CONTRASTING NATIONAL JURISDICTIONAL AND WELFARE RESPONSES TO VIOLENCE TO CHILDREN

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Abstract

This paper describes some approaches to addressing maltreatment of children in OECD countries and explores whether these approaches could be used to improve outcomes in New Zealand. Comparisons are made between the Anglo-American model of *child protection*, which New Zealand uses, and the Continental European model of *family services*. The child protection model is based on the adversarial legal approach, where social workers' focus is on removing the child from potentially harmful family situations and gathering evidence for legal proceedings. The family services model is focused on maintaining the family unit wherever possible, and the social workers work with families to sort out their problems. This model uses the inquisitorial legal approach, where specially trained judges lead teams of social workers to help the child by enabling changes in family circumstances to equip parents to meet their obligations to their children. New Zealand's use of Family Group Conferences, which is developed from an indigenous Māori structure, is more akin to the family services approach. This is because it encourages early intervention, with a wide whānau/family focus, without the need for gathering legally admissible evidence. However, if New Zealand wanted to adopt a more holistic family

services approach to child protection, there would need to be a substantial theoretical and procedural shift from seeking to punish "unsafe" families to ensuring parents are assisted to meet their obligations regarding the wellbeing and safety of their children.

INTRODUCTION

The Social Report (Ministry of Social Development 2005), which records New Zealand's official indicators of social wellbeing, referred in its "international comparison" section to "a UNICEF study of child maltreatment deaths in rich nations in the 1990s [which] reported that New Zealand had the third highest maltreatment death rate (1.2 per 100,000) behind only the United States and Mexico" (p.107). The report noted that care should be taken with this finding because of the small numbers involved and the possible differences in the ways in which countries classify death by intention. Nevertheless, the result is sobering. In a second league table in the same UNICEF document, the figures for children under 15 years intentional death and death of "undetermined intent" were combined, and the results were not much different: New Zealand moved from third highest death rate to sixth highest out of 27 OECD nations (UNICEF 2003).

The UNICEF league tables are interesting because they offer one of the only accepted international comparative outcome data sets for violence to children, crude though they may be. In fact, apart from road deaths, the league table is the only international comparative database cited in the entire "Safety" section of the Social Report. This is because violence and abuse reporting systems and processes vary so widely in countries that comparisons lack credibility. Child deaths identify an objective outcome at the extreme end of the violence continuum, and they may or may not reflect the levels of abuse in a particular country.

Countries vary greatly in their jurisdictional and welfare responses to violence to children, according to their cultural conventions and political histories. Surprisingly, given the seriousness of the topic, there are few comparative studies that systematically explore the differences in terms of both their processes and outcomes. It is extraordinary when one considers the costs of violence to countries financially and in the loss of wellbeing. Yet many similar countries have developed quite different philosophical, legal, organisational and operational responses to violence and abuse. Given that all these countries encounter many of the same problems, an analysis of the relative merits of the different aspects of each system should be a fruitful ground for research and evaluation in this vexed area.

New Zealand is an English-speaking country that has inherited its essential traditions of law and welfare from the United Kingdom. Until 1989, it practised, for the most part, a traditional *child protection* model approach common to the Anglo-American world. In

1989, with the adoption of the Children, Young Persons and Their Families Act (the Act), an indigenous Māori element was introduced into the heart of the jurisdictional and welfare system through the use of the family group conference. This approach, based on a traditional Māori "whānau hui" (gathering for meeting involving extended family members), was designed to strengthen family agency and participation, and mobilise community and government resources more effectively (Dalley 1998, Love 2000). It introduced a broader ecological dimension into the responses to the maltreatment of children.

Unfortunately, the Act's early life was accompanied by a period of economic restructuring and substantial constraints on social expenditure during the 1990s. The Department of Social Welfare, like other social ministries, had its budget substantially reduced and along with it much of the early resourcing of the family group conferences. Thus, it can be argued that the mixed cultural approach never really had the opportunity to develop in the way it was intended. Important elements of the family group conference were incorporated, but its application is probably more fully practised outside of New Zealand (Burford and Hudson 2000).

