

Moral anguish and systemic failure

Notes on state child care and protection in Australia

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A recent, widely-publicised report based on a two year inquiry by the Australian Law Reform Commission and the Equal Opportunity Commission highlighted a range of serious shortcomings in the provision of care and protection for some of Australia's most vulnerable children and young people. According to the report, Australia's child protection system has failed in its basic duty of protecting children and young people from abuse and exploitation. The report confirms the argument presented in this paper that the abuse and neglect experienced by children and young people while under the care and protection of the state is systemic and widespread. While the media prefers to devote attention to 'spectacular' instances of departmental failure in regard to care and protection, the extent of the failures is far more routine than was initially apparent. One of the more vulnerable groups of young people 'in care' are state wards. Unfortunately the government's record in respect to these young people indicates that many may be placed at greater risk in terms of their health, safety and general well-being after they have been taken into state 'care'.

Public awareness of issues associated with state child care and protection is usually heightened when 'spectacular' cases receive concentrated media attention. Such cases have, for example, involved the sexual abuse of young British/European migrant boys in homes run by Christian Brothers (Davies 1994; Coldrey 1993); the physical abuse of young girls by nuns and others at various church 'homes'; the alleged sexual abuse of students by teachers in some New South Wales schools; the deaths of children in care and the severe abuse or neglect of children in residential establishments; and the generations of indigenous children 'kidnapped' from their families. Evidence from the New South Wales Wood Commission (1997) regarding the sexual abuse of students by teachers and the re-opening of files by the NSW Police Child Protection Unit on well over 100 cases of suspected sexual abuse in schools did arouse intense public concern and repeatedly made front page news. So too did the naming of 'known' offenders in the Australian Paedophile and Sex Offender Index prove to be newsworthy. Popular concern has also been expressed over the proposal by the NSW Education Minister to publicly identify convicted and suspected child sex abusers. All this has generated intense moral anguish among journalists and social commentators.

In this article we make the simple observation that, while critical popular attention is focused on sexual and physical forms of the violation of young people by those acting *in loco parentis*, public and media responses to more

systemic forms of mistreatment of young people remain comparatively muted.

Accusing fingers are pointed at those charged with incompetence and mismanagement of institutions responsible for the care and protection of children and young people. While graphic examples of institutional abuse and neglect prick the public conscience, giving rise to heated debates over the nature and effectiveness of care and protection services, they nonetheless reflect a partially blinkered and somewhat sensationalised picture of institutional failure and violence against young people. In this article we argue that the moral anguish aroused by the sensationalised 'newsworthy' coverage of particular instances of abuse and neglect tends to overlook the more routine and 'mundane' nature of systemic failings. Long standing cultures of neglect and systemic abuse that feature in some areas of child protection are less attractive to most journalists and editors compared to the more vivid stories of abuse. This, in part, is due to the very nature of institutionalised violence – its less tangible, less visible character means such abuse is likely to receive comparatively less critical attention.

MUNDANE SYSTEMS ABUSE

Sensationalised cases of child abuse often tend to be seen as aberrations in an otherwise effective, efficient and caring system of child care and protection. While many of those children received into the care and protection of the state may indeed find some sanctuary and security in institutions or homes managed by

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caring and responsible adults, it is equally evident that quite a few other young people experience the opposite. This point is made very effectively in a recent national report on Australia's child and protection services, published jointly by the Human Rights and Equal Opportunities Commission (HREOC) and the Australian Law Reform Commission (ALRC). The report, *A Matter of Priority: Children and Legal Process*, concludes that:

Children in care can suffer serious disadvantage. Care and protection systems often exacerbate problems faced by children in care. Evidence to the Inquiry indicated that care and protection systems can contribute to some children in care drifting into the juvenile justice system, becoming homeless or developing serious psychological or social problems (HREOC & ALRC 1997: 78).

The report suggests that 'systems abuse' is an endemic feature of the care and protective services in Australia. Drawing on a definition by the NSW Child Protection Council cited in the report, 'systems abuse' is said to occur when:

...preventable harm was done to children in the context of policies and programs designed to provide care and protection. The child's welfare, development or security are undermined by actions of individuals or by the lack of suitable policies, practice or procedures within systems or institutions' (HREOC & ALRC 1997: 78).

