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To cite this article: Frank Ainsworth & Patricia Hansen (2012) Doing Harm While Doing Good: The Child Protection Paradox, *Child & Youth Services*, 33:2, 146-157, DOI: [10.1080/0145935X.2012.704787](https://doi.org/10.1080/0145935X.2012.704787)

To link to this article: <http://dx.doi.org/10.1080/0145935X.2012.704787>



Published online: 12 Sep 2012.



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Doing Harm While Doing Good: The Child Protection Paradox

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Every Australian citizen expects state and territory governments to protect children from child abuse and neglect. Protecting children from harm is seen as good. This however is not a simple matter. The ultimate act in protecting children is to remove them from parental care. This causes trauma for the child and pain and distress for parents no matter how inadequately they may have been caring for their children. In that respect removing a child from parental care does harm to parents and children. This article explores the paradox of doing harm while doing good. The article has an Australian focus but the authors think that this issue affects child protection services in many countries.

KEYWORDS *doing good, doing harm, model of child protection practice, parenting practices*

In 2010–2011 the number of children admitted to out-of-home care in Australia was 11,613, while in total 37,648 children were in out-of-home care in that period (Australian Institute for Health and Welfare [AIHW], 2012). We also know that there were 40,466 substantiated cases of child abuse and neglect in 2010–2011 (AIHW, 2012). Substantiation of child abuse and neglect is always a prelude to the removal of children from parental care. The families subject to substantiation were 5,449 two-parent intact families,

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2,507 two-parent (step or blended) families, 5,660 single-parent female-led families, and 752 single-parent male-led families. This is a total of 14,368 families. This data on the characteristics of families covers all Australian states and territories with the exception to New South Wales (NSW) who were unable to provide family data (AIHW, 2012). The number of children involved in substantiations was 31,527 including children in NSW (AIHW, 2012). These statistics quantify the extent of child abuse and neglect in Australia and set the context for the remainder of this article.

In keeping with our extensive experience in the NSW Children's Court as a lawyer and a Guardian ad Litem, as well as the recorded experience of parents who have had children removed from their care (Cleary, Klease, Thompson, Thorpe, & Walsh, 2007; Harries, 2008; Holmes, 2009; Ivec, Braithwaite, & Harris, 2009), our assumption is that each and every one of these parents were harmed and suffered pain and distress as a result of this experience (Burgheim, 2005; Davies, 2011; Schofield et al., 2010; Thorpe and Thomson, 2004). Their distress is further compounded by the failure of some child protection authorities after the removal to incorporate parents into the decision making process as it affects their children's future (Healy, Darlington, & Feeney, 2011; Healy, Darlington, & Yellowlees, 2012). Regrettably, confidentiality legislation in NSW prevents us from giving case examples from our Children's Court experience of the harm we have all too often observed (Ainsworth & Hansen, 2010).

Our question is, can harming parents be justified in the name of protecting children from abuse and neglect? What should a humane society like Australia do to ameliorate the harm to parents? Or should this harm and distress be ignored?

CHILDREN'S RIGHTS AND PARENTS' RIGHTS

In all Australian state and territories, as in many other countries, "the best interests of the child" construct (Goldstein, Freud, & Solnit, 1973) is embodied in child protection legislation. This legislation then safeguards a child's right to safety, security and well being. These are rights which all agree must be preserved given the acknowledged primary concern for the well being of vulnerable children and young people.

Unfortunately, there is no consensus in law or social science as to what the construct "the best interests" of the child means. One consequence is that the construct is under increased scrutiny, not because it is unsympathetically received, but because of the way it is used in child protection circles to justify what some commentators see as inadequate, mistaken and unfair practices (Hansen & Ainsworth, 2009b, 2011; Reece, 2010).

Parents in comparison have no legal rights in relation to their children. They only have rights to parent their children so long as they ensure that the

children are safe and secure, and their well being is assured. If this is not the case, the state has, and always has had, the authority to intervene and remove the children from parental care. Most parents do not question this authority as they also are committed to their child's best interests.

But while parents do not have legal rights, they do have human rights which are inalienable under the United Nations Universal Declaration of Human Rights (United Nations, 1948). As a consequence, some parents who find themselves involved with child protection services think that article 5 and 12 of the Declaration, which focus on maltreatment and arbitrary interference in family matters, are being breached (Hansen & Ainsworth, 2009a). The issue then becomes how children's rights under child protection legislation and parent's rights, not under legislation, but under the Universal Declaration of Human Rights to which Australia is a signatory, can be reconciled. It is against these considerations that we return to the issue of "doing harm while doing good."

