A Historical Overview of Family Rights in British Law Reform

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Introduction

Upon looking at developments in law regarding child protection, one distinctly notices the major debate in how, when, and why the state should intervene into the freedom and privacy of individual citizens. Firstly, we acknowledge that individual cases of ill-treatment, whether deliberate or not, lie on a continuum, with many other dimensions such as financial support and class structure distorting this scale. The intersection between the state, the child and parents results in a delicate threshold of defining abuse and child protection work in the law that is not entirely static. In the law, increases in the domains of abuse such as moral danger and emotional abuse indicate that the concept of abuse is ultimately a socially defined phenomenon, which reflects the values and opinions of a particular culture at a particular time. Despite this subjectivity, the state remains selective in its concerns which sanction intervention based on rational and moral arguments, as well as pragmatic concerns. Developing ideologies about human rights, national policy over social concerns, and media representation of milestone events all interact to and create upward or downward pressures on the threshold of state intervention in matters of legal jurisdiction. Hence, in order to tackle an explanation of what has formed the legal guidelines regarding child protection, we must adopt a multi-modal approach as we view historical development.

This document will attempt just that. Starting from the 18th Century industrial revolution, we will chart the major historical influences and trends that led to an accompanying evolution of children law with particular attention to how family rights are treated, or mistreated, by the law. We hope, through a comparative study of different countries starting with Britain, to identify the common trends or obstacles faced in the development of children law and adapt ourselves appropriately.

The Children Act 1989

The children act 1989 was a significant milestone in British child law because it consolidated public and private law relating to children into a single act and court system, providing a clearer and more consistent standard for acceptable child care. Thus it strove to seal previous gaps within the system and safeguard for the child the right to protection from abuse and exploitation and the right to inquiries to their welfare. Throughout the Act, it can also clearly be seen that the child's wishes, accommodating for his age and maturity, is to constitute a primary factor in the court's decision making processes [s(1)(3), s(6)(7)(b), s(10)(8), s(20)(6), s(22)(4)(a), s(26)(2)(d)(i), s(26)(3)(a), s(39)(1)(b), s(39)(2)(b), s(41)(1), s(43)(8), s(45)(8)].

Four distinct themes can be identified in the Act. Firstly the Act provided a consistent framework for reviewing and regulating all forms of substitute care. These

ranged from privately run residential homes and boarding schools to private foster parents, day nurseries and child minders [s(3)(22)]. Additionally, it hoped to facilitate cooperation and consultation between different authorities, linking together services such as education, housing and health authorities as required for the welfare of the child [s(3)(27), s(3)(28)].

Secondly, the Act introduced the notion of parental responsibility to replace that of custody, care and control [s(2), s(3)]. This overwrote the paternalistic structure of families in post -war Britain where fathers were awarded custody and mothers were awarded care and control. Previous laws and their application appeared sexist as it connoted that mothers did the work of caring but could not be trusted with decisions, and fathers made decisions but were exempt the hard work of caring. The more egalitarian idea of parental responsibility led to more flexibility in complex families and indicated that parents have responsibilities to their children that accompany their rights, reinforcing the idea that courts make decisions based on the children's needs rather than their parent's claims.

John Eekelaar has commented that the notion of parental responsibility in the Act reflects the view that responsibility for children belongs primarily to parents and not the state – the state plays a secondary role. However, the introduction of these concepts into the law also normalizes powers which were rarely exercised by the High Court in wardship and under the Guardianship Act. Now, the power of the courts to make specific issue order and prohibited steps order allowed for diverse interventions to be made to ensure the parental responsibilities were being met, and to secure the best interests of the child [s(8)].

In order to clarify the balance between family privacy rights versus children safety rights, and between laissez-faire versus state intervention, the third major theme of the act defines limits and controls state intervention in family life by setting a single standard for intervention and a single procedure for obtaining public law-orders. Procedural changes were made in court rules designed to inhibit the use of emergency orders and care and supervision orders. The court may make the order if, and only if it is satisfied that there is reasonable cause to believe that the child is likely to suffer 'significant harm' [s(31)(2)(a)]. Moreover, the Court will only make an order if it is better for the child than making no order [s(1)(5)]. Consideration of the welfare checklist assists the Court in making this decision

Fourthly, and of greatest relevance to our overview, the Act provides a framework for state support of 'children in need' and their families by imposing new duties on local authorities to provide services for them [s(17)]. The intention behind this part of the Act is to forestall the need for compulsory intervention by encouraging local authorities and families to work in partnership. While the local authority will seek a Court order when compulsory action is in the best interest of the child, the first option and obligation of local authorities must be to work with the parents in the form of services and assistance to help the family achieve and maintain a reasonable standard of health and development [s(17)].

Placement with relatives or friends should be explored before other forms of placement are considered, maintaining the child in the community insofar as it is possible and not separating siblings [s(23)(2), s(23)(4), s(23)(6), s(23)(7)]. Should the child be

removed to substitute care, the parents wishes should be ascertained by local authorities through consultation before any decisions are made with respect to the child, thus maintaining the rights and responsibilities of the parents during this period [s(22)(4), s(22)(5)]. In order to develop a continuity of relationship and sustained attachments for the child, reasonable parental contact should be established with the child in care unless it can justifiably be refused for the welfare of the child [s(34)(1), s(34)(6)].

The procedure for children entering state care was revised into a single route as determined by the court and the previous system of voluntary care was replaced by provision of accommodation. Local authorities were prohibited from providing accommodation if there were any objections from persons with parental responsibility, and who were willing and able to provide or arrange for accommodation for the child [s(20)(7)]. Additionally, any person with parental responsibility may, at any time, remove the child from accommodation provided by local authority [s(20)(8)]. Hence, accommodation was viewed as a service to families, who entered it by choice, removing the negative stigma attached to 'giving away one's child' or being an 'incapable parent'. More importantly, it ensured that 'voluntary consent' was not abused as a back door route into formal state care by administrative action.