This is not new. In Victoria, one of the chief critics of post-1993 child protection services in Victoria is Justice John Fogarty who, since the mid-1980s, has been a prominent figure in reviewing child protection services. At the request of the new Victorian government, Fogarty was asked to carry out the third of his reviews of Victoria's child protection services. (His first had been carried out in 1984, the second in 1989.)

In July 1993, the Fogarty Report acknowledged that considerable improvements had occurred in the State's child protection system since his previous review in 1989. However, he was also scathing in his criticism of recent policies and government cut backs to child protection services. Fogarty argued that since 1991 the assumption within the Department of

Health and Community Services Victoria (now the Department of Human Services) had been that homeless children were no longer 'in need of protection'. As a result the number of adolescents within the protection system dropped by about 50%. In Fogarty's words, 'the consequence is that the State, through its protection department, has virtually abandoned the care and protection of homeless adolescents'. Fogarty maintained that the assumption underlying that practice was that those young people would be picked up by agencies within the non-government sector. According to Fogarty this was a further example of systemic failure, and he saw little point in building up the statutory service if the community services were being cut:

It will simply mean that more children will be drawn into the child protection system but it will be incapable of caring for them properly (Fogarty 1993).

... we make the simple observation that, while critical popular attention is focused on sexual and physical forms of the violation of young people by those acting in loco parentis, public and media responses to more systemic forms of mistreatment of young people remain comparatively muted.

In order to substantiate the claims of systems abuse occurring in state child care and protection the recent report, *A Matter of Priority: Children and Legal Process* (HREOC & ALRC 1997), identified a number of findings. They included suggestions that state wards in particular are more likely to enter a juvenile justice centre than other young people; that juveniles in care aged over 10 years are far more likely to offend than adolescents in the general community, and that young people discharged from

wardship have lower levels of educational attainment and are likely to become homeless. Of course in assessing this report, we need to be mindful of the fact that it reflects in part the disruptive background that many of the young people who become state wards have experienced.

When brought together in a single volume, the findings in the HREOC and ALRC report (1997) present a disturbing picture of Australian care and protective services. Indeed, the system is described unequivocally as 'appalling'. The use of such graphic language in a major report by two august Commissions certainly ensured media attention, but it is attention that is politically sensitive because it usually entails criticism of current economic rationalist policies of government. It is also reportage that relies for its exposure on more sensational accounts of sexual abuse by paedophiles, and other forms of physical mistreatment of young people at the hands of those responsible for their care and protection.

Clearly, sexual abuse and particularly paedophilia are major news. Investigations into sexual abuse in schools, community agencies and churches are now under way. In a number of states and territories plans are afoot to develop a national program to screen for suspect teachers (MCEETYA 1997). The impetus for such measures has come from growing international concerns over the predatory actions of paedophiles (evidenced most recently on the Internet) and from sensational cases of child sex abuse. The Megan case in the United States, in which Federal support was given to the public naming of sex offenders, seems to have reverberated around the western world.

However, the fact remains that some adults responsible for their care and well-being do sexually abuse children. Our interest here is not with the veracity of particular accusations, but with the nature of the public response to allegations of sexual abuse in schools. For the purposes of this paper, what is significant about the responses is the selective ways moral crusades are mounted against particular forms of child abuse.

The current alarm over child sexual abuse in a number of institutions (such as schools) contrasts sharply with the more 'routine' forms of mistreatment of

children in welfare institutions across Australia. The fact, for example, that children under the care of the state are often moved from one family to another or that state wards are rendered homeless and/or engage in crime and prostitution or that they lose their lives, seems to attract less sustained sensationalism (Department of Human Services 1997a, 1997b).

The image often presented in the media of the sex offender as a predatory stranger who preys on unsuspecting children is not helpful, for it contrasts with those most responsible for the abuse, that is, the 'respectable' teacher/clergy/relative/family 'friend'/human service worker. As Dianna Kenny (1997: 2) explained, 'the person most likely to abuse the child is the mother'. Research, which Wood acknowledges, also suggests that girls have a one-in-four risk of being sexually abused and boys a one-in-eight risk of being abused, most often by parents, relatives and friends of the family, with the abuse often taking place in the home (Wood Commission 1997).

