family and suggested that if nothing untoward was forthcoming, that no further action be taken.

We then discussed the report of a child abuse investigation done last Friday. A child had suffered some bruising to the eye which she said her father had done. The interview with the father was done through an interpreter. The Child Protection Co-ordinator felt the mother should be interviewed and a conference set up as soon as possible. The child had not been removed at the time of the investigation.

6.30 The Child Protection Co-ordinator then asked me to write a letter to a probation officer regarding the whereabouts of a sexual offender recently released from prison.

We then discussed a case which had not been properly followed through and she asked me to leave instructions for tomorrow's duty officer to check with schools and the health visitor and then refer back to the duty senior.

A further case required similar checks and finally I informed her of the results of some school medicals on children whom we are conferencing soon.

7.30 I finished at 7.30 pm. (No lunch break.)

## Tuesday 25th April 1989

Duty

I had to go down to the duty room first thing as the duty senior for the day had not come in. I distributed the elements of yesterday's duty which I felt needed immediate attention.

9.45 Supervision

I then had a supervision session with one of my team. Because of the constant telephone interruptions she became upset and I had to re-emphasise to the switch board that I was not to be disturbed. We were only able to discuss two cases and had to rearrange a time for next week to do the rest.

The first case we discussed was about access arrangements of a father who has been the perpetrator of sexual abuse on other children. It has just come to light that he may have committed more serious offences than we first imagined. We talked about the value of access to his children and the fact that any recommendation to the Divorce Court Welfare Officer could never go beyond limited access supervised by a social worker or Court Welfare Officer. The child misses her father and is on the verge of anorexia. We talked about procedural issues and recognised that we did not have enough time to discuss the family dynamics and our own feelings about the situation.

Secondly we discussed a case which involved a child who had been found in

appalling child minding conditions. The child had been taken into care through an emergency order and mother had been engaged by the social worker. Because the child is on the Child Protection Register we discussed the fact that unsupervised access to the mother could not be allowed without the consent of the conference; a conference was needed before the Court Order expired and there were very few available dates left for conferences. [A date was fixed later, however, giving the social worker a week to make a recommendation as to whether the child should stay in care or not.] We discussed the merits of the child staying in care or not, and decided that we should pursue a recommendation for him to return to mother providing that he was not placed with an illegal childminder.

11.00 Discussions with three social workers on an ad hoc basis

Supervision ended and I spoke to the social worker who was involved in yesterday's conference, where we decided that two boys could return to their mother. One of the concerns had been that the children had been left with illegal childminders. Of the ten families registered in our patch, I phoned at least six and visited one other. None of them had vacancies. I spoke briefly to another worker concerned about a case we were to conference on Friday and she also asked if her union representative could see me with her tomorrow. I agreed.

I then spoke to a part time social worker who had been asked to do a time limited assessment of whether the level of parenting was good enough for two children to stay at home. She wanted to follow the new DHSS guidelines but there was insufficient time to do all of it. She also wanted me to co-work with her as I had not used the guidelines before. I did not feel, initially, that I could commit my

time to it, given other demands, but pencilled in two sessions in case I could find the space to participate.

After this I spoke to a social worker worried about a teenage boy who was beyond control. He was in care, but offending, spending a great deal of time missing and thought to be in a suicidal state of mind. We thought we should arrange a meeting to consider a therapeutic placement, as well as refer the boy to a psychiatrist. We also briefly discussed a teenage girl in care who has just had a baby.

12.30 Supervision

I then supervised another member of my team. The main item was to plan for a boy, both of whose parents do not wish to look after him. He has been passed from one to the other all his life. We talked over the need for a speedy placement, the lack of an ideal placement, and the legal protection we would need in order to include some permanency into our plans for him. We briefly checked over a letter and rearranged a time to meet later in the week.

Ad hoc

I then discussed a new case with an experienced locum, who told me what she would do. It concerned a disturbed boy who had been put into care at his parents' request.

Duty

I was called down to duty where I helped to persuade two drunken men to leave the office.