PRACTITIONERS DOING GOOD

It is beyond doubt that every Australian is against child abuse and neglect. Politicians of all persuasions routinely pass amendments to child-protection legislation with little dissent in the belief that new legal powers will ensure that child protection services will be more effective (i.e., NSW Children and Young Persons [Care and Protection] Amendments Act 2010) thereby reducing the incidence of child abuse and neglect. The same politicians regularly increase the budgets of their state or territory child protection services. A recent example of this is the Northern Territory government's response to the Bath's "Growing them strong, together" report in 2010. This response resulted in a promise of a further \$130 million additional funding across the next five years to support a reform of the Northern Territory child protection system. This includes 42 additional child protection worker positions. This came on top of the government's earlier allocation of \$14.7 million to support 76 frontline and support workers (Northern Territory Government, 2010). In turn the Victorian government allocated in 2009 an additional \$77 million to child protection services. This was just prior to an adverse report from the Victorian Ombudsman in regard to these services (Rout, 2010; Victorian Ombudsman, 2010).

Very recently, the Australian Capital Territory government allocated \$25 million extra funding over a four year period for out-of-home care (foster and kinship care) following a similarly adverse report from the Public Advocate in that territory (Hannaford, 2012).

These decisions were all made in the belief, not against evidence, that more resources will eventually lead to a reduction in the incidence of child abuse and neglect and improvements in out-of-home care services for children who have been removed from parental care.

The same politicians increasingly establish committees of inquiry into the effectiveness of child protection services (Anderson & Wild, 2007; Wood, 2008; Bath, 2010; Baillieu, 2011). In the past it used to be said that there were “no votes” in child protection issues but now it seems that politicians have decided that being seen to be concerned about child abuse and neglect gives them a “good woman–good guy” image. And the media are quick to congratulate child protection services when they are seen to be actively pursuing what the media casually typify as “abusive parents.” Equally the media are ferocious in their criticisms of child protection services if a child who is known to the services is harmed or killed (Box & Salusinszky, 2007; Healy, 2011; Hohenboken, 2009; McArthur, 2011; NSW Ombudsman, 2009a, 2009b). Many will of course say that this type of media attention is warranted as it both informs the public about child protection issues and holds child protection authorities accountable for their actions or inactions.

ACKNOWLEDGING THE HARM THAT IS DONE

Child protection authorities appear to be reluctant to acknowledge that removing a child from parental care causes trauma for the child and the parents. While it may be in the long-term interests of the child to be removed, the fact is that at the point of removal the child is traumatized and this should not be ignored. Equally, parental distress and grief is profound (Burgheim, 2005; Davies, 2011; Schofield et al., 2010) and neither should this be ignored. In fact there is a growing body of empirical studies and review articles that highlight parents’ experience of unsympathetic and potentially unnecessarily intrusive child protection activities (Ainsworth & Hansen, 2011; Altman, 2008; Davies, 2011; Dumbrill, 2006; Forrester, Kershaw, Moss, & Hughes, 2008; Platt, 2008).

Such denial of parental distress and grief may of course allow child protection caseworkers to rationalize their action in terms of “doing good.” Moreover focusing on the good and ignoring the harm may be one way caseworkers manage the stress of child protection work and in turn justify their actions which are sometimes wrong (*Re Georgia and Luke* 2010; *Re Anna* 2010). But this hardly seems humane.

HARMING OR HELPING?

There is also the added difficulty in thinking that removing a child from parental care and placing them in foster care is helping the child, when all too often this is far from being the case. In a media release prior to the recent NSW election the new Minister for Family and Community Services Pru Goward noted that

Foster care was expensive—\$39,000 a year per child—and the outcomes for children were “terrible” and she added “they are the most likely

children to end up homeless or, to end up in juvenile justice.”
(Goward, 2011)

This is in line with international research evidence that raises issues about the outcomes of foster care (Cusick, Courtney, Havlicek, & Hess, 2011; Doyle, 2007, 2008; Fernandez & Barth, 2010; Lawrence, Carlson, & Egeland, 2006). The cry no doubt will be that foster care may be expensive and it may not provide perfect care but we have to use it because there are no alternatives. And this may be true. Especially as suggestions for other forms of care such as shared family care or family for family care are few and are largely undeveloped (Barth, 1994; Barth & Price, 1999; Maluccio & Ainsworth, 2003). Clearly non-relative foster carers and kinship carers deserve generous praise for the difficult task they undertake in looking after other people’s children. There does need to be greater acknowledgement that for far too many children foster care does not improve their life chances (Hansen & Ainsworth, 2011). The multiple placements that many children removed from parental care experience while in care make further harm inevitable. Data from NSW emphasises this point. This data shows