In this way, the Children Act 1989 enshrines family rights, and the unique advantages for children in experiencing family life, within the legal system.

Pre-War Setting in Britain

Industrialisation and Urbanisation

The Industrial Revolution was a period from the late 18th Century to the early 20th Century where major changes in agriculture, manufacturing, mining, and transport had a profound effect on the socioeconomic and cultural conditions in the United Kingdom. Advances in mechanization and scientific progress in the areas of textile manufacturing, metallurgy, mining and steam power promised to improve the rate of production in comparison to early cottage industry and the putting-out system, where merchants outsourced physical production to worker's homes. However, the high cost of machinery could only be justified if the demand for its output was heavy and continuous. These new machines demanded a rational organization of job functions that differed greatly from that of old handicraft tradition, nurturing the rise of the factory system.

Facing the task of maximizing efficiency from both machinery and labour, factory owners increasingly divided the processes of labour into specific tasks, increasing productivity and allowing for greater control over labour and work processes. The influx of workers into factories, along with increased trade and the development of urban infrastructure, birthed the modern city.

The transformation of traditional family structures followed closely on the heels of modernization of modes in production. From an agrarian society with close kinship ties to extended family, the nuclear family became dominant in industrial society. The nuclear family was more mobile, able to move to areas where the demand for work was greater, and hence more practical for the factory system as well as for the economic betterment of the family.

The individual roles within families also changed greatly. Status in pre-industrial families was largely determined at birth by the family one was born into. Children usually adopted the trade of their parents and their roles in the household were normalized at an early age by helping out in domestic or farming chores. Before the advent of timed working hours, a child's supervision was a matter of overlapping responsibility between the mother, father, and extended family members. In contrast, industrial society required the idealization of a "breadwinner", usually male, that would leave the house for regular and extended periods of work. While fathers were designated to play an "instrumental" family role in finding occupational work, mothers were left with the large responsibility of "expressive" roles within the family, which included taking care of both young and elderly, socialization of children and managing the tensions that arose. Yet at the same time, mothers were still required to problem-solve the day to day difficulties of hygiene, cleanliness, marketing and cooking that constituted "keeping house".

The lack of extended family support, the continuous absence of one parent, coupled with the poor living conditions for the impoverished section of society, led to the state taking on many of the functions of the family in the pre-industrial era. These included establishing formal institutions for housing, policing, healthcare and education. From this Functionalist perspective, it can be seen that state intervention in the family was a process of adapting to the economic pressures and changing family structures of that time.

A Marxist perspective, however, is also equally revealing. In many eras, negative change can be seen to be more deleterious to the lower classes. As can be seen by the time discipline and constant supervision in the factory system, control of the means of production was stripped from the skilled craftsmen and awarded to the already affluent owners of machinery processes. Since work tasks were simpler and more specific, a large pool of unskilled labour could be tapped upon, increasing the bargaining power of factory owners. Predictably, the upper classes of society suffered much less erosion of extended family ties than the middle or working classes. Hence it can be argued that the intervention of state in family roles through social policy helped to promulgate and normalize the nuclear family for the better reproduction of labour power in a world of inequality. While the state did make provisions for the increasing concern of pauperism in industrial society, it was in many cases inadequate to meet the basic needs of the poor. Furthermore, it came with a negative social stigma which we will explore in the next section.

Social Stigma and the New Poor Law

The Puritan Work Ethic

The Puritan work ethic, as coined by Max Weber, is a sociological, theoretical concept which stems from the Protestant Reformation of 1517. It is based upon the Calvinist notion of the necessity for hard work as a proponent, or evidence, of a person's calling and worldly success as a sign of personal salvation. It is argued that early Protestants reconceptualised worldly work, which was previously seen as part of the trials of life, as a spiritual duty which benefits both the individual and society as a whole. Thus

the Catholic idea of good works, in the form of almsgiving and helping the poor, was transformed into an obligation to work diligently as a sign of predestination of salvation by grace.

While being in line with the role of the individual in an increasingly capitalist society, the Puritan work ethic discounted the disparity of opportunities for worldly success between the rich and the poor. Instead it placed emphasis on individual effort and personal responsibility as a yardstick against which moral worthiness can be measured. Consequently, attitudes to the poor and those receiving relief were derogatory. Ann Dill (2001) observed that:

> Starting in the 18th century, democratic politics and industrialization began to add a changed definition of *dependency* to the concepts of worthiness and the work ethic as core principles of social welfare. Formerly, dependency connoted a subordinate position in a system of social relations and, as the normal and normative situation for most people, was morally neutral. As being *independent* came to imply a free citizen engaged in wage labor, dependency became a quality of the individual vested with pejorative moral and psychological meanings. Depending on charity relief instead of wage labor denoted one a pauper whose fate arose from immoral behavior or defects of character.

The Puritans were also diametrically opposed to the Catholic practice of the "begging-letter" system, where those who donated to the Catholic Church were in turn offered salvation. Instead, the notion of giving alms was not seen as charity, but as exacerbating the vice of begging and dependency on relief. Hence, when the principle of public support for the poor and of governmental allocation of work to the poor was reformulated during the industrial revolution, the Poor Law Amendment Act 1834 or the New Poor Law came into existence as a deterrent system for begging (Weber 1905: 232).

The New Poor Law

Previously, Tudor and Elizabethan Poor Laws consisted of a range of parish-based policies to deal with paupers from punishment to providing relief. In 1832, the Royal Commission into the Operation of Poor Laws reported that existing means of poor relief was interfering with the natural law of "supply and demand" and undermining the prosperity of the country. The amended New Poor Laws discouraged outdoor relief and stated that no able-bodied person was to receive money or other help from the Poor Law authorities except in a workhouse in the form of indoor relief. Subsequent orders attempted to ban all outdoor relief from local parishes.