The international comparative research studies in this area, small though they are, offer some important points of reflection for policy in New Zealand. Like almost all English-speaking jurisdictions (Cameron et al. 2001), New Zealand continues to experience dramatic increases in reported child abuse (Department of Child, Youth and Family Services 2004), high levels of stress and job turnover among front-line workers, some loss of public confidence in the ability of public services to adequately address the safety needs of children, and a primary legal and resource focus on detection that constrains its welfare ability to deliver ongoing services to the families where violence has occurred (Ministerial Review Team 1992, Brown 2000, Ministry of Social Development et al. 2003, Connolly 2004). By contrast the *family services* focus of many European countries, though facing the same problems of child maltreatment, do not report a similar set of difficulties (Cooper et al. 1995, Hetherington et al. 1997, Cameron et al. 2001, Cameron and Freymond 2003). This is not to suggest that the European countries have developed some utopian formula to the vexed problems of violence, but that their predominant focus on "families" appears to have prevented a number of the persistent problems experienced by Anglo-American countries whose primary focus is the investigation and assessment of risk to children.

The purpose of this paper is to explore a number of differing national jurisdictional and welfare approaches to addressing the maltreatment of children as they tend to operate in a number of OECD countries and tease out important implications for improving outcomes in New Zealand. The paper will initially summarise important comparative research between the contrasting approaches of the French and English welfare and legal systems as they relate to the maltreatment of children, and identify differences between

the Continental European and Anglo-American typologies. It will then explore the principles that underpin these contrasting models as they relate to the family services model of the Continental European countries and the child protection model of the United Kingdom, Canada and the United States. Finally, the paper will consider the significance of the findings of these comparative studies for New Zealand as they relate to strengths and weaknesses in the country's approach when responding to violence to children. Particular focus will be given firstly to the role of family group conferencing in as much at it captures aspects of both contrasting models, and secondly to the types of changes New Zealand would need to make to its welfare and legal structures if it decided to incorporate a family services approach.

The paper is not intended to be a comprehensive analysis of countries' welfare and jurisdictional approaches or a full description of their systems, but rather a window into some exploratory research that has begun to investigate the assumptions behind the systems in various countries, the way they operate and the public's mandate and expectations of services.

CONSENSUS AND CONFLICT IN FRANCE AND ENGLAND

The early comparative work in national jurisdictional and welfare systems involved research into child protection in England and France (Baistow et al. 1996, Cooper 1994, Cooper et al. 1995, Hetherington 1996). This research began at a time when British practitioners and policymakers were beginning to turn away from the United States as the primary role model for the development of child protection systems. Until the early 1990s, the United States was seen as being at the forefront of efforts to combat violence towards children, and European systems were seen as lagging behind the Anglo-American approach. However, it became apparent that the United States and the United Kingdom, along with other English-speaking countries with similar child welfare systems, were heading for crisis. Researchers, looking for new perspectives on the problems they faced in the United Kingdom, found a range of cultural, structural and operational differences between Anglo-American and Continental European systems of child protection.

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

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

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

These differences were framed by the politico-legal culture in the two countries. The English system had become conflictual at root, and the work of a social worker as social worker was frequently at odds with the social worker's legal role. Tensions existed between the various parties, their claims on "rights" and their legal representatives, and between the differing professional interest groups. The French social workers, in contrast, were able to prioritise the family's needs and their working relationship with the family. The legal aspects of child protection cases were largely addressed by the Juges des Enfants (Children's Judges) – whose interesting role will be referred to later in this paper – while the social workers could focus on principles such as cohesion, consensus and collectivism in their work.

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

The primary objective of child protection work in France is to keep children in their family of origin, even in some situations where there was a risk of maltreatment. The families are not left alone to deal with the situation, however. If a parent, or parents, did not fulfil their role adequately, the aim is to help them become parents who learn to provide a safe environment for their children. This may involve therapeutic work, parental education and/or community support. The resources of the system provide a major investment for this process. The concept of parents being enabled to fulfil their role as parents who protect their children is embodied within the French Civil Code (Grevot 1994).

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

risk of abuse, and the social workers may enter into conflict with families in order to ensure the right of the child to protection from harm. Although social workers often referred to a "working partnership" with families, the norm involved contested legal proceedings.

In England, though the family of origin was seen as the preferred place for a child in the first instance, this quickly gave way to placement outside the family if the parents were assessed to be inadequate to provide the necessary care for a child. In such cases, the primary aim was to search for a permanent substitute for the birth parents. Court proceedings were used to separate children form their parents and adoption orders were sought in a majority of the cases. The concept of permanency was a significant influence throughout the process.

