Captive families: when parents lose their children

Jeremy Laurance on the struggle for parental rights

There aren't many happy stories about children in care, but this is one of them. Harry and his wife had five children, the eldest aged six, when she deserted him. Harry couldn't cope and the children went into care. But he was devoted to them and kept in close touch until five years later when the eldest was eleven and they started to come home. Harry had married again and had a new baby. The children were older and therefore easier to manage; and with the help of his aged mother, Harry and his wife could cope with them. The family is now re-united.

Harry's is a success story. Or is it? In most areas social workers would never have allowed a family to "languish" in voluntary care for five years. Parental rights would have been assumed after perhaps six months and the children placed for adoption. Harry would have lost his family forever, but his children's future would have been secured much sooner.

Until the early seventies, increasing emphasis in child care had been placed on rehabilitation and preserving family ties. But the death of Maria Colwell in 1973 at the hands of her stepfather, after she had been returned from her foster parents to her natural mother at her mother's request, provoked a backlash. Parental rights had been guarded too fiercely and for too long, at the expense of substitute parents and of the children themselves, argued the critics.

The Children Act, 1975, sought to redress the balance by increasing the power of local authorities in relation to parents of children in their care, in particular by making it easier for them to assume parental rights. The prevailing philosophy in most areas now is to get the child home as soon as possible but, if that fails, to assume parental rights in order to plan the child's long-term future. This is reflected in the figures. Fewer children are being admitted to voluntary care, but the number for whom parental rights has been assumed grew from 14,500 in 1976 to 18,400 in 1979 (a 27 per cent increase.)

This increased emphasis on control was accompanied by a spate of stories about the way in which the new powers were being abused. Evidence accumulated that pressure was put on parents; that they were not informed of their rights; and even that they were deliberately misled. Pressure groups reported a growing chorus of protests from parents who had lost their children and were being denied access to them.

One Parent Families, which has amassed a dossier of 40 case histories, to be published shortly, showing how the system is weighted against the parents, drafted a bill which would require all parental rights resolutions to go through the courts with legal representation for the parents, the child and the local authority. The bill, sponsored by Liberal MP, David Alton, is now before the Commons.

There is an issue of practice and an issue of principle here. The practical issue is whether social workers are using their powers properly—making the right decisions and implementing them in an appropriate way. The issue of principle is whether the power to remove a child from its parents is not so great, with such far-reaching implications, that natural justice demands that its exercise be controlled by a court of law.

Underlying these two issues is a deeper question about what constitutes good child care. The debate is about rescue versus rehabilitation. One Parent Families, and the other pressure groups that support the bill, believe that the backlash against parental rights embodied in the Children Act, 1975, went too far. Too much emphasis is placed on rescuing the child from its unhappy home and planning its future independently of the parents rather than focusing the effort on rehabilitating the family. The groups hope that putting parental rights resolutions through the courts will solve the issue of bad practice, restore the principle of natural justice and promote "good" child care. It is worth looking at these three aspects in turn.

Compulsory care

One much-quoted example of "bad practice" involved the homeless young mother of a six month old girl. She put the child in care until she could get housing and was immediately asked to sign a form. When she got a promise of housing from a neighbouring borough and returned to collect her daughter, she was told she had signed away her parental rights. The resolution was going before the social services committee. She lodged an objection. It was six months before the case came to court. The child was then a year old and had been separated from its mother for half of its life.

In court the social worker said the mother had given two addresses and she was worried that she was about to disappear —which would have prevented plans being made for the child's future. The chairman of the magistrates criticised the form the mother had signed for being technical and difficult to understand. The mother had been upset and had signed what she was asked. The social worker admitted she had not given her the explanatory booklet about the form.

The mother, who was 18, was the eldest daughter in a family of six being looked after by their father. When she came home from hospital with her baby, she found she was expected to look after her five brothers and sisters. Her boyfriend rowed with her father—and she left. She had given two addresses because she didn't know where she would be staying. Her problem was a housing one rather than a social one.

Cases like this led many people to the view that parental rights resolutions were being used as a back-door route into "compulsory" care which avoided the inconvenience of going through the courts. "You know all the circumstances when you receive the child into care," says June Thoburn, lecturer in social work at the University of East Anglia. "You should only take

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Cases like this led many people to the view that parental rights resolutions were being used as a back-door route into "compulsory" care which avoided the inconvenience of going through the courts. "You know all the circumstances when you receive the child into care," says June Thoburn, lecturer in social work at the University of East Anglia. "You should only take

parental rights when the situation changes. But there is evidence that many social workers know what they are going to do from the start—not let the children out again."

A small study by One Parent Families lends support to this view. Half the social workers interviewed saw the assumption of parental rights as a last resort after rehabilitation had failed. But half saw it "as a means of gaining care and control of the child."

Many parents have felt coerced or conned, even if they technically consented to give up their rights. In her book *Captive Clients—social work with families of children home on trial* (Routledge & Kegan Paul, 1980), Thoburn quotes a mother: "I had to go up to the office. The probation officer was there too. The social worker said, 'Do you mind signing this?' I said, 'What's it for?' and she said, 'It's just to say he's going to be looked after for a little while.' I signed, and that was the parental rights. They didn't mention anything about parental rights. They just waved it in front of me."