2.00 Review Conferences

I then attended two Child Protection Register Review Conferences. The first involved the removal of the names of some children of whom it had been alleged that they had been left unattended. Visits had been made and the allegations had not been substantiated.

The second one involved a highly emotional girl who has a tendency to minor self-mutilation when returning to a childrens home after weekend access to her mother. The dilemma is that she is so mixed up that to allow her home full time (something which her mother is unsure about anyway) might lead to a complete breakdown. Unfortunately, during the middle of this I received a personal call and had to leave the office to go to a hospital.

4.00 It was four o'clock. (No lunch break.)

## Wednesday 26th April 1989

I arrived at the office and one or two people asked me how my mother was as she had had a fall on the previous day. I checked through a long report for a conference the next day and then went on a home visit with another social worker.

9.30 Home Visit

The aim of the visit was to tell them why we, at this stage, did not feel they were capable of looking after their handicapped son. Currently he is looked after by a relative. We also talked about a complaint they had made against the social

worker for holding these opinions. Our main reasons were based on observations of the whole family by the clinic and our own judgement of the parents' own emotional immaturity.

10.30 Supervision

I then supervised a worker who primarily works with the elderly. She ran through her cases, talked about some personal matters and then also a problem where concern has been voiced about the practice and ethics of a Home Help.

11.15 Discussion with Child Protection Co-ordinator

After this I had to check out a matter with the Child Protection Co-ordinator. I was asking her for an opinion concerning an illegal childminding situation. The mother whose children had been returned to her on Monday intended to give up work at the end of the week, and could find no other interim arrangement. The Child Protection Co-ordinator felt that she was making every reasonable effort to safeguard her children, and did not feel we should intervene.

11.30 Planning Meeting

We then had a planning meeting on a child who is currently in care. We are undertaking an assessment to see if the child should be rehabilitated home. Concern centres around the issue of whether there is a genuine bond between the mother and child or whether the mother is co-operating in order to keep the family together for the sake of her husband. We arranged to meet again before the Full Hearing Court date and review the situation.

Ad hoc

I then had a brief discussion about the teenage boy in care with suicidal feelings. We discussed whether to leave him at home or force him back to an establishment

where he would abscond. We tried to weigh up the risk of the two courses of action.

1.30 For the first time in the week I had the opportunity to take a few minutes out of the office for lunch. I went out for fifteen minutes. When I got back the area manager who was on duty suggested I allocate a case (a sixteen year old boy in care) as there was a chance he could return home quickly. I reminded him of our unallocated list of cases (about 26) which I gave him last week.

I took a quick phone call from the mother of two children whose names are on the Child Protection Register and then went into supervision with one of my workers.

2.00 Supervision

She has been on four or five temporary contracts over the last three years and has very little security given her length of service. I wrote quite a long memo about her pay and conditions and discussed it with her and her union representative.

We then discussed the case of a family who are homeless, and of whom there are extreme concerns about one of the boys, and general concern about the conditions the family had been living in. A fire had occurred when one of the children had been left on their own, and the hygiene upstairs was discovered as being completely inadequate. Our discussion centred around whether the whole family should come into care or not.

4.00 Supervision

Following this session I supervised a social worker from another team as his team manager has been away on leave. He discussed the case of a baby taken

into care where there is concern over the mother's state of mind. As she is refusing to see a doctor, and is not registered with a G.P., protecting her legal rights would be in jeopardy if decisions in court regarding the child's future are to be made. We talked about ways of trying to get a psychiatrist to assess whether her current mental state is chronic.

I then had a quick discussion about a case where concern had previously been expressed about the sexualised behaviour of a child. It had now come to light that this boy's mother has a stock of pornographic films underneath her bed, which she thinks the children are unaware of.

