

THE CHILD AT THE CENTRE: RETHINKING CHILD PROTECTION

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ABSTRACT

This thesis considers the central problems posed by child protection in liberal societies and how those problems have played out in, and are addressed through, the legislative and administrative reforms in British Columbia in the 1990s. Child protection brings two important social values into conflict: on one side, liberal (adult) individualism (including the autonomy/privacy of the family as a counterweight to the State) and, on the other, the communal interest in child well being (including humanitarian and civil/moral order interests) which, in liberal societies, is delegated to the State. This conflict is a feature of liberal societies and cannot be, truly, resolved; child protection requires choices and decisions about the values/interests on either side of the conflict. British Columbia's new "child centred" child welfare system is about making those decisions on an individual basis focused on the child. The new Ministry contains a range of options and approaches ("intervention" and "support") and does not, *per se*, endorse one over the other. The professional task is to choose the appropriate response; "child centred" practice means that "appropriate" is defined from the beginning with reference to the child.

The conflict between family privacy and the communal interest in child well being has previously been managed, or contained, within the "liberal compromise" (Dingwall, Eekelaar and Murray, 1983), that the State may inspect the family provided that its agents make the best of what they find. The most significant effect of the compromise had been to minimise identified mistreatment. By the 1980s, however, it was increasingly clear (to professionals and the public) that neither children nor family privacy were adequately protected within the compromise. "Non-interventionist" child protection, which appeared to reconcile the problematic by subsuming child protection within family support, became the modern reform paradigm (as a response to perceived failure, and as an idea with wide political appeal, resonating with liberal norms of privacy and conflict avoidance). However (as the *Report of the Gove Inquiry* would show) supporting families and protecting children are not synonymous. The legitimacy and coherence of the "non-interventionist" paradigm depends on the disappearance (explained as both respecting family privacy and the professionalism of child protection workers) of child deaths (the most obvious form of child suffering). After the *Gove Report's* publicisation of the sometimes fatal (for the child) consequences of family support and the disappearance of dead children inside "the system" (dramatically, and very publicly, cast as professional back covering, shockingly indifferent to the child at the centre) the non-interventionist paradigm appeared untenable.

It is too early to tell how the Ministry's "child centred" decision making will better protect children (and family autonomy), however, several features of the post-*Gove* reforms-amendments moving the focus of the *Child, Family and Community Service Act* away from "non-intervention", the structure of the single Ministry and the regular inquiries and reports of the Children's Commissioner- do have the potential to preclude a comeback for the non-interventionist paradigm (despite the paradigm's political, cultural and professional appeal) *and* may also create an organisational and (professional) cultural context conducive to child centred decision making.

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DEDICATION

For Paul, and for Sean Xavier

INTRODUCTION

The Social Services, of course, always have a thankless task. If they are overcautious and take children away from their families they are pilloried for doing so. If they do not take such action and something terrible happens to the child, then likewise they are pilloried.¹

This insight from the Cleveland Inquiry in Great Britain is no longer fresh, or, as an observation, particularly interesting. The interesting point, and crucial to understanding child protection, is *why this should be so*.

My interest in child protection as a *problem* began with a newspaper story about an infant known as Paul.² I was struck by the intense "official" activity around Paul and his family, spanning a period of more than ten years, at the centre of which Paul died, essentially abandoned within his home, of neglect. The *perversity* of the story stayed with me, and I began to conceptualise it as a puzzle: a contradiction. I assumed that the enormous cast of agencies and workers involved with Paul and his family over the years were not incompetent, or insensitive, yet Paul's still figure remained literally untouched within these layers upon layers of assistance.

My return to Canada coincided with the Gove Inquiry into Child Protection in British Columbia. I was immediately struck by the many similarities between the story of Matthew Vaudreuil, the child at the centre of the Gove Inquiry, and baby Paul. A process appeared to be at work. I was also struck by the obvious discordance between the

¹ *Report of the Inquiry into Child Abuse in Cleveland 1987* (London: HMSO, 1988) at 85.

² D. Brindle, "Baby tragedy after fifteen years of errors" *The Guardian* (UK) March 2, 1995.

findings of the Gove Inquiry and the new child protection legislation introduced virtually simultaneously, as if the two were parts of a unified strategy; what would be the outcome of such disjointed reform? And when that outcome ultimately took shape in the government's implementation of two *Gove* recommendations for a "child centred" system- the Ministry for Children and Families and the office of the Children's Commissioner- I wondered how the process I first noted in baby Paul's story- the puzzle- would play out, and why.

I am not going to walk through a "review of the literature" from Dr. Henry Kempe and his "discovery" of "child abuse syndrome" in the 1960s onwards. I am not concerned here with trying to define what child abuse "really is", how often it "really happens", or who "really does it", although each of these questions has its own wide, and interesting, implications.³ I am interested, rather, in the challenge posed by child protection to individualism and liberalism⁴ more generally. Child protection is problematic because it

³ "It should be apparent that, if mistreatment is to be defined... as part of a wider analysis of the nature of our society, then questions about its true incidence or true prevalence become meaningless. Attempts to describe the epidemiology of abuse and neglect and, from that, to make inferences about aetiology are refractions either of the moral judgements of the investigator or of the practical decision making of child protection agents. We do not wish to argue that nobody has the right to make such judgements, nor are we trying to discount the suffering of many children by treating our response as something which has its origins in the culture of our society. What we do insist upon is that abuse and neglect come to exist as socially recognisable phenomena, and hence as a cause of action, only as a result of processes of identification, confirmation and disposition within health, welfare and legal agencies. They cannot be discussed intelligibly without an understanding of the way in which such processes operate, an understanding which must necessarily be moral, rather than technical." Robert Dingwall, John Eekelaar and Topsy Murray *The Protection of Children: State Intervention in Family Life* (Oxford: Basil Blackwell, 1983) at 3.

⁴ The liberal values of individualism, freedom of expression, and freedom from both State and communal interference pull together in sharp focus in the context of child protection; whatever the coherence of a "liberal paradigm" outside the child protection context, it has both meaning and relevance here. My interpretation of maximum parental autonomy/liberty as a "high liberal value" arises from its explicit political (see the legislative debates, *infra*, Chapter Two) and legal (see *B. (R.) v. Children's Aid Society of Metropolitan Toronto*, [1995] 1 S.C.R. 315) identification with fundamental liberal freedoms and from my own identity and experience of the "liberal way of thinking" within my world. Of course, the process I

brings into direct conflict two opposing, and important, social values: liberal (adult) individualism on the one hand, and the communal interest in child well being (including humanitarian and civil/moral order interests) on the other.⁵ The welfare of children is a crucially *social* concern; all of us have an intense interest in children both *as* children and as future adults. ‘Deviant’ children frighten⁶, as hurt children harrow (of course children may be ‘deviant’ and ‘hurt’ at the same time, inspiring both reactions simultaneously). Incapable of functioning as adults, those once ‘deviant’/hurt children may be even more frightening, or merely anger and worry the communal group by their inability to live and work productively.

am describing may not be uniquely ‘liberal’ (see J. Eekelaar, *supra*, note 7), but I suggest that these issues have a particular and profound resonance in a high liberal society such as Canada.

⁵ This ‘communal interest’, central to understanding children and child protection in the modern liberal context, refers to the non-official ‘public’- ‘civil society’, perhaps. My use of these words- community, the State, the individual- is particular to their function within, and as the context for, child protection. Because of the particular ‘communal interest’ in children ‘the community’ in the sense of a ‘non-official public’ whose shared interest groups them, makes sense here. The ‘community’ is a slippery fish, with many different meanings. Re *the child’s* community this large notion of community is not useful; the child’s community comprises those around him that are neither charged with his upbringing nor paid by the state to ‘protect’ him; a localised community in which the broad communal interest focuses on individual, known children (the broader interest remains, alongside as it were, and so we see that when a far away child’s sad tale becomes known, that focus may then pull him or her into this tighter community). There is also an official way in which the word is sometimes used in child protection, to mean State child protection whose organisation and membership is locally controlled and responsive to local conditions, as opposed to a more homogenous ‘system’ formed in the centre and merely implemented on the local level. This is not the meaning I give ‘community’ here; I use ‘community’ to identify group interests which are *not* official, neither located in or endorsed by the State. Crucial to ‘community’ as I use it here is the (self and official) perception that community members are not charged with the protection of children; it is not their *business*.

⁶ See Robert Dingwall and John Eekelaar, ‘Victims or Threats? Children in Care Proceedings’ (1982) JSWL 68 at 71; 77. The connection of delinquency with the home environment (which, the authors argue, is not a ‘modern’ or psychological realisation) is a key aspect of the social interest in child upbringing and child welfare: the communal interest in children. Child protection is about child victims but also, in this sense about ‘deviant’ children.

Chapter One begins with an analysis of the child protection problematic: the conflict between communal and individual interests, and between the "humanitarian" and "liberal" mores. In liberal societies, this communal interest is delegated to the State.⁷ This delegation has transposed the conflict between the communal interest in children and (adult) freedom into a political question about the relative rights/powers of the individual and the State. The central issue in child protection has thus become the extent to which the State should be permitted to interfere in family life: the non/interventionist debate.

The problem of acceptable State intervention in private family life for the protection of children has been accommodated within a "liberal compromise" maintained by a "rule of optimism", that the State may inspect the family provided that its agents make the best of what they find.⁸ The most significant effect of the compromise has been to minimise identified mistreatment, but "failures" both to protect family privacy *and* children at risk are inherent in the compromise.⁹

⁷ The private nature of child rearing within the family may be understood as an arrangement to further this "communal" interest, whereby the public interest in children is best met when they are well cared for "privately" by their parents. See J. Eckelaar, "What is Critical Family Law" (1989) 105 *Legal Quarterly Review* 244 at 255

⁸ R. Dingwall et al, *supra* note 3 at 91. "State agents will not find proven deviance, as opposed to questionable diversity, unless presented with overwhelming evidence to the contrary." *Ibid.*, at 89

⁹ "Uninvited surveillance is possible only as a result of a compromise which minimises the likelihood of identifying malpractice. The result is a system which is fully effective neither in preventing mistreatment nor in respecting family privacy, but which lurches unevenly between these two poles. A degree of "agency failure" is inherent in the compromise." *Ibid.*, at 219. "Persistent failure" is a significant problem for professionals, contributing to social worker "burnout" and turnover (an additional, subsequent difficulty for child protection systems). If *known*, failure becomes a public, and political, problem; in Canada, acknowledgment of the child welfare system's negative impact on First Nations communities is a significant feature of child protection failure.

A system of non-interventionist legislation, in a “family centred” policy/political context equating family support and child protection, developed in response to increasing public (including political) and professional awareness of these failures as systemic, rather than accidents or mistakes.¹⁰ I have called this reform trend, comprised of the legislation and its context, the “non-interventionist paradigm”. Child deaths are rationalised within the paradigm as regrettable, but not avoidable, accident-like events. The problem for this idea, however, is that the public does not read¹¹ stories about the death (the most obvious form of child suffering) of children “known to social services” in this way (returning to the communal interest in children, “behind”, as it were, the very existence of a State system for the protection of children: “the system’s” *raison d’etre*). The legitimacy and coherence of the “non-interventionist” paradigm, therefore, depends on the disappearance (explained as both respecting family privacy and the professionalism of child protection workers) of child deaths inside “the system”. The disappearance of child deaths is part of the non-interventionist paradigm.

Chapter Two considers the ascendancy of the non-interventionist paradigm in British Columbia in the early 1990s, a case study demonstrating the development of the paradigm as a response to perceived failure,¹² the paradigm’s persuasive political appeal, and its resonance with intuitive liberal values. The legislative debates during the passage of the

¹⁰ The paradigm’s popularity and rapid ascension is also connected to its inter-ideological political appeal, and its resonance with liberal norms of privacy and conflict avoidance.

¹¹ Using the word in the sense of interpretation, and in its more literal sense, as “the public” learns about the death and suffering of stranger children largely through the media.

¹² In British Columbia, the emphasis during this time period was on the failure of the system to protect families.

Child, Family and Community Act dramatically demonstrate the width and the depth of this appeal; they also signify (as do the Community Reports preceding the *Act*) the particular context in which the “non-interventionist” *Act* was introduced, which is a crucial element in my analysis of the “paradigm”.¹³

Chapter Three of this thesis considers in some detail the collected British child death inquiries (Chapter Four continues in this vein with a fairly close consideration of the *Report of the Gove Inquiry into Child Protection*.) There are several reasons for this. Firstly, the inquiries illustrate the systemic nature of the “rule” as opposed to a series of isolated, individual decisions or “accidental” outcomes. The stories told in these inquiry reports demonstrate, and make sense of, a liberal *system* of child protection. My analysis begins, and remains situated in, a particular “high liberal” context; therefore, I think it necessary to establish, prove, and, most importantly, *show* (hence the detail) patterns in liberal child protection: the “liberal compromise” at work.

I also want to include these stories, with sufficient detail to suggest their power *as* stories, because I think their emotional effect on the reader is important; after the delegation of the communal interest in children to the State, public inquiries are the space in which the community’s legitimate interest lives. The public interest in child protection is important and powerful; it has, to a considerable extent, determined the sequence of events in British Columbia’s reform process, from legislative reform, to the creation of the Ministry for Children and Families and the Children’s Commissioner. This public interest is both

¹³ The *Act* by itself does not create or, in a different context, sustain the “non-interventionist paradigm”.

expressed in and informed by the stories of the inquiry reports. This Chapter considers the dual narratives (the “minority” and “majority” reports) of the Maria Colwell inquiry in quite close detail because the two stories *dramatically* illustrate the existence of a (professional) cultural “rule of optimism” and the perceptual distance between social work “insiders” and “outsiders”. This last point, in particular, is relevant to the *Report of the Gove Inquiry into Child Protection* and its aftermath (considered in Chapters Four and Five), when public exposure of the non-interventionist paradigm made that paradigm untenable, preparing the ground for British Columbia’s new “child centred” structure.

The repetition in the inquiry reports is itself extremely important, indicating systemic “rules” and the apparent inability of the reports and their recommendations to change those “rules” and the patterns they produce. Situating the *Gove Report* in the context of Chapter Three shows at once how the events recounted in the *Report* conform to general patterns and how the outcome of *Gove*- creation of the “child centred” system- seems¹⁴ a quite startling departure.

Most importantly, children are at the centre of this thesis, and I think the inquiry stories put them, firmly, there.¹⁵ It disturbs me to read about child protection and find the children are missing.¹⁶ This thesis considers in some detail the conceptual and political

¹⁴ The changes may, in fact, have little or no effect on these systemic patterns.

¹⁵ The stories, of course, are not the stories *of* the children, but the stories of the inquiry reports; however, they bring the reader close to the child’s story (as close, I suggest, as it is possible to get: given that, while the professional’s focus or emphasis in “telling the story” will be on the relationships involved, the “outsider’s” inquiry focus will be on the child.

¹⁶ In which case the discussion, ostensibly about “child protection”, becomes about something else altogether.

aspects of child protection; the stories, in some detail, are necessary to bring the focus around.

Chapter Four considers the *Gove Report* narrative (in some detail, for the reasons given above) as it is elucidated by: the conceptual analysis constructed in Chapter One;¹⁷ the particular, preceding context described in Chapter Two;¹⁸ and the context of the inquiry reports contained in Chapter Three.¹⁹ Chapter Five considers what happened in British Columbia after *Gove*: why the dramatic structural changes recommended by Gove were quickly brought into being, the nature of those structural changes and the idea of “child centred” protection, and the new system’s potential for success, as a better way of protecting children without the unacceptably authoritarian intrusion of the State into private family life. Can it be done?

This thesis draws quite significantly on the work of the British scholars Robert Dingwall and John Eekelaar.²⁰ Their ideas have been very influential in the UK,²¹ where their position has been characterised as “at least a moderate state paternalist/protectionist position”.²² Recognising the importance of protecting the family from authoritarian State

¹⁷ The conceptual analysis of a child protection problematic: the conflict, the compromise, and its “resolution” in a “non-interventionist” paradigm.

¹⁸ The ascendant non-interventionist paradigm, in which the death of Matthew Vaudrueil became a public scandal and the Gove Inquiry was initiated.

¹⁹ The inquiry reports patterns, and the seeming imperviousness of those patterns to change, and the Maria Colwell reports’ dramatic illustration of the dissonance between the “insider’s” and “outsider’s” priorities and perceptions.

²⁰ With Topsy Murray in *The Protection of Children: State Intervention in Family Life*, *supra* note 3.

²¹ See Chapter Three.

²² Lorraine Fox Harding, *Perspectives in Child Care Policy* (1991: Longman, UK) at 65.

intrusion, they nevertheless assert that the State cannot opt out of an active role in protecting the well being of children. Therefore, the ideas of conflict and balance are central in their analysis, and they reject an approach which purports to “resolve” the conflict either by dismissing family autonomy as relatively unimportant *or* by equating child well being and family autonomy (as in the approach I characterise as the “non-interventionist paradigm”). This approach is challenging, requiring a constant, delicate balancing and “trading off” where the stakes on all sides are extremely high, but a “successful” child protection system- built around a child centred perspective without an unacceptable level of professional authoritarianism- depends on such a conceptualisation.

Reading the background papers prepared for the Gove Inquiry, I noted that a researcher had considered looking at *The Protection of Children: State Intervention in Family Life* but decided not to do so.²³ This was an unfortunate missed opportunity which I hope to rectify, at least partially, with this thesis.

²³ Jane Dawson, “Systems of Child Protection Governance in Various Jurisdictions”, Report Prepared for the Gove Inquiry (1995) at 22, describes *The Protection of Children: State Intervention in Family Life* as “an ethnographic study of a child welfare practice in ‘real life’ looking at the ethos and culture which guides social workers decisions. It sounds interesting but may be a bit off topic and too out of date to be useful.”

CHAPTER ONE

UNDERSTANDING CHILD PROTECTION: CONFLICT, COMPROMISE, AND RESOLUTION

Uninvited surveillance is possible only as a result of a compromise which minimises the likelihood of identifying mistreatment. The result is a system which is fully effective neither in preventing mistreatment nor in respecting family privacy, but which lurches unevenly between these two poles. A degree of "agency failure" is inherent in the compromise.¹

Public anxiety and hostility gathers as it becomes apparent that the child protection system is failing to meet its contradictory goals: preventing child mistreatment and supporting the "autonomy and integrity" of the private family.² The child protection "pendulum" swings between the public's discomfort at these opposing points of failure.³ An important political task in child protection is thus explanatory: the apparent reconciliation, for the public, of this contradiction (and with it, the explanation for- or disappearance of- failure).

The conflict between family privacy and a communal interest in child well being and the prevention of child mistreatment has been managed systemically within a "liberal compromise",⁴ that the State may inspect the family provided that its agents make the best

¹ Robert Dingwall, John Eekelaar and Topsy Murray *The Protection of Children: State Intervention in Family Life* (Oxford: Basil Blackwell, 1983) at 219.

² The social worker's "thankless task"; *Report of the Inquiry into Child Abuse in Cleveland 1987* (London: HMSO, 1988) at 85.

³ Legislative reform following major inquiries in Great Britain and in Ontario (see C. Robertshaw, *Outline of key legislative issues relating to child abuse* (Ottawa: Health and Welfare Canada, 1981)) do not seem to have significantly altered the way child protection works; hence the persistence of the themes and patterns identified in the inquiry reports, through two decades and their legislative changes, and hence the recurrence of child abuse crisis and reform.

⁴ R. Dingwall et al, *supra* note 1 at 91.

of what they find. The most significant effect of the compromise has been to minimise identified mistreatment. By the 1980s, however, it was increasingly clear (to professionals and the public) that neither children nor family privacy were adequately protected within the compromise. “Non-interventionist” child protection, which appeared to reconcile the problematic by subsuming child protection within family support, became the modern reform paradigm (as a response to perceived failure, and as an idea with wide political appeal, resonating with liberal norms of privacy and conflict avoidance). The non-interventionist paradigm codifies the “compromise”, with dangerous results for children, as the “compromise” and its “rule of optimism” work to frustrate the worker’s (and, with codification, the public’s) ability to *see* and comprehend child suffering.

Child protection is “problematic”⁵ because it brings two important cultural values into direct and irreconcilable conflict: individual freedom, including “basic” liberal “mores” and the idea of the autonomous private family as a “bastion of liberty”⁶ and counterbalance to the State, and the communal interest in the well being of children, involving the a public interest in civil, or moral⁷, order as well as the “humanitarian mores” of those wishing to alleviate the suffering of others. The problematic cannot be resolved by simply choosing

⁵ Developed from Waller’s suggestion (W. Waller, (1936) “Social Problems and the Mores”, *American Sociological Review* 1 922) that the perception of events as “problematic” arises from the interaction of two conflicting sets of mores: “the organisational or basic mores.. ‘those upon which the social order is founded, the mores of private property and individualism, the mores of the monogomous family, Christianity and nationalism’ [and] the humanitarian mores held by those who feel an urge to make the world better or to remedy the misfortunes of others.” *Ibid.*

⁶ *Ibid.*, at 220.

⁷ See Robert Dingwall and John Eekelaar, “Victims or Threats? Children in Care Proceedings” (1982) *JSWL* 68.

one set of mores/values over the other (indeed, if such a simple solution were available the issue would not be problematic). Each is important, and *known* failure on either side of the conflict- (perceived) child mistreatment and (perceived) authoritarian State intervention - is unacceptable. This conflict between opposing and fundamental values makes the form of child protection problematic as the State struggles to avoid failure on either side yet, ironically, the conflict necessitates the existence of a State child protection “system”.

So long as this communal interest in child well being retains social power⁸ the high liberal value of privacy⁹ demands the creation of an overtly “neutral”¹⁰ public apparatus to watch over and protect children inside private families. The “liberal way of thinking”, the internalisation of “moral minimalism”¹¹ and the “public/private divide”,¹² structures normal

⁸ And here the “humanitarian mores” and civil/moral order issues discussed above are joined by the strong emotions aroused by stories about child suffering - the same response which “pillories” social workers, sells sensationalistic newspaper accounts of child abuse, motivates “child savers” and accentuates the modern *strangeness* of children in the liberal world.

⁹ Nikolas Rose has described the public/ private divide as one of many distinctions that together comprise the “liberal way of thinking”; “These oppositions shape our consciousness. When incorporated into legal discourse they induce beliefs that existing social arrangements are just, natural and legitimate.” N. Rose, “Beyond the Public/ Private Division: Law, Power and the Family” (1987) 14 JLS 61 at 63; and see *infra*, note 12. Dingwall, Eekelaar and Murray described the liberal’s aversion to interference with “parental rights” as “instinctual”: “In a liberal democracy we almost instinctively reject both as authoritarian and dictatorial acts, infringements on the rights of adults to reproduce themselves on such occasions and in such fashions as they see fit.” Dingwall et al, *supra* note 1 at 2.

¹⁰ I use this phrase in the sense that the State’s action is arm’s length, and can be subject to formal rules (see LaForest’s suggestion that “family autonomy” be protected by the *Charter*, for example, *B. (R.) v. Children’s Aid Society of Metropolitan Toronto*, [1995] 1 S.C.R. 315 at 372), as opposed to the “community” (non-official actors- neighbours, friends, family, etc.); the use of quotes is intended to imply that this degree of neutrality is relative.

¹¹ See M.P. Baumgartner, *The Moral Order of the Suburb* (New York, Oxford: Oxford University Press, 1988 at 90; 129.

¹² See *supra*, note 9, and *infra*, note 16.

social relationship so as to make the “intervention” of non-household members into “private” family life counter-intuitive. Family privacy is a powerful inhibitor of personal action on behalf of other people’s children, making it difficult even to *know* children apart from those inside your own private domain, yet the diffuse “public” interest in, and anxiety about, these hidden children remains.

The delegation¹³ of this communal interest (and responsibility) to the (relatively) “neutral” and regulated State¹⁴ accommodates that interest within liberal social norms; a compromise, of sorts. The creation of an impersonal State mechanism for the protection of children recognises the limitations of family privacy for children, and for “outsiders”¹⁵ without confronting the internalisation¹⁶ of that idea (and the question of whether its costs

¹³ Cf. K. O’Donovan, *Sexual Divisions in Law* (London: Weidenfeld & Nicolson, 1985) at 57. O’Donovan describes the 19th century relationship between law and family in terms of a delegation of authority by the State to the husband; and see Nikolas Rose’s critique of this conceptualisation of a delegation of power from the top down: “To suggest that these transformations originate in the state, and amount to allotting powers to husbands and to fathers, or to coercive welfarism benign by ideology, is to obscure the new types of powers and relations between individuals, experts, professionals and authorities which have taken shape over the last century, and the ways in which the subjectivities, responsibilities and aspirations of both women and men have been transformed.” N. Rose, *supra* note 9, at 69.

¹⁴ Dingwall, Eekelaar and Murray make the point that children can’t protect themselves and must rely on others to do so; originally voluntary organisations of concerned citizens did this, increasingly it is a matter for the State, Dingwall et al, *supra* note 1 at 12. I want to suggest that this movement, from the “unofficial” community (extended family members, neighbours, otherwise influential community members such as religious leaders- those not specifically charged with the protection of children) through voluntary organisations (“official” community members) to the State is connected with the increasing domination of individualism in social relations.

¹⁵ People outside the household for whom other people’s children are not a professional concern.

¹⁶ “ideas which form the inarticulate core of social and legal systems have effects which are both subtle and profound. One idea historically unique to the West and embedded in the socio-legal system has deeply influenced state-parent relations, the social construction of child abuse and the purpose and threshold of state intervention. This is the private/public distinction... It is only in hard cases of severe failure and disclosed injury that the private becomes public. This too, confirms the validity of controls in place in those families not exposed to public scrutiny.” Anne McGillivray, “Reconstructing Child Abuse: Western Definition and Non-Western Experience” in M. Freeman and P. Veerman, eds., *The Ideologies of Children’s Rights* (Dordrecht, Neth.: Martinus Nijhoff Publishers, 1992) at 213-214. I suggest that this

are worth its benefits). Indeed, child protection legislation which empowers the State to “intervene”¹⁷ in the family re-enforces the inappropriateness of “intervention” by non-officials¹⁸ and the normal rightness of the *closed* family.

And so this “hard case for liberal democracy”¹⁹ is isolated within the “neutral” State system and, crucially, re-invented as a problem for “expert”²⁰ resolution. Both

particular idea connects with other inarticulate “core” ideas, notably “moral minimalism” and the avoidance of confrontation described by Baumgartner in her study of the *Moral Order of the Suburb* (*supra* note 11 at 73; 90 and 129), to form the matrix of expectations and approved behaviour within which the socialisation of the “normal” liberal character takes place.

¹⁷ Bearing in mind Frances Olsen’s argument that “intervention” and “non-intervention” are meaningless here. “As long as the State exists and enforces any laws at all it makes political choices” and the political choice between what is “private” and what is “public” *structures* consciousness, behaviour, and power relations. F. E. Olsen, “The Myth of State Intervention in the Family”, (1983) 18 UMJLR 835 at 837; see also F. E. Olsen “The Family and the Market: A Study In Ideology and Legal Reform” (1983) HLR Vol. 96 1497. Dingwall, Eekelaar and Murray describe the irrelevance of “intervention” as the State’s inability to “opt out” as a natural condition of the State’s “collective interest” in its future citizens: the State cannot opt out without harming its own interests. Dingwall et al, *supra* note 1 at 220. But like “family privacy” and “the community” (discussed *infra*) if “intervention” is a fiction that fiction has its own power and purpose.

¹⁸ This realisation informs Justice Brennan’s dissenting judgement in *DeShaney v. Winnebago County Department of Social Services* 109 S. Ct. 998 (1989) at 1011: “Through its child welfare program... the State of Wisconsin has relieved ordinary citizens and governmental bodies other than the Department of any sense of obligation to do anything more than report their suspicions to the DSS”. Joshua DeShaney was beaten repeatedly by his father, suffering acute brain damage in a final episode at age four. The child, and his mother, sued the DSS for failing to protect Joshua despite strong evidence that he was at risk, depriving him of his liberty in violation of the due process clause of the 14th amendment. The Court found the purpose of the due process clause was “to protect the people from the State, not to ensure that the State protected them from each other” *supra* at 1003; “the State may have been aware of the dangers that Joshua faced... [but] played no part in their creation, nor did it... render him any more vulnerable to them”. *supra*, at 1006. See T.A. Eaton and M. Wells, “Governmental Inaction as a Constitutional Tort: *DeShaney* and its Aftermath” (1991) 66 WLR 107; also Martha Minow, “Words and the Door to the Land of Change: Law, Language and Family Violence” (1990) 43 VLR 1665 for an interesting discussion of the *DeShaney* case.

¹⁹ Perhaps *children* are the hard case for liberal democracy; not only does their demand for collective care and concern conflict with the core liberal values of individual freedom, but their situational distance from “rights bearers”, makes children’s rights problematic, further isolating children within liberal culture and so increasing their vulnerability. See Martha Minow, “Rights for the Next Generation: A Feminist Approach to Children’s Rights” (1986) HWLJ 9:1. Michael Freeman argues that rights are crucial “moral coinage”: “Rights give their holder dignity and confidence. Benevolence is no substitute... Children’s

professionals and public have an intense (and intensely *covert*) interest in the success of this delegation while, at another level, both sides acknowledge the impossibility of the arrangement. The mutual hostility and blame (directed at self and other) generated by this many layered subterfuge has created a sustained, secret hysteria in both the “system” and the public, which briefly flares into view in the public aftermath of high profile “lightening rod” child abuse scandals.²¹

The crucial point is that this process has *already happened*; it is dangerous to pose, without addressing the internalisation of personal non-intervention (or privacy) as a cardinal social value, the “return” of child protection to the community²², as this “community” (used here in the sense of a general population of adults willing and able to assume “public” responsibility for “private” children) *does not exist*.²³

rights, or their absence, are very much key to the understanding of abuse and neglect. Children without defined rights are by definition vulnerable.” M. Freeman, *The Rights and Wrongs of Children* (London: Frances Pinter, 1983) at 33. The child’s position as a non-rights holder within a society of adult rights holder makes the child an “object” rather than a “human being, living outside the ambit of “human rights” and creating a cultural climate conducive to abuse and neglect. *Ibid.* at 104, 124.

²⁰ Specifically, child welfare workers (if *necessary*, the law).

²¹ Anne McGillivray describes how “lightening rod” “child abuse cases concentrate concern and dissolve general responsibility for the young: a “seemingly swift and decisive state response in selected cases does little to challenge ‘normal’ practices but provides the appearance of a caring society.” (*supra* note 16 at 213-214.) I agree with this analysis as far as it goes, but the relationship between the public and “lightening rod” child abuse scandals is, I believe, significantly more *fraught* than McGillivray suggests here. See also Michael Freeman, *supra* note 19 at 108 re the “lightening rod”.

²² In frustrated response to the *chronic* problematic-ness attached to State child protection. I emphasise that I am discussing here definitively liberal ways of thinking and acting- other groups, specifically First Nations families and communities, stand apart from this framework.

²³ M. Barrett and M. McIntosh argue that the strength of the private family has an inverse relationship to community weakness; “The family sucks the juice out of everything around it, leaving other institutions stunted and distorted.” *The Anti-Social Family* (London: Verso, 1982) at 78. I would argue that it is the

The “liberal way of thinking”²⁴ about the world makes a “community” of liberal citizens capable of effectively assuming responsibility for other people’s children not only difficult but counter-intuitive.²⁵ The State, then, becomes the only collective capable of protecting other people’s children,²⁶ complicating the underlying conflict between the communal interest in children and the freedom and autonomy of their parents, and posing the “liberal’s dilemma”: “For the liberal the unresolved problem is how child rearing can be made into a matter of public concern and its qualities monitored without destroying the

modern iconic figure of The Individual, always sexualised, always consuming, which has “sucked the juice” out of everything around it; the family’s power is *vis a vis* other groupings, and derived from its identity as the most “individual like” of social groupings. The tragedy, perhaps, is that Barrett and McIntosh’s analysis may be combined with Lasch’s notion of the modern family as increasingly penetrated on all sides by “the world” and so drained of the psychological intensity Lasch considered integral to formation of the liberal personality: the fictive “strong family”, socially valued for its relative resemblance to the individual, “sucks the juice” out of other social arrangements, but once inside the family, per Lasch, there is nothing there. See Christopher Lasch, *Haven in a Heartless World: The Family Besieged* (New York: Basic Books Inc., 1977).

²⁴ To lift a neat phrase out of its context in D. Kennedy, “The Stages of the Decline of the Public/Private Distinction” (1982) 130 UPLR 1349 (used, *supra* note 9 by Nikolas Rose). I use this phrase to mean Anne McGillivray’s “Ideas which form the inarticulate core of social and legal systems [and] have effects which are both subtle and profound” (*supra* note 16) in the particular context of child protection (the “liberal way of thinking” is quicker and as evocative). I make no wider assumptions about these concepts outside of the particular *problem* of child protection.

²⁵ Indeed, as the absorption of potentially disruptive impulses of revenge and vigilantism is part of the police officer’s social job, the absorption of community anxiety and/or concern about “private” children is part of the social worker’s role. One pattern arising from the inquiry reports is the imperviousness of the “system” to “civilian” complaints: it seems astonishing, obtuse, until one realises that this mere absorption in a crucial part of social work’s job.

²⁶ “The parent/child relationship is an unequal contract, which children do not enter freely. At the same time, both children and the society as a whole have a vital interest in the success of that relationship, in cultivating the capacity for responsible moral action. The only body with the legitimacy to survey the whole population is that which, in liberal principles, is accountable to the whole population- the state.” R. Dingwall et al, *supra* note 1, at 220.

ideal of the family as a counterweight to state power, a domain of voluntary, self-regulating action.”²⁷

The Liberal Compromise

The picture of decision making in child mistreatment that has emerged from this study clearly contradicts one fashionable view: that child protection agencies are rapaciously scouring the homes of the poor for children to seize. We have clearly shown that, at each and every stage, the structures...have the effect of creating a preference for the least stigmatising interpretation of available data and the least overtly coercive possible disposition. Officially labelled cases of mistreatment are, quite literally, only those for which no excuse or justification can be found.²⁸

The conflict of “mores” and interests is contained, effectively sheared off from “everybody’s” responsibility and “everybody’s” life, but it remains, now the concern of child protection workers and their “clients” and those bystanders- neighbours, teachers, friends- who may find themselves unexpectedly and unwillingly involved in the kind of moral decision making officially designated to the State and its agents. Such a bystander, unprotected by the distancing of the State worker’s official role, will be in a painful moral position, inhibited by very strong internalised social constraints while feeling the pain of her anxiety and fear for the child; experiencing the “liberal’s dilemma” on an individual, internalised level.

The delegation of responsibility from neighbour, or “community”, to the State reduces *intimate* interference by intensifying its inappropriateness and, therefore, its problematic-

²⁷ *Ibid.*

²⁸ R. Dingwall et al, *supra* note 1 at 207.

ness. The authoritarian potential of *State* intervention²⁹ requires its weakness: “Indeed, strong agencies are often regarded as the mark of an illiberal state... State agents will not find proven deviance, as opposed to questionable diversity, unless presented with quite overwhelming evidence. Parents may have problems or treat their children in ways other than those preferred by the front-line worker: they are *not*, however, so bad as to be conceived of as abusive or neglectful.”³⁰ This is the “liberal compromise” and its interpretative “rule of optimism”: “the principle that, in a situation of uncertainty, child protection workers should favour the interpretation of signs and symptoms which least stigmatises parents. If you like, parents should be viewed as ‘innocent until proven guilty’”.³¹

In 1983 Robert Dingwall, John Eekelaar and Topsy Murray published *The Protection of Children: State Intervention in Family Life*, an ethnographic study of “what the relevant agency staff considered to be child mistreatment and how this constructed a particular population of identified cases.”³² The researchers chose three very different local authorities throughout England, excluding London.

²⁹ The welfare relationship is a more “normal” state/individual relationship, and the rhetoric of “modern” child protection is, among other things, about trying to defuse or normalise the problem by recasting child protection as “welfare” (the provision of services with the “client” parent as voluntary- “supplicant” receiver). See R. Dingwall et al, *supra* note 1 at 91.

³⁰ *Ibid.*

³¹ R. Dingwall, “Labelling Children as Abused or Neglected” in *Child Abuse and Neglect: Facing the Challenge* Wendy Stanton Rogers, Denise Hevey and Elizabeth Ash, ed. (London: BT Batsford in association with the Open University, 1989) at 162.

³² R. Dingwall et al, *supra* note 1, at 20. The authors made no claim to define what child abuse “really was”.

Our basic hypothesis is that abuse and neglect are the products of complex processes of identification, confirmation and disposal rather than inherent in a child's presenting condition and, at least in some sense, self-evident. If this is correct, then we would expect to find areas of uncertainty where the appropriateness of defining a particular child as abused or neglected was a matter for debate. It may be possible to limit these areas by formalising decision rules. Some authorities, for instance, issue front-line workers with checklists of signs thought to be indicative of mistreatment. Nevertheless, at some point, someone must actually³³ decide whether a child is or is not a member of the class of mistreated children. In designing the study, therefore, we sought to observe occasions on which such choices were made and to question the participants about their decision making procedures.³⁴

The authors identify the "central fact to be explained by any analysis of decision making in child protection" as "the rarity of allegations of mistreatment"; "if a strict liability approach based on clinical evidence was actually enforced, both accident departments and child health clinics would overflow with identifications of child abuse."³⁵ Some children, of course, *are* identified and labelled as abused and neglected. "The central issue is not the actual condition of the child but the explanation of that condition, specifically the degree to which the child's parents can be formulated as the sort of people who could be capable of bringing such a condition about."³⁶

³³ Although, as discussed *infra* in Chapter Three, procrastination and unwillingness to take responsibility for such a decision is a significant filter and limit on State action.

³⁴ R. Dingwall et al, *supra* note 1 at 31.

³⁵ R. Dingwall, *supra* note 31 at 160. Prof. Dingwall goes on here to consider the exception, discussed in greater detail *infra*, which proves the "rule": Cleveland. "Something like this appears to have happened in Cleveland and precipitated the chaos which led to the subsequent inquiry. But since this is so obviously an exceptional state of affairs, a different analysis is needed to understand what is going on." I would suggest that Dingwall's analysis of Cleveland as involving an inversion of the "rule of optimism"-a "rule of pessimism"- may be important to understanding the dramatic over-representation of First Nations children in the child welfare system; see *infra* at 26.

³⁶ Dingwall et al, *supra* note 1 at 179. The point of agreement with the "progressive" or "left wing" critique of children protection as the judgmental and punishing State *manifest* is fleeting and misleading. In this analysis, value judgements based on "social evidence" are structurally key to the *weak*, non-authoritarian child protection system which works within the liberal State, their purpose to avoid coercive intervention (as opposed to a characterisation of value judgements- the infamous "middle class values"- as a means of coercion).

If we were to test our findings about the clinical and social features of cases used as criteria by agency staff by turning them into operational rules from which we could make predictive statements about decisions in particular cases, we would vastly over-identify by comparison with the decisions actually made. The reconciliation, we have suggested, is accomplished by an additional assessment of parents' moral character as revealed partly through their demeanour and partly by inspection of those aspects of their life which can be seen to lie within their own control. That assessment, however, is conducted under what we might term a "rule of optimism", that staff are required, if possible, to think the best of parents.³⁷

Dingwall et al borrow from the "framing" analysis developed by P.M. Strong³⁸ to describe the encounter between doctor and patient, in which Strong shows how parents are assumed to be honest, competent and caring and the disorders of their children to be natural events. Where the evidence for such assumptions was weak or absent, doctors engaged in various kinds of inter-reactional work which attempted to "reconstitute the parents' character within the principles of the frame."³⁹ The authors found that this filtering process in the doctor's office or emergency room was continued within the "frame" of social work practice through a second, finer screening to limit cases which would require the State to act coercively. Cases which have made it to social services will virtually always involve a finding of parental "deviance"; the task at that level is to reconstitute, or explain, the adult as a plausible parental character.

The consecutive frames through which an identified case of child maltreatment must pass are *functional*. The inquiry reports, discussed *infra* Chapter Three, identify lack of communication and co-ordination between the various agencies/individuals who may be

³⁷ R. Dingwall et al, *supra* note 1 at 79.

³⁸ P.M. Strong, *The Ceremonial Order of the Clinic* (London: Routledge and Kegan Paul, 1979).

³⁹ R. Dingwall et al, *supra* note 1 at 39.

involved with a child as a theme in child protection “disasters”⁴⁰. This focus is correct, as the failure to “work together” is responsible for children “falling through the cracks”, but this failure has a key function within the “liberal compromise”⁴¹; it is not a mechanical problem to be spotted and fixed. This accounts for its persistence, despite its identification, over and over again, in the reports.⁴²

“The liberal compromise” describes the following rough accommodation: “that the family will be laid open for inspection provided that the state undertakes to make the best of what its agents find”.⁴³ “The rule of optimism”, the operational result of two institutionalised “neutralising” techniques or devices - cultural relativism and natural love-” makes the compromise work.⁴⁴ “Singly or together they provide, on the one hand, for a highly elastic approach to parental deviance and, on the other, for the charge of deviance to be a matter of such gravity that workers are understandably inhibited from making it”.⁴⁵

⁴⁰ From R. Dingwall’s discussion of B.A. Turner’s “disaster” analysis in the context of child protection, R. Dingwall, “Reports of Committees: The Jasmine Beckford Affair” (1986) 49 MLR No. 4 489.

⁴¹ The “division between autonomous agencies institutionalises a set of checks and balances which effectively restrict the identification of mistreatment” Dingwall et al, *supra* note 1, at 77.

⁴² “The division of information and inhibited flows between child protection agencies, which have been criticised by many reports... can be analysed as a significant structural barrier to over-zealous intervention. The division of regulatory labour is not an organisational pathology but an important restraint on damaging allegations or intrusions against families.” R. Dingwall *supra* note 31, at 499.

⁴³ R. Dingwall et al, *supra* note 1 at 91.

⁴⁴ “The liberal compromise, that the family will be laid open for inspection provided that the state undertakes to make the best of what its agents find, is enshrined in these two devices. State agents will not find proven deviance, as opposed to questionable diversity, unless presented with overwhelming evidence to the contrary.” R. Dingwall et al, *supra* note 1 at 89.

⁴⁵ *Ibid.*, at 89.

Cultural Relativism and Natural Love

What we found... were two institutionalised devices- cultural relativism and natural love- which combined to eliminate the overwhelming majority of potential cases by allowing front line workers to prefer an optimistic reading of client behaviour. These neutralised deviance in advance of any particular challenge.⁴⁶

“Cultural relativism” justifies behaviour or characteristics which would otherwise be classified as deviant by recasting them as “not abusive or neglectful but positive attempts to comply with alternative normative standards that would allow them to be recognised as appropriate parental behaviour.”⁴⁷ The more obvious the “cultural” difference the stronger the justificatory power but this device may characterise almost any behaviour as “cultural”, and so has almost limitless explanatory application: “Cultural relativism has no internal limit... It is indefinitely extendable, so that any small group or articulate individual can find their own theories being elevated to the status of a culture and turned into a justification. What may seem like eccentricities or perversions are elevated into cultural statements”.⁴⁸

The “excuse of natural love” recognises “deviance” but with-holds moral liability;⁴⁹ if there is any sign of emotional warmth parental conduct can be excused.⁵⁰ “If it is assumed that

⁴⁶ *Ibid.*, at 82.

⁴⁷ *Ibid.*

⁴⁸ *Ibid.*, at 89. And so “cultural relativism” in this sense applies to the living conditions which eventually killed Malcolm Page, Steven Meurs and baby Paul, among others, as it does to Mr. Kepple’s “Irish” sensibilities: see *infra*, Chapter Three.

⁴⁹ *Ibid.*, at 86. “An excuse is an means of discounting otherwise unacceptable behaviour because the people involved are, for some reason, incapable of acting responsibly.” R. Dingwall, *supra* note 31 at 162.

all parents love their children as a fact of nature, then it becomes very difficult to read evidence in a way which is inconsistent with this assumption. The challenge... amounts to an allegation that deviant parents do not share a common humanity with the rest of us.”⁵¹ This assumption also makes it difficult for parents who do not feel themselves to be “safe” with their children to be frank about their situation.

“Withdrawal of parental compliance” and “failure of agency containment” are identified in Dingwall and Eekelaar’s analysis as the triggering events for a “more investigative” approach.⁵² Parental opposition “undercuts the parent’s moral character within the liberal compromise that trades the rule of optimism against co-operation with surveillance agencies” while (as agencies share the liberal preference for minimal intervention) social workers may be *forced* to use compulsory measures if “co-operation” is not possible.⁵³ “Failure of containment” occurs when “knowledge of the family’s situation spreads beyond a group of front line workers”; the more agencies are drawn in, the greater the possibility that the family will come into contact with agencies “whose staff are more insulated from the rule of optimism.”⁵⁴

⁵⁰ R. Dingwall, *supra* note 31 referring to the *The Protection of Children: State Intervention in Family Life* study. Prof. Dingwall continues: “Some of the saddest cases in our study, for instance, involved the children of mentally handicapped parents. These parents clearly had considerable affection for their children, but were incapable of providing for their care, to the extent of causing great physical and mental suffering.”

⁵¹ R. Dingwall et al, *supra* note 1 at 87.

⁵² *Ibid.*, at 92.

⁵³ *Ibid.*, at 96.

⁵⁴ *Ibid.*, at 96-97. One pattern from the inquiry reports, discussed in some detail *infra*, Chapter Three, is the striking divergence between the observations/perceptions of the police with those of social workers. To the outsider, the police officer’s perception feels real, what any possessor of “common sense” would

After the decision to investigate (and at any point in the decision making process) parents may successfully deflect a finding of abuse and/or neglect if they can bring their circumstances within a persuasive “excuse or justification”. Among these, Dingwall et al identify the following accounts as likely to succeed.

1. “Parental Justifications”: parents admit the “deviant” facts but argue “that the act has been misinterpreted either because the observer has incorrectly applied correct standards or has correctly applied incorrect standards”.⁵⁵ “Parental justifications” include *denial of injury* (as “discipline” or something peculiar to the child, in the examples given); *denial of the victim* (the child is naughty or otherwise brings it on himself); *condemning the condemners* (what gives the social worker the right to define acceptable behaviour?); “*sad tales*” (stories of their own unhappy childhoods); *appeal to loyalties and self-fulfilment* (the acts complained of are admitted but justified by reference to different philosophies of life, religious beliefs, for example).

2. “Parental Excuses”: the parent admits the deviant act but “denies moral responsibility by virtue of an impairment of his or her capacity”.⁵⁶ Parental excuses

read from a given scene. The police officer, of course, stands outside of the social worker’s frame; the officer seems to stand *in* for the public in some report (and media aftermath) narratives. Some reports describe social workers excluding police officers from the decision making process, apparently for this reason. Again, the striking exception is Cleveland, where it appears the doctors’ decision to step completely outside their “normal” frame tipped the balance of roles- the job of each official player within the liberal compromise- into disorder.

⁵⁵ *Ibid.*, at 198.

⁵⁶ *Ibid.*, at 202.

include: *appeal to accident* (the child was hit, but the severity of his injuries are not the consequences of the blow, i.e. he fell on something); *appeals to defeasibility* (that the adult did not *know about* the consequences of his acts, or that he was drunk, or mentally sub-normal, or suffering from a mental illness); appeal to biological drives beyond control (in the case of sex offences); an appeal to scapegoating (where the child is so provocative that the adult cannot control themselves): "Once again, some kind of mysterious force overwhelms the possibility of human agency."⁵⁷

In Great Britain, the "rule of optimism" became a "catch-phrase to describe professional naiveté"⁵⁸ through its use in the inquiry into the death of Jasmine Beckford in 1985.⁵⁹ Objecting to this "misunderstanding", Robert Dingwall characterised the "rule" as a "response to both an organisational and a psychological problem... one of the ways in which people and organisations defend themselves in situations where they are being expected to make complex decisions on the basis of insufficient information and limited resources":

It would not be a simple matter to invert the rule of optimism into a rule of pessimism.... If child protection work is ineffective, it is not because of a disrespect for the legal duties of the agencies involved. It is because child protection must be reconciled with other important social values, most particularly those of the freedom and autonomy of families. The surveillance of families by occupations like health visiting is only possible because of the tacit bargain that parents will not be harshly judged, that it is an occasion for them to demonstrate their respectability rather than have it minutely judged. A rule of pessimism would require a greater use of compulsory power and confrontation. This was graphically demonstrated in Cleveland where social services

⁵⁷ *Ibid.*, at 203.

⁵⁸ R. Dingwall, *supra* note 31 at 163.

⁵⁹ *A Child In Trust: The Report of the Panel of Inquiry into the Circumstances Surrounding the Death of Jasmine Beckford* [Louis Blom-Cooper] (Wembley, Middlesex: London Borough of Brent, 1985).

adopted the more pessimistic approach recommended by Blom Cooper [in the Beckford Inquiry]. Their attempt to treat all referrals as suspect until proven otherwise exploded in a barrage of political and media outrage at this threat to the ideals of family life.⁶⁰

The rule is an operational rule which makes State child protection in a liberal context *possible*; it is, indeed, “systemic” in the deepest possible sense (and whether a “child centred” model of decision making is able to modify this rule remains to be seen). The pattern of practice noted by Blom-Cooper and others (including Thomas Gove) in the series of child death inquiry reports from Maria Colwell onwards is evidence of the rule’s fundamental importance to social work practice.

The “neutralisation” techniques⁶¹ of the “rule” also “work” to address the social worker’s problem of “persistent failure”, a “latter day equivalent of the problem of theodicy”.⁶² “cultural relativism and natural love are accounts which front line workers can use to bridge the gap between their own ideals and the realities of their practice, that their impact can be no more than marginal in a liberal society... [and allow workers] to reconstitute families as having some integrity and personal worth through which gains can be made, however slight.”⁶³ The often uncomfortable relationship between the public and the child protection system may be understood by reference to the fact that the public stands outside of these explanatory devices. The public

⁶⁰ R. Dingwall, *supra* note 31 at 164.

⁶¹ Cultural relativism and natural love.

⁶² Dingwall et al, *supra* note 1 at 89, theodicy being a vindication of the justice of God in a world in which evil exists.

⁶³ *Ibid.*, at 90.

understands persistent failure as *failure*. The public child death inquiry may be understood as the final “failure of agency containment”.

A Rule of Pessimism? Child Protection and First Nations Communities

It is now conceded by almost everyone in the field that the child welfare system has not operated in the best interest of Native children, families and communities. The evidence contained in the statistics... is overwhelming. In fact, a 1980 meeting of child welfare experts from across Canada referred to the plight of native children as a “national tragedy”.⁶⁴

Robert Dingwall has characterised the 1987 Cleveland crisis in the UK, in which the use of proactive diagnostic techniques for child sexual abuse produced a sudden and drastic increase in diagnoses, as suggesting an “inversion” of the rule of optimism: a “rule of pessimism.” The “plight” of First Nations children⁶⁵ may reflect a similar inversion of the general “rule of optimism” that the State’s agents will prefer least stigmatising interpretation of available data and the least overtly coercive possible disposition:

One longtime employee of the Ministry of Human Resources in B.C. referred to this process [the escalation in the numbers of first nations children in care in B.C. between 1955 and 1965, from almost nil to one third] as the ‘Sixties Scoop’. She admitted that provincial social workers would, quite literally, scoop children from reserves on the slightest pretext. She also made it clear, however, that she and her colleagues sincerely believed that what they were doing was in the best interests of the children. They felt that the apprehension of Indian children from reserves would save them from the effects of crushing poverty, unsanitary health conditions, poor housing and malnutrition, which were facts of life on many reserves. Unfortunately, the long term effect of apprehension on the individual child was not considered. More likely, it could not have been imagined. Nor were the effects of apprehension on Indian families and communities taken into account, and some reserves lost almost a generation of their children as a result.⁶⁶

⁶⁴ Patrick Johnson, *Native Children and the Child Welfare System* (Toronto: Canadian Council on Social Development in association with James Lorimer & Co., 1983) at 65.

⁶⁵ Referred to in the quote above, *Ibid.*

⁶⁶ *Ibid.*, at 23.

The consequences⁶⁷ of “inversion”, that all referrals are suspect unless proven otherwise (Dingwall’s characterisation of Cleveland,⁶⁸ which is taken further- from suspicion to “pretext” in the quite cited above),⁶⁹ support the idea of “rule” as a general norm, by showing how the rule *works*; the exception, it seems, proves the “rule”. The “scoop” described above, and the continued over-representation of First Nations children in care, indicate both a different premise (that living with their families is likely to contain a degree of inherent dangerousness for First Nations children) and a different relationship with the State and its agents.

Dingwall et al concluded that the rule of optimism seemed “to filter moral character in such a way as to hold back some upper-, -middle-, and “respectable” working class parents, members of ethnic minorities and mentally incompetent parents while leaving women and the “rough” indigenous working class as the group proportionately most vulnerable to compulsory measures. This effect is achieved by tests which are not class biased in any simple or overt sense but [is one] which various groups are differentially able to meet.”⁷⁰ The over-representation of First Nations children in the Canadian child welfare system suggests that First Nations communities occupy this “vulnerable” position

⁶⁷ *Supra*, note 64.

⁶⁸ *Supra*, note 60.

⁶⁹ *Supra*, note 66.

⁷⁰ R. Dingwall et al, *supra* note 1 at 102.

in Canada⁷¹. Patrick Johnson's 1983 study *Native Children and the Child Welfare System*⁷² concluded that the "major contributing factor in this instance [the highly disproportionate number of First Nations children in care where services are available⁷³] is a service delivery system that is not always culturally appropriate or compatible with Native customs, values and traditions."⁷⁴ Differences in child-rearing norms and standards⁷⁵ create obvious problems when the dominant group's standards are applied to First Nations communities.⁷⁶ As these "norms" relate to the relationship of individual, family and community, there may be a dangerous dissonance between First Nations communities and a child welfare system built on and legitimised by the "inarticulate",

⁷¹ See Marlee Kline, "Complicating the Ideologies of Motherhood: Child Welfare Law and First Nation Women" (1993) 18 Queen's Law Journal 306.

⁷² P. Johnson, *supra*, note 64.

⁷³ Jurisdictional disputes regarding the provision of services on reserves has limited access to services for some families on reserves; "Only when a child's life was, quite literally, considered to be in danger, would the province step in. The assistance provided at that point was almost inevitably the apprehension of the child." P. Johnson, *Ibid*, at 66. The federal government is responsible for the provision of child welfare service of reserves, the provincial government for services off reserve.

⁷⁴ *Ibid.*, at 59.

⁷⁵ *Ibid.*, at 71. Described by Johnson as a "pacifistic" approach within a distinct and different notion of the family and conceptualisation of the relationship between the community and the individual: "The importance accorded group or collective rights is yet another factor that distinguishes native and non-native values. It influences the relationship between families and communities, which Native people believe is appropriate and legitimate. *Ibid.*, at 70.

⁷⁶ Whether or not the outcome of that application was intended (as contended by Hudson and McKenize, see *infra*, note 74) or not: "The child welfare system had not been planned to change the culture of Indian people. The system was designed for non-native people living in urban areas and was then exported to rural and Indian communities to provide equality of service. This export of services had overlooked significant differences between the society where the system originated and the one on which it was imposed." Andrew Armitage, "Family and Child Welfare in First Nations Communities" in Brian Wharf, ed., *Rethinking Child Welfare in Canada* (Toronto: McClelland & Stewart, 1993) 131 at 151.

“core” assumptions of the liberal character and the liberal state: the assumptions of privacy and “moral minimalism”, the isolation of the child within her family.

The sharp contrast between the “barrage of political and media outrage at this threat to the ideals of family life”⁷⁷ in Cleveland (and the quick suspension of a “pessimistic” approach) and the *persistence* of the child apprehension crisis in First Nations communities may be explained by the resonance of each crisis within its social context. The sexual abuse of children- boys as well as girls- by their fathers on an unsuspected scale, combined with characterisation of social services workers and paediatricians as “foreign” and/or “feminist”, connected with pre-existing cultural beliefs and prejudices in the UK to produce the Cleveland media event.⁷⁸ In contrast, the “rule of pessimism” in the First Nations context connected with negative beliefs in the dominant culture to support that “inversion”. Possible explanations for the over-representation in care of First Nations children were summarised by Brad MacKenzie and Peter Hudson as:⁷⁹ individual deviance; rapid cultural change and consequent family dysfunction; economic deprivation; the “historical” argument communities had been “institutionalised” through the boarding schools and deprived of their land, losing their culture; racism on the part of the non-First Nations majority; the “colonial” argument, that “the child welfare system was part of a deliberate assault on Native society designed to make changes in Native people (accepted

⁷⁷ R. Dingwall, *supra* note 31.

⁷⁸ See Beatrix Campbell, *Unofficial Secrets: Child Sexual Abuse, The Cleveland Case* (London: Virago Press, 1989).

⁷⁹ “Native Children, Child Welfare, and the Colonization of Native People”, in Levitt and Wharf, eds., *The Challenge of Child Welfare* (Vancouver: UBC Press, 1985).

by McKenzie and Hudson as most persuasive). These explanations may be conceptualised both as reasons for the adoption of a “rule of pessimism” in First Nations “cases”, and for the persistence of that “rule”.

