Support, timelines and hard decisions

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Termination of parental rights is a harsh term for a harsh concept. It is largely a phrase used in the USA and, to a lesser extent, the UK. A researcher at the University of Oregon defines it:

> this means the parents have no further contact with their children, are given no opportunities to plan for the future of their children, cannot give to or receive correspondence from their children, and cannot be given reports on the well-being of their children' (Heath, 1998, p. 606).

Central to this process is that it occurs without parental consent.

The equivalent phrase in Victoria is 'dispensation of consent', which is provided for in the Adoption Act 1984, Sn 43, albeit with stringent requirements. In reality, however, dispensations of consent happen rarely in Victoria, at the most once or twice a year, for unusual situations such as where a baby has been abandoned and the parents or extended natural family cannot be traced.

However, this is not to say that Victoria and other Australian states have rarely terminated parents' rights in the past century. As we know, all Australian states removed Aboriginal children over several generations from their natural families and these families had no right of appeal (Bird, 1998). Australia thus has a dark tradition of terminating parental rights (particularly Aboriginal parental rights), although we have tended not to use that phrase. It would undoubtedly have been more honest to do so.

Termination of parental rights is nevertheless a phrase which surfaces from time to time in Australia, most recently in New South Wales. Superficially, it can sound like a protective option for children, especially if legislation recognises the rights of birth parents. However, in practice, it is not as simple.

This paper presents some of the overseas literature which relates to terminating parental rights, and also draws upon the findings from my longitudinal PhD research project, which took place between from 1995 and 1998.[1]

The paper will cover the following themes which are related to termination of parental rights and the movement of children from one family to another on the grounds of protecting them from abuse or neglect:

- whether birth parents are supported sufficiently to keep their children;
- how and when decisions should be made to remove children from their birth families;
- relationships between birth and permanent families.

In each section, overseas and Australian research, legislation and practice will be examined. The question of whether termination of parental rights is appropriate within the current Australian context will then be looked at in the light of this literature.

BIRTH FAMILIES, SUPPORT AND CHILD PROTECTION

Practical and emotional support from relatives, friends, neighbours and professionals are seen as important mediators for parents at risk of maltreating their children or having their children removed for protective reasons (Becvar, Ray & Becvar, 1996; Tracy, Whittaker, Pugh, Kapp & Overstreet, 1994).

Not surprisingly, parents who come into contact with government organisations on protective grounds are more likely to report life stresses, depression, loneliness and weaker informal supports than those from similar backgrounds who have not had this contact (Gaudin, Polansky, Kilpatrick & Shilton, 1993).[2]

Research in the UK and USA details the impact of child protection investigations on families – the institutional power of the child protection system; feelings of fear and vulnerability; a lack of clarity about the social work role; the seeming impossibility of renegotiation once decisions are made; the selectiveness of evidence cited in legal proceedings; and the lack of information about the children once they have left the home (Diorio, 1992; Ryburn, 1994a, 1994c).[3]

My research with birth families in Victoria echoed all these themes and emphasised the overwhelming sense of loss and despair, isolation and lack of support experienced by these families. The birth parents I talked with over a period of three years had very little support from family or friends and,

[1] The study explored the support needs of birth parents and grandparents, children, permanent parents, teachers, social workers and therapists in situations where the children had been removed from their birth families by the child protection system (O'Neill, 1999).

[2] It is interesting to note that recent research in the UK has found that birth parents who are articulate and cooperative, and who have an explanation (of the situation which led to the investigation) which is plausible to the child protection worker, are more likely to keep their children than those parents who do not have these qualities (Holland, 2000).

[3] In contrast, one study reports that two-thirds of 176 respondents (25% of the total sample contacted) to a mailed survey favourably rated the child protection workers who had contact with their family. However, in this same study, 22% also believed that their workers' judgements about them were inaccurate (Fryer, Bross, Krugman, Denson & Baird, 1990).

although they had a considerable amount of contact with a range of professionals, this was rarely seen as support. They had not only had their children taken by the state, but the responsibility for the removal, as well as for being the cause of harm to their children, had been largely attributed to them personally, rather than any part of it to their environment. They talked about not being believed, about having no choices and about having no control over what had happened (O'Neill, 1999).