5.00 Child Protection Co-ordinator

I then saw the Child Protection Co-ordinator who told me about a sexual abuse case she would like me to allocate. The girl in question has disclosed a lot of information about a relative who is now in prison. The girl herself needs a great deal of counselling and I explained that with a list of over twenty-five unallocated cases it would be impossible to allocate immediately. I explained that we had just allocated three priority cases. She also queried a letter we had received about another sexual abuse case, and asked me to clarify another situation where another authority have been concerned about the quality of access to a parent living in our area. Finally I spoke to her about an eleven year old girl who had been sexually abused by her father and is now living with her grandparents. Another relative has made some complaints about the quality of care this girl is receiving. She suggested that I set up a fostering review meeting, get a duty officer to visit the family, and arrange a routine medical.

6.00 Home Visit

On my way home I delivered a letter to a family who we are having a conference about, on Friday. The concerns were over conditions in the house, and one of the children being out of control.

The father of this family has always been difficult to engage and so I decided to spend a while talking to him. He was quite angry about the way the housing department had treated him, and I pointed out that they were quite angry about the way he had treated them. Eventually I was able to tell him why we were holding the conference and what our concerns are. I invited the mother to the end of the conference.

## Thursday 27th April 1989

9.30 Team Meeting

We are planning a day out of the office for the team and made a list of some possible agenda items. I fed back the content of Monday's management meeting. We talked about our list of unallocated cases, as well as the case which the Child Protection Co-ordinator had asked us to allocate. One of the team took the file to read, but will not be in a position to do any work for at least two weeks.

We then had a general discussion about pressures of work. One of the main issues is that if I as team manager am holding a large number of unallocated cases, that in itself prevents me from giving adequate time to the supervision of team members. Although union policy which had previously put limits on the numbers of cases which could be worked was no longer in force, the weighting system which management has put in its place is not operating because there is not enough time to do it.

12.00 Supervision

I then discussed a visit I did yesterday with the relevant social worker, and following that supervised the Family Aide (who works on practical and emotional support to families). Just before this session I had received a phone call from a sixteen and a half year old boy and his foster parents. He had been placed there as an emergency after his former placement had broken down about six weeks ago. I had been trying to get financial approval from the director since that time, but it had still not been dealt with, and the foster carers and their organisation were becoming upset about the delay. This made it hard for me to concentrate on the supervision session as I felt partly responsible.

We discussed three families, the time which should be allotted to them, and which ones were priorities when time was short. We had a joint session with another social worker about an understimulated two year old whose mother has not responded to our intervention so far. We thought we should wait for the outcome of a behavioural assessment by a doctor and then hold a meeting of interested parties with the mother.

1.00 Supervision

Following this I started supervision with a worker whose session had been delayed from Monday because I was on duty. I wrote a note to the Child Protection Co-ordinator about the boy whose mother has a stock of pornographic films in the house, discussed the closure of two cases, and talked about the placement of a sixteen year old girl who has been thrown out by her mother and come into care.

Ad Hoc

I spoke to a part time locum about a disturbed teenager that we had been discussing in a review conference on Tuesday when I had to leave to go to hospital about a relative. We talked of the investigation into the injuries, the explanations of self-mutilation and the recommencement of access should no drastic medical concerns arise after examination.

Assistant Director

I phoned the assistant director about the financial approval for the sixteen and a half year old placed with a private fostering resource. She said she had not realised he was in placement and that I had to understand that she was dealing with between eighty and ninety items a day. I said that my area manager had just told me it had been approved and she said this was not the case. I phoned the private fostering association to explain my embarrassment and feeling of powerlessness. He reassured me that the boy would not be used as a pawn, and I said that if I had got nowhere by tomorrow I would hand it over to someone else.

Interruption

In the middle of a previous supervision session I had been informed by one of my part timers that she had been unsuccessful in contacting the parents of a handicapped child to gain their consent to a proposed arrangement. The child is normally looked after by an aunt who was due to go into hospital and consent was needed for her son and partner to take over during this period. It was necessary as the child is a Ward of Court.

