LST REVIEW

Volume 14 Issue 198 April 2004

CHILD RIGHTS AND CHILD WELFARE

LAW & SOCIETY TRUST

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ISSN - 1391 - 5770

Editor's Note ... ...

Child rights and child welfare is the predominant concern of this issue of the Review. In response to requests made to us by readers of the Review, we publish the Concluding Observations of the United Nations Committee on the Rights of the Child in connection with the submission of Sri Lanka's second periodic report under the Convention on the Rights of the Child (CRC).

The Committee, an elected body of ten experts appointed under the CRC, make its observations from one point of general concern that is, disturbingly enough, not confined to child rights alone. These concerns relate to the proliferation of domestic monitoring bodies, lack of effective coordination between them and scarcity of resources to those bodies that really matter.

In this specific instance, the establishment of mechanisms such as the National Monitoring Committee (NMC) and the National Child Protection Authority (NCPA), and their respective monitoring and child protection committees at provincial and district level, are welcomed by the Committee.

However, the Committee interrogates the question as to whether these bodies and others like the Department for Probation and Child Care Services effectively coordinate their work and whether their roles are clearly defined?

Equally, the Committee is concerned about the lack of human and material resources to the National Human Rights Commission. Its recommendations clearly address these concerns, suggesting that a bureau for children's rights be established within the Commission in order to ensure its accessibility to complaints by children, in particular those affected by conflict.

The substantive aspects of the Committee's recommendations are compelling, specifically with regard to corporal punishment and the administration of juvenile justice, both issues raised previously by the Committee when considering Sri Lanka's initial report under the Convention.

The Committee makes a peremptory recommendation that Sri Lanka repeal the Corporal Punishment Ordinance of 1889 and amend the Education Ordinance of 1939, to prohibit all forms of corporal punishment. The State is advised meanwhile to undertake well targeted public awareness campaigns on the negative impact of

corporal punishment and provide teacher training on non-violent forms of discipline as an alternative to corporal punishment.

The flamboyant ratification of major international human rights treaties by Sri Lanka in the past several decades had a particular logic to it, in the face of what was by most counts, a serious if not appalling record of rights abuse. Successive governments in this country agreed to abide by conditions imposed by these rights treaties, particularly in respect of civil and political rights, social and economic rights, children's rights and women's rights.

However, our adherence to the reporting procedures mandated by these international treaties had become increasingly lackadaisical, attracting sharp criticism by monitoring bodies set up under their provisions. In terms of the Convention on the Rights of the Child for example, Sri Lanka is mandated to submit a country report under Article 44 of the Convention every five years following the initial report.

In view of considerable delay in this process, the Committee has, in fact, invited Sri Lanka to submit a consolidated third and fourth country report in 2008 and called for regular and timely reporting. This is a caution that Sri Lankan policy makers we should keep well in mind for future reporting under international treaties - not only the Convention on the Rights of the Child - once we have taken a considered decision to submit ourselves to their reach.

A parallel concern relates to un-addressed recommendations in response to Sri Lanka's initial report, particularly with regard to the harmonisation of applicable legislation, coordination of the implementation of the Convention and issues concerning juvenile justice, all of which the Committee strongly reiterates in its Observations this time around.

In sum, the Committee makes the point that children in Sri Lanka have the right to ensure that the body in charge of regularly examining the progress made in the implementation of their rights, does indeed have the opportunity to do so.

Buttressing the general theme of this issue of the Review, we publish a thoughtfully researched comparative essay by *Sajeewa Samaranayake* that examines the history of child welfare in the United Kingdom and points out many living and practical insights that serve as good examples for Sri Lanka.

The author presents convincing arguments with regard to the need for Sri Lanka to jettison its punitive approach to child welfare in favour of wholly therapeutic and pragmatic measures, reserving criminal intervention only in respect of few select cases.

A new child welfare policy is urged, incorporating particular governmental measures, including commitment to social development and recognition of the family as the vital basic unit of a developing society. We publish as a useful addendum to these reflections, a short comparison of the United Kingdom Children Acts of 1948 and 1989 by *Rupert Hughes*.

Kishali Pinto-Jayawardena

Committee on the Rights of the Child

Thirty-third session

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 44 OF THE CONVENTION

Concluding observations: Sri Lanka

1. The Committee considered the second periodic report of Sri Lanka (CRC/C/70/Add.17) at its 871st and 872nd meetings (see CRC/C/SR.871 and 872), held on 23 May 2003, and adopted at the 889th meeting (CRC/C/SR.889), held on 6 June 2003, the following concluding observations.

A. Introduction

2. The Committee welcomes the submission of the State party's second periodic report, as well as the detailed written replies to its list of issues (CRC/C/Q/SRI/2), which gave a clearer understanding of the situation of children in the State party. It further notes with appreciation the high-level delegation sent by the State party and welcomes the frank dialogue and the positive reactions to the suggestions and recommendations made during the discussion.

B. Follow-up measures undertaken and progress achieved by the State party

3. The Committee is greatly encouraged by the ongoing peace process and the inclusion of human rights issues, including the human rights of children, in the peace talks.

4. The Committee welcomes the information provided by the delegation during the dialogue that the state of emergency has been lifted and the Prevention of Terrorism Act has been suspended.

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5. The Committee notes with satisfaction the ratification of the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict on 8 September 2000.

6. The Committee welcomes the various legislative measures aimed at improving the protection of children from domestic violence, child labour and commercial sexual exploitation.

7. The Committee welcomes the various mechanisms and programmes aimed at protecting and promoting the rights of children such as:

(a) The establishment of the National Human Rights Commission in 1997;

(b) The establishment of the National Child Protection Authority in 1999 and provincial level committees to address problems of child abuse and sexual exploitation;

(c) The dissemination of materials, including audiovisual materials, publications and posters, to raise awareness about the Convention and child rights.

C. Factors and difficulties impeding the implementation of the Convention

8. The Committee recognizes that the armed conflict and the challenges of reconstruction, particularly in the north and east, pose difficulties to the full implementation of the Convention in the State party.

D. Principal areas of concern and recommendations

1. General measures of implementation

The Committee's previous recommendations

9. The Committee notes with satisfaction that various concerns expressed and recommendations made upon the consideration of the State party's initial report (CRC/C/15/Add.40 of 21 June 1995) have been addressed through legislative measures and policies. However, recommendations regarding, inter alia, harmonization of legislation (para. 25), coordination of the implementation of the Convention (para. 29), child participation (para. 31) and juvenile justice (para. 40) have not been given sufficient follow-up. The Committee notes that those concerns and recommendations are reiterated in the present document.

10. The Committee urges the State party to make every effort to address the recommendations contained in the concluding observations on the initial report that have not yet been implemented and to address the list of concerns contained in the present concluding observations on the second periodic report.

Legislation

11. The Committee, acknowledging the various legislative measures taken to implement the Convention, is concerned at the lack of a comprehensive and systematic review of existing laws, including the different sets of personal laws, with the aim of bringing them into conformity with the Convention.

12. The Committee recommends that the State party undertake a systematic review of all existing laws in order to bring them into conformity with the Convention and to consult with the

different ethnic communities regarding the inclusion of their personal laws in this process of reform.

Coordination

13. Although encouraged by the establishment of mechanisms such as the National Monitoring Committee (NMC) and the National Child Protection Authority (NCPA) and their respective monitoring and child protection committees at the provincial and district level, the Committee is concerned that these bodies and others like the Department for Probation and Child Care Services (DPCCS) do not provide effective coordination of the implementation of the Convention. It is further concerned that the roles of these bodies are not clearly defined, which may contribute to duplication of efforts and a lack of effective cooperation.

14. The Committee recommends that the State party:

    (a) Establish one effective and identifiable governmental body for the coordination of all activities regarding the implementation of the Convention and which has adequate power and sufficient human and financial resources to carry out its coordinating role effectively;

    (b) Clearly define the role of the NMC and NCPA and the various committees at the provincial and district levels in order to avoid duplication of their efforts and to facilitate cooperation between them, and provide these bodies with the necessary human and financial resources.

Independent monitoring

15. The Committee welcomes the establishment of the National Human Rights Commission in 1997, which also accepts and investigates complaints regarding the violation of children's rights. However, the Committee is concerned that the Commission has insufficient human and material resources to deal effectively with its volume of work.

16. The Committee recommends that the State party, in accordance with the Committee's general comment No. 2 on national human rights institutions:

    (a) Ensure that the National Human Rights Commission is provided with sufficient resources to carry out its responsibilities effectively;

    (b) Consider establishing a bureau for children's rights within the Commission in order to centralize its work on children's rights;

    (c) Ensure its accessibility to children, in particular by raising awareness of its power to receive, investigate and address complaints by children, in particular those affected by conflict.

Resources for children

17. The Committee notes with great concern that the expenditures for education and health as a percentage of the country's GDP decreased between 1998 and 2001. The Committee is further concerned at the lack of disaggregated data on budgetary allocations for the implementation of children's rights at the national and district levels.

18. The Committee recommends that the State party:

    (a) Pay particular attention to the full implementation of article 4 of the Convention by prioritizing budgetary allocations to ensure implementation of the economic, social and cultural rights of children, in particular those in conflict-affected areas, "to the maximum extent of ... available resources and, where needed, within the framework of international cooperation";

    (b) Prioritize the provision of services to children in loan and structural adjustment negotiations with international donors;

    (c) Collect, and include in the regular budget, disaggregated data on the expenditures for children according to the various areas of the Convention, such as foster care, institutional care, primary and adolescent health care, pre-school, primary and secondary education and juvenile justice.