The most striking difference between the two countries' systems lay in their differing approaches to the significance of blood and kinship ties. In French child protection work, the individual child was, and remained, part of the family and so the family became the unit of intervention, whereas in the English approach, the assessment of risk to the child and immediate actions to prevent further harm was primary, regardless of its impact on the family. Thus, in French social work practice methodologies, individual rights were subordinated to the obligations family members had to one another. Emphasis was given to assessment factors, the evaluation of relative strengths and weaknesses in families, with a focus on causes and constraints, and a strong weight on education. Social workers were enabled to take considered risks in the process of family change. Placement outside the family home did occur, but only temporarily.

The practice methodologies in England, on the other hand, focussed primarily on the assessment of risk to the child and actions to prevent further harm. Risk was assessed largely through observation of parent–child interaction and by the employment of quasi-objective "indicators" of risk. When compared with the French social workers, little attention was given to causal factors. The primary focus was on immediate short-term solutions and then permanent long-term arrangements. Social workers were not allowed to take risks. The entire child protection system strove to minimise risk.

The differences between the two countries were reflections of their different social, political and legal assumptions concerning the relationship between children, the family and the state. A rights-based legal culture predominated in England. The privacy and responsibility of the family was central to the British tradition and consequently the law sought to restrict state interventions. The French state was more paternalistic. The family existed within a Continental European conceptual environment of citizenship and solidarity in which the state had responsibilities for its children. When parents failed their children in England, a contested legal process ensued, whereas in France the Children's Judge embodied the benign authority of the state.

The Children's Judge epitomised the different approach to law in the two jurisdictions. The Children's Judge's role was to gain an appreciation of family circumstances and difficulties rather than accord guilt or blame. They endeavoured to help the child and enable changes that would equip parents to meet their obligations to their children. They met in the Judge's office in an informal but respectful atmosphere, usually with the social worker in attendance and only in isolated cases with a lawyer. These judges had their own teams of social workers separate from the social work agencies. The Children's Judges could make legal orders and the child protection social workers, both the Judge's and those in separate social work agencies, were accountable to them. Social workers could request an "audience" with the Children's Judge if they were concerned about the safety of a child, without having to produce legally admissible evidence. Thus, in child protection work in France, the Children's Judge and the social workers worked together as a combined justice and welfare team. The legal processes were essentially inquisitorial, in sharp contrast to the adversarial approach across the Channel.

The participating English and French social workers in the study reacted differently to the findings. The English social workers noted the loosely defined powers of both the Children's Judges and the social workers in France. They were impressed with the ease of access to legal proceedings and the informal family-focused audience with the Children's Judge. They expressed concern over the lack of attention to individual rights and the lack of "due legal process", but this was offset by a recognition that the system delivered substantive rights to children and parents in a manner that the formalities of the English system did not. Interestingly, participants in both countries considered that while families in England were accorded more rights, professionals there intervened more than in France and, despite the fact that the French system was paternalistic, its decisions were more moderate. English participants observed far less hostility between client families and social workers in France. They felt the lack of representation by lawyers contributed to this.

> Overall, many English participants felt that while parents and children in England may have more rights than their French counterparts, they actually had less power. (Cooper 1994:9)

> The English participants came to believe that the rights of the French families to be included in decision making, to be consulted and to be properly heard in the legal context, might be greater and more real. (Hetherington 1996:103)

French social workers were very disturbed at the power English parents had if there was insufficient evidence to bring the case to court. To them, it appeared to contradict the central objective of protecting children from harm. It was noted that the French system delivered a family-focused problem-solving style of justice, which was not possible in the adversarial and rights-based approach of the English legal system, where the legal and social work responses were not integrated.

CHILD PROTECTION IN EUROPE

The comparative studies of child protection systems eventually explored other European countries (Hetherington et al. 1997, Hetherington 1998) and later included research on the welfare of children with mentally ill parents (Baistow and Hetherington 2001, Hetherington 2001, Hetherington et al. 2002). The eight systems of child protection studied were Belgium's Flemish and francophone communities, France, Germany, Italy, Netherlands, England and Scotland. The broad Continental European themes, as described above in relation to the French system, had many similarities with the other Continental European countries.