3.00 Ad Hoc

By this time I realised that I would not be able to go to the area meeting I went to a solicitor to get some legal aid forms for child in care signed and left a message to get a Court Hearing deferred to a certain date when other matters could also be heard. I phoned another mother regarding home leave of a boy in care, and refused to deal with a message about another unallocated case as I was about to go into a meeting.

Director

All afternoon the director had been onto my area manager about the children we had allowed home on Monday. The mother had phoned the director to tell him that she was having to give up work in order to prevent her children being taken away. The director told her she did not have to and could leave her children with an illegal minder until something was sorted out. He said he would ask our area to sort something out. I discussed the situation with our area manager.

3.30 Home Visit

I visited the parents of the handicapped child, and to my surprise they gave their consent to the arrangement we suggested. Something was going right!

Message

I took a call from a health visitor who was concerned that a client may have got the idea that a confidence had been betrayed. I said I would leave a message for the social worker involved.

4.00 Conference

The conference I attended discussed the teenage boy who was being rejected by both of his parents (who are separated). We talked about the care plan, that is

involvement of child guidance, the children's home and the social worker in assessing the viability of rehabilitation or preparing the boy for a permanent alternative placement. At five o'clock I went out for a sandwich.

5.30 Child Protection Co-ordinator

I discussed one further case with the Child Protection Co-ordinator who asked for some checks to be done, and wrote her a memo about the recommencement of access after the completion of investigations on a teenage girl. I finished at 6.20 pm.

## Friday 28th April 1989

9.30 Assistant Director

I spoke to the assistant director who told me that the money had been approved for the sixteen and a half year old boy, but that because the borough does not use private fostering agencies it could not be regarded as anything else but a temporary placement. This is despite the fact that the boy is doing well and is becoming less institutionalized already. He is a hard to place boy because of his low self-esteem, low tolerance and learning disability. He resorts to aggression very easily and needs a great deal of careful handling. During the day I spoke to the principal officers for fostering and residential services. I learnt that because the fostering organisation takes out private health insurance this meant that we could not use them regardless of their effectiveness. Later on I discovered from the foster care association that they had taken this out as a precaution so their families could avoid long waits built up by the National Health Service. One foster mother had had to wait nine months for a hysterectomy and therefore could not be used during that period. At the end of the day I explained the situation to

the social worker attached to the foster carers and said I would do my utmost to focus on the needs of the young person in question.

10.00 Under Fives Provision

I visited a nursery, in response to the directors request of yesterday about the mother giving up work to look after the child. The nursery could not help due to staffing and other restrictions. I tried to find a childminder from the list available to the public - the search was completely fruitless. There were very few, some no longer were available and others had no vacancies. Eventually an under fives clerk was able to find one.

11.00 Home Visit

I went on to visit the grandparents of an eleven year old girl who had been sexually abused. It became apparent that the grandfather had lost interest in caring for the girl as she was dismissive of any care and love shown towards her. He wanted her to leave, but the grandmother felt that the problems stemmed from the access the girl had to another relative. I asked them about methods of punishment, establishing that they did not hit the girl, had a look round the house, and said I would fix up a review and a medical. I will also try to get a duty officer to visit the girl and talk to her.

12.00 Conference

I refused a request to do duty for a day and a half next week and went to a conference where it was decided to seek a speedy care order on a teenager out of control and assess the quality of care and hygiene in the rest of the family. The conference felt that the local authority needed some statutory control over the other children in the family although I did not. The mother attended the end of the meeting and the decisions were explained to her.

2.00 Duty

In the afternoon I was duty senior again and I read through several night duty reports. None needed immediate action. I left some messages for the Child Protection Co-ordinator and did a joint visit with another worker to investigate an allegation of children being left unsupervised. No-one was in. I finished at 6.20, relieved and amazed that I had survived another week. I had not had any time to do my paperwork or look at my 'in basket'.

# Appendix C - References

1. Beistek, F. The Casework Relationship
Unwin 1961, p.134

2. The Barclay Report, Social Workers, Their Role and Tasks,
Bedford Square Press 1982, p.205