Data collection

19. The Committee regrets the lack of comprehensive and up-to-date statistical data in the State party's report.

20. The Committee recommends that the State party continue to upgrade its system of data collection to cover all areas of the Convention and ensure that all data and indicators are used for the formulation, monitoring and evaluation of policies, programmes and projects for the effective implementation of the Convention. The State party should consider seeking technical assistance from, among others, UNICEF and UNFPA.

2. Definition of the child

21. The Committee notes the plan for constitutional reform in which the child is defined as a person below the age of 18 and that the NCPA and others are applying this definition. Yet, it is concerned that there are various legal minimum ages which seem to be discriminatory or are too low.

22. The Committee recommends that the State party enact, as soon as possible, a clear legal definition of the child applicable throughout the country and review existing age limits in various areas, including marriage, child labour and the Penal Code provisions on child sexual abuse, in order to bring them into compliance with international standards.

3. General principles

23. The Committee is concerned that the general principles of non-discrimination (art. 2 of the Convention), best interests of the child (art. 3), the right to life, survival and development of the child (art. 6) and respect for the views of the child (art. 12) are not fully reflected in the State party's legislation and administrative and judicial decisions, as well as in policies and programmes relevant to children at federal, provincial and local levels and conflict-affected areas.

24. The Committee recommends that the State party:

(a) Integrate, in an appropriate manner, the general principles of the Convention, namely articles 2, 3, 6 and 12, in all relevant legislation concerning children;

(b) Apply them in all political, judicial and administrative decisions, as well as in programmes, services and reconstruction activities which have an impact on all children.

Non-discrimination

25. The Committee notes with concern that societal discrimination persists against vulnerable groups of children, including children with disabilities, adopted children, children displaced by conflict, children infected with and affected by HIV/AIDS, and children of ethnic and religious groups.

26. The Committee recommends that the State party amend its legislation and increase its efforts to ensure the implementation of existing laws guaranteeing the principle of non-discrimination and full compliance with article 2 of the Convention, and to adopt a proactive and comprehensive strategy to eliminate discrimination on any grounds and against all vulnerable groups.

27. The Committee requests that specific information be included in the next periodic report on the measures and programmes relevant to the Convention on the Rights of the Child undertaken by the State party to follow up on the Declaration and Programme of Action adopted at the 2001 World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, and taking account of general comment No. 1 on article 29 (1) of the Convention (aims of education).

4. Civil rights and freedoms

Corporal punishment

28. The Committee is deeply concerned that male child offenders can be sentenced to whipping or caning under the Corporal Punishment Ordinance of 1889, and that the Education Ordinance of 1939 permits corporal punishment to be used as a disciplinary measure for boys and girls in schools and that many teachers and principals consider corporal punishment to be an acceptable form of discipline.

29. The Committee reiterates its previous recommendation that the State party repeal the Corporal Punishment Ordinance of 1889 and amend the Education Ordinance of 1939 to prohibit all forms of corporal punishment. Furthermore, the Committee recommends that the State party undertake well-targeted public awareness campaigns on the negative impact corporal punishment has on children, and provide teacher training on non-violent forms of discipline as an alternative to corporal punishment.

5. Family environment and alternative care

30. The Committee notes the new programme for children of migrant workers undertaken by the Bureau of Foreign Employment, yet it is concerned that families of migrant workers receive little or no assistance with their child-rearing responsibilities while they are working abroad.
31. The Committee recommends that the State party develop a comprehensive policy to support the families and caregivers of children of migrant workers in their child-rearing responsibilities and limit the institutionalization of children of migrant workers to measures of last resort, while promoting the placement of all children in need of alternative care with their extended families or other family types of care whenever possible.

Alternative care

32. The Committee welcomes the increasing emphasis on foster placements, yet it remains concerned that there is no monitoring mechanism for either registered and unregistered institutions or voluntary homes.

33. The Committee recommends that the State party proceed with its intention to amend the Orphanages Ordinance No. 22 of 1941 to criminalize running an orphanage without a licence, and establish a uniform set of standards for public and private institutions and voluntary homes and monitor them regularly.

Abuse and neglect

34. The Committee notes that the Domestic Violence Act is under consideration, but is concerned that, although there are limited data available, the problem of abuse within the family and in

institutions appears widespread. The Committee is further concerned that victims of abuse do not receive adequate assistance and support for their recovery, and that the practice of institutionalizing victims while their case is being processed is common.

35. The Committee recommends that the State party

(a) Expand current efforts to address the problem of child abuse, including through the adoption and implementation of the Domestic Violence Act, and ensure that there is an effective national system for receiving, monitoring and investigating complaints and, when necessary, prosecuting cases, in a manner which is child-sensitive and ensures the victims' privacy;

(b) Ensure that all victims of violence have access to counselling and assistance with recovery and reintegration,

(c) Provide adequate protection to child victims of abuse in their homes, whenever possible, through restraining and removal orders against the alleged perpetrator in cases where the removal of the child is necessary, preference should be given to foster care or similar family-type settings and institutionalization should only be resorted to in exceptional cases.

6. Basic health and welfare

Children with disabilities

36. The Committee is concerned that a significant number of children with disabilities, in particular girls, are not able to attend school and that not all special schools managed by non-governmental organizations are registered by the Ministry of Education, and they are concentrated in the more developed and urbanized Western Province.

37. In light of the recommendations of the Committee's day of general discussion on the private sector as service provider and its role in implementing child rights in 2002 (see CRC/C/121), the Committee recommends that the State party:

(a) Ensure that all children with disabilities, particularly girls, have access to education by increasing spending and expanding special education programmes, including non-formal special education in rural areas, and by training teachers in mainstream education about special needs;

(b) Register and monitor all special schools run by non-State actors;

(c) Take all necessary measures to integrate children with disabilities into society and include them in cultural and leisure activities.

Basic health and health services

38. While acknowledging the improvements in mortality rates and immunization coverage, the Committee remains concerned at the high levels of child malnutrition, the significant proportion of children born with low birth weight, the prevalence of mosquito-borne diseases, including malaria, and the lack of access to safe drinking water and sanitation, particularly in conflict-affected areas.

39. The Committee recommends that the State party:

    (a) Ensure universal access to maternal and child health-care services and facilities throughout the country with special attention to conflict-affected areas;

    (b) Prioritize the provision of drinking water and sanitation services in reconstruction activities;

    (c) Strengthen ongoing efforts to prevent malnutrition, malaria and other mosquito-borne diseases and continue to promote exclusive breastfeeding for an infant's first six months, and extend these programmes to all conflict-affected areas;

    (d) Seek technical assistance, from, among others, UNICEF.

Adolescent health

40. The Committee notes the establishment of Presidential Task Forces to deal with the problems of suicide and alcohol, drug and tobacco use by adolescents, and the subsequent improvement in the rate of youth suicide. Nevertheless, the Committee is concerned that these issues remain a problem for adolescents and that an organized system of reproductive health counselling and services for youth, as well as education on HIV/AIDS and STDs, does not yet exist.

41. The Committee recommends that the State party continue to strengthen its efforts to address youth suicide, drug abuse, alcoholism and tobacco use and develop a comprehensive policy on adolescent health which, inter alia, supports the implementation of the recommendations of the Presidential Task Forces, promotes collaboration between State agencies and NGOs in order to establish a system of formal and informal education on HIV/AIDS and STDs, and ensures access to reproductive health counselling and services for all adolescents. The State party should make use of the International Guidelines on HIV/AIDS and Human Rights (E/CN.4/1997/37) and the Committee's general comment No. 3 on HIV/AIDS and the rights of the child, in order to promote and protect the rights of children infected with and affected by HIV/AIDS.

7. Education, leisure and cultural activities

42. The Committee is encouraged by the education reforms initiated by the State party in 1999, which focus on improving the quality of education and also emphasize early childhood development. At the same time, the Committee is concerned that all principals, teachers and parents, particularly in rural areas, are not fully aware of the objective of these reforms, that their implementation is not uniform across all regions and that there is no mechanism for monitoring and evaluating their implementation.

43. In light of articles 28, 29 and 31 of the Convention, as well as general comment No. 1 on the aims of education, the Committee recommends that the State party:

(a) Ensure that primary education is in fact free and compulsory for all children;

(b) Provide additional information on the reforms and adequate material resources for their implementation to principals, teachers and parents in rural and conflict-affected areas;

(c) Establish a participatory mechanism for monitoring and evaluating the implementation of the education reforms which involves principals, teachers, parents and students;

(d) Ensure that there is a sufficient number of trained teachers in rural and conflict-affected areas;

(e) Include human rights education as part of the curriculum.

8. Special protection measures

Children affected by armed conflict

44. Almost 20 years of civil conflict has had an extremely negative impact on the implementation of the Convention in the State party. While recognizing that children will greatly benefit from the peace process, the Committee is concerned that during the transition to peace and the reconstruction process, children who have been affected by the conflict remain a particularly vulnerable group.

45. The Committee recommends that the State party implement the plan of action for the respect of the rights of children during the reconstruction process (2003). In particular, the Committee recommends that the State party:

(a) Prioritize the demobilization and reintegration of all combatants under 18 and ensure that all armed groups reintegrated into the national armed forces adhere to the minimum age of recruitment of 18 years;

(b) Develop, in collaboration with NGOs and international organizations, a comprehensive system of psychosocial support and assistance for children affected by the conflict, in particular child combatants, unaccompanied internally displaced persons and refugees, returnees and landmine survivors, which also ensures their privacy;

(c) Take effective measures to ensure that children affected by conflict can be reintegrated into the education system, including through the provision of non-formal education programmes and by prioritizing the rehabilitation of school buildings and facilities and the provision of water, sanitation and electricity in conflict-affected areas;

(d) Seek in this regard technical assistance from, among others, UNICEF.