Revelations that sexual abuse has taken place in institutions so intimately connected to the 'community' (church school) explain in part the intensity of public reaction. Clearly, fewer people have direct experience of state care, or have knowledge of what goes on in welfare institutions, and perhaps it is this absence of immediate personalised experience with institutions such as youth detention centres and other welfare institutions that provides some insight into why media responses to child mistreatment within them is comparatively muted.

Added to this are issues running quite close to the taboo area of incest. It is difficult to avoid querying the role of teachers and others as custodians acting

in loco parentis. Thus the powerful three-way combination of sex, child, adult *in loco parentis* casts some light on the reasons why sexual abuse in schools so disturbs the popular conscience in ways that other endemic and systemic forms of child abuse do not.

Finally the 'discovery' of paedophilia activities in generally trusted institutions disturbs popular understandings of how the world ought to be. For many young people, school provides a sense of security, stability and sometimes even fond memories of childhood. To think that this is so for all or even a majority may be

SOME REALITIES OF CHILD ABUSE AND NEGLECT

While some children and young people judged to be 'at risk' are removed from their families and placed in 'protective care', the state has a poor record in meeting the needs of this section of population (Department of Human Services 1997a, 1997b). It has been estimated by a Brisbane-based child care agency (Formerly in Care) that there are currently over 250,000 people in Australia who have suffered some form of abuse while under the care of the state.

The abuses perpetrated against this population include sexual and physical assault as well as various forms of deprivation and institutional neglect. As noted in the *Victorian Annual Report of Inquiries into Child Deaths: Protection and Care 1996*, many young people have, for various reasons, lost their lives while under the care of the state.

The largest and most vulnerable section of the in-care population are state wards. For them, as the evidence shows, a life 'in care' may prove as damaging as the situations from which they have been extracted (Department of Human Services 1997a, 1997b). A 1996 Report from the NSW

Community Services Commission, cited in the *Sydney Morning Herald* (1996), maintained that children in NSW state care through no fault of their own were 15 times more likely to end up in juvenile detention centres than other children. The report showed that female wards were 35 times more likely to end up in juvenile detention centres than other girls. In a discussion paper entitled *Turning Victims into Criminals*, the NSW Community Service Commissioner, Roger West, maintained that: 'The very system that is supposed to care for these children is too often the system that delivers them into a



a popular myth. For many children schools are not happy places; rather they are characterised by experiences of abuse, bullying and other forms of physical and sexual violence (Wood Commission 1997; Slee 1995). Despite such experiences, the popular image of the school as a safe house and the school child as a figure of contented innocence remains etched into our collective psyche.

worse life (*Sydney Morning Herald*, 13 December 1996).

Many young Australians continue to lose their lives while under state care, and are also subject to various forms of abuse and neglect, and yet the public outrage about this pales into insignificance compared to the shock response over recent disclosures of sexual abuse in schools.

THE STATE OF STATE CARE

When Australia became a signatory to the United Nations Convention on the Rights of the Child, the Commonwealth Government signed a document that contained a clear definition of maltreatment and child abuse. Signing the Convention indicated Australia's commitment to safeguarding the rights of young people, particularly of those most 'at risk'. Moreover, it was an agreement that required all signatories to take appropriate legislative, administrative, social and educational measures to protect the child from physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment and exploitation. This applied equally to all children whether in the care of parents or legal guardians, or in the care of the state.

Despite the United Nations' protocols, the quality of the treatment received by children and young people in state care is often considerably less than might reasonably be expected. Many state wards come into the government care system already brutalised by their families and/or by poverty, or they become state wards simply because they are unwanted or said to be 'uncontrollable' by their parents. Many wards spend extended periods of time in residential units awaiting placement with foster parents. The administrative and supervisory arrangements used to organise and monitor the placement of state wards are also often unco-ordinated and poorly resourced (Szwarc 1992; Fernandez 1996).

The state's record of caring for young people is permeated with accounts of the worst kinds of mistreatment and negligence. Records reveal an extensive history of maltreatment by state authorities. Violations include the removal of thousands of Aboriginal and 'poor white' children from their families, often under the most fragile of pretexts (Public

Interest Advocay Centre 1997). There is also evidence that many young people become homeless while in care and significant numbers lose their lives through drug overdoses or other forms of violence (Department of Human Services 1997a, 1997b). Over the years there have also been countless examples of systematic sexual, emotional and physical abuse of young people in state run institutions. Many state wards have also moved into crime and prostitution (*ibid*).

