

CHILDREN'S RIGHTS

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INTRODUCTION

Child focus does not necessarily imply children's rights. For a child's rights to be exercised, the child must be seen in the context of his or her family and community, and hence the parents' rights must also be respected. Recognition of children's rights by default rather than affirmative action leaves open the possibility that the child's rights may not be adhered to.

Working on the boundaries of systems, social work is often at the pivotal point for potential conflict of rights between parties. For example, the decision to place a child in care may be the result of the social worker's assessment that there has been denial of the child's right to adequate care — the decision to place a child in care may conflict with the child's right to make his own decision regarding action, for instance the child may not want to be moved, and conflict with the parents' right to plan care for their child. With this scenario, the social worker has both to rely on empirical knowledge, and also our own values as to our decisions to what would be in the child's best interest.

I think we are in a position of continually being aware of the competing rights of individuals, and unfortunately know there is no recipe which can be used to ensure that without qualification a selected intervention is the best action for all interested parties. There are no unequivocal guidelines. In making decisions affecting an individual's rights in their lives and hence their dignity, our decisions have to be based both on knowledge and on our own values.

There is a tendency to see the family as sacrosanct and a system in which the State can only intervene if there has been or is suspected, malfunctioning. Even when intervention occurs, resolution of the family's problem is sometimes considered to necessarily assume that the child's problem will be resolved. For example, a child may be removed from his home, from his parents, when the parents are not coping with his or her care. It is usually assumed that once the parents can cope adequately that the child will be ready to return home. Perhaps in most situations, in most cases, this is so. The child's timing may not be in accord with the parents' timing. In this situation we may be overshadowed by a value towards the intactness of families, and this value is legally supported in our society, where the parents' ownership of the child and the State's rights over both the parent and the child are often identified to a greater degree than the child's rights, and if we look at a lot of our legislation we can see that that is so.

CHILDREN'S RIGHTS

I would like now just briefly to address how the concept of children's rights has developed. Children's rights as people will remember was very much a catch-phrase in 1979 Year of the Child, and as such the concept attracted a lot of discussion, useful discussion but it also attracted a lot of jingoism. The concept is often oversimplified, and because of this, I think it is in danger of being considered not relevant by those who are working very closely with, and in depth with, children.

Takanashi has suggested that awareness that children have rights has only developed since childhood itself has been identified as a separate period in the life cycle. Prior to this (as Phillipe Aries in *Centuries of the Child* has pointed out), childhood as we identify it was not existent, and children were not seen as individuals in their own right but rather as 'yet to be' adults. As incomplete adults they were not seen to have rights.

However, as childhood was more clearly delineated, the responsibilities and obligations of others towards children have been identified and summarised into statements of rights.

STATE OF CHILDHOOD

The state of childhood is changing. Now we have the situation where childhood as we perhaps would like to define it as an age of innocence and protection from the harsher realities of life is fast disappearing. In an address to the Children's Bureau (June, 1983), David Scott introduced Postman's work on the disappearance of childhood. This thesis presented in this work is that in the age of open communication where children can have access to all aspects of the adult world the world of childhood is disappearing. Children are no longer protected from the realities of adult life and their own values are often tested before they are firmly formed. For example, a child can have access to drugs; and on television watch all aspects of life being dramatized.

However, in contrast to the area of pre-discovery of childhood, the disappearance of childhood is causing greater emphasis to be placed on children's rights. As children do have access to information, they are moving towards demanding, often through their caretakers, the right to make their own decisions. Yet children do not have all the resources adults have available to them. The child's mental capacities are not yet mature, emotionally and physically the child has yet to mature, and they cannot always be aware as adults of the consequences of

their own decisions. So the dilemma for those who are working with children, is still there. What is in the best interests of the child that allows a child to exercise his or her rights as individual and at the same time affords the child the right for nurture and protection?

It needs to be stressed again that children are equal in dignity to adults, and as persons have rights. But this does not mean that children have equal personal social resources to deal with all situations.

Just looking briefly at what we mean by rights. Rights are legally and/or morally sanctioned statements of dueeness to individuals, and derive from values and philosophies of society. To some extent, some rights can be seen as inalienable and, in effect, God-given rights, because the condition demanding the rights is inherent in the individuals.

The rights we tend to focus upon in our practice are those rights which are based on philosophies and values of the prevailing culture. These rights are usually legally sanctioned and include rights for the common good, such as members of the community have rights to be protected from theft, etc.