46. The Committee reiterates its request to the State party for additional information on child combatants and child prisoners of war, to be included in its initial report under the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict.

Sexual exploitation

47. The Committee welcomes the Penal Code (Amendment) Act No. 22 of 1995, which seeks to protect children from sexual exploitation. However, it is concerned that existing legislation is not effectively enforced and that child victims of sexual exploitation do not always receive adequate recovery assistance.

48. The Committee recommends that the State party:

(a) Develop a National Plan of Action on Commercial Sexual Exploitation of Children as agreed at the first and second World Congresses against Commercial Sexual Exploitation of Children in 1996 and 2001;

(b) Train law enforcement officials, social workers and prosecutors on how to receive, monitor, investigate and prosecute complaints in a child-sensitive manner that respects the privacy of the victim;

(c) Prioritize recovery assistance and ensure that education and training as well as psychosocial assistance and counselling are provided to victims, and ensure that victims who cannot return to their families are not institutionalized;

(d) Seek technical assistance from, among others, UNICEF.

Economic exploitation

49. The Committee welcomes the State party's ratification of ILO Conventions Nos. 138 and 182 in 2000 and 2001, respectively. Nevertheless, it remains concerned at the high proportion of children, including very young children, working as domestic servants, in the plantation sector, on the street and in other parts of the informal sector.

50. The Committee recommends that the State party continue its efforts to eliminate child labour, in particular by addressing the root causes of child economic exploitation through poverty eradication and access to education, as well as by developing a comprehensive child labour monitoring system in collaboration with NGOs, community-based organizations, law enforcement personnel, labour inspectors and ILO/IPEC.

Juvenile justice

51. The Committee reiterates its serious concern that the minimum age of criminal responsibility, set at 8 years, is too low and that children between the ages of 16 and 18 are considered by penal law as adults.

52. The Committee recommends that the State party:

(a) Ensure the full implementation of juvenile justice standards and in particular articles 37, 39 and 40 of the Convention, as well as the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules) and the United Nations Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines), and in the light of the Committee's 1995 day of general discussion on the administration of juvenile justice (CRC/C/46, chap. III, sect. C);

(b) Amend the Children and Young Person's Ordinance (1939) to raise the minimum age of criminal responsibility to an internationally acceptable level and to ensure that all offenders under 18 are treated as children;

(c) Set up a system of juvenile courts across the country;

(d) Ensure that deprivation of liberty is used only as a last resort and for the shortest appropriate time period;

(e) Take effective measures, including, where appropriate, the enactment of legislation, to implement the recommendations of the Law Commission on the juvenile justice system, in particular those regarding access to legal assistance, training of professionals working with children, separation of children in conflict with the law

from adults at all stages of the legal process and development of alternative non-custodial methods of rehabilitation.

9. Optional Protocols to the Convention on the Rights of the Child and amendment to article 43(2) of the Convention

53. The Committee notes that the State party has signed but not ratified the Optional Protocols to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography.

54. The Committee recommends that the State party ratify the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography.

10. Dissemination of documents

55. Finally, in light of article 44, paragraph 6, of the Convention, the Committee recommends that the second periodic report and written replies submitted by the State party be made widely available to the public at large and that the publication of the report be considered, along with the relevant summary records and concluding observations adopted by the Committee. Such a document should be widely distributed in order to generate debate and awareness of the Convention and its implementation and monitoring within the Government, the Parliament and the general public, including concerned NGOs.

11. Next report

56. The Committee, aware of the delay in the State party's reporting, wishes to underline the importance of a reporting practice which is in full compliance with the rules set out in article 44 of the Convention. Children have the right for the committee in charge of regularly examining the progress made in the implementation of their rights, to have the opportunity to do so. In this regard, regular and timely reporting by State parties is crucial. As an exceptional measure, in order to help the State party catch up with its reporting obligations so as to be in full compliance with the Convention, the Committee invites the State party to submit its third and fourth reports in one consolidated report by 10 August 2008, the due date for the submission of the fourth report. The consolidated report should not exceed 120 pages (see CRC/C/118). The Committee expects the State party to report thereafter every five years, as foreseen by the Convention.

Taking to Heart, a Living Law - 50 years of Child Welfare in the United Kingdom and Lessons to Learn for Sri Lanka

Sajeeva Samaranayake[*]

Introduction

The framers of the United Nations Convention on the Rights of the Child, 1989, (CRC) envisaged a dynamic role for international co-operation in bridging the enormous gaps in the quality of life between the children of the First and Third Worlds. This requires both a genuine transfer of resources to and a genuine assessment of priorities within those Third World Nations, which in turn calls for a high degree of political and societal commitment around the world.

A crucial aspect of this exercise is the transfer of know-how. The experience of the United Kingdom (UK) is particularly relevant to common law jurisdictions like Sri Lanka which have inherited their political, legal and administrative structures from a not so distant colonial past. The length and breadth of this experience is attested to by the fact that the acclaimed Children Act of 1989 was, in many ways, another milestone in a modernization process which began with the Children Act of 1948.

Indeed a study of the history of child welfare in the UK in the latter half of the 20th century throws up living and practical insights into many principles which are now enshrined in the CRC. This is not to say that the British have got it right. They still grapple with some of the more intractable and complex and even fundamental issues in relation to the rights of the child and seek inspiration and instruction from their own past, and present. The first lesson to be learnt in child welfare is that 'it is very, very difficult to act as a corporate good parent for children who are separated from their parents, or to offer effective protection and support to them in their own homes' (Stevenson, 1999.)

What the British do have is an honourable record of commitment to the task. This cannot be said of a Sri Lankan society, which has so far failed to seize the opportunities presented by the ratification of the CRC in 1991. Although every nation must develop in its own time, there is today, a global sense of urgency to address inexcusable failures to ensure the most basic survival, protection, development and participation needs of children. Thus sooner, rather than later, Sri Lanka must undertake the journey that its colonial rulers embarked upon so decisively in 1948.

Saying Goodbye to Oliver Twist

Up to 1948, the single most pervasive influence on child welfare in the UK was the Poor Laws, which imposed a duty on parents to support children and criminalized neglect. Poverty was viewed as an

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offence against the community and the state and a wrongful imposition of responsibility for the family on the state.

Under this regime which was primarily concerned with sustaining paupers as cheaply as possible, (Holman, 1996: 200), pauper parents were separated from their children: children's homes and foster homes were often of low standard and inadequately inspected: and legislation retained the directive, 'to set to work and put out as apprentices all children whose parents are not, in the opinion of the Council able to keep them', (*Poor Law Act* 1930, S 15, 1c). The resultant stigma attached to poverty and want were greatly removed by the abolition of Poor Laws with the new Children Act of 1948 affirming the principle that 'children in care were to be treated in the same way as good parents would look after their own children. They were no longer to be second class children, immortalized by Dickens in *Oliver Twist* ' (Stevenson 1998:154).

These egalitarian measures were propelled in part by war-time experiences which served to engender a spirit of magnanimity and brotherhood. Significantly it was a time of nation building and free market capitalism was linked to a strong commitment to social welfare which served to strengthen the foundations of child welfare and its integration within the institutional framework of social security, (Parton 1999).

Catalysts for Change

The reforms proposed by the Curtis Committee of 1946 were not original contributions to child care practice, but its genius was in harnessing the practical wisdom of pioneers in child care whose work had started long before legislation was contemplated. These developments are outlined by Holman (1996:197-209). A municipal initiative in the Education Departments recognised early that pupil performance depended on more than what took place within the class room.

This led to the establishment of Children's Care Committees by the London Education Authority in 1909 which organised volunteers to visit and help families whose children's schooling was being held back by poor attendance, delinquency, ill-health and poverty, (McKinnon Wood 1954). Further developments resulted from the growth of psychology as an academic subject. In 1927, a number of psychiatrists and psychologists and a few social workers founded the Child Guidance Council 'to advance the treatment of maladjusted, difficult and delinquent children.' Their approach was to jointly investigate the troubles of disturbed children, and to help both by treating the child as an individual and also by enabling parents to improve their relationship with the child, (Holman 1996: 200).

During the War, around six million people and a great number of children were evacuated from the cities in anticipation of bombings. Many of the children were working class and their foster carers were middle class. Direct experience of the lot of these children pricked the collective conscience of the middle and upper classes and inspired a new determination to espouse their cause. Almost every family in Britain was affected by the evacuation, either by separation or by receiving separated children, and fostering became a national enterprise, (Holman 1996).

Both central and local government responded to the flood of evacuees by relying heavily on the expertise and experience of Children's Care Committees and Child Guidance Clinics. Moreover, the number of social workers specialising in child care increased, leading to a new kind of service within local authorities, (Holman 1996: 202). The methodology of child care was also actively researched. Donald Winnicott and Clare Britten, (1944 & 1947), published articles which drew on their hostel experience to discuss the role of residential care. Lucy Faithful made the important finding that as opposed to evacuees, those children who stayed with their families had fared better emotionally and physically despite the Blitz.

CURTIS REPORT: PRESERVING YOUNG LIVES THROUGH SKILL, AFFECTION AND ATTENTION

The remit of the Curtis Committee included both delinquent and deprived children and their number was assessed at 124 900. The Committee visited 451 institutions and examined several experts on child care including Bowlby, Winnicott, Clare Britten and Susan Issacs. The principal observation was one of 'administrative chaos and human suffering', (Griffith 1966) through the exposure of children to the worst features of institutionalisation. It was found that many homes were too large and decrepit and characterised by a lack of personal interest in and affection for the children which was shocking, (Curtis 1946:418).