Professional support to this group of families is often inappropriate or inaccessible, and sometimes non-existent. In the USA, research has found that while agencies offered services 'designed to change the clients, the clients desired concrete advice, help with interpersonal problems, and material assistance' (Faver, Crawford & Combs-Orme, 1999, p. 94). The support which is available tends to be complicated by the nature of the adversarial process involved in protective intervention (Ryburn, 1994a, 1994c).

Attempts to empower this group of birth parents have involved professional support and counselling (Mason & Selman, 1997); the establishment of partnerships between parents and professionals (Harrison & Masson, 1994; Sinclair & Grimshaw, 1997); involvement in peer support groups (Levin, 1992); and involvement in the training of foster carers (Gilchrist & Hoggan, 1996).

In Australia, intensive family support services such as Families First programs (Campbell, 1998) and the Strengthening Families program (Victoria) offer intensive support which is, however, time limited and only available to families who fulfil particular criteria (such as having been reported to child protection services).

Peer support for this group of parents appears to be sparse, although there have been two lobby groups set up in Victoria in the 1990s which represent them (Hatch, 1997; Mendes, 1998).

Given all this, legislation which actively requires agencies to offer family support services prior to terminating parental rights, could seem positive. However, the US experience suggests that this is not so simple.

While the USA Adoption and Safe Families Act (ASFA) 1997 requires that states make 'reasonable efforts' through support services to keep families together and to reunite children with their parents, 'reasonable efforts' is not defined (Weinberg & Katz, 1998). If a judge decides that the state has not made 'reasonable efforts', the child must stay longer in foster care while the state undertakes this task – and the longer a child remains in foster care, the less likely he or she is to return home (Negrau, 1999).

However, just as importantly, USA federal patterns of funding actively undermine the provision of support services for birth families. While states receive unlimited funding for foster care, and substantial bonuses for adoptive placements of children in foster care, they receive limited funding for family support services, thus actually weakening the goal of family preservation and reunification (Faver et al., 1999; Negrau, 1999).

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DECISIONS AND TIMELINES

At the centre of the move towards Permanency Planning in the 1980s were the goals of avoiding foster care drift and achieving permanency for children in a timely way (Maluccio, Fein & Olmstead, 1986; Weinberg & Katz, 1998).

The USA ASFA 1997 states that 'a child's health and safety, rather than family reunification, are the paramount concerns when the state makes any decision concerning the welfare of a child in the system' (Negrau, 1999, p. 5). Permanency hearings are to take place no later than 12 months after the child has been placed in foster care and states must, with few exceptions, initiate termination of parental rights petitions when a child has been in state custody for 15 of the preceding 22 months (Brooks, 1999; Negrau, 1999).

In Australia, there are similar time provisions for a dispensation of consent. For example, Sn 43 (1)e of the Victorian Adoption Act 1984 gives as one of the grounds for dispensation of consent:

> that the person has, for a period of not less than one year, failed, without reasonable cause, to discharge the obligations of a parent of the child.[4]

Similarly, the Victorian Children and Young Persons Act 1989, Sn 112 states that the Court may make a permanent care order for a child if the child has not been living with his or her parent for a period of 2 years (or 2 of the previous 3 years); and the parent is unable or unwilling to resume custody and guardianship of the child, or it would not be in the child's best interests for the parents to resume custody and guardianship.

Most child welfare experts agree that children in foster care should be offered permanency in a timely way, either with their birth families or with alternative families.

One way of achieving permanency in a timely and open way is the use in the USA of 'concurrent planning'. This is a process which actively promotes the child returning to the birth family,[5] while at the same time working to prevent placement drift through the concurrent development of plans for

[4] However, as noted earlier, dispensation of consent rarely occurs in Victoria.

[5] A major issue here is, that if birth families were to be given the same financial support provided to permanent families, this may well prevent some children coming into care at all (Ryburn, 1994c). The Victorian DHS Family Options Program, which organises permanent placements for children with disabilities, has recognised this and does provide such financial support to birth families (Hind, Woodland, O'Neill & Horne, 1998).

permanency in the foster family (Katz, 1996; Weinberg & Katz, 1998).

In this system, in which the carers' desire for permanency is openly acknowledged, birth parents participate in writing the child's service plan and professional and peer support are provided to help carers with the difficult task of supporting the birth parents' plans for family preservation, while at the same time moving towards possible permanency (Katz, 1996). Support to birth families must be 'relevant to the safety and protection of the child ... adequate to meet the needs of the particular child and family ... available and accessible to the family ... and consistent and timely' (Weinberg & Katz, 1998, p. 11).