The principle of "less eligibility" was put in place to make workhouses a deterrent, stating that conditions within the workhouse had to be worse than the worst job possible outside the workhouse. Hence, life in work houses were made to be harsh to discourage people from claiming relief within them and force those who were able to cope outside a workhouse to choose not to be in one. These measures ranged from the introduction of prison style uniforms to the segregation of "inmates" into yards. Ironically, the living conditions of the urban poor were so incredibly bad that it would be necessary to starve the "inmates" below an acceptable level.

Once a family of an able-bodied man was inside a workhouse, they were separated into different sections. A child under seven could, if deemed 'expedient', be accommodated with its mother in the female section of the workhouse and even share her bed. She was supposed to have access to the child at all reasonable times. Parents were allowed a daily interview with a child living in the same workhouse, or an occasional interview if the child was in a different workhouse or school. These decisions were very much subject to the discretion of the workhouse masters and regulators.

Children arrived in workhouses for a number of reasons. In 1838, Assistant Commissioner Dr James Phillips Kay noted that children who ended up in the workhouse included “orphans, or deserted children, or bastards, or children of idiots, or of cripples, or of felons”. The original scheme of classification of inmates categorized females under 16 as girls and males under 13 as boys, with those under seven forming a separate class. By 1839, almost half of the workhouse population (42,767 out of 97,510) was children. The physical condition of children in workhouses was appalling. Although a minimum of 3 hours of education a day was prescribed for workhouse children, the standard of education of workhouse schools was poor and there were numerous reported instances of abuse and excessive corporal punishment. During the rest of the time, the children were either sent to work or apprenticeships, or were confined in unhygienic conditions.

In an 1849 report by the General Board of Health, an outbreak of cholera saw 180 children dead in Mrs Drouet’s pauper establishment in Tooting, creating pressure for change and the creation of district schools. Although the standard of education in district schools was an improvement from before, discipline was harsh and infection was still rampant. The 1876 Elementary Education Act erased the need for district schools as universal education allowed children to attend local schools instead. However, industrial schools and reformatories for juvenile delinquents persisted until replaced by Approved Schools in 1927.

The Poor Law itself was gradually abolished after 1927 with the increased availability of alternative sources of relief. The public care of abandoned or orphaned children was then taken over by voluntary and religious organizations. In order to view the New Poor Laws in context, it is important to note that the life of the poor was as terrible, if not worse, outside the workhouses, and that the conditions of workhouses and workhouse or district schools varied considerable from institution to institution. As a well-meaning attempt to solve poverty, the 1834 New Poor Laws exacted harsh interventions on the family with little regard for individual or family rights. Considering that slavery in the British Empire was only abolished in 1833, the notion of unalienable and universal human rights, much less family rights or children’s rights, was still in its foundling stages. What we can extract from it is to recognize the fundamental change in the way the poor were viewed by many of their betters. The traditional attitude of poverty being inevitable and unfortunate was guided by a growing view that the poor were largely responsible for their own situation. This was combined with the high-minded idea that children of the poor should be removed from the vicinity of bad influences – including their parents.

Post-World War II Influences

Family Rights as a subset of Human Rights

Universal Human Rights

Strictly speaking, the history of human rights has a long history with roots that can be traced back to Late Antiquity (c. 235-400) through to the Protestant Reformation in the modern period and the Age of Enlightenment. As encapsulated by famous humanists such as John Locke, Thomas Paine and Voltaire, the rights of man to life, self-determination and the more controversial rights of property have played a pivotal role in the French Revolution, the American Revolution, and the shift to parliamentary democracy in Britain (see Appendix A).

However, until the atrocities of the Holocaust in World War II, the ideas of human rights have usually been confined to the realm of academics and revolutionaries in fighting for greater civil liberties between the individual and the state. The Universal Declaration of Human Rights (1948) was the first set of standards that was written with the intention of setting out principles for the behaviours and interactions between governments, organisations and individuals alike. In comparison to prior philosophical treatises, the Declaration was written and translated in relatively simple terms in order to be made accessible to everyone. Thus it is universal not only because it was meant to apply to all groups of individuals without exception, but also because it extended the discourse of natural rights to include the participation of the common man. Even though not formally legally binding, the Declaration has been adopted in or influenced most national constitutions since 1948. It also serves as the foundation for a growing number of international treaties and national laws and international, regional, national and sub-national institutions protecting and promoting human rights.

The very first instance in which family rights are institutionalised can be found in two Articles within the Universal Declaration of Human Rights. Article 12 proclaims the right for privacy and non-interference in family affairs and Article 25 places special emphasis on providing special aid to the mother and the child.

Article 12:

(1) No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.

Article 25:

(1) Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the even of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control

(2) Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection

European Convention of Human Rights

The Council of Europe in 1950, faced with the challenges of post-WWII reconciliation, undertook the creation of the European Convention of Human Rights (ECHR) to protect human rights and fundamental freedoms in Europe. The European Convention provided a high degree of individual protection by establishing the European Court of Human Rights in Strasbourg to monitor the respect of human rights by states. The Court is open to states, parties and individuals to bring forward applications against contracting parties of the Convention for human rights violations. Similar to the UDHR (1948) the ECHR (1950) states in Article 8 that:

> (1) Everyone has the right to respect for his private life and family life, his home and his correspondence
> (2) There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of rights and freedoms of others.

After the Human Rights Act 1998 came into effect, the rights in the ECHR are now protected and upheld by law in the United Kingdom.

Children's Rights

The Geneva Declaration of the Rights of the Child (1924) was a post-WWI proclamation adopted by the League of Nations which contained five basic principles. In 1959, the United Nations General Assembly adopted an expanded version of the Declaration of the Rights of the Child which included ten principles. Principle 6 of the Declaration of the Rights of the Child (1959) expands upon the idea of preserving the child within the family, for the full development of the child, as follows:

> **Principle 6** The child, for the full and harmonious development of his personality, needs love and understanding. He shall, wherever possible, grow up in the care and under the responsibility of his parents, and , in any case, in an atmosphere of affection and of moral and material security; a child of tender years shall not, save in exceptional circumstances, be separated from his mother. Society and the public authorities shall have the duty to extend particular care to children without a family and to those without adequate means of support. Payment of State and other assistance towards the maintenance of children of large families is desirable.