The Rule of Optimism as Rule of Law

The rule of optimism remains intact: only it is now explicitly underwritten by the *Act* and policed by the courts.⁸⁰

Child protection legislation cannot be a “pure” set of rules recreating, *tabula rosa*, the “system” in its image, but legislative reform has meaning beyond the normative legal sanction of a system run *de facto* by the requirements of the “liberal compromise” and its operational “rules”. The “codification” of the “rule of optimism” reinforces its legitimacy, increasing its resilience as an “over-riding belief” to alternative explanations.⁸¹

⁸⁰Dingwall, Eekelaar and Murray in a 1995 postscript to a second edition of *The Protection of Children*, considering the impact of *The Children Act, 1989*, *The Protection of Children: State Intervention in Family Life*, Second Edition (Aldershot, UK: Avebury, 1995) at 249. “In a way, this should not be surprising: to the extent that a number of changes reflected a desire to align the law with the way cases are actually handled.” *Ibid.*

⁸¹ “professional thinking can be organised by overriding beliefs about a case. These beliefs may be determined by socio-political attitudes, strong personal or professional views, or inferences drawn from ongoing work with a family which develop into automatic thinking about them. Once a case becomes dominated by a fixed view, workers selective attention is likely to distort their observations and any contradictory information becomes difficult to acknowledge. We found a number of cases in which pervasive beliefs seemed to dominate most decisions and actions.” Peter Reder, Sylvia Duncan and Moira Gray, *Beyond Blame: Child Abuse Tragedies Revisited* (London: Routledge, 1993) at 92. Legislation is one “determinant” in this process.

“Legalisation” of the “rule” also works to bring the public within the rule of optimism’s “frame”. The high profile given to child protection failures in the 1970s and 1980s⁸² created a fairly high level of dis-satisfaction on both sides of the “delegation”.⁸³ I have suggested that the ambivalent, sometimes hostile relationship between social workers and “the public” may in part be explained/understood by the public’s position outside the “rule of optimism”: decisions which seem right to the social worker inside her frame seem incomprehensible to the “public” on the “outside”.⁸⁴ “Legalisation” of the “neutralising” techniques of cultural relativism and natural love brings these “accounts” to bear on the gap which exists for non-professionals between the “ideal” and the “real”- as the realities of social work practice can be known to non-professionals, that is largely, through the media. The dramatic Canadian shift towards “non-interventionist” child protection statutes in the 1980s and 1990s was a response to the growing perception of failure.

“Non-interventionism” in child protection legislation means narrowly defined legalistic standards strictly applied, increasing the scope of parental discretion by limiting the

⁸² D.H.S.S., *Child Abuse: A Study of Inquiry Reports 1973-1981* (London: H.M.S.O., 1982.); D.H.S.S., *Child Abuse: A Study of Inquiry Reports 1980-1989* (London: H.M.S.O., 1991.) And see P. Reder et al, *supra* note 81, a British study summarising all major inquiries since 1973, considered within their social context. In Canada, see *Judicial Inquiry into the Care of Kim Anne Popen by the Children’s Aid Society of the City of Sarnia and the City of Lambton* [Judge H. Ward Allen] (Toronto, Ontario: Queen’s Printer, 1982); and see Cyril Greenland, *Preventing CAN Deaths: An International Study of Deaths Due to Child Abuse and Neglect* (London: Tavistock Publications, 1987.) In British Columbia in 1995, the *Report of the Gove Inquiry Into Child Protection* (Victoria, B.C.: Queen’s Printer, 1995) [hereinafter the *Gove Report*]. The Gove Inquiry may have been called to identify and explain “errors”, following two superficial and unsatisfactory internal reports, but the Report’s criticism in fact targeted “business as usual” in child protection practice: the “system”.

⁸³ For child welfare professionals and for the public.

⁸⁴ See the minority and majority reports of *The Report of the Committee of Inquiry into the Care and Supervision Provided in Relation to Maria Colwell* (London: HMSO, 1974).

discretion of courts and child protection agencies to enter into and enforce non-voluntary arrangements with parents and children. The system must be designed to ensure that agencies and courts are held accountable for their actions. If the State must intervene to protect the child, it should do so in the manner which least interferes with family autonomy.⁸⁵ A “legalistic, non-interventionist” statute is one which has very narrow grounds for intervention in a specific and narrow set of circumstances”, avoiding vague descriptions such as “improper” and “unfit”.⁸⁶ The legislation should contain clear guidelines encouraging courts to leave children with their parents, or return them if removed. The “best interest test” is considered “interventionist”; even where it is accompanied by a lengthy list of relevant factors which the court must consider in making a determination about “best interests” (the test being unlikely to “encourage the use of the least intrusive dispositional alternative”).⁸⁷

“Non-interventionist” legislative “principles” include as objectives both child welfare,⁸⁸ or well being, and the protection of family autonomy. While these conflicting objectives may

⁸⁵ Richard Barnhorst, “Child Protection Legislation: Recent Canadian Reform ” in Barbara Landau ed. *Children’s Rights in the Practice of Family Law* (Toronto: Carswell, 1986) 255 at 256. This brief description draws on Barnhorst’s “interventionist” spectrum of Canadian legislation.

⁸⁶ *Ibid.*

⁸⁷ “although some factors reflect the positive aspects of the child living with the parents, others may actually encourage placement with “psychological parents” such as foster parents in some cases.” Richard Barnhorst, *supra* note 85 at 271. For a comprehensive discussion of the critical approach to “best interests”, see N. Bala, J. Isenegger and B. Walter, “ ‘Best Interests’ in Child Protection Proceedings: Implications and Alternatives ” (1995) 12 CJFL Vol.2 367 at 368.

⁸⁸ But see Andrew Bainham’s argument that “non-interventionist” legislation “hijacks” the “welfare” principle which may or may not be paramount within it: “This is because the welfare principle cannot come into operation at all unless the court is called upon to determine an issue affecting a child, but the non-interventionist principle may result in the court having no issue before it.” A. Bainham, “The Privatisation of the Public Interest in Children”(1990) 53 MLR 206 at 220.

be conceptualised as creating “balance”, the idea that both can be “realised simultaneously” creates obvious contradiction:

From one viewpoint, the two broad objectives are in conflict and cannot be realised simultaneously: more power for social workers in relation to children does mean parents lose some of their rights, in this view. Therefore, descriptions of the *Children Act 1989* which refer to its providing both better protection for children and greater rights for parents are simply a denial of conflict, an attempt to avoid the awkward dilemmas that child care throws up.⁸⁹

Resolving the Best Interests of the Child: Professionalising the Humanitarian Mores

Whether the protective shell of the family is already broken before the state intrudes, or breaks as a result of it, the goal of intervention must be to create or re-create a family for the child as quickly as possible. That conviction is expressed in our preference for making a child's interests paramount once his care has become a legitimate matter for the state to decide... So long as the child is a member of a functioning family his paramount interest lies in the preservation of his family. Thus our preference for making a child's interest paramount is not to be justified in and of itself for intrusion. Such a reading would ignore the advantages that accrue to children from a policy of minimum state intervention.⁹⁰

⁸⁹ Lorraine Fox Harding, *Perspectives in Child Care Policy* (1991: Longman, UK) at 230. Fox Harding goes on to add: “...from another viewpoint, however, what legislation and policy is all about is balance. While there are some conflicting objectives, it is argued a better balance can be achieved. Thus it is reasonable, and not inconsistent, for the *Children Act* to attempt to proceed in two directions at once, adding to the power of parents here, strengthening the courts and local authorities there. What will be achieved, it may be argued, is not simply a redistribution of muddle but a genuinely more effective balance correcting tendencies both to over and under react, while helping parents and children as a unit where it is appropriate to do so.”

⁹⁰ A. Freud, J. Goldstein and A. Solnit, *Before the Best Interests of the Child* (New York: Free Press, 1979) at 4-5. The “arch exponents” of anti-interventionism: so described by R. Dingwall and J. Eekelaar, “Rethinking Child Protection” in MDA Freeman ed., *The State, The Law and the Family* (London: Tavistock Publications, Sweet and Maxwell, 1984) at 78. And see Michael Freeman's critique, “Freedom and the Welfare State: Child Rearing, Parental Autonomy and State Intervention” [1983] JSWL 70.

The child protection problematic, the “clash of utopias”⁹¹, cannot be resolved by simply choosing one set of values over the other and, crucial to the “resolution” of this conflict is the *identification* of child well being and family autonomy, what Robert Dingwall and John Eekelaar called the “family autonomy ideology”: “The ‘family autonomy’ position [appearing in “left” and “right” versions] is an attempt to evade this dilemma [the “central dilemma within western liberalism over the relative priority to be afforded to individual freedoms, social justice, and civil or moral order] by reformulating children’s rights in terms of adult freedoms... In fact, this is not a theory of children’s rights at all so much as a political theory about the proper relationship between families and the state.”⁹²

This *apparent resolution* “resolves” the underlying conflict (and with it, the “liberal’s dilemma of how the *State* can interfere in the private family “counterweight” without destroying it) by explaining that conflict as a “false dichotomy” and, crucially, by making child death (and therefore child suffering, death being most obvious) invisible.⁹³ Given a

⁹¹ R. Dingwall et al, *supra*, note 1: “Debates about the proper response to child abuse are, in substance, debates about the nature of the good society. They are possible only because of a clash of utopias between humanitarian and organisational moralists.”

⁹² R. Dingwall and J. Eekelaar, *supra* note 90 at 104.

⁹³ In 1992, when Joyce Rigaux became Superintendent of Family and Child Services in B.C., Audit and Review Division reviews into suspicious child deaths virtually ceased. In the 27 months preceding Rigaux’s appointment there were 19 such reviews; the first ARD review authorised by Rigaux was into the death of Matthew Vaudreuil nearly 2 years after his death (the circumstances are discussed, in Chapter Four, *infra*)- during this time 33 child deaths had been reported to the Superintendent’s office. *Gove Report, supra* note 82, Volume I at 165. Judge Gove referred to those children as the “invisible ones” (*Ibid.*, at 213). A former Audit and Review Director told the Gove Inquiry that, in her opinion, Joyce Rigaux’s decision to suspend the audits “stemmed from a desire not to stress staff”. See Sharon Samuels and Karen Ryan, *Audits and Reviews*, Report Prepared for the Gove Inquiry (1995) at 15-18. At the time the Ministry’s policy was “families first and apprehension only as a last resort.” (*Gove Report, supra* note 82 Volume I at 101). I understand these events as a literal attempt to “disappear” children inside the “family autonomy ideology”, and so “resolve” the problematic-ness of child protection.

family integrity premise, the child death inquiry (which has served as the main vehicle for public awareness of child protection “failure”) rather loses its point; non-intervention anticipates “failures”, characterised as occasional, regrettable outcomes or accidents. The interests of the child, identified with family privacy in life, continue to be identified with the privacy of his or her family in death.⁹⁴ Public knowledge of private child suffering and death become (from this perspective) both unseemly and harmful: reviews and inquiries, with their connotations of blame and responsibility are (persuasively) inappropriate, indeed counter-productive. Press “scapegoating” of social workers during and after high profile inquiries (at once “unfair” and perceptive, a contradiction traceable to the essential contradiction within the “liberal compromise”⁹⁵) becomes mere (and avoidable) hysteria. The conflict is “resolved” by the effective disappearance of private child suffering as a public concern, consequentially de-legitimising the communal interest in children and professionalising the humanitarian mores.

The reconfiguration of failure containment as a family centred *good*, like the disappearance of children’s rights as an enhancement of the child’s interests and ultimate protection, “resolves” the contradiction by simply removing child suffering from the scope of public knowledge and the political agenda. Again, this re-imagining of the child protection problem must be cast as good for children, as actually expressing, and pursuing, “humanitarian mores”: secrecy protects children and families,

⁹⁴ See Chapter Five, *infra*, re the inquiries of the Children’s Commissioner.

⁹⁵ See Maria Colwell, *supra* note 84 and *infra* Chapter Three.

where publicity harms them. Non-interventionist child protection, by *professionalising* the humanitarian mores, “resolves” the liberal’s dilemma in a quintessentially “modern” reform.

Despite the logical and moral difficulties posed by the normative disappearance of the child into his or her family, the non-interventionist paradigm draws its considerable ideological power from the *wide* variety of political demands⁹⁶ it appears to meet, together with the *depth* of its psychological/ social appeal. Where an idea serves many purposes, for many people, the will to “see” it work may be irresistible. Where, as with the “family autonomy ideology” the rationale for disguising failure is built into the value system of the philosophy itself, the danger increases manyfold.

Thomas Kuhn described the process of discovery, or paradigm shifts, as beginning with the “awareness of anomaly”, ending only “when the paradigm theory has been adjusted so that the anomalous has become the expected.”⁹⁷ I suggest that the wave of Canadian child protection legislative reform in the late 1980-early 1990s⁹⁸ (like the UK’s *Children Act, 1989*)⁹⁹ was influenced by the publicly experienced failure of an earlier child

⁹⁶ The “right or “left” versions of the “family autonomy ideology”; see R. Dingwall and J. Eekelaar, *supra* note 90. In the Canadian First Nations context, this idea includes aspects, of “cultural autonomy” as well; see *infra*, Chapter Two.

⁹⁷ Thomas Kuhn, *The Structure of Scientific Revolutions* (Chicago: University of Chicago Press, 1962) at 52.

⁹⁸ See N. Bala, J. Isenegger and B. Walter “ ‘Best Interests’ in Child Protection Proceedings: Implications and Alternatives ” (1995) 12 CJFL Vol.2 367 at 368.

⁹⁹ 1989, c.41 (UK).

protection paradigm.¹⁰⁰ In a slight variation of Kuhn's formula, the "anomalous" (individual "mistakes") had increasingly become the "expected" (patterns of failure¹⁰¹), but the "theory", or explanation for protection failures, could not be (publicly) adjusted to *expect* child deaths (prevention of child deaths being the bottom line purpose of State child protection). The solution to this dilemma was the disappearance of child deaths. British Columbia's (pre-Gove) reform process was very much about the ascendancy and formalisation of the "non-interventionist paradigm".

However, what *happened* in British Columbia, through the high profile *Report of the Gove Inquiry into Child Protection*,¹⁰² was the almost immediate public conceptualisation of "non-interventionist" child protection¹⁰³ as producing *regular* failure (with the *Gove Report's* "Invisible Ones", tying the Ministry's failure to protect Matthew Vaudreuil with numerous other child deaths, and the post-Gove crisis, with its incremental revelation of past child deaths), powerfully combined with a scathing presentation of the family autonomy "resolution"- the disappearance of child deaths- as political cover-up.¹⁰⁴

¹⁰⁰ A competent State system in which individuals sometimes made "mistakes", which then became the subject of inquiries and corrections. The series of child death inquiries which had accumulated by the end of the 1980s showed remarkable similarities between ostensibly aberrant, and individual, mistakes (over and over again), discrediting this explanation. It does not seem reclaimable. The Gove Inquiry, while noting individual decisions and behaviour, is really *about* "the system", as are Gove's thorough-going recommendations.

¹⁰¹ In British Columbia, *this* failure was joined by acknowledgement at the governmental level that State child protection had failed First Nations communities.

¹⁰² *Supra*, note 82.

¹⁰³ "Child protection with a family focus":

¹⁰⁴ In the pre-Gove Rigaux scandal, in the *Gove Report* itself, and in the post-Gove political crisis of 1996.

The “non-interventionist paradigm” is dangerous for children because it rests on a false premise: that family preservation protects children. The systemic “liberal compromise” and its “rule of optimism” tend to produce a system in which relatively few cases of child maltreatment are identified, and relatively few of those will be considered to require coercive State action. The “non-interventionist paradigm” is a political theory *identifying*, or equating, child well being and family autonomy, implemented through non-interventionist legislation codifying the “rule” within a political and policy context of “family centred” child protection.¹⁰⁵ Legitimacy and coherence of this paradigm depends on the disappearances of child suffering because “child protection” practised *as* family preservation may increase child deaths,¹⁰⁶ rather than, as officially explained, “lessen[ing] the need for protection work.”¹⁰⁷

The long and sometimes surprising reform process in British Columbia between 1991 and 1996 provides the material for a remarkable “case study” of both the ascendancy of the “non-interventionist paradigm”, and the paradigm’s fundamental *inadequacy*, despite the width and depth of its appeal.

¹⁰⁵ The “compromise” and “rule” are therefore not the *same thing*, although of course they relate to and inform one another, and understanding the rule is an important aspect of understanding the “non-interventionist paradigm” (and vice versa).

¹⁰⁶ A conclusion indicated by the inquiry reports, considered *infra*, Chapter Three, and by the *Gove Report*, *supra* note 82; see Chapter Four.

¹⁰⁷ Ministry of Social Services Bulletin#1 issued March 1993, “Message From the Minister: Shift to a Family Centred System”.

CHAPTER TWO

PROTECTING OUR CHILDREN, SUPPORTING OUR FAMILIES: LEGISLATIVE REFORM

Legislative reform in British Columbia, leading to the *Child, Family and Community Service Act*,¹ was very much about codifying the ‘non-interventionist’ consensus of the 1980s and ‘90s. The reform *process* was about, in part, constructing ‘social meaning’,² ‘naturalising’ what Dingwall and Eekelaar called the ‘family autonomy ideology’³ as the will of the ‘community’.

The debates in the legislative house during passage of the *CFCSA* demonstrate the width of the ‘non-interventionist’ consensus among the political parties and perspectives represented there.⁴ The tone of the debates, the virtually total focus on State restraint and ‘non-intervention’, indicates the depth of that consensus, and its resonance with ‘instinctual’ liberal ideas. The community consultation process⁵ makes a different point

¹ R.S.B.C. 1996, Ch. 46.

² Lawrence Lessig described “social meaning” as “[understanding or expectations which] must be *taken for granted* by those within the group at issue...For an action to convey a social meaning in the sense I want to use the term here, it must do so in a way that feels natural... it must function with a sort of ‘social magic’.” Lawrence Lessig, “The Regulation of Social Meaning” (1995) 62 UCLR No. 3 958. at 958.

³ This “ideology” is about, or *for*, explaining child protection (specifically, child protection failures) politically and for the public; how minimal intervention “works” for “outsiders”, and is conceptually distinct from, although certainly informed by, the “liberal compromise/rule of optimism” analysis (which is about how the consensus “works” for “insiders”, or professionals; see *infra*, Chapter Three).

⁴ The points of difference between a politically conservative (*all* State activity in the zone of private family responsibility) and a “left”, or “progressive” (non-supportive and judgmental interference with the private family on the part of the State) conceptualisation of “intervention” are visible, but not explored, in the debates, which are very much focused on the consensus (not the variations within it).

⁵ See *Making Changes*, *infra* note 12, at 5. The *CFCSA* was presented as the government’s “response” to the reports of the produced by the community panels; *Making Changes: Next Steps, A White Paper for Public Review* (British Columbia: Ministry of Social Services, July 1993).

about the *diversity*⁶ which exists within that consensus: between ideological perspectives on the “left and “right” and, most significantly, the different meaning of “non-intervention” in the First Nations context, a meaning which includes cultural (in addition to family) autonomy.

At first blush the community consultation process, acknowledging the “community’s” authority/responsibility for the protection of children, seems to be explicitly *about* the underlying delegation of the communal interest in and responsibility for child well being to the liberal State. Social Services Minister Joan Smallwood’s statements at this time about “returning” child protection to the “community”⁷ also suggest a sensitivity to an idea of the State/community relationship as crucial to understanding (and changing) child protection.

A “return to the community” makes unambiguous sense in the context of colonial oppression and cultural autonomy, the conceptual framework of *Liberating Our Children*, *Liberating Our Nations* (the report of the Aboriginal Committee of the Community

⁶ See *Protecting Our Children, Supporting Our Families: A Review of Child Protection Issues in British Columbia* (British Columbia: Ministry of Social Services, 1992), at 25, a “discussion document” *about* positioning a “left” or “progressive” family/state partnership as both moderate and modern (vs. the “extremist” imperative to simply keep the State away, and “old fashioned” ideas of child saving).

⁷ “I want to take the opportunity to state very clearly for the House something that I have taken every opportunity, when I’ve been talking to staff, when I’ve been talking to service delivery groups, with advocacy groups, with families and with communities...[sic] The time for this ministry to own the problem is over... We will continue to work with communities, and we will open the doors to allow communities and service providers, wherever possible, to sit at the table with us to identify the issues, to identify their concerns and to help, in partnership, to solve the problems.” Joan Smallwood, British Columbia, Debates of the Legislative Assembly (April 10, 1992) at 678. “Community ownership” draws on the “progressive” or “left” critique discussed *infra*, of the oppressive tendencies of a monolithic State system; my criticism is only that the idea of “community ownership” requires a deeper analysis, a confrontation of the delegation and the conflict beneath it. “Community ownership” is a very *challenging* idea.

Panel),⁸ a paradigm which resonates with First Nations cultural norms.⁹ A ‘return’ does not make immediate sense in the non-First Nations context without a similar consideration¹⁰ of why the ‘community’ does not, at the moment, ‘own the problem.’ There is no such radical¹¹ analysis in *Making Changes*,¹² the general, or overall, community report.

Making Changes

I know that there are some concerns in the House that we would be too intrusive - that the legislation would perhaps now say that because we have so clearly defined what a child at risk is, we may have opened up every family to being accused of having children at risk. That is not the intent and I hope that is not the case. Much of this legislation is modeled after successes in other provinces and other jurisdictions. Our province is very much at the tail end of change in modernizing child welfare.¹³

⁸ Report of the Community Panel , Family and Children’s Services Review in British Columbia (British Columbia.: Ministry of Social Services, 1992).

⁹ “The importance accorded group or collective rights is yet another factor that distinguishes Native and non-native values. It influences the relationship between families and communities, which native people believe is appropriate and legitimate. In particular, Native people believe that the community has not only a right but a responsibility to become involved in Native family life.” P. Johnson, *Native Children and the Child Welfare System* (Toronto: Canadian Council on Social Development in association with James Lorimer & Co., 1983) at 70. And see Mary Ellen Turpel, “Aboriginal Peoples and the Canadian Charter: Interpretative Monopolies, Cultural Differences” (1989-90) 6 CHRYB 3; L. Little Bear, “Aboriginal Rights and the Canadian ‘Grundnorm’” in J.R. Pointing, ed., *Arduous Journey: Canadian Indians and Decolonization* (Toronto: McClelland & Stewart, 1986) 243.

¹⁰ *Liberating Our Children, Liberating Our Nations* is (in one sense) *about* how and why First Nations communities do not own the problem, and what to do about it.

¹¹ “pertaining to, constituting, proceeding from or going to the root”: *Chambers Concise Dictionary*.

¹² *Making Changes: A Place to Start*, Report of the Community Panel, Family and Children’s Services Review in British Columbia (British Columbia: Ministry of Social Services, 1992).

¹³ Joy MacPhail, British Columbia, Debates of the Legislative House (June 7, 1994) at 11553. Child protection reform as a politically neutral, linear “modernisation” is a theme of the government’s presentation and defence of its Bill. “Modernisation”, with “de-politicisation”, or “naturalisation” is also a theme of the Community Reports, and the community consultation process itself. “De-politicisation” here is about crafting consensus (in this case around non-intervention and the priority of restraining the State) as natural. Re passage of the (UK) *Children Act, 1989* in the House of Commons, Nigel Parton noted “this was one of the few opportunities to pass legislation which was likely to receive wide political, professional and public support... everyone was keen to demonstrate they were caring and

A left of centre New Democratic provincial government was elected in British Columbia in October 1991. The new government initiated a process of (ostensibly) community *led* reform¹⁴ by appointing the Community Panel Family and Children's Services Legislation Review in November 1991.¹⁵ The reform agenda is already clear in the consultation document released early in 1992,¹⁶ however, as, indeed, it appears in the throne speech delivered on March 17, 1992 by then Premier Michael Harcourt.¹⁷

First Steps

The community reports, whatever their degree of *influence* (or as part of political design), are key to understanding the wider political/legal context in which the *Child, Family and Community Service Act* was introduced and the public inquiry into the death of Matthew Vaudreuil called. Through the public panel process the government was clearly involved

concerned adults who could come together in the interests of children and the family." *Governing the Family: Child Care, Child Protection and the State* (London Macmillan Education Ltd., 1991) at 149.

¹⁴ Although the preceding Social Credit government may be considered to have begun the process: see *Public Report No. 24: Public Response to Request for Suggestions for Legislative Change to Family and Child Service Act, February 1991* (Victoria, B.C.: Ombudsman, 1991). At this time, the government had not decided on the process by which amendments would be decided; this Ombudsman's Report recommended an invitation for public submissions before new legislation was drafted, resembling the "Community Panel" approach eventually decided on. This *Report* refers to a series of "cases" dealing with unwarranted and heavy handed intervention by child protection workers and featured on the popular Rafe Mair radio talk show, which seem to have created a mini Cleveland-like crisis in British Columbia at this time.

¹⁵ *Report of the Gove Inquiry into Child Protection* (Victoria, B.C.: Queen's Printer, 1995) [hereinafter the *Gove Report*] Volume II at 15; K. Hamilton, "From the Ground Up: Designing a New, Child-Centred Child Welfare System for British Columbia" Report Prepared for the Gove Inquiry (1995) at 39.

¹⁶ *Protecting Our Children, Supporting Our Families*, *supra* note 6.

¹⁷ British Columbia, Debates of the Legislative Assembly (March 17, 1992) at 11.

in *constructing* a context within which the meaning of child protection would be changed.¹⁸

The value one ascribes to the family as the central child rearing unit in society will shape the legislative framework related to child protection... The child protection mandate given to the state will depend on one's philosophy about the family and beliefs about parental rights and responsibilities.¹⁹

In November 1991 then Minister of Social Services Joan Smallwood appointed a "Community Panel" to travel throughout the province, gather popular opinion, and make corresponding recommendations for legislative change. To facilitate this process, a Consultation Paper was prepared by the Ministry to "stimulate discussion about the major issues and themes associated with child protection" (*Protecting Our Children, Supporting Our Families: A Review of Child Protection Issues in British Columbia*). The agenda is set out in the ideological spectrum established by this "consultation document". The Paper constructs a continuum of beliefs, positioning a voluntary "partnership of family and state" at the centre²⁰, with "maximum parental rights" at one extreme and "maximum state authority"²¹ at the other. The "role of the state" is considered along a similar continuum: residual role for the state; family support role for the state; senior partner role for the

¹⁸ "Meanings exist, and are used. Construction is about how they are changed- more particularly, how the contexts within which they exist are changed [by intervention, as opposed to simply changing by evolution]." L. Lessig *supra* note 2 at 962.

¹⁹ *Protecting Our Children, Supporting Our Families, supra* note 6, at 25.

²⁰ *Ibid.*

²¹ A position characterised as one suspicious of arguments about "autonomy and integrity" seeing in them a mere reluctance on the part of the State to assume responsibility for children. See *Ibid.*

state. Again, positioned pleasingly in the centre, “family support” is presented as the moderate option.²²

The legislative agenda tacitly outlined in *Protecting Our Children, Supporting Our Families* was explicitly filled in by the two Community Reports published in 1992 (*Making Changes: A Place to Start* and *Liberating Our Children, Liberating Our Nations*). After release of the reports, Smallwood announced a shift in policy from a “child centred” to a “family centred” system, apparently reflecting the messages received in the consultation process.²³

Liberating Our Children, Liberating Our Nations (the report of the Aboriginal Committee of the Community Panel) is prefaced by the following disclaimer:

We have been asked to review your child protection legislation and recommend changes as it affects our people. In doing so, we are put in a contradictory position, since we do not believe that your laws apply to our people....They [your governments and your courts] have enforced the extension of your law onto our land and applied them to our people with devastating effects. This has been particularly true of your child protection laws.

Your child protection laws have devastated our cultures and our family life this must come to an end.²⁴

This report (as the “disclaimer” and the very title make so clear) is self-consciously *about* lifting an externally imposed force *off of* First Nations communities, accompanied by a

²² Throughout the legislative reform process, the New Democratic government has been at pains to present the legislation as “moderate”; see discussion of the Legislative Debates.

²³ Ministry of Social Services Bulletin#1 issued March 1993, “Community Panel Reports: A Blueprint for Change”. Also in that issue a “Message From the Minister: Shift to a Family Centred System” “In this ministry, we are undergoing a fundamental shift in values- from a child centred system to a family-centred system. A similar shift is underway in jurisdictions across North America, and certainly the new Community Panel Reports provide a framework for a much more family centred system.”

²⁴ *Liberating Our Children, Liberating Our Nations*, *supra* note 8 at vii.

request for funds to build a separate First Nations "owned" (to borrow Smallwood's phrase) system. The document anticipates aboriginal self-government, recommending that "Changes to family and child protection legislation must be seen only as an interim measure that will be fully resolved through the recognition of the paramountcy of Aboriginal family law."²⁵ The model which emerges from the *Report's* 102 recommendations locates responsibility for aboriginal children in First Nations and "enclave" communities; recommended government input is limited to financial support. The *Report* also recommends an emphasis on support services enabling the child to remain within the family, (again stressing the need for the government to finance aboriginal services), the involvement of the extended family and the Nation/community in planning for the child, and a moratorium on the adoption of aboriginal children by non-aboriginal people.²⁶

Making Changes: A Place to Start considers the system in general²⁷, and, like the *Report* of the Aboriginal Committee, calls for a "shift in emphasis" to a "family centred system [which] recognises and enhances the strengths of each family member while minimising the tendency to find fault and lay blame".²⁸ *Making Changes* identifies lack of public

²⁵ *Ibid.*, at 30.

²⁶ *Ibid.*, at 97-107 contains the complete list of recommendations.

²⁷ Guiding Principles; Poverty; Community Development; Access to Information; Advocacy; Support Services; Youth Services; Service Delivery Structure; Guardianship: Past and Future; Dispute Resolution; Child Protection; Alternative Care; Staff; Legislating Change.

²⁸ "In this approach, parents are supported in fulfilling their child-rearing roles and children are protected within the family setting. Communities have a vital role in supporting families by developing support service plans that will address local concerns. This shift in emphasis is vital, and is a theme throughout our entire report." *Making Changes: A Place to Start*, *supra* note 12 at 63.

confidence in social services, particularly regarding child protection, as a vital area for change.²⁹ Its recommendations include no removal without adjudication except in emergencies, family conferences, specific and unambiguous definitions, provision for removing the offender, and criteria to assess competence. Both reports emphasise support to keep families together, constraints on discretionary authority, and the importance of the biological family

Yet despite these points of similarity, the *Reports* are essentially very different. *Liberating Our Children, Liberating Our Nations* is an unambiguously political document, with a conflict as its centre and its subject: "oppression within the context of colonization."³⁰ Its subject is, as the name indicates, *removing* (and wholly replacing) rather than reforming. In this political context the foundational delegation of the communal interest in child wellbeing to the "neutral" State³¹, key to the system's legitimacy, is incoherent- even gross. This difference becomes clear in the legislative debates, when the overtly political character of child protection reform³² for the First Nations overlaps the carefully "de-politicised" context of the debates.

²⁹"Child protection is a highly specialised field of social work. This must be recognised and valued, both within government and within the community. It must be recognised that caring for children is everybody's responsibility. Furthermore, we need a social climate that values family and community." *Ibid.*, at 125.

³⁰ Elaine Herbert, "An Overview and Analysis of First Nations Child and Family Services in B.C." Report Prepared for the Gove Inquiry (1995) at 6.

³¹ See Chapter One, *supra*, at 1-4.

³² See *infra*, the debates. The characterisation of child welfare law as "your" law-an outside and imposed force- an external oppression, is what I call a political characterisation, and is *about* aggression and opposition in contrast to the "natural" consensus constructed (it is clearly hoped) in *Making Changes*, and defended on all sides throughout the legislative debates. The up front challenge for resources- a transfer to the group- is also directly political in a way which the more generalised request for "more

The White Paper for Public Review published in 1993 to advise “the community” about the Ministry’s “proposed legislative response to the panel reports” (again, the careful de-politicisation of the legislation, posed as a passive “response” to “the people’s” initiative), while not incorporating some of the more extreme recommendations of *Making Changes*³³ is self-consciously the product of its documentary evolution: “The proposed legislation will continue to protect children but will focus on supporting families as the best, first step in preventing the need for intrusive intervention. The legislation will place greater emphasis on the role of the extended family and community members in support of families and children.”³⁴

Development of a powerful, opposing context, the *Report of the Gove Inquiry into Child Protection*, would complicate this “non-interventionist” paradigm.

The “community panel” project does not appear to have been *merely* ritualistic, an expensive and time consuming exercise in image management; ritual may carry, and create, crucial social meaning. But if “community ownership” is fictive (if, indeed, “the

resources” for “the system” is not. The coherence of the community in the First Nations context, which emerges, *infra*, in the debates, may be key to understanding the difference I suggest: child protection here is a community issue posing First Nations communities against the State. In the non-First Nations context, child protection is clearly conceptualised in terms of the individual, whose rights are paramount, against the State, which must be restrained; this is also a “political” characterisation but, as the debates show, it is “taken for granted” as a natural consensus so as to possess the “social magic” which Lessig described as crucial to “social meaning” (removing the element of conflict and challenge which is crucial to my notion of “political” child protection).

³³ Such as the replacement of “the child in need of protection” with the “less blaming” “in need of mandatory services” and the disappearance of the child altogether in the suggested name of the new statute, the “Family and Community Service Act”. *Making Changes*, *supra* note 12 at 186 and 188.

³⁴ *Making Changes: Next Steps*, *supra* note 5 at i.

community" is fictive) that fiction, (like 'family privacy') has its own shaping power to de-politicise or 'naturalise' hitherto political issues. *This* notion of the community as ideological neutralizer is crucial to "modern" child protection. The difficulty for the project is, of course, that child protection *is* a political problem (in which "community" is deeply implicated)- perhaps the defining political problem for liberal democracy. The "de-politicisation" of child protection as a question of *natural consensus* is about dissembling that problem.

All key elements of the non-interventionist "solution" in child protection at once depend on and promote this 'political neutrality': disappearing the child as an independent concern into his or her family (*de-legitimising* political choices about child welfare and adult freedom rights), 'normalising' child protection as a matter of expertise and service delivery³⁵ and containing the problem inside the 'expert' domain.³⁶ The story of the *CFCSA* and the Ministry for Children and Families in British Columbia is a story, in part, about the rather spectacular failure of this careful exercise in de-politicisation, which began so methodically in 1991 with Joan Smallwood's community panels.³⁷

³⁵ Within a less problematic "welfare-like" relationship.

³⁶ By the process which I call "professionalising the humanitarian more". Cf. Leroy H. Pelton, "Child Abuse and Neglect: The Myth of Classlessness" in Leroy H. Pelton, ed., *The Social Context of Child Abuse and Neglect* (New York: Human Sciences Press, 1981) at 37: "The myth of classlessness persists not on the basis of evidence or logic, but because it serves certain professional and political interests."

³⁷ Overt politicisation of child protection in British Columbia was perhaps inevitable when the government made the decision to publicly hitch its legislative "reform" to the Matthew Vaudreuil scandal and the Gove Inquiry into child protection. The decision must have been politically irresistible at the time, but therein lay the political crisis which (perhaps) hastily ushered in the Ministry for Children and Families (see Chapter Five). The connection between *Gove* and government reform implied that the reforms would do something to stop children from suffering as Matthew Vadrueil had or, at the very least, stop children from *dying*: as it became clear, after *Gove*, that children were continuing to die, and as the Ministry appeared both evasive about and unresponsive to those deaths, the government appeared

Unforeseeable Consequences: Matthew Vaudreuil and the Gove Inquiry

Nothing in Matthew's story gives us reason to feel comfortable, and everything in it makes us feel sadness and anger. While we grieve for Matthew, and are outraged over what he experienced, we must also learn from these events. More than anything else, it is our mutual responsibility to do everything we can to prevent another child from suffering as Matthew did during his short life.³⁸

Today I am introducing the *Child, Family and Community Service Act* to address the urgent public demand for change in this area. A child's greatest resource is a strong, secure family and a family's greatest resource is a strong community.³⁹

It is almost impossible to believe that the timing of these two announcements was not influenced by publicity surrounding the death of Matthew Vaudreuil, a five year old boy who spent his short, unhappy life "known to the Ministry" until killed by his mother in Vancouver in 1992. Shocking newspaper reports around the time of his mother's trial and conviction for manslaughter in April 1994 prompted Social Services Minister Joy MacPhail to call for an Internal Social Services Review on May 5; the very perfunctory "review" released on May 16⁴⁰ satisfied no one, compounding the appearance of Ministry incompetence, indifference, and (it seemed) actual cover up. The external inquiry, to be conducted by Judge Thomas Gove, was announced on May 17.

incompetent, confused, uncaring and mendacious, and child protection became a very political issue, in the House and in the papers. This crisis, as explained in Chapter Five, led to the creation of the new "child centred" system.

³⁸ Joy MacPhail, announcing an external inquiry under *Inquiry Act* into the death of Matthew Vaudreuil, British Columbia, Debates of the Legislative Assembly (May 17, 1994) at 10912.

³⁹ Joy MacPhail, British Columbia, Debates of the Legislative Assembly (May 18, 1994) at 10951.

⁴⁰ *The Findings, Conclusions, and Recommendations of the Review of the Superintendent of Family and Child Services Into the Death of a 5 Year Old Male Child in Vancouver on July 8, 1992* (British Columbia: Ministry of Social Services, May 16, 1994).

The implication of the almost simultaneous introduction of the Gove Inquiry and the *Child, Family and Community Service Act* is that the *CFCSA* is the kind of reform which will “prevent another child from suffering as Matthew did.”⁴¹ What is never acknowledged- indeed, what appears not to be *noticed* throughout the debates accompanying the second and third readings of the Bill in the Legislature, where MacPhail doggedly defended the *CFCSA* as “legislation that is the least intrusive in families’ lives”⁴² is that the “least intrusive” *CFCSA* is, in fact, a codification of the family centred approach which kept Matthew Vaudreuil and his mother together.

After three years of careful “consultation” positioning the *CFCSA* as the State’s response to the community,⁴³ the legislation was expediently re-invented for the public as a response to the death of Matthew Vaudreuil⁴⁴.

In the “Terrain of Struggle”⁴⁵: Debates in the Legislative House

⁴¹ A connection made explicitly after Gove by the new Minister of Social Services, Dennis Streifel; see Chapter Five, *infra* note 16.

⁴² Joy MacPhail, British Columbia, Debates of the Legislative Assembly (June 16, 1994).

⁴³ The *Child, Youth and Family Advocacy Act* RSBC 1996 c. 47, creating an independent advocate for children, youth and families, was also drafted in “response” to the community panels, another piece in the reform process. “The child, youth and family advocate has a restricted jurisdiction, and I think its important that people be clear about that. She [like the ombudsman] has no authority to make change or to require change. Her role is to ensure that a child has an advocate.” Ombudsman Dulcie McCallum, describing the roles of the various “players” in the post-Gove child welfare system to the members’ Committee on the Response to the Gove Report on April 24, 1997 (Hansard). Introducing the *CYFAA* 1994, Joy MacPhail gave a rather different emphasis to the Advocate’s role, reflecting the different “reform” context then obtaining: “Some jurisdictions with similar legislation have limited the advocate role to children and young people. However, we felt it imperative to extend that role to the family as well...Support for the family is the single most important manner in which society can see to the rights of children.” Joy MacPhail, British Columbia, Debates of the Legislative Assembly (June 7, 1994) at 11521.

⁴⁴ Of whom it is extremely doubtful upper levels of the Ministry would have been *aware*, were it not for the need to respond to media stories.

The tension between conflicting mores and interests (or, using the language of rights analysis⁴⁶, the tension between the child's rights, which include his right to protection by the State, and the "family" rights of parents) is resolved for the non-interventionist by a total fusion of those mores/ interests/ rights until parental care falls below a low, unacceptable threshold, at which point the child's interest ceases to be merged with his family and attaches briefly to the State pending family rehabilitation.⁴⁷ This understanding of the respective rights and interests involved re-defines the "welfare principle"⁴⁸ in child protection, so that the child's welfare may be interpreted as a "family interest".⁴⁹ The "liberal dilemma" is thus neatly resolved by the "realisation" that the dilemma itself poses a

⁴⁵ Davina Cooper and Didi Herman, "Getting the Family Right: Legislating Heterosexuality in Britain, 1986-1991" (1991) CJFL Vol.10 41 at 51. Focusing on parliamentary and "expert" arguments in a different context, Davina Cooper and Didi Herman discuss legislative debates as "exposing the extent to which the law making process is a terrain of struggle."

⁴⁶ I allude only briefly to "rights analysis" as I agree with Dingwall and Eekelaar that the language of "rights" is misplaced within the "ideology of family autonomy", a blind, perhaps: "this is not a theory of children's rights so much as a theory about the proper relationship between families and the State. A theory of children's rights would actually need to express claims that enhanced their interests as a matter of principle, rather than co-incidence." R. Dingwall and J. Eekelaar, "Rethinking Child Protection" in M. Freeman ed., *The State, The Law and The Family: Critical Perspectives* (London: Tavistock Publications, Sweet and Maxwell, 1984) at 104-105.

⁴⁷ Or, if this becomes acknowledged as impossible, pending location of a second family.

⁴⁸ That the welfare of the child is paramount.

⁴⁹ See A. Bainham, *Children: The Modern Law* (Bristol: Family Law, 1993) at 104: "At the heart of the jurisprudential debate is the issue of when the interests of children and parents can truly be regarded as distinct and when they ought to be conflated. This is a problem deeply embedded in the welfare principle itself. For if the welfare of children is paramount and the sole consideration, the separate interests of parents (if they exist at all) are not only subordinate, they are actually irrelevant... Increasingly it is likely that the trend will be to admit the co-existence of independent rights and interests for children and parents whilst emphasising the primacy of the rights and interests of children. This has led to the suggestion [by John Eekelaar] that the welfare principle should itself be reformulated as a principle giving priority to children's rights over those of the parents in cases where they cannot be reconciled." What seems to have happened in Canada, with the gathering emphasis on parental interests or "rights" (see *B. (R.) v. Children's Aid Society of Metropolitan Toronto*, [1995] 1 S.C.R. 315, and discussion in Chapter One, *supra* note 79) is that resolution of the "problematic" welfare principle in Canadian child protection is proceeding in the opposite direction, towards "subordination" of children's rights within a welfare principle.

“false dichotomy”.⁵⁰ The enthusiasm with which non-interventionism has been greeted on all sides must derive from this neat “solution” to a terrible problem; it is a tragedy that the non-interventionist “resolution” is a false one, a contradiction disguised as a paradox.⁵¹

From a conservative perspective, non-interventionist reform contemplates the “re-privatisation” of family life.⁵² From this perspective, which sets the tone of the legislative debates, the cure for social ills in general- child maltreatment among them- is to strengthen the family, a process directly and proportionately connected to weakening those “outside

⁵⁰ “Every decision... is based on the well being of the child within the family. There is no ‘family focus’ vs. ‘child focus’ in competent social work.” BCGEU, *A Presentation to the Inquiry into Child Protection in British Columbia* (January, 1995). The existence of the *apparent* (pre-“realisation”) dilemma appears as an historical misapprehension perpetuated by unsophisticated or sentimental “child savers” .

⁵¹ Borrowing John Eekelaar’s notions of “paradox” and “contradiction” in legal theory. Eekelaar challenges the idea of the “fundamental contradiction”, explained by Duncan Kennedy in “The Structures of Blackstone’s Commentaries”, (1979) 28 Buffalo L. Rev. 209 as the incompatibility of individual freedom with the “communal coercive action” necessary to achieve it. Eekelaar considers this not a contradiction at all, but a paradox “reflecting a deeper truth about human nature and social ordering, that without degrees of communal action regulating behaviour (and therefore restricting freedom) the experience of freedom for many might be capricious, fragile and minimal” [an observation which has especial poignance in the context of child protection, both for parent and child]. “What is Critical Family Law?” (1989) 105 LQR 244 at 245. “conflict is not contradiction. It is no contradiction for an individual to value both work and play, both discipline and pleasure, and to exercise choices between them, unless he were to believe in all of them simultaneously.” *Ibid.*, at 248. The “false dichotomy” characterises the conflict I describe as central to child protection- the conflict between public concern for children and the values of privacy and individual liberty- as a paradox; that the inviolate family will promote the welfare of children. Eekelaar finds that “conflict is not contradiction”- necessarily- but sometimes it is, where one is asked to believe in each “simultaneously”, as the *false dichotomy* implies.

⁵² Bernard Dickens has characterised the ascendancy of the non-interventionist philosophy in child protection as a reaction to the perceived failure of the welfare State. “This return to the independent family as the basic social unit which functions without State involvement reflects a shift in focus. It marks an evolution from seeing welfare officers as benign helpers and guides leading families out of distress into self reliance, to seeing welfare officers as interfering and accident prone bureaucrats whose meddling interventions perpetuate dependency and endanger the potential for autonomy... The neo-conservative response to the failure of elaborate and costly welfare programs, supported by various levels of government to arrest perceived family breakdown and violence, and the role of welfare workers in achieving family dismemberment.” Bernard Dickens, “The Modern Function and Limits of Parental Rights” (1981) 97 LQR 462 at 464; 467.

forces” which threaten its autonomy (chief among them, the State). This return to the private family may also be understood as a “redefinition”, rather than a release, of the public interest in children: “In effect the *Act* [the *Children Act, 1989*] does not deny the public interest in children but redefines it by identifying it more closely with support for parental discretion.”⁵³ This is “privatisation” like the “privatisation” of a utility- not private in the sense that the provision of that utility now belongs in a “private sphere”, but in the sense that the public interest in the provision of water is best met where its distribution is controlled by individuals rather than the state.⁵⁴

Critics on the left have argued that child protection statutes are used by the State’s “life style police” to harass and punish poor or otherwise “unconventional” parents: “Low-income parents should not be forced to adopt the lifestyle espoused by agents of the State, typically middle class social workers.”⁵⁵ This “progressive” critique argues that interventionist child protection statutes confer a troubling degree of discretionary power upon the State and its representatives: the power to form opinions, make judgements and take oppressive action against the “bad” parents, usually mothers, so constructed.⁵⁶ This perspective frames the contest in child protection proceedings as pitting the conformist

⁵³ Andrew Bainham, *supra* note 49 at 104.

⁵⁴ See J. Eekelaar, *supra* note 51. Cf. Michael Freeman on the *Children Act, 1989* and “libertarian” Thatcherism: “Freedom and the Welfare State: Child Rearing, Parental Autonomy and State Intervention” (1983) *JSWL* 70 and, on this connection, Nigel Parton, “Child Abuse, Social Anxiety and Welfare” (1981) 11 *BJSW* 391.

⁵⁵ Bala, Lilles and Thomson, *Canadian Children’s Law: Cases, Notes and Materials*, p.11.

⁵⁶ M. Kline, “Complicating the Ideologies of Motherhood: Child Welfare Law and First Nation Women”, K. Swift, *Manufacturing Bad Mothers: A Critical Perspective on Child Neglect*. See discussion of the “bad mother” in M. Ashe and N. Cahn, “Child Abuse: A Problem for Feminist Theory”; also J. Mosoff, *Motherhood, Madness and the Role of the State* (LLM Thesis, U.B.C., 1994).

ideological agenda of the strong State against the freedom rights of relatively weak parents; the restraints on State discretion and State action imposed by non-interventionist legislation are essential to correct the balance.⁵⁷

Self styled ‘realists’, who prefer to distance themselves from ‘politics’ of either brand, appreciate the modesty of the non-interventionist paradigm, the self-conscious absence of mission, and the emphasis on family rehabilitation through practical support, suggesting that child protection is a ‘normal’ sort of problem which can be, and will be, resolved by normal ‘welfare-like’ means: more money, more programs, more training and expertise.

The three ‘versions’ of the ‘family autonomy ideology’ (or ‘critiques’, as I have called them) imply the existence of a powerful *establishment* opposition, sounding what Christopher Lasch referred to, ironically, as ‘urgent calls for sweeping reform’.⁵⁸ Indeed, these ‘versions’ are powerful *as* critiques, as defences against the authoritarian tendencies of the State. However, it is also important not to underestimate the existing level of

⁵⁷ The characterisation of welfare ‘agents’ in the progressive critique is crucially different from the neo-conservative characterisation identified by Bernard Dickens, *supra* note 52 (that of ‘meddlesome’ bumbling bureaucrats haplessly creating and perpetuating a dependency culture despite-- perhaps *because* of-- their good intentions). The progressive critique identifies the threat in child protection as the fundamentally authoritarian use of inappropriate ‘middle class standards’ by the State (social service workers and the courts) to judge and punish ‘other’ women who do not conform to the mother norm created by dominant ideology.

⁵⁸ ‘that category of social criticism which attacks arrangements already on the wane, disguising as independent, somewhat cantankerous and unpopular judgements what in many ways amount to an apology for the emerging order. Such criticism boldly defends views that have already become acceptable to everyone except the most hardened reactionaries... not so much a demand for change as the description of a change in attitudes that had already come into being... [such criticism is in considerable demand where] defence of an emerging status quo usually takes the form of urgent calls for sweeping reform.’ C. Lasch, *Haven in a Heartless World: The Family Besieged* (New York: Basic Books Inc., 1977) at 12.

“resistance” to the “Panopticon” State.⁵⁹ This resistance may be more or less in regard to different aspects, or tasks, of the State, but my argument is that in child protection, this resistance is an important part of the liberal context.⁶⁰ The various critiques against the “interventionist” State are valuable, but they must be understood in the cultural context in which they exist- the non-interventionist *consensus*. The danger inherent in not acknowledging this context, posing the “critiques” as brave, principled, *modern*, is the extent to which the “debate” shuts down: all sides allied against the phantom Goliath, the “interventionist” State.

Looking at the Debates

From the point of view of understanding family law, what requires analysis is the process of transition from the perception that behaviour, whether within the public or private realm, adequately serves the public interest without the invocation of law to the conviction that the public interest demands a legal response. This will include a consideration of the image a community holds of itself, and of what events constitute threats to that image. It will include examination of the historically specific configuration of interest groups within a community and their control over or access to the process of lawmaking. In short, the focus should be upon the conception of the public interest current at any given time within a community and not some predisposed classification which has small legal relevance.⁶¹

⁵⁹ “Our society is not one of spectacle, but of surveillance...it is not that the beautiful totality of the individual is amputated, repressed, altered by our social order, it is rather that the individual is carefully fabricated in it according to a whole technique of faces and bodies. We are much less Greeks than we believe. We are neither in the amphitheatre, nor on the stage, but in the Panopticon machine, invested by its effects of power, which we bring to ourselves since we are part of its mechanism.” Michel Foucault, *Discipline and Punish: The Birth of the Prison* (Harmondsworth, England: Penguin Books, 1977) at 217. Dingwall, Eekelaar and Murray note: “The resistances... lie in both the culture and the structure of the tutelary complex” [following Jacques Donzelot’s analysis of the family as penetrated/under surveillance by the “tutelary complex” of the welfare state] *The Protection of Children: State Intervention in Family Life* (Oxford: Basil Blackwell, 1983) at 218-219. My point is that this “resistance”, on the subject of children, is itself established as *part of* the social/political context of the liberal State- part of liberal culture.

⁶⁰ “the parental interest ... is an individual interest of *fundamental importance* to our society... the state can properly intervene in situations where parental conduct falls below the socially acceptable threshold.” [my emphasis] *B. (R.) v. Children’s Aid Society of Metropolitan Toronto*, [1995] 1 S.C.R. 315 at 317 per LaForest, J. I further suggest that the experience of First Nations people with the State child welfare system gives this cultural resistance an added resonance, and power.

The remarkable point about the legislative debates is the width and depth of the consensus they reveal between all parties in the House, a “taken for granted” understanding with the “social magic” essential to “social *meaning*.”⁶² In a background paper prepared for the Gove Inquiry in 1995⁶³, Lisa Martz characterised the *CFCSA* as among the ‘least interventionist’ of Canadian statutes.⁶⁴ The debates in the Legislative House on second and third readings of Bill 46 (the *CFCSA*) reveal the *consensus* at this time about what the *Act* was *for*: limiting State intervention in family life.

⁶¹ *Ibid.*, at 258.

⁶² “[these understanding or expectations] must be *taken for granted* by those within the group at issue...For an action to convey a social meaning in the sense I want to use the term here, it must do so in a way that feels natural... it must function with a sort of ‘social magic’.” L. Lessig, *supra* note 2 at 958. The understanding here is, in short: “stay away if you can” (see *infra*, note 92).

⁶³ “Apprehension”, Report Prepared for the Gove Inquiry (1995). The legislation considered in its “pre-Gove” context. The recent “post-Gove” case *B.S. v British Columbia (Director of Child, Family and Community Services)* [1997] B.C.J. No. 2202 (B.C.S.C.) considering whether the standard of proof required for a finding of “in need of protection” was higher under the new *Act*’s “different underlying philosophy” (at para. 37) found that it was not, rejecting an argument that Madam Justice L’Heureux-Dube’s statements in *Catholic Children’s Aid Society of Metropolitan Toronto v. M. (C.)* (1994), 2 R.F.L. (4th) 313 (S.C.C.) at 336 re the “underlying purpose” and “objective” of the Ontario statute (“balancing the best interests of children with the importance of keeping intact the family unit, without neglecting the protection of children who need protection”; “to balance the rights of parents and to that end.. to restrict State intervention with the rights of children to protection and well being”) applied to alter the standard of proof under the *CFCSA*. “In her discussion of the underlying philosophy of the legislation, Madam Justice L’Heureux-Dube noted (at 336) that ‘The Ontario legislation, when compared to the legislation of other provinces, has been recognised as one of the least interventionist regimes’ ” (para. 49) which, in 1994, it was; by 1997, it seems, the *CFCSA* was *not*.

⁶⁴ *Ibid.*, at 53. Richard Barnhorst, placing the predecessor *FCSA* along an “interventionist continuum” found that statute among the *most*; “Child Protection Legislation: Recent Canadian Reform” in Barbara Landau ed. *Children’s Rights in the Practice of Family Law* (Toronto: Carswell, 1986) 255 at 256. It is important to bear in mind that Matthew Vaudreuil lived and died in B.C. under the “interventionist” *FCSA*, recalling the “perceptual pendulum” discussed in Chapter One, and Christopher Lasch’s analysis, discussed *supra* note 58 “[where] defence of an emerging status quo usually takes the form of urgent calls for sweeping reform.”).

Bill 46 was presented for second reading on June 7, 1994. The new legislation was presented by the Minister to the House as *reform*, a “new approach to child welfare”:

Since taking office, this government has been working to replace outdated legislation with new laws and a new system that will ensure the safety and well being of children, and provide significant support for families who are experiencing significant levels of stress or conflict. ⁶⁵...Parents will be guaranteed involvement in decisions affecting children. The aims are to continue contact between parent and child and to maintain parental responsibilities so that families can be reunited as speedily as possible...However, our willingness and desire to strengthen families does not eliminate the need to protect children from abuse or neglect. As a society, we must effectively address the needs of our children. They are our future. How we treat them today will affect the quality of life for each and every British Columbian for decades to come. The *Child, Family and Community Service Act* introduces significant new ways of protecting children by involving the family and the community.⁶⁶

MacPhail is anxious to position her legislation as the “new”, modern child protection by pledging government support for the autonomous, responsible family. At this early point she reminds the House of the *raison d’etre* of child protection- the fact that children need protection from abuse and neglect- then, interestingly, develops this point in terms of the justification for “society’s” involvement with children⁶⁷, immediately diffusing its “interventionist” potential by re-asserting “the family”.⁶⁸

In reply, Liberal M.L.A. Val Anderson expressed the following “concerns” about the Bill:

⁶⁵ Joy MacPhail, British Columbia, Debates of the Legislative Assembly (June 7, 1994) at 11529.

⁶⁶ *Ibid.*, at 11530

⁶⁷ The treatment of children will have an affect on *your* “quality of life”; this appeal to a special dispensation for the interference of the public in the private family sphere, a plea based on the listener’s personal interests, immediately places MacPhail on the defensive.

⁶⁸ The notion of the desirability of the “involvement” of the family in protecting the child which they (the “family”) put at risk is one point on which, one may imagine, MacPhail might be vulnerable to criticism, but no. No criticism is directed towards this objectively questionable assertion; all criticism revolves around fear of The State. MacPhail speedily introduces the concept of “community involvement”, but this idea remains vague.

I have some concerns about this bill. I see a lack of accountability for social workers, wide ranging powers for ministry personnel, and, in my view, a massive intrusion by the state into the rights of parents and families. We're going to be looking for checks and balances to prevent that abuse.⁶⁹

Anderson here wants to make it immediately and unambiguously clear, at the start of the "conversation", that he is a committed and *wholehearted* supporter of the private family, that he understands "the state" to be the natural enemy of parental and "family" rights (as opposed to a "partner" in the relationship offered by MacPhail) and therefore a power to be contained. Robert Neufeld M.L.A. of the Reform Party is anxious to establish his credibility in Mr. Anderson's paradigmatic camp, and then some:

This bill actually legislates for government to intervene in our children's and families' lives at a very-- I don't know quite the word to use--slight provocation. I find this hard to believe, coming from a minister and a government that just said that some of the legislation in place before was far too harsh and that you should not intervene in family problems. I see there seems to be a bit of a change in philosophy, to where in some cases it could become almost too easy to interfere in a family's life.⁷⁰

What *exactly* is he talking about? An analysis of the *CFCSA* using Barnhorst's criteria for legislative interventionism shows that the statute is carefully non-interventionist in tone where it cannot avoid being so in content. Interestingly, Neufeld identifies one of Barnhorst's specified "non-interventionist" criteria⁷¹ as exemplifying this "bit of a change in philosophy" towards unacceptable state interventionism:

A good example is that this bill has an entire section outlining when a child needs protection, which if broadly interpreted could apply to every child in British Columbia. That's disturbing for me, because I think that all of us realise that the family unit is under attack-- not by government, but it just seems to me to be under attack from all

⁶⁹ Val Anderson, *supra*, note 65 at 11547.