The studies identified nine critical underlying concepts of the Continental European systems as they related to child protection.

- **Subsidiarity** was particularly emphasised in Germany, the Netherlands and Belgium. In Germany, where the concept had considerable force, there was an obligation on the state to develop social capital through strong social networks and support for local and regional institutions. Those closest to or most involved in activities should be the decision makers; that power could not be moved to a higher institutional level or to the state.
- **Welfare pluralism** is the substantial involvement of community groups and other non-government organisations in the delivery of services. As with the concept of subsidiarity, it did not refer to the state as a non-participant, but rather an encourager of diversity and autonomy for social institutions. Germany, Flanders and France (as we have already noted) offered good examples of public and private partnerships and linkages in the delivery of child protection services. In these countries, there was also considerably less government control over social work practices, in sharp contrast to their British counterparts.
- **Solidarity and the family** was considered fundamental to Continental European thinking, but most particularly in France. It was substantially distinguished from the British concept of family in that it was understood to be the foundation institution of society rather than an institution in the private domain. Social solidarity recognised the family as the appropriate object of social policy, which ensured its support and wellbeing. Thus, the interests of the state and the family tended to coincide (Hetherington et al. 1997:86). The concept of solidarity was linked to that of subsidiarity, the hierarchy beginning with the family, then the community and lastly the state.
- **Republicanism** was a strong organising principle, even in countries like Belgium that have a monarchy. It referred to a mutual set of obligations between the state and families. The French Children's Judges embodied the benign paternalism of the state. Easily called upon, the Judges were obliged and committed to help and enable families. Although the Judges and the families did not have equal power, both had

ownership of space when there was an "audience", and the law required a negotiated reciprocity in such meetings. This framed notions of public and private, intervention and non-intervention, very differently from countries without this tradition.

- **Intermediate institutions** is a concept closely related to subsidiarity and welfare pluralism, referring to a devolved institution that sits between the family and the state. An example was the Flemish Mediation Committee, which functioned as both an alternative to court proceedings and a filter for cases to reach court. It sat between the administrative and legal domains and, in a sense, it functioned to protect civil life from needless intrusion by the state or the courts. It could refer child care matters to community organisations for help or to the court system depending on their assessment.

- **Rights and social rights** in relation to society and government were ensured for individuals by the concepts of solidarity and subsidiarity. The family was conceived as the basic unit of society and children's rights were expressed through the family, implying a more collective notion of family welfare and rights as opposed to an individual-rights approach. Because the vast majority of children continued to live with their families, engaging with the family was essential for ensuring their safety and wellbeing. As noted earlier in this paper, this was in marked contrast to the English practice of individual rights over and above those of the family.

- **Rights and family support**. The earlier French and English research found that French parents, though frequently unclear about their rights, often successfully negotiated for forms of help other than those originally offered by the social worker. English parents, by contrast, generally struggled to receive help and were often afraid of the social worker's power. At the same time, they were well informed about the system and their rights, probably indicating the social worker's concern to inform them. Interestingly, French and English parents were much more concerned about their and their children's welfare than they were about their rights.

- **The citizen and the state** referred to a Continental view of the state as reflecting the will of the people, giving political expression to the best wishes of human beings, as opposed to being an external force that regulated human activity. The Children's Judge embodied this notion and was required by law to acquire parents' agreement to the judge's orders. Again, this sharply contrasted with English legal practice.

- **Ideologies of training** referred to the organising principles of social work practice and training – a holistic social pedagogy concerning the individual as self and the individual as a social being. The social worker's role related to the total social, emotional, developmental and family situation in a non-compartmentalised way, which was reflected in both the thinking and practice of social work.

As one would expect, the six Continental European countries had developed their judicial systems quite differently from the English one. Scotland lay somewhere in between. Every country apart from England had professionally trained specialist judges for all work with children. Likewise, all the countries possessed an inquisitorial

legal system, apart from England, which was fundamentally adversarial. England was also the only country that did not allow informal dialogue between the social workers and the judge, and in most countries, even the children and parents were able to speak informally with the judge. In all six Continental countries, the judge stayed with the family case throughout enabling development of an ongoing relationship with the family and regular review of progress. In Scotland, this occurred sometimes, but rarely in England.

