

CONTRASTING NATIONAL JURISDICTIONAL AND WELFARE RESPONSES TO VIOLENCE TO CHILDREN



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Like almost all English-speaking jurisdictions (Cameron et al. 2001), New Zealand continues to experience:

- dramatic increases in reported child abuse (Department of Child, Youth and Family Services 2004),
- high levels of stress and job turnover among front-line workers, some loss of public confidence in the ability of public services to adequately address the safety needs of children,
- and a primary legal and resource focus on detection that constrains its welfare ability to deliver ongoing services to the families where violence has occurred (Ministerial Review Team 1992, Brown 2000, Ministry of Social Development, Department of Child et al. 2003, Connolly 2004).



By contrast the *family services* focus of many European countries, though facing the same problems of child maltreatment, do not report a similar set of difficulties (Cooper et al. 1995, Hetherington et al. 1998, Cameron et al. 2001, Cameron and Freymond 2003).

This is not to suggest that the European countries have developed some utopian formula to the vexed problems of violence, but that their predominant focus on “families” appears to have prevented a number of the persistent problems experienced by Anglo-American countries whose primary focus is the investigation and assessment of risk to children



Early comparative in England and France (Baistow et al. 1996, Cooper 1994, Cooper et al. 1995, Hetherington 1996).

The findings suggested that:

- French social workers had not suffered the crisis of confidence of their English counterparts.
- Public perceptions of them were generally good and the media tended not to vilify them when abuse cases came to their attention.
- Client families, social workers and the judiciary displayed mutual respect and shared perceptions.
- The French child protection workers had consistently developed trusting professional relationships with families where abuse had occurred. Furthermore, they viewed those relationships as the medium of change for the families.



The English social workers, by contrast:

- were primarily (often reluctantly) focused on the guilt or innocence of parents and the work of collecting legally admissible evidence of abuse.
- The modern legalistic orientation of child protection work was seen to have disrupted the earlier consensus that existed between client families, the social workers and the judiciary.
- The social worker took on the role of legal assistant for the child, usually (by implication) against at least one parent, leading to a conflictual relationship with the family - almost the opposite of the French approach.

The structural relationship between social work and the law in each country ... plays a central role in encouraging and discouraging “consensus”, which in turn shapes the day to day experiences of social workers, parents and children involved with the system, tending in France to encourage co-operation and in England conflict. (Cooper 1994:2-3)



These differences were framed by the politico-legal culture in the two countries.

The English system had become conflictual at root, and the work of a social worker as social worker was frequently at odds with the social worker's legal role. Tensions existed between the various parties, their claims on "rights" and their legal representatives, and between the differing professional interest groups.

The French social workers, in contrast, were able to prioritise the family's needs and their working relationship with the family. The legal aspects of child protection cases were largely addressed by the *Juges des Enfants* (Children's Judges), while the social workers could focus on principles such as cohesion, consensus and collectivism in their work

There appeared to be much more consensus in France, than in England, between families and practitioners as to the general nature of the problem and possible solutions and little criticism on the part of French parents concerning strategies that professionals used or the type of assistance available to them. (Baistow et al. 1996)



The primary objective of child protection work in France is to keep children in their family of origin, even in some situations where there was a risk of maltreatment. The families are not left alone to deal with the situation, however.

If a parent, or parents, did not fulfil their role adequately, the aim is to help them become parents who learn to provide a safe environment for their children. This may involve therapeutic work, parental education and/or community support.

The resources of the system provide a major investment for this process.

The concept of parents being enabled to fulfil their role as parents who protect their children is embodied within the French Civil Code (Grevot 1994).



The primary objective of child protection work in England is to protect the child and to safeguard their rights in an immediate sense, regardless of the impact this may have on their relationship with their parents.

The focus is on identifying abuse and/or the risk of abuse, and the social workers may enter into conflict with families in order to ensure the right of the child to protection from harm.

Although social workers often referred to a “working partnership” with families, the norm involved contested legal proceedings.