⁷⁰ Robert Neufeld, *Ibid.*, at 11548.

⁷¹ See Richard Barnhorst, *supra* note 64 at 262.

kinds of forces. We see families broken up, not working and dysfunctional. If the state breaks in more, I think that's going to cause trouble. We have to do a little of the reverse, to make people more responsible... I mean, make some of the families more responsible for their actions, instead of just intervening and trying to do it that way.⁷²

Neufield's objection to s.13 "in need of protection" could be dismissed as mere thoughtlessness: he appears to assume that a detailed and limited list affords the state more points of intrusion than a brief, broad, vague list *because it is longer*. He may be objecting to "has been or is likely to be" in the case of physical abuse, sexual abuse and exploitation and neglect, more precise, and explicit, than "endangered"; perhaps he feels the subsection dealing with emotional abuse is applicable to every child in British Columbia. His objection may be best understood as a bid for the "non-interventionist" political high ground, but his plea for the "family under attack" is interesting as a pithy articulation of a conservative concept of "intervention". Neufield clearly understands "intervention" to mean any form of government "interference" in the "private" family, including the kind of activity characterised by MacPhail as "support." Where MacPhail imagines support in the form of services as strengthening the private family, Neufield has a different impact in mind, imagining that support damages the private family by removing the family's "responsibility for its own actions."⁷³

Neufield's "disturbance" neatly captures the dilemma in his classic conservative approach to child protection. All state activity in this most private "sphere" undermines the family-*support weakens*. Short of a total abdication of the state's responsibility for children this

⁷² Robert Neufeld, *supra*, note 65 at 11548. Note Neufeld's evocation of the per se destructive "welfare agent", and its similarity to the "neo-conservative" reaction described by Bernard Dickens, *supra* note 52.

⁷³ *Ibid.*

leaves only one course of action- the most extreme interventionist act, the removal of the child from the natural home and her or his placement in a substitute “private” family as quickly as possible.⁷⁴ Yet this absolute intervention must be anathema to the conservative hostile to State intervention in the family *per se*; and so the solution can only be to eliminate in so far as possible the range of situations in which the state needs to be concerned. It may not be possible to *eliminate* the “extreme cases” but it is possible to define them in such a way as to render them virtually invisible to the public eye (and so perhaps it is that *long* list of children in need of protection which disturbs him so).

Neufield continues, reiterating his hostility to State “help” with his assertion that it creates weirdos (using the following strange metaphor):

The family unit through time, if you read back in history, has brought us through many difficult times and will continue to do so. But if we allow the family unit to be broken down too much, to where the state will look after those who don’t specifically fit into the square hole, then we are encouraging it, and we are going to have a lot more trouble than we can deal with.⁷⁵

MacPhail, Anderson and Neufield are all concerned to establish themselves as in favour of “the family”. All three actors are ostensibly moderate in that they continue to accept that the State bears some responsibility for the prevention of child suffering and the “protection of children”.

⁷⁴ This conservative perspective sees no “middle of the road” position, See *Protecting Our Children, Supporting Our Families*, *supra* note 6, and its explicit positioning of “services” as the moderate approach- a pre-emptive “naturalisation” of the progressive agenda?

⁷⁵ Robert Neufeld, *supra*, note 65 at 1154.

MacPhail, drawing on the background of consultative documents prepared by and for her government, presumes and focuses on family ‘diversity’⁷⁶, and conceives of ‘intervention’ (used by all speakers as a pejorative) as the judgmental and destructive actions of the state when dealing with individuals in their capacity as private family members. MacPhail proposes a re-imagination of the state/family relationship as a partnership: the resources of the state will be used to shore up and maintain the ‘autonomous family’. Neufield understands that the state and private family are in natural and perpetual opposition; overt intervention is actively destructive and to be avoided (although, if this position is to be reconciled with a residual responsibility to protect children it must remain at least theoretically available), yet ‘support’ acts as an equally ominous and destructive force, draining the private family of the ‘responsibility’⁷⁷ it needs to function with autonomy. Anderson’s position is less clear, but he wants it to be known that he is, indeed, a liberal, and conceives of the statute’s function as the protection of the ‘family’ *from* the state.

⁷⁶ “In writing this report we have tried to be conscious of the cultural and racial diversity of people who make up our province. We see the need to preserve and enhance our pluralistic heritage and to work for equality.” *Making Changes: A Place to Start*, *supra* note 12 at 1. “That legislation [The *Family and Child Service Act*] was passed in 1980 and came into force in 1981. We have seen many changes in the intervening years. Two recessions and the economic shift that accompanied them have changed the lives of families and communities across the province. New social trends have emerged...Our child welfare legislation has not kept pace with these changes...it is for these reasons that we have drafted the legislation before you” Joy MacPhail, *supra*, note 61 at 11529.

⁷⁷ John Eckelaar, discussing the *Children Act*, 1989 has described how the notion of parental ‘responsibility’ for their children has shifted from a conceptualisation of ‘positive responsibility, involving a duty on the part of parents to advance the welfare of their children and behave, accordingly, ‘responsibly’, to a negative idea of responsibility, emphasising the dependency of children on their parents: parents are responsible for their children in this sense *because* no-one else is. Responsibility in this sense is immutable; it has no connection to behaviour and cannot be delegated. Eckelaar attributes this shift to the conservative political climate in Great Britain: J. Eckelaar, ‘Parental Responsibility: State of Nature or Nature of the State?’ (1991) JSWFL 37. His exploration of the idea of ‘responsibility in the ‘non-intervention’ philosophy captures one aspect of the divergence in the progressive/ conservative ‘versions’ of the ‘family autonomy’ ideology. The progressive policy of non-intervention imagine the State facilitating positive family responsibility. The conservative idea contemplates a re-imposition of negative responsibility which will in turn, *naturally*, encourage a sense of positive responsibility.

The classic liberal position is advanced with some passion and at some length by Gordon Wilson M.L.A. for the Alliance:

the government must be very careful at all times not to cross the line and allow the power of the state to become too great in terms of intervention...Because if you do, its a slippery slope. We have seen many instances in other jurisdictions--thankfully not many in British Columbia, although there are some examples in B.C.--where the state, sometimes out of good intentions, sometimes out of quite obvious politically driven dogma, has made the authority and rights of the state so overwhelming as to allow the state to move and to apprehend in a manner and at times that are simply not justifiable at all.⁷⁸

Wilson goes on to develop the argument that services are intervention of a destructive kind, and places this characterisation within an explicit statement of the issue in child protection legislation as one of *political* values:

We don't and should not need the state to intervene. But we have become more and more dependent on government to provide more and more services...We have to recognise that individual rights must be enshrined in society as well, to be able to protect those rights...In the judgement of the members of the Alliance, the rights of individuals are paramount.⁷⁹ They shouldn't be subjugated to the rights of the collective, and especially a collective that's driven by the government. It shouldn't be the government that's determining what's right in society and what the norms should be.⁸⁰

⁷⁸ Gordon Wilson, *supra*, note 65 at 11550. Wilson's evocation of "dogma" is interesting in this passage; he clearly understands the "private family" as a "natural", a political organisation, its opponents driven by sordid *political* motivations.

⁷⁹ Wilson must be referring to the rights of *adult* individuals, although he does not specify; he cannot be referring to the child's right which truly, to be meaningful, must include "aspects of both protectionism and independence", A. Bainham, *Children, Parents and The State* (London: Sweet and Maxwell, 1988) at 6.

⁸⁰ Gordon Wilson, *supra* note 65 at 11552. Note Wilson's "confusion of individual and family" (see M. Barrett and M. McIntosh, *The Anti-Social Family* (London: Verso, 1982) at 50) and his incoherent evocation of the "collective": what does this mean? Does he mean the State? Reference to "the collective driven by the government" seems to indicate that the "collective" by itself is something different. Is the collective the *community*? Is Wilson, subconsciously, referring back to the original dilemma in child protection, for a moment seeing "beneath" the "interventionist" question of State v. "family"? Wilson's later comments about the community suggest that he understands them to be several, primarily racially based; is the "collective" the "whole" community? Unfortunately no-one in the House challenges him as to what this means.

Wilson is anxious to characterise the issue here (ostensibly child protection) as a contest between the authoritarian tendencies of socialism, embodied in the NDP government, and the sacred liberal fundamental of individual (adult) rights embodied in himself. Interestingly, the long process of community consultation beginning with the appointment of the Community Panel in 1991 by MacPhail's predecessor Joan Smallwood, was self consciously about the government's adoption of this premise, that "it shouldn't be the government that's determining what's right in society and what the norms should be." Perhaps this "community participation" is what Wilson means by "the collective interest":

We believe in a greater of freedom in our society and among individuals, and we do not believe in subjugating that freedom to the collective interest...We're prepared to work with anyone who recognises that the state should have a limited authority.⁸¹

Responding to the cries of "danger" around her, MacPhail is anxious to re-establish the *CFCSA* as a "non-interventionist" statute, and herself as "pro-family":

Some of my colleagues have raised the concern that its too much intrusion by the state. I hope we can alleviate some of those concerns at the committee stage, because the intent is not to intrude in the home; it is to offer support when the family is in crisis and has no other way except to turn to our ministry for support in that crisis. Its not to have their children taken away or to have their rights lessened, but to see our ministry as an alternative for supporting the family, whereas before we weren't seen as a viable alternative.⁸²

MacPhail goes on to identify the *CFCSA* as part of the modernising, "non-interventionist" *trend* in child protection legislation:

I know that there are some concerns in the House that we would be too intrusive-- that the legislation would perhaps now say that because we have so clearly defined what a child at risk is, we may have opened up every family to being accused of having children

⁸¹ *Ibid.*

⁸² Joy MacPhail, *supra* note 65 at 11552.

at risk. That is not the intent and I hope that is not the case. Much of this legislation is modeled after successes in other provinces and other jurisdictions. Our province is very much at the tail end of change in modernising child welfare.⁸³

MacPhail wants to de-politicise the *CFCSA*, and take it out of the collectivist/individualism debate which Wilson has so distractingly constructed by characterising the statute as part of a general “modernising” trend rather than following the ideological agenda of the NDP.

I have the greatest of confidence that two years from now we will be facing a completely different system- a well resourced system, a system that both the community and our own staff are well trained for- and that there will be a different, much more open, point of view about how we protect our kids and how we strengthen our families. I look forward to ensuring that during committee stage.⁸⁴

During committee stage Judy Tyabji M.L.A. for the Alliance (together with fellow party member Gordon Wilson) emerges as a dogged critic of the “authoritarian” tendencies of the *CFCSA*:

The biggest concern [discussing the definition of the ‘family conference’] is that someone other than the parties directly related to the issue at hand will be able to interfere in the integrity of the family to have self determination. That of course goes to the heart of the Bill: when is a family allowed to self-determination and at what point can the state intervene?⁸⁵

This seems a remarkable statement to make about the “heart” of legislation which is manifestly *about* protecting children⁸⁶- but the most remarkable thing about it is that it goes completely unchallenged. MacPhail’s response to the criticisms of the Alliance is

⁸³ *Ibid.*, at 11553.

⁸⁴ *Ibid.*

⁸⁵ Judy Tyabji, British Columbia, Debates of the Legislative Assembly (June 9, 1994) at 11723.

⁸⁶ Note how the child is effectively “disappeared” here within the “family”.

consistent, that is, to dig in her heels and reiterate the ‘non-interventionist’-ness of her *Act*, its place in the ‘modernising’ trend, and her government’s belief in and esteem for the ‘private family’. Neither the Minister nor anyone else defends the *Act* in terms of society’s obligation to protect the young: ‘The intent throughout the *Act* is to ensure the safety and well being of *families* [my emphasis] and to keep families together.’⁸⁷

Further into the committee stage Tyabji again demonstrates her understanding of the appropriate focus of the legislation, and again MacPhail does not refute Tyabji’s *agenda*:

We have a difficulty with s.13 [child in need of protection] because the phrase “or is likely to be” comes up in almost every section. We have a problem with that, because the laws, of course, will demand that people are innocent until proven guilty.⁸⁸

Of course, the finding of whether a child is in need of protection is about whether a child is in need of protection, not the relative guilt or innocence of a parent, but MacPhail does not defend her legislation in these terms, falling back on her identification of the *CFCSA* with non-interventionist statutes in other jurisdictions: ‘the context of the entire *Act* is that the primary responsibility for the protection of children rests with parents’.⁸⁹

I believe there is a sentiment in the House that this Bill should not intrude into family matters that we have no business being in the middle of. That’s what this is saying...I want to reiterate that we are trying to make this bill responsible only in the areas for which the state should have responsibility and not to intrude in other areas where it shouldn’t⁹⁰

⁸⁷ Joy MacPhail, *supra* note 85 at 11731.

⁸⁸ Judy Tyabji, *supra* note 85, at 11734.

⁸⁹ Joy MacPhail, *supra* note 85, at 11736.

⁹⁰ Joy MacPhail, British Columbia, Debates of the Legislative Assembly (June 16, 1994) at 12021.

Exasperated by the committee stage criticisms, MacPhail hopes to re-establish her statute as embodying a trans-party, “natural” and non-ideological consensus on the social value of the family. She tries it again: “Throughout this *Act* you will see a requirement on the State--i.e. our social workers and child protection workers--to ensure that less disruptive measures are taken”⁹¹; and again: “I’ll try this one more time...We are trying to develop legislation that is the least intrusive in families’ lives. That’s what I’ve heard from the honourable member [Tyabji, to whom she is replying] over and over again: stay away if you can.”⁹²

Debate during the committee stage was dominated by the rather pious arguments of the Alliance members Tyabji and Wilson against the “authoritarian” tendencies of the Bill, with much righteous anger directed towards the sections dealing specifically with aboriginal children, which they characterised as racist:

the previous Act, the Family and Child Service Act dealt with every British Columbian on the same basis; all of us were equal and none of us were designated on the basis of race.⁹³

At this point the *politics* of child protection reform for the First Nations overlaps the carefully “de-politicised” context of the debates. Tyabji’s misunderstanding, from which her charge of racism flows, is to miss the politicising significance of community⁹⁴ in this

⁹¹ *Ibid.*, at 12026.

⁹² *Ibid.*

⁹³ Judy Tyabji, British Columbia, Debates of the Legislative Assembly (June 7, 1994) at 11549.

⁹⁴ See discussion of *Liberating Our Children Liberating Our Nation*, *supra* (“First Steps”).

context; although, at a later point, she notes that “community” is only ever defined re the First Nations, she does not make the connection between this kind of definition and the distinctions she perceives as racist. Tyabji’s premise (which, the debates show, is the shared assumption in the House) positions the “paramount” individual against the State *from which the individual must be protected*, a conceptualisation with no “natural” place for identity outside of the “individual” character (defined by her opposition to the State). In this “high liberal” conceptual context the introduction of *community* identity (and politics) is a distortion: racist⁹⁵, in diametrical opposition to the understanding of community identity as definitive which frames *Liberating Our Children, Liberating Ourselves* (and the development of autonomous First Nations child welfare programs).⁹⁶ This crucial difference, and the confusing consequences of a failure to recognise it, colours the later passages in the debates dealing with “community”.

MacPhail responds from a purely defensive position. It is somewhat infuriating to note MacPhail’s missed opportunity to challenge the “liberal” members of the Alliance as to how they would go about protecting children, the *raison d’être*, after all, of the legislation under discussion, while “enshrining” their belief that “the rights of individuals are paramount”.

⁹⁵ Harking to the essential conflict between the community and the individual: the notions of community and liberal individualism are in fact antagonistic: the State child protection structure is built on this antagonism.

⁹⁶ In a paper prepared for the Gove Inquiry into Child Protection, Elaine Herbert described this process as “cultural and community ownership”. As “ownership” develops, the issues of delegation fundamental to non-aboriginal child protection will no doubt arise within First Nations Programs. See Ms. Herbert’s discussion *supra*, note 30 at 63.

This is an extremely difficult and sensitive area because, on the one hand, every legislator wants to protect the rights and interests of children. All of us do. By the same token, we have to recognise that empowering an individual to remove a child...[meandering] I fully appreciate that there may be instances where a director has to move quickly to protect that child and his or her interests. I don't have any problems with that at all. I have serious problems when the state provides the power to eliminate the civil rights of individual parents. This is state authoritarianism in its worst form.⁹⁷

This is a classic statement of the classic "liberal" position: a strong, extensively argued argument against state interference with the rights of "individual parents" (using the strong language of "authoritarianism"), accompanied by a vague "of course" commitment to that abstract collective "children", with no concrete consideration of how that "commitment" is to be met (intervention is permissible in the *extreme* cases, never defined). It is remarkable that no-one in the House sought to challenge this flimsy position: it would have been easy to do. Why not? These debates are powerful evidence of the internalisation of "private family" values, and a trans-party political consensus supporting the identification of the child's interest with those of the parent in the "family".

About the "Community"

Matthew was too young to speak for himself, but he did have advocates, including his father, his aunts, his uncle and social acquaintances of Verna Vaudreuil. Some of these people alerted the ministry time and time again to Matthew's horrible living conditions, his neglect and incidents of abuse.

Whatever their personal difficulties and their own dealings with the social welfare system, these people were Matthew and Verna Vaudreuil's community; they were the people with the best opportunity to observe Matthew's real circumstances.⁹⁸

⁹⁷ Gordon Wilson, British Columbia, Debates of the Legislative Assembly (June 20, 1994) at 12100.

⁹⁸ *Gove Report*, *supra* note 15, Volume I at 140.

The presence of the “community” and its anticipated “involvement” runs through the legislation and the debates as a kind of abstract subtext (or, more accurately, counterpoint) to the struggle between “individual rights” and “The State”. Is this inclusion of the “community” a recognition of the origins of the apparent individual/ State “problem”? Does the legislation imagine a partial dissolution of the “walls of privacy” as they are internalised on an individual level, and a resulting “devolution” of responsibility to the community via statutory support? Does the *CFCSA* codify such a truly radical solution to the “State intervention” issue, and does this explain the notion of the “collective” that Gordon Wilson found so threatening?

Unfortunately, discussion of the notion of the “community” in the Debates never comes close giving it *meaning* of any kind. MacPhail defends the “Community” in the *Child, Family and Community Service Act*, potentially such a powerful concept, primarily in terms of its legal impotence and notional ambiguity (truly “meaningful”- given meaning- in the context of First Nations communities only⁹⁹):

Although this is called the *Child, Family and Community Service Act*, there is no definition of community. The only time we see any definition that has the word “community” in it is when we see “aboriginal community... I have a definition of community...The definition for community, ...would be that ‘community’ means a body of people living in one region or district and sharing common interests.¹⁰⁰

MacPhail responds:

⁹⁹ The relative coherence of “community” in this context flows both from the *imposed* and qualitatively *different* nature of aboriginal child welfare, and from those characteristics of First Nations communities which seem to set them apart from the dominant liberal paradigm.

¹⁰⁰ Judy Tyabji, *supra* note 93 at 11706.

Let me just try to explain what is intended by integrating 'the community' into this bill. At the beginning let me reassure the members that no legal consequences flow from the definition of community. It's not a legal concept which holds some weight before the courts or whatever, but it is a principle contained in the bill. The community isn't necessarily- but could be- physical geographical definition.. [unable to define the "community" but clearly indicating that "community" does not mean everyone, but describes *groups*¹⁰¹, MacPhail goes on to talk about what these communities will do] "We know that the community has a significant role in developing plans to protect children and keep them safe...Later on, we also understand that the community plays a significant role in identifying children who may require protection [the really difficult bit- acting- remains the responsibility of the State].. So it is a concept from which no legal consequences flow, but it is an important principle to be held throughout the bill.¹⁰²

So the original "delegation" remains intact, the walls of privacy unchallenged. Perhaps, extending the metaphor, a group of second walls, slightly thinner, called "communities", have been imagined as surrounding and collecting groups of "private families".

The community as described by Tyabji resembles nothing so much as a club, and, indeed, no other definition is possible in the liberal context. The "aboriginal community" makes sense because of a fundamental normative difference¹⁰³, *in contrast to* the dominant culture of liberal individualism. The only time we see a definition of "community" is in reference to the aboriginal community; no political definition of that word (in reference to child protection) appears outside of the aboriginal context. The "aboriginal community" has coherence because of its distance from the dominant culture.¹⁰⁴

¹⁰¹ A notion of "communities" as rather like larger "private families"; a loose grouping of "private communities", as opposed to "the collective".

¹⁰² Joy MacPhail, *supra* note 93 at 11706.

¹⁰³ M. Turpel, *supra* note 9; L. Little Bear, *supra* note 9.

¹⁰⁴ See Elaine Herbert's discussions of issues for First Nations child welfare programs, *supra* note 30. Discussing the Spallumcheen program, she notes: "For the workers at Spallumcheen this meant sometimes having to investigate your relatives or people you know in the community", which is *community* child welfare, and almost impossible to imagine with the liberal model of "professional" child

Communal responsibility for other peoples' children involves a much higher and more constant level of "intrusion" into private family life, on many levels and for everyone, than a residual State system implies for the few. Joy MacPhail's "community", coming as it does at the end of a long debate entirely focused on the sanctity of individual freedom and the potential *threat* of child protection, has to be meaningless, the spectre of the "collective" having been let loose in the Chamber.

Dissatisfaction and "non-interventionist" child protection reform was not peculiar to British Columbia in the 1990s.¹⁰⁵ In British Columbia, however, the "failure" preceding reform had particular characteristics, which perhaps account for the depth and width of the consensus we see in the legislative house, the resonance of the "non-interventionist paradigm" at this time and in this place: the little "Cleveland" of the Rafe Mair radio exposes, perhaps connecting with a general "neo-liberal" mood of the sort described by Bernard Dickens,¹⁰⁶ and government acknowledgement and acceptance of the unacceptable impact of State child welfare on First Nations communities.¹⁰⁷

protection as a neutral apparatus designed for the purpose of maximising parental freedom from censure and interference (from family, neighbours, tradition- the community).

¹⁰⁵ See N. Bala, J. Isenegger and B. Walter " 'Best Interests' in Child Protection Proceedings: Implications and Alternatives " (1995) 12 CJFL Vol.2 367 at 368. And see Richard Barnhorst, *supra* note 64. Also, the *Children Act, 1989* 1989, c.41 (UK).

¹⁰⁶ *Supra*, note 52.

¹⁰⁷ "As used in current debates 'child saving seems to have connotations of paternalism, do-gooding, and the promotion of class interests. It involves the imposition of an alien moral code on one section of society by another". R. Dingwall and J. Eekelaar, *supra* note 46 at 108. By precisely fitting this formulation, the experience of First Nations communities seems to prove this, moving it towards a self evident characterisation of "interventionist" child welfare, the "taken for granted" context described by Lawrence Lessig as "social meaning".

What happened between the introduction of Bill 46 to the House on May 17, 1994 and proclamation of the *CFCSA* almost two years later was the *Report of the Gove Inquiry into Child Protection in British Columbia*.¹⁰⁸ The conceptual problem for the philosophical consensus- the public experience of child protection failure through the child death inquiry- became, literally, the problem for the particular consensus in British Columbia. Crucially, the implicit solution- the disappearance of “failure” for the public as an aspect of family privacy and autonomy- became identified for the public, from the beginning, as a key part of the problem.

Child protection reforms in British Columbia before the Gove Inquiry were *about* the ascendancy of the “non-interventionist paradigm”, of which legislative reform- the *Child, Family and Community Service Act*- was a *part* (within the context of “family centred” policy and a political consensus around the inherent wrongness of “intervention”).¹⁰⁹ The *CFCSA* should still, after *Gove*, be characterised as generally “non-interventionist” child protection legislation¹¹⁰ but, although the legislation and its characterisation¹¹¹ is

¹⁰⁸ *Supra* note 15.

¹⁰⁹ Derived from and supported by child welfare critiques on both “right” and “left”, the “naturalising” consensus building exercise of the Community Reports, and resonating with liberal political and legal norms and “instinctual” liberal privacy values. The legislative debates demonstrate the power of this consensus, even after the initial Matthew Vaudreuil scandal which led to the Gove Inquiry.

¹¹⁰ Following Richard Barnhorst’s criteria for characterising child protection legislation along an “interventionist” continuum, *supra* note 64 at 255, considering: principles; grounds for involuntary intervention; initiation of proceedings; authority to apprehend; authority after apprehension (medical consent); time limits; interim custody of the child; clear guidelines encouraging the court to leave the child with or return her to her parent(s); adequate notice and hearing requirements; the court’s ability to order the provision of support services to the family so that the child may remain with or be returned to the parents; provisions encouraging the court to give parent(s) access to the child during a period for which the agency will have interim custody; and accountability mechanisms: “One of the general principles of a legalistic approach is that a system of involuntary child protection intervention should be

important, it is not determinative: Judge Gove noted that grounds existed for apprehending Matthew Vaudreuil under the ‘non-interventionist’ *CFCSA* (as they did under the ‘interventionist’ *Family and Child Service Act*)¹¹² After *Gove*, the context of that legislation- the new ‘system’ and its policy, and the political and social focus on the safety of children- is very changed from the ‘family centred’ context in which the *Act* was introduced. Elevation of the safety and well being of the child to the paramount consideration in the interpretation and administration of the *Act*¹¹³ codifies this new ‘child centred’ context. The Gove Inquiry was told ‘we continue to see in practice that ministry social workers support the view that family support must be completely exhausted before child protection is applied. If this attitude is practised within the framework of the new Act, there are many new hoops to jump through on the road to child protection.’¹¹⁴ Within a child centred political, policy and structural context (the non-interventionist ‘framework’ without the family centred ‘attitude’ referred to in the quote above), the

designed to ensure that agencies and courts are held accountable for their actions” (at 275), and as characterised by Lisa Martz, *supra* note 63.

¹¹¹ Along an “interventionist” continuum.

¹¹² *Gove Report*, *supra* note 15, Volume II at 328

¹¹³ The *CFCSA* originally contained seven “guiding principles” of equal emphasis. The *Child, Family and Community Service Amendment Act*, 1995 S.B.C. 1995, c.19 elevated the first of these principles, that “children are entitled to be protected from abuse, neglect and harm or threat of harm”, to the “paramount consideration” in the administration and interpretation of the *Act*, in response to Gove’s interim report recommendation. Also, amendments to the family conference provisions making their offer by the director discretionary rather than mandatory cut against the family support *presumption*: in some situations the family conference may be appropriate, but in some cases it will not be, and the professional “child centred” task is to discern the difference and make the choice. And see *B.S. v British Columbia (Director of Child, Family and Community Services)* [1997] B.C.J. No. 2202 (B.C.S.C.) considering whether the standard of proof required for a finding of “in need of protection” was higher under the new *Act*’s “different underlying philosophy” (at para. 37), and finding it was not, characterising the *CFCSA* (after *Gove*) away from the “non-interventionist” end of the “interventionist” spectrum (see, *supra* note 63).

CFCSA will not prevent child centred decision making, and may indeed prove an important balance to the over-intrusiveness some observers fear may result from a 'child centred focus'.¹¹⁵

The systemic 'rule of optimism' and the patterns it produces pose a greater challenge to the goal of a child centred paradigm.

¹¹⁴ From a submission from a consortium of 14 Vancouver agencies, *Gove Report*, *supra* note 15, Volume II at 247.

¹¹⁵ See I. Grant and J. Mosoff, "Supporting Our Families, Protecting Children" *The Vancouver Sun* (Dec.8, 1995).

CHAPTER THREE

SITUATING GOVE: THE INQUIRY REPORTS

The political coupling of the *CFCSA* with the *Gove Report* made the Report and its sequelae (up to and including the Ministry for Children and Families) a truly *sui generis* phenomenon- particular in all respects to its time, place and players. At the same time, setting the *Report of the Gove Inquiry* in the context of previous inquiry reports, Gove's report becomes one piece of a larger pattern of meanings: about the interplay between high profile inquiries and child protection reform, the "rule of optimism" and the limits of child protection practice, and understanding child protection failures.

Describing the collected British inquiry reports shows how the liberal compromise/rule of optimism analysis discussed in Chapter One *works*: how the non-interventionist consensus "works" for "insiders". Situating the *Gove Report* within the context of the British inquiry report collections extends that analysis; the repetition of patterns indicates a similar process is at work, despite obvious differences of time and place, supporting the concept of a systemic "rule". The sharp departure of *Gove's* "result"- creation of the new Ministry and the office of the Children's Commissioner- from another inquiry report pattern, the pattern of repeating failures and repeating recommendations without meaningful change, may indicate that the particular combination of events in British Columbia has created a special situation, or context, in which a quite new kind of "child centred" reform is possible (or, that the post-*Gove* changes will themselves prove less "meaningful" than they now seem).

The British Inquiry Reports: 1973-1989

The general picture of practice emerging from the reports is not of gross errors or failures by individuals on single occasions but of a confluence or succession of errors, minor inefficiencies and misjudgements by a number of agencies, together with the adverse effects of circumstantial factors beyond the control of those involved. The Lisa Godfrey Report points to the cumulative effect of errors by social, medical, probation and health visiting services¹; in the Carly Taylor case the professionals principally involved were all judged to have worked together to consult, but not to act positively to prevent the tragedy²; and a witness in the Karen Spencer³ inquiry described the entire case as “a whole chain of events... strewn with ‘if only’”.⁴

Eighteen British child death inquiry reports between 1973 and 1981 were considered together in a study published by the DHSS (Department of Health and Social Services) in 1982⁵, responding to requests from local agencies that the DHSS analyse these reports as a group to identify common lessons for practice. The cases cover neglect, emotional abuse, and physical violence. One “theme” of these reports⁶ and their public reception is

¹*The Joint Report of the Committee of Inquiry into Non-accidental Injury to Children, with particular reference to the case of Lisa Godfrey* (London: Lambeth, Southwark and Lewisham AHA(T), Inner London Probation and After-Care Committee, London Borough of Lambeth, 1975) [hereinafter *Lisa Godfrey*] at 189.

² *Carly Taylor: Report of an Independent Inquiry* (Leicester: Leicestershire County Council/ Leicestershire Area Health Authority, 1980) [hereinafter *Carly Taylor*] at 125.

³ *Karen Spencer: A report by Prof. J.D. McClean* (Derby: Derbyshire County Council/ Derbyshire Area Health Authority, 1978) [hereinafter *Karen Spencer*] at 19.

⁴ DHSS, *Child Abuse: A Study of Inquiry Reports 1973-1981* (London: HMSO, 1981) at 28.

⁵*Ibid.*

⁶The Carly Taylor report published in 1980 referred to “the plethora of recommendations in the various reports of similar inquiries in recent years; we have studied nine of them and while we agree with the majority of their general recommendations many of them are largely repetitious of others and it would be pointless of us to repeat them. We can only say that if they had been studied and followed by those concerned at all levels in this case, it is reasonable to assume that the troubles with which we are concerned would not have occurred.” *Carly Taylor, supra* note 2. A crucial *meaning* of the reports, I suggest, is this repetition.

the similarity of their findings and their inability to stimulate change; the DHSS collection is a response to that frustration. A second collection of 19 reports was published by the DHSS in 1991.⁷ The 1982 study was compiled by a panel of six. The 1991 study was compiled by a single individual, Philip Noyes of the NSPCC (National Society for the Prevention of Cruelty to Children).

The two collections identify similar themes and patterns in the reports, although Noyes distinguishes his study somewhat, noting: “what was remarkable in the first decade was the coherence of the findings. In the 1980s a more complicated picture emerges... it is understandable where difficult decisions concerning human relationships are being made by professional staff from a number of agencies that tragedies will from time to time occur.”⁸

This “more complicated picture” from the 1980s is primarily attributable to the huge influence of the Cleveland “crisis” and subsequent inquiry report, included in the 1991 DHSS study. Two doctors in Cleveland, England, began pro-active diagnosis of sexual abuse in young children in 1987. The result was a sharp and sudden upswing in the number of sexual abuse referrals to social services. Tensions between the police and social services erupted into open hostility, politicians took up the parents’ “cause” and the “crisis” became a media sensation. The *Report of the Inquiry into Child Abuse in*

⁷ DHSS, *Child Abuse: A Study of Inquiry Reports 1980-1989* (London: HMSO 1991).

⁸*Ibid.*, at iii.

*Cleveland*⁹ did not resolve the still ambiguous question of how many children diagnosed as sexually abused *were* abused, but “Cleveland” has nevertheless become a byword for “what happens when things go too far in the other way”, a counterpoint to the child death inquiries.

The “rule of optimism” (whose operation is so clear in the 1973-1981 narratives, although it had yet to be named and described) is an explicit point of reference for Noyes in 1991:¹⁰

The proper balance of judgement between respecting family privacy and intervention to protect a child must always be difficult to achieve. Most of the reports describe cases which require professionals to work with families who are either resistant or hostile to their intervention and hence are frightening or superficially plausible and the so-called ‘rule of optimism’ may prevail.¹¹

In 1993, Peter Reder, Sylvia Duncan and Moira Gray published *Beyond Blame: Child Abuse Tragedies Revisited*¹² a collective study of the British child abuse inquiries from 1973 and the inquiry into the death of Graham Bagnall, also the starting point of the 1981 DHSS¹³ study, to the Doreen Aston¹⁴ report published in 1989. This study considers the

⁹ London: HMSO, 1988 [hereinafter *Cleveland*].

¹⁰As it was by Louis Blom-Cooper in *A Child in Trust: The Report of the Panel of Inquiry into the Circumstances Surrounding the Death of Jasmine Beckford* (London: London Borough of Brent, 1985) [hereinafter *A Child in Trust*], although Robert Dingwall, in a subsequent article, objected to Blom-Cooper’s characterisation and use of the rule in that context: Robert Dingwall, “Reports of Committees: The Jasmine Beckford Affair” M.L.R. 49 No. 4 July 1986 489.

¹¹ DHSS, *supra* note 7 at iii.

¹² (London: Routledge, 1993).

¹³An inquiry was held into the death in foster care of Denis O’Neill in 1945 but the next one appears to be concerning Graham Bagnall in 1973. *Report of Working Party of Social Services Committee: Inquiry into the circumstances surrounding the death of Graham Bagnall and the role of the County Council’s Social Services* (Salop County Council: 1973) [hereinafter *Graham Bagnall*].

¹⁴ *Doreen Aston* (London: Lambeth, Lewisham and Southwark Area Review Committee, 1989).

inquiries and the patterns therein from a 'systems' perspective in an attempt to get beyond the "blaming", often accusatory context of the inquiries themselves.¹⁵ Cleveland is not included in this collection.

These three collections and their conclusions are discussed as they draw attention to or demonstrate certain common themes and patterns from the inquiry reports. Some passages of particular relevance to the *Gove Report* have been included for that reason. The report into the death of baby Paul, which is similar in many respects to Matthew Vaudreuil's story, is considered independently. *Paul: Death Through Neglect*, was written post *Children Act, 1989*: it is significant that many of the themes and patterns described in the earlier reports recur in Paul's story.

I have included, where appropriate, "stories" from the reports, mostly drawn from the *Beyond Blame* study, for two reasons. The themes and patterns identified in the studies are clearest and most compelling *in* the narratives from the inquiry reports. Most importantly, the children and their experiences must be central to any discussion of these events, and "neglect" must become what happened to Malcolm Page.¹⁶ I also hope that

¹⁵"Our concern has been that the reports tended to focus over-much on matters of professional responsibility and accountability at the expense of analysing the psychological aspects of the cases and the responsibilities of the caretakers. In our opinion, reviewing what did happen and what should have happened needed to be balanced with an attempt to understand how the errors had occurred." P. Reder et al, *supra* note 12 at 4.

¹⁶ See *infra*. The use of "clinical" words may convey a very different meaning to the reader than a plainer account of details: "A judge may ask a complainant: 'How often does he hit you?' or 'How did the child come to have a hematoma?' Compare these statements with 'a pool of blood rotted in the brain'. Judges more often use the former language- like that of a remote clinical examination." Martha Minow, discussing *DeShaney*, 109 S. Ct., "Words and the Door to the Land of Change: Law, Language and Family Violence" (1990) VLR Vol. 43 1665. In addition, some "clinical" words may come freighted for the reader with implications, particularly "neglect" which will (for some) trigger an image of ambiguous, sloppy housekeeping and "middle class" standards. This implications are not appropriate to the

the excerpts I have included, here and in Chapter Four, will convey something of the emotional experience of reading the reports, which is a crucial part of their meaning.¹⁷

The themes noted in the following sections are by no means discrete. Each pattern merges, overlaps and interacts with the others. The “pattern” organisation, while artificial and, to the extent that it implies a degree of separateness, a bit misleading, helps to make sense of the information and its relationship to Judge Gove’s report. I have tried to indicate connections in the text; in some instances they are self-evident.

Authority

The DHSS 1981 study identified reluctance to use authority as one theme in the reports:

There are a number of references to the fears of workers struggling to engage the co-operation of parents, that authoritative intervention to protect the child might lead to the breakdown of any relationship they might have established with the parent... “The need to establish and maintain a relationship of confidence with the parents may be difficult, perhaps impossible, to reconcile with the worker’s duty to the child.”¹⁸

But whilst the untimely imposition of authority can estrange parents, failure to impose authority and to set limits, as in the Malcolm Page case, can lead to a situation where a

“neglect” situations described in this chapter (or in the subsequent chapter dealing with the *Gove Report*) and it is extremely important to make that point, in the plainest language available, which requires some detail.

¹⁷ “The stories of the individual children are moving and the tragedy of the death, usually described near the middle of the report, is always moving impact [sic]. Afterwards, reading the policy and practice discussion seems rather superfluous. What really can be done?” DHSS, *supra* note 7 at 109.

¹⁸ From the *Lester Chapman Inquiry Report* (Berkshire and Hampshire County Councils and Area Health Authorities, 1979) [hereinafter *Lester Chapman*], at 65, ix. Also referred to here are the *Report of the Committee of Inquiry into the provision of services to the family of John George Auckland* (London: HMSO, 1975) [hereinafter *John Auckland*] and the *Report of the Joint Committee set up to consider co-ordination of services concerned with non-accidental injury to children* (Essex County Council and Area Health Authority, 1974) [considering the case of Max Piazzani; hereinafter *Max Piazzani*]. DHSS, *supra* note 4 at 23.

case “drifts”¹⁹... Whilst acknowledging the difficult casework decisions involved, the inquiry thought “that the solution lies in simply not taking “no” for an answer and the exercise of personal or statutory authority by the workers involved with the case... The existing law provides the means to set a specific requirement which if not met can result in the removal of a child”.²⁰

The fatal “drift” in the Malcolm Page case seems to have been the product of wavering authority, tentatively asserted, then withdrawn at the merest sign of co-operation. All four children of the household were severely neglected, their upstairs bedroom full of faeces, freezing cold, and filthy, their beds soaked with urine, despite the fact that the downstairs was kept reasonably pleasant (and on view to social workers).²¹ Malcolm Page died of malnutrition and hypothermia in that bedroom after weeks of malnutrition culminating in acute starvation. He was also found to be suffering from gangrene. Malcolm Page was 14 months old when he died. At the age of 4 months Malcolm and the other children were removed on Care Orders, because of appalling conditions in the home:

The parents co-operated with the social worker, visiting their children and making strenuous efforts to clean the house and the children were returned. However, within a few days the social worker received no replies to her home visits and the home conditions deteriorated again. Although she spoke sternly to the mother and despite parental promises, the children were not taken to the next two health clinic appointments. At their next home visit, the social worker and home help realised that they had never been allowed upstairs, where they found sheets soaked with urine and encrusted with faeces. A case conference recommended that the social worker should put the position bluntly to the parents and that home help should be increased. The father agreed... that things had slipped a bit and he thought his wife was depressed

¹⁹ From *Malcolm Page: Report by the Panel* (Essex ARC, 1981) [hereinafter *Malcolm Page*] at 3.67. DHSS, *supra* note 4 at 23.

²⁰ *Malcolm Page*, *supra* note 19 at 5.21. DHSS, *supra* note 4 at 24.

²¹ This aspect is echoed in *Paul: Death Through Neglect*: “there was a toleration from the beginning of the case of the state of the family home which raises concerns. Part of the explanation was that, whenever anyone visited the family home, they were shown in to one particular room. This room was untidy, but not especially dirty. However, no one seemed to see the remainder of the house, which was kept in an appalling state.” (London: The Bridge Child Care Consultancy Service for Islington Area Child Protection Committee, 1995) at 156.

again. The case continued in this to and fro manner with episodes of deterioration in the home and children met with confrontation by the workers, followed by temporary periods of improvement and co-operation from the family. It ended in terminal closure, with the health visitor and social worker either unable to gain entry to the home or not shown Malcolm in his room upstairs.²²

Malcolm Page's parents were found guilty of wilful neglect and imprisoned for twelve months.²³

The pattern of tentative assertion of authority, followed by anxious but ineffectual monitoring and the collapse or withdrawal of authority has been described as the hallmark of the "dangerous professional".²⁴ The implication of these analyses²⁵ is that intervention without confident authority is more dangerous than total non-involvement.

²² Reder et al, *supra* note 12 at 107.

²³ For a detailed account of this case, see M. Jay and S. Domains *Battered: The Abuse of Children* (London: Weidenfeld and Nicolson, 1987), at 64.

²⁴ Peter Dale with Murray Davies, Tony Morrison, and Jim Waters, *Dangerous Families: Assessment and Treatment of Child Abuse* (London: Tavistock Publications, 1986) at 35. "It is possible to caricature types of behaviour of dangerous professionals. The 'dangerous social worker' [attempts] to make contact with an unenthusiastic or hostile family in respect of some expressed concerns that a child might be at risk. Such approaches may be made by focusing on more mutually acceptable problem areas such as housing or material benefits, as neither the worker or family feels comfortable with an open statement of the real concern. The next phase occurs when, having provided a nursery place, the worker is informed of [suspicious injuries]. The referral is likely to have been delayed by a dangerous officer in charge. The dangerous social worker will then either reluctantly (and very anxiously) visit the parents to inquire about the bruising, but will be eager to accept rather implausible explanations. At the extreme the dangerous social worker will refuse to investigate (supported by a dangerous manager) rationalising that the referral is too late and also that it would 'damage my relationship with the family'. This is one of the catch phrases of the dangerous social worker in action. When noted it should cause immediate alarm and prompt active review of the management of the case. A 'relationship' which can be damaged in such a way is in fact only a relationship of enmeshment and collusion: the antithesis of any therapeutic or supervisory contact. A professional relationship which cannot include the discussion of concerns inevitably reveals itself as not a relationship at all, but an avoidance of conflict and difference."

²⁵ And see S. Minuchin, "Child Murder: Maria Colwell" in *Family Kaleidoscope* S. Minuchin ed. (Cambridge, Mass.: Harvard University Press, 1984).

The Jasmine Beckford Inquiry highlighted the appropriate use of authority as “an essential ingredient in any work designed to protect abused children”²⁶ although, as noted in the DHSS collection, the social worker’s “multiple roles and, in particular, the emphasis on parental rights complicated the exercise of that “authority”.”²⁷ The Panel of Inquiry into the death of Lucy Gates found that “the rights of parents appear to take precedence over rights of children... There is currently strong pressure on professional workers to keep children with their parents at almost any cost”.²⁸ Lucy Gates died at age two when an electric fire fell on top of her, after she and her siblings had been left unattended while their mother, Linda Gates, went to the pub. Linda Gates was sentenced to manslaughter and sentenced to eighteen months imprisonment, suspended for two years. A summary²⁹ of eight years of social services involvement with Linda Gates (from the birth of her first child, who she gave up for adoption, to the death of Lucy in 1979), shows a pattern of severe neglect and abuse. The Kimberley Carlile report³⁰ concluded that discomfort with authority subverts worker confidence about insisting on seeing a child where the parent(s) is “stonewalling”, a situation identified in all three studies as a danger sign.

²⁶ *A Child in Trust*, *supra* note 10 at 295.

²⁷ DHSS, *supra* note 7 at 5.

²⁸ *Report of the Panel of Inquiry* (London Borough of Bexley and Bexley Area Health Authority, 1982) [hereinafter *Lucy Gates*] at 6.17; DHSS *Ibid*.

²⁹ Reder et al, *supra* note 12 at 87.

³⁰ *A child in mind: protection of children in a responsible society. The report of the commission of inquiry into the circumstances surrounding the death of Kimberley Carlile* (London Borough of Greenwich, 1987) [hereinafter *Kimberley Carlile*]; DHSS, *supra* note 7 at 5.

Uncertainty and unease about the use of authority undermines the worker's capability to react appropriately to warning signs and signals. The *Beyond Blame* study describes a pattern of "disguised compliance" in the reports whereby the tentative use of authority is met by apparent co-operation from the family, effectively "neutralis[ing] the professional's authority":

...social services received a complaint about a child being beaten in the house but, although two social workers were allowed into the home, they were refused sight of Kimberley and her younger sister, who were said to be asleep upstairs. Three days later, the social worker delivered a confronting letter saying that the two youngest children had to be medically examined or else the police would be informed. The next day the family telephoned social services, admitting that they had harmed Kimberley, and the duty social worker arranged a meeting at the family's home the following afternoon with the social worker who knew them. However, in a move of apparent compliance which managed to undermine social services' more controlling stance, the family came instead to the department the next morning. Believing this indicated co-operation, the social worker agreed with them to seek a nursery school place for Kimberley and to have further meetings in a few week's time. The parents' never took up the offer of the nursery place and they did not attend for health clinic appointment. Despite being concerned by what he had seen of Kimberley's appearance, the social worker still did not have any statutory powers and could only recommend medical examination for her. At a subsequent home visit, Kimberley's step-father allowed him into the house but only to glimpse her through a glass panel above a door and this pattern towards closure continued until Kimberley was killed.³¹

Kimberly Carlile was killed by a blow to the head, having experienced physical abuse and starvation over a long period. She was four years old. She and her two siblings had been returned from voluntary care when her mother and step-father married. Kimberley

³¹ Reder et al, *supra* note 12 at 106. The "glass panel" incident is strikingly similar to an incident recounted in the *Review of the Circumstances Surrounding the Death of Mavis Flanders*, Report to the Honourable Ujjal Dosanjh, Attorney General prepared by Cynthia Morton, Children's Commissioner and Chair, Child & Family Review Board, June 12, 1997, in which a social worker responding to an anonymous call about the health and safety of Ms. Flanders' son is denied entry but, seeing the child through an open door, determines he is fine.

Carlile's step-father was sentenced to life in prison for her murder. Her mother was sentenced to twelve years for grievous bodily harm.

A very different conclusion about the appropriate use of "authority" and its implications for "error" comes from the Cleveland Inquiry: "the lack of a basic understanding of the unique features of each family meant that parents felt alienated by what they saw as an apparent lack of willingness to understand their point of view... we would suggest that the gathering of knowledge upon which to place carefully considered judgements, together with cautious use of professional authority and statutory powers, are more likely to be in the best interests of vulnerable children than patterns of professional practice which alienate parents and isolate children at the centre of the conflict."³²

The Law: Pre-guessing Court Outcomes

The 1981 DHSS study identified paucity of legal knowledge among some social workers, and confusion about the little that was known, as a recurring problem,³³ together with "numerous instances³⁴ of failure to exercise legal authority held".³⁵ Despite this lack of

³² *Cleveland*, *supra* note 9 at 4.195; DHSS, *supra* note 7 at 4.

³³ Referred to in the following child death inquiries: *Report of the Committee of Inquiry into the case of Paul Steven Brown* (London: HMSO, 1980) [hereinafter *Paul Brown*], at 60, *Report of the Committee of Inquiry into the Care and Supervision Provided in Relation to Maria Colwell* (London: HMSO, 1974) [hereinafter *Maria Colwell*], at 238; *Lester Chapman*, *supra* note 18 at 58; *Report of the Committee of Enquiry concerning Simon Peacock* (Cambridgeshire and Suffolk County Councils and Area Health Authorities, 1978) [hereinafter *Simon Peacock*], at 14, 2.9, 2.10, 4.15.

³⁴ *Paul Brown*, *supra* note 33 at 85,88; *Lester Chapman* *supra* note 18 at 50, 59; *Maria Colwell*, *supra* note 33 at 107, 109; *Karen Spencer*, *supra* note 3 at 2.87; *Report of the Social Work Service of the DHSS into certain aspects of the management of the case of Stephen Menheniott* (London: HMSO, 1978) [hereinafter *Stephen Menheniott*].

³⁵ DHSS, *supra* note 4 at 24.

legal knowledge, the study identifies a tendency to pre-judge court findings and take actions accordingly as a pattern in the reports:

Preparing and giving evidence can provide a useful discipline in reaching clear judgements and decisions; the value is, of course, lost to those who pre-judge what the court's findings will be. In the Lester Chapman case, for example, a social worker was influenced against seeking a place of safety order partly by a Court's earlier decision to refuse a Care Order in what seemed a clear case to the SSD.³⁶ In the Maria Colwell case social workers judged, in the legal and social context of the time, that application by the mother for revocation of the care order would succeed within a short time. The inquiry accepted that they were probably right to assume that the magistrates would return the child home once the parent's fitness was proved, unless it could be clearly shown that it would not be in her best interests. When the mother pressed ahead with her application, the local authority, seeking to retain some control in the situation, decided not to oppose it. The effect of the decision was: "because there was no opposition... there was no examination by way of argument or evidence of any reasons why the care order should not be revoked... The revocation went through virtually 'on the nod.'" If opposed, "there would undoubtedly have been a very full hearing with evidence and argument on both sides and the court would have made its decision after every possible point had been taken". The care authority would also have looked "for evidence to justify their opposition",³⁷ i.e. this would have imposed a useful discipline on social workers to seek evidence supporting actions.³⁸

The 1981 DHSS study refers to what it calls the failure to "pool" information from various agencies as pre-empting the collection of evidence for "full exploration" in Court proceedings.³⁹ The "tendency to regard physical injury as the pre-dominant factor in Court proceedings" is another practice conducive to error: "local authorities should be

³⁶ *Lester Chapman*, *supra* note 18 at 171.

³⁷ *Maria Colwell*, *supra* note 33 at 226.

³⁸ DHSS, *supra* note 4 at 25. The significance of "pre-judgement" and its influence on child protection practice is heightened in the context of "least intrusive" non-interventionist legislation. Also noted here: *Karen Spencer*, *supra* note 3 at 2.124, 2.128; *Wayne Brewer: Report of the Review Panel* (Somerset Area Review Committee, 1977) [hereinafter *Wayne Brewer*] at 4.18.

³⁹ DHSS, *supra* note 4 at 26; reference to *John Auckland*, *supra* note 18 at 120.

more prepared to bring evidence of the likelihood of injury and that the courts should be more willing to receive and weigh such evidence.”⁴⁰

What Can Be Known: Compiling Reports From Parental Accounts

The 1981 DHSS study identified the compilation of reports from parents’ “versions” as a dangerous pattern.⁴¹ The 1991 DHSS study found as a “recurrent theme” “the extent to which parents will lie and seek to deceive professional workers”⁴² citing as examples the cases of Jasmine Beckford, Tyra Henry, Lucy Gates, Charlene Salt and Kimberley Carlile.

Throughout the first month of the trial at home, Ms. Wahlstrom [social worker] and Ms. Ruddock [family aide] amply monitored the daily lives of the Beckford family. In the early stages, Miss Knowles [the health visitor] was requested to stay away “until the situation had calmed down a bit more” - a reference to the irritation being displayed to the social workers by both Beverley Lorrington and Morris Beckford in their handling of an intensely supervised pattern of life by public authority... It is fair to say that Ms. Wahlstrom did at least keep in contact with Mortimer Road Day Nursery about Jasmine’s erratic attendance there, but she appears always to have accepted Beverley Lorrington’s excuses for not having taken Jasmine to the nursery. This expression of trust in what she was told by Beverley Lorrington, both about herself and the children, permeated every aspect of Ms. Wahlstrom’s social work. She was, fatally, much too willing to believe everything “her clients” (the Beckford parents) told her.⁴³

The basic dilemma appears to be that most of the professionals involved seemed to be accepting at face value the way in which the family was portrayed and the information they presented. We would argue that parents who provide the greatest risk to children are those who successfully convince the system of their ability to care if only they receive the right help, year after year [the records begin in 1976 with the birth of the mother’s first of eight children. Paul dies March 7, 1993]. In addition such parents are also well versed in conveying misinformation and children may feel unable to contradict or may

⁴⁰ *Ibid.* Reference to *Wayne Brewer*, *supra* note 38 at 4.25; *Paul Brown* *supra* note 33 at 84; *Lester Chapman* *supra* note 18 at 66 xii; *Graham Bagnall* *supra* note 13 at 20.

⁴¹ *Maria Mehmedagi-Report of an Independent Inquiry* (London Borough of Southwark, Lambeth, Southwark and Lewisham AHA(T), Inner London Probation and After-Care Service, 1981) [hereinafter *Maria Mehmedagi*] at 87; *Maria Colwell*, *supra* note 33. DHSS, *supra* note 4 at 26.

⁴² DHSS, *supra* note 7 at 69.

⁴³ *A Child In Trust*, *supra* note 10 at 116.

not be asked... Because of the perceptions of this family as being a low income family in need of support, rather than one in which children were at risk, the direction in which the case was managed became distorted.⁴⁴

Reading the chronology of the involvement of Paul's family with social services, one becomes intensely curious about what these parents must be like. They must have been very persuasive, with considerable personal power, to have wrung so much out of social services for so many years while successfully refusing to avail themselves of the help directed at the children (such as doctor's appointments) without challenge. The parents position throughout is that any problems they experienced were completely due to social services' not giving them enough money. There is no indication that, when demanded benefits materialised, they were used to benefit the children. Furniture was immediately sold, with proceeds in the pocket of the father, who was the dominant figure in the family. Yet throughout the 15 year period covered by the report, such benefits continued to be provided to the family.

What Can Be Known⁴⁵: Specialised Knowledge and Blocks to Recognition

Two knowledge based error types are identified in the 1981 DHSS study under the heading "Professional Practice": "specialised knowledge" (a "lack of experience and expertise in child abuse") and "blocks to recognition" (subjective or "psychological" reactions to situations which prevent the worker from accepting certain explanations or

⁴⁴ *Paul: Death Through Neglect*, *supra* note 21 at 154-155; and see *infra* notes 59, 60.

⁴⁵ And see Robert Dingwall, *supra* note 10 at 495-504.

conclusions).⁴⁶ “Blocks to recognition” and their significance in the inquiry narratives are also considered in the subsequent DHSS study and *Beyond Blame*.

a) subjective reactions to family members

There is a danger that professionals may misconstrue situations by reacting too subjectively or uncritically to one family member. The Auckland report demonstrates very clearly the dangers of accepting too readily one party’s account of the situation. ‘From the start and perhaps because of her lack of knowledge of previous events’ a social worker ‘formed an adverse view of Mrs. Barbara Auckland and, from this point onwards, the social services personnel dealing with the Auckland family seems to have been rather too ready to accept information and explanations offered to them by Mr. John Auckland and his relations.’⁴⁷ Another worker, later in the story, having first talked to Mr. Auckland and his parents, went to see Mrs. Auckland ‘with a version of her reasons for leaving her husband already established in his mind’; he paid ‘relatively little attention to Mrs. Auckland’s own complaints about her husband and his family’.⁴⁸ The social worker succeeded in persuading Mrs. Auckland to allow Mr. Auckland to have care of the child, at the home of his parents. Susan was subsequently killed by her father, who had previously killed a baby daughter. There were also problems of accepting one party’s account too readily in the Maria Mehmedagi case,⁴⁹ problems of over-identification with the mother in the Steven Meurs case.⁵⁰ Fear of manipulation led workers to discount warnings given by the mothers of Paul Brown⁵¹ and Richard Clark.^{52, 53}

⁴⁶ DHSS, *supra* note 4 at 29.

⁴⁷ *John Auckland*, *supra* note 18 at 149.

⁴⁸ *Ibid.* at 190.

⁴⁹ *Maria Mehmedagi*, *supra* note 41 at 122.

⁵⁰ *Report of the Review Body appointed to inquire into the death of Steven Meurs* (Norfolk County Council and Area Health Authority, 1975) [hereinafter *Steven Meurs*] at 6.02.

⁵¹ *Paul Brown*, *supra* note 33 at 84.

⁵² *Report of the Committee of Inquiry into the Consideration given and steps taken towards securing the welfare of Richard Clark by Perth Town Council and other bodies or persons concerned* (Secretary of State for Scotland, 1975) [hereinafter *Richard Clark*] at 40.

⁵³ DHSS, *supra* note 4 at 30.

John Auckland killed his and Barbara Auckland's first child, Marianne, when she was nine weeks old. He was imprisoned for eighteen months, having been found guilty of manslaughter with diminished responsibility. He severely scalded his second child as a baby. Social services were unaware of John Auckland's responsibility for the death of Marianne until Barbara Auckland informed them of it after Susan's return to her father (Barbara Auckland had originally taken Susan when she left). This information "alarmed" the duty social workers, however, Susan remained with John Auckland until he killed her.

Richard Fraser⁵⁴ died as a result of severe head injuries when he was five years old. He was admitted to the hospital unattended. His father was given a life sentence for his murder. His stepmother was imprisoned for two years for wilful assault, ill-treatment and neglect.