Separate legal representation for parents and their children was necessary in the adversarial English legal system, but not used in any of the other countries. England was the only country that separated its child welfare and juvenile justice systems, indicating a different philosophy of child development and responsibility. In all countries apart from England, judges could intervene on the basis of a child's welfare needs alone. Only in England was it necessary to have evidence of significant harm at the parents' hands in order to take legal action (apart from short-term emergency legal action).

Recently, the British government attempted to address some of the shortfalls of the child protection and children's services systems. Following the report of the Laming Inquiry into the death of Victoria Climbie,[2] the government published the Green Paper *Every Child Matters* (Her Majesty's Treasury 2003) followed by the *Children Act (2004)*. These were attempts to change radically the structure and function of children's services in England. The main thrust of the Green Paper was to improve inter-agency communication, to clarify the lines of accountability and to move from crisis intervention towards prevention and early intervention.[3] This is an ambitious agenda, which is only in its first stages of implementation, and it is not yet clear how effective it will be. The fundamentally adversarial court system, however, has not undergone significant change.

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2   Victoria Climbie was a girl of West African origin who was killed by her aunt and her aunt's partner in 1999. Despite being known to many agencies in a number of local authority areas, no professional had assessed the risk to Victoria. The inquiry into her death was led by Lord Laming (Laming 2003). They found that inter-agency communication had been poor, and that no one had taken ultimate responsibility for ensuring her safety.

3   The main provisions of the Green Paper include:
   • increasing accountability by appointing a Director of Children's Services in each local authority area, who is responsible for outcomes of all children in that area and for all agencies
   • Children's Trusts – every local authority will have a Children's Trust, which brings together the various sectors (health, education, social services) which have the responsibility of coordinating services and meeting targets
   • an outcomes framework which governs all the work of the Children's Trusts
   • Local Children's Safeguarding Boards, which bring together the Children's Trusts and other relevant agencies to develop policies and interventions to safeguard children
   • a common assessment framework which will be used by all agencies
   • the development of Sure Start Children's Centres which will provide child care and family support in every neighbourhood in the country
   • the development of Extended Schools which will provide a range of community services
   • inspectorates from different sectors should be merged.

CHILD PROTECTION IN NORTH AMERICA

North American researchers (Cameron et al. 2001, Freymond 2001, Cameron and Freymond 2003) have joined the comparative study of child protection, and the "English approach" has been expanded into the "Anglo-American paradigm". They saw Canada, the United States and England as developing similar child protection systems, which they call "threshold systems" because they all require minimum levels of dysfunction in order to qualify for entry. The North American countries followed a very similar pattern to that outlined above for England.

They described the familiar notion of the privacy of the family and the state's right to intervene only when parents have failed to meet some minimal standards of care and protection of their children. Even then, social workers have had to gather sufficient evidence of maltreatment and prove such allegations in court before the family's right to privacy could be overridden. Front-line social workers spent much time collecting this evidence for the formal legal proceedings. If the evidence fell below the minimum standard, their case was closed and the family usually received no further help. As was noted with the English system, the North American child protection services were not able to be accessed directly by social workers or the families themselves. This ruled out effective preventive services with families who had not reached the minimum care threshold so far, but who might nevertheless be at risk.

Child abuse reports in these countries continued to increase substantially and, because every report required a formal investigation, the child protection services had become overwhelmed with the procedures, paper work and time required, such that little space had been left to provide helpful assistance to the families. This had been followed by complaints from workers of stressful job pressures, high levels of frustration and a consequent high staff turnover. As with the English system, the front-line workers experienced conflict between their legal and their welfare roles, which they referred to as "a perceived imbalance in the functions of care and control" (Cameron et al. 2001:26).

It was reported that very little choice had been left in a risk-averse system. Social workers complained of having decreased discretionary power in their work with families and a lack of flexibility to provide the care and support required to address family problems. The increased reliance on standardised legal recording and risk-assessment instruments compounded these problems. Likewise, families whose needs were often multiple and complex were offered limited and relatively inflexible prescribed processes from child protection workers. The workers, complying with investigation protocols, were constrained in their ability to adapt to the families' needs. For those families who did not meet the minimum risk standard, little was offered to help them despite the fact that they often required a range of supportive services. For those who did meet the minimum standard, instead of negotiating assistance with the social worker, they often

had to comply with a direction and in some cases had their children removed from their home.

