

Children's Rights

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The recent soccer tragedy at Brussels has no doubt many explanations, but one thing is certain. The offending Liverpool football supporters largely consisted of youths who had been greatly deprived in their childhood. Anyone who has been to Liverpool will be aware of the miserable living conditions that many families find themselves in. It is hardly surprising that children from this upbringing turned into hooligans who so disgraced their country.

Children are the citizens of the future. The future of Australia too depends on the children of today. It is therefore urgent that we protect the interests of children, who, of course, do not have a voice of their own.

This Bureau is one of the few organizations in Australia concerned to see that legislation is passed which is truly in the best interests of children. There are many areas which give rise to great concern.

ADOPTION

It is unfortunate for instance that Victoria has unilaterally passed some far-reaching legislation on adoption which is unparalleled in other States. In Victoria, it is possible for a single woman to adopt a child but only in exceptional circumstances. As a result of the new Adoption Act, however, it will henceforth be perfectly possible for a single woman, resident in Victoria, to travel abroad, adopt a child in a foreign country and return to Australia with an adoption order to which the Victorian Courts cannot refuse recognition. It is debatable whether it was desirable for Victoria to pass this sweeping change unilaterally. This, and several other sweeping changes made by the Adoption Act, while no doubt welcome to many people, nevertheless raise the question whether the interests of children have been seen as the top priority in this legislation.

FOSTER CARE

An even more problematical area is Foster-care. Foster-care is an arrangement whereby a child lives away from his natural parents and is brought up by other adults, who act as caretakers for him. It differs from adoption in that the arrangement is intended to be temporary. Unfortunately, however, foster-care often lasts for many years. Foster-parents have few rights and an exceedingly difficult task. They must in fact love the child but not too much! Otherwise the child might "bond" with them, and so be unwilling to return to his parents. It is one of the hallmarks of foster-care that the child may be returned to his natural parents at any time.

There are, however, certain measures which may enable foster-parents to resist immediate changes in the child's status, where these are clearly against the child's best interests. However, these procedures lead inevitably to "tug-of-love" cases, the most distressing of all cases. In any event, Courts are reluctant ever to deny natural parents what they perceive as their parental rights.

Foster-care is often arranged through the State, the foster-children having been involuntarily taken away from their parents and made wards of the State. These "children in limbo" can remain in foster-care or undergo several different placements, until they reach adulthood. Criticism of this possibility has led to a call for more "permanency planning" for children. This, however, seems to have hardly been effectively put into practice. Despite more regular reviews of children in wardship, there still are many children who never return to their natural parents, but who are also not adopted because the natural parents refuse consent.

One great problem foster-parents face is a high potential for legal liability. It can arise in three ways. (1) A child can be injured by a foster-parent, and thus have a right of action against him. Indeed, the natural parent of the child may be able to bring an action if the child is physically or emotionally damaged by the wrongful conduct of the foster-parent; (2) The child can

do damage to the foster-parent or his property. This is a great risk that foster-parents take. For many foster-children come from deprived homes and prove to be difficult to handle. For this reason, it is imperative that foster-parents be chosen who are sensitive to the problems of bringing up difficult children. And yet the legislation governing choice of foster-parents is loose. There are few criteria laid down for the choice of foster-parents usually their selection depends on a subjective assessment of social workers. (3) It is possible that the child will do damage to a third party for which damage the foster-parents will be liable.

Unfortunately, foster-parents often fail to insure and may have to pay extensive damages out of their own pockets. This Bureau believes that State insurance should cover such damage.

CHILD ABUSE

Several well publicised cases and discussions in the media have revealed that abuse of children is one of the most important issues of the day. Sexual abuse in particular is coming out into the open. The current concern with the victims of sexual abuse, especially children, is encouraging. However, in Victoria, there is still no system of mandatory reporting of child abuse. In most other Australian States a doctor is obliged to report suspected child abuse. It is true that this can lead to some



professional difficulties for doctors. But if they are required by law to report, I think they will be much more ready to report cases of suspected child battering to the authorities than if they have no such legal obligations. They can justify their action to the parents (who will probably be their patients) by saying that they are sorry to have to do it, but the law gives them no option!

Legislation of this kind is hard to police but may be nonetheless effective. The passage of seat belt legislation was resisted on this ground, but has proved effective. It is no answer that because legislation is difficult to police it should not be introduced. Could the duty report be imposed on a wider class of persons than doctors? It seems to me that teachers and even neighbours would find themselves ready to report suspected child abuse if they were under some legal obligation to do so and, of course, enjoy the protection of statutory provisions exempting them from civil liability for having done so.

A great difficulty in this area is that children's evidence of sexual abuse has in the past been regarded with great suspicion. Sometimes it may be fantasy. But not

always. Provision should be made for children's evidence of incest to be tendered in sympathetic surroundings — possibly by means of a separate legal representative. Perpetrators of sexual abuse of children of a family should not go unpunished because of some dubious evidentiary rule of exclusion.

CONCLUSION

These are only a few of the many issues which are of great concern to children today. By and large, children's interests are poorly protected in Australia. Children have virtually no voice on any issues which affect them. Only in South Australia is there a regularly funded bureau for children's interests. This has been set up and funded by the South Australian Government, and is attached to the Department of Community Welfare. This highly promising Bureau seems to have an increasingly effective voice. Its Executive Director acts as Children's Adviser to the Director of Community Welfare. Nothing comparable seems to exist in other States.

It is imperative that we grant to children both a collective and an individual voice in their future. A child or young person who is

in emotional trouble should be able to contact a helping agency without difficulty. What is needed? It is suggested that a Bureau like this one must be established and operated throughout Australia so as to provide legal and other representation for children. The remarkable advances in the status of women in the last decade have been due to the pressure of women's advocacy groups. Every day in one national newspaper there is a page devoted to women's issues.

By contrast, children have no voice at all. There are few newspapers which devote a page to children's interests! There is no advocate for children. There is no lobby group for children. All these issues and many more which would require a book to expatiate, are the concern of this Bureau. It is imperative that children be given an effective voice in society. Otherwise it is not beyond belief that a generation will grow up who will strongly resent what society has done to them and will manifest their resentment in ways such as the Liverpool supporters did in Brussels. It is this fear that moves this Bureau to urge that Society now gives immediate attention to the rights and future of our children.