Richard's father was repeatedly violent, dismissive and critical of Richard's mother. He often threatened her physically for neglecting Richard and eventually he beat her up and took Richard to a crisis reception centre. Richard's mother left the area and his father was then joined in the centre by a co-habitee. While the father was in prison for violence, Richard was seen to have sustained non-accidental injuries and was taken into care. A case conference decided not to return Richard to his father while he remained with the co-habitee, but at the subsequent care proceedings the solicitors representing both parties came to an agreement for Richard to go home on trial provided that his father was present in the household. The early belief that Richard was safe when his father was there was reinforced by the legal process and continued despite contradictory evidence, such as his father's re-imprisonment for violence and both parents' hostility to the social worker when he visited. It was Richard's father who was eventually charged with murder.⁵⁵

⁵⁴ Account taken from Reder et al, *supra* note 12 at 93.

⁵⁵ *Ibid.*, at 93.

The social worker adopted a “low profile” visiting strategy regarding Richard Fraser because she was afraid of his father; this does not seem to have mitigated the initial impression that Richard was safe in his father’s presence.

Granting a Care Order to Brent Social Services for Jasmine Beckford and her sister Louise, the Magistrates added “In making these Orders it is our earnest hope that the Social Services Department will do it’s [sic] utmost to carry out a rehabilitation programme to unite these children with their parents.”⁵⁶

[The Report considered that the Magistrates may have been given incomplete, incorrect or inadequate evidence conducive to misunderstanding] We think that, like most people who have seen Morris Beckford and/or Beverley Lorrington, the Magistrates found the Beckford parents very appealing, and were understandably sorry for them in their plight of having to live in appalling housing conditions⁵⁷ and with a background of unhappy childhood... Whatever objectively the investigators of this episode in the Beckford Case may conclude about the Magistrate’s rider, there is no doubt how it was perceived by everyone in court... Mr. Bishop [area manager] was astonished that the Magistrates found it possible to add their rider, given the evidence of multiple child abuse... What perturbed him more, in practical terms, was the effect it would have on the parents... Mr. Bishop, with whose reaction we entirely sympathise, was asked what he would have done in the absence of the Magistrate’s rider. While not wanting to hypothesise, he said it would have meant that he and his colleagues would have had one less factor to consider when assessing the case in the future. But he was more emphatic on the positive side, in concluding that what the Magistrates had indicated did powerfully influence at least his ultimate decision [to] concur in a programme of rehabilitation.⁵⁸

The story of the Magistrates’ rider vividly illustrates the incremental nature of mis-steps identified in all three studies, the accumulating “if onlys”. The rider, arising it seems from

⁵⁶ *A Child in Trust*, *supra* note 10 at 99. This statement is referred to in the report as a “rider”, and all evidence indicates that it contributed very much to social worker “preguessing” of court outcomes in this case.

⁵⁷ The care order was made on November 9, 1981; the Beckfords moved into a three bedroom house in March 1982; Jasmine Beckford was killed in July 1984.

⁵⁸ *A Child in Trust*, *supra* note 10 at 100-101.

a combination of misinterpretation and a subjective, sympathetic reaction to the Beckfords (and these two explanations are not exclusive) created a *context* for the Beckford case. The Beckford children were going home, and the Beckford family was a viable option; it became difficult at this point to “see” any signs to the contrary.

In the case of Paul, the report concludes:

In this case, both parents were able to convince a range of professionals involved of their ability to cope with help and were extremely successful in conveying misinformation and thus confusing the professional system. In addition they convinced many professionals that it would be better not to involve social workers.

Even in 1991, by which time social workers were more involved, the parents were still able to convince professionals, such as doctors, that referring a situation to social workers would not be constructive: a view which appears to have gone unchallenged.

Eleven years of a fixed perception continued to dominate.

Representatives of The Bridge [the agency carrying out the report] met both parents and we have some sympathy with the way in which professionals were deceived regarding their ability to cope.⁵⁹

Both parents blamed social services for Paul’s death, on the grounds that social services had not done enough to help the family:

the statements were presented with a confidence that they would be accepted... Despite the detailed factual knowledge of what happened, the Bridge representatives could feel the power that was being exerted to draw them in to an acceptance of these statements. The facts of the case showed the statements to be patently untrue.⁶⁰

b) denial

⁵⁹ *Paul: Death Through Neglect, supra* note 21 at 154.

⁶⁰ *Ibid.*

“Denial” may block recognition where a worker finds the suggested abuse so “horrifying” that she cannot suspect a client (who she may like) of doing it:

The Darryn Clarke inquiry found that the senior social worker initially believed the source of the problems and complaints lay in the family’s disapproval of Darryn’s mother’s conduct and friends. This caused him not to ask her brother specific questions about the alleged injuries, and not to pursue an objective assessment of the situation in the light of new information. The senior social worker told the inquiry “he did not want to believe that Darryn was being injured.”⁶¹

The abuse of Darryn Clarke was horrifying and sadistic. Darryn Clarke was three years old when he was killed by his mother’s partner, who went to prison for fifteen years for unlawful killing. The child’s physical injuries included severe burns to the legs: “Darryn’s step-father also locked him in a cupboard, forced him to drink lager and tied up his penis and put a cork in his anus to stop his incontinence and forced Darryn to sit on the potty for hours.”⁶² The child was well cared for until his mother began co-habiting with Charles Courtney, a relationship of which her family disapproved. The family contacted the police, social services and the NSPCC for seven weeks trying, unsuccessfully to find Darryn. They were unable to find the child before he was fatally assaulted by Charles Courtney.

Worker *interpretation* of statements and situations may be shaped by these kind of psychological processes. Christine Aston, the mother of Doreen Aston, confessed to her

⁶¹ *Report of the Committee of Inquiry into the Actions of the Authorities and Agencies relating to Darryn James Clarke* (London: HMSO, 1974) [hereinafter *Darryn Clarke*] at 43; this account from Reder et al, *supra* note 12 at 153. Other references: *John Auckland, supra* note 18 at 210, *Steven Meurs, supra* note 50 at 12.06. Darryn’s mother came from a large, “close knit” Liverpool family who, social workers suspected, disapproved of her partner because he was black.

⁶² *Ibid.*

worker that she had smothered an earlier child; the confession was interpreted by the worker as a “grief reaction” rather than a statement of fact. The worker’s interpretation of Ms. Aston’s statement was never *overtly* challenged:

A critical factor that influenced professionals’ assessments was a pervasive belief that Karl [the first child] had succumbed to the cot death syndrome. This was despite Christine’s earlier threats to harm him, her admission that she had hit him six weeks prior to his death, post-mortum evidence of fractured ribs and a brain haemorrhage and Christine’s disclosure to her social worker that she had smothered him. The belief may have been influenced by the police view that there was insufficient evidence for a criminal prosecution and the social worker’s interpretation that Christine’s confession was a grief reaction. Nonetheless, Doreen’s name was entered on the At Risk Register because some considered her brother Karl’s death to be suspicious.⁶³

c) confusion of fact and opinion

“Subjectivity and the confusion of fact and opinion” may distort assessment. The DHSS study considers the example of Malcolm Page, whose home conditions⁶⁴ were described in a social worker assessment as “not bad” meaning not bad *for the Pages*, in contrast to the police account, described in the inquiry report as a good example of factual reporting.⁶⁵

Paul: Death Through Neglect notes the positive “opinions” and “value judgements” which appeared in the files pertaining to Paul and his family- “dirty, smelly, but happy”- despite the fact that there was little evidence to support them and substantial evidence of gross neglect of all the children.

d) source of data

⁶³ This account from Reder et al, *supra* note 12 at 116.

⁶⁴ Malcolm Page would die in his home of hypothermia and malnutrition.

⁶⁵ DHSS *supra* note 4 at 30. And see M. Jay and S. Domains, *supra* note 23 at 73.

Data may be unappreciated because of its source or because the source is not valued.⁶⁶ The inquiry into the death of Tyra Henry⁶⁷ described how the evidence of police officers was discounted at case conferences because of social worker distrust of the police. The police were invited to early case conferences regarding Karen Spencer where they had questioned gaps in assessment but they were not invited to subsequent conferences after the rehabilitation plan was implemented.⁶⁸ A similar rift between the police and “care workers (the social worker, probation officer, health visitor and paediatrician) developed after Maria Mehmadagi was admitted to hospital with extensive injuries:

The police received their invitation to the next case conference too late for them to attend and this exemplifies the rift that had developed between the two entrenched groups, one becoming advocates for the parents [the care workers], the other (the police) being seen as hostile to them. In the middle of this polarisation was Maria and plans to return her to her parents continued even though she was observed to be bruised and injured. It seems that, as these processes develop, the great wealth of feeling generated by the professional interaction interferes with thinking about the child.⁶⁹

Maria died of severe head injuries three weeks before her first birthday. Her father was convicted of causing actual bodily harm and imprisoned for nine months.

⁶⁶ DHSS, *supra* note 7 at 59.

⁶⁷ *Whose Child? The report of the public inquiry into the death of Tyra Henry* (London Borough of Lambeth, 1987) [hereinafter *Tyra Henry*]; see Reder et al, *supra* note 12 at 72.

⁶⁸ Reder et al, *supra* note 12 at 72. “The day before Karen died, a police detective telephoned social services to inquire when the next case conference would be and he was told that it had taken place two months previously.”

⁶⁹ *Ibid.*, at 74.

The Jasmine Beckford inquiry found “the police exclusively possess optimum access to a range of information about the criminal background of individuals that can be invaluable to those in agencies engaged in the assesment of child abuse. For social services and the allied agencies engaged in child care to dispense with the expertise of police officers is to indulge in self-denial that may have serious, sometimes fatal results for children at risk.”⁷⁰

The implication here, and elsewhere in the narratives, is that the police are “real” in a way that social services are not: a “real” service, with “real authority”, doing “real” work. This attitude seems shared by some parents, who appear to respond much less aggressively to police than to social workers. This attitude *on the part of the police* certainly informed much of what happened in Cleveland. Such a self-perception may inform the problem of police “confidentiality”, discussed in the Tyra Henry and Liam Johnson inquiries: “the police have traditionally regarded and still regard the information in their hands as more confidential than the confidential information possessed by some other agencies.”⁷¹

The Jasmine Beckford Inquiry describes the discounting of information received from health visitors due to their relatively low hierarchical status (*vis a vis* social workers).⁷²

The *Beyond Blame* study describes how the strong suspicions of a student social worker and health visitor that Neil Howlett was suffering from parental neglect and cruelty were not received with “any degree of urgency”, referring to such discounting as an

⁷⁰ *A Child in Trust*, *supra* note 10 at 159; DHSS, *supra* note 7 at 18.

⁷¹ *Liam Johnson* (Islington Area Child Protection Committee, 1989) at 7.21, DHSS, *supra* note 7 at 21.

⁷² Reder et al, *supra* note 12 at 75.

“exaggeration of hierarchy”, in which professionals with a lower perceived status defer to the opinions of others perceived as hierarchically superior.⁷³ This could take the form of discounting information or the inhibition of “inferiors”. The *Beyond Blame* study gives several examples from the reports of the latter dynamic:

The first social worker involved with Lucy Gates was impressed by her mother’s potential to improve her standards of caretaking and cleanliness. At the initial case conference, the social worker’s report strongly in favour of leaving the children at home held sway, even though she was not present to speak to it. A health visitor who was present and very concerned about that proposal did not speak out. The midwife who found Charlene Salt at home dirty, hungry and bruised felt unable to express her disquiet at the first case conference’s decision to return Charlene home.

e) the “decoy of dual pathology” and the secure perspective

The McGoldrick case was viewed as one of poor parenting. The inquiry says ‘that there was an abundance of evidence of poor parenting we have no doubt. This was a case of ‘dual pathology’ and in concentrating on the poor parenting theme the agencies overlooked or played down a second theme of child abuse.’⁷⁴

The 1991 DHSS study calls the inability to appreciate a second problem where a first has been identified as the “decoy of dual pathology”.⁷⁵ Related to this phenomenon is the “block” posed by security in a certain point of view, which can make a worker resistant to information suggesting a different point of view is required. Where the problem is initially identified as material and therefore relatively straightforward- more welfare-like than police-like- worker attachment to the “decoy” seems particularly resilient:

⁷³ *Ibid.*

⁷⁴ Karl John McGoldrick (Northern Regional Health Authority, 1989) at 41; DHSS, *supra* note 7 at 59. This is also a theme in the *Report of the Gove Inquiry Into Child Protection* (Victoria, B.C.: Queen’s Printer, 1995) [hereinafter the *Gove Report*].

⁷⁵ DHSS, *supra* note 7 at 59.

At some point in at least half of the cases we were able to not an attempt to resolve problems through what we have called “concrete solutions”. We mean by this that undue reliance was placed on very practical measures as a means of dealing with or monitoring problems which were essentially emotional. While we recognise the value of practical assistance, we were struck by how often it became the main intervention to some families.⁷⁶

And see, Richard Fraser, *supra* note 55.

f) the larger paradigm

Another dimension to the dilemma is added by a number of inquiries, namely the rights of parents which appear to take precedence over the rights of children. There is confusion over what the rights of children are. There is currently strong pressure on professional workers to keep children with their parents at almost any cost.⁷⁷

Information may be blocked because it does not fit the current mode of understanding:

“The principles of clients’ self-determination, working through parents, keeping families together, on the one hand, and pessimistic perceptions of alternatives to care within the family on the other, influence understanding and action.”⁷⁸

Paul: Death Through Neglect identified “two distinct factors at play in social service provision which failed to prevent the tragedy in this home”: organisational fragmentation and the focus of social work intervention as shaped by policy and perception:

⁷⁶ Reder et al, *supra* note 12 at 94. See *A Child in Trust*, *supra* note 10; *Paul: Death Through Neglect*, *supra* note 21; and the *GoveReport*, *supra* note 74 on this point.

⁷⁷ *Lucy Gates*, *supra* note 28 at 6.17, DHSS *supra* note 7 at 5.

⁷⁸ DHSS *supra* note 7 at 60. Reference to *A Child in Trust*, *supra* note 10 at 294; *Lucy Gates*, *supra* note 28 at 24.7; *Liam Johnson*, *supra* note 71 at 3.67

Social work, not just in Islington but nationally, was firmly committed to Community Social Work in the late 1970s through to the mid-80s. Community social work is the provision of resources such as finance, housing and other practical help, together with short term supports from social workers and other professionals, to ensure that families in need are able to stay together and children protected.

By the mid 1980s in most local authorities, policy makers had come to realise that, laudable though the objectives of community social work are and effective as they were in practice for the vast majority of families, there was nevertheless a core of children who, irrespective of the supportive resources and systems provided, were still at risk of either severe abuse or neglect.⁷⁹

This realisation seems to have come too late for Paul and his siblings: why?

Because the professionals involved with the family perceived the children as dirty, smelly, but happy [a conclusion for which there was no evidence] other professionals, when they became involved, seemed unable or unwilling to pursue any alternative scenario and lacked confidence in changing the prevailing view... One professional told us that, despite her concerns, she felt powerless to change the direction because of the prevailing view. It was as if a collective inertia prevailed.⁸⁰

This relationship between “policy and perception”, the larger context (“policy”) and the intimate or familial context (“perception”) is crucial. The important “family context” (here, “dirty and smelly but happy”) is *created by* perceptions which are themselves decisively shaped by the larger social and legal context. The “family context” then becomes what the case is *about*. This relationship is important to understanding the Maria Colwell case, discussed in some detail in the next section.

g) “I know what she’s like”: the long relationship

⁷⁹ Paul: *Death Through Neglect*, *supra* note 21 at 161.

⁸⁰ *Ibid.*, at 162.

Where there is a long relationship between a family and a particular worker, cumulative misperceptions and a developing "I know what she's like" belief may block worker recognition.⁸¹

"... we summarised the eight years of injuries, accidents and illnesses suffered by all three of Linda Gates' children. During that time, Linda received regular social work visits to provide her with emotional and financial support, intensive home help and rehousing, as well as nursery placements, holidays, respite care and relief fostering for the children... The home help eventually left because she felt that Linda was taking advantage of her and she described her as childish, moody, prone to temper tantrums and in need of someone with her 24 hours a day to stop the situation deteriorating. The health visitor also felt that Linda needed a "grandma figure 24 hours a day". A case conference on all three children recommended massive support to keep the family intact and envisaged a minimum of ten further years of social work input. The first social worker involved with the Gates family visited them weekly for a further year after she had left the social work department and the case had been re-allocated. There is a danger in these situations [of] front line professionals sharing a conviction with parents that they are essential to the family's well being and that the family would collapse without their regular input. This belief can lead to the development of a closed system which excludes other workers who might adopt a more controlling approach. The NSPCC were called by neighbours to the Gates home on several occasions but withdrew after discussion with the social worker. It was only when the social worker was on leave that the NSPCC requested a case conference which resulted in the children temporarily going into care."⁸²

This social worker left without forwarding a case summary or file to the new social worker on the case. Lisa Godfrey's probation officer (she was on probation for defrauding the DHSS) became a "communication switchboard" between the family and all other agencies, suggesting social services were not "relevant" in the situation (social services kept the file open but took no further action):

When social services later planned a case conference, the probation officer suggested that, since housing was a major issue, the conference should not take place if the housing directorate could not be represented. When the health visitor informed social

⁸¹ DHSS, *supra* note 7 at 59, 61.

⁸² Reder et al, *supra* note 12 at 98.

services that Lisa was bruised, social services told her to inform the probation officer, whose reaction was to contact the housing directorate.⁸³

Failure to Read Warnings and Signs

The 1981 DHSS study identifies “warnings and signs”⁸⁴ repeating throughout the reports which could have alerted workers to dangerous situations: children being left alone,⁸⁵ dwindling school attendance,⁸⁶ and, critically,⁸⁷ failure of professionals to gain access.⁸⁸

a) failure to pay attention to the child

The failure of workers to communicate with children directly or to pay attention to children when they do indicate their unhappiness and fear or attempt to get help is well documented throughout the reports.⁸⁹ That the child’s “messages” might not always be clear is “not least because children tend to give up if their messages are not well

⁸³ *Ibid.*, at 76.

⁸⁴ DHSS, *supra* note 4 at 31.

⁸⁵ *Lester Chapman*, *supra* note 18 at 174; *Maria Colwell*, *supra* note 33 at 117; *Steven Meurs*, *supra* note 50 at 7.04; *Joint Inquiry arising from the death of Neil Howlett* (City of Birmingham District Council, Birmingham AHA, 1976) [hereinafter *Neil Howlett*] at 4.

⁸⁶ *Lester Chapman*, *supra* note 18 at 201; *Maria Colwell*, *supra* note 33 at 120, 124.

⁸⁷ Identified as a “critical danger sign” in *Steven Meurs*, *supra* note 50 at 7.16; *Carly Taylor*, *supra* note 2 at 48; *Paul Brown*, *supra* note 33 at 101.

⁸⁸ DHSS, *supra* note 4 at 31. The *Beyond Blame* study identifies this warnings sign as part of a general phenomenon of “closure” preceding a child’s death, in which a family increasingly shuts itself off from the outside world, Reder et al, *supra* note 12 at 99.

⁸⁹ *Paul Brown*, *supra* note 33 at 79; *Wayne Brewer*, *supra* note 38 at 2.62; *Darryn Clarke*, *supra* note 61 at 43; *Lester Chapman*, *supra* note 18 at 165-169, 207; *Maria Colwell*, *supra* note 33 at 53, 294, 306, 317; *Richard Clark*, *supra* note 52 at 39, 68, 88, 91; *Stephen Menheniott*, *supra* note 34.

received.”⁹⁰ A shocking example of this can be found in the Maria Colwell report, which will be discussed in some detail later. After a ferocious campaign of resistance to being “re-united” with her natural mother and stepfather were repeatedly ignored, the little girl finally gave up: her last doctor’s examination (before she was killed by her step-father) was carried out entirely in silence.

The circumstances of Jasmine Beckford’s final visit from her social worker dramatically illustrate the point.⁹¹

On 6 June 1982 Miss Knowles [health visitor] made her last visit to the Beckford family before handing over the case to Miss Leong. She described Jasmine as “rather a pathetic child” and “still looked pinched and ([word illegible]).” ... It is surprising that during her extensive work with the Beckford family in April and May 1982 Ms. Wahlstrom also did not come to a like conclusion about the picture Jasmine was presenting to Miss Knowles. But then Ms. Wahlstrom was not looking at Jasmine as a child to be protected, even if she averted her glance from the Beckford parents to the children.⁹² ... On 12 March 1984 Ms. Wahlstrom saw Jasmine alive for the last time... Ms. Wahlstrom very seldom visited the Beckford family unannounced. Indeed, on one occasion... when she did visit unannounced, Beverley berated her for having come on the wrong day. Beverley was placated by the news that Ms. Wahlstrom had come to arrange for the review which would lead to the removal of the children from the child abuse register... We have, moreover, found that on no occasion over a two and a quarter years of home on trial did Ms. Wahlstrom take Jasmine out on her own for a walk; that she recorded no conversation with Jasmine; and that virtually all the entries in her Social Worker’s Report which mentioned Jasmine were related to matters that occurred in the presence of one or both Beckford parents. Ms. Wahlstrom demonstrated with eloquent testimony the negation of any sense of personal relationship between her and the two children.

Ms. Wahlstrom’s own entry for this occasion [the final visit] is headed: *Home visit as arranged*... Ms. Wahlstrom enquired about the children and Beverley took her upstairs... Jasmine (dressed in jeans) and Louise were both sitting on the floor watching the “Jungle Book” on a hired video... When Ms. Wahlstrom came into the “playroom”, Jasmine did get up but took only a step or two towards the bedstead, [which] she probably used to prop herself. She did not walk across the room and was not heard to

⁹⁰ DHSS, *supra* note 4 at 32

⁹¹ They also merit describing in some detail for their resemblance, pertinence, to the *Gove Report*, *supra* note 74.

⁹² *A Child in Trust*, *supra* note 10 at 119.

say anything. She remained in that position for some moments and then continued watching the film. Ms. Wahlstrom proceeded to have a conversation with Beverley Lorrington in which she admitted that she no longer took Jasmine to a nursery class, the reason given being that she had been off school for a while with a bad cold and got out of the habit of going to school." ... Morris Beckford returned home and the three adults went downstairs...

Ms. Wahlstrom's record of the children's health and welfare was that "all three appeared well and happy". Before us, she amended the phrase to "calm and collected". The grounds for those generalised words are not apparent... we find that on that day Jasmine was recovering from a fracture of her thigh and would have walked with an abnormal gait. Since she did not perform any purposeful act of mobility, her healing bone fracture would not have been noticed. Ms. Wahlstrom also explained to us- and we accept her description- that Beverley Lorrington was waving her arm about so that Jasmine was partially obscured from sight, Miss Lorrington standing between the two of them in the playroom... We conclude that Ms. Wahlstrom was gravely in error in doing no more than have a cursory glance at the children in front of the TV set... We conclude, moreover, that the visit was stage managed by the Beckford parents who had been given five days notice of the impending visit and thus had ample opportunity to arrange the sitting of the children and the unrevealing clothing worn by Jasmine. Indeed, Morris Beckford said as much in his written statement to the Inquiry. Ms. Wahlstrom should have been alive to such parental ruses to conceal the effects of child abuse.⁹³

Paul: Death Through Neglect considers that "opinions" and "value judgements" at variance with the information contained in the family's file "suggests to us that no one who was dealing with the family ever got to grips with the detailed history and developmental issues that were unfolding in relation to each of the children over the fifteen years:

There is, however, another gap in the way in which information was dealt with. If one considers the contents of the column in the case history labelled "What the child says and impact of this" then it can be seen that little was occurring in terms of attempting to establish the views of the children within the family... This is a theme we will return to later. At this stage it is important to note that when one is attempting to establish accurate information about a situation, asking the children themselves is an important avenue to pursue.⁹⁴

⁹³ *Ibid.*, at 125-126.

⁹⁴ *Paul: Death Through Neglect*, *supra* note 21 at 152.

One “case history” from a study of social work practice has the worker consciously not “singling out” the child for private contact, on the grounds that to do so would isolate and perhaps alienate her from her familial context, despite the fact that in this particular case the child had been allotted her *own* social worker, and the family another.⁹⁵

b) parents asking for the child’s removal

The 1981 DHSS study notes as striking “the number of cases in which parents or parent figures asked for children to be removed in one way or another.”⁹⁶

Mrs. Godfrey kept asking for a holiday for Lisa, or for a full-time nursery place, and would not be put off by offers of child guidance⁹⁷ On one occasion when she said she wanted Lisa taken away she also said she was striking her again.⁹⁸ Similar warnings were given to the general practitioner by Mr. Auckland⁹⁹ and to the health visitor by Mrs. Piazzani¹⁰⁰ and Mrs Howlett.¹⁰¹ Richard Clark’s private foster parents asked for the children to be removed, ostensibly because their father was not offering sufficient support. As their own children had previously been removed and then placed home again under supervision it must have been difficult for them to suggest they could not cope.¹⁰² In the Lester Chapman case, Lester’s step-father twice called for help in relation to Wendy, the first time stating that she would have to go into care. On both occasions she was removed from the home.¹⁰³ Later, when Lester ran away for the

⁹⁵ “In this case it is difficult to distinguish the roles of the two social workers allotted to the family. Their briefs may have been different, but their reports are remarkably similar. The social worker for the child never actually saw Alia on her own. She wanted Alia to feel integrated with her family and not set apart.” M. Jay and S. Domains, *supra* note 23 at 34.

⁹⁶ DHSS, *supra* note 4 at 33.

⁹⁷ *Lisa Godfrey*, *supra* note 1 at 22, 45.

⁹⁸ *Ibid.*, at 41.

⁹⁹ *John Auckland*, *supra* note 18 at 50.

¹⁰⁰ *Max Piazzani*, *supra* note 18 at 19(f).

¹⁰¹ *Neil Howlett*, *supra* note 85 at 3.

¹⁰² *Richard Clark*, *supra* note 52 at 35.

¹⁰³ *Lester Chapman*, *supra* note 18 at 127, 133.

second time Mr. Chapman “said that he did not want Lester in the house”¹⁰⁴, although he did not demand immediate action, and later still he threatened to leave the boy on the social worker’s doorstep in an effort to apply pressure for something to be done.¹⁰⁵ Part of this pressure stemmed from a genuine concern for the child’s safety, and a search for a solution to the child’s behaviour problems rather than a wish to be permanently parted from him^{106 107}

Jean Duncan became the “unofficial” foster parent of Richard Clark and his brother Robert after their mother was charged with the attempted murder of Richard’s father. Jean Duncan was a drinking partner of the boys’ mother, and had previously been convicted (along with her husband) of severe neglect of her own children. Many workers, and the boys’ father were concerned with Richard and Robert’s situation at the Duncans, yet they remained in the “unofficial fostering” placement¹⁰⁸ until Richard was admitted to hospital with massive cerebral haemorrhage (he did not die, but will never recover from his severe disability). Jean Duncan was sentenced for assault, receiving four years; David Duncan for two years.¹⁰⁹

¹⁰⁴ *Ibid.*, at 188.

¹⁰⁵ *Ibid.*, at 204.

¹⁰⁶ *Ibid.*, at 240. The statement about Lester Chapman’s step-father being sincerely concerned about his emotional state must be tempered by pointing out the connection between the boy’s “flights” and severe parental assaults, Reder et al, *supra* note 12 at 104. It is, of course, entirely possible that the step father was unable to make the connection between the boy’s “emotional problems” and his abusive and rejecting home life.

¹⁰⁷ DHSS, *supra* note 4 at 33-34.

¹⁰⁸ Social services considered the Duncans to be unsuitable as “official foster parents”; Reder et al, *supra* note 12 at 74.

¹⁰⁹ This account from Reder et al, *supra* note 12 at 152.

Lester Chapman was taken into care aged five months, along with his sister, because of neglect. They stayed in care for two and a half years. Their mother, Linda, divorced and remarried during that time and the children were “re-united” with the new couple. Over the next four years the NSPCC and social services were contacted about the children, who were put on the At Risk Register for four months. Lester ran away from home repeatedly until disappearing; he was later found dead of exposure/suffocation, having fallen into sewage sludge.¹¹⁰

Failure to Assemble Complete and Accurate Information: Passivity and Credulity

The 1981 DHSS study identifies difficulties in assembling complete and accurate information, stressing that such “pooling” requires active “liasing” rather than “passive” assembly.¹¹¹ The 1991 collection contains a great deal about the need for various agencies to understand their individual roles as part of a wider social policy role, share information and actively pursue issues rather than wait passively until events force their hand. The Tyra Henry inquiry considered the difficulties posed for social workers by an expanded “policing” role: “It is one thing for a neighbour to report seeing Claudette Henry [Tyra Henry’s mother] and Andrew Neil [her father] in the street together; it is another for a social worker to visit the neighbour in search of such information.”¹¹² The conclusion that professionals should assume an active role in child abuse situations is troubled by the

¹¹⁰This was also a significant factor in the Vaudreuil case, discussed in detail in Chapter Four.

¹¹¹ *Ibid.*, at 35.

¹¹² *Tyra Henry*, *supra* note 67 at 7.16; DHSS, *supra* note 7 at 5.

Cleveland “affair”, in which the decision of doctors to take an active role in diagnosing child sexual abuse (as opposed to a passive “response”, and then only in the face of overwhelming evidence or when contacted or asked to do so by someone else) was the cause of such outrage and “scandal”. Despite the inclusion of Cleveland in the DHSS 1991 study, the connection between the “passivity” uncovered by the death inquiries and the “activism” in Cleveland goes unremarked.

Information must be corroborated to be accurate; the reports show a tendency to uncritically accept parental versions as true accounts:¹¹³ “Karen Spencer’s mother claimed untruthfully to be visiting her child in hospital daily;¹¹⁴ John Auckland claimed that his daughter Marianne (whom he had battered to death) died because he had a blackout and dropped her¹¹⁵ while his wife said her death had been an accident”,¹¹⁶ before telling the truth about Marianne’s death after Susan had been returned to her father.

Inappropriate Focus

The focus of assessment and intervention must be, and stay, appropriate: “In many of the cases studied, for example, housing was mistakenly seen as the source of all difficulties.”¹¹⁷ The “decoy of dual pathology” identified in the 1991 DHSS study as a

¹¹³ DHSS, *supra* note 4 at 36.

¹¹⁴ *Karen Spencer*, *supra* note 3 at 47.

¹¹⁵ *John Auckland*, *supra* note 18 at 146.

¹¹⁶ *Ibid.*, at 148.

¹¹⁷ *Lisa Godfrey*, *supra* note 1 at 38, 134, 135; *Malcom Page*, *supra* note 19 at 3.103; *Simon Peacock*, *supra* note 33 at 5.1; *Graham Bagnall*, *supra* note 13 at 14; DHSS, *supra* note 4 at 38.

block to worker *recognition* is also a block to appropriate focussing; it becomes difficult for a worker to shift focus where it is initially concentrated on housing, for example. Security in a point of view, another block to recognition, also acts to perpetuate an inappropriate focus.

The question of "focus" is inextricably bound with worker "blocks to recognition", so much so the "solution" to persistent blocks suggested by the 1991 DHSS study is, in fact, a clear child centred focus in a "framework of policy and principle" constructed around that focus.

Stripped of the inessential details of social work activity, the picture is one of unrelieved focusing on the parents. In short Mrs. Dietmann (the supervisor) and Ms. Wahlstrom had been saying, at least since May 1982: "We can rehabilitate this family if we work hard enough on defective parents..." Once the Beckford's were rehoused in March 1982, the social workers' earlier pessimism about rehabilitation quickly changed to a *genuine* attempt at rehabilitation. As soon as the social workers thought they saw the first signs of improved conduct on the part of Morris Beckford and Beverley Lorrington, an overweening optimism took hold. The prime focus on the parents was never adjusted- indeed, it was sharpened as the home on trial appeared, month by month to be working. Jasmine thus became a victim of persistent disfunctioning social work while the law demanded, above all, her protection.¹¹⁸

Inability to Commit to a Course of Action

Regarding "intervention", the first DHSS study notes both the importance of a clear and considered plan¹¹⁹ and the importance of *carrying it out*:

¹¹⁸ *A Child in Trust*, *supra* note 10 at 127.

¹¹⁹ *Malcolm Page*, *supra* note 19 at 2.23; *Wayne Brewer*, *supra* note 38 at 5.8; *Lisa Godfrey*, *supra* note 1 at 175; *Carly Taylor*, *supra* note 2 at 58, 125; *Karen Spencer*, *supra* note 3 at 2.79; *Maria Mehmedaggi*, *supra* note 41 at 100, 107; *John Auckland*, *supra* note 18 at 152, *Richard Clark*, *supra* note 52 at 66.

Once a plan of action has been adopted and clear decisions taken, they must be implemented: there are several instances in the reports of decisions simply not being carried out. In the Karen Spencer case, immediate reactions to Karen's first injury are described as "swift and efficient". But at a later case conference it was agreed, among other things, that a psychiatric assessment of the mother should be arranged. The psychiatric referral was not made, and the omission was not recognised until the next case conference. Even then a letter of referral prepared by the GP was not sent. There was no indication in the minutes of the case conference as to who should have taken action.¹²⁰ A potentially dangerous situation can be caused when intervention becomes routine or "token", without a clear follow-through from plan to implementation.... Over a period of three weeks immediately after [Susan Auckland's] return the social services "made one visit to a convicted child killer who had for the first time been left in sole charge of three small children... No liaison was established between the social services and the health visiting service, and the latter service did not in fact visit at all."¹²¹

Reluctance to commit to a course of action appears related to a reluctance to assume responsibility one's self, passing it on to another player in the "system". And so Richard Clark's social worker, having realised that the child's situation requires action, frantically searches for others to make the necessary decisions for her:

Finally, there are reminders that decisions made in critical situations should be implemented as a matter of urgency. In the Richard Clark case, after numerous expressions of concern from other workers and from family members, the social worker herself became worried that the child might be being battered and in consultation with her senior it was decided he should be removed. However, it was decided to postpone action until after a meeting with the children's father two days later. The inquiry considered "that once the need to remove Richard had been accepted this should have been done as soon as possible without waiting for the further two days which must inevitably elapse if removal was to be postponed until after the meeting with Mr. Clark".¹²² In the event the matter was not considered again as Mr. Clark did not keep the appointment and the next morning the social worker found Richard's condition had seriously deteriorated. She could not contact the health visitor but she called the GP shortly after mid-day and told the receptionist that the matter seemed 'fairly urgent'. She also told her senior that Richard needed "urgent medical attention". Further phone calls were made to the GP who eventually saw Richard at 4.20 PM and arranged immediate admission to hospital. The inquiry concluded, with hindsight, that the social

¹²⁰ *Karen Spencer*, *supra* note 3 at 2.60; also, *Lester Chapman*, *supra* note 18 at 101; *Max Piazzani*, *supra* note 18 at 19(e).

¹²¹ *John Auckland*, *supra* note 18 at 230; *DHSS*, *supra* note 4 at 41-42.

¹²² *Richard Clark*, *supra* note 52 at 72.

worker should have taken the decision to have the child removed to hospital immediately without waiting for the GP to visit.¹²³

Failure to Take Complaints Seriously

In most cases considered in the 1973-1981 study, neighbours and relatives contacted authorities about the child's situation, the exception being the John Auckland case.¹²⁴ In the cases of Maria Colwell, Lester Chapman, Carly Taylor and Darryn Clark, there were numerous complaints. In a number of reports information subsequently validated by the inquiries was dismissed as "idle gossip" or otherwise "unreliable", and "the mounting sense of crisis on the part of relatives and lay people was not shared by professionals."¹²⁵ Although the study found examples of prompt and effective investigations,¹²⁶ there were also numerous examples of inadequate- or non-existent- investigations.¹²⁷

The Lucy Gates inquiry provides a striking example of a situation in which neighbours' complaints' were justifiable *and* their behaviour indicated extreme hostility towards Linda Gates; of course their perceptions and actions were disentangleable. Linda Gates'

¹²³ *Ibid.*, at 73; DHSS, *supra* note 4 at 42-43. Other reference: *Carly Taylor*, *supra* note 2 at 76.

¹²⁴ DHSS, *supra* note 4 at 43.

¹²⁵ *Ibid.* *Carly Taylor*, *supra* note 2 at 78, *Darryn Clarke*, *supra* note 61 at 148; *Max Piazzani*, *supra* note 18 at p22; *Steven Meurs*, *supra* note 50 at 8.09, 10.11, 12.06; *Maria Colwell*, *supra* note 33 at 80, 96.

¹²⁶ *Wayne Brewer*, *supra* note 38 at 2.48, 2.62; *Lester Chapman*, *supra* note 18 at 23, 24; 26 *Simon Peacock*, *supra* note 33 at 8, 5.4.

¹²⁷ *Paul Brown*, *supra* note 33 at 69, 73; *Maria Colwell*, *supra* note 33 at 94, 103, 110, 124, 143; *Carly Taylor*, *supra* note 2 at 23; *Darryn Clarke*, *supra* note 61 at 98, 99; *Neil Howlett*, *supra* note 85 at 5; *Steven Meurs*, *supra* note 50 at 6.10, 6.12.

neighbours seem to have hated her because of the behaviours which put her children at risk:

Lucy Gates' neighbours were viewed as malicious and not responded to yet their information was extensive: "Linda's flat was filthy; her children were dirty and neither properly clothed nor fed; she had an assortment of male visitors; sometimes she left the children alone until the early hours of the morning while she visited a public house; she hit the children excessively and without cause." The neighbours, it was said, had expressed their disapproval of Linda by putting dead mice through her letter box. Their complaints were not taken seriously by the social worker.¹²⁸

The failure to take complaints from neighbours, extended family, acquaintances - the child's community- seriously is also highlighted in the *Gove Report*. These themes and patterns from child protection "failures" are significant in the context of recent recommendations made by the Children's Commissioner¹²⁹ that community complaints be encouraged as key to successful child protection.

Circumstantial Elements

Lastly, the DHSS 1981 study considers those "circumstantial" elements it styles "The Context of Professional Practice", "beyond the control of professionals at the time that decisions are taken but not, of course, beyond all control": resources, training and experience, supervision, staffing and recruitment, accommodation and administrative support, and re-organisations. These elements are repeated in the DHSS 1991 report, together with the issue of interagency co-operation as a priority for improvement and the shortage of black workers as a particular recruitment issue: this shortage was barely

¹²⁸ *Lucy Gates*, *supra* note 28 at 5.17; DHSS, *supra* note 4 at 66.

¹²⁹ In her first report and in the Mavis Flanders inquiry; see *infra*, Chapter Five.

addressed in the 1981-1989 reports, although 7 of the 19 reports considered minority children.

“A hurdle to cross for senior managers as all others, is the different points of view derived from different agency functions.”¹³⁰ An example of this is given from Cleveland: “one point of tension is how to relate the ‘bureaucratic’ to ‘professional’ structures, where the Director of Social Services tells doctors the resources do not exist to cope with the number of referrals and asks them to ‘reduce diagnoses’, which the doctors find unacceptable.”¹³¹

All three studies identified the problems of inter-agency communication as key, and the danger of information being lost or “falling through the cracks”, its significance unrecognised, because of a failure/inability to put the big picture together.

To summarise, these “themes and patterns” in dangerous practice are identified and considered in the three comparative studies discussed: the failure to exercise authority; insufficient knowledge of the law and a tendency to “pre-guess” court out-comes; a tendency to compile reports uncritically based on information given by the parents/parent figures whose behaviour is in question; lack of expertise combined with “blocks to recognition”; warning signs, including the statements of the children themselves, which go unheeded; failure to recognise the significance of a request that a child be removed;

¹³⁰ DHSS, *supra* note 7 at 24.

¹³¹ *Cleveland*, *supra* note 9 at 4.117-118.

passive stance as a mere receptor of information; inability to focus assessment appropriately, draw up a considered plan, and carry it out; failure take complaints from a child's immediate community of family and neighbours seriously; and inadequate or even non-existent investigations.

The inquiry reports are themselves extreme and unusual events; are the stories they contain so extreme and unusual as to be applicable only to themselves? What are the implications of the reports for child protection; what "lessons", if any, do they contain? The "big picture" in the collections shows not "gross" or aberrant mistakes, but *regular* (in the sense of ordinary *and* repeating) patterns of behaviour which occasionally lead to tragedy but more often, and through no greater virtue, do not.¹³²

The limitations of the inquiries were noted in the 1980-1989 DHSS collection¹³³ to be manifold: generalising from failure is self-evidently unsound; information, evidence available to the panel is partial; the focus on abuse as the product of family interaction, and on the family as the recipient of services, excludes an analysis situating abuse within social

¹³² Cyril Greenland has considered child death inquiries from a comparative, international perspective. Greenland's data is used by the *Beyond Blame* authors as a comparison for their own conclusions, against which to check/identify "common characteristics and patterns". Greenland is interested in identifying characteristics and patterns of behaviour in abusive and neglecting parents (he develops a "high risk check list" based on his findings), less so with identifying and analysing patterns of professional behaviour, but the "themes and patterns" in his studies are similar to those discussed here. See: C. Greenland, *Preventing CAN Deaths: An International Study of Deaths Due to Child Abuse and Neglect* (London: Tavistock Publications, 1987); C. Greenland, "Lethal Family Situations: An International Comparison of Deaths From Child Abuse" in *The Child in His Family: Preventative Child Psychiatry in an Age of Transitions*, Volume VI; E.J. Anthony and C. Chilland, eds. (New York: John Wiley & Sons, 1980); C. Greenland, "Inquiries into Child Abuse and Neglect (CAN) Deaths in the United Kingdom" (1986) 26 BJC No. 2 164. And see C. Greenland, "Reporting Child Abuse in Ontario" (1973) 10 Reports of Family Law 44.

¹³³ DHSS, *supra* note 7 at 109.

relations of class, race and gender; insufficient exploration of questions of environmental deprivation and what (unavailable) services *could have* helped, and why some people kill children while others do not.¹³⁴ Considering the reports collectively, the DHSS report finds two points strike “most forcibly”: the fragmentation and isolation of child protection from the rest of child care and the extreme polarisation of opinion, and people, within and around the inquiry event.¹³⁵

Maria Colwell

In retrospect, it now appears that, apart from the specific issues over supervision, the Committee of Inquiry found itself ensnared by a public preoccupation with the fundamental question of the nature of the relationship between social work and society, social work and the State. The interest of the public and of the media in the case of Maria Colwell- not underestimating the importance of the tragedy itself- was fanned by a widespread feeling of a need to re-assess the role of social workers in the community, and their role *vis a vis* some of the moral issues that are powerful factors in any culture-natural parenthood, fostering, adoption, child protection, delinquency and crime, deprivation and freedom of the individual.¹³⁶

The Report of the Committee of Inquiry into the Care and Supervision Provided in Relation to Maria Colwell [hereinafter “Maria Colwell”], published in 1974, initiated the wave of high profile child death inquiries of the 1970s and 1980s. The *Report* consists, in fact, of two reports, one compiled by the majority (Chairman T.G. Field-Fisher and

¹³⁴ *Ibid.*

¹³⁵ *Ibid.*, at 110.

¹³⁶ *A Child in Trust*, *supra* note 10 at 12.

Alderman Mrs. M.R. Davey), the other compiled by social worker Olive Stevenson (the minority).¹³⁷

The two reports are a remarkable example of the “framing process” in child protection described by Dingwall et al in *The Protection of Children: State Intervention in Family Life*. The narratives in the majority and minority reports are, in important respects, very *different* stories.¹³⁸ We read the majority report first, a series of mis-read signs, misguided persistence, and apparent insensitivity. The majority report is difficult to read. The reader feels angry and powerless as the narrative relentlessly describes Maria’s increasing distress, her panic as the plan to return her to her mother moves towards implementation. It is terrible to realise the child’s defeat and demoralisation, her subsequent retreat into isolation and pathetic fantasy, and the frantic attempts of her community- her neighbours and teachers- to persuade the authorities of Maria’s danger.

Olive Stevenson’s minority report is a relief. The workers’ decisions , up to and including Maria’s transfer to her mother, seem both reasonable and sensitive, much to the surprise (and gratitude) of the reader. The minority report is a far less harrowing experience, and,

¹³⁷“It is a matter of regret to the Committee, however, that we have been unable to reach agreement on certain matters, and on these Miss Stevenson has submitted a minority report”. *Maria Colwell, supra* note 33 at 7. The *Lucy Gates* Inquiry also produced two reports (the Chairman’s report and the report of the other panel members). According to the 1980-1989 DHSS collection, these reports show a “straight divergence of view about the interpretation of Linda Gates’ behaviour, and the appropriateness of the professional agencies response to it. Inquiries may allow themselves two decisions. Children in need of protection need one.” DHSS, *supra* note 7 at 82.

¹³⁸ Significantly, Miss Stevenson’s report was later described by one social worker as *the bit that really mattered*: “Jeanne Wall feels that Olive Stevenson was the only member of the panel who understood the reality: ‘Her minority report was the only bit we took seriously in a way- that was the bit that really mattered because that was the professional view.’” A. Shearer, “Tragedies Revisited (1): The Legacy of Maria Colwell” (1979) 10 *Social Work Today* No. 19, 12 at 16.

despite the reader's knowledge of the outcome, in many respects more persuasive: but, as Olive Stevenson concludes her report, "the narrative will speak for itself and I do not wish to apportion degrees of blame."

The following narrative is taken from the majority report.

Maria Colwell was born in March, 1965. She was her mother's fifth child. Maria's father left home in the weeks after her birth and died suddenly that July; Mrs. Colwell "went completely to pieces".¹³⁹ In August Mrs. Colwell's sister-in-law, Mrs. Cooper, agreed to look after Maria (then four months old). The arrangement was private, and voluntary.

Mrs. Colwell's other children were removed under a place of safety order in December; later that month all four were committed to the care of the local authority. Two were eventually boarded out with their maternal grandmother, two with foster parents.

In June 1966 Mrs. Colwell removed Maria from the Coopers. She intended, at that time, to "set up house"¹⁴⁰ with Mr. Kepple, who she would eventually marry. The following week, Mrs. Colwell left Maria with another woman in unsuitable conditions; the NSPCC removed Maria on a place of safety order and, as an interim measure, returned her to the Coopers. The following week Maria was placed under the care of the local authority. At that time, the authority contemplated placing Maria in a residential nursery, which was Mrs. Colwell's preference, but decided to board Maria with the Coopers as foster parents,

¹³⁹ *Maria Colwell*, *supra* note 33 at 11.

¹⁴⁰ *Ibid.*, at 12.

recognising their previous satisfactory care and wishing to avoid another move. It was explained to the Coopers that the placement was temporary, the long term plan being to return Maria to her mother.

The next "event of significance" noted by the report¹⁴¹ was a disagreement over having Maria christened. Mrs. Colwell had by this point started her second family of children with Mr. Kepple (three children being born in 1967, 1968, and 1969 respectively) and anticipated marrying him (Mr. Kepple was a Catholic, and although Maria's mother was not bothered whether the other children in her first family were brought up in the Church of England, she determined that Maria should become a Catholic).

"Despite the apparent degree of stability in Mrs. Colwell's relationship with Mr. Kepple and the steady arrival of further additions to their family, we gained the impression from the evidence relating to the years 1966-1969 that any improvement over that period regarding Mrs. Colwell, either of a material kind or of temperament, could not be assumed to be either substantial or lasting."¹⁴² In 1969 and 1970 there were complaints of Mrs. Colwell and Mr. Kepple going out drinking and leaving the children alone at night, and a visiting social worker thought a child may have been struck by Mrs. Colwell. In 1969 Mrs. Colwell asked for Maria's care order to be varied for specific access: "The attitude of the Social Services Department [at that time] was to encourage contact between Maria

¹⁴¹ *Ibid.*, at 14.

¹⁴² *Ibid.*

and her mother, but that was not linked at that time with any intention or idea by the latter to have Maria returned to her.”¹⁴³

Rather ominously, the report then describes how “two things of importance”¹⁴⁴ for Maria occurred in April 1970: she began to attend Middle Street Infants School and a new social worker, Miss Diana Less, took over her case.

That July Mrs. Colwell [hereinafter Mrs. Kepple] told Miss Lees she expected to move into a council house when she and Mr. Kepple got married, and that they would “get Maria back”:

As this was said in front of Maria, Miss Lees thought this an unsuitable conversation and managed to stop Mrs. Kepple “with difficulty”. Later during the same visit when Maria was upset and crying for “mummy”, Miss Lees noted that Mrs. Kepple very insensitively claimed that position in a tactless way. In view of later events it may well be that Maria’s fears for her security and happy home at the Coopers were aroused then for the first time... Even if her unease did not date from this incident it clearly existed by October 1970 when Mrs. Lees attempted to take Maria from school to see her mother in the new council house... On that occasion Maria was so distressed that Miss Lees had to abandon the visit and she recorded also that Maria had been told by her mother that she would have to live there.¹⁴⁵

The visits continued. Maria became distressed at suggestions she was to live with the Kepples, but otherwise seemed to accept the visits. In April 1971 Mrs. Kepple asked Miss Lees whether Maria could go home on trial. The ensuing case discussion lasted one and a half hours.

¹⁴³ *Ibid.*, at 15.

¹⁴⁴ *Ibid.*

¹⁴⁵ *Ibid.*

It would seem that whatever the decision was taken concerning Maria it would involve stress and trauma for her at some time. On balance it was felt that future plans should be directed towards her eventual return to her mother. It was recognised that while she remains with the Coopers she would continue to be the centre of conflict. It is unlikely that the Coopers will be able to deal with her feelings in adolescence concerning her natural parents, and it is possible that at this age she would herself decide to return to her mother. It should be easier for her to build relationships with the Kepple family and to take her place within [it] at a younger age, particularly considering the good emotional grounding she has received from the Coopers.

It was seen that the best way to manage a situation of this type would be for Maria's visits to the Kepples to be gradually increased to include holidays, etc., and in this way to effect a gradual transferring of her roots from one family to the other. She would then go home on trial whilst still remaining in care and contact with the Coopers would gradually diminish until revocation of the order could be supported. However, this type of management would not be possible in this case, because of the animosity between the Coopers and the Kepples...

It was felt that the best plan... was the gradual changeover up to the point when the stress for Maria appeared to be becoming too great, i.e. contact with the Kepple family should be encouraged and increased to give Maria the opportunity of knowing them better before her sudden transfer to them. With this in view, Mrs. Kepple should be encouraged to delay her application for revocation and go along with such a plan.¹⁴⁶

The majority report found that the crucial question, whether it was in the best interests of Maria to be returned to her mother,¹⁴⁷ was never asked by the East Sussex social workers, and that the Court was prevented from correctly deciding on the matter by a "total lack on knowledge" about Mr. Kepple, and the misinterpretation of Mrs. Kepple's physical and

¹⁴⁶ *Ibid.*, at 19. "An accurate note" of the case discussion, which is reproduced at length in the report.

¹⁴⁷ In his study of the Colwell report, Salvador Minuchin considered at this point in Maria's story: "Any first-grader would realise that the Kepples were a completely new factor in Maria's life. She was going to a new father, three new siblings, and a mother she had barely seen for six years. But legally this was a 'return' - to Maria's natural environment and to the ownership of her natural mother. This was the first of a fatal series of moves made considering the child in isolation from her context, which is like playing chess with only one piece." S. Minuchin, *supra* note 25 at 147. Although Minuchin appears to have read Olive Stevenson's report he does not seem to have paid much attention to it. The two narratives describe two *different contexts* in which this decision took place, and against which it must be judged. In the context of Olive Stevenson's report the Kepples were not strangers to Maria at all. The "lesson" from the reports is not the folly of isolating the individual from her context, but how the context itself may be formed by the frame of the actor/narrator, and how that context, in turn, creates meaning. Minuchin's subsequent analysis of Maria's situation within the Kepple household *after* her return is insightful.

emotional condition.¹⁴⁸ A “contingency plan” was not prepared for the event that the “transfer” did not work- the assumption seems to have been that *the transfer would happen*; the options for the social workers, *if* Mrs. Kepple did not seek a revocation order immediately (in which case it was assumed the transfer would happen immediately, and very traumatically, for Maria) were how to effect that transfer so as to minimise damage to Maria:

It is clear that the social workers considering the case in April did not consider themselves in a position to make an unfettered decision about Maria’s future. They operated within a legal and social system in which when a child was taken into care the expectation was not that she would remain in care until the age of eighteen but that she would return to her own family when their circumstances had improved.¹⁴⁹

The disturbing story of Maria’s gradual “transfer” to the Kepples starts here. Maria’s distress is obvious, her resistance utterly unambiguous. After an all day visit in June Maria ran away to Mrs. Cooper’s sister; brought back to Mrs. Kepple, Maria screamed and tried to run away again. Mrs. Kepple slapped her. Later that month Mrs. Cooper took Maria to the doctor for “bad nerves”. He gave her a nerve tonic and recommended she not see her mother if she didn’t want to. Miss Lees sent him a note thanking him for his opinion, but did not alter the plan. On July 14th, Maria resumed visiting her mother after “sitting on the floor and screaming that she did not want to go[;] [w]hen she finally went Miss Lees thought she had quite enjoyed herself and was fairly cheerful.”¹⁵⁰ There are many

¹⁴⁸ *Maria Colwell*, *supra* note 33 at 20.

¹⁴⁹ *Ibid.*, at 22. The report prepared and presented to the Court by Miss Lees is reproduced as Appendix II. The revocation order was made on the basis of this document.

¹⁵⁰ *Ibid.*, at 24.

instances in this narrative where, after strenuous resistance and obvious distress, Maria's mood is described as "quite cheerful" or "happy but subdued" by Miss Lees. On July 16 Maria spent the night at the Kepples after more strenuous resistance, eventually going only on condition Mrs. Cooper travel with her: "She needed reassurance that she would return to the Coopers but the visit, according to Miss Lees, appeared to go fairly well. Later, Maria accused the Coopers on her return of making her go because they didn't want her."¹⁵¹ More visits, more incomprehensible interpretation by Miss Lees: "[the visit] lasted for a whole day and... she was reluctant to go until reassured she would not have to stay overnight"; "On August 4 she went to stay for two nights after a considerable scene before she would go but on her return Miss Lees thought she had enjoyed herself":

On the 13th , she went to stay for three nights but at 7:45 the next morning she turned up again on the doorstep of her aunt, Mrs. Shirley, to whom she had run in June. She was half-dressed, barefoot, carrying all her clothes and very distressed. She told Mrs. Shirley she had run away and kept talking about going back to the Coopers. She was taken there and collected again from there by Mrs. Kepple who shook her and slapped her "to make her understand it was wrong to run away". No doubt this recurrence of Maria running away worried Mrs. Kepple and was certainly responsible for her later practice of locking the child in her bedroom. On her return after the visit Miss Lees thought Maria looked happy enough but rather subdued.¹⁵²

By September of 1971 the pattern of regular visits was established: "Maria's resistance was becoming more strenuous, resulting in major scenes on nearly every occasion."¹⁵³ Mrs. Locke, Maria's teacher at this time, told the inquiry she "assumed the authorities knew what they were doing but... that she thought it seemed a very inhuman

¹⁵¹ *Ibid.*

¹⁵² *Ibid.*, at 24.

¹⁵³ *Ibid.*, at 25.

procedure.”¹⁵⁴ And so it seems to the reader as, no doubt, it did to Mr. Field-Fisher and Mrs. Davies (authors of the majority report). In September, Maria returned from a weekend visit with finger mark bruising on her thigh and told the Coopers “the man who lived with Pauline [Mrs. Kepple] had done it.”¹⁵⁵ That Monday she ran away from school to avoid her mother picking her up. On October first, social services learned Mrs. Kepple was planning to apply for the revocation order. “The tension for Maria was approaching an unacceptable level”¹⁵⁶ - as anticipated in April- a decision “one way or the other” had to be made, and Mrs. Kepple’s application would be heard soon. Social services decided not to oppose her application.

I have included some detail of Maria’s resistance - the report itself includes much more- too put this moment from the majority report in context. The decision not to oppose, in this context of Maria’s resistance, is terrible, extremely upsetting even to read.

Their reasoning appeared to be that if Mrs. Kepple did not succeed on this first occasion she would probably do so sooner or later and therefore it was better to accept the position and seek to control it. Their assumption may or may not have been correct- no one will ever know- but that this belief of theirs was genuinely held and, moreover, in accordance with the current climate of opinion we are quite prepared to accept.¹⁵⁷

Mrs. Kepple’s application for revocation of the care order was to be heard November 17, 1972. Maria went to the Kepple house “home on trial” on October 22. “It is fair to

¹⁵⁴ *Ibid.*

¹⁵⁵ *Ibid.*

¹⁵⁶ *Ibid.*, at 27.