Other than being couched as a given human right, or for optimal development of the child, the family is seen as a valuable resource with regard to reducing juvenile delinquency. This can be found in the general principles in the 1985 United Nations Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules).

> **Section 1(3):** Sufficient attention shall be given to positive measures that involve the full mobilization of all possible resources, including the

> family, volunteers and other community groups, as well as schools and other community institutions, for the purpose of promoting the well-being of the juvenile, with a view of reducing the need for intervention under the law, and of effectively, fairly and humanely dealing with the juvenile in conflict with the law.

Finally, the United Nations General Assembly in 1989 adopted the United Nations Convention on the Rights of the Child (UNCRC). This convention has 54 articles, 40 of which are substantive rights applying to all children under 18. The UNCRC was drafted by an "open-ended" working group reaching consensus with participation from stated and non-state entities such as IGOs and NGOs. It is broader, more specific and more prescriptive than preceding proclamations. Article 9 states simply:

> Young people should not be separated from their parents unless it is for their own good, for example: if a parent is mistreating or neglecting a young person

The UNCRC is a political document which operated through regular "inspections" of its review committee. Because it is not legally binding, the mechanism for its implementations is, in essence, the pressures on a government made by shaming the defaulting states. The United Kingdoms, although the most vociferous initially in voicing that they felt no need for the UNCRC, took part in its working party consistently from 1981 to 1989 and ratified the UNCRC in 1991. The UNCRC had a clear influence on British legislation as can be seen in the Children Act 1989 (Piper, 2008).

Leading up to the Children Act 1948

The 1948 Children Act

Prior to the Children Act 1948, care of abandoned or orphaned children fell under the charitable care of voluntary and religious organisations. However, these institutions were poorly regulated as previous legislature awarded limited state intervention for the care of children. The Prevention of Cruelty to, and Protection of, Children Act 1889 allowed police to arrest anyone found ill-treating a child, and enter a home if a child was thought to be in danger. The 1908 Children's Act established juvenile courts for trying juvenile delinquents and also introduced the registration of foster parents. At this time, these laws were the only guidelines to the work of charitable organisations and there was a lack of centralised supervision by a state department

The Children Act 1948, which was based directly upon consultation with the Curtis Report (1946), was intended to provide a comprehensive service for the care of children deprived of the benefit of a normal home life. It established a children's committee and a children's officer in each local authority whose duty it was to assume parental responsibility of orphaned or deserted children. This committee would report to the Home Office which would take overall national responsibility to ensure that residential homes met the minimum standard, that caregivers and staff were well-equipped and well-trained, and that the goals of the

1948 Children Act were being pursued. These included a new emphasis on foster care in preference to residential homes; the restoration of children in care to their natural parents whenever possible; and a greater emphasis on adoption.

Contrary to Section 15 of the Poor Law Act 1930, which stated that it was the duty of local authority to: “set to work and put out as apprentices all children whose parents are not, in the opinion of the council, able to keep and maintain their children,” the 1948 Children Act sought to embody the revolutionary principle that the authorities should exercise their powers to further the best developmental interests of the child. By 1963, local authorities gained further powers to investigate neglect and to take preventative action, resulting in the development of range of state powers and interventions which we commonly identify with today with regards to state residential care.

Factors leading up to the 1948 Children Act

Four likely factors preceded the 1948 Children Act to influence the decision that governmental action was necessary to deal with the problem of orphans and other children in need. Firstly, it was pointed out that voluntary organisations caring for children were in serious difficulties because of uncertainties arising from the return of evacuees to their homes. Additionally, the influx of orphans was directly linked to the casualties suffered in the war, and hence these children could not be classified as morally destitute by society. Within the paradigm of the post-war welfare state, this problem became a matter of some urgency that required an undertaking by the state.

Secondly, in 1944, there still remained some 27,000 children in the care of Poor Law authorities. With the projected abolition of the Poor Law, it was imperative that some method of dealing with these children be found. By the time of the 1946 Curtis Report, the total number of children and young people in care (including the orphans and those left destitute from the war) had reached 124,900.

Thirdly, the campaigns of Lady Marjory Allen of Hurtwood provided a political impetus to establish a public committee of inquiry. Lady Allen had sent a lengthy memorandum on her concerns of the educational arrangements for children in residential care. She pointed out administrative overlaps and gaps in the system that were not addressed. Getting no response from government, she proceeded to write a letter to The Times on 15th July 1944 where she advocated the need for proper education and family care in children development and complained about institutional care. She wrote (Allen & Nicholson, 1975) that "many thousands of these children are being brought up under repressive conditions that are generations out of date and are unworthy of our traditional care for children". The response from the public was staggering. Appealing to the public through a maternal, common-sense approach, her letter crystallised further support (as well as some dissent) from leaders in the social work field and those with first-hand experience of residential care. Within the Civil Service, it was this letter and the overwhelming publicity which followed it that made it expedient for the government in Whitehall to immediately review her memorandum and set up an inquiry.

As the public enthusiasm from Lady Allen's campaign was waning, the deliberate comments of John Watson, a well-known juvenile court magistrate, served as a trigger for the inquiry of the Curtis Committee. For some years the juvenile court magistrates had protested about the practices found in the remand homes administered by the London County Council (LCC). In November 1944, after getting no responses from the Home Office about the case of a seven year old being accommodated in a remand home for adolescent girls, Watson primed the press beforehand and made a dramatic open court statement. His strong views for the separation of the "sexually innocent" from the rest of the adolescent juveniles was criticised as being without the moderation expected of his position, but the statement had already served its purpose in fanning the flames of public outrage. On the 7th December 1944, the government announced its decision to set up the inquiry for which Lady Allen had campaigned – the Curtis Committee.