Many young Australians continue to lose their lives while under state care, and are also subject to various forms of abuse and neglect, and yet the public outrage about this pales into insignificance compared to the shock response over recent disclosures of sexual abuse in schools.

This record of abuse and neglect is often explained in terms of bad policy, bad practice or lack of resources. But the fact remains that the provision of state care and the guardianship offered to some of our most vulnerable children and young people are seriously wanting. The wholesale adoption by governments of all persuasions of economic liberal policies and the severity of budgetary cuts to human services organisations have made the task of protective care all the more difficult. Indeed, the high levels of juvenile crime, neglect and mistreatment evident amongst state wards needs to be understood in the context of government and non-government departments that are under resourced, and overburdened with heavy caseloads and high staff turnovers.

Partly as a result of these policy, administrative and managerial problems, many state wards discharged from care are ill-prepared for 'independent living' and experience considerable difficulties in finding somewhere to live. Many also use crime and prostitution as a way of earning

an income (HREOC 1989; Heildensolm 1988). A national inquiry into homelessness by the Human Rights and Equal Opportunities Commission in 1989 noted that in any one year approximately 3000 state wards were discharged from care. Little or nothing is known about the eventual destiny of these young people other than the likelihood of them ending up homeless and involved in prostitution or implicated in criminal activities.

For a significant number of female state wards the route into the criminal justice system is established during their time in the welfare system. Kerry Carrington (1993) noted in her book *Offending Girls* that, of NSW state wards,

...it is the unsupported youth (ie, state wards, homeless youth and girls living in incestuous or intolerable family environments) are the most likely to be detected for petty crime and other forms of delinquency. When they are noticed they are more likely to be sentenced to some form of institutional care.

Carrington (1993) pointed out that in the early 1990s, state wards are 40 times more likely to be detained in custody than other girls.

An abundance of evidence exists indicating the under-resourced and ineffective nature of child welfare provision in respect of state wards, and it is difficult to avoid the conclusion that it is a system of 'poor care for poor children' (Australian Law Reform Commission 1997; Hough 1995; Bessant 1996; Fogarty 1993). Moreover, while the protective arm of the child welfare system devotes much of its resources to 'front end' services, particularly in relation to cases of sexual abuse, the quality of care and protection many state wards experience is inadequate. The result is that many state wards continue to live in the poorly resourced care of government departments – often in residential homes or refuges. It is perhaps not surprising that the children caught in this system often feel as if they are 'a number' to be administered rather than people to be adequately cared for.

Given the state's poor record as apparent and the detrimental experiences of many state wards, a need exists for more interventions directed towards identifying and redressing certain issues. To a large degree the effectiveness of those

interventions depends on the availability of research that examines certain aspects of young people's lives in state care. In particular, more research is needed that assesses the ability of those young people to re-establish themselves in their respective communities without recourse to activities likely to cause harm to themselves or those around them. Furthermore, research that attempts to measure the quality of services provided as well as the standards set for employment, obligations and conditions for those working with young people is required. In addition, the preoccupation of 'the media' with more sensationalist stories of abuse and neglect, while omitting, or rarely reporting on, more systemic and institutionalised abuse, places an added responsibility on those engaged in such research to ensure the media is used, as part of the 'policy making community', if their research findings are to influence policy and practice.

CONCLUSION

While the recent 'discovery' of child sexual abuse in schools and other public, community and private agencies has given rise to intense public concern, the fact remains that such abuse constitutes a small proportion of offences against children. The systemic nature of abuses occurring in many child welfare institutions indicates the current alarm is overly focused on abuse as individual acts of perversion while often overlooking more systemic, long standing and often less visible forms of violence against young people. The history of institutional child welfare in Australia provides a record of practices that frequently fail to meet the primary needs of children. For some children, particularly state wards, being 'in care' can sometimes be as damaging as remaining within their

abusive families. This is due to the long standing institutional violence in some organisations that is apparent in overt abuse, routine neglect and the dereliction of duty. The abuse and neglect we refer to does not usually occur at the hands of individual perpetrators, but instead results from the long standing absence of basic resources; it is the product of particular institutionalised practices, and the acceptance of certain actions (or the absence of particular actions) as normative. Such cultures violate many young people and deny many their rights to care and protection. It is such systemic abuse that deserves greater public observation and scrutiny. □

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