¹⁵⁷ *Ibid.*

record”, the inquiry notes, “that two weeks before, Miss Lees on a visit to the Kepples was impressed with the very real efforts to improve the home which had been made recently and also with Mrs. Kepple’s efforts at improving her appearance. She thought the family was on a steady upward trend and the children were developing normally.”¹⁵⁸

On Friday the 22nd Mr. Cooper took Maria to Middle Street School for the last time. She was nicely dressed and brought a box of chocolates for her school friends. Later Mr. Cooper collected her and took her to the Hove Social Services Office whence Mrs. Coulthard (Miss Lees’ senior) took her to the Kepples. She had screamed and clung to Mr. Cooper at the office and was apprehensive about going with her mother who was present. She was given an assurance by Mrs. Kepple in Mrs. Coulthard’s presence that she would be returning to the Coopers at the weekend. We think this was inexcusable. She then went quietly and on that false note her new life began. She was never to see the Coopers again

Shortly after moving to her mother’s, on the Monday, Maria again ran away to her aunt Mrs. Shirley. It is impossible to resist the inference that there was connection between this choice of day and her discovery of her mother’s deceit. She arrived on Mrs. Shirley’s doorstep at 7:45 am wearing only a dirty T-shirt and trousers. She was barefoot, crying and in a very distressed state. She repeatedly said “don’t let me go” and wanted to go back to her mummy and daddy. Miss Lees was telephoned and came round. Maria continued to cry and said she wanted to go back to “mummy and daddy Cooper” and begged not to be sent back to Pauline. When Mrs. Kepple appeared to claim her Maria cringed, according to Mrs. Shirley. Miss Lees thought she calmed down quite well and allowed herself to be dressed and taken home where she was quite “bright and chatty”.¹⁵⁹

Mrs. Kepple’s application was heard on November 17.

The Court had a full report from Miss Lees on behalf of the local authority and we accept that of its kind it was probably of the standard expected in general terms. It was also, we accept, intended by Miss Lees to be fair and in no way to mislead the Court. It made clear that the East Sussex decision not to oppose was not an easy or clear cut one, and it concluded by recommending that a supervision order might replace the care order with Mrs. Kepple resuming her parental responsibilities. Unfortunately, in our view, but entirely naturally in light of Miss Lees interpretation of Maria’s protests and trauma, it put a gloss on that aspect of the matter which distorted the true picture. It referred to Maria’s last running away to Mrs. Shirley but made no mention of the previous three occasions and referred to her “confusion over where her loyalties lie”. To our mind,

¹⁵⁸ *Ibid.*, at 28.

¹⁵⁹ *Ibid.*

there was never at any time on the evidence before us, any doubt at all where Maria's loyalties lay, and that was with the Coopers. On that ground the report can be criticised, but it is important to realise that this only arises because of the social workers' assumptions about the trauma, which we have already indicated they were not qualified to take on their own in the particular circumstances of this case.¹⁶⁰ On the other hand, since it has been admitted in evidence that this was not a moment when, unless forced by events, east Sussex would have chosen to return Maria, it seems to us that the omission of this factor from Miss Lees' report was a mistake. The Court was entitled to know this.¹⁶¹

Maria's resistance appears to have finally run out once she realised the permanency of her separation from the Coopers and new home with the Kepples. Her struggle seems to have been taken up, on her behalf, by her new neighbours. The complaints began in March/April of 1972. The report states the inquiry was "urged" to treat the "emphatic" evidence of the neighbours with "the greatest reserve", on the grounds that the Kepples were "social misfits" in the "somewhat superior council house area" and so disliked; the majority report "unhesitatingly" accepted the neighbours' evidence "in general terms": "The picture presented by that evidence is of an unhappy and deprived child whose general condition was both physically and emotionally deteriorating, at any rate after April 1972."¹⁶² Unfortunately, the neighbours were no more successful than Maria at moving the "authorities".

A Mrs. Ruston emerges from the narrative as the "conscience" of the neighbours. She first contacted the NSPCC after seeing Maria "looking out of the side of a curtain", after not seeing her at all for many days, with a blackened face and bloodshot eye. The NSPCC

¹⁶⁰ The majority report is critical of the social workers' not obtaining psychiatric advice regarding Maria.

¹⁶¹ *Maria Colwell*, *supra* note 33 at 29.

¹⁶² *Ibid.*, at 34.

officer (Mrs. Kirby), after learning that Maria was under the supervision of Miss Lees, went with Mrs. Lees to visit the Kepples. What happened next was referred to in the majority report as a “barrage of lies and prevarication”¹⁶³ as the two women were first told by Mrs. Kepple that Maria (who was “all right”) was at the dentist with Mr. Kepple, then (after Lees and Kirby discovered the dentist had never heard of Maria), told that Maria was shopping with her mother (by a “furious” Mr. Kepple who “hurled abuse” at Miss Lees), an explanation which was then changed for another lie, that Mrs. Kepple had taken Maria to Miss Lees’ own office. When Mrs. Kirby returned later that evening, Maria and Mr. and Mrs. Kepple were present. Maria was bruised on both sides of the face with a very bloodshot eye, as Mrs. Ruston had reported two days earlier. Maria was told to tell Mrs. Kirby that she had fallen off of her scooter. She did so. Mrs. Kirby thought this a feasible explanation.

What follows is a highly condensed version of events between the “April incident” and Maria’s death in January 1973. The majority report contains a lot of detail about these events (the minority report does not discuss events after Maria’s transfer to the Kepples). On April 24 a “deputation” of the neighbours complained to the administrator of the housing estate about the ill treatment of Maria and about the Kepple children being encouraged to defecate outdoors. Complaints continued from neighbours, and from Maria’s teachers, throughout spring and autumn. Miss Lees did not see Maria during that period, believing Mrs. Kirby was visiting regularly; between May 1 and the end of

¹⁶³ *Ibid.*, at 37.

November Mrs. Kirby paid two visits to the Kepple home, and on the second visit she did not see Maria (although she did see Mr. Kepple who thought Maria had something wrong with her mentally).

Other professionals were drawn into the situation. It seems that lack of communication and confusion about roles and obligations were chiefly responsible for the failure of this "failure of containment" to provoke a more investigative response. The police were called to the Kepple house in November after a complaint that the children has been left alone in the house while the Kepples were at the pub. The police did not see Maria in the house, the implication being that she was locked in her room (the inside door handle had been removed so that she could get out). A second deputation of neighbours visited the housing officer. Maria was missing school. The school welfare officer tried to see Maria at her home in December, but was prevented by an angry Mr. Kepple who "brandished a strap in the air during the interview with the clear intention of intimidating her", and told a string of contradictory lies about Maria's whereabouts.¹⁶⁴ When Miss Lees visited in response to the welfare officer's report, she was "completely reassured" having seen Maria, and accepted Mrs. Kepple's version of the confrontation, that the welfare officer had been "officious". "The trouble was , of course, that Miss Lees was merely the first of those to examine Maria over this period who looked for signs of physical injury, expecting to find them, and in the relief engendered by their absence and in the lack of knowledge of

¹⁶⁴ "Once again Mr. Kepple had shown something of himself and his attitude towards authority." *Ibid.*, at 54.

events during the last six months, or recognition of other signs of Maria's deterioration, felt somewhat reassured."¹⁶⁵

Shortly after this episode, Maria was brought to her doctor for her final examination. The doctor could not recall which adult had brought her, and did not refer to her medical card. Throughout the examination Maria was silent. The doctor found her to be thin, but not "unduly so" (although he did not weigh or measure her) and diagnosed a sore throat. A follow up appointment was not kept. In mid December the school welfare officer again tried to make contact as Maria had not returned to school, but got no answer. Mrs. Ruston telephoned Miss Lees to complain of seeing Maria "looking more or less like a skeleton, unkempt and dirty"¹⁶⁶ on December 12; Mrs. Ruston left her name and contact number as Miss Lees was not available, but Miss Lees never did successfully return the call (the reasons being rather mysterious). On December 18, an anonymous caller complained to the NSPCC about Maria; Mrs. Kirby's notes record that she called Miss Lees about this, and Miss Lees was to visit the next day, something she did not, in fact, do. Miss Lees had no record of this: "Once again, we can only record our bewilderment at the factual discrepancies between two vital witnesses who are accustomed to keeping notes of events. That alleged bruising was, at all events, never investigated."¹⁶⁷ On the morning of January 7, the Kepples took Maria to the hospital in a pram, where she was

¹⁶⁵ *Ibid.*, at 55.

¹⁶⁶ *Ibid.*, at 57.

¹⁶⁷ *Ibid.*, at 59.

declared dead. She was very bruised, with severe internal injuries. Prof. Cameron, who carried out the post mortem, described the majority of the injuries as “the result of extreme violence”.¹⁶⁸ Maria Colwell was seven years old when she died.

William Kepple was found guilty of murder in April 1973. The Court of Appeal substituted manslaughter in July of that year, and sent Mr. Kepple to prison for 8 years.

The majority report found that there was a failure of communication between the various welfare professionals who were involved with Maria, which resulted in confusion about roles and responsibilities.¹⁶⁹ The report also identified specific problems with recording notes and messages, and the transmission of information between schools (Maria changed schools when she move from the Cooper household to the Kepples) and between schools and social services departments. As the narrative makes plain, there were serious problems in the communication between the NSPCC and social services, and dangerous confusion about roles and responsibilities. The report identifies communication problems between the housing departments, the police and the local community (the neighbours) and social services. The report found that the key social workers, Miss Lees and Mrs, Kirby, failed to communicate with Maria; also that there was insufficient information obtained about Mr. Kepple. The report considered the impact of not contesting the revocation order, whether an independent report would have been beneficial, given Miss

¹⁶⁸ *Ibid.*, at 60.

¹⁶⁹ “The adage ‘too many cooks spoil the broth’ may come into the mind of the outside observer.” *Ibid.*, at 61.

Lees' "plurality of roles", whether the Coopers' should have been present (the Coopers were advised to seek legal advice but Mrs. Kirby and Miss Lees told them that there was no possibility of their "resisting" the return of Maria).¹⁷⁰ The report also considered the suggestion that supervision orders be governed by regulations.

The overall impression created by Maria's sad history is that while individuals made mistakes it was "the system", using the word in the widest sense, which failed her... because that system is the product of society it is upon society as a whole that the ultimate blame must rest; indeed the highly emotional and angry reaction of the public in this case may indicate society's troubled conscience.¹⁷¹

The Maria Colwell report is about the danger of failed communications, a point on which the minority report concurs with the findings of the majority. It is also about the way in which the larger legal and social context influences decisions about child protection. Focusing on its dual narrative structure, the report is about how events- the immediate context of the decisions in question- are shaped by the interaction between that larger context and the particular, structural limitations of child protection: the liberal compromise and its rule of optimism.

Two crucial "turning points" emerge from the majority report. The first of these is the introduction of Miss Lees, prior to which Maria's situation seems generally stable and trouble free (with the exception of the episode in which she was removed from the Coopers by her mother and the disagreement about her Christening), and Maria herself a happy little girl:

¹⁷⁰ *Ibid.*, at 82.

¹⁷¹ *Ibid.*, at 86.

In April 1970 two things of importance in the life of Maria occurred; first, she began to attend Middle Street Infant's School and secondly, there appeared to take over from the East Sussex social worker in charge of her case, Mr. Bampfylde, a new social worker in the person of Miss Diana Lees, who was to continue to be responsible for Maria's welfare until the latter's death. This seems to be an appropriate point to quote from the last statutory six monthly report on Maria prepared by Mr. Bampfylde just before his handing over to Miss Lees and dated the 20th March 1970: "Maria relates closely to Mr. and Mrs. Cooper (whom she is still calling Mum and Dad). They respond well to her, Mrs. Cooper being perhaps rather over indulgent in some ways. Maria presents no problems, though is perhaps a little 'out of control', very excitable. Maria is well settled with her aunt and uncle."¹⁷²

Enter Miss Lees.

The second turning point in Maria's story is the decision not to contest the revocation order, a decision which pre-empted the case against the Kepple reunification and forced a "decision" which was not, in fact, a *decision* at all but a "nod". After this point, what happened to Maria passed out of the realm of external influence and became, effectively, a private family matter; despite the ineffectual storm of protest around Maria she is, after her transfer to the Kepples, an isolated figure, a sad face glimpsed at the side of the window.

At this point it is helpful to refer to a statement put in evidence by Mrs. Kepple, who did not give oral evidence before us. Although, of course, not subject to cross examination, it contained much that bore to us at least the ring of truth. In it she recalled Maria's steady deterioration; how she got thinner and as she did so became more dreamy and quiet and went about in a daze; how she would not answer anyone but would sit and stare into space; how her habits of personal cleanliness greatly changed for the worse; how Mrs. Kepple thought she was pining for the Coopers and how she even became destructive of her own clothes. The whole picture drawn by Mrs. Kepple of Maria during the last few months of her life is a startling corroboration of, and wholly consistent with, the outward signs observed by neighbours.¹⁷³

¹⁷² *Ibid.*, at 15.

¹⁷³ *Ibid.*, at 59.

The Minority Report

There is little dispute concerning the central facts in Maria's life during this period. My differences from my colleagues lie in the interpretation of those facts and the emphasis which should be given to them... Those who read the two reports dealing with this period are therefore free to choose whichever they find most convincing. As a social worker, my education and experience has taught me that in such matters, there is no one truth; in considering the subtleties of human emotions everyone is subjective.¹⁷⁴

The minority narrative makes the case that Maria's social workers "did not consistently make mistakes [although there were certain "specific failures] but, at times, reached unfortunate decisions for good professional reasons."¹⁷⁵

The report describes the period of Maria's care up to her return in October 1971 to the Kepples, "home on trial". The report contains considerable detail about Maria's care up to the arrival of Miss Lees; the events of this period appear as essential to understanding how and why the tragedy unfolded as it did. Miss Stevenson focuses on her mother's removal of Maria from the Coopers in 1966 as a crucial point for two reasons. The emotional impact of this separation from Mrs. Cooper on the 14 month old Maria may have been relevant to her subsequent behaviour during the transfer; the subsequent decision to return the child to the Coopers, on the face of it, the most obvious and sensible one, may in fact have laid the foundation for the later tragedy.¹⁷⁶

¹⁷⁴ *Ibid.*, at 88.

¹⁷⁵ Robert Dingwall, *supra* note 10 at 490.

¹⁷⁶ This point has its own significance in the context of the "non-interventionist" preference for family placements; and see B. Needell and N. Gilbert, "Child Welfare and the Extended Family"; M. Tester, "Kinship Foster Care in Illinois"; M. Courtney and B. Needell, "Outcomes of Kinship Care: Lessons from California" for information suggesting that while fostering with kin is stable *fostering*, it is

Viewed in retrospect, it is possible to argue that in this humane and seemingly obvious choice lay the seeds of the tragic “tug of love” which was to follow. Mrs. Kepple, in removing Maria, had given an indication of which way the wind would blow and it is worth noting that at the point when the choice was made she herself had expressed a preference for residential care for Maria and had said she would not want her to be returned to the Coopers. Given the legal and social framework within which the social workers had to operate, in which it was assumed that a parent had a right to reclaim a child if he or she could prove themselves to be “fit persons”, it may be that this was the most serious error of judgement made up to the point where Maria returned to the care of her mother.¹⁷⁷

Miss Stevenson considers the disagreement over Maria’s christening to be significant, a “symbolic blow for Maria” struck by Mrs. Kepple, and that the relationship between Mrs. Cooper and Mrs. Kepple began to seriously deteriorate at this point.¹⁷⁸ In January 1968 Mrs. Kepple came to see the social worker, Mr. Morrish, and asked to see Maria at her flat. An earlier visit to her brothers in an unrelated foster home had caused Maria some anxiety, evidently about being separated from Mrs. Cooper, and Mr. Morrish asked Mrs. Kepple to visit Maria at the Coopers, accompanied by himself. Mrs. Kepple’s solicitors wrote a few days later that Mrs. Kepple had sought their help about seeing Maria.: “From this time forward, Mrs. Kepple’s interest in Maria, though erratic, was a force to be reckoned with... For any experienced social worker, there would have been a mounting dread of the inevitable explosion.”¹⁷⁹

dramatically less likely to result in the “permanency” outcomes of either return to parent or adoption. All articles contained in *Child Welfare Research Review, Volume Two*, J. Berrick, R. Barth and N. Gilbert eds. (New York: Columbia University Press, 1997).

¹⁷⁷ *Maria Colwell*, *supra* note 33 at 91.

¹⁷⁸ *Ibid.*, at 93.

¹⁷⁹ *Ibid.*, at 94.

Mrs. Kepple's "interest" stepped up markedly in June 1969. The relationship between Mrs. Kepple and Mrs. Cooper deteriorated further, with Mrs. Kepple's main complaint being that she could not see Maria (although she did not always keep arrangements that were made), asking in July 1969 that Maria be put into a home so that access would be easier (the request was refused).

The minority report emphasises the complexity and significance of Maria's position within her familial context. Miss Stevenson identifies four points as standing out in her narrative of Maria's situation before the arrival of Miss Lees: although "variable in intensity", Mrs. Kepple's interest in Maria and resentment of her placement with the Coopers was constant from 1966; Mrs. Cooper was always "disturbed and upset by Mrs. Kepple's interventions"; "the wider families on both sides played a significant part in the difficulties"; the social workers were sensitive to Maria's situation and emotions, and were working to reduce conflict in her extended family.¹⁸⁰

And so the scene is set for the entrance of Miss Lees, which occurs with none of the intimations of foreboding in the majority report.

The detailed account of Maria's early life and the "tug of love" feuding which coloured her family relationships, builds up a very different context for the introduction of Miss Lees. Maria's aggressive resistance to the Kepple household becomes more ambiguous in this context- less obviously a reaction against/fear of the Kepples, more persuasively

¹⁸⁰ *Ibid.*, at 97.

related to Maria's deeply rooted anxiety about separation from the "mother" in her life, Mrs. Cooper (possibly related to the early separation from her "real" mother, the incident at 14 months where she was removed from Mrs. Cooper, and less than sensitively handled contact visits with her family). Maria liked her maternal family, but was afraid to let go of the Coopers. Her behaviour was an indication of that conflict, rather than a more straightforward resistance. In this context, Miss Lees' statements about Maria's feelings during and after her visits seem significantly less obtuse, even perceptive. Here is Miss Stevenson's account of Mr. Bampfylde's final review:

...in the last six monthly review before Miss Lees took over, Mr. Bampfylde reported that Maria was seeing her brothers and sister, those with Mrs. Tester [the grandmother] frequently, and also her mother. The review, as all the others, emphasised that she was "well settled with her aunt and uncle". "Maria relates closely to Mr. and Mrs. Cooper (whom she is still calling Mum and Dad!¹⁸¹). They respond well to her, Mrs Cooper being perhaps over indulgent, etc."¹⁸²

When Miss Lees took over the case she worked hard to get to know everyone involved and understand the dynamics of the situation. Maria expressed some anxiety about visiting the Kepples and Testers (her maternal grandmother) at that time, and her anxiety increased when, on Mrs. Kepple moving into the council house, the possibility of her moving to the Kepples became "real". However, according to Miss Stevenson, Maria's "uncertainty about the whole position is illustrated by two contrasting incidents. On the first, she was to be collected by Miss Lees from school but was too upset to go without

¹⁸¹ It is interesting to note the exclamation mark here, which is absent in the majority report's account of this note- it gives the comment quite a different emphasis.

¹⁸² *Maria Colwell, supra* note 33 at 97.

seeing Mrs. Cooper first. (Later she went quite happily). On the second she was most enthusiastic at the idea of spending a Saturday with the Kepples and asked Mrs. Cooper about it as soon as she went home.”¹⁸³

A striking note of difference between the reports is the “treatment” of Mr. Kepple. The majority report makes much of the fact that “nothing was known of Mr. Kepple” except what Miss Lees had been told by the Kepples themselves, “neither of whom were truthful or reliable persons”.¹⁸⁴ Mr. Kepple seemed “indifferen[t]” about whether Maria came to live with his family.¹⁸⁵ “such an apparent unconcern may mask a more sinister form of indifference which, after all, can pass through insensitivity and callousness to neglect and active cruelty.”¹⁸⁶ What was known about Mr. Kepple was not good: that he was “an Irishman with quite a wild reputation” and the possessor of several aliases,¹⁸⁷ that he liked to get drunk, and that he did not think much of authority.

The minority report tells us that Miss Lees felt anxious about Mr. Kepple’s “lack of interest and understanding of Maria”, adding that he “seems to have little idea of a close relationship with any of his children, but was clearly fond of them and played with them a

¹⁸³ *Ibid.*, at 99.

¹⁸⁴ *Ibid.*, at 20.

¹⁸⁵ “It was suggested to us... that this was a not uncommon attitude for that type of person, and that nothing wrong should therefore be inferred from it. Such may well be a frequent attitude and .. portend nothing more than ‘leaving it to the woman of the family to deal with the children’... but clearly one would hope to find a more positive approach by the man in this situation” *Ibid.*, at 17.

¹⁸⁶ *Ibid.*

¹⁸⁷ *Ibid.*, at 14 from case notes on the Kepples made at the end of 1968.

lot".¹⁸⁸ However, after a long talk with Mr. Kepple, Miss Lees comes to understand his attitude towards his family in the context of his cultural background:

... a long talk with Mr. Kepple shed some more light on this. In a very full record, Miss Lees described how bewildered Mr. Kepple felt about the involvement of social services: "He felt that in Ireland, if a mother had not been able to look after her children, friends, neighbours, etc., would have done so until such time as this mother could care for them again, when they would automatically have returned to that mother. He now finds great things are being made of Maria's return with emphasis in the building up of relationships... He comes from a large family of 16 children himself and his view of relationships between the father and his children is a natural relationship which does not require working at but would automatically build up." Our expert witnesses were in agreement that they saw nothing sinister in Mr. Kepple's approach to the situation. Indeed, one may criticise the social workers for being slow to realise the cultural differences which Mr. Kepple so graphically described. It is not in the least uncommon for men and women from such backgrounds to view with astonishment the notion of problems of emotional adjustment. And Mr. Kepple was quite right in reminding Miss Lees that in some cultures children are "borrowed and returned" between relatives with no fuss and bother!" ... To suggest, as do my colleagues, that this attitude may be on a continuum leading to "neglect and active cruelty" is unhelpful.¹⁸⁹

In April 1971, it being apparent that Mrs. Kepple was going to apply to have the Care Order revoked and in the expectation that she would be successful, the social workers decided on the strategy of encouraging Mrs. Kepple to delay her application to give Maria time to get used to her new family, this being preferable to the trauma of a sudden move.

Miss Lees is described as "[seeking] opinions from, and [explaining] the situation to, various significant people"¹⁹⁰ as she effected the plan. Of Maria's mounting distress at visiting, as her impending transfer became more tangible, Miss Stevenson writes:

The pattern, as described in detail by my colleagues, was of very considerable resistance to going but apparently enjoying herself whilst there. Miss Lees remarked that she

¹⁸⁸ *Ibid.*, at 99.

¹⁸⁹ *Ibid.*, at 100.

¹⁹⁰ *Ibid.*, at 103.

thought Maria “chooses what she says knowing what will be acceptable to the person she is addressing”, an intolerable burden for a child of this age.¹⁹¹

Miss Lees “felt that these scenes were caused by Maria’s very great fear of losing security at the Coopers and she wondered whether the interaction between Mrs. Cooper’s feelings and those of Maria increased the display of anxiety.”¹⁹² The minority report also refers to significant improvements in the Kepples living standards during this time, the house “clean and bright with a good fire burning”, material comforts in the new council house. Miss Stevenson describes a long visit between Miss Lees and Mr. and Mrs. Kepple, in early October, before the return of Maria “home on trial” on October 22. The interview “must have seemed like a breakthrough” to Miss Lees, “the beginning of trust and... hope for the future”, being “marked by a candour and self-examination not evident before and alas not after.”¹⁹³

Miss Lees concluded that “this family is at long last on, I hope, a steady upward trend. The improvement over the year since they had been in this house is considerable in all spheres of family life.”¹⁹⁴

The account of Maria’s “transfer” and subsequent flight to Mrs. Shirley are strikingly different here from the account in the majority report:

Mr. Cooper brought Maria to the office where Miss Lees’ senior effected the transfer and Maria went quietly with her mother. Mrs. Kepple had given her a false assurance

¹⁹¹ *Ibid.*, at 104.

¹⁹² *Ibid.*

¹⁹³ *Ibid.*, at 106.

¹⁹⁴ *Ibid.* This is the same meeting referred to “in fairness” in the majority report, rendered in much fuller, more emotional, detail here.

that she would return to the Coopers at the weekend. She did not see the Coopers again. Maria ran away once again to relatives in the Whitehawk Crescent and arrived in a distressed state. She ran out early in the morning. Miss Lees went round; Maria sobbed and asked to be taken back to the Coopers but, as soon as her mother appeared, Miss Lees thought she calmed down (although Mrs. Shirley, her aunt, said in evidence she "cringed"), allowed herself to be dressed and taken home and was quite bright and chatty. Miss Lees recorded that she "showed no apprehension at all of a comeback from her mother".¹⁹⁵

The minority narrative ends with the revocation of the care order in Court on November 17, 1971. Olive Stevenson describes Miss Lees' report to that Court as "a skilful presentation of an exceedingly complex situation":

Inevitably, in a history of the kind described in the preceding papers, there is much that is abbreviated and condensed. In my view it is not fair to single out, as do my colleagues, Miss Lees' failure to mention all the running away episodes. The magistrates were told of Maria's strain, distress and medical treatment; and of her affection for Mr. and Mrs. Cooper they were left in no doubt. As to the question of "confusion over where her loyalties lie", this must be a matter of interpretation. Miss Lees had made clear that Maria regarded Mr. and Mrs. Cooper as her "Mummy and Daddy". But my analysis of Miss Lees' observation and description of Maria's feeling shows that she did indeed believe Maria was in some confusion. To acknowledge that her primary affections lay with the Coopers does not preclude the possibility of some confusion of loyalties. Whether Miss Lees was right or wrong is another matter. She was as fallible as the rest of us. But as I indicated in the beginning of my report, I do not consider it useful to speak in terms of a "true picture" in a situation as confused and complex as this. Nor do I accept that she "put a gloss" on the situation, which seems to suggest a degree of deliberate distortion.¹⁹⁶

Miss Stevenson raises several points in the discussion which follows.

It is implicit, however, in the arguments of my colleagues that painstaking work is of no avail if the fundamental assumptions are mistaken. In this case, the assumption which is open to argument is, of course, that which led the social workers to work towards Maria's return to her mother and the care of her stepfather.¹⁹⁷

¹⁹⁵ *Ibid.*, at 107.

¹⁹⁶ *Ibid.*, at 107.

¹⁹⁷ *Ibid.*, at 109.

Pertaining to this issue is the wider context in which the social workers were operating, in which it was presumed that the magistrates would return the child once the parent's fitness could be shown unless it was clearly not in the best interests of the child. The social workers did not, as the majority report concurred, have "free reign". While the social workers did not believe in the automatic priority of the "blood tie", they did consider it important for Maria to know her family, and not come to believe, as an adolescent, that she came from "bad stock". For this reason, the social workers had to plan for Maria long term, and clearly the increasing tension between Mrs. Kepple and Mrs. Cooper could not continue (Miss Stevenson points out that, had Mrs. Kepple not pushed for Maria's return the social workers would not have moved Maria- the *tension*, not Maria's placement with the Coopers, was untenable). On the "vexed question" of Maria's "true feelings" Miss Stevenson argues that although Miss Lees' interpretation of Maria's distress as caused by the "tug of love" may have been incorrect (and Miss Lees should have taken her running away more seriously), this point of view was certainly defensible.¹⁹⁸

"Whichever is More Convincing": Reading the Reports

The gulf between a professional conceptualisation of "what went wrong" as the uncontrollable and unfortunate outcome of rational decisions and the public perception of bad decisions by individuals who should be held accountable reveals how child protection operates as a "culture" with particular beliefs and behaviours. The implicit demands of this culture are not, of course, apparent to "outsiders"- a group which will usually include

¹⁹⁸ *Ibid.*, at 111.

those responsible for inquiry reports. Neither “outsider” nor professional is dissembling or unobservant; the division is best described as a case of cultural misunderstanding. The reports of the Maria Colwell Inquiry dramatically illustrate this “culture clash”.

Of the two, the minority report is the most persuasive, and the reasons for this reveal the way in which the “rule of optimism” operates as a systemic or cultural rule, as opposed to a mere “attitude”¹⁹⁹ which can be assumed or discarded under the appropriate instruction. Miss Stevenson’s careful reconstruction of the important familial context of Maria’s early life makes her account of Maria’s early life more “realistic”, a fuller, more textured picture. She describes the households of the various Coopers, Testers and Kepples as constantly shifting with large numbers of relatives on all sides moving in and out, visiting, falling out and reconciling. Maria’s situation within the Cooper household yet connected with her mother is *a part* of this fluctuating extended family scene. She also has a particular significance within her close family culture as the last child of her father and the object of possessive tensions between her mother and Mrs. Cooper.²⁰⁰

¹⁹⁹ See Nigel Parton re the rule as discussed in the Jasmine Beckford Inquiry: “The report suggests that the tragedy occurred not because the child abuse system was misplaced or lacking but because the professionals attitudes were inappropriate. Therefore, it is not the system but the attitudes that need correcting... the report strips the concept from its social, legal and organisational context and reduces it to individual professional attitudes”. N. Parton, “The Beckford Report: A Critical Reappraisal” (1986) 16 BJSW 511 at 517.

²⁰⁰ Both reports describe Mrs. Kepple’s desire to “have” Maria as informed by the wish that Mrs. Cooper not “have” her, as opposed to a consideration of Maria’s best interests. For the majority, this evidence of Mrs. Kepple’s motivations is another strike against Maria’s transfer; in the minority report, Mrs. Kepple’s stubbornness on this point means the tension around Maria will be increased and prolonged, and so a resolution becomes ever more pressing.

The presumption that a return to her mother is inevitable is informed by the larger legal and social context acknowledged in both reports, but also, in Olive Stevenson's report, by Maria's position within this wider extended family context. There is little sense here of Maria as a "stranger" to her non-Cooper family, or psychologically "belonging" to the Coopers.²⁰¹ The larger social and legal context in which the "blood tie" has priority and the Cooper/Tester/Kepple culture, as interpreted²⁰² by the social workers, are complimentary.²⁰³ Maria's "significance" within that family culture disqualifies the status quo as viable in the long term. The decision to return Maria to the Coopers as opposed to placing her in a residential nursery, in the context of the family culture and Maria's place in it, lit the fuse for the eventual "explosion".²⁰⁴

²⁰¹ Goldstein, Freud and Solnit use the Maria Colwell report to prove the guidelines they recommend in *Before the Best Interests of the Child* (New York: Free Press, 1979). Had these guidelines been followed in Maria's case, the tragedy would not have occurred (they submit). If return to the biological mother had been contemplated, "our provisions would have precluded subjecting Maria to the agonising ordeal of experimental (or preparatory) visiting. More vividly than any of our arguments, the Report's description of Maria's reactions demonstrates the shattering effect of this procedure on a child's feeling of security and the stability of her personality in general... When, with the aim of final return in view, visiting was intensified, she answered it with kicking and screaming, clinging, hiding, repeated running away, deterioration in behaviour and health. All these should have been taken as unmistakable signs of where her loyalties lay, who her psychological parents were, and that her return to her natural mother represented a threat to her well being." Goldstein, Freud and Solnit at 183-184. The authors' solution to Maria's situation is, however, *dependent on* their interpretation of Maria's behaviour (which is not self-evident, as we see in the two reports), and an understanding of the Cooper's as Maria's psychological parents (which is, again, not self-evident but dependent on the emphasis one places on Maria's extended family context, anticipating her growth to adolescence within that context).

²⁰² Sensibly and with sophistication; the point of this exercise is to understand how a rule of optimism interpretation *works*, and how it is, within a particular frame, *correct*.

²⁰³ This understanding of the extended family by reference to their behaviours/norms is an incident of cultural relativism as part of a rule of optimism.

²⁰⁴ To step aside at this point is to see our distance from the outsider's "common sense": to take Maria from her caregivers at the age of 14 months and place her in a residential nursery because her mother's jealousy seems, *because it is*, absurdly indifferent to Maria's well being. In fact, from the outsider's perspective, this was the point to sever contact with *Mrs. Kepple*. Yet, within the minority narrative, the decision to leave Maria with the Coopers *was* a mistake; here we have, in one moment, the perceptual dichotomy explicit in the Maria Colwell report, and implicit throughout the collected reports.

“Cultural relativism” is explicitly relied on to explain Mr. Kepple’s attitude, obviously a “red light” for the majority report. Indeed, Miss Stevenson chastises the majority for their cultural insensitivity on the point of Mr. Kepple. Miss Lees’ “long talk” with Mr. Kepple on this occasion (and at the “candid” and “trusting” interview before Maria’s return, when Mr. Kepple again expressed his mystification about social services) seems to have reassured her, with Mr. Kepple’s cultural difference effectively neutralising his potentially “deviant” behaviour.²⁰⁵ Mr. Kepple, after the conversation with Miss Lees recounted in the minority report, becomes a far more sympathetic character, and the reader (as did, one supposes, Miss Lees) begins to form an understanding of Mr. Kepple and his family as the “odd ones out” in the context of the “superior council estate” they have moved to. In this context, the neighbours complaints²⁰⁶ become more ambiguous, and their “concerns about Maria” (coupled, on one occasion with their objections to the Kepple children’s “free range habits”) open to interpretation. Perhaps the neighbours had a prejudice against their Irish neighbour with his carefree attitude towards his large family.²⁰⁷

²⁰⁵ Again, in the context of the minority narrative, this interpretation of Mr. Kepple is the correct one, and the majority’s description of the “Irishman with a wild reputation” seems crude, a caricature.

²⁰⁶ Which Miss Stevenson does not refer to; however, the majority report refers to “strong urgings” from various agencies that the neighbours’ accounts were not credible.

²⁰⁷ Here one should pause to consider the partiality of Mr. Kepple’s Irish reverie re communal child care. In such a system the community has the authority to censure as well as care (Mr. Kepple’s violent reactions to his neighbours, who he physically attacked on several occasions when they “interfered” with his freedom to do as he pleased, suggest his problematic community situation). Mr. Kepple’s “communality” is accepted uncritically in the minority report (suggesting a stereotypical imagination equal to the majority report’s “Irishman of wild reputation”).

The decision to return Maria is made; in the context of the minority report, it is difficult to imagine how an alternative decision could have been justified. We have reached the point at which, in the majority report, the extremely disturbing description of Maria's acclimatisation and transfer to the Kepple house begins. The minority report is much less awful to read (as one imagines it was to write). It is less painful to understand Maria's behaviour as *about* her ambiguity, her long standing separation anxieties exacerbated by Mrs. Cooper's tension, her more florid distress an "acting out" for the benefit of observing adults (rather than a child's fear and helpless panic). In the context which has been constructed to this point, such an interpretation is also the most reasonable and the most sophisticated, taking into account both the historical and long term perspectives. This "good professional decision"²⁰⁸ was, of course, a fatally bad decision for Maria Colwell, and this apparent paradox is key to understanding child death inquiries and understanding child protection.

Recurrence and Lasting Impact

One of the striking features of these inquiries is the repetitive character of their findings and recommendations... But this very recurrence suggests that these inquiries are actually failing to make any lasting impact on the everyday practice of the occupations and organisations under scrutiny.²⁰⁹

²⁰⁸ And in a 1986 "Guest Editorial" considering the Jasmine Beckford Inquiry, Olive Stevenson emphasised that her "minority report" was motivated by the strength of the decision making behind the decision to send Maria Colwell "home" (she concludes she might not have felt it necessary to write a separate decision in the Beckford case, in which she found a "manifest failure to assess the total situation comprehensively"). Olive Stevenson, "Guest Editorial on the Jasmine Beckford Inquiry" (1986) 16 BJSW 501 at 501.

²⁰⁹ Robert Dingwall, *supra* note 10 at 489. Prof. Dingwall's analysis here is used in part and in part of the DHSS 1980-1989 collection, *supra* note 7 at 69.

Robert Dingwall suggests that this phenomenon (“recurrence” without “lasting impact”) may be explained as a function of the “inquiry” premise: that the “disaster”²¹⁰ is the outcome of “human errors which are randomly generated within the system”.²¹¹ The recommendations of such reports, proceeding from that perspective, focus on “attempting to make individuals less error prone” by altering training and selection or “designing error limiting systems” involving “monitoring, supervision or regulation”.²¹² These solutions, however, assume knowledge about risk and “good predictors of occupational performance”, and that “the introduction of additional complexity actually improves an organisation rather than simply creating new points for failure.”²¹³ These kinds of solutions seem unlikely to disrupt or suspend the “patterns and themes” discernible over and over again in the inquiry reports, yet these sorts of solutions appear as “recommendations” with the same repetitiveness.

By focusing on the repetitive nature of the reports as the key to their meaning one can appreciate the inquiry reports as providing quite detailed descriptions of the *kind of thing* child protection is and how it *works*. In B.A. Turner’s analysis of *Man-Made Disasters*, considered here by Robert Dingwall in terms of understanding child protection “disasters”, accidents occur when people are stopped from acquiring and using relevant information because “the information is not available to them at an appropriate time in a usable

²¹⁰ Prof. Dingwall borrows here from B.A. Turner’s study *Man-Made Disasters* (1978) for his analysis.

²¹¹ Robert Dingwall, *supra* note 10 at 491.

²¹² *Ibid.*, at 490.

²¹³ *Ibid.*, at 491.

form”.²¹⁴ Prevention is then impossible. Everyone’s perceptions are selective; no one sees everything at once.

The “power of Turner’s analysis”, according to Dingwall, “[is] in his insistence that the underlying disorder does not have a specific pathology but is intrinsic to the nature of organisations²¹⁵ in modern societies.” The division and specialisation of labour in the advanced liberal State has created what Turner called “bounded decision zones”, whose inhabitants establish a common way of perceiving events and predicting outcomes, what might be called a professional culture:

But the effect of this culture of decision making is to define what is and is not relevant knowledge in ways which generate selective ignorance, inattention, non-communication or incomprehension. Disasters in the twentieth century are rarely the result of genuinely unforeseeable events. They are more usually predictable outcomes of the way complex organisations have to operate, if decision makers are not to be overloaded with information or paralysed by uncertainty.²¹⁶

And so the inquiries “identify” the same “failures”, prescribe the same “mechanical” solutions, and, apparently, disappear with little accomplished except possible public catharsis and ritual scapegoating; and here we find the notion of the inquiries themselves as expensive and harmful, deflecting from the “real issues”, a characterisation which resonates on many levels with the non-interventionist paradigm. While the “once in a generation” high profile report such as Maria Colwell, which brought the issue of the child

²¹⁴ *Ibid.*

²¹⁵ *Ibid.*, at 192.

²¹⁶ *Ibid.*, at 193.

abuse to public attention in the UK, has an important social function the repetition of the process (where that repetitiveness is a matter only for passing criticism) does seem rote, ritualistic.²¹⁷

The *Gove Inquiry into Child Protection*, which looked so much like another ritual exercise in containment and catharsis, *was not*. Within a year of the Gove Report's publication the Ministry of Social Services had been dismantled and a process of massive change initiated. Why?

²¹⁷ And, possibly, evasive. Labour MP Ann Clwyd (amid the usual official chorus of praise for the government's decision to "air the truth") sought to block the currently ongoing Waterhouse Inquiry into long term abuse of children in residential homes in North Wales, fearing it would create a "wall of silence" around the more controversial circumstances surrounding that "affair". The "official version" of the inquiry, Ms. Clwyd implied, could hide rather than reveal; in the case of the Waterhouse Inquiry, it is possible that is the intention. Re the public child abuse inquiry as a *class*, the "wall" is undoubtedly unintentional (but no less a possibility for that).

CHAPTER FOUR

REPORT OF THE GOVE INQUIRY INTO CHILD PROTECTION

As a story about dead children,¹ the *Report of the Gove Inquiry into Child Protection* is about the importance of “disappearing” child deaths² to the coherence, and legitimacy, of the “non-interventionist paradigm”. The *Gove Report* has effectively discredited that apparent resolution (for the time being, at least). As a particular *narrative* story about one boy- “Matthew’s Story”- the *Gove Report* is about the limitations and failures implicit in the “liberal compromise” and its “rule of optimism”, and the way in which policy “attitudes”³ can encourage and magnify these systemic tendencies of the “rule”.

What Came Before

First I tell the story from Matthew’s perspective, as though the services provided to him and his family were for him- in other words, were child centred. Regrettably, this was seldom the case. If Matthew’s story was told as the evidence unfolded there would be long passages in which he was not mentioned at all...The Ministry, its employees and contractors lost sight of why a child protection service exists and who they were supposed to be protecting.

¹ Matthew Vaudrueil and the “Invisible Ones” (see *Report of the Gove Inquiry into Child Protection* 1995, An Independent Commission of Inquiry Appointed by the Province of British Columbia, (Victoria, B.C.: Queen’s Printer, 1995) [hereinafter the *Gove Report*], Volume I at 213.

² This *apparent resolution* “resolves” the underlying conflict by explaining it as a “false dichotomy” and, crucially, by making failure (for the public) invisible.”

³ “We continue to see in practice that ministry social workers support the view that family support must be completely exhausted before child protection is applied. If this attitude is practised within the framework of the new Act, there are many new hoops to jump through on the road to child protection.” From a submission from a consortium of 14 Vancouver agencies, *Gove Report*, *supra* note 1, Volume II at 247.

My second caution is that Matthew's story is very sad and will upset many readers, as it upsets me.⁴

Matthew Vaudreuil died on July 9, 1992.

On July 22, 1992 one of two Vancouver Police detectives investigating the killing requested the relevant Ministry records from ISU/ARD⁵ Inspector Donna Knox. On July 30, 1992 Inspector Knox completed a chronology based on information contained in the files, and met with Superintendent Rigaux to discuss it. According to Knox, Rigaux didn't see the point of doing a review, and stated that she "didn't want to proceed any further" because she didn't want to upset staff:

The child was already dead. The mother was probably going to be charged.. There wasn't any urgency around this. There were no other children in the home [although Verna Vaudreuil was pregnant]. There were no immediate planning issues that had to arise out of the review.⁶

Rigaux recalled events differently,⁷ testifying to the Gove Inquiry that she did not remember telling Knox about being reluctant to upset staff.⁸ Rigaux explained that she

⁴ *Gove Report, supra* note 1, Volume I at 6.

⁵ "When notified of a child's death, the superintendent, who is designated by and reports to the Minister of Social Services, must decide whether the circumstances are 'suspicious or unusual'. If they are Ministry policy requires the Superintendent to refer the case to the Audit and Review Division, formerly the Inspections and Standards Unit [ISU/ARD], for an independent review." *Ibid.*, Volume I at 159.

⁶ Donna Knox, *Ibid.*, Volume I at 162.

⁷ "The Inquiry accepts Knox's version of events over Rigaux's version for two reasons. First, Knox clearly remembered her conversation with Rigaux, while Rigaux testified that she did not have a clear recollection. Second, a decision not to proceed with a review was consistent with Rigaux's termination of the role of ISU/ARD in reviewing children's deaths and serious injuries since she had taken office as superintendent." *Ibid.*, Volume I at 181.

⁸ In January 1998 a B.C. Supreme Court Judge ordered that the chapter of the Gove Report "What the ministry did after Matthew died" be quashed and the findings against Rigaux be set aside on the grounds

had postponed the review in the mistaken belief that it was ministry policy to put such a review on hold until criminal proceedings had been completed:

Rigaux testified that she had every intention of doing the full review as soon as the criminal process was concluded. However, she took no steps to ensure that the police or court officials would keep her or her staff advised of the progress of the case.⁹

Anticipated media criticism seems to have prompted action in 1994. On January 20, 1994 the District Supervisor of the social worker responsible for assessing whether Matthew was in need of protection in Vancouver e-mailed several of his colleagues that Verna Vaudreuil had pleaded guilty¹⁰, and that there would be “considerable media interest in this case”:

invariably [there will be] criticism of the ministry’s role in this tragic matter...in view of the media blackout [until Vaudreuil’s sentencing], the ministry has some time to develop a strategy to deal with the media and control damage.¹¹

On January 27, 1994 this story appeared in the *Vancouver Sun*:

that Judge Gove exceeded his jurisdiction; “Judge quashes criticisms of former child-protection boss”, *Vancouver Sun*, January 14, 1998. “The Terms of Reference... were very specific. They clearly relate to events preceding Matthew’s death. They simply do not bear a construction which would include an investigation into the preparation of the Superintendent’s Review commencing on March 3, 1994, almost two years after Matthew’s death.” *Rigaux v. British Columbia (Attorney General)*, [1998] B.C.J. No. 32, Q.L. at para. 25.

⁹ *Gove Report*, *supra* note 1 Volume I at 163. See three Reports Prepared for the Gove Inquiry: Karen Ryan, *Coroner’s Recommendations for MSS Arising from the Deaths of Children and Youths* (1995); Karen Ryan, *Critical Incident Review: An Examination of Family and Children’s Services Division Records* (1995); Audits and Reviews, Karen Ryan and Sharon Samuels (1995). *Critical Incident Review: An Examination of Family and Children’s Services Division Records* includes an evocative, and quite fantastic, account of gaining access to critical incident reviews, and what the researchers found when they got there (at 51).

¹⁰ She was sentenced to ten years, reduced on appeal to four.

¹¹ *Gove Report*, *supra* note 1, Volume I at 164.

Matthew's story: the boy who was doomed from the start

The shrivelled body on the stainless-steel examining table looked like the corpse of an Ethiopian famine victim. It weighed only 16 kilograms. On his back, the child had a purple footprint, with the toe and heel marks clearly visible. There were rope burns on his wrist. There were deeply embedded belt marks on his buttocks. He had nine cracked ribs. His lower left arm had a week old fracture. There wasn't an inch of his body that hadn't been hit. He was covered in bruises- deep, ugly, purple bruises- from his head to his toes. When Matthew Vaudreuil finally came to the attention of the Vancouver authorities, it was too late. The five year old was dead. He had been suffocated. His 27 year old mother, Verna Vaudreuil, was sentenced last week to 10 years in jail for killing him. Many people in Matthew's short life tried to save him. They called social services dozens of times. They asked for his mother to be charged with child abuse. None of them were successful.

On March 3, 1994 an officer in the Ministry of Social Services Communication Division organised a conference call regarding the Matthew Vaudreuil case, to "discuss communications issues in anticipation of public and media criticism of the ministry arising from the Vaudreuil case."¹² Rigaux decided, as a result of this call, to re-open the review into Matthew's death.¹³ Inspector Orla Peterson completed the first draft of that report on May 9. Rigaux, after receiving the report and obtaining comments from the Assistant Deputy Minister for Regional Operations responsible for the field staff involved, expressed her concerns "about the content of the review, the style of the review".¹⁴ Peterson did not personally revise, edit or restructure subsequent drafts of the report.¹⁵ The week long

¹² *Ibid.*, at 167.

¹³ *Ibid.*

¹⁴ As per the testimony of Sheila Bitschy, ISU/ARD acting director, regarding a conference call made the evening of May 9 between Rigaux, Peterson and Bitschy. Bitschy also sent an 'urgent' email message to the area manager for the region including Fort St. John (where Matthew Vaudreuil was born and, periodically, lived), who had, apparently, received a copy of Peterson's first draft (partially completed): "The message explained that she and Peterson had reviewed the first draft with Rigaux and that the superintendent had asked them to 'make some substantial changes to the body of the findings and conclusions'. Bitschy asked Parker 'Please destroy that copy so there is no chance it will get released and become confused with our subsequent draft.' The manager replied, 'Will do. It never ends.'"

¹⁵ *Gove Report, supra* note 1, Volume I at 170.

revision process began with Rigaux, Bitschy and Peterson; by week's end, several senior ministry staff and members of the Ministry's Communications Division had attended meetings during which the report was substantially re-written: "Joyce Rigaux decided that Orla Peterson's report needed to be changed and she, by her own admission, was in charge of the revision process."¹⁶ Rigaux's report¹⁷ was significantly different¹⁸ from Peterson's first draft: "The report of Matthew's life and death that the Legislature and the public saw was an attempt to obscure inadequate practice by ministry social workers, and to shift blame away from the Ministry of Social Services."¹⁹

After release of Rigaux's review, Ms. MacPhail informed the House, on May 17, that an independent external inquiry would be conducted into Matthew Vaudreuil's life and death:

Nothing in Matthew's story gives us reason to feel comfortable, and everything in it makes us feel sadness and anger. While we grieve for Matthew and are outraged over what he experienced, we must also learn from these events. More than anything else, it's our mutual responsibility to do everything we can to prevent another child from suffering as Matthew did during his short life.²⁰

The following day, MacPhail introduced the *Child, Family and Community Service Act* (then Bill 46) to the Provincial Legislature:

¹⁶ *Ibid.*, Volume I at 183.

¹⁷ "Rigaux said that she made significant changes to the report before it was tabled in the legislature, because she wanted to ensure that she was going to be comfortable with the report: 'I was signing it. It was my report. The process had been very intense and I was certainly appreciative of all the help, but in the end, it's my report.'" *Ibid.*, Volume I at 173.

¹⁸ Detailed at *Ibid.*, Volume I at 174-180

¹⁹ *Ibid.*, Volume I at 185.

²⁰ Joy MacPhail, British Columbia, Debates of the Legislative Assembly (May 17, 1994) at 10912.

Today I am introducing the *Child, Family and Community Service Act* to address the urgent public demand for change in this area. A child's greatest resource is a strong, secure family, and a family's greatest resource is a strong community.²¹

This rather tawdry prelude to the independent inquiry, in its own right a high profile media story, drew the public into the "crisis", and so set a public agenda for what the inquiry was going to be *about*: incompetence and cover-ups in child protection, child deaths and their disregard. Later, the report itself would shape, for the public, what "reform" in British Columbia meant ("child centred child protection" practice, an end to lazy and or dogmatic reliance on "services" to parents who did not want/ could not use them, improved co-ordination between services, focusing again, on the child²²) in almost diametrical opposition to the reform context in which the *CFCSA* was initially posed.²³

"Matthew's Story"²⁴:

²¹ Joy MacPhail, British Columbia, Debates of the Legislative Assembly (May 17, 1994) at 10951. The government's "response" to the crisis posed as two pronged: openness (the independent inquiry) and change (the Act, a response to "urgent public demand").

²² "The division of information and inhibited flows between child protection agencies, which have been criticised by many reports... can be analysed as a significant structural barrier to over-zealous intervention. The division of regulatory labour is not an organisational pathology but an important restraint on damaging allegations or intrusions against families." R. Dingwall, "Reports of Committees: The Jasmine Beckford Affair" (1986) 49 MLR No. 4 489. at 499. This issue, although apparently "mechanical", involves the same contradictions as "child centred" protection, requiring the same kinds of political *choices* (or "balance").

²³ Then Premier Michael Harcourt recalls, as his "over-riding" memory of child protection as a *political* issue pre-Gove, that Social Services Minister Joan Smallwood was under attack for her "child centred" position re child protection (personal communication, December 15, 1997). The *CFCSA* seems to have been positioned, pre-Gove, as a counter to that criticism: "Minister promises to trim incidents of removing children from families" " 'Removing children from troubled families will in the future be the last resort, not the only resort' social services Minister Joan Smallwood said Thursday [telling a] news conference new legislation [would be] announced in the spring to 'protect the interests of children while keeping families together'." *Vancouver Sun*, December 4, 1992.

²⁴ *Gove Report*, *supra* note 1, Volume I.

The results of the Inquiry's review of other child deaths are troubling. Matthew's suffering and death was not unique. Many other children living in similar circumstances, known to the ministry through a child protection report or a request for services but not in the ministry's care, have died of unnatural causes. Some were killed by caregivers or other family members, some died in suspicious circumstances and some took their own lives. Many had been previously apprehended or were subjects of numerous child protection reports or investigations.

What sets Matthew apart from these children is that Matthew's death became the focus of an inquiry and has attracted wide attention. They, on the other hand, are the "invisible ones". They died of abuse or neglect, alone and in obscurity... Many of these deaths have gone unnoticed and uninvestigated... When the Ministry did review children's deaths, significant practice problems were identified, hauntingly similar to what the Inquiry found in Matthew's Story.

Regrettably children continue to die in similar circumstances.²⁵

Matthew Vaudreuil was born on October 3, 1986 in Fort St. John, British Columbia. His mother, Verna Vaudreuil, was 20 years old.²⁶ By the time the Matthew was born, Verna Vaudreuil and Matthew's father, Ken Hutchins, were estranged.²⁷ Six days after Matthew's birth, the public health nurse working with the hospital noted re Verna Vaudreuil:

At risk for Parenting: mentally handicapped 20 yr. old girl living with father and brother in a deprived home with no reliable female role model for help with mothering... Nursing her baby well... will require assistance for learning parenting skills. [emphasis in original].²⁸

²⁵ *Ibid.*, at 223.

²⁶ This summary is taken from the *Gove Report*. It gives a bare framework of official involvement in Matthew Vaudreuil's life; the complete story is told in Volume I of the *Report* ("Matthew's Story") which contains far more detail than I can reproduce here. I have included some portions of the "Executive Summary" of the *Gove Report* to provide a sketch of the facts from which the subsequent analysis is drawn. I will discuss some parts of "Matthew's story" in more detail during the analysis which follows.

²⁷ "According to Vaudreuil, the relationship was 'a living nightmare... he liked to bat me around a lot.' Hutchins testified that he was shocked and scared when he was told that Vaudreuil was pregnant. He was unable to provide a home for a baby and did not believe that Vaudreuil, who was unable to care for herself properly, was ready to be a mother." *Gove Report, supra* note 1, Volume I at 21.

²⁸ *Ibid.*, Volume I at 22.

On October 15 the public health nursing supervisor called a case conference to discuss the situation:

Verna needs close supervision with her spending plans. She appears to have the mental capacity of a 10-12 year old. Assessment of Verna's mental capabilities not available at this time.

... A great concern at this time is safety, consistency and an ability to learn and manage time and stress. It is unknown what can be taught to Verna and how home situation will continue. PLAN: All involved services will meet in late October/November to assess what has evolved and how services can be efficiently and effectively co-ordinated.²⁹

Despite this plan, however, the next case conference did not take place until December 1989, three years later.

Verna Vaudreuil's "mental handicap" was uncertain, although her sometime official designation as "disabled" is important in the Vaudreuil's' story. Doctors told her father that a fall at age three had caused learning disabilities, and Verna Vaudreuil believed the fall caused her speech impediment and partial hearing loss. At age 15 Vaudreuil was assessed, and her intellectual skills were found "within the borderline range of functioning". It was considered that Vaudreuil was not retarded, although she seemed to think she was.³⁰ In 1982 Vaudreuil lived in a residence for youths with mental handicaps. When Vaudreuil applied for income assistance (on turning 19 and being discharged from

²⁹ *Ibid.*, Volume I at 23.

³⁰ "The team recommended that Verna be given a complete neuro-psychological assessment and be re-integrated from the skills development class she was attending into the normal school system: 'This should improve her self image (i.e. she considers herself retarded which she is not) and will also provide her with the appropriate peer role models, which she requires (emphasis in original).' There is no evidence that a neuro-psychological assessment was done." *Ibid.*, Volume I at 18.

care) her social worker helped her to complete an application for *Guaranteed Available Income for Need* handicapped benefits: "Livingston [the social worker] felt that Verna would never be financially self-supporting and could use the additional money for shelter and support over a longer period of time provided by the handicapped benefits. On Verna's behalf, Livingston wrote, 'My disability is... mentally handicapped.'"³¹

If Verna Vaudreuil was not mentally disabled, the Gove narrative describes a woman troubled by emotional and behavioural difficulties. She had been severely emotionally rejected, neglected and physically (in her biological home) and sexually (by her father and, allegedly, a foster father) abused, and was first taken into care at age eight, going through many foster care placements and home returns.

Verna and Matthew Vaudreuil left Fort St. John's for the Lumby/Vernon area of B.C. when Matthew was 33 months old. By the time they left Fort St. John eight different ministry social workers had been involved in providing services and the ministry had recorded 17 reports of concern about Matthew Vaudreuil's safety and well-being (the Inquiry heard about two more which were not recorded). Matthew Vaudreuil was seen by 13 different physicians 45 times, and assessed by a speech-language pathologist, a psychologist and the medical director of the Child Development Centre. Services provided to the Vaudreuils included two home support workers, a homecare nurse, a

³¹ *Ibid.*, at 20. "In testimony to the Inquiry, Livingston said that these answers might have overstated Verna's disabilities, but that Verna required supervision to fulfil normal daily functions." *Ibid.*

public health nurse, an infant development consultant, a life skills worker, two ministry-approved foster parents and shelter at a transition house.

The following narrative is taken from the Executive Summary of the Report of the Gove Inquiry into Child Protection.³²

The home support worker and infant development consultant who worked with Matthew and his mother during his first year became concerned about the risks to Matthew posed by his dirty home environment and Vaudreuil's limited parenting skills. Matthew also began demonstrating self-abusive behaviour such as head banging and biting himself .

By the time Matthew was two, the ministry had received several reports that he was being neglected and physically abused, was often filthy and was living in appalling conditions. Matthew and his mother lived in a women's transition home for six weeks after she reported that she and Matthew had been physically abused.

Vaudreuil sought advice from ministry social workers about Matthew's temper tantrums and self-abusive behaviour. She also took Matthew to the hospital emergency ward numerous times for minor ailments, and several doctors noted her apparent difficulties in parenting Matthew.

Matthew's foster mother who babysat him when he was two and a half found that he acted violently toward both himself and another child in her home by scratching and biting. After three months, this behaviour led the foster mother to refuse to care for Matthew any longer. When Vaudreuil was later hospitalised for two weeks, a home support worker who lived with Matthew observed him to thrive: he put on weight, he laughed and his self-abusive behaviour stopped. When Vaudreuil returned, he deteriorated; he and the home grew dirtier and his tantrums and self-abuse returned. A psychologist who evaluated Matthew at the request of the Fort St. John Child Development Centre found that his severe language delay qualified him as a special needs child, and recommended that he attend the child development centre pre-school.