Accordingly the first principle emphasised by the Committee was that deprived children should be regarded as individuals of importance, treated with affection and helped through **personal relationships** within a family setting. As Holman points, out these were precisely the ideas promoted strongly in the 1920s and 1930s by the enthusiastic staff and volunteers at the Children's Care Committees and the Child Guidance Clinics, (1996:206).

Secondly, as far as those children separated from their parents were concerned, 'the good foster parent' was considered as offering the best compensation and opportunity for personal development. Thirdly, with regard to children who could not be placed with foster carers, smaller homes with affectionate and skilled leaders was held to be an option which was not incompatible with their best interests, (Winnicott & Britten 1947:2-12).

The Committee envisaged the unification of all statutory responsibilities for deprived children in the Children's Committee of the local authority. This Committee, having all authority regarding the effective implementation of these policies, was to be subordinate to no other and was subject only to the supervision of a single central government department. The Children's Officer who was to head it, was to be the key to providing the personal element in the care of children. It was envisaged that this person would be a graduate with social science qualifications, experience with children and good administrative ability, (Curtis 1946:446).

All these recommendations found clear expression not merely in the 1948 Act but also in the practical measures taken for its effective implementation. The Committee was especially concerned about the **training of personnel.** Towards this end, it issued an interim report urging the formation

of a Central Training Council in Child Care to promote and oversee new courses of training and also to standardize them through an eminent and representative standing council. This was done with the required urgency and the newly trained staff of children's homes was ready to take up their posts after a fourteen month course when the Act came into operation. The subordinates of the Children's Officers, who would become professional social workers, required a more rigorous academic training which was coordinated with several universities updating their social science courses. The first batch of these officers was also ready by 1948. Their professional association was formed by 1949, (Packman 1975:11).

FROM SUBSTITUTE CARE TO PREVENTION

According to Packman, (1975:50,191), 'Children's Departments were given a tough but narrow brief. Children deprived of a normal family life were to be provided with good substitute care by a new professional personal service.' However, admission to care and subsequent reunification with the family were both to be based on the fundamental principle of the welfare of the child. The Home Office Circular, (1948), accompanying the Act stressed the importance of keeping families together. But the Act did not expressly confer any powers or duties for preventive or rehabilitative work. The Women's Group on Public Welfare, (1948:53) reported immediately that 'the removal of the child provides an easy answer to the problems of the unsatisfactory home but not a psychologically sound one' and they proposed **practical** methods of helping, like material aid, domestic help, training and guidance in home management and child welfare and even residential care for whole families. According to them, the first priority for Children's Departments was an intensive Family Casework Service for all the children in their care.

Pursuant to a Home Office Circular in 1952 and an amendment to the Children and Young Persons Act (CYPA) in 1952 which imposed a duty to inquire into cases 'suggesting' that a child was 'in need of care or protection,' local authorities adopted the strategy of appointing a Specialist Social Worker who would concentrate on a small caseload of hard-core problem families 'that were the most costly to help if they broke down.' 'The help given was long term, painstaking and immensely practical' but proved rewarding, (Packman 1975:56). Three principal strategies were adopted in helping families.

1. Direct work with the family
2. Family and community empowerment.
3. Shielding families from external pressures like potential evictions by negotiating with other government departments and working for debt relief (Packman 1975:58,59).

The Ingleby Report of 1960, precursor to the CYPA 1963, made a valuable contribution to the future direction of child care policy by framing the preventive approach in **positive**, rather than negative terms:

> *"Everything within reason must be done to ensure not only that children are not neglected but that they get the best upbringing possible ...It is the duty of the*

community to provide through its social and welfare services the advice and support which such parents and children need."

Section 1 of the CYPA 1963 gave expression to this idea. Implementation of this mandate was not without difficulty; issues of housing and poverty continued to raise concern and results varied across the country. Nevertheless, the spectre of child abuse and public hostility had not yet arisen and the prevalent mood of social work was largely one of optimism. Some departments responded to the expansion of work with an imaginative and flexible approach which met diverse needs of families. These included family advice centres, mobile foster mothers, holidays arranged or financed for families, group work, day training centres and efforts to involve the wider community, (Packman 1975:69,70).

FROM CHILD CARE TO CHILD PROTECTION AND THE PROCEDURAL ERA

Post-war child welfare practice was based on what Parton *et al,* (1997:18-44) refer to as the 'optimistic welfare consensus.' It was a harmonious model with a unity of interests between the state, social workers and the people they helped. Parents or children were not viewed as having 'rights' distinct from that of the family and social work intervention was regarded positively. Thus,

"When a family required modification this would be via casework, help and advice, and if an individual did come into state care this was assumed to be in their best interests. Interventions which had ***therapeutic intentions*** *necessarily had beneficial outcomes so that social work required and was allowed a large degree of independence and discretion to carry out its work." (Parton et al 1997:22)*

Within such a scheme, the courts and the legal system were seen as secondary whilst the police were seen as marginal and a potential source of difficulty, (1997:23). The role of law was to enable and facilitate an essentially therapeutic, helping and caring process and not to prescribe methods or dictate objects. Packman states that in this era, policy was shaped by both legislator and administrator; that 'many of the developments in child care sprang directly from local experience and experiment' and that 'social legislation is drafted in the broadest terms to enable such developments to take place', (Packman 1975:194). In 1971, all personal social services including children's departments came under the umbrella of the newly constituted Social Services Department which had an ambitious programme envisaged by the Seebohm Committee to universalise community welfare to make a complete break with the Poor Laws. But the welfare state was now in decline and in the coming years, child welfare policy and social work had to contend with an increasingly difficult political, social-economic climate, (Parton *et al* 1997).

The subsequent developments of the 1970s and 1980s saw a child care system based on supporting families in need being replaced by a system for the management of child abuse and neglect as regulated by the formal child protection system under the general direction of Area Review Committees, later succeeded by the multi-disciplinary Area Child Protection Committees (ACPCC.)

The process by which prevention became a poor relation within that system, is best understood with reference to a series of public inquiries into child deaths and other 'scandals' in regard to which the child care system was found wanting.

The first of these related to **Maria Colwell** who was neglected by her mother and killed by her step father after being returned to her natural family after six years in foster care. The case was supervised by qualified social workers and there was no finding of neglect of duty. Yet a series of errors suggested that the death may have been prevented. The principal substantive issue concerned the perception that child welfare practice, developed over the years, had failed the child through a pre-occupation with the natural family. Whilst this concern was justified on the facts of this case, it had a disproportionate influence on policy. As Packman & Randall, (1989:101) point out, the more sensible approach appears to be 'to strive for balance, and to emphasise neither at the expense of the other.'

Two other procedural issues had ramifications far beyond the confines of the inquiry. The first concerned the failure to engage directly with Maria and ascertain her true wishes. Although her behaviour was open to interpretation that she rejected her natural family, no serious effort was made to actually establish her wishes. The Children Act of 1975 introduced the requirement that children's wishes and feelings should be considered in reaching decisions affecting their care and upbringing. However, both ascertaining and incorporating the wishes of children within the decision making process has remained a subject of concern over the years, (Stevenson 1989:167-171). The second concerned effective communication and interagency co-ordination in protecting children at risk. Several agencies had vital contact with Maria: the schools, the education welfare service, the NSPCC, police doctors and neighbours. Packman, (1975:171), commented that –

> *"Effective communication between them depends upon a clear appreciation of each other's roles and responsibilities and mutual respect. No administrative reorganisation will automatically create either of these."*

Nevertheless, the administrative response this time was swift, decisive and momentous. A critical shift in policy as well as a shift of resources was effected by administrative circular (DHSS: 1974). This emphasised the need for teamwork and 'strongly recommended' the establishment of case conferences, area review committees and child protection registers all of which were promptly carried out. It was advised to 'strengthen measures to prevent, diagnose and manage cases' and it outlined the first signs of non accidental injury (NAI) emphasising mainly, the physical abuse of infants and young children. However, the **medico-social reality** of child abuse was preserved up to the 1980 Circular (DHSS 1980) which stipulated that the 'diagnosis of child abuse will normally require both medical examination of the child and social assessment of the family background.'

By the time of the Jasmine Beckford Inquiry in 1984, the pre-occupation with child protection, (in the sense of child rescue), to the near exclusion of welfare aspects was strongly established, (Stevenson 1998:160). The therapeutic object of intervention was being eclipsed by a child and family rights discourse and the ideal of legal conformity. The **Beckford Report** is credited with placing the law

most effectively at the centre of child welfare. It was argued that Jasmine 'became the victim of persistent dysfunctioning social work while *the law* demanded, above all, her protection', (1985:127). The report recommended that the local authority, legal department, the police and the crown prosecuting service be included in the decision making, so that important decisions, particularly when returning a child home, should only be made after full legal consultation in the multi-disciplinary case conference.