The Children's Judge epitomised the different approach to law in the two jurisdictions.

The Children's Judge's role was to gain an appreciation of family circumstances and difficulties rather than accord guilt or blame.

They endeavoured to help the child and enable changes that would equip parents to meet their obligations to their children.

They met in the Judge's office in an informal but respectful atmosphere, usually with the social worker in attendance and only in isolated cases with a lawyer.



These judges had their own teams of social workers separate from the social work agencies.

The Children's Judges could make legal orders and the child protection social workers, both the Judge's and those in separate social work agencies, were accountable to them.

Social workers could request an "audience" with the Children's Judge if they were concerned about the safety of a child, without having to produce legally admissible evidence.

Thus, in child protection work in France, the Children's Judge and the social workers worked together as a combined justice and welfare team.

The legal processes were essentially inquisitorial, in sharp contrast to the adversarial approach across the Channel.



Child Protection in Europe

- **Subsidiarity** an obligation on the state to develop social capital through strong social networks and support for local and regional institutions.
- **Welfare pluralism** is the substantial involvement of community groups and other non-government organisations in the delivery of services.
- **Solidarity and the family** Social solidarity recognised the family as the appropriate object of social policy, which ensured its support and wellbeing.
- **Republicanism** referred to a mutual set of obligations between the state and families.
- **Intermediate institutions** referring to a devolved institution that sits between the family and the state.



- **Rights and social rights** in relation to society and government were ensured for individuals by the concepts of solidarity and subsidiarity, a more collective notion of family welfare and rights as opposed to an individual-rights approach.
- **Rights and family support.** The earlier French and English research found that French parents, though frequently unclear about their rights, often successfully negotiated for forms of help other than those originally offered by the social worker.
- **The citizen and the state** referred to a Continental view of the state as reflecting the will of the people, giving political expression to the best wishes of human beings, as opposed to being an external force that regulated human activity.
- **Ideologies of training** referred to the organising principles of social work practice and training - a holistic social pedagogy concerning the individual as self and the individual as a social being.



Every country apart from England had professionally trained specialist judges for all work with children.

Likewise, all the countries possessed an inquisitorial legal system, apart from England, which was fundamentally adversarial.

England was also the only country that did not allow informal dialogue between the social workers and the judge, and in most countries, even the children and parents were able to speak informally with the judge.

In all six Continental countries, the judge stayed with the family case throughout enabling development of an ongoing relationship with the family and regular review of progress. In Scotland, this occurred sometimes, but rarely in England.



Separate legal representation for parents and their children was necessary in the adversarial English legal system, but not used in any of the other countries.

England was the only country that separated its child welfare and juvenile justice systems, indicating a different philosophy of child development and responsibility.

In all countries apart from England, judges could intervene on the basis of a child's welfare needs alone.

Only in England was it necessary to have evidence of significant harm at the parents' hands in order to take legal action (apart from short-term emergency legal action)



Child Protection in North America

They described the familiar notion of the privacy of the family and the state's right to intervene only when parents have failed to meet some minimal standards of care and protection of their children.

Even then, social workers have had to gather sufficient evidence of maltreatment and prove such allegations in court before the family's right to privacy could be overridden.

Front-line social workers spent much time collecting this evidence for the formal legal proceedings. If the evidence fell below the minimum standard, their case was closed and the family usually received no further help.

As with the English system, the North American child protection services were not able to be accessed directly by social workers or the families themselves.



This ruled out effective preventive services with families who had not reached the minimum care threshold so far, but who might nevertheless be at risk.

Child abuse reports in these countries continued to increase substantially and, because every report required a formal investigation, the child protection services had become overwhelmed with the procedures, paper work and time required, such that little space had been left to provide helpful assistance to the families.

This had been followed by complaints from workers of stressful job pressures, high levels of frustration and a consequent high staff turnover.

