The Protection of Children

State Intervention and Family Life

ROBERT DINGWALL,
JOHN EEKELAAR & TOPSY MURRAY

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Robert Dingwall
John Eekelaar
Topsy Murray

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Foreword

Twenty years ago, when the first scholarly articles on child abuse were being published, and when the very topic of child abuse was being discovered by physicians, lawyers, and the lay public, the abuse of children was thought to be both rare and caused by mental defects in the perpetrators. Two decades of research have demonstrated that both views were misconceptions. Child abuse is not rare, and mental illness and character disorders explain no more than 10 per cent of the instances of abuse.

In the course of scientifically establishing the extent of abuse, an important problem arose, which, to the best of my knowledge, was not identified or addressed by anyone until this volume was prepared by Robert Dingwall, John Eekelaar, and Topsy Murray. The problem is the discrepancy between the number of officially validated instances of child maltreatment and incidence estimates obtained through social surveys. In the United States, the largest number of cases of child maltreatment officially tabulated is not much more than 600,000 cases annually. Yet, survey research (e.g. Straus, Gelles and Steinmetz, 1980) yields an incidence estimate of more than 1.4 million instances of child abuse annually – and this estimate is confined only to instances of physical abuse.

Official reports of child maltreatment significantly and consistently underestimate the actual extent of abuse and neglect of children. As Dingwall, Eekelaar, and Murray correctly point out in chapter 4 of this book, a major fact to be explained is the *rarity of allegations of maltreatment*. This rarity is examined and explained by the authors through a careful ethnographic examination of how front-line agency staff confront, identify, investigate and report instances of suspected maltreatment of children.

It would be a mistake to assume that because this is a study of how clinical personnel label and identify child maltreatment in the

United Kingdom, the results are only generalizable to the management of maltreatment in that country. There are important differences between child abuse management in the United Kingdom and the United States, not the least of which is that mandatory reporting of abuse, a fixture in the United States for the last decade, does not exist in the United Kingdom. These differences, however, should not obscure the fact that in both countries, indeed, in virtually every society in which abuse occurs, there is no objective condition which results in total agreement that the condition is abuse. The private and intimate nature of the family as a modern institution means that most abuse and neglect takes place behind closed doors, in the privacy of the home. The official detection of maltreatment nearly always requires a report, an assessment of the condition of the child, an inquest into how that condition arose, and, often, an assessment of family history. This entire process, whether in the United Kingdom, United States, or many other countries, is conducted under what Dingwall, Eekelaar, and Murray call 'the rule of optimism', where clinical staff are required to think the best of parents.

The assumption that maltreatment allegations are rare, in the light of the probable extent of abuse and neglect, the postulate of the 'rule of optimism', and the careful ethnographic examination of how agents of the state identify, investigate and intervene in cases of abuse constitute three major leaps forward in our understanding of the problem of child maltreatment in society. This book does not offer the conventional formulation of child abuse – incidence, causal model, treatment and prevention programmes. It offers much more. In fact, it is only by understanding how child maltreatment cases come to public and official attention, and what aspects of maltreatment or suspected maltreatment cases motivate certain actions by agents of social control, that we can assuredly improve our understanding of, and our ability to manage the tragic and sorrowful problem of the abuse and neglect of children.

Richard J. Gelles
University of Rhode Island

Acknowledgements

Few projects of this scale – using comparable methodologies – have been carried out in Britain. It may, therefore, be difficult for readers to appreciate the depth of our indebtedness to informants, sponsors and associates. Indeed, it was only in attempting to draft these paragraphs that we, ourselves, fully realized just how many people had contributed in so many ways to the study. We can hardly mention them all but we hope that those we have been unable to name will, none the less, accept that this is no reflection on the significance of their help.

Our first debt must necessarily go to the participating authorities and their staff for accepting and welcoming us into their everyday practice. This was not always convenient and was sometimes intrusive, but our presence was received not merely with tolerance and good humour but with the confidence that a published scrutiny of the complexities of child protection would eventually benefit staff, clients and citizens. Without wishing to diminish the significance of others' contribution we would especially like to thank the then Divisional Nursing Officer and Deputy Director of Social Services in our main study area for their continuing encouragement and personal commitment to facilitating our work.