The Child Protection System did not take on sexual abuse until the 1980s (Porter 1984). Once it did, interventions touched off 'a range of sensitivities ... rarely evident in earlier concerns about physical abuse and neglect.' Issues of family privacy, adult-child relations, patriarchy and male power were thrown open 'and for the first time the issue threatened not just men but middle class and professional households...'(Parton *et al* 1997:219). This formed the background to the **Cleveland Inquiry** presided over by Butler- Sloss LJ. 'This time, paediatricians as well as social workers failed to recognise the rights of parents and intervened too prematurely...Over a hundred children were removed on place of safety orders on the basis of questionable medical diagnoses of sexual abuse' (Parton *et al* 1997:31). Both medical science and social work were found wanting in their methods and came under heavy criticism for failing to safeguard the rights of parents and children. The law too needed reform. The message which emerged was that 'professionals should be much more careful and accountable in identifying the **"evidence"**, forensically framed, for what constituted sexual abuse and child abuse more generally.' The law was held up as the ultimate arbiter and the issue was narrowed and prioritised to a matter of 'investigation, identification and ... the weighing of forensic evidence.' Another key recommendation was to strengthen parental rights to be informed and consulted.

The cumulative effect of these developments was to effect a fundamental change in the nature of social work and the way people related to it. The new duties of investigation and surveillance of families to protect children from harm emphasised the **controlling** aspect of their role to the detriment of its **caring** and **helping** aspects. Moreover, the assumption that socially deprived children and families should be protected from exposure to the legal system was replaced by a new one, that the law and lawyers stood to protect them from dysfunctioning social work, (Cooper *et al* 1995:103). This was accompanied by the rise of 'managerialism' in the 1980s which sought to limit the involvement of welfare professionals in peoples' lives, (Dennington & Pitts 1991). Thus in 1984, the Short Committee which reported to the Review of Child Care Law, (DHSS 1985), noted that it was overwhelmingly the poor who entered public care and that the state must pursue a broad-based preventive strategy to make good the material and personal deficits experienced by those children and families. This view was strengthened by research findings that 90% of the children who entered public care eventually returned to their parents or home communities. Short also proposed that the claims of welfare and justice, broadly represented by social work and law respectively could be most effectively met by a less formally legalistic and inquisitorial (rather than adversarial) 'Family Court.' But whilst family support for children in need and their families was recognised as a principal statutory object in Part III of the **Children Act 1989** the need for a different kind of decision making process was rejected. The expansion of social work duties in the Act was accompanied by a tighter control of discretion, reiterating the subordination of social work to the legal process (Cooper *et al*

1995:105; Ball 1998). Significantly however, both thresholds for intervention, (ie; the concept of the 'needy child' and the 'child at risk of significant harm'), were linked for the first time to the developmental needs of the child.

Despite this orientation, child protection and a pre-occupation with 'children at risk' continued to dominate social work practice under the new Act. This narrow approach has kept the operation of two progressive elements of the Act, the principles of non-legal intervention and partnership with families, depressed (Cooper *et al* 1995:108) and family support under-resourced, (Dartington Social Research Unit 1995:28). As Thoburn, (1999), said, citing the Research Unit, more resources were spent detecting abuse but less on helping those who had been abused or preventing it happening in the first place. Moreover identification of risk was confined to acts of physical or sexual maltreatment by parents or parental figures. Other causes which impaired child health or development such as bullying and racism in school, neglect and emotional maltreatment and neglect of children previously abused but no longer 'at risk' after separation from abuser, received too little attention. In a study of four local authorities in 1993/94, Brandon *et al*, (1999) found that in nearly half the cases, registered protection could have been provided as effectively via support plans. A major recommendation of this study - that formal child protection procedures should only be triggered if they are necessary to safeguard the child's welfare – was incorporated in the 1999 edition of the *Working Together* Guidelines.

As evidenced above, the 1990's saw research joining public inquiries in exerting a significant influence on the regulation of practice. Improved inter-disciplinary and inter-agency co-operation in childcare and protection has been another positive development of the procedural era. Stevenson, (1999), has identified, the existence of a sufficient consensus for cooperative action; the existence of clear procedures which tends to economise work; and inter-professional training as the key ingredients of this development. According to Holman, (1999),

1. commitment to prevention enabling children to stay with their parents,
2. development of child care skills, and
3. staff morale and dedication

were key achievements of Children's Departments which went into decline after their abolition in 1971. This decline is associated with the reactive adoption of a narrow and 'safe' brand of prevention i.e. child protection as opposed to the broader form of family support pursued in the 1950s and 1960s.

The public inquiries in the 1970s and 1980s and a culture of blaming individuals were to play a decisive role in transforming public perceptions of social work from help to bungled interference. The lack of congruence between social work responsibility and the element of trust, confidence and support shown by wider society in the discharge of that responsibility became institutionalised over time with a defensive recourse to procedures and checklists bureaucratising the profession. This has had negative implications for the *personal element* stressed by the Curtis Committee in 1946 as the lynch pin of public care involving children.

SRI LANKA: A SITUATIONAL ANALYSIS

State, society and family

Since the early 1940s, successive Sri Lankan Governments pursued a consistent policy of free and universal health and education services which contributed to family well-being and social stability. Declining rates of maternal and infant mortality as well as family planning and the education of the girl child ensured a better quality of life for growing children. Although health and education services (being hospital and school based) were not directly focused on the family home, these services were adequate to ensure a reasonable standard of family health within a stable society.

However, the year 1977 marked a watershed for the relationship between the state and the family unit. The state relinquished its hold on the economy to embrace capitalism. But in doing so, it failed to develop a corresponding vision of social security and development to protect society itself. There was no balanced perception of capitalism which was seen as wholly good. Within a free market, public health and education services not only failed to develop but were also undermined by the private sector. Quality services were increasingly available to the select few and at a price. There was no commitment to uniformity or universality in the health care and education provided for children. This burden was shifted to the family, effectively separating the privileged children from the deprived. 8

The lack of a social vision not only divided the minority who reaped the rewards of economic development, from the rest of society but alienated both from a cohesive sense of national identity. This sense of alienation characterised the prosecution of the ethnic war in the North and East, ('normalcy' was maintained in the rest of the country), and the suppression of a youth insurgency in the late 1980s. A psychological divide came into being between those affected by these upheavals and those not so effected. In the absence of a genuine process of reconciliation and healing, a gulf yawned between the perpetrators of atrocities and their victims. The families and children of those affected were compensated in cash for the deaths and disappearances of their loved ones, but in the absence of an organised professional service, the question of meeting their psychological needs did not arise.

This culture of intolerance, political violence, assassination and devaluation of human dignity continues unabated where the moral fabric of society has come to be upheld more by individuals rather than by organised institutional or collective action. Within this context of declining social order and governance, the unifying feature of society has been a narrow concern for economic survival. This contradiction was noted by Hoole, (1990), who said,

> *"We clamour for physical and material freedom, when we have so readily mortgaged our spiritual freedom."*

Children have become directly affected by demanding and oppressive patterns of employment in both the public and private sectors which effectively de-prioritise family life. The other extreme is

unemployment which has struck both the urban and rural poor the hardest. Less time and motivation for leisure means less time for social activity and strengthening social networks within the family, neighbourhood and community. There has also been a national shift from the extended family concept to the nuclear form of family due to urbanisation and economic hardships of young couples (Second Country Report 1998:34). Moreover, increased participation of mothers in the workforce has posed new challenges to gender relations and child rearing, (First Country Report 1994:40). Single parent units are also on the increase; It was calculated in 1998 that 6-800 000 young mothers from low income families had left for employment to the Middle-East. War widows are another such identified group, (Second Country Report 1998, Hettige 1999).

Country Reports submitted to international fora in 1994, 1998 and 2002 provide disturbing and continuing indicators of the potential under-achievement and poor development of around one-third of all Sri Lankan children. 5% of births take place unsupervised, 16-17 out of 1000 infants are born under-weight and 33% of children under 5 are malnourished. Around 10% never enter school. Those who do enter drop out progressively so that 50% are out by year 9. Only 3% gain university admission. This is supplemented by the following additional estimates.

- Households below poverty line - 30%.
- Children affected by armed conflict and internally displaced - 400 000. (165 000 families housed in 544 welfare centres).
- Institutionalised children – 25 000, including 2000 child offenders.
- Children between ages 10-14 engaged in labour – 82 000. (Males 46 000, females 36 000 – 30% of males and 58% of females *may* be in domestic service.)
- Disabled children – 50 000.
- Street children in cities – 20 000.

These figures could be rationalised in the following manner to aid policy formulation. (It may be noted that categories could overlap.)

1. Children without caregivers and homes; eg. some street children and orphans.
2. Children with caregivers but without homes; eg. some street children and those in shelters for the internally displaced due to war or natural disasters.
3. Children in homes but without caregivers; eg; some children left behind by migrant mothers.
4. Children with caregivers at home but with unmet needs. This would include *all* such children including a fraction produced in criminal courts on complaints of child abuse or juvenile delinquency.
5. Children removed from their family environment (with or without parental consent) and subjected to exploitation for sex, labour, drug trafficking or domestic service.
6. Children in institutions for alternative care.
7. Children with special needs; eg. children with physical or learning disabilities.

The single unifying factor in all these cases remains the relevance of *family life* for all these children, and in its absence, their need for a *family environment.*

Whilst early approaches to poverty were based on the Poor Laws, emphasis since the early 1990s has shifted to empowerment and raising the income earning capacity of these families. Nevertheless, this remains the most challenging obstacle to children and families in need. The National Nutrition Co-ordination Committee monitored a Nutrition Plan of Action which involved the ministries of health, education and agriculture and the provincial and divisional administrations. But due to a lack of effective monitoring, evaluation and information systems subsidies, relief, and assistance was **poorly targeted**, thus leading to persistence of inequity in household food security.

In the other noteworthy multi-sectoral initiative, the Early Childhood Care and Development (ECCD) Programme of the Children's Secretariat and community based NGO's, sought to promote the psycho-social development of young children through home based early child care which included provision of information and education materials and training of community facilitators. There is also an extensive network of family health visitors whose experience will become valuable for the implementation of family support measures, ((Second Country Report 1998:35). Several NGO's have commenced work with children and families in areas such as pre-school education health and nutrition and their methods include a strong element of community participation. Whilst these programs have reached only a fraction of the families in need, they constitute pioneering efforts in the field of social work in Sri Lanka.