The Curtis Committee and the Monckton Report

The death of Dennis O'Neill came a month after the government's decision to set up the Curtis Committee. However, although his death cannot have influenced the decision to establish the committee, the O'Neill case was repeatedly referred to in the Curtis Report and the reason for the Curtis inquiry generally came to be seen as a way to prevent a repetition of the O'Neill case.

Dennis O'Neill was one of eleven children born to a couple who were living on an income of £2 a week. Eventually, in June 1944, the parents served a jail sentence due to the default of payment of a fine, and Dennis was hurriedly placed, by one local authority, in a foster home of another local authority, without proper agreement between the two authorities about respective duties and responsibilities. At his death, the coroner's report found that Dennis was in a state of undernourishment due to neglect, and died from acute cardiac failure following violence applied to the front of the chest and being beaten by a stick.

Sir Walter Monckton was appointed to inquire into and report upon the circumstances of the case. Although his conclusions were undramatic, there had indeed been found to be administrative failings on the part of the local authorities, including why Dennis was placed in the charge of a man who had complaints made against him regarding cruelty and assault. Furthermore, there was also found to be a serious lack of supervision by the local authorities. This highly sensationalised case imprinted the need for a restructuring of child care services in the climate of public opinion, underlined the significance of the findings of the Curtis Report, and influenced the politicians' decision to reform legislature.

The Curtis committee examined 451 institutions and visited 58 local authorities. Their findings highlighted the deficiencies in the existing arrangements for public child care and the lack of co-ordination of social services. It recommended that a central department of state should have the responsibility of defining requirements and maintaining standards in voluntary and state-run homes. It should also be concerned with establishing and promoting courses to train children's officers and staff in children's homes in order to provide the child with a sense of security and personal affection.

Where local authorities in the Poor Law could, by administrative means, assume parents' rights over a child, the Curtis Committee considered that to extinguish these rights by a mere resolution of a council was fundamentally objectionable. Instead, the Curtis Report favoured requiring judicial decision in such cases to obtain a more impartial judgement directed to the paramount welfare of the child. Although the Committee had no doubt that every effort should be made to keep a child in the family home, its legal aspects focussed more on administrative reform and adoption instead of the provision of more family services. Subsequently, the values of family preservation were more implied than expressly stated in statutes.

Factors Leading up to the Children's Act 1989

Shifting Ideologies and the Law

Although it percolated from a number of different factors, the 1948 Children's Act was arguably a reflection of the political ideology at that time. Accompanying the rise in significance of human rights, the post-war welfare state was based on a particular model of the economy and the family. Not only did it assume full male employment, it also assumed a traditional role for the patriarchal nuclear family. Within the family, the male 'breadwinner' would provide economic support while women would be responsible for caring for children. The provision of state welfare was intended to support, not replace, this arrangement. However, in the next few decades, there would be many tensions and difficulties arising from the underlying assumptions about the relationship between parents, children, and the state.

Shift to Family Services

During the 1950s, children's departments were increasingly finding their role too narrow and restrictive and they began to expand their operations and reframe their responses. The major principle behind this was that they felt a need to intervene with families at an earlier stage within their own homes, thereby preventing children coming into care. The Fabian Society, a prominent British intellectual movement, drew explicit links between child neglect, deprivation and delinquency such that providing help to families earlier would not only help to prevent admissions into care but would also prevent future delinquency.

After the Seebohm Report (1968), different services for children, elderly, and the mentally and physically challenged were amalgated into an enlarged family service. The role of the new social services departments was not just to provide a range of services and professional help but to coordinate aspects of other state services, such as health, education, housing and social security, thus making them much more responsive to the needs of individual families.

Shift in Family Strategies

Family strategies emerged in the law initially in the 1963 Children and Young Person's Act by making local authorities responsible for providing advice, guidance, and assistance in order to prevent children coming into public care or before the courts. There

is also an accompanying need to reduce the number of children in residential care. The idea of permanency planning for those in residential care gained prominence along with the decarceration of juvenile delinquents using community based strategies to divert them from institutionalisation. Although these developments first gained popularity in the United States, the spread of these ideas quickly permeated western society as can be seen in the 1963 and 1969 Children and Young Person's Act.

However, these efforts remained only partially implemented because of the lack of belief in or commitment to family preservation ideals. Ill-treatment and the best interests of the child were also only partially defined. Keeping in mind the public attention to the importance of protecting children from harm that arose during this period, child policies generated from the 'rescue motive' developed in parallel with these developments, resulting in sometimes conflicting and overlapping policies. Hence the failure in implementing the values of the 1963 Children and Young Person's Act was attributed to complicated procedural policies, highlighting the need for consensus in the establishment of a consolidated set of statutes – the 1989 Children Act.

Shifts in Advocacy

The UK National Children's Bureau was founded in 1963, as the National Bureau for Cooperation in Child Care, reflecting the growing social concern over the treatment of neglected children and the realisation of the importance of preventative work. Improving the education and training of childcare staff, anxiety over adoption and fostering procedures, and concerns over child health and education, were also contributing factors to the creation of the organisation.

The Family Rights Group, one of the strongest advocates for family preservation was founded in 1974 in response to the perceived injustices by many families involved with social services and the unnecessary separation of children from their families. The Family Rights Groups was instrumental in influencing the preparation of the 1989 Children Act and introduced the key principle of partnership with parents in ensuring the safety, care and protection of the child. They also successfully campaigned that a court decision was necessary for removal, instead of that power lying with social services.

With the burgeoning advances in social sciences and psychology, the arguments regarding family preservation have been much more empirically informed rather than ideological. In an increasingly multi-racial and multi-cultural society, state matters such as government policy grew to be separated from religious underpinnings and became more secular in nature. Although the universality of human rights was perceived to be unquestionable, the main discourse employed by policy makers and lobby groups in the justification of their arguments shifted away from ideological good or moral virtue. Instead, the reliance on research-driven change has been heavily emphasised upon by both advocacy groups as well as the civil service in deciding what policies or law reforms should be made. Although empirical research can often be biased and subject to contention, research done directly by the Department of Health and Social Security revealed a need for changes in practice in many areas of child care to improve the quality of services and increase the confidence in social services departments of those using or needing to use them.