In some cases the reason given for assuming parental rights is bizarre. Jo Tunnard, of the Family Rights Group, cites the example of a 13 year old boy who had been in care in a children's home for four years when the local authority took parental rights. The social services explained that teenagers needed to rebel; and if the authority assumed parental rights, then he would know that it was it he should be rebelling against. The solicitor at the hearing said the argument was used quite often.

In this case, the mother was threatened with the removal of her son from the children's home if she didn't consent. Finally she gave in—and the boy stayed where he was.

Social workers, represented by the British Association of Social Workers and the Association of Social Services Directors, broadly agree that bad practice exists. But they diverge over how best to deal with it. The pressure groups want to invoke the power of the courts. The social work professionals argue that a code of practice would be sufficient.

Parental rights can be assumed simply by passing a resolution in the social services committee. The committee makes its decision on the basis of a report from the social worker. The parents have no right to be told of the resolution before it is passed; no right to be present at the committee hearing; no right to present their case to the councillors who pass the resolution; and no right to challenge the social worker's report. The committee consists of lay councillors who are unlikely to challenge a professional opinion. So it therefore often fulfils just a rubber-stamping function.

One right that the parents do have is to object to the resolution within 28 days and take the case to the juvenile court. But they are often too demoralised to do so, or have not been properly informed. Or they believe nothing will come of it. They may also appeal later on, but the onus is then on them to prove that it is in their child's best interests to be returned to them.

For these reasons the pressure groups believe the whole process is unfairly weighted against the parents. "The authority should place its evidence on the table before a court as it has to when it applies for a care order," says Tunnard.

BASW and the ADSS argue that the parents' right to object is safeguard enough. Informing them of their rights is simply good practice which could be laid down in a code of practice. In a paper for the ADSS, Tom White, Coventry's social services director, argues that the adversarial procedure of the juvenile courts is unsuited to care proceedings which "should be in essence an investigation into what will best serve the child's long-term interests." But why then is the court procedure deemed suitable for care orders but not for parental rights resolutions? And, as Tunnard points out, isn't the authority already in an adversarial position against the parents when it decides to take parental rights? Parents certainly feel that it is: as Jean Packman points out in *The Child's Generation* (Blackwell and Robertson, 1981), these families frequently refer to the social services as the "SS" and to social workers as "Nazis" and the "Gestapo."

A legal safeguard?

The pressure groups argue that parents in this situation are so vulnerable, so open to pressure that some legal safeguard is essential. The problem is how to strike the legal balance between the rights of the parents and the interests of the child. "The biggest criticism of social workers is not that they take children away when they shouldn't but that they don't when they should," says Labour MP, Allan Roberts, who was principal child care officer in Salford until the 1979 election and who is opposing Alton's bill. "I'm not in favour of a law which discourages them from doing what they should."

This danger is real as the Colwell case revealed. On that occasion the social workers were criticised because they had decided not to apply to a court to oppose Maria's return home because they were afraid they might lose. The judge said they

Margaret: she successfully fought a full care order in court, and the family is now happily reunited

Chris Moyse

should have presented the evidence and left it to others to decide; but the social workers were concerned about how they could sustain a relationship with a family after bringing an unsuccessful action against it.

Roberts also says that a magistrate's court is no more likely to make fairer, or less biased, decisions than a social service committee. "The idea that a magistrate's court is an independent arbiter that doesn't side with the authority is rubbish, even given legal representation for both sides," he says. In which case why should it be a deterrent to the social workers?

Plainly, parents are likely to be upset by having to go to court—and they may well still come under pressure. In *Captive Families* June Thoburn quotes some parents' experiences of the juvenile court, which is intended to have a treatment rather than a punitive role. "Mother: I didn't agree with anything the court did. There is no justice in these courts." "Father: You have three or four months waiting before you go to court. It's enough to give you a nervous breakdown. I mean, if a child does something, you don't wait three months and then give it a smack. I had to go three or four times. And they just mess you about. I'm already punished, and then I am punished again when I go in." "Mother: I admit that for battered babies and that, there has got to be court cases. But I hadn't hurt them, there was no need for a court case. Why can't they just sit and have a talk about the child, and about what is going to happen?"

Thoburn concludes: "My general impression was that the present formal court experience was seen as punitive by the parents as well as the children, and did not encourage a constructive attitude so that the best plan for the children could be worked out."

Roberts opposes Alton's bill because he does not think every case should go to court. But he goes further than BASW and ADSS in believing that legal safeguards for parents are necessary. His middle-of-the-road solution is to introduce a legally-binding code of practice. Parents would be heard by the social services committee, if they wished, and would be legally represented. The committee would then act as a kind of tribunal, though Roberts hopes parents would not see it as punitive.