As with the English system, the front-line workers experienced conflict between their legal and their welfare roles, which they referred to as “a perceived imbalance in the functions of care and control” (Cameron et al. 2001:26).



Family Group Conferences

The introduction of family group conferencing in 1989 through the Children, Young Persons and Their Families Act incorporated into the heart of child protection and youth justice work in New Zealand a process akin to the family services approach.

Unfortunately, the downsizing of public investment in the 1990s stifled much of its early life, but it has survived and it has been successful enough to take root in North America and Europe.

The family group conference places New Zealand in a unique position to draw the best and extinguish the worst from both the child protection and the family services models, while adding a much-needed indigenous element authentically drawn from Aotearoa New Zealand.



The first two principles in the Act stated that:

- a) wherever possible, a child's or young person's family, whanau, hapu, iwi, and family group should participate in the making of decisions affecting that child or young person, and accordingly that, wherever possible, regard should be had to the views of that family, whanau, hapu, iwi, and family group.
- b) wherever possible, the relationship between a child or young person and his or her family, whanau, hapu, iwi and family group should be maintained and strengthened.
(section 6, the Act)

Family group conferences, formally introduced by the Act, were designed to empower families to resolve the majority of their family welfare and justice problems through their extended family members.

The traditional whanau hui (Maori extended family meeting) was the model for the family group conference. Initially, these worked very successfully when they were properly resourced and competently managed.



The family group conference contains elements that are common to the continental family services approach. These include:

1. the primacy of children remaining within their families and living within their kinship groups wherever it is possible. Its emphasis on the extended family offers more options and flexibility in terms of safety than the European model.
2. the FGC is an intermediate structure that can be called early in child protection cases without having to amass legally admissible evidence. It reflects the concepts of subsidiarity, welfare plurality and solidarity that are lacking in the Anglo-American model but central to the Continental European approach.
3. it encourages a consensual process rather than a conflictual one.
4. it enables problem solving and preventive strategies, agreed to by the family, to be planned and acted on early in the process.



Anglo-American approaches to child protection are being seriously questioned today in the light of the problems in those systems that are largely avoided by the Continental European family services approach

There is much to be commended in the cooperative, consensual approach of working with families to help them change their behaviour when it is unsafe, and preserve the family unit wherever that is possible.

By contrast, the conflictual legal approach often antagonises parents and disengages them from their children.

The resources in this latter approach are placed primarily into the legal arena, rather than into welfare and rehabilitation



In the family services approach, the judicial and welfare roles work flexibly in partnership, allowing early interventions within a more preventive and holistic framework.

The legal process is essentially inquisitorial, rather than adversarial, with a view to understanding causes and influences and how to change behaviour.

The adversarial approach discourages early intervention and focuses more on legal assessment of guilt or innocence, often at the expense of family relationships. Children can become permanently separated from their parents, or at later stage returned to their parents who very often have not received the welfare and rehabilitative support that would help them become better and safer parents.



Changes Required if the Family services approach were Adopted

1. The legal framework would require a different orientation. It would need to adopt a consistent, inquisitorial approach to the problems before it. Legal representation for each party would be replaced with social workers or other helping professionals. The focus would move to a “strength-based” approach of rehabilitating parents who were deemed to be unsafe.
2. The Continental European principles of welfare pluralism and employing strongly devolved social networks, the substantial involvement of community groups and non-government organisations, and use of intermediary institutions that sit between the family and the state, would encourage a broad range of differential responses. It would call for a conscious effort to build trust and predictability with key stakeholders in regions throughout the country.



3. It follows that social workers, psychologists, educationalists and other helping professionals will need to be trained for holistic, preventive and rehabilitative strength-based work as their primary mode.
4. The greater bulk of child protection resources would be diverted from the “front end” of the system, which is focused on detection and the gathering of legally admissible evidence, to the “back end”, which is primarily focused on rehabilitation. This will not remove the need for more legal processes in certain situations, but it will enable early preventive work, help for as many family members as require it and a vehicle for the learning of safer ways to parent children