The study was funded primarily by the Social Science Research Council with a contribution from the Department of Health and Social Security. At a time when the value of social science research is under critical scrutiny, we are particularly pleased to acknowledge the benefits of the SSRC's support by means of the block grant to the Centre for Socio-Legal Studies. This produces the inestimable advantages of continuity and stability of employment with the consequent development of a unique cadre of experienced staff, able to transcend basic disciplines in a common endeavour. While it is hard to disentangle the contributions of specific individuals, we would

particularly like to thank Chris Whelan, who assisted with some of the fieldwork, Keith Hawkins, Doreen McBarnet and Mavis Maclean. We are also grateful to Pembroke College, Oxford for releasing John Eekelaar from a significant part of his tutorial duties and for administering the DHSS grant.

We would particularly like to pay tribute to our secretarial staff. In a project like this, secretaries are far more than people who type letters and make coffee. Their role is better understood by analogy with laboratory technicians whose skill, initiative and flexibility are the essential foundation for scientific advance. We have been peculiarly fortunate in the talents of three of our project secretaries, Angela Palmer, Ginny Rosamond and Rosemary Stallan, and one of our interview transcribers, Jean Mason, all of whom have contributed far more than we had any right to expect. We are also grateful to Noël Harris, Jennifer Dix, Caroline Mason and Carolyn Hartley at the Centre for Socio-Legal Studies and to Maureen Hudson, Jill Souch and Katie Span for their home audio-transcription of fieldnotes and interviews.

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Finally, we must thank our respective spouses, Pam, Pia and Simon, for their forbearance over the six years of this project.

None of this is, of course, to imply that the limitations of this study should be attributed to anyone but its authors, although we trust that the reader will find in it the virtues of others.

Contents

Introduction

TORTURE BOY 'TRAGEDY'

> The aunt of a three-year-old boy, who was tortured and beaten to death by his mother's lover while police and social workers made fumbling attempts for 22 days to find him, said last night: 'I can never forgive the system for what happened.' . . . vital information was garbled and lost as it was passed between police, the city's social services department and the local National Society for the Prevention of Cruelty to Children. A senior police officer told the inquiry that D____ could have been found within three days if the search had been properly conducted.
>
> *Guardian* 9.11.1979

BOY SNATCHED AT HOME – FATHER

> Police and social workers barged into a living room and snatched seven-year-old L____ W____ from his family, it was claimed last night . . . . The police and social workers had a warrant to put L____ into care. They suspected that he had been 'battered' because of bruises on his face . . . . A spokesman for B____ social services department defended the action: 'It is our duty when there has been an allegation of injury or neglect to inquire and ensure that we act in the best interests of the child . . . .' A police spokesman said: 'When a warrant is issued we have to ensure it is enforced . . . the correct procedure was observed.'
>
> *Guardian* 3.9.1980

It seems that child protection agencies cannot win. In the first case, an allegation is dealt with in a routine fashion and a child dies. On the second occasion, a suspicion leads to prompt and decisive action.

Either way, the social services department finds itself pilloried – for bureaucratic delay or for over-zealous intrusion into family life. In each case, however, that judgement is possible only by reference to a particular model of the relationship between children, families and the state. The first extract implies a view that state agencies have a duty to protect children from the excesses of their adult caretakers; the second, that families have a right to privacy which is sustainable even where the proper legal formalities of obtaining a warrant have been observed.

Such conflicts can be demonstrated not only in newspaper articles but equally in academic and political debates, most conspicuously in the United States but increasingly wherever a nation's health and welfare services are influenced by American experience.[1] They exemplify a relatively long-established sociological observation: that the existence and nature of social problems cannot be separated from the values of those who would identify them.

> The term *social problem* indicates not merely an observed phenomenon but the state of mind of the observer as well. Value judgements define certain conditions of human life and certain kinds of behavior as social problems: there can be no social problem without a value judgement. (Waller 1936: 922 original emphasis)

In the same paper, Waller goes on to suggest that the perception of events as problematic arises from the interaction of two conflicting sets of *mores*. The first of these, the organizational or basic *mores*, 'are those upon which the social order is founded, the *mores* of private property and individualism, the *mores* of the monogamous family, Christianity and nationalism' (1936: 924). Alongside these exist the humanitarian *mores* held by those who feel an urge to make the world better or to remedy the misfortunes of others.