At 30 June 2008 there were 14,654 children and young people in out of home care. A third of this group, 4,868 or 33.2%, had been in care for five years or more. Almost a quarter of the total group, 3,445 or 23.5% had been in care for less than one year. Of the 4, 868 children and young people who had been in care for five years or more in June 2008, just under half (42.9%) had experienced three or more placements in those five years. By 2010 there were 17,382 children and young people in out of home care and slightly less than a third of this group, 5,567 or 32% had been in care for five or more years. The children and young people who had been in care for less than a year numbered 3,048 or 17.5%. Of those who had been in care for five or more years 43.9% had experienced three or more placements. This shows that over the past few years there has been no improvement in placement stability for children and young people in out of home care. The intention to provide these vulnerable children with permanent and stable homes does not occur in at least 40% of instances. And these figures do not include children who had short term placements of less than 7 days. (Hansen, 2011, p. 10)

Moreover, as Barber and Delfabbro (2004) have shown something like 20% of children placed in foster care for the first time do not settle and placement failure occurs. More distressing still is the fact that the best predictor of placement failure is an earlier failed placement. In addition to the issue of placement instability there is significant evidence that children in foster care have poor educational and behaviour outcomes (Create Foundation, 2004; Smithgall, Gladden, Yang, & Goerge, 2004; Wise, Pollock, Mitchell, Argus,

& Farquhar, 2010) no doubt partially due to placement instability and the disruption to schooling this causes. Nevertheless, a recent study that compared outcomes of two groups of children, those who were reunified with parents and those who remained in care on a global outcome measure of child well-being pointed to better outcomes for those children who remained in care (Wade, Biehal, Farrelly, & Sinclair, 2011). Clearly, foster care has the capacity to do good and enhance a child's life chance but as indicated for some children it will do harm to these chances.

HELPING OR HARMING?

Central to effective child protection practice is the relationship between the caseworker and the family where there are concerns about child abuse or neglect (Dumbrill, 2006; Forrester et al., 2008; Platt, 2008; Trotter, 2002). The reason for this centrality is that the first objective of intervention in a family's life cannot be removal of a child or children from parental care. This is especially so for NSW that has the highest rate of child removal of any state or territory in Australia, a rate of removal that is not replicated any where else in the world, (AIHW, 2012; Scott, 2010). Rather the intervention needs to focus on changes in a family's parenting practices so that the children of that family are safe and secure. This goal would be greatly assisted by the provision of a range of concrete family support services. Indeed if this objective was achieved it would mean that the children can remain in parental care.

To this end the characteristics or quality that child protection caseworkers must display are empathy, respect, genuineness, and optimism (ERGO) (Scott, Arney, & Vimparni, 2010). Unfortunately, the dominant Australian forensic/investigative/prosecutorial model of child protection practice does not reflect these qualities even though they are supported by research evidence. In fact much of the Australian research evidence points to caseworkers showing little empathy, conveying disrespect, and a lack of genuineness and optimism toward parents (Clary et al., 2007; Harries, 2008; Holmes, 2009; Ivec et al., 2009). Not all Australian jurisdictions have such a strong focus on a forensic approach as evident in NSW but the studies reviewed from other state jurisdictions showed consistent responses, from family members who deal with child protection authorities, in regard to these attitudes.

The profound imbalance of power between parents and child protection services that renders parents powerless and immensely disheartened is an essential factor to be dealt with in this caseworker-parent relationship (Davies, 2011; Reich, 2005; Thorpe & Thomson, 2004). It can be argued that the use of the forensic model, because it focuses on "detection" of child abuse or neglect and allocation of blame (Hansen & Ainsworth, 2006;

Gillingham & Bromfield, 2008) rather than on working toward parental change, is harming not helping.