Shifts in Public Opinion

From the 1960s onwards, accompanying the growth of the women's movement, the increasing recognition of violence in the family and the 1970s introduction of Shaken Baby Syndrome, the need for clarifying and defining the best interests of the child was a matter of great importance. In 1973, the highly sensationalised case of Maria Colwell became a major flashpoint of contention between protecting children and preserving family rights. What began as a "tug-of-love" between birth mother and foster parents over the custody of Maria Colwell subsequently turned into an emotionally charged witch hunt when Maria suffered physical abuse and death at the hands of her stepfather. As the entire district of Brighton became involved, they campaigned for an investigation to be carried out, and the findings be completely transparent. The resulting inquiry tried to abstain from making moral judgements on social services or the parties involved but thoroughly scrutinised the adherence to procedural issues using the current paradigm. It found failures of communication between social services agencies and mismanagement of social services during times of reorganisation. However, the compelling nature of this case, and similar cases, birthed the commitment never to allow such a tragedy to occur again, a risk averse attitude to child protection.

Similar cases of child fatality due to abuse such as Jasmine Beckford in 1984 and Kimberly Carlile in 1986 urged social workers to act more forcefully to protect children. Conversely, following the Cleveland inquiry (Butler-Sloss, 1988), social workers and medical practitioners were castigated by the media for being overzealous. In the 1987 Cleveland child abuse scandal, 121 children were diagnosed of being sexually abused. However most of these cases were eventually dismissed by the court and the children were returned to their parents.

Although the pendulum of public opinion is often fickle and swings from one side to the other, it does serve as the most persuasive cry for policy change because of its intrinsically political nature. In this case, the central concern of society at large, and to which those involved in child abuse investigation need to be sensitive, is the necessity to protect children without being overly intrusive or damaging innocent families against whom accusations are made. The UK Children Act (1989) recognizes this dilemma and its guidelines attempt to act as a counterbalance between the roles of child protection agencies and families by emphasizing notions of "empowerment" and "involvement" during investigations into child abuse.

Shifts in Political Climate

All the above developments must be contextualised within the political climate of the period. From the mid- 1970s onwards there was an increasing disillusionment about the ability of the post-war welfare state to manage both the economy and the increase of social problems effectively using welfare programmes. The growth of the New Right and election of the Margaret Thatcher in 1979 proved significant in shifting the political discourse in the 1980s.

The new conservative government stressed the importance of individual responsibility, choice and freedom and supported the disciplines of the market against interference of the state. In the same light, the family, being the key institution of the social sphere, was seen as essentially a private domain from which the state should be

excluded but which should be encouraged and supported to take on its 'natural' caring responsibilities, especially for children. Hence the role of the state should be confined to ensuring that the family fulfilled these responsibilities, while making sure that no one suffered at the hands of violence or abuse. From this delicate balance between laissez-faire politics, informed research, establishing public order, and the rights and responsibilities of individuals and children, the discourse of child welfare shifted to a more negotiation-based approach, with parents working in partnership with regulations and accompanying guidance by professionals.

Obtaining Consensus

Based on the issues, challenges and changes highlighted in the above section, there was consensus about the need for law reform in both the public and professional domain in the 1980s. An independently formed Social Services Select Committee chose "Children in Care" for the topic of its second report (from 1982-1984) and proceeded to take evidence from the Department of Health and Social Security (DHSS), local authority associations, Directors of Social Services, academics, child-care experts from voluntary organisations, and pressure groups. It recommended that the Department of Health and Social Security establish a Working party on child-care law. It also identified individual areas for reform, the extent to which concern about these were shared, and gaps in knowledge about current practice. This information provided a foundation for the work of the Departmental Review on Child Care Law (DHSS, 1985)

This DHSS concluded its consultative paper in 1985 and its findings and recommendations were included in a Command Paper in 1987 entitled "The Law on Childcare and Family Services". The proposals in this Command Paper formed the basis of the 1989 Children Act

The Departmental Review of Child Care Law and hence the Children Act (1989) was quite modern in its approach because it strove to achieve consensus from different perspectives and groups. Unlike the usual black-and-white decisions made from precedent and legal principles, the delicacy and sensitivity of the issues regarding children's safety and rights required a different approach to law reform.

The Select Committee had beforehand noted how susceptible child-care policies had been to 'the swing of the pendulum of fashionable trends and theories' and that appealing to these changes had not brought solutions to the problems. Stability could only be achieved if there was agreement based on sound understanding of what was needed. Furthermore the wide variations of approaches from different social service groups and local authorities were deemed unacceptable as being inconsistent and unjust for the families concerned. Flexibility and fairness could only combine if there were agreed principles on which decisions were taken.

The DHSS also had a clear interest in obtaining a consensus decision. This was because the perceived failure of previous reform of child-care law was fraught with implementation problems due to the lack of collaboration and co-operation between social services, education, health, housing and the voluntary sector. Unless consensus was achieved any attempt at law reform would be impotent at tackling the problem.

Additionally, consensus would strengthen the case to appeal for further resources and increase the budget.

In order to generate consensus, the Department sought to create a forum for focused debate, a floor in which child-care organisations could lobby for reform and increase the chances that legislation would embody their perspectives. Secondly, the DHSS Working party was interdepartmental, involving civil servants from the DHSS, the Home Office, the Lord Chancellor's Department and including Professor Brenda Hoggett, a Law Commissioner and child-law expert.