The pressure groups object to Roberts's solution on two main grounds. First, on principle. The decision to remove a person's children is so grave that natural justice demands it be made by an independent body. Harry Fletcher, of One Parent Families, says: "Social workers can't be carers and controllers, yet this contradiction is inherent in social work. That is why we need safeguards—accountability." Jo Tunnard says: "Never mind how perfect the social workers are, how well they are implementing the administrative procedures, it is not right to give them that power over people."

The second ground for objection is tied up with the pressure groups' opposition to the trend of child-care practice since the 1975 act. There is now more emphasis on rescue rather than rehabilitation. Children are placed for adoption earlier to prevent them languishing in care for long periods, their future uncertain and unplanned. Richard White, of the British Agencies for Adoption and Fostering, says: "I believe at some stage in a child's life you have to put its interests first before its parents and I believe that's a fairly early stage."

The pressure groups think this emphasis is misplaced. The basic issue is: should the state supplant parents or support them? Tunnard says: "I pay a childminder to look after my 3½ year old son and most people see nothing wrong in that. If I can't afford it, why shouldn't the social services department provide it?" More than half the children in care come from single-parent families who are subject to special pressures of low income, poor housing and loneliness. If the state adopted a policy of shared care, acting like a kind of extended family, instead of one of crisis intervention and removal, more of these parents might cope.

The case for parental access

The idea of shared care has received wider acceptance for the families of handicapped children. Somerset has a scheme offering flexible foster care which dispenses with the legal formalities. Devon has two units which offer day and residential care for handicapped children. Parents are encouraged to take an active part, with the children moving to and fro between home and unit by voluntary arrangement.

But in the traditional child-care case, the parents are generally the problem. Shared care involving "problem" families is regarded as trickier than that for handicapped children because continued access for the parents is thought to be disruptive. Indeed, parental rights are most commonly assumed by a local authority to reduce parental access with a view to preparing the child for long-term placement. Yet, according to Thoburn, the evidence does not support this trend. "All the researchers who have looked specifically at the relationship between the well-being of the child in long-term care and parental contact have come down in favour of continued contact in the majority of cases. Any harm to the child seems to result, not from the contact itself, but from the child's awareness of conflict between the two sets of parents."

Furthermore, the DHSS's own guidance advises parents not to worry if their child is upset by their visit. It is far better that he should express his feelings than be left to feel he is forgotten.

But can it be right to leave children in voluntary care for an uncertain period of time? So much stress is put on this question, and so powerful is the conviction among social workers that it is *not* right, that paradoxically it may actually work against any prospect of rehabilitation. The emphasis on rescue, the defensiveness of social workers fearful of a child battering case and its attendant publicity, can result in them putting all their effort into getting control of the child, to secure its future—and then breathing a sigh of relief.

"What I'm unhappy about is the complete limbo the whole thing goes into when they get control," says Tunnard. "Our experience is the social workers vanish onto another case as soon as the child is taken into care," says Fletcher. If the child is to go home, the amount and quality of access for parents is of paramount importance. But how far social workers encourage this, or put pressure on the foster parents to allow it, depends on their priorities. In one DHSS sponsored study of 105 cases of long-term fostering, rehabilitation had seemed likely in the early months in almost half of the cases, but was pursued in only ten.

One Parent Families is drawing up a code of practice to be published in case the bill fails (as it certainly will, for lack of parliamentary time) which includes the requirement to maintain "maximum" contact between parents and child for the first two or three weeks—"by which we mean daily," says Fletcher.

So a more positive attitude to voluntary care might actually promote rehabilitation. But much would depend on how good the care was in practice. As Packman points out in *The Child's Generation*, providing assistance to families which will support rather than undermine them is "an extremely delicate task" which is not helped by the rapid staff turnover in many social work departments. What is needed, says Packman, is specialist child-care teams, staffed by long-serving workers who can provide personal and quasi-parental relationships.

But the "permanency movement" has certainly gone too far. Gwen James, secretary of A Voice for the Child in Care, says: "The fashion among social workers is that the child has either got to go home or be adopted. But it isn't as clear cut as that. For lots of kids it takes quite a long time to sort out what's right for them."

Children who wait

The celebrated 1973 study by Lydia Lambert and Jane Rowe, *Children Who Wait*, which showed that children who have been in care for more than six months have a greatly reduced chance of ever going home, is often quoted in defence of present practice. But it may be self-fulfilling if social workers give up any thought of rehabilitation at six months because of it. "If you have got parents who keep in touch, that tells you something about the bond," says James. "If there isn't a strong bond, you should go for a family placement. You certainly shouldn't keep the children hanging around. But equally you shouldn't brush the parents aside for the sake of a theory."

The law should be changed. But will it achieve what the pressure groups want? It may well help to eliminate bad practice and meet the human rights case. But it will only succeed in promoting "good" child care if it results in fewer parents of children in care losing their parental rights—by putting more pressure on social workers to aim for rehabilitation. If it does not, it could have the opposite effect: strengthening the law on behalf of parents may increase the extent to which they and social workers become adversaries, to the ultimate detriment of the children.