The overall picture of the Anglo-American child protection systems was dismal indeed. Dissatisfied workers and client families have prompted questioning of the direction of these services. In particular, these systems have been criticised for their disregard of family relationships in both preventing and addressing child maltreatment. That these societies do not appear to be achieving higher levels of safety through their approaches, when compared with other countries, raises questions about the efficacy and value of such an orientation in child protection practice.

SOME REFLECTIONS IN THE NEW ZEALAND CONTEXT

Caution should be exercised whenever systems in one country are compared with those in another. Countries have differing cultural traditions, political processes and systemic structures. It would be foolhardy to import a system that grew in one environment and simply impose it on another. However, there is value in questioning critical services in terms of the efficacy of their processes and the quality of their outcomes in any country. International comparative research enables a fresh view of the way different jurisdictions address similar problems in their own settings. This becomes particularly important where services, such as child protection, are essential to the wellbeing of a society, are big-ticket budget items and are struggling under a loss of morale and public confidence. In such a situation, it can be very useful to explore the strengths and weaknesses of similar jurisdictions and compare them with those from different traditions with a view to constructive criticism of one's own system.

As noted at the beginning of this paper, New Zealand inherited its essential traditions of law and welfare from the United Kingdom and has much in common with other English-speaking countries. Like them, it continues to experience dramatic increases in reported child abuse, high levels of stress and job turnover among front-line workers, a loss of public confidence in the ability of public services to adequately address the safety needs of children, and a primary legal and resource focus on detection that constrains its welfare ability to deliver ongoing services to the families where violence has occurred (Ministerial Review Team 1992, Brown 2000, Ministry of Social Development et al. 2003, Connolly 2004). Nevertheless, serious and commendable attempts are being made to address these problems (Ministry of Social Development et al. 2003, Waldegrave and Coy 2005), including more realistic approaches to issues of funding and training in recent years.

However, there is a danger that the reform of child protection services in New Zealand may be too narrowly focused and end up reconditioning a faulty engine when there was the opportunity to consider an alternative model. The comparative research outlined in

this paper suggests the Anglo-American child protection model contains some serious deficiencies in terms of quality of service. The Continental European family services approach avoids many of the pitfalls of the child protection model, although it poses some new dilemmas of its own.[4] Nevertheless, its consensual approach to families, which primarily focuses its resources on enabling parents to create safe environments for their children, and its coordinated cooperation of legal, welfare and non-government organisations, may offer valuable pointers to improving child protection work in New Zealand. Furthermore, its principles may also offer ways of improving services around domestic and other forms of violence.

Family Group Conferences

It is worth noting that the introduction of family group conferencing in 1989 through the Children, Young Persons and Their Families Act incorporated into the heart of child protection and youth justice work in New Zealand a process akin to the family services approach. Unfortunately, the downsizing of public investment in the 1990s stifled much of its early life, but it has survived and it has been successful enough to take root in North America and Europe.

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

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

Family group conferences, formally introduced by the Act, were designed to empower families to resolve the majority of their family welfare and justice problems through their extended family members. The traditional whānau hui (Māori extended family meeting) was the model for the family group conference. Initially, these worked very successfully when they were properly resourced and competently managed. Resources were available to allow attendance of critical kin members who lived in other places

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4   It has been suggested, for example, that children's rights may on occasions become lost with the strong focus on families and that there can be a higher level of risk for children when the presupposition in most cases is that they will remain within their families. These arguments are countered by reference to the serious problems created by multiple child placements and that removing children from their families often punishes them and does little to help parents learn new ways of relating to their children.

and to follow through on family decisions, be they further educational tutoring, counselling, sports, music, and so on. The family group conference model was introduced for children, young people and their families of all cultures. Many Pākehā (white New Zealanders) also benefited from the extended family approach.

The family group conference contains elements that are common to the continental family services approach (Love 2000, Waldegrave 2000, Connolly 2004). These include the primacy of children remaining within their families and living within their kinship groups wherever it is possible. In fact, the family group conference, with its emphasis on the extended family, offers more options and flexibility in terms of safety than the European model. Secondly, the family group conference is an intermediate structure that can be called early in child protection cases without having to amass legally admissible evidence. It certainly reflects the concepts of subsidiarity, welfare plurality and solidarity that are lacking in the Anglo-American model but central to the Continental European approach. Thirdly, it encourages a consensual process rather than a conflictual one. And fourthly, when it is competently facilitated and responsibly followed up, it enables problem solving and preventive strategies, agreed to by the family, to be planned and acted on early in the process. Even in situations where court proceedings ensue, the family group conference can be called and important decisions agreed to before and during the period of legal proceedings.