ACKNOWLEDGING THE GOOD THAT IS DONE

Regardless of this harm it is important to acknowledge that child protection services are needed and some children have to be removed from seriously abusive parents. Everyone agrees with this. There are however legitimate questions about the frequency with which children are removed and not restored to parental care given that the total number of children in care has risen every year for the last 5 years (AIHW, 2011, Table 4.7). Indeed removal can be viewed in two different ways. Firstly, as is often the case it can be viewed as a “successful” intervention in family life as it has removed a child from a dangerous situation and hopefully set them on a better life course. Alternatively, it can be viewed as “failure” in so far as child protection caseworkers have been unable to engage the child’s parents and help them to change their life style and parenting practices to make the family a safe and nurturing place for their child. This raises the issue of the level of family engagement skills (Connolly, 2010; Forrester et al., 2008; Platt, 2008) possessed by some child protection caseworkers. These are practice skills which the forensic model of child protection, that has been adopted in NSW more generally than elsewhere, has discounted because the model prioritizes protecting the child rather than helping the parents. This stance is based on the view that child and family should always be considered separately and that the child’s need are paramount. Given the importance of parents to children, even abusive and neglectful parents, this separation remains contentious even when a child’s needs are recognized as assuming a paramount position.

A focus on success is one way to boost morale, and this is an important consideration as being a child protection caseworker is a very stressful occupation. The danger is that a focus on success in terms of removal of children may lead to complacency and reduce any effort to examine current practices and to develop higher-level family-engagement skills or provide support services. In contrast, a focus on failure may deplete morale for a limited time. Nevertheless it is through a focus on failure and a rigorous examination of what did not work and why it did not work with a particular family that a child protection caseworker has the potential to develop new and more effective family-engagement skills that help parents to change their life-style and parenting practices. It is also important to remember that failure cannot be solely attributed to the noncompliance or intransigence of parents (Goodman & Trowler, 2011; Reich, 2005). Parents in child protection cases may initially be non-compliant but that is fertile ground for the employment of high level family engagement skills by child protection caseworkers.

A RE-EMPHASIS ON BALANCED PRACTICE

Many would argue that the forensic model of child protection practice has failed because it only focuses on the child rather than the child in the context of his or her family. Indeed, the notion that a child can be divorced from his or her family and be immediately offered a brighter future, can only be regarded as unsustainable.

Instead the need is to return to a relationship-based model of child protection (Lonne, Parton, Thomson, & Harries, 2009; Munro, 2011) where there is a focus on supportive practice that encourages and rewards parental efforts to change their lifestyle and parenting practices, while at the same time being cognisant of child protection concerns (Platt, 2008). In fact the call is for humane practice where empathy, respect, genuineness and optimism are the cornerstone of practice (Scott et al., 2010).

MORE THAN “DO NO HARM”

Codes of ethics in many disciplines emphasise a primary principle: Do no harm (Australian Association of Social Workers, 1999; Australian Medical Association, 2006; Australian Psychological Association, 2009). What can child protection caseworkers do to ameliorate the harm that they must do? ERGO is only a beginning. Policy makers have a role in re-directing resources from the forensic and data-keeping tasks (Munro, 2010) and to put resources into helping vulnerable and neglectful parents to reduce the need for the removal of their children. The Wood report (2008) urged that out-of-home care services in NSW be transferred to the non-government sector because Wood considered that this sector workforce had not embraced the forensic model of practice or discounted the need for high-level engagement skills when working with families to the same extent as the state child protection services. In the September 2011 budget, the NSW government allocated \$98 million over the next four years to support the transfer of these services to the non-government sector (Association of Children’s Welfare Agencies, 2011).

CONCLUSION

Essential to fostering the qualities of empathy, respect, genuineness, and optimism for parents in child protection cases is an acknowledgment that the task that caseworkers face involves not just doing good but also doing harm. Without this acknowledgement of the harm that is done to parents when a child is removed from their care, there is no basis for empathy or respect of the parent. Unfortunately parents are then likely to be disregarded and be seen as “getting their just desserts” because they harmed their children or allowed their children to be harmed.

The qualities of genuineness and optimism will also be absent since the notion is that only the child is of concern. Being optimistic with parents about their capacity to change and regain custody of their children, and to have a better future for themselves, is also unlikely when the focus is solely on the child. That is the paradox for child protection caseworkers who have to protect children while knowingly doing harm to parents. However, as Connolly (2010) has indicated:

If parents who have hurt their children are nevertheless valued as humans who deserve the opportunity to work with dignity towards positive solutions to keep their children safe then there is no reason not to involve them in decision making. (Connolly, 2010, p. 212)

In fact it is only by child protection caseworkers acknowledging that they do harm even while they are doing good that it is possible for them to protect their own humanity and that of parents.

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