Institutional framework and responses to child abuse

Sri Lanka adopted the CRC in 1991. However no serious attempt has yet been made to incorporate the Convention into domestic law. A non-statutory 'National Plan of Action' was unveiled in 1991 followed up by a non-statutory Children's Charter to be monitored by a non-statutory National Monitoring Committee. These initiatives were, in a sense still-born, unsupported beyond a token commitment and hamstrung by a sheer lack of data and relevant expertise. (By *relevant expertise* is meant expertise in child development, child protection and family support.) The fundamental rights chapter of the Constitution which is enforceable is confined to civil and political rights. Social and economic rights including those specific to children are found in a non-binding chapter entitled 'Directive Principles of State Policy'.

However, a striking difference could be observed between the 'law in books' and 'law in action.' The colonial poor laws and vagrancy statutes which reflect a philosophy 'that the law and state power can be used to interfere with the personal liberty of low income families and their children', (Goonesekere, 1998:194), continue to guide and determine the actions of public authorities, the police, probation officers and magistrates. In its practical administration, the system of 'juvenile justice' under the Children and Young Persons Ordinance 1939 which takes place in the adult magistrates' courts and mixes young offenders with adult criminals exhibits the same lack of respect for the importance and dignity of the individual child, (Samaraweera, 1997).

The First Country Report, (1994), records 141 institutions which provide alternative care to child victims, child offenders, orphaned, abandoned and destitute children. A majority of these are managed by religious and voluntary organisations under the supervision of the Department of Probation and Child Care whilst statutory homes are administered directly by the Department. The statutory homes were originally established for separate categories of children for distinct purposes but these distinctions have been ignored by judicial practice and placements carried out without any psycho-social assessment of the child, (Samaraweera, 1997). Thus, victims are mixed with offenders and influenced by them. The majority of the homes are characterized by a lack of trained and committed staff, poor supervision, poor facilities and a complete neglect of both the physical and emotional needs of children. Sexual and other forms of abuse have also been reported from certain homes, (Second Country Report 1998:88). These institutions perpetuate the cycles of abuse and neglect suffered by children.

On the whole therefore, a lack of social cohesion, awareness, social organization, efficiency and social empathy were the distinguishing features of Sri Lankan society when child abuse was recognized as a problem in the early 1990s. The piecemeal solutions proffered in response to the problem bear the same imprint.

It is not surprising therefore that the travails of children affected by war – on both sides of the ethnic divide received little prominence till the late 1990s. The most 'scandalous' form of abuse recognised in the early 1990s was a sub culture in coastal areas, which supplied young boys to sex tourists. Limited research suggested however that incest could be a bigger problem and that more boys than girls appeared to be affected. Girls, especially after puberty are generally subject to greater protection than boys, (De Silva 2000). Physical abuse by way of corporal punishment both in schools and at home and child labour in the informal sector, particularly in domestic service were other areas of concern.

Propelled by a strong women's lobby and a fresh reformist government after seventeen years a 'consensus' was built around criminalizing child abuse and the Penal Code (Amendment) Act No.22 of 1995 was passed by a unanimous Parliament. New sexual offences were created to protect both women and children and there were harsh sentences to deter would be sex offenders.

The resort to the criminal process to deal with deeply rooted social and family problems of a psycho-social nature is perhaps explicable in view of the resources and expertise possessed at that time. However, apart from the establishment of Women & Children's Desks at police stations across the country, there was little investment by way of training personnel in child friendly procedures, (at all levels), and enhancing skills to deal with complaints which increased dramatically. Hence, there was a failure to make efficient use of the resources available and a resultant failure to take into account the full impact of the criminal process on vulnerable children and their families. The child victim was important to this process as a witness for the prosecution, period. Many of the cases related to sexual abuse by fathers and also consensual sex with other teenagers. (The age of consent was fixed at 16 for both sexes by the Act of 1995). Both the underlying causes of intra-family abuse and the continuing welfare needs of these children remained unrecognised and un-addressed.

Low income families form the overwhelming majority affected by these cases. Although not intended as such, this was the classic Poor Law response where the poor are punished for deviance with little understanding of their socio-economic circumstances or psycho-social environment. Abused children were re-victimised not just by an insensitive exposure to a highly charged court environment but also by misguided institutionalisation. Two child deaths were recorded in 2000. A 15 year old girl died in a statutory home after matrons failed to provide prompt and appropriate medical care and a 16 year old girl committed suicide six months after she was reported as having suicidal tendencies. Her psychological needs were neglected by the probation officer concerned. Both deaths were reported by the press but psychological alienation was to play its part here as well. There were no public inquiries or seismic disruptions, either within the legal profession or wider society.

One progressive step however came in 1998 with the establishment of the National Child Protection Authority (NCPA) which functions as a statutory body responsible for policy formulation, monitoring and co-ordination of action against all forms of child abuse. Although it functions directly under the President, the NCPA is in a nascent stage and needs a greater commitment from the government by way of human resources and infrastructure for institutional strengthening. The Authority has been active in five main areas to date. These are; awareness creation, training, recommendations for legal reform, monitoring and co-ordination of activities of ministries and departments, and protection and rehabilitation of victims, (Gunaratne 2001). A considerable part of the awareness, training, legal reform and monitoring of the NCPA relates to penal laws and procedures and individual criminal cases.

LESSONS TO BE LEARNED AND THE WAY FORWARD

The UK child welfare system remains supported by a set of strong inter-connected foundations which transcend the cultural boundaries between the two countries in their relevance to child welfare. We examine these now.

Political will

The system which came into being in 1948 was undoubtedly a reflection of the spirit of the time and one which found its due place within the common aspirations of a resurgent society. However social contexts do not just happen to people. People in fact create them and they are *jointly responsible* for the social forces they produce through their individual responses. It is this assumption of responsibility for self and for others and a mature realization of the mutuality of social risk that promotes a sense of social solidarity, (Donzelot 1988). Forty-one years ahead of the CRC, the most remarkable aspect of the Children Act 1948 was the political will of the government to assume **full responsibility** for all children separated from their parents. What Lady Allen and other champions of deprived children forcefully expressed, became a national campaign backed by ordinary people. Despite all the lip service paid to the CRC today, disenfranchised children will not get an automatic place in any governmental agenda. Civil society must communicate with decision makers and it must do so with clarity and force. *Children* are the largest minority in society and the one that is subject to most discrimination, (Leach 1994:172). The British identified with their deprived children during the

war thanks to their unique evacuation experience. Neither decision makers nor lay persons in Sri Lanka will make room in their hearts for 'other people's children' overnight. This underscores the moral and social duty which is vested in professionals, in particular, to initiate an informed public debate in a committed but thoughtful manner.

Social vision

Unlike Britain in 1948, Sri Lanka today is a nation in search of an identity. More than at any other time since independence, the balance of power appears to rest on ethnically divided lines between the majority Sinhalese and minority Tamils and Muslims. Curiously enough **social citizenship**, inclusion and belonging remain live issues *within* each of these communities, so that whatever form new political structures take, the need for an inclusionary social vision will remain, in a fundamental sense for both the privileged and deprived, the rulers and ruled. Social citizenship means that people must *live* their rights and be respected by society and its institutions for their inherent dignity. It is **not** the mere availability of rights in a procedural sense.

Post-war social work in the UK found a secure base in the express linkage between capitalism and welfare and the family was envisaged to play a central role in the economic and social re-construction of society, (Parton 1999:5). This went beyond a convenient marriage to represent an **ethical** commitment to protect and assist the weak and vulnerable and to provide services which would meet their special needs. Thus social security, unemployment and housing benefits of parents also helped their children. As Leach, (1994:172), says even the most loving of parents can only do what society arranges, allows and supports. This is also the ethical and holistic approach of the CRC. The welfare state is no more but social needs have become even more pronounced and received a new emphasis today, (Copenhagen Declaration and Programme of Action for Social Development 2000). It is therefore essential that child welfare in Sri Lanka be located within a broader commitment to social development. In particular, both the health and education services would have to be reorganised and equipped with trained personnel to co-operate effectively with social workers at community level and respond appropriately to cases of children in need.

Social development however can only be *facilitated* and not imposed by formal measures, (Veerman & Levine 2000). It is an *evolutionary* process which must be nurtured and carried forward. Child welfare in Sri Lanka is a process which seeks to achieve *social change* and it must necessarily follow the same pattern. It is a misplaced faith in formal measures and a failure to address the apathy and inefficiency on the ground that has held back and retarded the process of child welfare in Sri Lanka. Holman, (1996), demonstrated how municipal initiatives and action by professionals and volunteers at grass roots level provided a foundation for the successful implementation of the Children Act 1948. This is a pointer to the role of local authorities, health professionals and community actors themselves. The preventive work of NGO's which has been going on for over a decade needs to be recognised and strengthened. Bilton, (1998:202), states that child and family social work should be able to demonstrate that it has a contribution to make to social development, by helping excluded families and individuals to find affirmation through participation in community life and economic regeneration.