> Poverty is a social problem, when it exists in the midst of plenty or in a world in which universal plenty is a technological possibility. The value judgement passed on poverty defines it as at least in part socially caused and as something which ought to be remedied. A simpleton would suggest that the remedy for poverty in the midst of plenty is to redistribute income. We reject this solution at once because it would interfere with the institution of private property, would destroy the incentive for thrift and hard work and disjoint the entire economic system. What is done to alleviate poverty must be done within the limits set by the organizational mores. (1936: 926)

The simple-minded remedy for child mistreatment might be to license child-bearing and collectivize child-rearing. In a liberal democracy we almost instinctively reject both as authoritarian and dictatorial acts, infringements on the rights of adults to reproduce themselves on such occasions and in such fashions as they think fit. Debates about the proper response to child abuse and neglect are, in substance, debates about the nature of the good society. They are possible only because of the clash of utopias between humanitarian and organizational moralists.

There is an important implication. In so far as most participants in the debates would, nevertheless, concede the existence of such phenomena as child abuse and neglect, the core dispute is over the point at which intervention may be justified. What this means is that the very definition of mistreatment becomes a relative matter. Where do we draw the line between firm discipline and physical abuse? How is neglect to be distinguished from low standards of parental competence? What marks off sexual abuse from intimate displays of affection between family members? It is on the answers to these questions that advocates of state intervention and family rights ultimately establish their positions. The more we argue for family autonomy, the more latitude we must allow parents in their conduct, and vice versa.

Furthermore, it should be apparent that, if mistreatment is to be defined in this relative fashion, as part of a wider analysis of the nature of our society, then questions about its true incidence or true prevalence become meaningless. Attempts to describe the epidemiology of abuse and neglect and, from that, to make inferences about aetiology are refractions either of the moral judgements of the investigator or of the practical decision-making of child protection agents. We do not wish to argue that nobody has the right to make such judgements, nor are we somehow trying to discount the suffering of many children by treating our response as something which has its origins in the culture of our society. What we do insist upon is that abuse and neglect come to exist as socially recognizable phenomena, and hence as a cause of action, only as a result of processes of identification, confirmation and disposition within health, welfare and legal agencies. They cannot be discussed intelligibly without an understanding of the way in which such processes operate, an understanding which must necessarily be moral rather than technical.

This is not an entirely novel observation. In a somewhat neglected paper, Gelles advocated a similar view of child abuse as social deviance. He spelt out the consequences:

> . . . all the cases that make up the data on incidence, all the explanatory analyses and all the prevention and treatment models are influenced by the *social process* by which individuals and groups are labelled and designated as deviants. In other words there is no objective behavior we can automatically recognize as child abuse . . . when I speak of the social construction of abuse, I mean the process by which: (a) a definition of abuse is constructed; (b) certain judges or 'gatekeepers' are selected for applying the definition; and (c) the definition is applied by designating the labels 'abuse' and 'abuser' to particular individuals and families. This social process of defining abuse and labelling abusers should be an important facet in the study of child abuse. (Gelles 1975: original emphasis)

Unfortunately, such arguments have had little practical effect. In a recent review of research on child mistreatment during the 1970s, Gelles (1980) remarked on a continuing methodological weakness in the readiness to define child mistreatment in terms of 'those instances in which the victim became publicly known and labelled by an official or professional' and argued that this should be corrected in future work. Gelles, himself, has carried out a number of studies of violent acts within families which could be the basis for identifications of child abuse, based on survey data, latterly from a nationally representative US sample of households (e.g. Gelles 1974, 1978.) One might also mention the ingenious attempts of Giovannoni and Becerra (1979) to map the diversity of commonsense definitions of mistreatment by the rating of vignettes presented to samples of social workers, paediatricians, lawyers, police officers and the general public in Los Angeles.

