

## Part I

## Overview

## Chapter

## 1

# A Developmental Perspective on Justice

Mike Shaw and Sue Bailey

## The Book's Themes

This book explores the values, ideas and structures that promote justice for children and families, and it does so from a developmental perspective. This is because children come into the world completely helpless and only very gradually develop the capacity to look after themselves. For at least a quarter of their natural lifespan they depend on families and communities to meet their needs, protect their interests and nurture their potential.

When children grow up in well-functioning families, parents are sufficiently available and sensitive to recognise their children's needs. Children in such families are able to draw on, as much as their evolving capacities require, their parents' superior physical, intellectual and emotional strength and problem-solving ability. Children do best when they have secure relationships with their parents and open lines of communication. It also helps if children are reasonably outgoing, bright and have a capacity for symbolic thinking. Play and humour are examples of symbolic thinking that make difficult experiences more manageable, thereby creating opportunities for learning. Equally, well-functioning neighbourhoods, schools and other agencies provide further layers of stimulation and support. It follows that children who grow up in well-functioning families and communities are more likely to make the best of their potential.

But all too often things don't go well, and the structures that are supposed to support children's development fail, or worse, inflict harm. Children's health, life chances and life expectancy can be seriously damaged when parents neglect or abuse their children. Similarly, children are much less likely to make the best of their potential when they grow up in communities blighted by poverty, prejudice and poor schools, or where children are victimised and exploited by peers, gangs, criminal organisations, tyrannical governments or war.

We will argue that justice for children and families requires the state to ensure checks and balances that favour:

1. Fairness: a fair distribution of resources and burdens within communities, so that every child and family gets the best possible chance to develop their potential.
2. Protection: resources for families, neighbourhoods, schools and other agencies to help them protect and encourage their children, alongside the means to intervene when these layers of protection fail.
3. Autonomy: encouraging children's voice and participation in decision-making at a level commensurate with their maturity.

We ask to what extent contemporary society meets or falls short of these expectations?

We aim to stimulate interdisciplinary interest, debate and cooperation, and have drawn contributions from practitioners and scholars of philosophy, history, social science, law, social work, psychology, paediatrics, psychiatry, psychotherapy and public health.

We challenged our authors to respond to the book's themes with short chapters on emerging ideas and evidence, with an emphasis on important questions, solvable problems and solutions worth investing in.

We hope this book will influence the practitioners, researchers and policymakers who go on to shape the future of justice for children and families.

The Contents of This Book

The book has five parts: a short Overview, which is followed by the three main themes of Fairness, Protection and Autonomy, and finally a brief Synthesis and Response.

Part I Overview

Following a Foreword by Professor Sir Michael Marmot, Professor of Epidemiology at University College London, and President of the World Medical Association, this part of the book includes the present introductory Chapter 1, 'A Developmental Perspective on Justice' in which the editors set out the themes and structure of the book, and Chapter 2, 'Foundations of Family Law', in which the Honourable Mr Justice MacDonald of the Family Division of the High Court of Justice for England and Wales explores all the themes of the book in a wonderfully well-rounded and lucid account of the evolution of the law on children and families.

Part II Fairness

Fairness shapes our perception of misfortune and our capacity to process it. While misfortune can make us feel singled out and punished, these feelings are easier to tolerate when they are just feelings and not objectively true. For instance, where children miss out on life's opportunities, the disappointment is easier to tolerate if the process has been open and fair. But more often than not, children miss out on life's opportunities because of poverty, parental negligence or discrimination, all of which are objectively unfair.

Unfairness leaves a bitter taste. The 1954 film *On the Waterfront* is set in a poor, tight-knit dockyard community controlled by dishonest union bosses. Terry Malloy (memorably played by Marlon Brando) is a gifted young boxer who feels his career has been choked by betrayal, coercion and corruption. In a classic scene, he tells his brother: 'You don't understand. I coulda had class. I coulda been a contender. I coulda been somebody, instead of a bum, which is what I am.'

The part on fairness begins with Chapter 3, 'The Social Determinants of Child Health', where Dr Angela J. M. Donkin, Deputy Director at the University College London Institute of Health Equity, demonstrates how inequalities in the distribution of wealth, power and resources lead to crucial differences in health behaviour, health outcomes and mortality. She goes on to make powerful and well-evidenced policy recommendations for both reducing inequality and mitigating its impact.