Given the shared elements between family group conferences and the family services approach, it is perhaps surprising that New Zealand's Department of Child, Youth and Family Services has often been the focus of negative attention since the introduction of the Act. The reasons for this are probably not inherent in the processes of the family group conferences, but a range of other factors. Foremost among these is that the more family-services style of the family group conference has been imposed on an essentially Anglo system of welfare and law and that system often reverts to type, especially when it is under pressure. The weight of a huge increase in reported abuse (Department of Child, Youth and Family Services 2004), high stress and job turnover among front-line workers, and the demoralising impact of public exposure of casework failure when it has occurred, has probably contributed to a risk-averse, depersonalised approach that is more akin to its Anglo roots (Ministerial Review Team 1992, Brown 2000, Ministry of Social Development et al. 2003, Connolly 2004). Furthermore, the long period of low investment in funding and human capital during the first decade of its life (Ministerial Review Team 1992, Brown 2000, Ministry of Social Development et al. 2003) added to the pressure.

The legal structures around child protection essentially incorporate the family group conferences without fundamentally adopting a Continental European-style "family friendly" approach. Judges have not been specially trained for working with children at risk, court processes cannot be accessed without a certain level of evidence, and

the processes remain conflictual, with separate legal representation for the different parties involved.

As the Department of Child, Youth and Family Services became more risk averse, it tended to manage "abuse and neglect" cases itself, reducing the role of intermediary community and service organisations (Connolly 2004, Waldegrave and Coy 2005). This could be expected to have damaged the trust and goodwill inherent in stakeholder support. Furthermore, the Department's performance data sets reveal that over the period 2001 to 2004, family group conferences were only convened for around 10% of the "abuse and neglect" notifications. Family/whanau agreements were formed for considerably fewer than that (Department of Child, Youth and Family Services 2004). Thus the family services processes in the system are only being employed sparingly.

The risk-averse behaviour of the Department is better understood in the context of their having primary responsibility for the care of children at risk, instead of this responsibility being shared to the extent it could be across ministries like health and education. The Department carries the bulk of protection and welfare responsibilities and is expected to budget for both. Critical rehabilitative services are not prioritised to the extent necessary to provide an efficient coordinated service by the ministries that carry those responsibilities.

As noted earlier, child protection services in New Zealand are being rebuilt. The 21st century finds these services better resourced and leadership determined to lift their game in light of the reports referred to earlier. The resilience of the family group conference process, despite the pressures noted above, has the potential to reinvigorate the whole child protection system if it could be accompanied by a more consistent family services focus across the legal, inter-ministerial and community and service organisations domains, as outlined in the research in this paper.

This is not a presentation of the family group conference as a utopian instrument, but rather an indigenous plant that has many more blooms than we have yet seen. Its great value to New Zealand is that it offers an approach that is consistent with some of the best practices in child protection work in the world. European cultural practices do not have to be imported because this "taonga" (treasure) is already established in the child protection system. It can offer a firm foundation for substantial improvements in the field if it becomes the centre of the new developments and is accompanied by similar approaches in the legal, ministerial, community and service organisations domains.

Changing the Model

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

European family services approach (Allen Consulting Group 2003, Connolly 2004). As the research outlined in this paper indicates, there is much to be commended in the cooperative, consensual approach of working with families to help them change their behaviour when it is unsafe, and preserve the family unit wherever that is possible. By contrast, the conflictual legal approach often antagonises parents and disengages them from their children. Furthermore, the resources in this latter approach are placed primarily into the legal arena, rather than into welfare and rehabilitation.