The working party issued a series of discussion documents about the law and sough preliminary views. It also commissioned further research in areas where gaps of knowledge existed. The DHSS disseminated the results of earlier and current research to inform those interested about the current practices and future policy developments, seeking consultation from child-care organisations and interest groups. This consultation allowed practitioners on the ground to express their problems and solutions. The proposals and suggestions were then followed up with research in order to support or dismiss them. Consensus did not mean that there was complete agreement about the direction or scope of changes, rather that the conflicts between perspectives of different groups were contained. Contradictions between the competing notions of parental rights and children's rights, laissez-faire and state paternalism remained, but were buried so that the agreed goal of law reform could be pursued. Further consultation was held after the publication of the Command Paper in 1987 and even continued while amendments to the Children Act were being negotiated.

Conclusions

Children suffer both in state care and in parental care. In the most extreme cases, children risk bodily harm and loss of life at the hands of an abusive parent. Conversely, the negative stigma, loss of stability, and learning of sexualised or antisocial behaviours in state care is also damaging. Additionally, the cost to the state and the subsequent social problems of delinquency and marginalisation are also substantial. It is generally acknowledged that the piecemeal adjustment of policy and law in reaction to public outcry is insufficient in rooting out and eliminating the real problem of family violence directed to children. Instead, the strategy of isolating problematic families, originating from the workhouse era, has marginalised certain class structures in society. These observations necessitate a paradigm shift in how we should approach the problem.

While most parties will agree, in accordance to family rights that it is best for a child to be raised in his own family, different threshholds of what forms unacceptable family behaviour exist, as well as inconsistent assessments for an individual family. Contrasting cultural values, socio-economic backgrounds and family backgrounds also clutter the isse. Instead of framing the problem as a clash between parental rights, children's rights and state intervention, only partnership between the various parties involved produces transformational change.

Current research by Farmer and Owen found that greater parental involvement in understanding and tackling the unique nature of each case gave rise to more creative solutions and more purposeful social work. Obtaining a working partnership requires

cooperation and negotiation from different levels. It involves honesty and reliability from parents and social services, and it requires patience and a less inquisitorial style on the part of the authorities. It involves the training and awareness that broad generalisations about the merits of removing children and assessing parents are usually found wanting because individual cases are complex. Instead the contexts of ill-treatment, and patterns of behaviour involved should come into the foreground. It involves realising that calculated risks must be taken to achieve the best outcome.

The community also has a large role to play in preventative work as well as reintegrating families that have been separated. The universal complaint that inter-agency cooperation is lacking should be addressed. Currently the register for at risk cases in the United Kingdom that is accessible to all social workers has been extensively found to be useful. The increased communication and coordination between social agencies is of course not free from conflict. It is hence important that as much consensus regarding the practice of child protection be obtained, influencing all levels from national policy, the law, down to best practices on the ground. Over and above that, enshrined in law, there is the commitment to work together or find a better way to work together in the best interests of the child.

Finally, the scientific developments in child development and psychology have been increasingly applied to the domains of law and policy reform. In our modern times, the appeal for evidence-based practice is a double-edged sword and must be employed sensitively and rationally. Modern theories in the social sciences base their findings on large groups of sample statistics, ostensibly eliminating the non-systematic variance of individual differences. They can then be used to formulate a set of best practices or guidelines that, at the same time, must leave room for exceptional circumstances and appeals. The validity of taking such findings and applying them to a case by case basis is inherently risky. Psychological or sociological tools for assessment and intervention must be constantly refined, and discriminately used in a therapeutic or helping approach instead of making black and white judgements on individuals. For example, psychological findings give insight on good parenting skills and how to improve on the parent-child relationship. However, using it as a tool to categorise good and bad parents and apply intervention based on governmental mandate becomes an intrusion into the rights of the family.

Appendix A

The specific enumeration of legal rights accorded to people has historically differed greatly from one century to the next, and from one regime to the next, but nowadays is normally addressed by the constitutions of the respective nations. The following documents have each played important historical roles in establishing legal rights norms around the world.

- The Magna Carta (1215; England) required the King of England to renounce certain rights and respect certain legal procedures, and to accept that the will of the king could be bound by law.
- The Declaration of Arbroath (1320; Scotland) established the right of the people to choose a head of state
- The Bill of Rights (1689; England) declared that Englishmen, as embodied by Parliament, possess certain civil and political rights.
- The Claim of Right (1689; Scotland) was one of the key documents of Scottish constitutional law.
- Virginia Statute for Religious Freedom (1785; United States) Written by Thomas Jefferson in 1779, the document asserted the right of man to form a personal relationship with God without interference by the state.
- The Declaration of the Rights of Man and of the Citizen (1789; France) was one of the fundamental documents of the French Revolution, defining a set of individual rights and collective rights of the people.
- The United States Bill of Rights (1789/1791; United States), the first ten amendments of the United States Constitution, was another influential document.
- The Universal Declaration of Human Rights (1948) is an over-arching set of standards by which governments, organisations and individuals would measure

their behaviour towards each other. The preamble declares that the "...recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world..."

- The European Convention on Human Rights (1950; Europe) was adopted under the auspices of the Council of Europe to protect human rights and fundamental freedoms.
- The International Covenant on Civil and Political Rights (1966) is a follow-up to the Universal Declaration of Human Rights, concerning civil and political rights.
- The International Covenant on Economic, Social and Cultural Rights (1966) is another follow-up to the Universal Declaration of Human Rights, concerning economic, social and cultural rights.
- The Canadian Charter of Rights and Freedoms (1982; Canada) was created to protect the rights of Canadian citizens from actions and policies of all levels of government.
- The Charter of Fundamental Rights of the European Union (2000) is one of the most recent legal instruments concerning human rights.

Appendix B

A brief list and summary of famous child abuse cases in the UK.

1945

Dennis O'Neil, 13, was beaten to death by his foster father, Reginald Gough, at Bank Farm, Shropshire. A post-mortem examination revealed he had been starved for months and weighed just four stone. The murder trial revealed that he had sucked the farm cows' udders in a desperate attempt to get some sustenance. The case shook a war weary Britain and there was a national outcry when Gough was jailed for six years for manslaughter. An appeal court ruling changed the verdict to murder and his sentence was extended to 10 years. A Home Office inquiry identified a string of failures by the staff and agencies involved in the case. There had been confusion between the two local authorities responsible for the boy's foster placement, conflicting reports by childcare staff about his wellbeing, staff shortages and miscommunication.