The community approach has positive implications for resource generation as well. The British experience both before and during the war demonstrates how resources can be unlocked when there is a groundswell of support for a cause. Hammarberg, (1995), states that "resources" must be broadly defined to include human, technological, cultural and organisational capabilities as well as conventional economic resources. He also includes traditions, culture, political maturity and values such as tolerance, mutual respect and a spirit of solidarity within this definition and notes their dynamic aspect. The appropriate linkage today for an agenda of social development is between human rights and development which are now seen to have a common goal. 'One of the main strategic elements of both a rights and a development approach to working for children in developing countries is a systematic concern for resource mobilisation', (Hammarberg 1995: v-xi).

Criminal prosecutions

The concept of *societal* abuse impugns the fairness of the rationale of individual responsibility in criminal law. Gil, (1979:4), defines this as 'any act of commission or omission by individuals, institutions or society as a whole, and any conditions resulting ..... which deprive children of equal rights and liberties and/or interfere with their optimal development constitute by definition, abusive or neglectful acts or conditions.' A commitment to social development obliges the government and all public and private sector institutions to be aware of the impact of their policies and actions which either impact directly on children or are mediated through their treatment of parents. This is the broadest approach to child welfare which recognises 'the potential impact of chronic adversity on parental morale and motivation in bringing up children' (Waterhouse 1997:152). This is not to deny individual responsibility but to place it within context and perhaps to assert that it does not warrant a criminal sanction in all cases.. The criminal law does not recognise societal abuse and its application in all these instances withour qualification, may resemble the action of a bull goring a man who falls down from a tree.

The question of harm to the child must also be linked to the development of the child and meeting his/her needs, as recognised in the Children Act 1989, both of which happen over a period of time. According to child abuse research it is now recognised that 'the essential element in child abuse is not the intention to destroy a child but rather the inability of a parent to nurture his offspring', (Newberger, 1973). Secondly, despite the early attention to observable physical effects, it is the *psychological consequences* that are the unifying factor in all types of maltreatment, (Garbarino & Vondra 1987). Several researchers, (Giaretto 1976, Herman & Hirschmann 1977), have noted that the occurrence of sexual abuse suggests *general family dysfunction* and they contend that it is this dysfunction rather than the abuse *per se* that accounts for psychological outcomes for the child. According to Erickson *et al*, (1989), this could be said in regard to other types of maltreatment as well. The criminal law cannot and is not meant to deal with family problems in this holistic sense.

The indiscriminate approach to prosecutions being followed in Sri Lanka today cannot therefore be reconciled with the best interests of the child. It is significant that criminal proceedings as such, do not figure in Article 19 of the CRC at all. The response referred to therein includes,

(a) family support measures, and other forms of prevention; and
(b) a mechanism for child protection ; and
procedures *as appropriate* for judicial involvement (emphasis added).

The words "as appropriate" mean that judicial involvement must only be sought where it is necessary in the best interests of that particular child who is to be the subject of the proceedings. Article 3.1 refers to the 'best interests of the child' and not children in general. Thus, in order to ensure that the criminal process does not overlook the best interests of the child victim, the scope for prosecutions ought to be narrowly defined both in terms of the evidence justifying a prosecution and also the need to prevent further psycho-social harm to the child. The limitation of prosecutions would not affect the majority of cases of intra-family abuse widely perceived as not being reported at all. In those cases social work intervention offer the only hope of psycho-social well-being for the child and other family members concerned. Irrespective of the question of prosecution however, Article 19 requires measures by way of family support or protection which meet the needs of the child. The Dartington Research Unit in the UK has confirmed the wasteful and inefficient nature of child abuse investigations in failing to meet the real needs of children and families.

It is interesting however to see that the crisis responses in both countries to public pressure to "do something" about child abuse shared the same narrow outlook. Both public inquiries in the UK and the punitive response of Sri Lanka in 1995 were based on 'taken for granted assumptions on child abuse; little inquiry into processes of socialisation which led adults to harm children; and a critical focus on individual action which did not challenge the basic social order.' This ensured that blame was laid at the feet of individuals and political responsibility evaded, (Hallett 1989:140). Having said that, it must be pointed out that a wide gulf separates the respective responses in UK and Sri Lanka, both in terms of professionalism and administrative efficiency.

Addressing the crisis of awareness and developing human resources

From the 1920s onwards, social work with children and families in UK has been associated with a keen sensitivity to the psycho-social development of children and the methodology of child care blessed by the input of giants in this field like Bowlby and the Winnicotts. The professionalisation of social work in the 40s and the involvement of universities ensured by and large, that intervention in family life was carried out with requisite competence. From the mid 1980s, theory and practice has been enriched by a comprehensive research programme which promotes 'evidence-based practice' with children and families.

In Sri Lanka however, the absence of a theoretical framework for understanding child abuse has held back progress on virtually all fronts. For example, the attachment theory on personality development, (Howe *et al* 1999), has established a strong connection between the quality of parent-child relationships and the different psycho-social pathways taken by young children including those who end up as victims of abuse or exploitation in later life. This provides a clear theoretical basis for early intervention and family support by way of prevention. Secondly, both the gathering of data and their interpretation needs to be informed by a relevant theory of child development but so far even the

meagre research carried out has failed to do so. Thirdly, the participation rights of children under the CRC cannot be properly implemented unless the expressed wishes of individual children are understood against the background of their psycho-social makeup.

The systematic training of personnel who deal with children and take decisions affecting them, is an essential process which commenced in the UK even before the Children Act 1948 came into operation and has continued since then, backed up by a strong culture of monitoring and evaluation. If social development and social work is to be given the high priority it deserves in Sri Lanka, both schools and universities would need to modernise and restructure their curricula by focusing on current social needs such as the needs of children, families and deprived communities. A school of social work, a Training Council, inter-disciplinary studies and joint training between professionals from the health, education and social work sectors are all clear imperatives.

Alternative care, prevention and children's tribunals

Apart from those children and families in need living in their homes in the classification set out above, (category-4), most of the other children are bound to need some form of alternative care. Bringing institutional care up to the standards required by the CRC is a major challenge facing the government today. The approach adopted by the Curtis Committee in 1946 in regard to administrative reorganisation and the principles of public care it specified, would remain relevant in the present context for Sri Lanka. Thus the creation of a new social work service which would function within local authorities whilst being subordinate to a central government authority would appear to be an imperative. There are several sources of recruitment for this new service, ie; probation officers, woman sub-inspectors and other police officers with experience or skills in investigating child abuse cases and existing social workers in the NGO sector in addition to sociology graduates from universities. Additionally, both fostering and adoption services need to be linked formally to the child care system. Fostering is done as a matter of course by close relations in the absence of parents and it was very much in evidence in early studies on families of migrant's mothers. Adoption is presently governed by a separate statute.

Parker, (1980), has pointed out that within a needs-based model of social welfare, prevention is a relevant aim at every level of intervention. The basic object remains preventing matters getting worse and thereby avoiding a more intrusive form of intervention later, (Hardiker 1998). It will be seen that 'child protection' is also a form of prevention based on the needs of the child. The location of child protection within a 'needs model' is one of the most positive recent developments in the UK, (Department of Health 2000). Consequently, 'risk assessment' has been supplanted by the needs assessment within which the need for protection will be one amongst a bundle of needs. The Dartington Research Unit, (1995:54), has stated that whilst swift child rescue and emergency powers will be required in certain extreme cases in a majority the needs of the child and family would be more important than the abuse. A non-stigmatising and honest approach promotes voluntary co-operation which is a necessary condition for effective social work, (Jordan 1997:17). To be relevant and useful, the social worker must work with and not against families. Thoburn's (2002) reference to

accurate empathy (as contrasted with foolish sympathy) elaborates the personal element referred to by the Curtis Committee and it also reiterates the centrality of the individual social worker.

His or her skill, ability and commitment would remain a most important factor in achieving a good outcome for the relevant child. All preventive and protection work would be carried out by the new social work service within a supportive legal framework that provides them with a broad discretion, subject however to the direction and supervision of an autonomous and inquisitorial children's tribunal. It would be linked to the legal system however via the writ jurisdiction of the appellate courts. These tribunals would assume full and continuing responsibility for the welfare of children with the power to hold multi-disciplinary case conferences and to summon any officer of state thereto. The proceedings in this court would be both informal and free of the constraints of the law of evidence.

It is envisaged that this environment which unifies both powers and responsibilities of social work in a co-operative and supportive atmosphere would sustain a more conducive working environment for social workers than that which obtains for social workers in UK today, (Cooper *et al* 1995). The key attributes of a children's tribunal would be sound knowledge of child development, social work theory and practice, child law and relevant legal and administrative procedures. He would in effect function as a team leader who channels the multi-disciplinary expertise at his disposal into decisions affecting the child. A specialised branch of this tribunal would be entrusted with the jurisdiction of the juvenile court.

Conclusion

The re-discovery of abuse as an indication of *need* in the UK decades after the CYPA of 1963 is a significant breakthrough which provides a strong foundation for maintaining family support measures in the teeth of concerns about abuse.

Sri Lanka would therefore need to jettison its punitive approach towards child welfare in favour of wholly therapeutic and pragmatic measures, reserving criminal intervention in respect of a few select cases. However, real progress would essentially involve long term planning.

The following governmental measures are consequently proposed as the bases of a new child welfare policy.

1. Commitment to social development and recognition of the family as the *vital* basic unit of a developing society.
2. Coordinating and strengthening all community based family support work of NGO's and extension of support measures to children and families affected by criminal and other court proceedings; working towards an effective island-wide network of child ombudsmen to monitor child welfare efforts and provide administrative relief to children.
3. Institutional strengthening of NCPA and universities for the preparation of a database of all children and families in need;

4. Repeal of Vagrants Ordinance and similar enactments; Enactment of legislation setting out procedures for family support and child protection for both delinquent and deprived children; time-bound training programmes for children's tribunals, social workers and residential care staff including joint training with health and education personnel; legislation to take effect in selected areas by way of pilot projects as and when batches complete training.
5. Modernisation of social science curricula in schools and universities.
6. Harmonisation of laws and practices in conformity with the CRC.