U.N. DECLARATION OF RIGHTS OF THE CHILD

The 1959 U.N. Declaration of the Rights of the Child recognised children as individuals but perhaps was more a prescription for the protection of children than an actual declaration of rights. Such statements as 'the child has a right to compulsory education' suggests prescriptions, and in the latter case perhaps gives an example of the often seemingly paradoxical aspects of rights of children, the child has a right to compulsory education.

It's doubtful that there would be a rewrite of the U.N. Declaration, although there have been some attempts. I think as a society we have become more sophisticated with regard to our understanding of the underlying philosophies and values which are embodied in rights, and any discussion of rights quickly becomes a battle between opposing political philosophies and hence to get a national let alone international agreement on the rights of children today seems, unfortunately, unlikely.

PSYCHOLOGICAL RIGHTS

Whether we look at children's rights as psychological rights, and these have been defined as the right to love and freedom from fear, the right to personal, spiritual and social development, the right to education and play, and in these terms they have been seen to be internationally and cross-culturally valid.

A research project was conducted in which children were asked to rank how they saw the importance of rights (Nixon, 1981). Interestingly enough, of the children tested,



there were only minor shifts in attitude according to age. Young children were inclined to rank right to education and satisfactory relationships highest in their assessment of importance. And the older children shifted to rights of freedom from fear, right to personal identity, love, affection and understanding. Perhaps one interpretation we can give this is that young children do not countenance a world where their right to love and the right to freedom from fear would be questioned, that they accept that that will always be there.

DILEMMAS

I would just like to discuss now what I think is the basis for our dilemma, the dilemma for social work in the area of children's rights, and I see it as stemming from three considerations.

One, as I mentioned before, the recognition that the child is not intellectually, emotionally or physically equipped to make all decisions pertaining to his/her life, but should be able to make age appropriate decisions, and there's a dilemma there.

The recognition that emphasis on the rights of the child can conflict with the rights of the parent and sometimes sanction State intervention in the parent/child relationship. This in itself can conflict with the child's right to receive nurture from his natural family.

Thirdly, recognition of the need to make decisions about children takes into account our need for empirical knowledge, theories, and ethical and value based data. Empirical knowledge may not be value free and decisions based on factors outside the area of empirical knowledge may reflect the professional's own value system, and a

social worker or any professional working in these areas has those dilemmas, those considerations to keep in mind.

I'd just like to consider a couple of examples of where the rights of children undergoing a form of social work intervention can be viewed.

One is the right of a child to commit themselves to appropriate treatment. I guess we have to ask the question of whether most children are involuntary clients, and if involuntary client means that the child does not make a purposeful decision to initiate treatment, then the answer in most cases must be yes, the child is an involuntary client, at least at the beginning.

As we are all aware, children come into treatment only if their behaviour causes concern or discomfort to their parents or to other adults who feel responsible for the

child. And I guess we're all aware of the withdrawn child who is denied treatment by virtue of the fact that his or her behaviour is not upsetting to adults. When it comes to operationalising the child's right to appropriate treatment, the child must rely upon an adult's assessment of his or her need for treatment.

This can be an area of dilemma for the social worker who may be working with the parents round another purpose, yet observe a child in a family requires more specific help. Firstly, ethically, can the social worker address this area, the area that the child needs professional help, with the parents? The answer is obviously yes. But what if the parents deny any concern or don't see the child's problem. Would it be unethical, would it be unwarranted interference by the professional, the social worker, to direct that the child be seen — can the social worker draw on any legal authority that the child must be seen, can the social worker by directing treatment for the child indicate their recognition of the child's right to access to appropriate resources, and if the parents do not see the need, will the child's rights be denied? Or if the child goes into treatment, are the parents' rights being denied?

I guess the other side of the coin is if we accept a child's right to commit himself for treatment, we must look at the other side, and that is his right to resist commitment to treatment, and whilst probably everyone has worked with the resistant child, and experienced satisfaction when the resistance is let go and the child is free to work, we must also be aware of situations where the child is making a decision not to be involved in treatment, and as the therapist have to make a decision as to whether the child is making an age appropriate decision, whether they are taking into account all the aspects of the situation or whether their decision is a reflection of their problems, the reason they are being seen. The child may take a different perspective from his parents, he may take a different perspective from the therapist. I think we probably need to ask whether parents are always motivated by the child's best interest, and whether therapists are always motivated by the child's best interest.