In Chapter 4, 'Philosophical Ethics and Children', Drs Mar Cabezas and Gunter Graf, philosophers from the Centre for Ethics and Poverty Research, argue that philosophy has largely ignored children and childhood. They go on to identify some promising starting

points for constructing a child-sensitive ethics, which they call *well-being* and *well-becoming*. In a companion chapter, ‘Child Poverty, Well-Being and Social Justice’ (Chapter 5), Drs Gottfried Schweiger and Gunter Graf develop *well-being* and *well-becoming* further. They use a ‘capability approach’, derived from the works of the economist and philosopher Amartya Sen, to explore the damaging effects of poverty on children’s health, education, self-respect and inclusion.

In Chapter 6, ‘Children and Relational Citizenship: A History’, historian and sociologist Professor Pamela Cox from the University of Essex argues that children are ‘relational citizens’, whose rights as citizens are bound up with the responsibilities of adults to protect them and to meet their needs. She asserts that we are increasingly living in an ‘empowerment state’, in which ‘active citizens are invited, cajoled and sometimes coerced to take on a range of responsibilities for themselves, for the care of others and for the well-being of their communities’, and goes on to explore the opportunities and contradictions thrown up by this world view.

In the final chapter in this section, Chapter 7, Dr Maggie Atkinson, Children’s Commissioner for England 2010–15, reflects on ‘The United Nations Convention on the Rights of the Child (UNCRC)’. She not only provides a lively account of the charter, but also uses powerful examples to illustrate the ways in which contemporary society falls short of treating children as ‘citizens now, not citizens in waiting’.

Part III Protection

Morality is about ‘doing the right thing’. Sometimes it is difficult to do the right thing, especially where it involves making sacrifices, confronting powerful vested interests or protecting the rights of ostracised minorities. We believe: first, that there is a moral argument for the state to support families and communities to bring up children to fulfil their potential; second, that where families and communities have problems the state should support families and communities to overcome their problems so that they can raise their children safely; and third, that permanently removing children from their parents should be a last resort. In the United States these principles are enshrined in federal law in the Adoption Assistance and Child Welfare Act 1980, and states risk losing their federal funding if they can’t demonstrate ‘reasonable efforts’ to keep children in their families. There is no equivalent statutory framework in the United Kingdom; however, the Family Drug and Alcohol Court (see Chapter 9) stands out as the only family court to guarantee ‘reasonable efforts’.

In Chapter 8, ‘Birth Mothers Returning to Court: Can a Developmental Trauma Lens Inform Practice with Women at Risk of Repeat Removal of Infants and Children?’, Professor Karen Broadhurst and Ms Claire Mason from Lancaster University present their own recent findings that one in four women who have children removed by the court return to court and have further children removed, and that among the youngest women, the rate is one in three. With Dr Sheena Webb of the Tavistock Clinic, they go on to explore ‘developmental trauma’, which is an emerging diagnostic framework that links complex intrapsychic and interpersonal difficulties in adult life with sustained neglect and abuse as a child. They argue that ‘developmental trauma’ provides a way of understanding the aetiology and complex symptomatology of this subpopulation, and signposts potential avenues for intervention.

In Chapter 9, ‘The Family Drug and Alcohol Court: A Problem-Solving Approach to Family Justice’, Professor Judith Harwin of Lancaster University, Ms Mary Ryan of RyanTunnardBrown and Ms Sophie Kershaw of the Tavistock Clinic describe the principles

of problem-solving justice and show how they apply to the Family Drug and Alcohol Court (FDAC). They go on to present the evidence that FDAC provides not only a more humane experience of justice that is valued by parents and professionals alike, but also more durable outcomes for children and families. In a companion chapter, ‘Why Video Interaction Guidance in the Family Drug and Alcohol Court?’ (Chapter 10), Dr Hilary Kennedy of University College London, Ms Fran Feeley of Frontline and Ms Sophie Kershaw of the Tavistock Clinic describe Video Interaction Guidance (VIG) and its adaptation as an assessment and treatment tool within FDAC. VIG uses short video clips of ‘better than usual’ parent–child interaction that allows parents to see when they are responding in an ‘attuned’ way to their children’s emotional needs, and encourages them to build on these examples. The authors present case illustrations and discuss the theoretical origins and emerging evidence and applications for this powerful new therapy.

In Chapter 11, ‘A Life Course Approach to Promoting Healthy Behaviour’, Dr Lorraine Khan from the Centre for Mental Health argues that ‘severe and persistent behavioural difficulties are our most common, costly and overlooked childhood mental health problem’. She shows that despite a wealth of evidence for how we can reduce the chances of behavioural problems arising, and intervene early when they do occur, current policy and provision favours waiting for the problems to reach the youth justice system and courts.