RELATIONSHIPS BETWEEN BIRTH AND PERMANENT FAMILIES

Generations of adopted people and their birth families have suffered through losing contact with each other by means of legally enforced separation (Ryburn, 1994b).

There is a growing trend in the overseas literature to advocate for some degree of openness between the birth and permanent families when a child has been placed away from his or her biological family.

This is seen as not only being in the best interests of children, but also as encouragement for birth parents to voluntarily relinquish their children for adoption (Brooks, 1999; Weinberg & Katz, 1998). Indeed, US research has been undertaken comparing the cost of mediation (between birth parents and child protection agencies) with the cost of contested termination of parental rights proceedings. Not surprisingly, the findings show that mediation achieves substantial cost savings, in addition to leading to better outcomes for children and birth parents (including on-going contact).

In contrast, openness in adoption and other permanent placements has been at the core of Australian and New Zealand permanency planning practice for at least two decades.

Mary Iwanek, in reviewing the previous research in this area, concluded that openness was helpful for all those involved in adoption. The findings of her research with adoptive and birth parents in New Zealand suggest that openness in fact increases the psychological entitlement which adoptive parents feel; and that knowledge about the wellbeing of their child actively helps birth mothers cope with their grief (Iwanek, 1987).

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Although there has been no longitudinal research on the effects of openness in Australian and New Zealand adoptions, Ryburn's review of the research has found that 'permanence and continuity may co-exist successfully. Continuity through contact can bring significant benefits to children and both their new and original families' (Ryburn, 1994b, p. 102).

This conclusion confirms the findings of research which looks at the needs of children in situations of divorce or where a parent is in prison. A researcher in the latter area states:

> A child's relationship with a parent has – in addition to the tangible qualities associated with physical care and presence – intangible qualities of love, affection, emotional support, and a sense of roots and identity (Genty, 1998, p.548).

It is interesting that researchers and writers overseas are starting to think about permanent placement possibilities outside adoption, a decade after Permanent Care Orders (through the Children and Young Persons Act 1989) were initiated in Victoria. Permanency, in the eyes of a child, is likely to have more to do with long-term security than with legal status (Brooks, 1999). Furthermore, it may well be that placement options which offer custody and guardianship to permanent parents also promote openness between the two families in a way which is more satisfactory than adoption (Ryburn, 1994b).

DISCUSSION

The recent international literature on termination of parental rights calls for:

- greater support for birth families who are in danger of having their children removed on protective grounds;
- permanency to be available for children, either with birth families or alternative families, within tight timelines;
- funding systems which do not undermine the provision of support to struggling birth families; and
- ongoing contact between children in permanent alternative families and their birth families.

In Australia, we already have adequate legislative ways of protecting children and moving them from one family to another when necessary – although we tend to delay the final move for years.

We also actively promote openness in foster care, permanent care and adoption and this serves children, birth parents and permanent parents well.

What we don't do well (or consistently), in common with other countries, is support parents who are struggling to raise their children – or indeed those whose children have already been placed in alternative families or other kinds of care.

We are also far too hesitant about the need to protect children from 'impermanence', years of going back and forth between violent or neglectful birth families and alternative care.

However, terminating parental rights and placing children in adoptive families with little or no contact with their birth families is not the solution and would be contrary to the openness which is such a positive part of child placements in Australia.

Clear timelines for permanence can be achieved in ways which do not involve legislation to extinguish parents' rights. While media and public concern about

the removal of children from families is acknowledged, it is possible to impact this through education programs such as those which have alerted the public to the need for child protection.

There also needs to be a greater awareness by case planners and legal decision makers of how time slips by in children's lives and the emotional (and educational) damage caused by recurrent moves. One way of increasing such an awareness is by incorporating measures of timeliness (the time between when a child leaves home and a decision is made to work towards reunification or placement in a permanent alternative family; and the time taken between the decision and the implementation of that decision) into structures such as key performance indicators.

CONCLUSION

Children need consistency, safety and loving care and, if birth parents and their extended families are unable or unwilling to nurture them in all these ways, then hard decisions, with clear time guidelines, need to be made on behalf of the children.

However, making a decision to remove a child from his or her birth parents should never involve terminating the right of child and extended birth family to maintain a continuing relationship.

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