OMBUDSMAN

There is no doubt we are moving towards greater emphasis on rights, and these are issues that social workers working with children must be prepared to address. You are probably aware that the Law Reform Commission Report on Child Welfare in 1981 recommended the appointment of an Ombudsman for children, and I just wonder what our reaction would be to that if a child went to an Ombudsman regarding treatment that they were undergoing. Would that be seen automatically as unwarranted interference with treatment, or treatment couldn't go ahead, or could we see that perhaps an Ombudsman is another impor-

tant resource available to support the child's right to protection, and not necessarily interfering with the child's ability to use treatment.

IMPLICATIONS FOR PRACTICE

Equally, I think, in the area of child abuse the children's rights can, at times, be overlooked when everyone is working for the child, but perhaps not with the child. In the area of child abuse, the rights and obligations of the parents, the rights and obligations of the child, and the rights and obligations of the State, as you all know, can become so confusing, the knowledge that we have sometimes seeming not adequate, and it can lead to poor decisions being made. It is suggested that the child abuse scenario gives rise to the paradigm that the parent is the benevolent assailant, the child the innocent victim and the State the loving rescuer of children. Yet we know that that's not so, the parents have their own rights, they have their stresses, the child is not an inanimate object to be acted upon, and the State may be rescuer and at the same time through its social policies and lack of provision of supports to the parents in fact the perpetrator of the abuse.

However, there is usually no dilemma regarding whether the child should be removed, that the child is actually being physically abused, and then it is agreed that the State must take on to itself the right to decide what's in the best interests of the child. That can be rather comforting for anyone, that the State is taking that role, except for the social worker or other professional, who suddenly realises that they in fact are 'the State', and they are the ones who know what is in the best interests of the child. Suddenly the assumption that the State knows best and can protect the child doesn't seem quite so valid. In making decisions regarding intervention in this area, then, as well as respecting the responsibility to the State, the worker must also be ready to protect the child from institutional abuse, and I think that that is an area where professional responsibility must be exercised, and perhaps an area of dilemma where decisions are not clearcut and we don't have all the knowledge that we would like.

I think in child abuse, it's my opinion that sometimes the child's interest has been subordinated to the interest of the State and the parents, and this can be seen where arrangements are made, and I go back to where arrangements are made that if the child's functioning improves the State hands back the child to the parents' care. And often this can be done without the child's position, how the child is feeling, being explored. If the child is listened to, we can expect that his parents' role can be better understood and I think this provides a greater chance that the rights of the child and the rights of the parents are taken into account. Such an approach is costly and in

this day and age where everything is being measured by the bottom line, I think that perhaps specialists working in the area need to speak more for children and their rights to have adequate resources so their rights can be protected and they can be heard.

There are other examples where adherence to children's rights can cause dilemmas for social work practitioners and others, and I'm sure all of you could think of many. Others can include the child's right to information, what should the child be told, what is age appropriate in terms of what the child is told about his or her treatment? The child's right to confidentiality in that age old problem of what is shared with the parents if the child is seen individually, should everything be shared, how should it be shared, etc. is another area. The child's rights in relation to research, at what age can children make an informed decision to participate in research, and who can take responsibility that they do participate when they are younger? The child and parents' rights to be assessed in the context of their culture can also lead to a dilemma, and lead us to explore further what are common universal rights and what are rights which are rights because of the culture. In these areas, the basic issues remain the same. What does the child bring to the situation? What is the parents' role and what is the role of the service provider and how can the service provider be assured of using their knowledge base, their empirical knowledge, and exercising their own value base?

CONCLUSION

Finally, just four points I'd like to reiterate. Firstly, I think the concept of children's rights is a complex one, yet it can so easily be simplified, and the concept can place children in jeopardy by arguments which demand that they be allowed to make decisions which are outside their abilities due to their age.

Secondly, children's rights within the family structure have been relatively unexplored. I think parents have the right to expect information and guidance to assist them in appropriately operationalising the concepts of children's rights, and I think sometimes when parents bring their children into treatment we can be critical of how they have approached the child's individuality, and yet perhaps they haven't had the opportunity that we have had in terms of developing greater understanding of identification of the child's rights.

Thirdly, children's rights can only be identified by delineating the province and roles and hence the rights of the parents. Any attention to children's rights which ignores parents is already limiting the possibility that the child's rights will be met.

REFERENCES

- Nixon, Mary, Children's Psychological Rights. An Empirical Study, Australian Child and Family Welfare, 1981, Vol. 6, No. 1.