In Chapter 12, ‘Female Genital Mutilation’, paediatricians Drs Najette Ayadi O’Donnell and Deborah Hodes from University College London Hospitals analyse the economic and cultural context in which female genital mutilation (FGM) occurs. They argue that ‘change in attitude can and should come from within communities’. While communities need to be clear that FGM is illegal and will not be tolerated, it is necessary to educate and challenge the attitudes of women and men alike, and to raise the status of women.

Finally in this part, in Chapter 13, ‘Litigation for Failure to Remove’, Mr Richard Scorer, Solicitor and National Manager for Serious Injury at Slater & Gordon, describes how ‘failure to remove’ litigation involves a child seeking monetary damages from a local authority social services department for failure to protect that child from abuse. The abuse will usually have occurred within the child’s birth family but in some cases the wider community. The basis of the claim will be that social workers negligently failed to protect the child from abuse which they knew or ought to have known was occurring. He argues that such litigation supports the aims of family justice, first, by compensating children and second, by helping to monitor and uphold the quality of service provided by social work professionals. However, he goes on to describe difficulties with what he argues is excessive attention to the technical calculation of compensation at the expense of justice, and insufficient opportunity for society to learn from the failings and mistakes which these cases reveal.

Part IV Autonomy

*Die Gedanken Sind Frei* (‘Thoughts are free’)

*Die Gedanken Sind Frei, my thoughts freely flower*  
*Die Gedanken Sind Frei, my thoughts give me power*  
*No scholar can map them no hunter can trap them*  
*No man can deny Die Gedanken Sind Frei*  
*No man can deny Die Gedanken Sind Frei*  
  
*I think as I please and this gives me pleasure*  
*My conscience decrease this right I must treasure*

*My thoughts will not cater to duke or dictator  
 No man can deny Die Gedanken Sind Frei  
 No man can deny Die Gedanken Sind Frei  
 And if tyrants take me and throw me in prison  
 My thoughts will burst free like blossoms in season  
 Foundations will crumble and structures will tumble  
 And free men will cry Die Gedanken Sind Frei  
 And free men will cry Die Gedanken Sind Frei<sup>1</sup>*

This is Arthur Kevess’ translation of the traditional German folksong about the power, pleasure and far-reaching possibilities of autonomy. Pete Seeger’s (1966) rendering of the song spoke to Dr Mike Shaw when he was a child, and it still does. In Chapter 14, ‘Towards a Theory for the Development of Autonomy’, Dr Shaw draws on his career as a child psychiatrist to argue that actively promoting the development of healthy autonomy is important for all children, but especially for children with complex needs, children who have been abused or neglected or children growing up in communities blighted by problems such as poverty, prejudice or war.

In recent years, children and young people’s vulnerability to sexual abuse and exploitation has been highlighted by the accessibility of pornography on the internet, the sexual victimisation of young people on social media and a number of high-profile criminal trials. In Chapter 15, ‘Child Sexual Exploitation and Consent to Sexual Activity: A Developmental and Context-Driven Approach’, Professor Jenny Pearce OBE, Director of The International Centre: Researching Child Sexual Exploitation, Violence and Trafficking at University of Bedfordshire and Dr Maddy Coy of the Child and Woman Abuse Studies Unit at London Metropolitan University argue that abusive and exploitative sexual activity is often overlooked because of ‘three flawed assumptions’ about ‘consent’ to sexual activity: ‘first that the child’s capacity to consent can be determined solely by their age; second that the child’s capacity to consent is independent of the social context within which that child is functioning; and finally, that the onus is on giving, rather than getting consent’. They go on to explore the implications for practice and policy.

In Chapter 16, ‘Treatment without Consent’, Ms Camilla Parker, mental health, disability and human rights lawyer at Just Equality, argues that ‘consent to treatment, particularly in relation to mental health care, is an area of law in which the dynamics between the role of the state, the rights of the child and the rights and responsibilities of parents is both complex and uncertain’. The Human Rights Act (HRA) 1998 has led to a significant change. Whereas in the past the courts considered that parents could override their child’s refusal of medical treatment, guidance now advises against relying on parental consent where the child has the competence, or the young person has the capacity, to make such decisions for him or herself. However, the HRA 1998 has not removed the tension between autonomy and protection. Like adults, children and young people aged under 18 can be treated for mental disorder without their consent if they are detained under the Mental Health Act (MHA) 1983. Moreover, unlike adults, the courts can authorise the medical treatment of under-18-year-olds, thereby overriding the refusal of a competent child or capacitous young person. The author argues that even in cases of life-saving treatment, where the court has a ‘heavy duty’ to take reasonable action to prevent an under-18-year-old’s death, children and young people’s views are central to determining what is in their best interests. Where such wishes are overridden, clear reasons for doing so should be given.