Nevertheless, the processes involved in selecting incidents from a candidate population or applying definitions elicited in response to hypothetical cases remain obscure. The study reported here attempts to fill that gap in demonstrating how such processes generate the perception of child mistreatment current in our society. England[2] is taken as an example of advanced liberal democracies as we seek to answer questions like: What sort of social problem is child mistreatment? Whose job is it to respond to this problem? How does that work shape and define the problem? We shall describe how children are actually identified as having been mistreated and chronicle their passage through a variety of health, welfare and legal agencies. At each stage, we shall point to the range of available decisions and consider why some cases take one route rather than another. In particular, we shall ask why some cases attract coercive intervention while others do not.

This discussion, we shall argue, encapsulates the interaction between a number of different ideas about the proper nature of our society and about the relations between families and the state. In this respect, the book can also be seen to have a sub-text which explores the compromises which make social regulation possible in a liberal society. We draw this out towards the end of our account in attempting to explain why the present English system takes the form that it does and why *all* systems of child protection in comparable societies are likely to operate in a similar fashion. Finally, we use this theoretical analysis as the basis for specifying a definition of children's rights against which particular institutional arrangements may be evaluated.

1

The Institutional Framework and Research Design

There are two possible ways of starting a book which is mostly about organizations and their members, each of which carries its own presuppositions. We might begin with a formal description of official rules, roles and statuses. Alternatively we could open with an account of everyday practice, what the staff actually seem to be doing. The former might be taken to imply that the most important definitions of organizations and their work are those of the people who create the official structure, in this case the legislators, who draft statutes defining child mistreatment and setting up or licensing agencies to deal with it. The latter might be understood as asserting the primacy of street-level or comparable work, here by social workers, doctors and health visitors making operational decisions about particular children. In either case, we risk being drawn into an irony, of concentrating on the lack of fit between formal and informal aspects of the organizations to criticize either the ignorance of legislators or the deviance of agency staff.

The reality is, of course, that both aspects are important. The statutes relating to child mistreatment constitute the relevant organizations' charters, defining their objectives, legitimizing their intervention into citizens' family life to regulate the quality of child-rearing and empowering them either to trade resources for compliance or to coerce reluctant parents.[1] At the same time, statutes are not self-enforcing. Their application and, hence, their social significance depend upon case-by-case decisions taken by authorized interpreters, not just in the courts but in all agencies having dealings with children. Nevertheless, those interpretations must ultimately be reconcilable with the terms of the organization's charter, if an agency is to fulfil its notional contract with the remainder of its host society.

In choosing to begin with a description of the principal legal provisions and related institutions in England, then, we should not

be taken as prejudging their relationship to the way in which members of these organizations work. These formal structures are a final constraint on staff activities but, simultaneously, statutes take on significance only as they are used and organizations exist only through their members' actions. Our motive for starting with an institutional account is entirely pragmatic: that readers who are not familiar with the English system of health, welfare and legal agencies will find our analysis of their practice more intelligible if we first perform a 'naming of parts'.

THE LEGAL PROVISIONS

Most Anglo-American jurisdictions seem to have a broadly comparable set of statutory provisions relating to child mistreatment. Katz et al. (1976), for instance, show that American state laws typically have some sort of preamble which enjoins the promotion of child welfare and establishes the state as a caretaker of last resort where this goal is unattainable. The circumstances which amount to mistreatment are loosely defined but compulsory intervention can only follow a court hearing, under the state's civil procedure. Dispositions available normally include some sort of protective supervision in the child's own home or the transfer of legal custody to a recognized agency.

English legislation follows a similar pattern. At the time of our study, social intervention in family life for the purpose of child protection was founded on three Acts of Parliament: the Children Act (CA) 1948 and the Children and Young Persons Acts (CYPA) 1963 and 1969.[2] The 1963 Act laid an overriding obligation on local authorities – county councils and metropolitan boroughs – to prevent children from coming into their care and empowered them to provide various sorts of family support for that purpose.

> It shall be the duty of every local authority to make available such advice, guidance and assistance as may promote the welfare of children by diminishing the need to receive children into or keep them in care . . . or to bring children before a juvenile court; and any provisions made by a local authority under this subsection may, if the local authority thinks fit, include provision for giving assistance in kind, or in exceptional circumstances, in cash. (CYPA 1963, s.1(1))

Where this objective is not attainable, however, the authorities have two sets of statutory resources available.