In June, 1989 the Vaudreuil's moved out of the Fort St. John area. On September 6 Verna Vaudreuil's social worker prepared a closing summary, noting Vaudreuil's "slight medical handicap" and that she "has quite literally had all the services available in Fort St. John."³³

³² *Ibid.*, Volume I at 9-10.

³³ *Ibid.*, Volume I at 48.

Shortly before Matthew turned three, Vaudreuil and Matthew moved to Lumby, near Vernon, where she married. Ministry social workers in Fort St. John alerted social workers in Vernon to the need for the ministry to become involved with the family, noting that Vaudreuil was mentally handicapped and citing concern for her ability to parent Matthew. In spite of these warnings, the Vernon social workers made few efforts and never did locate Matthew and his mother in Lumby.

Vaudreuil stopped living with her husband after two months. She claimed that he had abused Matthew. An RCMP officer took Vaudreuil and Matthew to a women's transition home, but concluded that Vaudreuil's allegations did not warrant further investigation. Transition home staff observed that Matthew screamed, bit himself, hit his head on the floor, and that Vaudreuil's seriously inadequate parenting skills aggravated Matthew's behaviour. They reported their concerns to a ministry social worker.

After two months Vaudreuil and Matthew moved to the transition home's independent living residence. Vaudreuil did not participate in any of the counselling programs, and people in the residence observed her apartment to be dirty and disgusting. Matthew's self-abuse continued.

When Vaudreuil told a ministry social worker that she could no longer care for Matthew, it was agreed that Matthew would be placed with a foster family for two weeks full time, and then on an intermittent basis. Home support services were cancelled when Vaudreuil did not co-operate. A child care worker hired by the ministry had found Vaudreuil resistant to meeting with her until Vaudreuil's social worker threatened to cancel the foster parent's services unless Vaudreuil co-operated. The foster mother eventually cancelled the intermittent care agreement on her own initiative. Vaudreuil was leaving Matthew longer than agreed and, without speaking to the foster mother, Vaudreuil's social worker agreed with Vaudreuil that the foster mother would babysit Matthew on the days that she was not contracted to provide foster care.

Vaudreuil and Matthew moved in with a man she had met in a bar, but neighbours soon complained of screaming and of Vaudreuil's attempts to force them to babysit Matthew. The social worker took no significant steps to determine if it was an appropriate living arrangement for Matthew. The man eventually evicted Vaudreuil and Matthew. They moved back to the transition house, and, shortly thereafter, to Fort St. John.

While in Vernon the Vaudreuil's had contact with six social workers and the ministry recorded 11 reports of concern about Matthew Vaudreuil's safety and well-being (the Inquiry heard about at least one more which was not recorded). Matthew Vaudreuil was seen by 7 different physicians approximately 15 times, and assessed by an infant development consultant. Services provided to the Vaudreuil's included a home support

worker, a child care worker, foster care, shelter at a transition house, and the child development centre pre-school. The Vaudreuil had also been in contact with the police.³⁴

Vaudreuil and Matthew moved back to Fort St. John in April 1990, when Matthew was three and a half years old. Vaudreuil sought advice from her financial assistance worker about Matthew's tantrums and self-abuse. At the child development centre pre-school he was assessed as interacting with other children at the level of an 18 month old.

In December, Vaudreuil asked ministry social workers to put Matthew into a foster home while she took course on parenting and anger. The social workers refused because they were not convinced of her commitment to making effective use of a break from parenting.

The ministry continued to receive reports that Matthew was dirty, neglected and abused, and that the home was filthy and smelled putrid. The psychologist who had evaluated Matthew for the child development centre did so a second time, and concluded that Matthew needed a full scale behaviour management program at home, but that results were not likely to be achieved because of Vaudreuil's limited parenting abilities.

In March 1991, while Matthew and Vaudreuil were living with her father, a child care worker found Matthew's living environment to be so filthy that she returned with a social worker. The social worker returned several times, threatening to remove Matthew if the situation did not improve, and ultimately insisting that Vaudreuil find her own apartment. This did not occur until May 1991.

Over the next few months, Vaudreuil's apartment became a "flop house" for homeless and runaway youth. Vaudreuil reported to the police that her boyfriend had cut Matthew's penis with a knife, an accusation that the boyfriend denied and that was not substantiated. Matthew's uncle reported to the ministry that Vaudreuil was using drugs and was a prostitute, and that Matthew was not being fed. A social worker spoke with Vaudreuil, but did not visit the home or speak with the uncle, anyone else who knew the family or Matthew himself.

A week later a youth took Matthew to the hospital at 1 am claiming Matthew had choked and stopped breathing. The youth reported that Vaudreuil was drunk and had gone out, and the youth did not know how long Vaudreuil would be gone. The next night the ambulance service attended Vaudreuil's apartment and found the same youth lying on the floor, apparently unconscious, and another youth in a closet apparently on drugs. Matthew looked dirty, underweight and neglected.

During the summer there were more reports that Matthew was being physically abused and neglected, and that the apartment was filthy, with maggots on dirty laundry in the bathroom and mould growing on food in the fridge. Social workers visited the home and found it to be in a mess. Child care and home support services were provided, but Vaudreuil routinely missed appointments or did not co-operate.

³⁴ *Ibid.*, Volume I at 70.

When Matthew was almost five, he was suspended from his day-care when workers felt they could not manage his difficult behaviour without the assistance of one to one care for him. He was subsequently terminated from the day-care altogether when his mother made a scene about his suspension.

Vaudreuil then placed Matthew into a family day-care. The day-care provider reported to the Ministry that she could no continue to care for Matthew because he was acting out physically and sexually with other children in her home. Ministry social workers never investigated.

In the autumn, a social worker referred Matthew to the Ministry of Health's Mental Health Services program. A psychiatric social worker saw Matthew and his mother three times, and concluded that Vaudreuil's lack of parenting skills was the main problem. A three to four month treatment program was proposed but was never undertaken because Matthew and his mother missed the next two appointments.

In December Vaudreuil began living with 18 year old Patrick Johnson. Around Christmas a ministry social worker investigated an allegation that Matthew had been physically abused by his mother. When the physician who examined Matthew could not find absolute evidence of abuse, the social worker left him in Vaudreuil's care.

In January 1992 Matthew came to pre-school in soiled clothes, and he was observed hitting himself and other children. In February, after pre-school staff felt compelled to bathe him themselves and sent his filthy clothes home for Vaudreuil to see, he stopped attending altogether.

In early March, after Johnson, Vaudreuil and Matthew moved to Vancouver, a ministry social worker closed the file, even though she recorded in the file that there were protection concerns and that Matthew might need to be apprehended. Prior to their move, Vaudreuil's *Income Assistance* file had been closed and both mother and son placed on Johnson's assistance file in order to give Johnson a greater sense of responsibility.³⁵

During this period in Fort St. John, the Vaudreuil's had contact with nine social workers and the ministry recorded 19 reports of concern about Matthew Vaudreuil's safety and well-being (the Inquiry heard about at least five more reports which were not recorded). Matthew Vaudreuil was seen by 8 different physicians over 15 times, and assessed twice by a clinical psychologist and once by a psychiatric social worker employed by the

³⁵ "Executive Summary", *Gove Report*, *supra* note 1, at 10-12.

Ministry of Health. Matthew Vaudreuil attended the Fort St. John Child Development Centre pre-school, summer day-care and the home of a private babysitter.³⁶

On March 3, 1992 [in Vancouver], Johnson applied for income assistance for himself, Vaudreuil and Matthew. A week later a social worker filled in an Intake form based on her telephone conversation with the Fort St. John social worker who told her that there should be ministry follow up with this family. When the file arrived from Fort St. John on March 16, the social worker realised there were serious child protection concerns.

The intake social worker who was responsible for the investigation made several attempts to contact Johnson, Vaudreuil and Matthew, but did not meet them face to face until May 21, 10 weeks after the intake telephone call the Fort St. John social worker was received. No Alerts had been placed on the ministry's computer system and the intake social worker never discovered that the ministry had placed Johnson and the Vaudreuil's in a Vancouver hotel.

The social worker's primary concern was arranging a special needs placement for Matthew with the school board. He did not examine or talk to Matthew privately, and did not perform a risk assessment.

According to Johnson, when Matthew told him on July 8, 1992, that a man had been in Johnson and Vaudreuil's bedroom, Johnson went for a walk, feeling lost and confused. When he returned Matthew was on the sofa. When Johnson noticed that Matthew was not breathing, he asked Vaudreuil to phone 911. Matthew was pronounced dead just after midnight in the emergency ward of British Columbia's Children's Hospital.

When Matthew died he was five years and nine months old. Not including supervisors, 21 ministry social workers had been responsible for providing him with services. At least 60 reports about his safety and well being had been made to the ministry. He had been taken to the ministry. He had been taken to the doctor 75 times and had been seen by 24 different physicians.

The autopsy showed that Matthew died of asphyxia, a lack of oxygen. The cause of death was consistent with Vaudreuil's statements to police that she had put her hand over Matthew's mouth and nose to stop him from yelling.

Although he was nearly six years old at the time of his death, Matthew weighed only 36 pounds. His face, arms, legs and back were covered with bruises. There were what appeared to be rope burns on his shoulders and wrists, as if he had been bound. His buttocks were covered in bruises and welts. He had a fractured arm, 11 fractured ribs and what looked like the imprint of a foot on his back. Matthew had been tortured and deprived of food before he was killed.³⁷

³⁶ *Gove Report, supra* note 1, Volume I at 102.

³⁷ "Executive Summary", *Gove Report, supra* note 1 at 12-13.

Situating Gove

If the inquires have pinpointed time and again the failures of communication between professional social workers, they have also shown some quite enormous failures of communication between social workers and the public. They have an unerring way of showing up the gaps between facts and the truth...

Truth, in the end, depends on where you sit, and social workers and the public- as represented by members of committees of inquiry and the mass media- sit in different places. Even the starting points are different. For social workers, they have to do with the complexity of relationships. For the rest of us, with hindsight, they have to do with the simple wrong that a child died.

And if what social workers are trying to get across is that their job is a complicated one, the message they are getting back is that, complicated or not, their first duty is to protect children. This duty has now, as the whole apparatus of child abuse shows, become too important to be left to any one profession. It has also become too important to be left to professional workers' best efforts: the public will want to know why they fail if they do so. To social workers, this may look like a lack of trust in what they are up to. That's very probably exactly what it is.³⁸

The themes and patterns discussed in Chapter Three run throughout the Gove Report: inconsistent and ineffectual use of authority ("ultimatums" without consequence);³⁹ apparent misunderstanding of the law and pre-guessing court outcomes;⁴⁰ compiling reports from parental accounts;⁴¹ blocks to recognition, including the inability to recognise unacceptable living conditions;⁴² failure to read warning signs;⁴³ failure to assemble

³⁸ A. Shearer, "Tragedies Revisited (3): "Have We Learned the Lessons?" (1979) 10 *Social Work Today*, (No. 21) 11 at 14.

³⁹ See: Gove Report, *supra* note 14 Volume I at 78, 80, 86, 93, 99.

⁴⁰ *Ibid.*, Volume I at 35, 39, 75.

⁴¹ *Ibid.*, Volume I at 33, 34, 54, 83.

⁴² *Ibid.*, at Volume I 34, 35, 69-70, 78, 79, 101, 110 for particular examples; the following discussion of Verna Vaudreuil's disability, victimisation and "sad tale" also pertain to this idea.

⁴³ *Ibid.*, Volume I at 34, 36, 44, 58, 61, 63, 65-77, 88, 133.

accurate and complete information;⁴⁴ inappropriate focus;⁴⁵ inability to commit to a course of action;⁴⁶ failure to take complaints seriously;⁴⁷ and the “circumstantial elements” of re-organisation etc.⁴⁸ “The Inquiry’s investigations clearly established that the poor social work practice evident throughout Matthew’s life was not unique. To the contrary, that practice was representative of the ministry’s delivery of child protection services across the province.”⁴⁹

As I stated in Chapter Three, it is rather artificial and potentially misleading to separate the themes; it becomes apparent, reading the *Gove Report* (as with the others) that the patterns discernible merge, overlap and interact with one another. Considering the UK surveys, the separation had more purpose than it does here, considering a single report. Separating each theme within a single report seems not only artificial, etc., but unnecessary. Accordingly, I have structured the following discussion fairly loosely.

⁴⁴ *Ibid.*, Volume I at 55, 58, 68, 117-118.

⁴⁵ *Ibid.*, Volume I at 64, 67, 81, 135.

⁴⁶ Bearing on the related themes of wavering authority and evasion of responsibility: *Ibid.*, Volume I at 23 and 23 (the first case conference which begins the pattern in which action consists in *making plans*).

⁴⁷ *Ibid* Volume I at 26 (the first phone in complaint), 29, 30, 31, 34, 79, 88, 92-3, 94, 96, 123, 139.

⁴⁸ *Ibid.*, Volume I at 35, 45, 95. Circumstantial or organisational elements should not be considered as “external” to an ideational analysis (or as the “real issue”.) The organisational problems which appear endemic to child protection are a function of, and feed into, the fundamental contradictions and consequent “patterns of error” discussed in this paper; successive rounds of “fixing” a system which in fact “works” according to the “liberal compromise, but not according to its own stated agenda. The subsequent uncertainty generated by this “chaos” has an obvious impact on worker confidence about knowledge (the law, what to look for) and authority, and the ability to commit to and take responsibility for a plan of action.

⁴⁹ “Executive Summary”, *Gove Report*, *supra* note 1 at 30.

Bearing in mind the themes and patterns developed in the preceding chapter, the reader should be able to see them in the following passages, *and* to see the larger pattern they form: the “liberal compromise”, and the “rule of optimism” which makes it work.

Unfortunately, no “minority report” similar to Olive Stevenson’s accompanies *The Report of the Gove Inquiry*. A fuller meaning for Gove’s story depends on the contrast of a “minority” perspective. Without a doubt that story - the minority narrative- exists within the profession as an “unofficial version”, or secret history.⁵⁰ This kind of “secret history” has two unfortunate implications: the official version is subverted for “insiders”, and is more generally compromised as simplistic and “untrue”. A minority version would be no “truer” than Gove’s; such accounts provide *alternative perspectives*: the “lesson” of child protection “disasters” may be found in the space between them.⁵¹

Within the *Gove Report* itself, however, a shadowy alternative version may be glimpsed in the facts of the narrative. Gove criticised social workers for treating each crisis in the Vaudreuils’ life as a discrete event and failing to put the pieces together. Putting those events together himself, Judge Gove sees the *ignored* background against which workers made decisions about Matthew Vaudreuil: the child’s “dangerous family”. Social workers appear to be reacting, ineffectually, to each incident without reference to that background.

⁵⁰ Elizabeth Pendleton’s “no regrets” statement to the Inquiry gives us an idea: “[if] I had Verna and Matthew here now, I would continue the way I had been, as a family service worker, trying to provide the services to this young boy, and to his young mother as well.” See *infra*, note 104. Cf. I. Grant and J. Mosoff, “Supporting Families, Protecting Children” *The Vancouver Sun* (Dec.8, 1995).

⁵¹ in which the “good professional decision” may have fatal consequences for the child at the centre.

It is possible, however, as in the Maria Colwell case, that social workers did assemble events and information to create a highly influential *context* for the Vaudreuil. (at least in Fort St. John, where mother and son lived for some time). Perhaps something like an *over-contextualisation*, focusing on Verna Vaudeuil's disabilities, victimisation and "sad tale", and Matthew Vaudreuil's behaviour, within the larger paradigm of "family centred" child protection, made the decision not to apprehend Matthew Vaudreuil appear the right one. It is this alternative context which becomes briefly discernible at moments in the Report, and one regrets the absence of a minority version to explore it more fully.

Threats and Promises

One striking feature of Matthew's story is the extent to which Verna Vaudreuil emerges as an active, sometimes dominant, player in her relationship with social services. An impressive array of resources were offered to and rejected *by* Vaudreuil. The narrative describes a woman who knew what she wanted- someone else to be responsible for Matthew- and openly dismissed the various services designed to "help" *her* to handle the responsibility. The Verna Vaudreuil in the Gove Report is not a passive figure defined by her "disability", "falling through the cracks" of an overburdened system. Verna Vaudreuil, it seems, simply *did not want* the help on offer.

Social workers threatened to take Matthew away from Vaudreuil on a number of occasions if she did not "meet his needs"; these "ultimatums" were abandoned regardless of whether or not the demands made of Vaudreuil (or "goals") were met. The following passage describes events after the Vaudreuil's return to Fort St. John; it is worth noting

that Kevin Rushton was Verna Vaudreuil's previous social worker in Fort St. John, and that Child Development Centre medical director Richard Moody had known the Vaudreuil's since Matthew's infancy.⁵²

In January 1991, the Child Development Centre gave SPMH social worker Kevin Rushton several reports that Matthew was not attending regularly and that when he did, he was dirty and improperly dressed for the winter weather. This prompted Rushton to prepare a written summary, in which he noted protection concerns from both the Fort St. John and the Vernon offices...

CDC staff are concerned about Matthew's mother's ability to parent. CDC staff members have to go and collect Matthew each morning that he is to attend pre-school; otherwise he will not be present. This service is not one they offer to any other child.

On January 22, 1991, Dr. Richard Moody, medical director of the CDC, summarised recent events, concluding:

The staff find this one of the more frustrating problems to deal with because of the home situation. Unfortunately, the odds are stacked very much against poor Matthew but we shall continue to give this family what support we can.

On January 28, Vaudreuil [met with workers and the District Supervisor] at the CDC... Rushton's notes summarise the meeting:

Verna was to think about things that she wanted different in her life and the F&CS Unit would provide a Special Services to Children worker to work... on some specific goals selected. It was also suggested... that she apply for Handicapped Status. This might help her more financially.

... [The District Supervisor] told the Inquiry that Vaudreuil was very co-operative at the meeting; he explained to her that they would have to take Matthew away from her if she did not meet his needs.

[On February 11 Vaudreuil's] family service file was re-opened in order to provide a child care worker. The short-term goals of the contract were for Vaudreuil to learn

⁵² Dr. Moody evaluated Matthew Vaudreuil's situation on May 12, 1987, noting his "domestic circumstances can best be described as sub-optimal, but although Ms. Vaudreuil may not be a competent mom she seems to be caring and I don't think there is any question of child abuse or neglect", while at the same time noting that Matthew's physical and intellectual development was at risk because of Vaudreuil's poor parenting skills. (*Gove Report, supra* note 1, Volume I at 26). The point is often made, by "realists" wishing to normalise child protection, that the "real problem" in child protection is lack of resources, lack of services, constant staff turnover with the result that clients cannot get what they need and workers cannot "know" their clients. One significant feature of the *Gove Report* story, (and here there is a strong parallel with *Paul: Death Through Neglect* The Bridge Child Care Consultancy Service for Islington Area Child Protection Committee, 1995) is the extent to which services were ignored or abandoned by Verna Vaudreuil - "every service available in Fort St. John" - and, before she left for Vancouver, the element of continuity in her care.

basic life skills, to work on housekeeping and to learn personal hygiene for herself and Matthew. The long term goals were to move out of her father's home and to find her own place, and to learn parenting skills. Versions of these goals, especially the short term ones, had been set repeatedly since Verna Vaudreuil herself had been in the care of the superintendent.⁵³

On March 19 social worker Susan Cornell visited Vaudreuil, still at her father's home, after receiving a report from a child care worker of the home's "filthy" conditions:

In her recording [of her visit] in the *Family Service* file, she wrote, 'The smell in the home was quite putrid and I could no longer stay after about ten minutes time.' She met Vaudreuil in her office the next day and told her that her home was unhealthy for Matthew, and that if Vaudreuil did not make a good effort to clean up the mess and health hazards, Matthew would have to live elsewhere for a while. According to Cornell's notes, Cornell 'told her we did not want to apprehend, but we may have to keep Matthew healthy.' Vaudreuil was given two days to make a difference. Meanwhile Matthew remained in the putrid environment.⁵⁴

There follows a rather pathetic account of Vaudreuil "cleaning, but she did not appear to know how to go about the task."⁵⁵ She was given three more days. There was little change. She was given until the end of the week to move. The child care worker's notes state that Matthew would be apprehended unless he moved out. This was in mid-March.

The Vaudreuil family moved into their own apartment in May, which does not seem to have been an improvement, despite the optimistic hope of the child care worker assigned to help the family that "hopefully a new home will give her the drive to keep her home clean". Rather, the apartment became a "flop house" for runaway and street youths. The

⁵³ *Gove Report, supra* note 1, Volume I at 78-79.

⁵⁴ *Ibid.*, Volume I at 80.

⁵⁵ *Ibid.* Although at one point in the narrative it is mentioned that Vaudreuil got a job as a chambermaid at a hotel; no detail is given about this.

Fort St. John Fire department ambulance team, responding to a midnight call at the Vaudreuil apartment found a youth “lying on the floor, apparently unconscious... There were four or five other teens in the apartment, including one in the closet who was apparently on drugs. The apartment was very messy, with beer and liquor bottles and clothing scattered around... [The Lieutenant] told the Inquiry that he saw Matthew carrying a bag of hot dog buns, complaining he was hungry and looking dirty, underweight and neglected. Concerned for Matthew, [the Lieutenant] phoned the Helpline at the end of his shift”.⁵⁶ As a result of the incident, a social worker visited Vaudreuil and told her “she had better clean up her place and stop allowing so many people over on a regular basis, because Matthew was being exposed to drugs, alcohol, suicide, inappropriate behaviour, etc.”⁵⁷ According to her notes, she told Vaudreuil Matthew would be apprehended if “such behaviour continued.” Her notes also describe her risk assessment as a “borderline protection concern”:

[She] told the Inquiry that she described the case as “borderline” because Vaudreuil had agreed to clean things up and, in neglect cases, you had to give the parent the opportunity. She also testified that while she was well trained on child safety issues such as physical and sexual abuse, she was not nearly as well trained on assessing a child’s “well-being”, or recognising signs of neglect.⁵⁸

⁵⁶ *Gove Report, supra* note 1, Volume I at 86.

⁵⁷ *Ibid.*

⁵⁸ *Ibid.*

The squalor of Matthew Vaudreuil's living conditions was a media focus after his death.⁵⁹ Newspaper stories about appalling material conditions may be particularly worrying to the public as squalor *would seem to be so obvious* to any "common sense" observer. While bruising on a child, or behavioural problems, may be ambiguous to the extent that the "lay" observer can appreciate the social worker's difficult task of professional judgement, the inability to recognise and do something about "obvious" squalor may be understood by the public as incompetence or *indifference*. Yet, while their evaluation requires no special knowledge the framework of interpretation may discount the significance of material conditions.⁶⁰

The proper application of "legal guidelines"⁶¹ is only one factor in the makeup of that interpretative framework; professional self-perception⁶² and the social worker's "territory

⁵⁹ And a matter of professional concern from his infancy (*Gove Report, supra* note 1, Volume I at 24.) "A review of the Ministry's records for Matthew and his mother would have shown that extremely poor hygiene and housekeeping were constants in the Vaudreuil home. The records also showed that a lack of motivation to work on her parenting skills and a tendency to evade those who were trying to help her with this were hallmarks of Verna Vaudreuil's behaviour, despite occasional spells of apparent caring and effort at parenting. There is some controversy over what standards should define an appropriate home environment; however, court decisions have given some legal guidelines. By any standards, Matthew's home environment was not fit for any child." *Gove Report, supra* note 1, Volume II at 86.

⁶⁰ "Normality and deviance, then, are both outcomes of an interaction between what is available to be observed and the framework of ideas within which observations are actually made." Robert Dingwall, John Eekelaar and Topsy Murray, *The Protection of Children: State Intervention in Family Life* (Oxford: Basil Blackwell, 1983) at 244.

⁶¹ See, *supra* note 50.

⁶² From *Paul: Death Through Neglect, supra* at note 52, an inquiry report with many similarities to *Gove*, at 181: "The professional perception of the children as 'dirty, smelly but happy' went unchallenged. There may even have been professional pride in a position that value judgements should not be imposed on issues to do with hygiene."

of normal appearances”⁶³ are also important here. The statement of the social worker above that in neglect cases “you had to give the parent the opportunity” notes the *wider* context which delimits decisions about material conditions. Within that context is the worker’s “territory of normal appearances”, and within *that* context is the context of the particular household, or “case”. Dingwall, Eekelaar and Murray describe the idea of change⁶⁴ as significant within the particular “case” context. Consistent, if unsatisfactory, living conditions, may be taken as an indication that the client is not “doing it on purpose” and cannot, therefore, be formulated as the kind of person capable of neglecting her child.⁶⁵

“Ultimatums” given to Vaudreuil consisted not only of threats to take Matthew away but, significantly, threats to *force them together*, by removing alternative care arrangements.

Despite the supports offered to her[home support worker services], Vaudreuil called [Vernon social worker] Denise Gauthier on November 21, 1989 to tell her that she could not cope and that she could no longer care for Matthew. Ms Gauthier, after consulting with her district supervisor, decided to offer Vaudreuil a short term care agreement under which Matthew would be taken into temporary full-time foster care for two weeks, then intermittent foster care for a few days a week. The condition of the agreement was that Vaudreuil use this respite from parenting to take advantage of the services offered her.⁶⁶

⁶³ “[Social workers] also can be seen to operate with a model of normal appearances grounded in the social ecology of their area.. Both groups [social workers and health visitors] must be sensitive to variations from their conceptions of normality as a warrant to undertake further investigations... those attempting to deceive either agency will model themselves as closely as possible to their idea of expectable conduct.” *Ibid.* (referring to M. Sacks’ discussion of the police officer’s beat as a “territory of normal appearances” by which the officer distinguishes “suspicious” behaviour or circumstances; “Notes on police assessment of moral character”, D. Sudnow, ed. *Studies in Social Interaction* (New York: Free Press, 1972)). Dingwall et al. *supra* note 60 at 244.

⁶⁴ *Ibid.*, at 59.

⁶⁵ This last observation feeds into Verna Vaudreuil’s purported mental disability, which, I suggest, coloured social worker perceptions of her *culpability* for the environment she and Matthew lived in.

⁶⁶ *Ibid.*, Volume I at 61.

On December 4, 1989 Matthew began attending NONA pre-school three afternoons a week... Two days later the full time foster care contract expired and [social worker] Roundhill, filling in for Gauthier, extended it, changing the term to "intermittent": the Veritys (foster parents) would care for Matthew Monday to Wednesday, three days and two nights a week. Roundhill's reasoning was that Matthew would benefit from a structured family environment. Placing him with Verity offered a valuable opportunity to see if Matthew's behaviour as the same with another caregiver as with his mother. Roundhill also believed that Vaudreuil needed a break,

a chance to meet the other needs of the parenting class. She needed the time to do some more healing and some more learning about herself.⁶⁷

In any event, there is no evidence that Vaudreuil ever attended any of the support services that were arranged for her during her stay at the transition house or Second Stage in Vernon, including programs offered by Second Stage itself. The Vernon & District Home Support Society Supervisor met with Vaudreuil on November 23, 1989 to discuss her contract, which provided for two hour home visits twice a week. Vaudreuil agreed, but did not keep any appointments, refusing to open the door or telling the home support worker to come back later and then not being home. The contract was discontinued. Eileen Podanowski, a child care worker with North Okanagan Youth and Family Services had more success, meeting with Vaudreuil for private counselling sessions eight times over two months; Podanowski observed that "Vaudreuil seemed happy to have someone to talk to about herself, her relationships with men, and her own problems, but deflected talking about Matthew... parenting was clearly not Vaudreuil's priority. She testified that as a child care worker she had seen a lot of apartments of parents who need help, but that Matthew's home was unusually filthy."⁶⁸

⁶⁷ *Gove Report*, *supra* note 1 Volume I at 62.

⁶⁸ *Ibid.*, Volume I at 63.

Jennifer Roundhill, who had been filling in for Gauthier, took over the Vaudreuil case. Ms. Roundhill testified "that she concluded that Vaudreuil needed more services, and that her strategy was to rely on community care givers to monitor Matthew:

there have been a number of things tried and there will need to continue to be a number of things tried. Fortunately we are well disposed to provide a lot of services.

Unfortunately, Verna Vaudreuil was not disposed to take them.

At the end of her first week as Vaudreuil's social worker, Roundhill recorded that child care worker Eileen Podanowski had not been able to get in contact with Vaudreuil, that the home support service contract was cancelled and that Vaudreuil was leaving Matthew with Karyl Verity beyond the three days a week stipulated in the care agreement. Roundhill apparently told Verity to "put your foot down" and not help Vaudreuil take advantage of the ministry's services, and then left messages for Vaudreuil at Second Stage advising her that Matthew would be returned as scheduled.⁶⁹

Jennifer Roundhill finally contacted Vaudreuil at the NONA pre-school on January 30, 1990. There she told her that if Vaudreuil did not agree to see the child care worker three times in the next two weeks, the respite care agreement would be cancelled: Vaudreuil would not receive services unless she co-operated. Vaudreuil agreed.

In her testimony to the Inquiry, Roundhill stated that she had no intention of depriving Matthew of the positive environment of the foster home and that her statement to Vaudreuil may have been a "bluff".⁷⁰

On March 12, 1990 Verity cancelled the care contract; Verna was abusing the intermittent care agreement, consistently leaving Matthew for longer than the two night a week which had been arranged (in one seven day stretch Verity did not hear from Vaudreuil), and Verity had not been asked about providing additional daytime babysitting services for Matthew, a plan which Roundhill had offered Vaudreuil (without consulting with

⁶⁹ *Ibid.*

⁷⁰ *Ibid.*, Volume I at 64.

Verity).⁷¹ On March 14, 1990 Roundhill gave Vaudreuil a choice between intermittent care for Matthew in a new foster home or daytime babysitting, giving Vaudreuil a week to decide:

My thought was this wasn't what Verna had been counting on. She's on her own. Let's see what happens for a few days until she decides what to do... it was a good opportunity to see what perhaps had changed for Verna and perhaps the plan would change accordingly.

Roundhill felt that reducing contracted services placed the responsibility for Matthew's care more on Vaudreuil, which Roundhill thought was appropriate.... In testimony before the Inquiry Roundhill stated that: "The direction I was ultimately working towards was that Verna would be responsible for full time care of her son."⁷²

That choice was never made. Vaudreuil called Roundhill on March 21 to say she would be going to Fort St. John to look after her ill father, and Roundhill decided to "see what happens next."⁷³ That afternoon an intake social worker got a call that Vaudreuil, having been evicted, had left Matthew in a man's apartment.. The neighbour was willing to look after Matthew for the night. He phoned the ministry again the next day, and spoke to Roundhill, as did Vaudrueil, then at the neighbour's house. Roundhill recommended that Vaudreuil go to Transition House if she had nowhere else to go: "She asked Vaudreuil to let her know where she ended up staying", explaining to the Inquiry that "she saw Verna Vaudreuil as a mother who had lost her place to live and was having difficulty planning and finding reliable babysitters."⁷⁴

⁷¹ The day after the cancellation Matthew was taken by ambulance to the hospital with damage to the soft tissue of the lower back, explained as due to a fall.

⁷² *Ibid.*, Volume I at 67.

⁷³ *Ibid.*, Volume I at 68.

⁷⁴ *Ibid.*, Volume I at 69.

The 1981 DHSS study notes as striking “the number of cases in which parents or parent figures asked for children to be removed in one way or another”⁷⁵ This is also a striking feature in the Vaudrueil case; Verna Vaudreuil explicitly requested that Matthew be taken into care, and repeatedly simply left him with others, apparently including people she did not know.⁷⁶ On many, many occasions she took Matthew to the hospital, even where there did not appear to be anything the matter with him; this seems to have been another attempt on her part to find someone else to take responsibility for him. One of these visits, poignantly, took place after social workers in Vernon referred Matthew to a paediatrician in October, 1989, after determining that Vaudreuil’s file would be the primary responsibility of Family and Children’s Services (as opposed to Services for People with Mental Handicaps) because of “grave child welfare concerns”.⁷⁷ The paediatrician found no “overt evidence of physical or sexual abuse”, and although concerned by the history of abuse (attributed to others) told by Vaudreuil, he assumed there was no “immediate concern” as Vaudreuil had left her husband (although he noted

⁷⁵ DHSS, *Child Abuse: A Study of Inquiry Reports 1973-1981* (London: HMSO, 1981) at 33.

⁷⁶ Dr. Susan Penfold, psychiatrist at BC Children’s Hospital, who reviewed the case for the Inquiry, noted, re Vaudreuil’s behaviour: “What I’ve noticed about parents, particularly when I was working with the child welfare agency, is that they’ll often tell you that they want to parent their children but they’re often demonstrating by their behaviour that that’s the last thing they really have in mind, because... they don’t turn up for appointments. They’re always late. They don’t collect their children from the foster home. They don’t take the parenting courses you’ve suggested or they don’t follow through. So that by their behaviour they’re showing you that they’re not really able to parent.” *Gove Report, supra* note 1, Volume I at 133.

⁷⁷ *Ibid*, Volume I at 58. The report also notes the SPMH worker’s impression that Vaudreuil “did not fit the profile of a handicapped client: she was capable of doing things such as moving from Fort St. John, getting married, and checking herself in to a shelter.”

the “mother needs help” and seemed a “lost soul” in need of direction).⁷⁸ “That same day”, the Report records, “Vaudreuil took Matthew to the emergency ward of Vernon Jubilee Hospital for nausea, vomiting and diarrhoea. According to the notes of the attending nurse, Vaudreuil told her that Matthew had seen by [the paediatrician] that day, but that she wanted Matthew ‘rechecked.’” The implication of this act, *now*, seems terribly clear: you missed something- *look again*.

Child care worker Eileen Podanowski noted in 1990, that although Verna loved Matthew she lacked the ability and common sense to care for him: “Perhaps her manipulation and overuse of others around her to care for him is her way of indicating that she needs help.”⁷⁹

Podanowski concluded that “Verna was on a roller coaster of highs and lows from one day to the next... The roller coaster, however, rarely contained Matthew or anything about him.” Podanowski’s report went to Jennifer Roundhill [Vaudreuil’s social worker].

On April 5, 1990, Jennifer Roundhill learned from Transition House staff that Matthew and his mother had left for Fort St. John. She closed the Vernon file, noting in her closing summary that her primary concerns were Vaudreuil’s intellectual impairment, her poor housekeeping, Matthew’s special needs and Vaudreuil’s inability to sustain change. She then notified Kevin Rushton in the Fort St. John office that Vaudreuil and Matthew were on their way, telling Rushton, according to her closing summary that:

If service is requested or warranted by child welfare concerns, this client is in need of every available support in order to maintain the strong parent-child bond.

Roundhill’s closing summary was countersigned by acting district supervisor Marilyn Patton.

When asked by the Inquiry why Vaudreuil should simply be allowed to move on, taking Matthew on what Eileen Podanowski described as a roller coaster ride, Jennifer Roundhill answered: “because that’s the mother he was born to.”⁸⁰

⁷⁸ *Ibid.*

⁷⁹ *Ibid.*, Volume I at 69.

⁸⁰ *Ibid.*, Volume I at 69-70.

Back in Fort St. John, around Christmas 1990, Verna Vaudreuil went with two of her sisters to the ministry office. "All the sisters said that Vaudreuil wanted Matthew put in a foster home while she took courses on anger and parenting".⁸¹

Joanna Vaudreuil, who was credible and articulate in her testimony before the Inquiry, recalled that the man they spoke with at the ministry office made several disparaging remarks about Claudine Gayford [the other sister] having lost her children, and about the possibility that Joanna Vaudreuil was AWOL from her foster home in the Lower Mainland, an allegation that was untrue. According to Joanna Vaudreuil, the man said that Matthew had been in care three times before, and that his mother never followed through on her commitments to take courses or attend counselling. He said that under the circumstances they could not take Matthew away from Vaudreuil, because she treated it like a holiday and always expected to get Matthew back. He then ended the meeting, saying he could not help them and he had to go. Joanna Vaudreuil could not recall any discussion of a follow up meeting.

Vaudreuil remembers the incident somewhat differently. She recalls asking a woman who identified herself as a supervisor for temporary foster care for about a year. She did not remember any discussion of another appointment, but when she left she believed that she was *finally going to get the help she needed*. [my emphasis]⁸² According to Vaudreuil, throughout the interview Joanna Vaudreuil did most of the talking.

[The Recording Summary, dated December 28, 1990]:

Verna came in requesting a Short-term Care Agreement for Matthew. It was [our position] that a Short-term Care Agreement could not be entered into until we had reviewed the files. Verna wanted the Short-term Care Agreement so she could work on personal problems.. When questioned though she agreed that she had three previous STCAs for the same reason but had failed to follow through. [emphasis in original].

It is our concern that Verna just wants a break. Therefore, an appointment was made for Friday, January 4 (1 week hence) in the hopes the files have arrived by that time.⁸³

⁸¹ *Ibid.*, Volume I at 76.

⁸² Vaudreuil is articulating what is implied by her actions: the help she needed was not the services she kept being offered to teach her how or help her to look after Matthew, but *someone to look after Matthew*.

⁸³ *Gove Report, supra* note 1, Volume I at 76.

The file was not requested from Vernon until February 11. Vaudreuil did not show up for her January 4 appointment and on January 15 the assessment file which had been opened when Vaudreuil requested the care was closed. The file was closed without an investigation; indeed, the social worker “did not question Vaudreuil about Matthew, nor could she recall being concerned about him”.⁸⁴ Vaudreuil’s visit was characterised as a voluntary request for service.⁸⁵

Excuses and Justifications

The themes and patterns identified in the Inquiry Reports, including the *Gove Report*, and the “rule of optimism” analysis of Dingwall et al, describe the way “the system” works as essentially low intensity surveillance, allowing for State child protection within the wider liberal context. This kind of system is assumed to coincide with parental wishes (the notion/“device” of “natural love” described by Dingwall et al is important here, naturalising this coincidence and making it difficult for a parent to challenge it by requiring that the parent present themselves as *unnatural*, even monstrous). Where a parent, like Vaudreuil, is able to make the request for separation explicitly, it seems the demands of

⁸⁴ *Ibid.*, Volume I at 117.

⁸⁵ Vaudreuil told the Inquiry about making another request for foster care in Vancouver, although there is no record of such a visit: “According to Vaudreuil, she and Johnson [the man she was living with] went by bus to a ministry office... and asked for foster care for a six month period and for a psychologist to see Matthew... She wanted ‘to get help for my son and for myself and again [received] the same old treatment.’ She believed that if her request for short term foster care was granted, it probably meant that Matthew would not be returned to her: ‘I was prepared to accept it and try and get myself some help and get a psychologist for my son.’... Vaudreuil said that she was offered respite care three days per week and was upset that she was ‘asking for one thing and getting another.’ She did not follow up on her original request for foster care because she ‘had tried so often in Fort St. John and nothing was done.’” *Ibid.*, Volume I at 116-117.

the “system”- its operational rules combined, in the Vaudreuil case, with a particular social and political context⁸⁶- will, where *possible*, continue to set the agenda.

Of course, some children are take into care (including the children of Vaudreuil’s sister, Claudine Gayford). The deciding factor may be the availability of what Dingwall et al called parental “excuses and justifications”⁸⁷. The *Gove* narrative describes how these “excuses and justifications” are available to *the system* to further its agenda (here, an explicit political commitment to family maintenance reinforcing the “rule of optimism”), as well as to a parent. In Verna Vaudreuil’s case, Matthew’s characterisation as a difficult “special needs” child, as well as providing a “justification” in itself, seems to have added to her considerable “sad tale”- her troubled and deprived childhood, her disabilities, and her alleged victimisation⁸⁸ by the men she became involved with. Indeed, the power of Vaudreuil’s “sad tale”, apparent although not given much detail in the *Gove* narrative, implies that it must have formed an important piece of Verna and Matthew Vaudreuil’s *context*, as it would have been perceived and considered by the social workers who wanted to help them.⁸⁹

The rule of optimism then would seem to filter moral character in such a way as to hold back some upper-, -middle-, and “respectable” working class parents, members of ethnic minorities and mentally incompetent parents while leaving women and the “rough” indigenous working class as the group proportionately most vulnerable to compulsory measures. This effect is achieved by tests which are not class biased in any

⁸⁶ See: *The Wider Context: Child Protection with a Family Focus*, *infra* 177.

⁸⁷ See Chapter One.

⁸⁸ *Gove Report*, *supra* note 1, Volume I at 32, 53, 55, 65, 83.

⁸⁹ This is another point at which the absence of an Olive Stevenson like “minority report” is regretted.

simple or overt sense but [is one] which various groups are differentially able to meet.”⁹⁰

The influence of Verna Vaudreuil’s purported mental handicap on her progress through social services may also be understood through application of the “rule of optimism” and “cultural relativism”.⁹¹ The facts of the narrative suggest that Verna’s perceived “handicap” “explained” the Vaudreils’ situation in a way that characterised apprehension of Matthew as unacceptably judgmental.⁹² Verna Vaudreuil, like her sister, could be characterised as a member of the “rough’ indigenous [white] working class”, but her *official* mental incompetence made Matthew’s apprehension indefinitely deferrable.

The Wider Context: Child Protection with a Family Focus

⁹⁰ Dingwall et al, *supra* note 60 at 102.

⁹¹ The operational rule and its techniques- cultural relativism and natural love- were institutionalised in the “philosophy of service delivery” during the Vaudreuil’s involvement with social services: the “strengths approach”, based on the “innate nurturing capacities of the parent”: “The focus on the adult as client is rooted in service delivery models developed in the U.S. to meet the needs of developmentally disabled and psychiatrically ill adults. The plan concentrates on the client’s inherent strengths, rather than personal deficits.” See *Gove Report, supra* note 1, Volume II, at 43.

⁹² “Its very difficult to define what neglect is. What may be neglect to you or me is not necessarily neglect to other people. Poor mothering skills, being mentally handicapped, doesn’t necessarily mean that you neglect your child.” Dr. Richard Moody, medical director of the Child Development Centre in Fort St. John, *Gove Report, supra* note 1, Volume I at 40. Judith Mosoff, considering the relationship of women with mental health histories to the child welfare system, concluded that official designation as “mentally ill” placed women in a very vulnerable position: “Once articulated, the label raises immediate concerns that her children are in jeopardy, not because of what she has done but what she might do in the future, based on who she is as defined by an expert.” J. Mosoff, *Motherhood, Madness and the Role of the State* (University of British Columbia, LLM Thesis, 1994) at 8. Mental “illness” (as opposed to mental “disability”), however, has differences in connotation and implication which would seem crucial in child protection. “Mental illness” carries notions of violence, bizarreness (as opposed to mere incompetence, or slowness) and an element of personal control, or “character” (in contrast to the “blameless” mentally disabled): “As we have observed, mental illness, especially in its minor forms, seems open to being regarded as intentional or at least intentionally exploited.” R. Dingwall et al, *supra* note 60.

Matthew Vaudreuil lived and died in British Columbia under the “protection” of the “non-legalistic, interventionist”⁹³ *Family and Child Service Act*⁹⁴ (the *CFCSA*’s predecessor).⁹⁵ The “emerging status quo”⁹⁶, “child protection with a family focus”, seems to have become the *de facto* guiding principle in social services by the time of Matthew’s death in 1992.⁹⁷ A 1991 Program Plan for Family and Children’s Services (a division of the Ministry of Social Services responsible, at that time, for planning, policy development, budget preparation and legislative change proposals) described the Social Service Ministry’s primary responsibility as “child protection with a family focus... Families are responsible to ensure that their children are safe from abuse and neglect... The Ministry is committed to maintaining children in their own families wherever possible.”⁹⁸

In March 1993, Joan Smallwood (then Minister of Social Services) announced that the Ministry was undergoing what she called a “fundamental shift in values- from a child

⁹³ Richard Barnhorst, “Child Protection Legislation: Recent Canadian Reform ” in Barbara Landau ed. *Children’s Rights in the Practice of Family Law* (Toronto: Carswell, 1986) 255 at 256.

⁹⁴ S.B.C. 1980, c.11

⁹⁵ For an interesting discussion of the *FCSA* and its history, see Marilyn Callahan and Brian Wharf, *Demystifying the Policy Process: A Case Study of the Development of Child Welfare Legislation in BC* (British Columbia: University of Victoria School of Social Work, 1982): “At the time of the writing of this study, the Act and policy have been in place two years, too soon to determine whether the *Act* has lived up to its promise to encourage positive preventative approaches and to have the removal from the home seen as a last resort.” Callahan and Wharf, at 32.

⁹⁶ Per Christopher Lasch: “not so much a demand for change as the description of a change in attitudes that had already come into being... [such criticism is in considerable demand where] defence of an emerging status quo usually takes the form of urgent calls for sweeping reform.” C. Lasch, *Haven in a Heartless World: The Family Besieged* (New York: Basic Books Inc., 1977) at 12.

⁹⁷ See the *Gove Report*, *supra* note 1.

⁹⁸ Cited in *Protecting Our Children, Supporting Our Families: A Review of Child Protection Issues in British Columbia* (Victoria, B.C.: Ministry of Social Services, 1992).

centred system to a family centred system.” In a Ministry *Bulletin*, Smallwood explained a “family centred system” as: “a different style of service provision. The greatest proportion of time, energy, and financial resources of the child welfare system must be dedicated to preserving families. The service will be geared to enhance the welfare of children in their own homes or to promptly reunify families when temporary placement is required.”⁹⁹

Bob Cronin, deputy manager at the time of Smallwood’s announcement, said that the *Bulletin* announcement “did not signal any new or fundamental shift in Ministry policy”: “asked whether the announcement marked any change for field staff, Cronin replied, ‘I hope not. It certainly didn’t at the executive.’”¹⁰⁰ Dan Perrin, assistant deputy minister for management services in 1993 said the announcement itself “reflects considerable confusion in the ministry between whether child welfare services should be child centred or family centred.”¹⁰¹ Regional Director Geoffrey Eggleton, whose region includes Vernon (where the Vaudreuilts lived for a time), told the Gove Inquiry that Smallwood’s announcement did not reflect any new policy direction, but simply reflected the view among field staff at the time, sending a “very clear message” to staff in his region:

My strong belief is that a child is better off with its parents than it is to be removed from its parents. My strong belief is that to remove a child from his parent is probably the most traumatic thing you can do to a child and it should be the last thing we do to a family.¹⁰²

⁹⁹ *Gove Report, supra* note 1, Volume II at 88.

¹⁰⁰ *Ibid.*, Volume I at 200.

¹⁰¹ *Ibid.*, Volume I at 201.

¹⁰² *Ibid.*

It is clear that this wider political and professional context would have significantly influenced social worker perceptions of what their job was *about* (which, in turn, must inform the important “over-riding belief” of what an individual case is *about*):

Commission counsel asked Elizabeth Pendleton to explain the decision making process she used in dealing with Matthew’s file. Her answer indicates a deep seated confusion about the role of the ministry’s child protection social workers:

“At that time the ministry’s policy was families first and apprehension as a last resort. And if and when a child is apprehended, we will continue to work with the family in the hope that the child can be returned. [a child coming into care] is not something that I, as a worker, wish to see... Its extremely painful on the family. Its even more painful on the child... [When] dealing with Matthew, that was always my concern... to keep him in the home... to ensure that the integrity of the family was maintained.”

Even after Matthew was killed by his mother, after an internal ministry investigation, after Matthew’s mother was convicted of manslaughter and after several weeks of testimony before this inquiry, family services social worker Elizabeth Pendleton expressed no second thoughts about whether she had adequately protected Matthew:

“[if] I had Verna and Matthew here now, I would continue the way I had been, as a family service worker, trying to provide the services to this young boy, and to his young mother as well.”¹⁰³

Given the context of her employment as a social worker, however, it seems that Pendleton was not “confused” about her job, but understood her mandate very well.¹⁰⁴

¹⁰³ *Ibid.*, Volume I at 101.

¹⁰⁴ The *Gove Report* (like the majority Maria Colwell report) is sophisticated in its consideration of the wider policy context in which individual decisions were taken, but the distance between Gove’s situation as an “outsider” and a *sub-textual* “minority account” is discernible in his consideration of Elizabeth Pendleton’s testimony before the Inquiry. The gap between these accounts (implicit in *Gove*, explicit between *Maria Colwell*’s two reports) is a point at which the distance between social work “insiders” and the public (and the mutual distrust and dissatisfaction within the original “delegation” of the communal interest in, and responsibility for, children) becomes very clear.

This professional focus on families and their preservation bears heavily on “pre-guessing court outcomes” which, as dramatically illustrated in the Maria Colwell reports, can have a decisive effect on worker perceptions of what the case is *about*:

District Supervisor Glenn Parker told the Inquiry that although he did not seek legal advice from the superintendent’s lawyers, he formed the opinion that if the ministry had apprehended Matthew, a judge might not grant custody to the superintendent, but might instead urge the office to provide additional supports to Vaudreuil for the purpose of extending the periods of time when Vaudreuil was able to adequately parent. The staff worried that if that happened, they would have lost all ability to work with Matthew’s mother; she would see the ministry as trying to take Matthew away from her and harm the family, rather than trying to help her.¹⁰⁵

Social workers told the Inquiry that they did not believe an apprehension would “stand up in court” without physical evidence of abuse or a “triggering event” proving neglect, although Judge Gove concluded “Case law and the ministry’s own experiences indicate that this is simply not so.”¹⁰⁶ There were grounds to apprehend Matthew Vaudreuil under the *FCSA*, as there continue to be under the *CFCSA*.¹⁰⁷

Finally, the assumption within the wider context¹⁰⁸ that family support is always in the best interests of *parents* may create the almost farcical (with the bleakest of humour) situation

¹⁰⁵ *Gove Report, supra* note 1, Volume I at 35.

¹⁰⁶ *Ibid.*, Volume II at 86.

¹⁰⁷ *Ibid.*, at 218. The *idea* of “The Court” as an external, contextual limitation appears, in the Gove report, to have assumed an independent life (as opposed to the legal assumptions made by social workers in the Colwell case, which were acknowledged correct by all commentators). This raises interesting issues about the *function* of “legal restraints” (“what will stand up in court”) for child protection. See Michael King, “Child Protection and the Allure of the Courts”, paper given at the critical legal conference, “...in the wake of the law”, Dublin, 1997.

¹⁰⁸ The professional and policy focus on family preservation, together with the general cultural assumption that parents will (especially mothers) will “do anything” to stay with their children (an assumption which Dingwall, Eekelaar and Murray describe within *social work* culture as the “technique” of natural love; see Chapter One).

in *Gove's* narrative, wherein a large cast of professionals, at considerable expense, doggedly offer unwanted help to support Verna Vaudrueil in her capacity as a mother, while she tries almost everything she can think of to rid herself of that responsibility until, in the end, she succeeds.

Failure to Take Complaints Seriously

Like the Inquiry Reports discussed in Chapter Three, the *Gove Report* describes numerous "community" attempts to alert "the authorities" to Matthew Vaudrueil's situation.¹⁰⁹ While the existing mechanism for complaining may have led some members of Matthew's family and community to believe that something was being done,¹¹⁰ it seems that a combination of the "blocks to recognition"¹¹¹ a tendency to compile information from Verna Vaudrueil's accounts, and a succession of inappropriate focuses¹¹² successfully neutralised their concerns.

The last of these complaints was made two days before Matthew Vaudrueil was killed¹¹³:

¹⁰⁹ *Gove Report*, *supra* note 1, Volume I at 26, 29, 30, 31, 34, 41, 79, 88, 92-93, 94, 96, 123, 139.

¹¹⁰ As did the psychiatrist to whom the mother of the man Vaudrueil lived with during her months in Vancouver made *her* complaint: "I thought I had handed it to those professionals who could take action", "Tot pleaded for help, inquiry told in Matthew & Verna Vaudrueil case", October 21, 1994, Canadian Press Newswire.

¹¹¹ Subjective reactions to family members and complainants, denial, confusion of fact and opinion, the decoy of dual pathology and the secure perspective, the larger paradigm, I know what she's like, distrust of information source; see Chapter Three.

¹¹² The focus generally on Verna Vaudrueil (Verna Vaudrueil as a woman in need of a reliable babysitter, Verna Vaudrueil as mentally handicapped and her "case", therefore *about* services and not protection concerns); if on Matthew, on Matthew's "special needs". Verna Vaudrueil frequently alleged that both she and Matthew had been abused by male friends of Vaudrueil's.

¹¹³ Matthew Vaudrueil appears to have been killed on July 8; he was pronounced dead minutes after midnight, July 9.

On July 6, Claudine Gayford went to see Ellen Sinclair, the co-ordinator of the Fort St. John's Women's Resource Centre. Gayford was very upset. She said that Matthew was being abused, and asked how her family could get custody. Sinclair explained the process, and offered to call the ministry to see if they were investigating. Gayford got angry, and said that the ministry never did anything.

As soon as Gayford left her office, Sinclair phoned the ministry. She talked to a female worker who recognised Matthew's name, and asked if Sinclair was aware that there was a custody battle going on and that, in such cases, a parent will often claim child abuse, just to be vindictive. Sinclair replied that the father did not make this report and that there had been other reports from different sources. She asked the worker to call Vancouver to see if they were investigating and was told that "their office was very busy and under-staffed and over-worked and they really didn't have the time, but if she found the time she would look into it." Her impression was that nothing would be done. The Inquiry has been unable to identify the woman Sinclair spoke with.

About a week later, Claudine Gayford came back to Ellen Sinclair's office to tell her that Matthew was dead.

The *Gove Report* will not stop child deaths but it will, it seems, stop their disappearance from the public view; the "resolution" of the family autonomy contradiction (that better support for family autonomy and better protection for children are realised simultaneously, "resolved" by disappearing one objective- child well being- inside the other) has been laid bare and discredited, perhaps (with the regular, institutionalised inquiries of the Children's Commissioner¹¹⁴) for the long run. *Gove* made change necessary. Contradiction, without a plausible explanation, is experienced as crisis.

The *Report of the Gove Inquiry* was not cathartic; "child deaths"¹¹⁵ *continued* for British Columbians, the scandal of their disappearance gaining momentum, after *Gove*.

¹¹⁴ See *infra*, Chapter Five.

¹¹⁵ As a high profile media, and a political, issue.

CHAPTER FIVE

AFTER GOVE: THE CHILD AT THE CENTRE

Discovery commences with the awareness of anomaly, i.e. with the recognition that nature has somehow violated the paradigm induced expectations that govern natural science. It then continues with a more or less extended exploration of the area of anomaly. And it closes only when the paradigm theory has been adjusted so that the anomalous has become the expected. Assimilating a new sort of fact demands a more than additive adjustment of theory, and until the adjustment is completed—until the scientist has learned to see nature in a different way— the new fact is not quite a scientific fact at all.¹

The “non interventionist paradigm” is a complete, conceptual framework for understanding child protection and its persistent problems, and for resolving them. It has developed in response to the failures of the systemic liberal compromise and its “rule of optimism” which, by the 1980s, could no longer plausibly be explained as “mistakes”. The “paradigm” is *not* non-interventionist legislative reform; *or* “family centred” child protection policy; *or* a systemic “rule of optimism”; *or* a political theory equating children’s rights with a right of adult parents to be left alone by the State; *or* a convergence of “left” and “right” critiques of State intervention in family life; *or* a constructed “natural” consensus; *or* a consensus inherent in liberal ideology and instinctual liberal values; *or* denial and disappearance of child suffering and child death. The “non interventionist paradigm” is *all of these things together*, informing and supporting one another. The “non interventionist paradigm” is dangerous for children *as* a conceptual framework, a way of seeing, understanding and making sense of events.

¹ Thomas Kuhn, *The Structure of Scientific Revolutions* (Chicago: University of Chicago Press, 1962) at 52.

The *Report of the Gove Inquiry into Child Protection* was a paradigm shifting event. The *Gove* story describes the patterns of a “rule of optimism” in individual decision making but *Gove* is very much *about* these decisions within the political and policy context in which they were made. The *Gove Report* is about the failure of the non-interventionist paradigm to protect children.

“... because until that time nothing had been so private as social work”:² The Child Death Inquiry

On the lunchtime before I was called to give evidence, I left the court building and was followed up the street by numerous press photographers and television cameramen. The experience was not helpful in preparing to give evidence. The treatment I received had not happened to my colleagues, and any lingering doubts I had about the size of the story were over. It was going to be big and I was going to be the prime focus. The feeling of powerlessness reminded me of being a small child in school and being backed into a corner by numerous bigger children. The desire to hit out in self-defence, wink arrogantly in un-realistic defiance, or swear, were fortunately resisted. They would have made headlines and provided the press with unneeded material!

A day later I finished giving evidence and, with a feeling of relief, left the witness box. The reporters now had me at their mercy and as I walked out through the courts of justice I was pursued by questions:

“Had you made any mistakes?”

“How do you feel about Kimberley’s death?”

“Do you have any regrets?”³

² “It was bizarre”, remembers Jeanne Wall [of the Maria Colwell Inquiry]. “It was so beyond one’s experience to be a sort of pawn or puppet, pushed and pulled. It felt so totally unjust, so totally untrue. The whole thing was unreal. One was quite unable to talk freely about what had happened. Because of the quasi-judicial set-up, like a trial, the cross-examination, one had to answer only what one was asked, with no opportunity to talk. It was so unprofessional - Olive Stevenson apart - and so sensational which was beyond our experience, because until that time nothing had been so private as social work.” A. Shearer, “Tragedies Revisited (1): The Legacy of Maria Colwell” (1979) 10 *Social Work Today*, (No. 19) 12 at 14. The first in a series of “Tragedies Revisited” considering the cases of Maria Colwell, Susan Auckland, Wayne Brewer and Karen Spencer.