In Chapter 17, ‘Autonomy and Decision-Making in Children and Adolescents with Gender Dysphoria’, Dr Domenico Di Ceglie, child and adolescent psychiatrist at the Tavistock Clinic, University College London and Sapienza University, describes how ‘adolescents who have a persistent experience of incongruity between mind and body find puberty painful and... are often at high risk of suicide attempts’. He goes on to argue for a ‘staged approach to management’ that ‘provides a containing framework for these unbearable states of mind’ and ‘gives the young person and the family a sense of orientation and provides a space for reflection about the next intervention and the decision to be made’.

Finally in this part, autonomy provides not only the freedom to take risks, make mistakes and learn, but also the obligation to take responsibility for the decisions made. In Chapter 18, ‘Criminal Responsibility’, Dr Enys Delmage, adolescent forensic psychiatrist at St Andrews Healthcare, and Dr Hannele Variend, adult psychiatrist at Derbyshire Health Care NHS Foundation Trust, contrast the rights and responsibilities of children under UK civil and criminal law. They argue that the idea of developing competence and or capacity in civil law is commensurate with our understanding of the development of the brain. The criminal law in England, Wales and Northern Ireland sets criminal responsibility at the age of 10 years, which is not only very low in comparison to most other jurisdictions, but also out of keeping with neuroscientific knowledge.

Part V Synthesis and Response

The book concludes with two responses to the parts above. The first is by Dr Sarah Jonas, consultant child and adolescent psychiatrist at the SWIFT Specialist Family Services, Sussex Partnership NHS Trust, entitled ‘How Reading This Book Can Contribute to Public Health Strategies for Children and Families’ (Chapter 19). Here she picks out the importance of maternal physical and mental health in pregnancy, ‘enabling children to have the best possible start’ and ‘policy targeting the social determinants of health’. She thinks there are huge gains to be made from preventing of adverse childhood experiences (ACEs) and a ‘developmental trauma lens’ to mitigate the effect of ACEs. She advocates the benefits of emerging approaches such as the Family Drug and Alcohol Court and Video Interaction Guidance. Furthermore, she thinks policymakers would benefit from exploring Amartya Sen’s ideas on health and justice, the development of autonomy and changes in children’s roles as relational citizens. She also discusses some of the barriers to action, such as the need for further research, the long time frames required to demonstrate the benefits of intervention and the need for coordination and munificence between the health, child protection and family and criminal justice systems, where spending in one part of the system might lead to savings in another.

The book finishes with a powerful chapter by Dr Gwen Adshead, forensic psychotherapist and Honorary Professor of Psychiatry at Gresham College, London, called ‘Looking Three Ways: Reflections on a Developmental Perspective on Justice’ (Chapter 20). Here she casts a wise eye over first, justice as respect for individual rights, liberty and due process, where she comments ‘children who lack attachment security may not be well placed to exercise their “rights” because they lack attachment figures to help them to do so; or the insecurity of their attachment systems means that they struggle to develop a coherent narrative of moral identity’. Second, she considers justice as protection of the vulnerable in society, where she observes ‘[i]nterference with the vulnerable is the leitmotiv of most human violence, whether as bullying, exploitation or physical attack; and this interference is



driven by denigratory attitudes towards dependence, neediness and lack of power.’ Finally, she explores justice as the promotion of the good life, in which she reviews the research on adverse childhood experiences and argues that reducing childhood adversity is in our enlightened self-interest because ‘I have met the adult incarnations of these young men and women exposed to adversity who have become what Shakespeare called “ruined pieces of nature”; full of promise like every child, but who have been damaged because they missed out on all opportunities for rescue, repair and redemption.’

Concluding Comments

There is a lot more that this book could have included, such as chapters on education, refugees, social mobility and children’s relationship with the internet and social media, or chapters written by children and parents. However, this book will have succeeded if it gets the discussion going, and inspires, or perhaps maddens, others into participating in a debate about the values, ideas and structures that promote justice for children and families.

Note

1 ‘Die Gedanken Sind Frei’, written by Arthur Keess, published by Harmony Music Limited, Roundhouse, 212 Regents Park Road Entrance, London NW1 8AW.

References

Seeger, P. (1966) Die Gedanken Sind Frei.  
From *Dangerous Songs*, Columbia

Records. Available at: [www.youtube.com/watch?v=dbwQXVcbkU0](http://www.youtube.com/watch?v=dbwQXVcbkU0)