In the family services approach, the judicial and welfare roles work flexibly in partnership, allowing early interventions within a more preventive and holistic framework. The legal process is essentially inquisitorial, rather than adversarial, with a view to understanding causes and influences and how to change behaviour. The adversarial approach discourages early intervention and focuses more on legal assessment of guilt or innocence, often at the expense of family relationships. Children can become permanently separated from their parents, or at a later stage returned to their parents who very often have not received the welfare and rehabilitative support that would help them become better and safer parents. This is not to suggest that using one approach rather than the other will resolve all the problems in child protection work. There are, of course, a number of other important factors, like families' motivation to change, socio-economic circumstances, education services and so on.

The contrast between these two approaches, however, has considerable implications for New Zealand's child protection services and, beyond that, for violence-prevention services with adults. The analysis above highlights the problems when family group conferences are placed in a largely unchanged legal, cross-ministerial, community and service organisations environment. This points to the substantive change that would be required if New Zealand chose to adopt an holistic family services approach to child protection. It would involve employing an ecological, theoretical framework.

Firstly, the legal framework would require a different orientation. It would need to adopt a consistent, inquisitorial approach to the problems before it. Legal representation for each party would be replaced with social workers or other helping professionals. The focus would move to a "strength-based" approach of rehabilitating parents who were deemed to be unsafe. An assessment of the influences and causes of destructive behaviour would become central to this approach, with a view to addressing them with therapeutic and educational resources. Funding that was saved through the reduction in legal representation could be reinvested in the rehabilitative services. Judges in this area would undergo specialist training in working with children and families. They would have a central role in the process of ensuring parents were assisted to meet their obligations for the wellbeing and safety of their children. They would make legal orders and the social worker would, at least in part, become accountable to them. The total service would aim at early intervention with flexible access to the judges.

Secondly, the Continental European principles of employing strongly devolved social networks, the substantial involvement of community groups and non-government organisations, and use of intermediary institutions that sit between the family and the state, would encourage a broad range of differential responses. The principle of welfare pluralism would require the Department of Child, Youth and Family Services to involve and resource non-government service providers and community-based organisations to broaden its service base, enable strong preventive work and enhance the ability of communities to encourage safety in families. It would call for a conscious effort to build trust and predictability with key stakeholders in regions throughout the country. This approach has been advocated in New Zealand (Connolly 2004) and there are indications that the Department plans to adopt a "differential response model" to child protection services that will incorporate this principle (Waldegrave and Coy 2005).

Thirdly, it follows from this that social workers, psychologists, educationalists and other helping professionals will need to be trained for holistic, preventive and rehabilitative strength-based work as their primary mode. The gathering of legally admissible information will be of less significance. Specialised skills in family therapy, non-violence group work, social networking, parenting groups and child development will reflect the type of human capital required. Specialised, sensitive family facilitators and coordinators will be needed in senior positions, and a raft of experienced supervisors, who can support, nurture and lift the capability of front line workers, will also be needed.

Fourthly, it further follows that the greater bulk of child protection resources would be diverted from the "front end" of the system, which is focused on detection and the gathering of legally admissible evidence, to the "back end", which is primarily focused on rehabilitation. While there must always be a commitment to some "front end" work, the emphasis in the family services model is predominantly in the "back end", helping families to live safely through rehabilitative processes like counselling, education, support for their particular circumstances, help with social networks and so on. This will not remove the need for more legal processes in certain situations, but it will enable early preventive work, help for as many family members as require it and a vehicle for the learning of safer ways to parent children. A planned movement of the bulk of child protection resources to the support, education and rehabilitation of families is central to the family services approach. It would also be important to develop joint ministerial responsibility for child protection services so that health and education resources could be prioritised for families where violence has taken place.

The focus of this paper has been on jurisdictional and welfare responses to violence to children. Many of the principles, though, may well apply to responses to domestic violence, other forms of adult violence and elder abuse, although that is really the subject of another paper. It is not a central aim in responses to domestic violence to keep a couple together, but the emphasis on holistic, preventive and strength-based

responses, aimed at helping people fulfil their obligations to each other in safety, warrants investigation. The emphasis on inquisitorial and consensual approaches to violent offenders is reflected in the "men for non-violence" movement and restorative justice approaches. This is not to suggest there should be no punishment through the court system, but that the long-term safety of society will depend on the quality of the "back end" services of rehabilitation and behaviour change. Early interventions well before legal thresholds are crossed, well-resourced community and non-government service provision, and skilled social-work professionals capable of enabling therapeutic and educational change, could all lead to more effective responses to violence between adults, as well as that from adults to older people and children.

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