³ Extracted from Martin Ruddock’s piece, “A Receptacle for Public Anger” about his experience during the inquiry into the death of Kimberley Carlisle. Mr. Ruddock was the social worker who assessed Kimberley, and made the decision to leave her at home. *Social Work, The Media and Public Relations*, Bob Franklin and Nigel Parton eds. (London: Routledge, 1991).

The inquiry report brings the apparent impotence of “the authorities”⁴ into public view. The child death inquiry (and “moral panic”⁵) is the ultimate “failure of containment”.

There is something prurient, even pornographic⁶ about the pre-occupation with child abuse⁷ and the “gory details” reiterated in the media aftermath. The prurient element is undeniable, but the “unreasonableness” of the public’s interest in knowing what went wrong when a child dies is also informed by what looks like a professional fear of/contempt for public interest *per se*. Without any doubt the fear and dread experienced by Martin Ruddock, author of the excerpt quoted above, were truly experienced, but the build up is hard to credit (if we do not appreciate the particular, *charged* context in which they occur) to the questions which “pursue” him: “Had you made any mistakes? How do you feel about Kimberley’s death? Do you have any

⁴ In their stories and the reports in themselves; what Cyril Greenland called the “repetition of recommendations with little evidence of corresponding action”, “Inquiries into Child Abuse and Neglect (CAN) Deaths in the United Kingdom” (1986) 26 BJC 64 at 164.

⁵ The public furore about Maria Colwell was characterised by Nigel Parton as a “moral panic”, a reference to S. Cohen’s *Folk Devils and Moral Panics: The Creation of Mods and Rockers* (London: Paladin, 1973): “Societies appear to be subject, every now and then, to periods of moral panic. A condition, episode, person or group of persons emerges to become defined as a threat to societal values and interests... sometimes the object of the panic is quite novel and at other times it is something which has been in existence long enough but suddenly appears in the limelight.” N. Parton, *The Politics of Child Abuse*, (London: MacMillan Education, 1985) at 69.

⁶ I am using this term in the sense that I have heard television’s “reality based” police programs described as “poverty porno”: a nasty sort of excitement at being allowed to look at other people’s shocking or violent experiences in the “underbelly” (usually the other people are poor); its a neat phrase which I think catches the appeal of these programs, and I definitely think a similar sort of unpleasant attraction is a part of the public interest in child abuse/neglect cases. I think an appreciation of this pornographic aspect is implicit in the discussions referred to *infra* between the Children’s Commissioner and the Committee on the Response to the Gove Inquiry about the importance of privacy for children and families.

⁷ The “pornographic” aspect of high profile child death reports resonates with all the other sympathetic reasons to dislike them (respect for privacy, unfairness to professionals, media exploitation, distortion, simplification, etc.) to *justify* the professionalisation of the humanitarian more.

regrets?" Why shouldn't the public want to know those things? How odd, and terrible, if we didn't.

In their study of the media/social work relationship⁸, British authors Bob Franklin and Nigel Parton note both the selective media focus on children (as opposed to the elderly or those with special needs) and the "remarkable" identification of social workers (rather than the actual child killers) as the " 'folk devils' to be castigated, vilified and designated to the out-group challenging the values of civil society".⁹ Stories involving child abuse and social workers satisfy "both public conscience and appetite for horror... at the same time [providing a] ritual purification; the inquiry into what went wrong and the public execution of the 'guilty parties' - the social workers."¹⁰

Franklin and Parton associate the relatively recent growth of media interest in child abuse [in the UK] to the rise of conservatism in Great Britain and the notion of the social worker as metaphor for the State sector and the "evil therein".¹¹ Another understanding of this media/public interest focuses on the breakdown of stable communities, most sharply traditional working class communities¹², during the late 1970s and the 1980s (the Thatcher years) and anxiety about the fate of children in the

⁸ B. Franklin and N. Parton, "Media Reporting of Social Work: A Framework for Analysis" *supra* note 3 at 7.

⁹ *Ibid.*, at 45

¹⁰ *Ibid.*

¹¹ "The key to... exploring the complexities of the relationship between media and social work, seem to lie in the suggestion that social workers, especially those operating in the statutory sector, increasingly have been presented in the media as a metaphor or symbol for the entire public sector, personifying the 'evil' which the political new right presumes to be inherent therein." *Ibid.*, at 9.

¹² See Nigel Parton, "Child Abuse, Social Anxiety and Welfare" (1981) 11 BJSW 391 at 401.

“post-society”¹³ nation. The preoccupation with children and the “scapegoating” of their social workers also suggests a diffuse anxiety around the original delegation of the communal interest in children to the State, an anxiety difficult to express directly without challenging the “liberal way of thinking about the world” and its benefits.¹⁴

The non-interventionist paradigm appears to “resolve” this anxiety by *professionalising* the humanitarian mores.¹⁵ The *obverse* of that “resolution” is the emotional public aftermath of the high profile child death inquiry. In British Columbia this “aftermath”, perhaps more than the *Gove Report* itself, created the context for change.

The government handled what should have been a blow, a high profile damnation of its family centred reforms after years of preparation, by simply not acknowledging any contradiction between the “new approach” of the *CFCSA* (within a “family centred” context) and *Gove’s* call for a “child centred” paradigm shift. This tactic may have been the result of government embarrassment, or an inability to imagine an alternative course of action, or the simple, mistaken belief that these reforms came out of a single impulse.¹⁶

¹³ Recalling Margaret Thatcher’s famous remark that there is no society, only individuals and families.

¹⁴ See Chapter One.

¹⁵ Public knowledge of private child suffering and death becomes both unseemly and harmful: reviews and inquiries, with their connotations of blame and responsibility are inappropriate, indeed counter-productive, undermining both the privacy of the child within her family and the professionalism of social workers.

¹⁶ This seems to have been then Social Services Minister Dennis Streifel’s take: “I’ll get into the specifics of Judge Gove’s recommendations in just a moment. I certainly don’t mean to undermine their seriousness in any way, but I must point out that this government recognised the need for change in child protection back in 1991. We launched a comprehensive, two year process of public consultation, asking people in our communities how we could improve this vital component of B.C.’s

Report of the Inquiry into Child Abuse in Cleveland, 1987

The powerful conjunction between legislative reform and an attendant high profile inquiry that has characterised the British Columbia "case study" had its antecedent in the UK in the late 1980s. The *Report of the Inquiry into Child Abuse in Cleveland, 1987* conducted by Lord (as she then was) Butler-Sloss played a crucial and idiosyncratic part in the British process of re-defining child protection in the late 1980s. As the *Gove Report* provided the *CFCSA* with a particular meaning,¹⁷ so the meaning of the *Children Act*¹⁸ seems to have been shaped by the events in Cleveland. In each case the narrative of the *Reports*- the *story*- was crucial in defining for the public *the problem* in child protection. Comparing these experiences- two high profile inquiries accompanying legislative reform- and their very different outcomes, may bring one closer to understanding what happened in British Columbia.

Pervasive social and political unease about child welfare provided the context for British legislative reform. The failure of State intervention, described to professionals

public sector. Based on that consultation, we brought in two new pieces of child-centred legislation: the *CFCSA* and the *Child, Youth and Family Advocacy Act*... These two acts were passed by the legislature in May 1994, the same month in which my colleague the Hon. Joy MacPhail ordered the Inquiry Into Child Protection. I point this out not to suggest that the ministry was out ahead of the inquiry process but to underline the fact that there are two major initiatives currently underway, both aimed at strengthening the child protection system... Both involve a more holistic, proactive approach to child protection.. and - above all - clear direction that the safety and well being of the child must be the paramount consideration in all decisions affecting the child." British Columbia, Debates of the Legislative Assembly (July 19, 1996) at 613.

¹⁷ Reinvented as a response to the tragedy, and scandal, of Matthew Vaudreuil: "to prevent another child from suffering like Matthew did." Joy MacPhail, announcing an external inquiry under *Inquiry Act* into the death of Matthew Vaudreuil, British Columbia, Debates of the Legislative Assembly (May 17, 1994) at 10912. The following day, the *CFCSA* was introduced in the House. As a "response" to Gove the *CFCSA* (before the post *Gove* reforms created a quite different policy and political context, taking this non-interventionist legislation outside of a non-interventionist paradigm) the *CFCSA* was obviously inadequate. The *Children Act, 1989* (UK) was not a response to the Cleveland scandal, but it could plausibly appear so (and so, perhaps in some sense become one).

¹⁸ *Children Act, 1989*, 1989, c.41 (UK). See Nigel Parton, *Governing the Family: Child Care, Child Protection and the State* (London Macmillan Education Ltd., 1991) at 149; 190.

in a series of critical research studies¹⁹ was experienced by the public through consecutive child death inquiries.²⁰ In response to an all-party social services committee report (the Short Report) into children in care, a *Review of Child Care Law* was published in 1985, in which the “principles of partnership, family support, shared care, respite care, maintaining links and return to the family were all given pre-eminence.”²¹ A fresh series of child death inquiries in the mid 1980s re-focused public anxiety on child deaths and the apparent impotence of social services: “it was as if there were two competing paradigms for practice and it was the one symbolised by the child death inquiries which was dominant.”²² The very high profile Jasmine Beckford Inquiry emphasised the failure of social workers to exercise authority,²³ but any nascent post-Beckford consensus around this explanation for child abuse “error” disappeared in the Cleveland crisis.

All one can say now with absolute certainty is that if you believe you know what went on in Cleveland you are wrong. The kind of evidence required to settle the matter is not available, and never will be.²⁴

¹⁹ See Nigel Parton, David Thorpe and Corinne Watson, *Child Protection: Risk and the Moral Order* (London: Macmillan Press Ltd., 1997) at 26.

²⁰ See Chapter Three.

²¹ *Ibid.*, at 50.

²² N. Parton, *supra* note 18 at 78.

²³ Louis Blom-Cooper found that the failure of social workers to appreciate and use their authority under a “rule of optimism” contributed to the death of Jasmine Beckford; writing about the Beckford Inquiry, Robert Dingwall considered that Blom-Cooper had misunderstood his statement of the “rule”: “The rule of optimism is the product of a fundamental conflict of values about the relationship between families and the state...It is not that social workers do not *know* about their authority but rather that its exercise is inconsistent with the nature of their role in society.” Robert Dingwall, “Reports of Committees: The Jasmine Beckford Affair” (1986) MLR 49 No. 4, 489 at 501.

²⁴ “All as clear as Tees mud” *The Guardian*, January 4, 1989. See Beatrix Campbell, *Unofficial Secrets: Child Sexual Abuse- The Cleveland Case* (London: Virago, 1988) and Stuart Bell, *When Salem Came to the Boro: The True Story of the Cleveland Child Abuse Crisis* (London: Pan Books, 1988) for two very different accounts.

What happened in Cleveland was the pro-active diagnosis of child sexual abuse by two doctors who *looked for* signs of abuse and found them, creating a steep and sudden increase in the number of sexual abuse cases referred to social services. The Inquiry was about the “crisis” which followed- the hostility between the various agencies and professionals involved, the consequent chaos, and the public outcry- and did not comment on whether or not the children diagnosed had actually been sexually abused.²⁵ Despite ambiguity in the *Report*, which criticised the parents’ supporters along with the doctors and social workers involved, Cleveland was identified politically, and in the media,²⁶ as a counter weight to the child death inquiries, a warning about the importance of parental rights, and the dangers of “going too far in the opposite direction”. “Cleveland” became a buzzword for the unacceptable, dictatorial intervention of the State into family life²⁷- the child protection system “gone out of control”.

²⁵ A television documentary screened in 1997 suggested that the majority of children involved had been abused, and that this information had been deliberately “buried”. Independent panels established to give second opinions on diagnoses by the Cleveland doctors verified 70-75% of those as correct; the public was not informed of this. On July 6, 1988 Health Minister Tony Newton reported that of 121 children referred by the doctors 98 had been returned home. What he did not say was that the courts had found 93 of the 121 “at risk”; only 28 remained at home without an order. All documents pertaining to the Cleveland children as a group have been destroyed. “The Death of Childhood” Interesting Film Co. for Channel 4.

²⁶ The tabloid press and more “respectable analysis”: “It took the Cleveland Inquiry into the alleged sexual abuse of children to bring about a major shift in public concern to include the rights and wrongs of professional intervention into family life”, Elaine Farmer, “The Impact of Child Protection Interventions: The Experiences of Parents and Children” in *Child Abuse and Child Abusers: Protection and Prevention* Lorraine Waterhouse ed. (London: J. Kingsley, 1993) at p. 38. An example of the mainstream spin on Cleveland.

²⁷ The enthusiasm with which this characterisation was embraced suggests that it fell on fertile cultural ground; an opposite conclusion can be drawn from the persistence of a “rule of pessimism” in First Nations communities (see Chapter One, *supra*). Nor was the *Gove Report* a popular phenomenon in the Cleveland sense, suggesting that its critique of “family centred” child protection, while hitting a certain public “nerve”, did not have the broad and deep cultural resonance of Cleveland’s themes.

The Cleveland scandal and Inquiry was no more the “inspiration” for the *Children Act, 1989* than the *Child, Family and Community Service Act*²⁸ was the “result” of the Matthew Vaudreuil scandal and subsequent Gove Inquiry in British Columbia. The themes and concerns raised by “Cleveland” the political and media event (as opposed to the events or the Inquiry), however, focused discussion during passage of the Children Bill 1988²⁹ and helped define, for the public, what the *Children Act* was for. “Cleveland’s” themes- fear of social worker authoritarianism and lack of accountability, concern about apparent disregard for parental rights and children’s sensibilities, fear of child abuse hysteria - seemed to prove the assumption that “a central commitment to the welfare of children and a non-interventionist philosophy governing relations between the family and the state”³⁰ were not only compatible, but one and the same.

In contrast, British Columbia’s *Child, Family and Community Service Act* entered the House³¹ accompanied by a scandal whose themes did not illustrate or support its principles, but seemed to mock them, bitterly and directly.

Political Events Force the Pace

Because it demands large-scale paradigm destruction and major shifts in the problems and techniques of normal science, the emergence of new theories is

²⁸ RSBC 1996, c. 46.

²⁹ N. Parton, *supra* note 18 at 151.

³⁰ “Clearly, those responsible for the legislation saw no incongruity between a central commitment to the welfare of children and a non-interventionist philosophy governing relations between the family and the state. I want to question this assumption.” Andrew Bainham, “The Children Act 1989: Welfare and Non Intervention” (April 1990) 20 Family Law 143.

³¹ The implications of this relationship developed alongside the growth of that scandal in the *public* domain, via the *Report of the Gove Inquiry into Child Protection* (Victoria, B.C.: Queen’s Printer, 1995) [hereinafter “The Gove Report”].

generally preceded by a period of pronounced professional insecurity. As one might expect, that insecurity is generated by the persistent failure of the puzzles of normal science to come out as they should. Failure of existing rules is the prelude to a search for new ones.³²

The immediate political effect of the *Gove Report* was described in a Canadian Press Newswire report³³ as “an unsettling frenzy of finger pointing”:

Bernd Walter, head of a board reviewing ministry child care, was among those leading Thursday’s rush to deflect fallout.

Walter said Gove’s figure of 264 controversial deaths is misleading because some of those children died of natural causes. “Frequently these children aren’t medically expected to live” he said. Our information is that a substantial proportion (of the 264) fall in that category.”

That angered Gove, who said the numbers in his report are a conservative reflection of a crisis. “That many children died- at least. That’s only the ones we know about or the ones they have records on. It may be more.”

Social Services Minister Joy MacPhail says she takes responsibility for the problems, but constantly reminded reporters that Matthew’s death occurred when Smallwood was minister. Smallwood, in turn, blamed the previous Social Credit government for cutting social spending and leaving the ministry understaffed and with poor morale.

Smallwood spearheaded a policy flip flop that saw the NDP focus on keeping families intact rather than removing children from abusive homes.³⁴

The political response to *Gove* was an official commitment to a long range program of adjustment. The government accepted the *Gove Report’s* recommendation that a Transition Commissioner be appointed to review and implement the Report’s agenda for improvement in the organisation and delivery of child, youth and family services.³⁵

³² T. Kuhn, *supra* note 1 at 67.

³³ “Politicians, bureaucrats in damage control over dead-children report”, November 30, 1995.

³⁴ It is interesting to note how this spin on Smallwood’s contribution to child protection reform in British Columbia settles, post-*Gove*, like this; the context for legislative change generated by earlier criticisms of Smallwood’s “child-centred” approach to child protection, recalled by then Premier Harcourt as defining the political climate around this issue during Smallwood’s run as minister, has disappeared.

³⁵ The Report made 118 recommendations for change in the following broad areas; service delivery, quality assurance, participatory decision making, and governance. The Ombudsman’s office is

The timetable for this process was, at this stage, generous and elastic; the Transition Commissioner, Cynthia Morton, was appointed on February 1, 1996 for a two to three year renewable term. An all party Committee on the Response to the Gove Report was established, with the idea that the Transition Commission would report through the committee.

Judge Gove had asked the government³⁶ to delay proclamation of the *Child, Family and Community Service Act* until his *Report* was complete and the government was able to review his findings and recommendations. The government waited. The *Report* was published in November, 1995. The *Child, Family and Community Service Act* became law at the end of January, 1996; importantly, both as a guide to interpretation and in a symbolic sense, the safety of the child was made paramount among the guiding principles, as recommended by *Gove* and, again *per Gove*, the family conference provisions of the *Act* were not proclaimed.³⁷

What followed shortly thereafter, however, was a full blown "moral panic".³⁸ The crisis of August, 1996 gathered around the issue of child death reports, and what

compiling a report to assess the take up of recommendations; the Ministry released its own report in May, 1997, *Response to the Recommendations of the Gove Inquiry into Child Protection* (Province of British Columbia, Ministry for Children and Families).

³⁶ Gove's letter to MacPhail of March 13, 1995 containing his recommendations was delivered to the Lieutenant Governor on March 31, 1995 as an "interim report"; *Gove Inquiry into Child Protection, Interim Report*, March 31, 1995.

³⁷ Gove recommended that the family conference provision not be proclaimed until the Ministry had more experience with such conferences, and that the *Act* be amended before proclamation so that children at risk of abuse and neglect were not referred to family conferences; also that the use of family conferences be discretionary. (*Gove Report, supra* note 31, Volume II recommendation #85 and #86). Under s.20 of the *CFCSA*, pre-amendment, a director concluding after an investigation that a child needs protection *must* offer to refer the parent (or another family member if the parent is unavailable) to a "family conference co-ordinator", who would then convene the family conference (if the offer was accepted). s. 28 of the *Child, Family and Community Service Amendment Act 1997* S.B.C. 1997, c. 46 strikes out "must" and substitutes "may".

³⁸ See N. Parton, *supra* note 6.

appeared to be government delay and secrecy which, in the post-*Gove* context, carried connotations of inefficiency, indifference and cover-up. The *Gove Report* had identified the deaths of 19 children “known to the ministry” occurring between Matthew Vaudreuil’s death in July 1992 and May 1995, which had not been reviewed: “the invisible ones”. The government promised to investigate those 19 deaths, and a report was completed in March 1996, although it was not released until August. The release, when it came, appeared in response to media and political pressure around the delay³⁹ and continuing controversy around child deaths,⁴⁰ and it seems to have had the effect of *increasing* criticism and crisis.⁴¹

The government’s explanation for the delay was that it did not want to release the report until its recommendations could be acted on by the ministry. By this point, the 19 deaths referred to by Gove had been joined, for the public, by additional, *incremental* (as they were experienced by the public) child deaths: the government’s review into the 19 “invisible ones” revealed a further 11 deaths; between May 1995, when Gove finished his research, and November 1995 when the *Gove Report* was released a further 28 deaths of children in care or known to the ministry were disclosed; between November 1995 and July 1996, a further 64 deaths were recorded.

³⁹ Echoing the initial “response” to the death of Matthew Vaudreuil.

⁴⁰ Notably, the death of “Baby Elijah” in a foster home early in 1996.

⁴¹ “The cryptic reports give no names, ages or genders. But the message is clear: Nineteen children died and the government didn’t, or couldn’t, do anything to help them”. The *Vancouver Sun*, August 15, 1996; a multi-page feature appearing in the *Vancouver Sun* on August 16 bore the title “Dying in our Care”.

In this context,⁴² the government's approach (alongside the ever escalating death count) seemed indifferent rather than measured.⁴³ Leader of the opposition Gordon Campbell accused the government of using the *Report* to postpone the issue.⁴⁴

One of my concerns about the Gove report, to be brutally honest and candid about it, is that the report was tabled. It is, I think, a pretty scathing indictment of all of us and what we've done and how we've acted and whether or not we've managed to carry out our responsibilities to the children of this province under our public care. I don't think there is anyone in this House who doesn't believe we should be caring for these children properly.

I was a little taken aback by the promptness with which the response came back, not specifically from the government - because the words from the government were different from this- but from the bureaucracy, which said: "Well, gee, this is going to be awfully tough to do. You know, its different from what we've done before. I don't know whether we can do it or not." The problem still exists, and we know the problem still exists. If what we're doing now with Ms. Morton [the Transition Commissioner] is rediscovering or re-examining all the issues that Gove examined, I think we're wasting out money. I would rather that we move forward in an executive capacity to make sure that those recommendations are put forward.⁴⁵

⁴² Of inestimable significance, the political *dramatis personae* had changed again since the *Gove Report* and *CFCSA* were introduced in the spring of 1994. The NDP was still in office, but now under the leadership of Premier Glen Clark. There was a new Minister of Social Services, Dennis Streifel. The Liberal opposition also had a new leader, Gordon Campbell. It seems reasonable to conclude that Campbell and, especially, Glen Clark, wished to make a mark in their first season. Streifel came under media and political criticism for his handling of the issue, which seemed to combine elements of secrecy and arrogance; it is difficult to believe that his poor performance did not contribute to the escalation of the crisis.

⁴³ The emotional effect of reading "Matthew's Story" in the *Gove Report*, and the other child death inquiry reports discussed in Chapter Three, is of events moving on towards their terrible climax *just* out of the reader's reach. Each time one reads it, the emotion is that the ending *could* be different, perhaps if one simply read it again- perhaps the act of reading could alter the story somehow (the same impulse keeps the watcher intent on the Zapruder film of John F. Kennedy's assassination, for example, however often she has seen it). The sense of urgency around the crisis of August 1996- a multi-page *Vancouver Sun* feature from August 15, "Dying in Our Care" featured in its graphics a clock, and a sad child's face- seems to correspond to that terrible feeling: the missed opportunity, the being just that little bit too late. The dreamlike inadequacy of the inquiry report narrative in real time.

⁴⁴ Implicitly, of "using" the report as ritual or catharsis, the recommendations without corresponding action described by Robert Dingwall and Cyril Greenland, see *supra*, Chapter Three.

⁴⁵ Gordon Campbell, British Columbia, Debates of the Legislative Assembly (August 14, 1996) at 2004. I am not suggesting that Campbell forced the government into action; I quote his remarks here because they capture neatly the mood of the crisis.

In August 1996, Premier Clark asked Transition Commissioner Cynthia Morton to prepare an interim report on the work of the Commission but, as Ms. Morton told the Member's Committee on the Response to the Gove Report, "it was clear over the course of those two or three weeks... that there was probably little public appetite for the continuance of the three year mandated change and that it was just not going to be soon enough or fast enough to reassure people that enough was being done in as timely as way as possible to protect children... I indicated to the premier that if there was a willingness to consider major structural changes in government then it was possible to expedite this agenda. If we couldn't do the major structural changes, then it was not possible to expedite this agenda."⁴⁶ Morton also concluded that, as a model for change, Gove's recommendation that the Transition Commission create the change agenda from without was not do-able: "unless the line ministries own and accept responsibility for the change agenda and are held accountable for achieving it, your task as an external change agent is so much more difficult".⁴⁷

The Premier created the Ministry for Children and Families on September 23, 1996; Cynthia Morton was appointed to the new, *Gove*-recommended office of Children's Commissioner, reporting to the Attorney General. Premier Clark was quoted in the *Vancouver Sun* as saying: "You really have two choices. Go through a long transition period with a lot of process and discussion, lots of turf fights and protection... meanwhile, I believe, children continue to fall through the cracks- or a more dramatic action, which is to blast through the problems. We've had enough study."⁴⁸

⁴⁶ Cynthia Morton, Members' Committee on the Response to the Gove Report, Transcripts of Proceedings (October 21, 1996) at 3 of 28.

⁴⁷ *Ibid.*

The implementation time frame was six months. In December, 1996 regional operating officers were hired to plan and implement the redesign in the province's twenty regions. By April, 1997, they assumed operational and fiscal responsibility.

Crisis set the pace for change in British Columbia; that pace, in turn, set the dramatic scale of the change agenda. That grand scale- the new Ministry- will, it is hoped, generate a wholly new and child centred professional culture, the "child centredness" described by Gove in the passage above. It could do so; the post-Gove chaos of accusations, recrimination, raised expectations and high visibility seems to have made child protection as usual⁴⁹ *impossible*, but given the political pressures obtaining from both "left" and "right" to normalise the problem,⁵⁰ within the wider ideological context, the Ministry's ultimate development is unpredictable.

A Ministry for Children

As one listened to the testimony of employees of that Ministry, one could not help but form the impression that, for whatever reason, during the period of time material to the life and death of Kim, the Ministry muddled along. It appeared to have been constantly reviewing, discussing, re-organising, appointing task forces or the like and engaging consultants. Then the Ministry did not act effectively upon whatever came from such reviews, discussions, task forces and consultants. Instead the Ministry would begin another round of review and discussion and re-organisation.

In his submission to the Inquiry, counsel for the Society suggested that the position of that Ministry was summed up in a portion of a letter published in December, 1978 by the president of the Ontario Association of Children's Aid Societies.

The portion as read by Mr. Granger bore the sub-title "Does this sound familiar?" and continued as follows:

⁴⁸ *Vancouver Sun*, September 24, 1996.

⁴⁹ The operation of the "liberal compromise" under the aegis of one or another system of apparent resolution.

⁵⁰ As, respectively, a welfare issue or symptomatic of the general decline of the family; "normal" in the sense that such characterisations avoid the particular problematic-ness of child protection, the conflict of mores.

A faithful reader who shall remain nameless has sent us this quotation from Pertains which seems to fit the current ministry's situation.

"We trained hard, but every time we were beginning to form up into teams we would be re-organised and I was to learn later in life that we tend to meet any new situation by re-organising and a wonderful method it can be for creating the illusion of progress while producing inefficiency and demoralisation.⁵¹"

Is the new Ministry a decisive, and lasting, departure from the "interventionist"⁵² debate? Can the "problematic-ness" of child protection be defused, and is this kind of spatial and organisational re-creation the way to do it? Is the re-creation itself a distraction, *mere* re-organisation and, as such, harmful in itself?⁵³

The Ministry's capability to generate a new culture centred around the child as client is certainly crucial to the reforms proposed by Gove.⁵⁴ It is not certain, however, whether or not the "wider" cultural context in which child protection operates can accommodate (or even, barely, allow) a "child centred" approach.⁵⁵ After *Gove*, however, it seems the consequences of the inability (professional *and* public) to support child centred decision making will be *known*, in *Gove's* media wake and (for

⁵¹ From the *Judicial Inquiry into the Care of Kim Anne Popen by the Children's Aid Society of the City of Sarnia and the City of Lambton* [Judge H. Ward Allen] (Queen's Printer for Ontario, 1982) at 9.

⁵² I put quotation marks around these words to indicate that I am using the definitions I developed in Chapter One; I intend these words here to carry that meaning with them. The "interventionist" debate focuses on the State/adult relationship and State intervention in family life, rather than the child.

⁵³ Re-organisation may result in confusion about roles and responsibility, "inefficiency and demoralisation", as the above quote from the Kim Anne Popen Inquiry suggests. And see the *Gove Report* re "re-org" in the 1980s.

⁵⁴ *Supra*, note 33.

⁵⁵ See the discussion of the pre-*Gove* political context in Chapter Two, read in conjunction with the post-*Gove* political appreciation of *these reforms* as two parts of a whole. It seems *Gove's* reform has not supplanted the reform so vigorously defined and defended in the legislative debates. The tension will resurface at some point unless: *Gove's* idea is simply forgotten; *Gove's* criticisms are, apparently, resolved for the public *by* re-organisation; the ministry is able to sustain a *mere* transparency around child protection and so "release" the problem.

the long run) the regular inquiries and reports of the Children's Commissioner (it seems unlikely, after *Gove*,⁵⁶ that a return to a conceptualisation of the inquiry as finding and correcting aberrant, and individual "mistakes" would be credible).

What follows is a brief description of how the new structure *can* work towards *Gove's* "child centred" idea in the following areas: removing systemic and professional barriers ("working together");⁵⁷ prevention; protection; and the "child centred" perspective.

A child centred system will contain a range of strong, acceptable relevant and confident alternatives so that choices made for children can be made on the basis on what is appropriate for the child. The professional's task is to choose.

Designing the System

one of the things we're not going to do is actually meld them [different systems coming from different ministries]...because I don't think you can. They're very different... how people collect, what they collect, how you access it, who accesses it-all those things. So the goal isn't to sort of meld them, the goal is to design a system... There are some savings from that [the abbreviated Transition Commission] and we're putting them back into designing a new system, not trying to meld the ones that are there. So it would be a system in which people collect in the same way. And by the way, it won't be next week.⁵⁸

The pace, dictated by crisis, demanded major structural change.⁵⁹ The scale of this change, however, was first suggested by Judge Gove ("Designing a New Child Welfare

⁵⁶ The *Gove Report*, while discussing the decisions/actions of individuals in some detail, considered those individuals in the context of "the system".

⁵⁷ "Working Together" has been a theme, and slogan, of the UK *Children Act* and post-*Children Act* reforms. In that context the phrase carries allusions to the "lessons" of the Inquiry Reports (see Chapter Three), which frequently allude to the lack of agency co-operation as a cause of agency failure (in the child death cases and in Cleveland). I intend this phrase to carry these allusions with it.

⁵⁸ Penny Priddy, Members' Committee on the Response to the Gove Report, Transcripts of Proceedings (November 4, 1996) at 8 of 15.

System”),⁶⁰ although he imagined a single provincial authority for children could either be added as a sub-ministry to an existing ministry or as a “stand alone” ministry.⁶¹ Describing the “need for a new system” Gove noted the piecemeal development of the child welfare system as the product of “historical and political influences: it did not develop in accordance with clearly articulated principles or goals.”⁶² “Beginning again” would allow the creation of a system under coherent principles with a clear constituency: “a constituency of children”⁶³.

Working Together

The Ministry for Children and Families contains and integrates the (previous) child and family serving functions of the Ministries of Health, Attorney General Education, Skills and Training, Women’s Equality, and the old Ministry of Social Services, now dismantled. It is hoped that the Ministry, with its re-positioning of child and family services as core, will dissolve the persistent inter-Ministerial “culture clashes” which have attached to “working together” initiatives.⁶⁴ The emerging culture will (it is

⁵⁹ See then Transition Commissioner (now Children’s Commissioner) Cynthia Morton’s comments *supra* note 51. The implication of her remarks is that once the government decided it was necessary to act on Gove’s recommendations quickly (clearly in response to the “crisis” of the summer of 1996) “major structural change” became necessary: “If we couldn’t do the major structural changes, then it was not possible to expedite this agenda.”

⁶⁰ “The review and analysis of Matthew’s life, and the Inquiry’s other investigations, consultations and research, have led to several conclusions... These conclusions have led the Inquiry to the broader conclusion that British Columbia’s entire child welfare system must be reformed if the province is to institute more responsive child protection services. One objective of this report is to begin this process.” *Gove Report, supra* note 31, Volume II (1995) at 242.

⁶¹ *Ibid.*, Volume II, at 276.

⁶² *Ibid.*, Volume II, at 243.

⁶³ *Ibid.*, Volume II, at 243-244.

⁶⁴ The UK experience suggests that “working together” may also become an end in itself; see DHSS, *Child Abuse: A Study of Inquiry Reports 1980-1989* (London: HMSO 1991); and Michael Freeman, “Freedom and the Welfare State: Child Rearing, Parental Autonomy and State Intervention” (1983)

hoped) see all workers sharing a child centred perspective with the child as client. This cultural shift is crucial to the success of the child centred Ministry, with Family and State, whose tense relationship formed the centre of the interventionist debate, considered now in terms of their impact- current or potential, benevolent or malign- on the safety and well-being of the child.

Only if service providers are linked to a single employer will they be united by a common loyalty and have control over resources, both of which are essential for the delivery of co-ordinated multi-disciplinary services. Similarly, contracted child welfare service providers would contract with only one organisation.⁶⁵

Information gathering is expected to be substantially improved within the single Ministry, which will remove both systemic and *perceived* systemic barriers to information gathering and re-orient *all* Ministry workers to approach child protection complaints from a whole history perspective: "a system in which people collect [information] in the same way".⁶⁶

Prevention

National expenditure" [is difficult to calculate because costs are disbursed] "the main agencies involved in preventing and investigating child abuse neither know what they spend on it at local and national levels, nor what return they get for their investment or effort... ways must be found to work across organisational and service boundaries at national and local levels, to develop a child and family centred approach to facilitate more co-ordinated and rational financial investment. Ideally, this would include transferring investment from relevant adult services, such as penal and mental health services, although additional short-term investment would be needed to protect those services and vulnerable adults."⁶⁷

JSWL 70 at 78 "the ostensible reason for case conferences is to protect children but co-operation co-ordination is in danger of becoming the reason for their existence."

⁶⁵ *Gove Report*, *supra* note 31, Volume II at 252.

⁶⁶ Penny Priddy, Members' Committee on the Response to the Gove Report, Transcripts of Proceedings (November 4, 1996) at 8 of 15.

⁶⁷ *Childhood Matters: Report of the National Commission of Inquiry into the Prevention of Child Abuse*, Chairman: Lord Williams of Mostyn, Volume 1: The Report (London: The Stationary Office, 1996) at 30; 35.

Prevention is a minor, or counter-theme (the “child-centred” perspective being the dominant theme) of the new Ministry. The need to move from “crisis driven” reactive services to “prevention” is a familiar goal, but the problem has been how to get there. If prevention is conceived of in primarily expansionist terms (providing more, widely available services), focusing on future cost savings to the social services system overall if money is invested in children, the argument falls on the difficulty of calculating expenditures. The single Ministry can make the prevention investment *clearer* and perhaps more persuasive.⁶⁸

Protection

Prevention *is not* protection; the danger in the kind of “family centred” approach described in the *Gove Report* is that their identification actually subordinates the social worker’s protective role, forming “over-riding beliefs”⁶⁹ which then become very difficult to challenge. A commitment to prevention *must* be balanced by a strong and confident protective service in the “child centred” system described by Gove, and taken on by the Ministry.

⁶⁸ In May, 1997 the Ministry announced \$3 million for prevention programs “nurturing” babies and toddlers as the first phase (“Healthy Beginnings”) of a broad preventative strategy (“Healthy Beginnings, Healthy Lives”): “Promoting the physical, intellectual, emotional and social development of children and families; Supporting parents to become self sufficient, stable and equipped with good parenting skills; Encouraging communities to take an active role in supporting the healthy growth and development of their children”. B.C. Ministry for Children and Families, News Release, May 26, 1997.

⁶⁹ “professional thinking can be organised by overriding beliefs about a case. These beliefs may be determined by socio-political attitudes, strong personal or professional views, or inferences drawn from ongoing work with a family which develop into automatic thinking about them. Once a case becomes dominated by a fixed view, workers selective attention is likely to distort their observations and any contradictory information becomes difficult to acknowledge. We found a number of cases in which pervasive beliefs seemed to dominate most decisions and actions.” Peter Reder, Sylvia Duncan and Moira Gray, *Beyond Blame: Child Abuse Tragedies Revisited* (London: Routledge, 1993) at 92.

Crisis should not shape service provision, but crisis *is* part of child protection: within the Ministry structure child protection units will organise their caseloads around crisis response. In this structure, protection “specialists” are frankly crisis driven, but the idea is to *contain* crisis reaction within protection units. The post “interventionist” response here is to retain crisis driven practice *and* prevention/support, increasing options to respond to individual situations on an individual child centred basis: some situations will require an “interventionist” response, others a preventative “non-interventionist response”. Both should be possible, and available. The professional task is to choose.⁷⁰

The Ministry for Children and Families contains a discrete team of child protection workers, composed of “specialist” (as opposed to mixed functions and caseloads) managers and social workers, and posed as an elite and highly trained squad within the larger body of the Ministry.⁷¹ These child protection workers, with their specific mandate and accountability (reporting to a Director of Child Protection), are expected to integrate their work with other service providers. At the present time, the

⁷⁰ The head of the child protection consultant team has developed and introduced a risk assessment model, following Judge Gove’s recommendation. Risk assessment will require input from individuals and agencies involved with a family, including physicians and service providers, and require reassessment before expiry of a supervision order. These features of the risk assessment model were cited by Cynthia Morton, the Children’s Commissioner in the Mavis Flanders report, *infra*, as having the potential to prevent, specifically, a Mavis Flanders type of situation from recurring in the new system. The model avoids the “check list” approach; “there has been some criticism... which leaves the impression that if they just check off everything on the list that’s all they have to do”. Jeremy Berland, Members’ Committee on the Response to the Gove Report, Transcripts of Proceedings (September 13, 1996) at 7 of 25.

⁷¹ “The new ministry will establish a separate, highly trained child protection workforce, dedicated to focus on high risk children.” Cynthia Morton, Transition Commissioner for Child and Youth Services, *British Columbia’s Child, Youth and Family Serving System: Recommendations for Change*, Report to Premier Glen Clark (British Columbia: September 17, 1996).

government has created a child abuse consultant program, with experts assigned to each of twenty regions to advise.

A particular difficulty for child protection in advanced liberal societies such as Canada originates in the normative definition of the liberal personality. The social worker must be taken to share the internalised ideas which typify and shape the society around her; a crucial question in child protection is whether her socialisation can be overcome by role definition in such a way as to allow otherwise counter-“intuitive” responses (and whether the wider social and political context will permit those responses). This crucial issue increases in difficulty within liberalism’s legal and bureaucratic paradigm of rational objectivity, a set of ideas and language which does not include an easy or obvious space for the consideration of character.⁷²

The positioning of the child protection specialist within the Ministry for Children and Families may, however, have created the kind of sharp official character capable of carrying out the child protection task. The connections made between the police and child protection workers in the *Gove Report*⁷³ and the *Transition Commission Report*⁷⁴

⁷² One potentially unfortunate post-Gove development is the rather fetishist emphasis on formal qualifications for protection workers. See David Cruickshank’s “Paper on Qualifications and Training”, Report Prepared for the Gove Inquiry (1995) at 14, in which he describes a policy then being developed to broaden the recruitment pool base by not insisting on specific educational credentials, known as the KSA (knowledge, skills, abilities) approach to hiring (Cruickshank would add “attitude”, a positive attitude towards children for example, to the acronym). See also Dan Perrin “Issue Paper 2” Report Prepared for the Gove Inquiry (1995) at 5. According to the *Recommendations for Change* released in September 1996 (*supra* note 71) KSA testing was introduced for entry level positions in 1995 (apparently to remain *in addition to* formal qualifications).

⁷³ Judge Gove recommended that the Ministry “promote and participate in” joint training with the police, particularly on risk assessment, interviewing and investigative skills. Recommendation 63, *Gove Report*, *supra* note 31 Volume II at 199. The Ministry reports that this is happening through the Justice Institute and that social workers and supervisors assigned to the new child protection teams will receive additional training in conducting child protection investigations and investigative interviewing, in conjunction with the RCMP. *Response to the Recommendations of the Gove Inquiry into Child Protection*, *supra* note 35 at 23.

are interesting and important; the police officer is a strongly defined public character whose assumption of his or her on duty "role" justifies - indeed, dictates- the kind of judgmental, authoritarian, and coercive behaviour towards strangers which would be intolerable in the private citizen.⁷⁵

In a society, such as British Columbia, which awards the highest political value to individualism, privacy, and adult autonomy,⁷⁶ the child protection worker may need a similarly sharp persona to make her "intrusion" acceptable, both to the citizens of the *polis*, and to herself. The distinct "child protection worker" (as opposed to "social worker") character with certain "cop-like" duties and expectations also bears on the significant, if (dangerously) underplayed, issue of *fear* in social work with children. The stress of threatened or actual violence may be intensified for not being frankly up front and centre, the way it is in police work.

The effects of fear of violence are likely very hard to identify... If, as is the case, some social workers are too ashamed after being attacked to report the incident and are even inclined to blame themselves, how much more unlikely must it be that they will admit to the feeling of uneasiness before any violence had occurred. It is not easy to admit to being afraid; social workers must, for their sake and their client's sake... It is only too easy to find other reasons for doing something, or not doing something, when the real reason is that we are afraid to do it... Every effort must be made to make sure that the social worker's assessment, on which might hinge the safety of a child, is not disarmed by violence or the fear of its possibility. We encourage social workers to be straight, open and frank with their clients when

⁷⁴ "This specialising of the child protection functions would ensure a focus on the needs of the children most in danger. The work of this team would be aided by the work of the police, and protocols have already been developed in this area to ensure an effective working relationship." *Recommendations for Change*, *supra* note 71.

⁷⁵ The child's ambiguous situation vis a vis rights limits the analogy, however, in so far as the police officer's special status is connected to her official role as rights enforcer (in that rights "legiti[mise] access to and use of force in a way that other moral reasons do not; legitimise the limitation of other people's freedom of action, and are crucial in enforcing compliance when positive demands are met"); Susan Wolfson, "Children's Rights: The Theoretical Underpinning of 'The Best Interests of the Child'", in M. Freeman and P. Veerman eds. *The Ideologies of Children's Rights* (Dordrecht, Neth.: Martinus Nijhoff Publishers, 1992) at 18.

⁷⁶ Virtually all political debate during B.C.'s protracted reform process was focused on the potential threat posed to these high liberal values by the State child protection "system".

investigating possible cases of child abuse... and to speak out if they are fearful for their own safety or if they consider their performance as a social worker is being handicapped by fear of violence.⁷⁷

The Child Centred Perspective

“Child-centredness”, the theme pervading Gove’s *Report*, and (at this point) the “theme” of the new Ministry, means *sui generis* decision making (in the spirit of the “best interests of the child”). From this perspective, child-centredness was impossible inside the interventionist debate, which focused on the individual (adult)/ State.⁷⁸

The idea of the “child centred perspective” looks like this: the new Ministry contains a range of options and approaches, and does not, *per se*, endorse one over the other. The crucial task, the professional task, is choosing the appropriate tack; “child centred practice” means that “appropriate” is defined from the beginning with reference to the child. This requires a true range of options, which means accessible (destigmatised in addition to the “one stop shop” service provision the single Ministry can provide) and

⁷⁷ From *A child in mind: protection of children in a responsible society. The report of the commission of inquiry into the circumstances surrounding the death of Kimberley Carlile* (London Borough of Greenwich, 1987) at 197; DHSS *supra* note 64, at 71. Dingwall, Eekelaar and Murray refer to violence in terms of a “gender effect”: “... a violent man may sufficiently intimidate other members of his household to conceal child mistreatment... [or] sufficiently intimidate the (predominantly female) front-line staff in health visiting and social work to prevent them from discovering mistreatment. Perhaps the most notorious example of this was revealed by the inquiry into the death of Stephen Menhenniott, whose father appeared to have instilled fear into not only his immediate family but the greater part of the small, remote community where he lived. We observed at least one similar example where a woman social worker was so alarmed by the violent record of a man whose son had been referred through a school teacher as possibly mistreated that she failed to investigate the report except by telephone calls to the family’s health visitor and general practitioner, despite a case conference decision that she should visit the household.” Robert Dingwall, John Eekelaar and Topsy Murray *The Protection of Children: State Intervention in Family Life* (Oxford: Basil Blackwell, 1983) at 101.

⁷⁸ A Ministry draft document titled “Child’s Lens: A Prism of Opportunity” intended to help workers see events and actions from a child’s perspective, described by Children’s Advocate Joyce Preston to the Members’ Committee on the Response to the Gove Report as in its third draft in April 1997 (April 17, 1997 at 4) seems to have disappeared; personal communication, Rob Harvey, MCF/MHR librarian.

relevant support services and, recognising that for some children family support is not always a desirable option, a self confident and effective protection service. The risk assessment model is designed to focus the choosing task by focusing professional judgement, and ultimately a homogenous child centred Ministry culture should make that focus seem "natural". Of course the "child centred" perspective is not without costs; harking back to the original dilemma, if the choices in child protection were easy or without negative consequence, the issue would not be problematic. Some observers/participants in the change have questioned whether the change is always worth it.⁷⁹

The rushed and slightly makeshift nature of the Ministry's introduction is not determinative; the Ministry's origins in political imperative do not prevent it from developing into what Gove imagined, a "child centred system". But the ability of the Ministry to succeed on its own terms will depend on the ability of the social/political context to allow and support "child centred" decision making, and the ability of the Ministry to deal with the systemic "rule of optimism" and the patterns of practice and outcome it produces (see Chapter Three).

This thesis has proposed that a "rule of pessimism",⁸⁰ an inversion of the "rule of optimism" (that the State's agents will make the best of what they find), has

⁷⁹ See "Transfer of addicts raises fears of avoided treatment", *Vancouver Sun*, July 14, 1997; "The provincial government is playing politics with the lives of B.C. drug and alcohol addicts, and people needing help to conquer their addictions will lose out as a result, the former head of Burnaby's drug and alcohol counselling centre said Sunday. At issue is the government's decision to move all alcohol and drug counsellors from the health ministry to the newly created children and families ministry. While the move is in response to high-profile cases in which children have been harmed by addicted parents, Walter Moy predicted parents with addictions will stay away from treatment, fearing the new ministry might apprehend their children."

⁸⁰ The "sixties scoop", and continuing over-representation of First Nations children in care, indicating both a different premise (that living with their families is likely to contain a degree of

characterised child protection in First Nations communities.⁸¹ Within a legislative framework which defines preservation of the aboriginal child's cultural identity to be considered as a factor in interpreting and administering the *Act*⁸² and in determining the best interests of the child,⁸³ "child centred" decision making in First Nations communities *precludes* a "rule of pessimism" (this does not mean that a child will never be removed from his or her family). The new "child centred" focus, within the legislative framework of the *CFCSA*, will not be responsible for perpetuation of a "rule of pessimism" towards First Nations families.⁸⁴

Despite the "failures" inherent in the "liberal compromise", the compromise and its "rule of optimism" are *functional*, a check against unacceptable State authoritarianism. This functionality must be set against the rule's tendency to minimise child mistreatment.⁸⁵ The "rule" becomes avoidably, and unjustifiably, dangerous for children in child protection when it becomes an "over-riding belief",⁸⁶ impervious to contrary indications, actually defining the knowable. The phenomenon of the unseeable child which I first noted in the story of baby Paul may be attributable to a "rule

inherent dangerousness for First Nations children) and a different relationship with the State and its agents.

⁸¹ See Chapter One.

⁸² *CFCSA* s. 2.

⁸³ *CFCSA* s. 4.; s. 39 provides for the representation aboriginal communities in child protection hearings.

⁸⁴ Meaning that reasons may be found elsewhere, in racism/cultural insensitivity and continuation of an imperialist or colonial relationship between First Nations communities and the State; see Elaine Herbert, "An Overview and Analysis of First Nations Child and Family Services in B.C." Report Prepared for the Gove Inquiry (1995).

⁸⁵ In Dingwall and Eekelaar's analysis, restraint of State intervention and minimisation of identified risk are the *general* tendencies of the "rule": see *infra*, Chapter One, for a more complete explanation of why the "rule" produces these general tendencies and the situations in which it does not.

⁸⁶ See P. Reder, et al, *supra* note 69 at 92.

of optimism” as this kind of “over-riding belief”. The non-interventionist paradigm is dangerous for children because it codifies a “rule of optimism” as *the* “over-riding belief” in child protection. If British Columbia’s experiment in “child centred” decision making cannot displace the “rule of optimism”, it *can* increase the “rule”’s permeability; the child centred focus will cut against the “rule”’s resilience to contrary evidence- the inability to “see” the child (if the child’s situation counters the rule)⁸⁷ created by the “rule” as “over-riding belief”.

Another of the new Ministry’s “child centred” strategies, the creation of the strong child protection “character” within the Ministry, to be balanced within the Ministry by an equally capable and confident range of support options, may also mitigate against the overreaching tendencies of a systemic rule of optimism. If the “rule” is the response to the social worker’s particular task,⁸⁸ the protection worker persona within the new Ministry seems to be a role with a *re-defined* task, and comparison with the police officer is important; the police officer is not charged with “reconciling” civil order and individual freedoms, although her/his scope of permissible action is limited by clear and defined rules. The larger structure of the Ministry is intended to balance the “cop-like” protection worker with the tasks of prevention and support. So long as there is no claim that both of these objectives may be realised simultaneously, this

⁸⁷ In the absence of factors which, in Dingwall, Eekelaar and Murray’s analysis, would trigger a more “investigative response: “Withdrawal of parental compliance” and “failure of agency containment”. R. Dingwall et al, *supra* note 77 at 87. See Chapter One, *infra*.

⁸⁸ “If child protection work is ineffective, it is... because child protection must be reconciled with other important social values, most particularly those of the freedom and autonomy of families. The surveillance of families by occupations like health visiting is only possible because of the tacit bargain that parents will not be harshly judged, that it is an occasion for them to demonstrate their respectability rather than have it minutely judged.” R. Dingwall, “Labelling Children as Abused or Neglected” in *Child Abuse and Neglect: Facing the Challenge* Wendy Stanton Rogers, Denise Hevey and Elizabeth Ash, ed. (London: BT Batsford in association with the Open University, 1989) at 164.

conflict does not amount to contradiction, but may be conceptualised as allowing and encouraging balance and choice. Lorraine Fox Harding's observations re *The Children's Act, 1989* are applicable to the "competing objectives" of the post-Gove child protection system in British Columbia:

Concerns about both the child care agents of the state doing too much, too coercively, and about them doing too little, ineffectually, resulted in a wish for legislation and policy to attempt to proceed in two directions at once- both towards better protection of the child and better protection of the parent. From one viewpoint, the two broad objectives are in conflict and cannot be realised simultaneously: more power for social workers in relation to children does mean parents lose some of their rights, in this view. Therefore, descriptions of the *Children Act 1989* which refer to its providing both better protection for children and greater rights for parents are simply a denial of conflict, an attempt to avoid the awkward dilemmas that child care throws up.

...from another viewpoint, however, what legislation and policy is all about is balance. While there are some conflicting objectives, it is argued a better balance can be achieved. Thus it is reasonable, and not inconsistent, for the *Children Act* to attempt to proceed in two directions at once, adding to the power of parents here, strengthening the courts and local authorities there. What will be achieved, it may be argued, is not simply a redistribution of muddle but a genuinely more effective balance correcting tendencies both to over and under react, while helping parents and children as a unit where it is appropriate to do so.⁸⁹

The wider culture's ability to support the sharp "protection worker's" role *vis a vis* the relationship between children and their parents (while a trade off of civil order/liberty values is acceptable in the context of adult rights)⁹⁰ is another question. Perhaps not. However, if a more effective child protection system is impossible, for this reason, that conclusion needs to be *known*, opening up subsequent, political questions: are there other possibilities for meeting the needs of children? Or perhaps the communal interest

⁸⁹ Lorraine Fox Harding, *Perspectives in Child Care Policy* (1991: Longman, UK) at 230. Striking an "effective balance" has been made difficult in child protection by the social and political imperative to (appear to) *resolve* the conflict; such an appearance of resolution requires the denial or dissemblance of one aspect of that conflict

⁹⁰ Returning to the moral "strangeness" of children as non-rights bearers in a political culture defined by rights, a position in which children are dependent on benevolence for their protection, and so extremely vulnerable to various exploitations. See Chapter One, *supra*, and Martha Minow, "Rights for the Next Generation: A Feminist Approach to Children's Rights" (1986) *HWLJ* 9:1; M. Freeman, *The Rights and Wrongs of Children* (London: Frances Pinter, 1983). And cf., *infra*, note 128, re *Pricing the Priceless Child*.

in child well being is, in the context of liberal culture, archaic, formalistic, the public “outcry” of the child abuse/death “crisis” voyeurism combined with the happy sensation of moral superiority (to families implicated and professionals both). If analysis of child protection leads to this conclusion, the implications⁹¹ are extremely important, and need to be addressed seriously on a policy level. The “non-interventionist paradigm” is dangerous for children because it makes it hard to “see” children and to make choices for them. The “non-interventionist paradigm” is dangerous for society because, by pretending to “resolve” conflicts and dilemmas by rationalising/denying one side of the conflict, it obfuscates the issues within and raised by child protection.

The office of the Children’s Commissioner is perhaps the most significant organisational step outside the “interventionist debate” (and its systemic “resolution” in the liberal compromise/rule of optimism). The requirement that the Commissioner make regular public reports anticipates that there will be child deaths- there is no return to an earlier notion of child deaths as rogue, or aberrant “errors”. Counter to practice under the pre-*Gove* regime, however, when internal inquiries virtually stopped (the approach here seemed to have combined a public posture of “the new system is going to work so much better than the old one that we won’t need any more public debate about these issues”⁹² with a private acceptance of continued- perhaps increased- child deaths) this new “realism” is accompanied by the highest public visibility. The “error” characterisation of the earlier British inquiry reports was

⁹¹ In a “humanitarian” and social order sense.

⁹² R. Neufeld, Members’ Committee on the Response to the Gove Report, Transcripts of Proceedings (Feb. 4, 1997) 4 of 27.

dependent on their infrequency; public reaction to child deaths was formed by the relatively small number of known child deaths. British Columbia's fatality reviews should, quite dramatically, increase the number of deaths which exist for the public, preventing a comeback for the non-interventionist paradigm, and perhaps inspiring public debate about the isolation and vulnerability of the child in liberal society, and what might be done about it.

The Children's Commissioner

With respect to the fatality reviews, it is crucial that our reports are viewed as opportunities to learn how we can serve children better- not to inquire into the lives and deaths of individual children and their families. The right to privacy of these children and their families is often forgotten in public debate. The work of my office is to honour this right while learning from these tragedies.⁹³

But how do you get the attention of those who are really providing the services if some of these things aren't brought out in public?... Had it not been for the outcry about Matthew Vaudreuil.. where would we be today? Are you telling me in this paragraph that the new system is going to work so much better than the old one that we won't need any more public debate about these issues?... I for one, to be honest, don't like bringing these things into the public... But how else do you get it there? How else do you get a response?⁹⁴

The Children's Commissioner⁹⁵ is responsible for internal process reviews, investigation and resolution of external complaints,⁹⁶ the annual review of all continuing care orders (to prevent foster care "drift"),⁹⁷ and the review of child deaths

⁹³ *The First Three Months: Report to the Attorney General Hon. Ujjal Dosanjh, Cynthia Morton, Children's Commissioner, January 31, 1997.*

⁹⁴ R. Neufeld, *supra* note 87 at 4 of 27.

⁹⁵ *Children's Commission Act*, S.B.C. 1997, c.11.

⁹⁶ All children receiving services from government have a right to access a statutory review process. The indication is that the Commissioner will keep track of the nature complaints to identify particular areas which yield a high number of complaints.

⁹⁷ Under s. 4(d) of the *Children's Commission Act* the Commissioner will establish "standards" for care orders.

and critical injuries. The Commissioner receives notification of all child deaths in the province, which are assessed with regard to whether they are “suspicious or unusual”.⁹⁸ The Commissioner will investigate “suspicious or unusual” deaths, and write a report with recommendations to be given to the families and agencies involved. The Commissioner will also release (quarterly) an anonymised summary of all recommendations and reports. The procedure is the same for child critical injuries but includes only children known to the Ministry (this is due to the available database, and may alter if the appropriate database can be created). The Children’s Commissioner retains jurisdiction over aboriginal children; any delegated authority from the Ministry requires adherence to standards, which a review will investigate, and the commissioner will consult with the band regarding any “issues” arising from her investigation.

I think the most powerful way to move a system is an ongoing cycle of public reporting and accountability, and I don’t think the names and identities of individual children are critical to create that process of change... At the same time though, I think its important that when people receive a report with 63 recommendations in it, they have some comfort that these recommendations are grounded in a thorough examination of the cases of individual children... So the severed case reviews on the individual children are available. You can see the specific recommendations on a case by case basis, but all identifying information about the children has been removed.⁹⁹

Debates in Hansard about the office of the Children’s Commissioner focused, in part, on “follow through” of the Commissioner’s recommendations as the evidence on which the Commissioner’s Office will succeed or fail.¹⁰⁰ This understanding of what

⁹⁸ Whether or not the Ministry was involved with the child: “This process is child-focused, not ministry-focused at all”. Attorney General Dosanjh, British Columbia, Debates of the Legislative Assembly (April 21, 1997) at 2677. The Commissioner has all the powers of a commissioner under the *Inquiry Act*, including subpoenas.

⁹⁹ Cynthia Morton, Members Committee on the Response to the Gove Report, Transcripts of Proceedings (Feb. 4, 1997) at 5 of 27.