The first set are established by the Children Act 1948, which provides for what is, somewhat inaccurately, known as 'voluntary care'.[3] In fact the care is voluntary only in the sense that children may not be removed from their homes against parental objections. The origins of this Act lie in the duties of Poor Law authorities to receive into their care children who had been orphaned or deserted or whose parents were incapable, whether for physical, mental or moral reasons, of looking after them. While such children are no longer placed in the workhouse, the state still assumes the responsibilities of a residual caretaker. Once a child has come into care, the authority is under a duty to facilitate his or her discharge to the care of parents or near kin. Where this is not consistent with the child's welfare, the authority has the power, under section 2 of the Act, to pass a resolution assuming parental rights over the child. If the parents object, and the authority wishes to persist in the case, the resolution must be referred to a juvenile court for determination. The 1948 Act is most relevant to those mistreatment cases where it is possible to negotiate with parents for the placement of a child with alternative caretakers. It empowers the authority to provide financial assistance and to regulate the placement. If necessary, of course, the authority can take advantage of section 2 powers to detain the child for his or her own protection, should the parents breach the agreed disposition.

Where negotiation is neither possible nor desirable, the authority's actions lie under the Children and Young Persons Act 1969. This provides for juvenile courts to make orders relating to a child's care on application from a local authority, the police or an authorized person. (Only the staff of the National Society for the Prevention of Cruelty to Children enjoy this latter status.) Those orders may be granted where the conditions specified in subsection 1(2) are satisfied in respect of a particular child:

> a) his proper development is being avoidably prevented or neglected or his health is being avoidably impaired or neglected or he is being ill-treated; or
> b) it is probable that the condition set out in the preceding paragraph will be satisfied in his case, having regard to the fact that the court or another court has found that that condition is or was satisfied in the case of another child or young person who is or was a member of the household to which he belongs; or
> bb) it is probable that the conditions set out in paragraph (a) of this subsection will be satisfied in his case, having regard to the fact that a person who has been convicted of an offence mentioned in Schedule 1

to the Act of 1933[4] is, or may become, a member of the same household as the child; or
c) he is exposed to moral danger; or
d) he is beyond the control of his parent or guardian; or
e) he is of compulsory school age within the meaning of the Education Act 1944, and is not receiving efficient full time education suitable to his age, ability and aptitude; or
f) he is guilty of an offence, excluding homicide,
and also that he is in need of care or control which he is unlikely to receive unless the court makes an order under this section .... (CYPA 1969, s.1(2))

We shall adopt the shorthand of agency argot and refer to these respectively as the 'proper development', 'same household', 'moral danger', 'beyond control', 'truancy' and 'offence' conditions.

This collection of mistreated, disobedient and delinquent children reflects the 'unified theory of deviance' (Handler 1973: 42–51) which became established in England during the post-War period. The presenting problems of troubled and troublesome children were all defined as epiphenomenal manifestations of the same underlying family pathology. As Handler (1973: 42–51) and Packman (1975) show, the result was a steady expansion and integration of services for families and children, from the Children's Departments set up under the 1948 Act to the present day generic social services departments described later in this chapter. While few other jurisdictions seem to collapse the statutory categories together to quite the same degree, the practical overlap is often considerable. These will, of course, almost invariably all be defined as juvenile court matters and dealt with under similar procedures even if there is a greater separation of social work services for probation, school welfare and child protection.

If a local authority receives information suggesting that there are grounds for bringing proceedings on a child in their area, the 1969 Act requires that the report be investigated unless the authority is satisfied that inquiries are unnecessary. If it is substantiated, proceedings must follow, unless the authority determines that such action would not be in the child's interest or in the public interest. Where emergency action is needed, the authority's staff, like any citizen, may apply to a justice for a *place of safety order*, empowering them to remove a child and detain him or her in a place of safety. The applicant must establish a *prima facie* case under section 1 (2a–f) and the order cannot extend for more than twenty-eight days. A police officer of the rank of inspector or above has a similar power