1973

Maria Colwell, seven, died in Brighton after being starved and beaten by her stepfather, William Kepple. She had suffered brain damage, a fractured rib, black eyes, extensive external bruising and internal injuries. Maria had been fostered by her aunt and uncle because her mother, Pauline, could not cope with bringing up five children on her own. Five years later Pauline decided she wanted her daughter back. But an inquiry by the Department of Health found that East Sussex county council had insufficient evidence to return the girl. There were 50 official visits to the family, including from social workers,

health visitors, police and housing officers. All agencies involved in the case were criticised.

1984

Jasmine Beckford was starved and battered to death by her stepfather, Maurice Beckford. He was found guilty of the four-year-old's manslaughter and jailed for 10 years. Her mother, Beverley Lorrington, was jailed for 18 months for neglect. Jasmine had been in the care of Brent social services for two-and-a-half years before she died, after Beckford was convicted of assaulting her younger sister. She was seen by a social worker only once in 10 months.

1984

Tyra Henry died after being battered and bitten by her father, Andrew Neil, while in local authority care. Neil was subsequently sentenced to life imprisonment for the 21-month-old baby's murder. A report on the case found that the white social workers from Lambeth council tended to be too trusting of the family because they were black. John Patten, then a junior social services minister, published new guidelines on child abuse cases for social workers soon after.

1984

Heidi Koseda starved to death in a locked room in Hillingdon, west London. Her stepfather, Nicholas Price, was jailed for life for her murder while her mother, Rosemary Koseda, was found guilty of manslaughter and detained in a high security psychiatric hospital. A private inquiry into her death found that the senior National Society for the Prevention of Cruelty to Children inspector allocated to her case failed to investigate a complaint of child abuse made by a neighbour. He also tried to cover this up with a fictitious account of a visit to see the child.

1986

Kimberley Carlile, four, was starved and beaten to death in Greenwich. Her stepfather, Nigel Hall, received a life sentence for her murder while her mother was given 12 years' imprisonment for assault and cruelty. Hall frustrated attempts by social workers and health visitors to investigate. But an inquiry found that her death was avoidable and concluded that four key social work and health staff in Greenwich failed to apply the necessary skill, judgement and care in her case.

1987

Doreen Mason died of neglect after her mother and her boyfriend bruised, burnt and broke the 16-month-old's leg then failed to have her injuries treated. Christine Mason and Roy Aston were convicted of manslaughter and cruelty and each jailed for 12 years.

Doreen was on the "at risk" register of Southwark council from birth. She slept on the floor where the couple put junk food for her to eat. A report said her social worker was inexperienced and given no proper training or supervision, and that Southwark social services department suffered from a "siege mentality" and "destructive mistrust" between senior managers.

1992

Leanne White, three, was beaten to death by her stepfather, Colin Sleate, who made her sleep on the floor. The girl suffered 107 external injuries and died of internal bleeding and repeated blows to the stomach. Sleate was jailed for life for the girl's murder while her mother, Tina, received 10 years for manslaughter. An inquiry concluded that her death could have been prevented if Nottinghamshire social services had responded properly to reports from her grandmother and neighbours that she was at risk.

1994

Rikki Neave, six, was found strangled by his coat zipper in a wood near Peterborough. His drug addict mother, Ruth, was jailed after admitting cruelty towards Rikki and two of his three sisters. She hit them, burned them, threw them across the room and locked them outside. Neave had asked a succession of social workers to take the boy off her hands and told one she would kill Rikki if they did not do something. A report by the social services inspectorate three years later said fault primarily lay with senior management in Cambridgeshire social services department.

1999

Chelsea Brown, two, was battered to death by her father. Robert Brown, who was jailed for life for her murder, had a criminal record for violence against children. Her mother, Maria Brown, was jailed for 18 months for child cruelty. The girl's social worker, Norma McDevitt, visited the family 27 times in the 10 weeks before her death. She took Chelsea to a paediatrician who said that six out of nine areas of bruising "had no plausible explanation" and at least one was deliberately inflicted. These findings should have triggered police involvement and a multi-agency case conference under Derbyshire county council's procedures, but neither happened.

2000

Victoria Climbié, eight, died from hypothermia in a tiny flat in Tottenham, north London, after suffering months of horrific abuse and neglect. Her aunt, Marie Thérèse Kouao, and her boyfriend, Carl Manning, were both jailed for life for the girl's murder in January 2001. A public inquiry into her death began in September 2001, which is expected to lead to sweeping reform of Britain's child protection services. It has heard that there were at least 12 chances for the agencies involved in her protection to have saved her. Two social

workers from the London borough of Haringey have been suspended and face disciplinary proceedings.

2000

Lauren Wright, six, was found dead after suffering a fatal punch or kick from her stepmother, Tracey Wright, which caused her digestive system to collapse. The woman was found guilty of manslaughter, as was the girl's father, Craig Wright, who had turned a blind eye to her abuse. Norfolk social services department has admitted it made serious mistakes and missed chances to save Lauren. An inquiry found that inter-agency coordination was "ineffective" and social workers had not acted with "due urgency".

2002

Ainlee Labonte, two, was starved and tortured to death by her vicious parents, Leanne Labonte and Dennis Henry. The couple, from Plaidstow, east London, were jailed for manslaughter for deliberately punching, scalding and burning the toddler, who had 64 scars and bruises on her body when she died. She weighed just 9.5kg (21lbs), about half the normal weight of a child that age. An inquiry into her death found that the health and social workers who should have protected her failed to do so because they were paralysed with fear of Leanne and Dennis. It criticised the staff and agencies involved for poor communication and for failing to carry out a proper assessment of the risks facing Ainlee.