¹⁰⁰ Val Anderson, British Columbia, Debates of the Legislative Assembly (April 21, 1997) at 2677 (April 21, 1997) at 2678.

the reports' are *for* has the potential to undermine the office of the Commissioner; after all, how many recommendations do you need, especially when (if the history of child death inquiry reports is considered) they are likely to repeat one another? These reports are important first as an "ongoing cycle of public reporting and accountability", then as providing recommendations which are *acted* upon (although this is certainly a secondary function of the reports). Indeed, changing patterns of practice which (understood in the context of the British inquiry reports and Dingwall et al's analysis of the liberal compromise) may be understood as a function of the "rule of optimism" may not, as I have suggested *be* possible; if that is the case, the Commissioner's reports are necessary to monitor the consequences of the "rule" and keep them visible.

One potential development, identified by Gordon Wilson during legislative debates¹⁰¹, is that the Commissioner's reports could become a "babysitting service" for ministries involved with children by internalising, or "keeping the lid on" complaints and critical reports. This caution is analogous to Ann Clwyd's warning re the Waterhouse Inquiry underway in the UK, that the inquiry could actually "build a wall" around the scandal; the institutionalised inquiry¹⁰² as institutionalised "containment of failure".

The regular reporting structure- including what appears to be a *harnessing* of media interest in "real life stories", with the availability of the "severed case reviews"- seems to preclude this kind of "wall building", or apparent resolution. If this structure works as it should, one of two things could happen: British Columbians will cease to care about vulnerable children through sheer over-exposure to their plight, or the frequently

¹⁰¹ British Columbia, Debates of the Legislative Assembly, June 5, 1997.

¹⁰² And perhaps crucial to this conceptualisation is control of the "public aftermath".

mentioned but never defined "community" will begin to assemble and a new definition of what is "politically possible" for children will take shape. Or perhaps, more modestly, the "realities" of social work and "the public" will begin to move closer together (and this does not mean the public coming around to the professional point of view), working on the important issues of fear and secrecy in child protection.¹⁰³

This is the way things look now; whether this transparency can be maintained, or whether a new "resolution" of the problems in child protection will evolve to explain failure and relieve the public of this partial re-assumption of involvement and responsibility, is uncertain. Judge Gove noted the experience of Victoria, Australia (where child deaths were referred to a family court judge who, with a department of child welfare representative and an independent third person with particular expertise, conducted an inquiry): "Inquiry research found that this approach was successful in Australia. Unfortunately, it was not required by legislation, and once several inquiries critical to child welfare officials were made public, the referrals have stopped."¹⁰⁴ The inquiries of the Children's Commission, however, are provided for in legislation in British Columbia.¹⁰⁵

¹⁰³ One malign manifestation of these issues appears as a paralysing policy over-kill which seems, perversely, to result in a total lack of usable policy. "The hundreds of pages of policy to direct every action of social workers" indicating a fear of criticism/responsibility, create a situation in which "social workers cannot completely know and follow all the policies". "All social workers know they have broken the rules; they have to in order to serve the interests of their clients." Having broken rules, however, workers must then fear being "found out" and disciplined at any time. See R. Whitelaw "Financial, Administrative, Human Resources and Organisational Commentary", Report Prepared for the Gove Inquiry (1995) at 38.

¹⁰⁴ *Gove Report, supra* note 31, Volume 2 at 142.

¹⁰⁵ Of course this does not guarantee that the inquiries will run as anticipated. It was suggested that Cynthia Morton's report re Mavis Flanders (see *infra*) was temporarily withheld to allow the ministry to get its act together; see Vaughn Palmer, *Vancouver Sun*, August 1, 1997. "Cabinet minister Penny Priddy and her staff in the ministry of children and families had known for three weeks that she would face a reckoning in the legislature over the death of Mavis Flanders... The delay bought time for Ms. Priddy and her staff to prepare a response, time they needed badly because, among other

Review of the Circumstances Surrounding the Death of Mavis Flanders

Agency guidelines and policy may 'learn lessons' from previous inquiries into child death, while everyday practice does not.¹⁰⁶ The previous review of inquiries said that "the general picture of practice emerging from the reports is not of gross errors or failures by individuals on single occasions but of a confluence of a succession of errors, minor inefficiencies and misjudgements by a number of agencies, together with the adverse effects of substantial factors beyond the control of those involved.' This report confirms that view.¹⁰⁷

If the Children's Commissioner's reports come to be understood as part of the child protection process (neither wholly "within"¹⁰⁸ or "outside"¹⁰⁹ the business of child protection) they may become accessible to that level of everyday practice. Understanding the Commissioner's reports within the context of the collected inquiry reports (see Chapter Three) will make it easier to find connections and, subsequently, accessible "lessons". The Children's Commissioner's *Review of the Circumstances Surrounding the Death of Mavis Flanders*,¹¹⁰ illustrates how this aspect of the new system is likely to work, through its structural investigative role in a high profile

things, the 55 page report provided and account that was grossly at odds with what Ms. Priddy had told the legislature about the Flanders case earlier this year." Also of note a July 1997 order-in-council ordered all documents and submissions to tribunals of the Children's Commissioner be held confidential; "Asked how the public will know she is not also removing [in addition to information that might identify the child] information that would be embarrassing to the government, Morton said: 'The only guarantee you have is my integrity'. "Children's protector defends new gag law" *Vancouver Sun*, August 1, 1997.

¹⁰⁶ Doreen Aston (London: Lambeth, Lewisham and Southwark Area Review Committee, 1989) at 8.1.

¹⁰⁷ DHSS *supra* note 64 at 57.

¹⁰⁸ Suggesting the kind of "containment" feared by Gordon Wilson.

¹⁰⁹ The trial-like "ordeal" described by Jeanne Wall, *supra* note 2.

¹¹⁰ Report to the Honourable Ujjal Dosanjh, Attorney General prepared by Cynthia Morton, Children's Commissioner and Chair, Child & Family Review Board, June 12, 1997[hereinafter *Mavis Flanders*]. The case under investigation was at the centre of a high profile media scandal which drew Gove-like accusations of government cover-ups and untruths.

scandal,¹¹¹ and by the insights into the problems of vulnerable children and their protection the story holds.¹¹²

The Children's Commissioner released her first report, "The First Three Months"¹¹³ in January of 1997. The fatality reviews considered 105 child fatalities between 1992 and 1996. The report made 63 recommendations from the review of child fatalities, prominent among them the importance of community involvement in child protection, conceived of as the duty to report suspicions to the authorities:

In some of these cases, community members, friends or families witnessed or suspected the neglect or abuse of a child but did not report this to the authorities. While in some cases the failure to report stemmed from uncertainty or lack of evidence, in other situations it was motivated by fear of a general unwillingness to interfere.

However, after the death, the authorities received calls from these people, guilt ridden that they had not reported their suspicions of an abusive/neglectful situation before it was too late.

Recommendation 5

MCF, the RCMP, police and public health agencies develop a strategy to educate the public regarding what children need to thrive, what constitutes child abuse and neglect and the duty to report any suspicion of abuse and neglect.

Recommendation 6

That a public education campaign include information regarding the possibility of criminal proceedings when the evidence indicates a clear knowledge of abuse and a failure to report.¹¹⁴

"Having children safe in a family isn't only about whether the ministry does a good job" Minister Priddy responded. "Children are safest because of unpaid people in their

¹¹¹ Seeming to contain the scandal.

¹¹² For the professionals and for the public; the report's "story" and conclusions were front page news.

¹¹³ *The First Three Months*, *supra* note 93.

¹¹⁴ *Ibid.*, at 5.

lives- the bus driver, their neighbours.”¹¹⁵ The assumption that community involvement in and responsibility for child protection *equals* reporting to social services is difficult in the light of the inquiry report patterns, including those in the *Gove Report*, of what happens- and *why it happens* - to such complaints. If, as I have suggested, the State system *absorbs* community concern, this casting of community responsibility in terms of contacting authorities is problematic.¹¹⁶ This early emphasis undermines the progressive potential of the Commissioner’s reports by falling back on an easy, but inadequate, conceptualisation of the “communal interest” in the liberal state.

It is important to realise that the kind of “norm management”¹¹⁷ contemplated by Cynthia Morton and the Minister for Children and Families may have unintended consequences. Recalling Justice Brennan’s dissent in *DeShaney*¹¹⁸ (and my own analysis of the “delegation”) there may be an inverse and proportionate relationship between a norm of community obligation (Penny Priddy’s “bus drivers and

¹¹⁵ Canadian Press Newswire, January 31, 1997.

¹¹⁶ “The mandatory reporting system by design accepts a high rate of false identifications in order to maximise rates of accurate detection of child abuse. The objective of the reporting system is to cast a wide net to capture as many actual cases of abuse as possible.” S. Kalichman, *Mandated Reporting of Suspected Child Abuse: Ethics, Law & Policy* (Washington D.C.: American Psychological Association, 1993) cited in L. Martz and B. Enderton “Mandatory Duty to Report” Report Prepared for the Gove Inquiry (1995). It seems, however, that the wide net *requires* the low intensity approach described by Dingwall, Eekelaar and Murray as the “rule of optimism”, and the relationship is proportional. The wider the net, the weaker it must be.

¹¹⁷ Cass R. Sunstein, “Social Norms and Social Roles” (1996) 96 CLR No. 4 at 907. “A good deal of governmental action is self-consciously designed to change norms, meanings, or roles, and in that way to increase the individual benefits or decrease the individual costs associated with certain acts.” *Ibid.*, at 913.

¹¹⁸ *DeShaney v. Winnebago County Department of Social Services* 109 S. Ct. 998 (1989) at 1011: “Through its child welfare program... the State of Wisconsin has relieved ordinary citizens and governmental bodies other than the Department of any sense of obligation to do anything more than report their suspicions to the DSS”. See Chapter 1.

neighbours”) and the perception that social services will “take care of it” (the idea inside the exhortation to report).

The issue of “community responsibility” was central to the 1997 “scandal” surrounding the circumstances of the death of Mavis Flanders. Ms. Flanders, a First Nations woman living in Vancouver, died of a heroin overdose in March, 1997. Her two year old son was left alone with his mother’s body for five days before the manager of their apartment building phoned the police. Ms. Flanders had been receiving various services for over a year. Her son had been apprehended twice; for a two day period in January 1996, following his mother’s incarceration for “alcohol related behaviour” (accepted as an isolated incident), and again in April after Flanders’ arrest for “engaging in substance abuse in a public place.” A three month temporary custody order, requiring Flanders’ to seek assistance for alcohol and drug problems and anger management, was granted in June 1996. Following the child’s return that September, a supervision order was granted, with the following terms: that Flanders maintain her residence in a “safe and sanitary state at all times”; that she allow social worker visits and inspections at any time, as often as “deemed necessary to ensure the safety and well being of the child”; that she not use drugs, alcohol or inhalents; that she continue with alcohol and drug counselling, and family counselling at NCCA (Native Courtworkers and Counseling Association of B.C.,) that she co-operate with the provision of homemaker services; that she ensure her child was supervised. The child was to be removed if she failed to comply with these conditions. The supervision order expired without any formal assessment of whether these terms had, in fact, been satisfied. Cynthia Morton’s report found that they had not.

Minister Penny Priddy's assurance to the legislature in April that the "Ministry had done all it could for Flanders" was contradicted by the report prepared by the Children's Commissioner¹¹⁹ in her capacity as Chair of the Child & Family Review Board:¹²⁰

When asked by social workers how Mavis was doing over the fall, reports from all agencies were positive. What was not explored between social workers and service agencies... was how frequently Mavis attended which programs, what results or changes were being achieved, what goals had been set and how all of this informed an assessment of needs and risk to both Mavis and son..

The facts demonstrate that Mavis was not regularly attending the programs she had enrolled in during this period.... The NCCA [from which Flanders received counselling services] counsellor advise us she saw Mavis once or twice a week, yet records indicate this had not been the case since before September 1996. Another NCCA worker perceived Mavis to be there "a lot", yet records do not substantiate that she actively participated in counselling.¹²¹

Plus ca meme chose plus ca change? In the media "post mortem", Morton said she found no evidence of a deliberate government "cover-up" in the Flanders case, despite the discrepancy between Minister Priddy's assurances to the House and the findings of her own report. "I just don't think they knew," Morton was reported as saying: "They were wrong, but still I think that was what they believed."¹²²

¹¹⁹ *Mavis Flanders, supra note 110.*

¹²⁰ Cynthia Morton was appointed Chair of the Children and Family Review Board and Children's Commissioner under Part I of the Inquiry Act; The *Children's Commission Act* came into force by regulation in June 1997. "Morton's report... found a court-imposed supervision order returning Chabasco [Mavis Flanders' son] to his mother's care expired in December 1996 without any formal assessment as to whether Flanders had satisfied the terms and conditions of that order. 'The facts suggest her son was not consistently safe,' Morton wrote. 'The facts suggest Mavis struggled continuously with alcohol, substance and drug abuse in 1996 and 1997.' This is in contrast to what Priddy told the legislature last April when she suggested that there was no reason for ministry staff to intervene. She said the supervision order was not continued because Flanders 'had met all of those conditions', and had 'successfully completed' drug treatment programs." *Vancouver Sun*, July 4, 1997.

¹²¹ *Mavis Flanders, supra note 110 at 21.*

¹²² "Chabasco's Legacy", *Vancouver Sun*, July 12, 1997. This is an interesting suggestion that the "evidence" is not always objectively discernible, indicating the importance of the observer's assumptions and beliefs to the identification of evidence; this suggestion needs to be explicitly posed, and considered in its own right, on its own terms.

The isolation of Mavis Flanders' son after her death was clearly the most terrible aspect of this story for the public. Indeed, the greater isolation of mother and son, throughout their lives, is a "theme" of Morton's report:

The issue of most concern to me, and I would suggest the missing consideration in the assessment of Mavis' ongoing capacity to parent, was her isolation and behaviour when not visible in the community. When Mavis was out in public with her son, both mother and child usually appeared well and happy. The health and well being of the son, however, was not consistently assured through the sole care of his mother. There were occasions when Mavis could not be found, or she denied others entry into her home. From the outset Mavis ferociously guarded the secrecy of her home life with her son. The absence of friend, family or caregiver in their home from her son's birth to Mavis' death, with only a few exceptions, does not allow me to conclude that the public, healthy and happy Mavis and son were the private Mavis and son. In these circumstances, the facts suggest her son was not consistently safe. In this case, the facts suggest Mavis struggled continuously with alcohol, substance and drug abuse in 1996 and 1997. During these episodes of isolation, unsafe circumstances for the child occurred."¹²³

"It is also necessary to point out the consequences of a failure to report, a greater sense of community responsibility for all children and the need to continue to build a system which instils confidence that reports will be investigated...Mavis Flanders lived in an apartment with other women and children facing challenges of poverty, single parenthood and isolation. She repeatedly faced eviction and denied entry into her home. Her isolation and that of her son seems the most difficult, pervasive and fatal component of her lifestyle that neither family, neighbour nor service provider overcame."¹²⁴

Mavis Flanders' son was the subject of a number of anonymous reports before his mother's death. Two of those lead to his mother's arrest, and the son's apprehension; the others were successfully met by assurances and explanations from Ms. Flanders herself. Mavis Flanders evident, "doting"¹²⁵ love for her son seems to have been a significant factor throughout her relationship with the ministry and her service

¹²³ *Mavis Flanders supra* note 110at 6.

¹²⁴ *Ibid.*, at 50.

¹²⁵ *Ibid.*, at 6.

providers; "She was convincing, people liked her, and it was easier to believe her than not."¹²⁶

The "isolation" of her other, addicted self seems to have been deliberately chosen to keep her son and her lifestyle: she wanted them both. Her strategy, Morton suggests, fit the systemic needs of her service providers. If Mavis Flanders' *isolation* killed her, and almost killed her son, that dynamic must be explored. In doing so we return again to the original dilemma of child protection. *Could* the various professionals who knew Mavis Flanders have broken her chosen isolation? In the context of the preceding analysis, this is extremely problematic, bringing us around again to the underlying delegation and its *dilemma* and, finally, to the "vexed question" of community.

The general isolation of children with one or more parents makes those parents *too* important. Fairy stories and folk tales are full of enterprising children striking out to make their way; today's children cannot support themselves, unless they are willing to become outlaws. It is near impossible (officially) for the modern child to be self-reliant, and unlikely that she will be able to rely on the kindness of strangers¹²⁷ (unless- and even then only possibly- they are paid for it). The increasing isolation of children as a group (including their physical and social ghettoization in the artificial environments of daycares) makes it difficult to *know* children outside one's own private sphere, let alone befriend them. In the context of this social (and, increasingly, cultural) isolation, it matters too much when parents fail.¹²⁸

¹²⁶ Cynthia Morton quoted in the *Vancouver Sun*, "Chabasco's Legacy", July 12, 1997.

¹²⁷ See Emmy E. Werner and Ruth S. Smith, *Vulnerable but Invincible: A Longitudinal Study of Resilient Children and Youth* (New York: McGraw-Hill Book Co., 1982) at 162 re the potential importance of these caring "outsiders" for vulnerable children.

¹²⁸ Considering the emergence of the “economically worthless” but “emotionally priceless” child between the 1870s and the 1930s Viviana A. Zelizer notes the implications for the “unwanted child”: “As they become increasingly sentimental assets, children’s value is increasingly dependent on parental attitude. Indeed, the decline in children’s objective contributions corresponded to this increase in parental rather than societal determinants of value.” *Pricing the Priceless Child: The Changing Social Value of Children* (New York: Basic Books, Inc., 1981) at 167.

CONCLUSION

The province needs to be clear that the child is the paramount client of the child welfare system. It needs to reflect this "child-centredness" in legislation, training, policies... Doing so will demand that child welfare organisations act with undivided loyalty to the child, making choices based on what is best for the child. Such decisions might include assisting parents... it might also mean removing the child. Children need stable, caring relationships, but child welfare authorities often appear too ready to assume that these relationships can always be nurtured in the child's family. This is not always true... This does not mean that the goals of child protection and family support are necessarily in conflict; from a child centred perspective, family support services fit on a continuum of services designed to ensure care for the child. Conflict occurs when supporting the family is contrary to achieving or maintaining a child's safety or well being... Family unification is not the goal; the goal is preserving the safety and well being of the child.¹

The child centred choice may be removing a child from a dangerous family situation-taking the family apart- or supporting the integrity of the family unit. Robert Dingwall and John Eekelaar have suggested that the correct alternative to removing a child is a power to supervise parents, based on a conceptualisation of parents as agents,² or trustees, for their children.³ The idea of parents as "trustees" for their children emphasises the family's

¹ *Report of the Gove Inquiry into Child Protection* [hereinafter the *Gove Report*] (Victoria, B.C.: Queen's Printer, 1995), Volume II at 246.

² *Ibid.*: "Since children lack the capacity to gain access to these resources [referring to a collective duty to limit inequalities via redistributive economic support and the provision of services] for themselves, the way we make redistribution work is by recognising parents as agents for their children. By corollary this imposes a duty on the parent to exercise that agency for the child's benefit. Socially, if not legally, the parent is a trustee." "Trustees must use their powers to promote the purposes of the trust. In the case of parents, the purposes of their powers can readily be seen to be the promotion of the welfare of their children. The scrutiny of the exercise of these functions in care proceedings is analogous to an action on behalf of beneficiaries for failure of trustees to properly exercise their duties...The conclusion that can be drawn, therefore, about the nature of care proceedings is that they are essentially civil in nature; that the local authority is, on behalf of the child, calling the parents for the discharge of their trust." Robert Dingwall and John Eekelaar, "Rethinking Child Protection" in M. Freeman ed., *The State, The Law and The Family: Critical Perspectives* (London: Tavistock Publications, Sweet and Maxwell, 1984) at 106; And see Robert Dingwall and John Eekelaar "Victims or Threats? Children in Care Proceedings" (1982) JSWL 68 at 81.

³ "A parental supervision order should give authorities the power to direct parents in the discharge of their duties, which might include presenting the child for medical inspection or bringing her regularly to a nursery, for example. Staff would also have a right of entry to the home and an emergency power to

obligation to the child, as opposed to its autonomy *from* the State:⁴ a “child centred” approach to the family itself.

It is too early to tell how successfully British Columbia’s “child centred” reforms will do a better job of protecting children in dangerous family situations (and what kind of impact those reforms will have on family privacy). However, several features of these reforms-amendments moving the focus of the *Child, Family and Community Service Act* away from “non-intervention”, the structure of the single Ministry and the regular inquiries and reports of the Children’s Commissioner- do have the potential both to preclude a comeback for the non-interventionist paradigm (despite the paradigm’s political, cultural and professional appeal) *and* create an organisational and (professional) cultural context conducive to child centred decision making.

Elevation of the safety and well being of the child to the paramount consideration in the interpretation and administration of the *Act*⁵ codifies the post-Gove “child centred”

remove the child for a short time.. also some legal provision to protect children at risk without having to wait until damage has actually been inflicted.” Lorraine Fox Harding, *Perspectives in Child Care Policy* (1991: Longman, UK) at 66; see R. Dingwall, J. Eekelaar and T. Murray “Times Change and We Change with Them?” (1983) *Community Care* 16. In a child centred *context*, the “non-interventionist” framework of the *CFCSA* would permit something like this. The *Child, Family and Community Amendment Act, 1997* S.B.C. 1997 c. 46 allows the director to initiate protection proceedings by applying for a supervision order, without removing the child (s.4), and, under s.16, to attach terms and conditions recommended by the director (services for parent or other person in home; daycare or respite care; director’s right to visit child; and a requirement that the child be removed if one or more specified terms or conditions is not complied). The child may be removed if the provisions are breached. The child “likely” to be harmed is included under s. 13 of the *CFCSA* (child “in need of protection”); authority to enter premises without a court order and to remove the child in immediate danger or where less disruptive measures are inadequate is given under s. 30.

⁴ The “non/interventionist debate”, focusing on the relationship between State and family and the point at which State intervention in family life could be justified, has tended to define “the family” in terms of its “freedom from” the State (rather than its obligation to the child).

context. The *Child, Family and Community Service Act* remains, after Gove, “non-interventionist” child protection legislation⁶ but, after Gove, the context of that legislation—the new “system” and its policy, and the political and social focus on the safety of children—is very different from the “family centred” context in which the *Act* was introduced. In 1998 the *Child, Family and Community Service Act* is “non-interventionist” legislation *outside* of a non-interventionist paradigm. Judge Gove noted that grounds existed for apprehending Matthew Vaudreuil under the “non-interventionist” *CFCSA* (as they did under the “interventionist” *Family and Child Service Act*)⁷; the *Act* itself does not prevent child apprehension, outside of a “family centred” political/policy context. The Gove Inquiry was told “we continue to see in practice that ministry social workers support the view that family support must be completely exhausted before child

⁵ The *CFCSA* originally contained seven “guiding principles” of equal emphasis. The *Child, Family and Community Service Amendment Act, 1995* S.B.C. 1995, c.19 elevated the first of these principles, that “children are entitled to be protected from abuse, neglect and harm or threat of harm”, to the “paramount consideration” in the administration and interpretation of the *Act*, in response to Gove’s interim report recommendation. Amendments to the family conference provisions making their offer by the director discretionary rather than mandatory cut against the family support *presumption*: in some situations the family conference may be appropriate, but in some cases it will not be, and the professional “child centred” task is to discern the difference and make the choice. And see *B.S. v British Columbia (Director of Child, Family and Community Services)* [1997] B.C.J. No. 2202 (B.C.S.C.) considering whether the standard of proof required for a finding of “in need of protection” was higher under the new *Act*’s “different underlying philosophy” (at para. 37), and finding it was not, characterising the *CFCSA* (after Gove) away from the “non-interventionist” end of the “interventionist” spectrum.

⁶ Following Richard Barnhorst’s criteria for characterising child protection legislation along an “interventionist” continuum (“Child Protection Legislation: Recent Canadian Reform” in Barbara Landau ed. *Children’s Rights in the Practice of Family Law* (Toronto: Carswell, 1986) 255), considering: principles; grounds for involuntary intervention; initiation of proceedings; authority to apprehend; authority after apprehension (medical consent); time limits; interim custody of the child; clear guidelines encouraging the court to leave the child with or return her to her parent(s); adequate notice and hearing requirements; the court’s ability to order the provision of support services to the family so that the child may remain with or be returned to the parents; provisions encouraging the court to give parent(s) access to the child during a period for which the agency will have interim custody; and accountability mechanisms: “One of the general principles of a legalistic approach is that a system of involuntary child protection intervention should be designed to ensure that agencies and courts are held accountable for their actions” (at 275), and as characterised by Lisa Martz in a paper prepared for the Gove Inquiry (“Apprehension”, Report Prepared for the Gove Inquiry (1995)).

protection is applied. If this attitude is practiced within the framework of the new Act, there are many new hoops to jump through on the road to child protection.”⁸ Within a child centred political, policy and structural context perspective (the “framework” without the “attitude” referred to in the quote from the Gove Inquiry cited above),⁹ the *CFCSA* does not prevent child centred decision making.

The single Ministry structure, building a new system “from the ground up”¹⁰ with the child identified, from the beginning, as the “client” and the “constituency”, could generate a new child centred professional culture, crucial to the “success” of child centred decision making.¹¹ A child centred professional perspective faces two obstacles: the internalised “liberal way of thinking” (which the social worker must be taken to share) which works against intervening in family life, and the external restraints of the liberal context, the “basic”¹² liberal political values of (adult) individualism and personal freedom. The creation of a sharp official protection “persona” within the Ministry could counter the intuitive liberal values of privacy and conflict, and the frank acknowledgement of conflict

⁷ *Gove Report, supra* note 1, Volume II at 328

⁸ From a submission from a consortium of 14 Vancouver agencies, *Ibid*, at 247.

⁹ *Ibid*.

¹⁰ *Gove Report, supra* note 1, Volume II (1995) at 242

¹¹ And the importance of a professional culture in child protection decision making- indeed, in the social worker’s ability to see the child’s situation within her family- is made apparent in the inquiry reports.

¹² From Waller’s “basic” mores, “those upon which the social order is founded, the mores of private property and individualism, the mores of the monogamous family, Christianity and nationalism” (W. Waller, 1936, “Social problems and the mores”, *American Sociological Review*, 1, 922) from Robert. Dingwall, John Eekelaar and Topsy Murray, *The Protection of Children: State Intervention in Family Life* (Oxford: Basil Blackwell, 1983) at 2.

inherent in that official role will work on the problem of unacknowledged fear of violence in child protection work, which further complicates the exercise of authority. Strong support and prevention services in the Ministry, and the non-interventionist aspects of the *CFCSA*,¹³ should balance the “cop like” protection character.

The regular inquiries and reports of the Children’s Commissioner, by keeping child deaths very public and (seemingly) precluding the “disappearance” of child deaths inside the system,¹⁴ should prevent a “comeback” for the non-interventionist paradigm.¹⁵ The width and depth of the paradigm’s appeal make it likely to re-appear without this sort of preclusion. Child centred decision making will (on the heels of, and in contrast to, the “family centred” system described in *Gove*) almost certainly increase the *numbers* of apprehensions,¹⁶ leading to another “swing” of the “pendulum” back to the non-interventionist paradigm unless that paradigm *remains* de-legitimised. The coherence of

¹³ See *supra* note 6.

¹⁴ Although Gordon Wilson MLA has suggested that he reports could become an internalised “baby sitting service” for government agencies working with children, “keeping the lid” on child deaths (containing scandals by defusing public outrage with the appearance of “something being done”). British Columbia, Debates of the Legislative Assembly June 7, 1997.

¹⁵ *Appearing* to resolve the conflict between the problem of child suffering in private families and family autonomy and privacy by *subsuming* child protection within family support and preservation, the legitimacy and coherence of the “non-interventionist” paradigm depends on the disappearance (explained as both respecting family privacy and the professionalism of child protection workers) of child deaths (the most obvious form of child suffering).

¹⁶ As occurred in the Quesnel “scandal” of early 1998 (see “Seizing the Children: Why the ‘black stork’ struck in Quesnel”, *The Province* (Vancouver B.C.), February 13, 1998), after seventy one children were “seized” over a period of two months beginning in late November, 1997. The rash of apprehensions followed a Social Services audit of the Quesnel office, and the high number was originally explained as a result of the audit, “a year’s worth of apprehensions condensed into two months”, although this explanation was challenged by local Judge Robin Smith, who claimed that most of the apprehensions in question were new, the result of new social workers (brought in after the audit) applying the new Ministry policy. see “Judge questions seizure of children in Quesnel”, *Vancouver Sun*, February 13, 1998.

an equation of child protection with the pursuit of family preservation depends on the disappearance of child deaths, for, as *Gove* has dramatically shown, the “family centred” focus of the non-interventionist paradigm is dangerous for children.

What if the child centred approach increases child apprehensions? As noted¹⁷ this issue has already caused controversy in Quesnel. Child centred decision making does not necessarily entail a decision to remove a child and, indeed, a child centred perspective is conducive to the development of new ideas of *child centred* family support.¹⁸ If success equals fewer numbers of children in care, then a “family centred” policy will always be more “successful” than a “child centred” approach, but that simplistic definition is not satisfactory.¹⁹ I would define success as a system capable of focusing on the child’s situation, and making choices, from a genuine²⁰ range of strong and confident alternatives.

If increased numbers of children come into care, what will happen to them? How will the care system cope with more children? If provisions for children in care are inadequate, that situation is not addressed or ameliorated by leaving those children in dangerous or damaging family situations.²¹ Problems in foster and residential care are not a reason for

¹⁷ See *supra*, note 13.

¹⁸ See Dingwall and Eekelaar’s notion of the family as “trustee”; *supra* note 2.

¹⁹ “With hindsight, we now feel that in several cases the child’s interests might have been better served if the focus of our intervention had been on helping the parents to accept permanent separation rather than working towards rehabilitation.” Peter Dale with Murray Davies, Tony Morrison, Jim Waters *Dangerous Families: Assessment and Treatment of Child Abuse* (London: Tavistock Publications, 1986) at 179.

²⁰ Relevant, available, well funded.

²¹ Of course workers taking decisions will consider existing alternatives when making choices; see Paul D. Steinhauer *The Least Detrimental Alternative: A Systematic Guide to Case Planning and Decision Making for Children in Care* (Toronto: University of Toronto Press, 1995). At a policy and political level,

giving up on child protection (by re-defining it as family preservation): they are a further area for attention, and action.²²

however, problems in foster or residential care need serious attention on their own terms. Marlee Kline has posed the question of whether the child centred system will result in more First Nations children being brought into care: can it then be characterised as a success? The issue of inadequate/culturally appropriate care options for First Nations children is *not resolved* by leaving children in dangerous or damaging situations. Provisions of the *CFCSA* requiring the preservation of the aboriginal child's cultural identity to be considered as a factor in interpreting and administering the *Act* (s.2) and in determining the best interests of the child (s.4) should mitigate against taking First Nations children into care where appropriate home alternatives are not available (and see s. 71 prioritising the child's own extended family or child's aboriginal cultural community or, if this is not possible, another aboriginal family as placements) but, of course, the issue of inadequate/culturally appropriate care options for First Nations children is *not resolved* by leaving children in dangerous or damaging situations.

²² See Steinhauer's consideration of permanency planning in foster care, *supra* note 21; and the Utting Report into Residential Care in the UK (William Utting, Chair), released November, 1997 for a place to start.

REFERENCES

- Ashe, M. and N. Cahn, "Child Abuse: A Problem for Feminist Theory" in M. Fineman and R. Mykitiuk, eds., *The Public Nature of Private Violence: The Discovery of Domestic Abuse* (New York: Routledge, 1994).
- Bainham, Andrew, *Children: The Modern Law* (Bristol: Family Law, 1993).
- Bainham and Cretney, *Children: The Modern Law* (Bristol: Jordan Publishing Ltd., 1993)
- Bainham, Andrew, "The *Children Act*, 1989: Welfare and Non-interventionism" (April 1990) 20 *Family Law* 143.
- Bainham, Andrew, *Children, Parents and the State* (London: Sweet and Maxwell, 1988).
- Bainham, Andrew, "The Privatisation of the Public Interest in Children" (1990) 53 *Modern Law Review* 206.
- Bala, Isenegger and Walter, "'Best Interests' in Child Protection Proceedings: Implications and Alternatives" (1995) 12 *Canadian Journal of Family Law* Vol.2 367.
- Bala and Clarke, *The Child and the Law* (Scarborough, Ontario: McGraw-Hill Ryerson, 1981).
- Bala, Lilles, and Thomson, *Canadian Children's Law: Cases, Notes, and Materials* (Toronto: Butterworth's, 1982).
- Barnhorst, Richard, "Child Protection Legislation: Recent Canadian Reform" in B. Landau, ed., *Children's Rights in the Practice of Family Law* (Toronto: Carswell, 1986) 255.
- Barrett, Tom, "Dying in our Care" *Vancouver Sun* August 15, 1996.
- Barrett, Tom, "Chabasco's Legacy" *Vancouver Sun* July 12, 1997.
- Barrett and Beatty, "Clark unveils new ministry for children" *Vancouver Sun* September 24, 1996.
- Barrett and McIntosh, *The Anti-Social Family* (London: Verso, 1982).
- Baumgartner, M.P., *The Moral Order of a Suburb* (Oxford: Oxford University Press, 1988).
- Baxter, Sheila, *A Child Is Not A Toy: Voices of Children in Poverty* (Vancouver: New Star Books, 1993).

Bell, Stuart, *When Salem Came to the Boro: The True Story of the Cleveland Child Abuse Crisis* (London: Pan Books, 1988).

Birchall, Elizabeth (with Christine Hallett), *Working Together in Child Protection* (London: HMSO, 1995).

Brindle, David "Baby tragedy after fifteen years of errors" *The Guardian* March 2, 1995

British Columbia's Child, Youth and Family Serving System: Recommendations for Change, Report to Premier Glen Clark, Cynthia Morton, Transition Commissioner for Child and Youth Services, September 17, 1996 (Victoria, British Columbia, Canada).

British Columbia Government Employees Union, *A Presentation to the Inquiry into Child Protection in British Columbia* (January, 1995).

Callahan and Wharf, *Demystifying the Policy Process: A Case Study of the Development of Child Welfare Legislation in BC* (British Columbia: University of Victoria School of Social Work, 1982).

Campbell, Beatrix, *Unofficial Secrets: Child Sexual Abuse, The Cleveland Case* (London: Virago Press, 1989).

Canadian Child Welfare Law: Children, Families and the State, Bala, Hornick and Vogl eds. (Toronto: Thompson Educational Publishing Inc., 1991).

Canadian Press Newswire, "Tot pleaded for help, inquiry told in Matthew & Verna Vaudrueil case" October 21, 1994.

Canadian Press Newswire, "Politicians, bureaucrats in damage control over dead-children report" November 30, 1995.

Canadian Press Newswire, "Children safest because of unpaid people in their lives" January 31, 1997.

Carter, Betty, "Case Management Review and Analysis of Child Protection Services in the Province of B.C.", Report Prepared for the Gove Inquiry (1995).

Castle, Raymond, *At Risk: An Account of the Battered Child Research Department* (London: Routledge & Kegan Paul, 1976).

The Challenge of Child Welfare, Levitt and Wharf eds. (Vancouver: U.B.C. Press, 1985).

Child Abuse and Child Abusers: Protection and Prevention, Lorraine Waterhouse ed. (London: J. Kingsley, 1993).

Child Abuse: Commission and Omission, Cook and Bowles eds. (Toronto: Butterworths, 1980).

A Child In Trust: The Report of the Panel of Inquiry into the Circumstances Surrounding the Death of Jasmine Beckford [Louis Blom-Cooper] (Wembley, Middlesex: London Borough of Brent, 1985).

New Support Initiatives for Child Protection Workers (British Columbia: Ministry for Children and Families, News Release, May 12, 1997).

Cooper and Herman, "Getting the Family Right: Legislating Heterosexuality in Britain, 1986-1991" (1991) *The Canadian Journal of Family Law* Vol.10 41.

Courtney and Needell, "Outcomes of Kinship Care: Lessons from California" *Child Welfare Research Review, Volume Two* Berrick, Barth and Gilbert eds. (New York: Columbia University Press, 1997).

Cruickshank, David, "Paper on Qualifications and Training", Report Prepared for the Gove Inquiry (1995).

"The Death of Childhood", Interesting Film Co. for Channel 4

D.H.S.S., *Child Abuse: A Study of Inquiry Reports 1973-1981* (London: HMSO, 1982).

D.H.S.S., *Child Abuse: A Study of Inquiry Reports 1980-1989* (London: HMSO, 1991).

Dale, Davies, Morrison, and Waters, *Dangerous Families: Assessment and Treatment of Child Abuse* (London, New York: Tavistock Publications, 1986).

Dawson, Jane, "Systems of Child Protection Governance in Various Jurisdictions", Report Prepared for the Gove Inquiry (1995)

Dickens, B., "The Modern Function and Limits of Parental Rights" (1981) 97 *Law Quarterly Review* 462.

Dingwall, Robert, "Labelling Children as Abused or Neglected" in *Child Abuse and Neglect: Facing the Challenge* Rogers, Hevey and Ash eds. (London: BT Batsford in association with the Open University, 1989).

Dingwall Robert, "Reports of Committees: The Jasmine Beckford Affair" (1986) 49 *Modern Law Review* No. 4 489.

Dingwall, Eekelaar and Murray, *The Protection of Children: State Intervention and Family Life* (Aldershot: Avebury, 1995).

Dingwall and Eekelaar, "Rethinking Child Protection" in M. Freeman ed. *The State, The Law and The Family: Critical Perspectives* (London: Tavistock Publications, Sweet and Maxwell, 1984).

Dingwall and Eekelaar, "Victims or Threats? Children in Care Proceedings" (1982) *Journal of Social Welfare Law* 68.

Dingwall, Eekelaar, and Murray, *The Protection of Children: State Intervention in Family Life* (Oxford: Basil Blackwell, 1983).

Dingwall and Fox, "An exploratory study of variations in social workers' and health visitors' definitions of child maltreatment (1985) *British Journal of Social Work* 15 467.

Eaton and Wells, "Governmental Inaction as a Constitutional Tort: *DeShaney* and its Aftermath" (1991) 66 *Washington Law Review* 107.

Eekelaar, John, "Parental Responsibility: State of Nature or Nature of the State?" (1991) *Journal of Social Welfare and Family Law* 37.

Eekelaar, John, "What is Critical Family Law" (1989) 105 *Legal Quarterly Review* 244.

Ellickson, Robert C., *Order Without Law: How Neighbours Settle Disputes* (Cambridge, Mass.: Harvard University Press, 1991).

Family Violence: An International and Interdisciplinary Study, Eekelaar and Katz eds. (Toronto: Butterworth's 1978).

Farmer, Elaine, "The Impact of Child Protection Interventions: The Experiences of Parents and Children" in *Child Abuse and Child Abusers: Protection and Prevention* Lorraine Waterhouse ed. (London: J. Kingsley, 1993).

The Findings, Conclusions, and Recommendations of the Review of the Superintendent of Family and Child Services Into the Death of a 5 Year Old Male Child in Vancouver on July 8, 1992 (British Columbia: Ministry of Social Services May 16, 1994).

The First Three Months: Report to the Attorney General Hon. Ujjal Dosanjh, Cynthia Morton, Children's Commissioner (British Columbia: January 31, 1997).

Foucault, Michel, *Discipline and Punish: The Birth of the Prison* (Harmondsworth, England: Penguin Books, 1977).

Fox Harding, Lorraine, *Perspectives in Child Care Policy* (1991: Longman, UK).

Franklin and Parton, "Media Reporting of Social Work: A Framework for Analysis" *Social Work, The Media and Public Relations* Franklin and Parton eds. (London: Routledge, 1991).

Freeman, Michael, "Freedom and the Welfare State: Child Rearing, Parental Autonomy and State Intervention" [1983] *Journal of Social Welfare Law* 70.

Freeman, Michael, "The Limits of Children's Rights" in Freeman and Veerman, eds., *The Ideologies of Children's Rights* (Dordrecht, Neth.: Martinus Nijhoff Publishers, 1992) 30.

Freeman, M., *The Rights and Wrongs of Children* (London, Frances Pinter, 1983).

Freud, Goldstein, and Solnit, *Before the Best Interests of the Child* (New York: Free Press, 1979).

Freud, Goldstein, and Solnit, *Beyond the Best Interests of the Child* (New York: Free Press, 1973).

Gibbons, Conroy and Bell, *Operating the Child Protection System: A Study of Child Protection Practices in English Local Authorities* (London: HMSO, 1995).

Gove Inquiry into Child Protection: Interim Report [Thomas J. Gove]

Grant and Mosoff, "Supporting Our Families, Protecting Children" *Vancouver Sun* December 8, 1995.

Greenland, Cyril, "Inquiries into Child Abuse and Neglect (CAN) Deaths in the United Kingdom" (1986) 26 *British Journal of Criminology* No.2 164.

Greenland, Cyril, "Lethal Family Situations: An International Comparison of Deaths from Child Abuse", in *The Child in His Family: Preventative Child Psychiatry In An Age Of Transitions* Volume VI, Anthony and Chiland eds. (New York: John Wiley & Sons, 1980) at 389.

Greenland, Cyril, *Preventing CAN Deaths: An International Study of Deaths Due to Child Abuse and Neglect* (London and New York: Tavistock Publications, 1987).

Greenland, Cyril, "Reporting Child Abuse in Ontario" (1973) 10 *Reports of Family Law* 44.

The Guardian, "All as Clear as Tees Mud" October 23, 1989.

Hamilton, Keith, "From the Ground Up: Designing a New, Child-Centred Child Welfare System for British Columbia" Report Prepared for the Gove Inquiry (1995).

Healthy Beginnings, Healthy Lives (British Columbia: Ministry for Children and Families, News Release, May 26, 1997).

Herbert, Elaine, "An Overview and Analysis of First Nations Child and Family Services in B.C." Report Prepared for the Gove Inquiry (1995).

Howitt, Dennis, *Child Abuse Errors: When Good Intentions Go Wrong* (New Brunswick, N.J.: Rutgers University Press, 1993).

Hunter, Justine, "I was wrong on addict mom: Priddy" *Vancouver Sun*, July 4, 1997.

- Hunter, Justine, "Workers Reject Blame for Addict Mom" *Vancouver Sun*, July 5, 1997.
- Jay and Domains, *Battered: The Abuse of Children* (London: Weidenfeld and Nicolson, 1987).
- Judicial Inquiry into the Care of Kim Anne Popen by the Children's Aid Society of the City of Sarnia and the City of Lambton* [Judge H. Ward Allen] (Ontario: Queen's Printer for Ontario, 1982).
- Kennedy, Duncan, "The Stages of the Decline of the Public/Private Distinction" (1982) 130 *University of Pennsylvania Law Review* 1349.
- Kennedy, Duncan, "The Structures of Blackstone's Commentaries", (1979) 28 *Buffalo L. Rev.* 209.
- King, Michael, "Child Protection and the Allure of the Courts", paper given at the critical legal conference, Dublin, 1997.
- King, Michael, "The New Child Savers" *LAG Bulletin* October 1983 10.
- Kline, Marlee, "Complicating the Ideologies of Motherhood: Child Welfare Law and First Nation Women" (1993) 18 *Queen's Law Journal* 306.
- Kline, Marlee, "Blue Meanies in Alberta: Tory Tactics and the Privatisation of Child Welfare" [unpublished].
- Kuhn, Thomas, *The Structure of Scientific Revolutions* (Chicago: University of Chicago Press, 1962).
- Lasch, Christopher, *Haven in a Heartless World: The Family Besieged* (New York: Basic Books Inc., 1977).
- Lee, Jeff, "Town reels as 71 kids seized" *Vancouver Sun* February 7, 1998.
- Lessig, Lawrence, "The Regulation of Social Meaning" (1995) 62 *University of Chicago Law Review*, No. 3 958.
- Liberating Our Children, Liberating Our Nation*, Report of the Community Panel, Family and Children's Services Review in British Columbia (British Columbia: Ministry of Social Services, 1992).
- Little Bear, L., "Aboriginal Rights and the Canadian 'Grundnorm'" in J.R. Pointing ed., *Arduous Journey: Canadian Indians and Decolonization* (Toronto: McClelland & Stewart, 1986) 243.

Making Changes: A Place to Start, Report of the Community Panel, Family and Children's Services Review in British Columbia (British Columbia: Ministry of Social Services, 1992).

Making Changes: Next Steps, A White Paper for Public Review (British Columbia: Ministry of Social Services, 1993).

Martz and Enderton "Mandatory Duty to Report" Report Prepared for the Gove Inquiry (1995).

Martz, Lisa, "Apprehension", Report Prepared for the Gove Inquiry (1995).

McGillivray, Anne, "Reconstructing Child Abuse: Western Definitions and Non-Western Experience" in Freeman and Veerman eds. *The Ideologies of Children's Rights* (Dordrecht, Neth.: Martinus Nijhoff Publishers, 1992) 213.

Members' Committee of the Response to the Gove Report, Transcripts of Proceedings (Hansard) (British Columbia: March 26, 1996, Issue No. 1).

Members' Committee of the Response to the Gove Report, Transcripts of Proceedings (Hansard) (British Columbia: September 13, 1996, Issue No. 1).

Members' Committee of the Response to the Gove Report, Transcripts of Proceedings (Hansard) (British Columbia: October 21, 1996, Issue No.2).

Members' Committee of the Response to the Gove Report, Transcripts of Proceedings (Hansard) (British Columbia, November 4, 1996, Issue No. 3).

Members' Committee of the Response to the Gove Report, Transcripts of Proceedings (Hansard) (British Columbia, February 4, 1997, Issue No. 4).

Members' Committee of the Response to the Gove Report, Transcripts of Proceedings (Hansard) (British Columbia: April 24, 1997, Issue No. 5).

Minister's Response to the Findings, Conclusions and Recommendations of the Superintendent of Family and Child Services Review Into the Death of Matthew Vaudreuil (British Columbia: Ministry of Social Services, May 17, 1994).

Minow, Martha, "Forming Underneath Everything That Grows: Towards a History of Family Law" (1985) *Wisconsin Law Review* 819.

Minow, Martha, "Rights for the Next Generation: A Feminist Approach to Children's Rights" (1986) *Harvard Women's Law Journal* 9:1.

Minow, Martha, "Words and the Door to the Land of Change: Law, Language and Family Violence" (Nov. 1990) *Vanderbilt Law Review* Vol. 43 1665.

Minuchin, Salvador, "Child Murder: Maria Colwell" *Family Kaleidoscope* (Cambridge, Mass.: Harvard University Press, 1984).

Mossoff, Judith, *Motherhood, Madness and the Role of the State* (University of British Columbia, LLM Thesis, 1994).

Needell and Gilbert, "Child Welfare and the Extended Family" *Child Welfare Research Review, Volume Two*, Berrick, Barth and Gilbert eds. (New York: Columbia University Press, 1997).

O'Donovan, Kathleen, *Sexual Divisions in Law* (London: Weidenfeld & Nicolson, 1985).

Olsen, F., "The Family and the Market: A Study In Ideology and Legal Reform" (1983) *Harvard Law Review* Vol. 96 1497.

Olsen, F., "The Myth of State Intervention in the Family" (1983) 18 *University of Michigan Journal of Law Reform* 835.

Ouston, Rick, "Transfer of addicts raises fears of avoided treatment" *Vancouver Sun* July 14, 1997.

Ouston, Rick, "Children's protector defends new gag law" *Vancouver Sun* August 1, 1997.

Palmer, Vaughn "The NDP's updated version of ministerial responsibility" *Vancouver Sun*, August 1, 1997.

Parton, Nigel, "Child Abuse, Social Anxiety and Welfare" (1981) 11 *British Journal of Social Work* 391.

Parton, Thorpe and Wattam *Child Protection: Risk and the Moral Order* (London: Macmillan Press Ltd., 1997).

Parton, Nigel, "The Beckford Report: A Critical Reappraisal" (1986) 16 *British Journal of Social Work* 511.

Parton, Nigel, *Governing the Family: Child Care, Child Protection and the State* (New York: St. Martin's Press, 1991).

Parton, Nigel, *The Politics of Child Abuse* (London: MacMillan Education, 1985).

Paul: Death Through Neglect, Report Prepared by The Bridge Child Care Consultancy Service, Commissioned by London Borough of Islington Social Services (London: Islington Area Child Protection Committee, 1995).

Pelton, Leroy H., "Child Abuse and Neglect: The Myth of Classlessness" in L.H. Pelton, ed., *The Social Context of Child Abuse and Neglect* (New York: Human Sciences Press, 1981).

Pemberton, Kim, "Matthew's Story: The Boy who was Doomed from the Start" *Vancouver Sun* April 30, 1994.

Pemberton, Kim, "Judge questions seizure of children in Quesnel" *Vancouver Sun* February 13, 1998.

Perrin, Dan "Issue Paper 2" Report Prepared for the Gove Inquiry (1995).

Proposed Child Protection Model, Draft #2 (British Columbia: December 2, 1996).

Protecting Children: Cleveland to Orkney: More Lessons to Learn? Proceedings of a One Day Conference, Stewart Asquith ed. (Edinburgh: HMSO, 1993).

Protecting Our Children, Supporting Our Families, A Review of Child Protection Issues in British Columbia (British Columbia: Ministry of Social Services, 1992).

Tanner, Adrienne, "Seizing the Children: Why the 'black stork' struck in Quesnel" *The Province* [Vancouver B.C.] February 13, 1998.

Province of British Columbia, 1st Session, 35th Parliament, *Debates of the Legislative Assembly*, Volume 1, No. 1, March 17, 1992.

Province of British Columbia, 1st Session, 35th Parliament, *Debates of the Legislative Assembly*, Volume 1, No. 2, April 10, 1992.

Province of British Columbia, 3rd Session, 35th Parliament, *Debates of the Legislative Assembly*, Volume 15, No. 12, May 17, 1994.

Province of British Columbia, 3rd Session, 35th Parliament, *Debates of the Legislative Assembly*, Volume 15, No. 13, May 18, 1994.

Province of British Columbia, 3rd. Session, 35th Parliament, *Debates of the Legislative Assembly*, Volume 16, No. 4, June 7, 1994.

Province of British Columbia, 3rd. Session, 35th Parliament, *Debates of the Legislative Assembly*, Volume 16, No. 8, June 9, 1994.

Province of British Columbia, 3rd. Session, 35th Parliament, *Debates of the Legislative Assembly*, Volume 16, No. 15, June 16, 1994.

Province of British Columbia, 3rd. Session, 35th Parliament, *Debates of the Legislative Assembly*, Volume 16, No. 17, June 20, 1994.

Province of British Columbia, 1st Session, 36th Parliament, *Debates of the Legislative Assembly*, Volume 1, No. 24, July 19, 1996.

Province of British Columbia, 1st Session, 36th Parliament, *Debates of the Legislative Assembly*, Volume 2, No. 22, August 14, 1996.

Province of British Columbia, 2nd Session, 36th Parliament, *Debates of the Legislative Assembly*, Volume 4, No. 1, April 21, 1997.

Province of British Columbia, 2nd Session, 36th Parliament, *Debates of the Legislative Assembly*, Volume 5, No. 14, June 5, 1997.

Public Report No. 24: Public Response to Request for Suggestions for Legislative Change to Family and Child Service Act, February 1991 (Victoria, B.C.: Ombudsman, 1991).

Reder, Duncan and Grey, *Beyond Blame: Child Abuse Tragedies Revisited* (London, New York: Routledge, 1993).

Response to the Recommendations of the Gove Inquiry into Child Protection (Province of British Columbia: Ministry for Children and Families).

Report of the Committee of Inquiry into the Care and Supervision Provided in Relation to Maria Colwell (London: HMSO, 1974).

Report of the Gove Inquiry Into Child Protection, 1995, An Independent Commission of Inquiry Appointed by the Province of British Columbia.

Report of the Inquiry into Child Abuse in Cleveland 1987 [ElizabethButler-Sloss] (London: HMSO, 1988).

Review of the Circumstances Surrounding the Death of Mavis Flanders, Report to the Honourable Ujjal Dosanjh, Attorney General prepared by Cynthia Morton, Children's Commissioner and Chair, Child & Family Review Board, June 12, 1997.

Robertshaw, C., *Outline of key legislative issues relating to child abuse* (Ottawa: Health and Welfare Canada, 1981).

Rose, Nikolas, "Beyond the Public/Private Division: Law, Power and the Family" (1987) 14 *Journal of Law and Society* 61.

Ruddock, Martin, "A Receptacle for Public Anger" *Social Work, The Media and Public Relations* Franklin and Parton eds. (London: Routledge, 1991).

Ryan, Karen, *Coroner's Recommendations for MSS Arising from the Deaths of Children and Youths* Report Prepared for the Gove Inquiry (1995).

Ryan, Karen, *Critical Incident Review: An Examination of Family and Children's Services Division Records* Report Prepared for the Gove Inquiry (1995).

Samuels and Ryan, *Audits and Reviews*, Report Prepared for the Gove Inquiry (1995).

Schneider, E., "The Violence of Privacy" in M. Fineman and R. Myktiuk, eds., *The Public Nature of Private Violence: The Discovery of Domestic Abuse* (New York: Routledge, 1994) 31

- Sells, M., "Child That's Got Her Own" in M. Fineman and R. Myktiuk, eds., *The Public Nature of Private Violence: The Discovery of Domestic Abuse* (New York: Routledge, 1994) 130.
- Shearer, Anne, "Tragedies Revisited (1): The Legacy of Maria Colwell" (1979) 10 *Social Work Today* No. 19 12.
- Shearer, Anne "Tragedies Revisited (3): "Have We Learned the Lessons?" (1979) 10 *Social Work Today* No. 21 11.
- Steinhauer, Paul D., *The Least Detrimental Alternative: A Systematic Guide to Case Planning and Decision Making for Children in Care* (Toronto: University of Toronto Press, 1995).
- Stevenson, Olive, "Guest Editorial on the Jasmine Beckford Inquiry" (1986) 16 *British Journal of Social Work* 501.
- Sunstein, Cass R., "Social Norms and Social Roles" (1996) 96 *Columbia Law Review* No. 4 907.
- Swift, Karen J., *Knowledge About Neglect: A Critical Review of the Literature* (Toronto: University of Toronto, Working Papers in Social Welfare in Canada, 1988).
- Swift, Karen J., *Manufacturing Bad Mothers: A Critical Perspective on Child Neglect* (Toronto: University of Toronto Press, 1995).
- Tester, M., "Kinship Foster Care in Illinois" *Child Welfare Research Review, Volume Two* Berrick, Barth and Gilbert eds. (New York: Columbia University Press, 1997).
- Todd, Douglas, "Parents, counselors, police puzzle over Quesnel apprehensions" *Vancouver Sun* February 7, 1998.
- Turpel, Mary Ellen, "Aboriginal Peoples and the Canadian Charter: Interpretative Monopolies, Cultural Differences" (1989-90) 6 *Canadian Human Rights Year Book* 3.
- Vancouver Sun* "Minister promises to trim incidents of removing children from families" December 4, 1992.
- Vancouver Sun* (editorial), "A Reality Check: Mavis Flander's Life and Death Show Children's Ministry Still isn't Doing Job" July 5, 1997.
- Vancouver Sun*, "Audit of Quesnel case first of many for B.C." February 11, 1998.
- Werner and Smith, *Vulnerable but Invincible: A Longitudinal Study of Resilient Children and Youth* (New York: McGraw-Hill Book Co., 1982).
- When the Bough Breaks: Co-ordinating the Planning for Services to Children, Youth, and Families in Vancouver*, Final Report of the Community Development and Case

Management Project (Vancouver, British Columbia: Vancouver Regional Child and Youth Committee, October, 1993).

Whitelaw, Robert, "Financial, Administrative, Human Resources and Organisational Commentary", Report Prepared for the Gove Inquiry (1995).

Wolfson, Susan, "Children's Rights: The Theoretical Underpinning of 'The Best Interests of the Child'", in Freeman and Veerman, eds. *The Ideologies of Children's Rights* (Dordrecht, Neth.: Martinus Nijhoff Publishers, 1992).

Working Together Under The Children Act 1989: A Guide to Inter-Agency Co-Operation for the Protection of Children From Abuse (London: HMSO, 1991).

Zelizer, Viviana A., *Pricing the Priceless Child: The Changing Social Value of Children* (New York: Basic Books, Inc., 1981).

CASES

B. (R.) v. Children's Aid Society of Metropolitan Toronto, [1995] 1 S.C.R.

B.S. v British Columbia (Director of Child, Family and Community Services) [1997] B.C.J. No. 2202 [QL] (S.C.).

Catholic Children's Aid Society of Metropolitan Toronto v. M. (C.) (1994), 2 R.F.L. (4th) 313 (S.C.C.).

DeShaney v. Winnebago County Department of Social Services 109 S. Ct. 998 (1989).

New Brunswick (Minister of Health and Community Services) v. J.G., [1997] N.B.J. No. 138 [Q.L.] (C.A.).

Rigaux v. British Columbia (Attorney General), [1998] B.C.J. No. 32 [Q.L.] (S.C.).

Superintendent of Family and Child Service v. C.G. and S.G. (1989), 22 R.F.L. 1 (B.C.C.A.).

Superintendent of Family and Child Service v. M. (B.) and O.(D.) (1982), 37 B.C.L.R. 287 (S.C.).

STATUTES

Children Act, 1989 1989, c.41 (UK).

Children's Commission Act, S.B.C. 1997, Ch. 11.

Child, Family and Community Service Act, R.S.B.C. 1996, Ch. 46.

Child, Family and Community Service Amendment Act, 1995, S.B.C. 1995, c.19.

Child, Family and Community Amendment Act, 1997, S.B.C. 1997, c. 46.

Family and Child Service Act, S.B.C. 1980, c. 11.