Author's Note:

This essay was prepared as part of the coursework for the LLM in Family Justice Studies at the University of East Anglia in the summer of 2002. It is thus the academic viewpoint of a prosecutor who had a limited involvement with child protection practice in Sri Lanka. Since then I have had the opportunity of a closer involvement with moves to establish a child protection mechanism under the NCPA Act through the District Child Protection Committees (DCPCC) as Project Officer with UNICEF. As a result of this experience the initial recommendation to set up Children's Tribunals would stand revised in favour of a clear preference for DCPCC as the principal vehicle for unifying and coordinating all prevention and protection initiatives at district level.

Practitioners have less time to write but experience has confirmed the belief that theory and practice must combine more in Sri Lanka if we are to make a difference for our children. In a sense this article is an appeal to all academics having anything to do with either economic or social development to engage more directly with and support the current efforts being made in family support and child protection in the country.

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The United Kingdom Children Acts of 1948 and 1989: Similarities, Differences, Continuities

Rupert Hughes[♣]

The Scope of the Legislation

In the 50th anniversary year of the 1948 Children Act, questions have inevitably been asked about the achievements of the Act and its relationship with more recent developments in child care policy. For those of us who reviewed the child care law in 1984 and subsequently worked on the Children Act 1989, there was more than passing interest in the themes and issues which had shaped legislation in the past as well as a desire to look forward to improving services to children and their families.

The main feature of the 1948 Act was the establishment of the child care service in the Children's Departments of local authorities. This was a major innovation surely comparable in its significance to its larger cousins of the time, the newly established health and education services. However, with a few notable exceptions it is usually belittled or totally ignored in histories of social policy or of the welfare state. I am not pointing any fingers here but I think that a short browse along the social policy shelves would confirm this.

Cretney (1997) makes a similar point when he notes the 1948 Act's poor record in histories of family law. Yet for the state to take on responsibility for children who were vulnerable, neglected or in other ways receiving inadequate parenting was a remarkable development in its time. A key provision was that a child received into care should be returned to the parent if he wishes (the local authority should try to secure this) although provision was continued for a 'Parental Rights Resolution' because the parent suffered from 'permanent disability or such habits or mode of life as to be unfit' (section 1-3). We should note also the duty of parents to maintain contact (section 10).

The child care system set up by the legislation and its successors can be seen to fall into three main parts (there are other local authority functions in relation to the private and voluntary sector). The first is the services for children who need substitute parenting and care away from home. This includes adoption, fostering and residential care. The second is the services to support the family for children remaining at home. The third part (superimposed on these rather than in parallel) is an assessment service in relation to child protection/maltreatment, which needs to be interdisciplinary, including health professionals and the police, and which in suitable cases plans for services for the child either at home or in substitute care or a

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combination of these, Of these only the first was focused on by the 1948 team which worked on the policy and the law. The other two came subsequently. Family support as we now tend to call it developed out of 15 years' experience of Children's Departments. It was set out in legislation first in the 1963 Act and built on in 1989. The child protection system was in 1948 the poor relation legislatively (apart from unruly children compulsory powers could not be taken over abused or neglected children unless there was a conviction). The need for interdisciplinary action in cases of suspected neglect was recognized in circulars from 1951 onwards, but arrangements remained administrative with the Area Review Committees (ARCs) of the 1970s and the Area Child Protection Committees (ACPCs) of the 1980s. These circulars have nevertheless the authority of the Secretary of State, derived (I think it is the earliest reference) from section 42 of the 1948 Act.

Getting the right balance between these three elements is nowadays a major issue for the child care service and this is new. But much of what we seek to achieve for substitute care as, for instance, return to the parents if in the interests of the child, maintenance of contact, regulation of fostering (boarding out) and residential care, leaving care plans are dealt with in the 1948 Act and have broadly stood the test of time.

Adoption was not included in 1948 nor in 1989 (except marginally) although for different reasons. It was ruled out in 1948 as not being within the scope of the Bill even though the Curtis Committee was in favour of it, whereas in 1989, although some changes were made, a full review of the provisions had not been completed at the time. Legislative time for adoption is still awaited for England and Wales while Scottish amendments were made in 1995. (The 1948 Act did of course cover Scotland and it was only subsequently that child care law diverged north of Gretna Green.) What difference the inclusion of adoption would have made in either case is difficult to judge. Certainly the differences in law and process do not serve to encourage the thinking that adoption is 'the top of the range' for those seeking a new placement with permanence for those children whose parents cannot care for them adequately rather than a qualitatively different type of status.

Another area of legislation covered differently in 1948 and 1989 was the provision through the courts for juvenile crime. This was in a separate stream of legislation and has remained so; it is the relationship between these streams which is at issue. In 1948 the local authority became the person to act as Fit Person under the 1933 Act. In 1989 the aim was to remove the care order as an offence disposal which it had become under the 1969 Act (largely because that Act has never been fully implemented). Separation of care and crime disposals docs not of course mean that when a welfare disposal is indicated after an offence it cannot be achieved, provided that the grounds for care are wide enough to cover the situation. The child should be diverted to care instead of reaching the criminal court.

The issue of offending children remains hot. It is ironic that the Home Office in 1948 defended their responsibility for child care on the grounds that transfer to the Ministry of Health would be 'fatal to recent progress' made by the Home Office with their then welfarist views. Since 1989 there is the further separation of the courts handling juvenile care and crime. There is a downside to this but it is far outweighed by the value of combining care and private family disputes such as divorce and domestic violence in the new court jurisdiction. Parenting

questions (which is surely what these are on the welfarist hypothesis) are best dealt with in a family environment. The Scottish solution of this came earlier than the English in 1968 and was perhaps fully implemented for that reason. It has different advantages and disadvantages. The relationship there between 'care' and the family court jurisdiction including adoption is more distant, but the hearings system produces a tribunal which is more welfarist in approach. Opinions will continue to differ on the English and Scottish options.

To sum up on the scope of the 1948 Act, I would say that as well as providing for a replacement of the Poor Law provisions, it made the major leap of assuming direct state responsibility for safeguarding children at home where previously concern had been largely about the regulation of private and voluntary arrangements. So it paved the way for our present child care system.

The Legislative Process

With regard to process, the similarities between 1948 and 1989 are striking. In each case for some years a committee of officials led by the Ministry of Health (in 1989 in combination with the Law Commission) prepared proposals to meet an identified need for legislation, but legislative action was only given impetus when there was media concern about a scandal, viz; O'Neill and Cleveland. (In 1948, the inhibiting factor may have been interdepartmental rivalry; in 1989 it was more the general overload of the legislative programme and lack of interest.) Each time the scandal had some relevance but only partially affected the form of the legislation already well under preparation.

When the legislation did come forward to Parliament in each case, there was considerable agreement and little party political opposition. This consensus extended outside Parliament. The 1948 Act might not have been enacted or at least not in that form without the favourable climate of opinion around at that time. This rings true for 1989 too. There is, I think, a reluctance of government as a whole, although not usually of sponsoring ministers, to legislate in respect of a social problem if this is not clearly needed to implement a stated manifesto or government priority. Some subjects, such as criminal justice and more recently education, seem to be able to obtain an almost annual place in the legislative programme but others are restricted in various ways and need a special impetus. Without that, they struggle if there is the least hint of parliamentary controversy or of serious financial implications.

Having obtained an all-party consensus the 1989 bill benefited because ministers relaxed to some extent the usual conventions which frown on contact between officials and politicians and because of the wide range of constructive comment which came from all interested quarters within and outwith Parliament.

Is there a difference in that the 1989 Act is more legalistic? Cretney, (1997), for example refers to a 'massive legalization and judicialization of the child care process' and Parton, (1991), in various places has criticized excessive legalism. The 1948 Act did not of course set out to reform the court system as was the case in 1989. It provided for the local authority to take over responsibility for the child against the wishes of parents by resolution of the authority, a process ended in 1989 when it was transferred to the courts as being more just and fair to all

parties. Already prior to 1989 the courts were taking more responsibility either through wardship or 1969 Care Orders and I doubt whether the change has been hugely significant in practice. It is, however, of more importance in principle. In England and Wales these cases were integrated with 'other reason' care orders under the general heading of significant harm and the concept of continuing responsibility of the parents. The Scottish solution in 1995 was different in that it introduced Parental Responsibility Orders under section 86. It remains to be seen how important this difference will turn out to be.

The 1989 Act includes provisions designed to bring involvement of the court only when necessary for the interests of the child. Court orders are, in the main, needed when it is a question of the change of status of the child (or parental relationships in the case of private law or regulation of disputed contact in public law cases) rather than the detail of his or her care which becomes the responsibility of the local authority as additional and 'superior' parents. This division of functions between the courts and local authorities is perhaps an uneasy one. The courts understandably are interested in the care which a child will receive under the order they have made. The authority has the professional staff and the responsibility of providing within its resources appropriately for all its clients whether or not they have passed through the court process.

During the intervening decades the rights of parents and of children became more widely acknowledged. It was recognized that the responsibility assumed by the state in 1948 for vulnerable children had to be tempered by ensuring that compulsory intervention was under due process of law. Whether we have reached the right balance between the courts and local authorities on the one hand and parents and children on the other time will tell or, to put it another way, our successors may view the balances differently. However that may be, I find it entirely appropriate that we should mark the achievements of 1948 fifty years later.

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