

FLJ

In Practice

Decision making within a child's timescale: who decides?

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In May 2013 an audience of social workers, children's guardians, academics, lawyers and judges assembled at the Royal College of Surgeons for a presentation: 'The child's timeframe: what the neuroscience really says'. By the end of the evening, hosted by 14 Gray's Inn Square Chambers, many participants considered that they had probably heard not only the deconstruction of a prominent document used in judicial training but a challenge to the model of children's justice being promoted by the Family Justice Board (FJB).

In order to appreciate the significance of the insights provided by Susan White, Professor of Social Work at Birmingham University and David Wastell, Professor of Information Systems at Nottingham University (and a neuroscientist by initial training) we need to remind ourselves of the context. The FJB was set up last year following the final report of the Family Justice Review in November 2011. The FJB, as was the Review, is chaired by the former Treasury economist and businessman David Norgrove. Its *Action Plan*, published in January 2013, aims to support the government's reform agenda which intends to deliver the best possible outcomes for all children who come into contact with the family justice system.

The principal proposals of the Family Justice Review are contained in the Children and Families Bill currently before Parliament which, in relation to public law, are the limitation of all but exceptional care cases to 26 weeks, restricting the involvement of external expertise to what is necessary to enable the court to reach a just outcome and reducing the scope of the court's consideration of care plans. Action 10 (of the 13 actions identified in the plan, each with key performance measures, key deliverables and delivery dates) is to 'improve the quality and consistency of management information, research and advice available on the family justice system to help improve system performance'. The key deliverables include the 'establishment of a "Knowledge Hub" to aid the dissemination of key research to stakeholders and professionals across the system'.

One of the fruits of the knowledge hub is a document, 'Decision-making within a child's timeframe – an overview of current research evidence for family justice professionals concerning child development and the impact of maltreatment' published by the Childhood Wellbeing Research Centre in February 2013 with the imprimatur of the former President of the Family Division, Sir Nicholas Wall. An email circulated by a designated family judge, shortly before our seminar took place to a range of family justice professionals, left no one in any doubt as to the status of this document. All needed to be familiar with its contents upon

which courts were likely to place ‘considerable reliance’. The report, by researchers Rebecca Brown and Harriett Ward, is used in judicial training and one participant has already observed that it is treated as ‘completely authoritative’.

The presentation

Professors Wastell and White were generous in acknowledging that the research review discusses a range of literature, some of which is straightforward, uncontroversial and covers helpful knowledge on child maltreatment. However, while purporting to be a rigorous scientific evaluation of the neuro-developmental knowledge-base it may more accurately be described as a simple guide to a complex field of work where knowledge is far from settled and certainly not ‘policy ready’. White and Wastell’s analysis described the Brown and Ward review as reproducing, probably inadvertently, a version of ‘science to go’ which bears little relationship to the science as practised or argued in the field. Their own critique of Brown and Ward is based on their following key points:

- The report at no point attempts to produce a balanced argument: whilst it begins with a caveat about the knowledge base, in the body of the report, all contradictory evidence or any hint of controversy within the neuroscientific field is ignored.
- The conflation of statistical significance and predictive validity; statistical significance merely means that an observed result is not a chance finding; it does not imply the level of predictive power for practical application.
- The neuroscientific strand of the argument is a resurrection of the ‘myth of the first three years’, the idea that the brain is highly vulnerable to irreversible damage in the early years of life. The science, in fact, says quite the opposite as White and Wastell (2012) demonstrated in their critique of the *Allen Report* (D Wastell and S White, ‘Blinded by Neuroscience: Social policy and the Myth of the Infant Brain, Families, Relationships and Societies: An International Journal of Research and Debate (2012) 1(3) 397–414) which also relied on the ‘myth of the first three years’.
- The core argument, that maltreatment is intrinsically bad and can cause lasting damage, is only weakened by this apparent misrepresentation of neuroscience. Invocation of attachment theory also does not aid the cause – attachment theory is superfluous to the core argument and its reliability and predictive power are questionable.
- Despite the display of scientific trappings and references to an impressive volume of peer-reviewed papers, the neuroscience review relies heavily on a small number of secondary non peer-reviewed books and reports, some from organisations with an apparent ideological orientation and campaigning mission.
- The repeated claim that emotional abuse is more serious than either physical or sexual abuse seemed perverse to the professors: where was the evidence for that, indeed for the existence of such abuse as a well defined category? The authors seemed unconcerned about the elevation of such a category to take precedence over other forms of abuse. Another ‘slippery but potent’ concept was Shonkoff’s tautological notion of

‘toxic stress’.

That Brown and Ward have represented a simplified version of neuroscience designed to, in the Professors’ view, ‘prop up a moral mission’ was illustrated by reference to two recent peer-reviewed studies which illustrate the limitations of the current state of neuroscience for policy purposes (J Belsky and M deHaan, ‘Parenting and children’s brain development: the end of the beginning’, (2011) *Journal of Child Psychology and Psychiatry*, 52 (4): 409–428; E McCrory, S DeBrito and E Viding, ‘The link between child abuse and psychopathology: a review of the neurobiological and genetic research’, (2012) *Journal of the Royal Society of Medicine*, 105: 151–156). Belsky and DeHaan (2011: 409–410) argue that although the brain ‘packs a punch’ for policy makers, ‘the study of parenting and brain development is not even yet in its infancy; it would be more appropriate to conclude that it is still in the embryonic stage’. Professors Wastell and White concluded their presentation by quoting the distinguished neuroscientist Steven Rose who observed in a recent Royal Society policy paper that ‘any genuine increase in knowledge of brain processes ... can only enrich our understanding of ourselves. Nor can such increased knowledge replace or diminish the insights into what it is to be human that come from philosophy, the social sciences or the humanities – therefore, there should only be benefits, providing one can pick one’s way through the “over-hyping” of apparent neuroscientific claims.’

Professors Wastell and White reflected at the seminar on why such ‘implausible claims’ seem to attract credulity with policy makers. They said that this kind of packaged knowledge plays well with ‘action oriented people’ and thus with professional and policy audiences who are naturally eager to try out and apply the ideas. They appear to make complex moral decisions simpler; they do away with the need for rigorous empirics in social work and other assessments of families and children’s individual circumstances since the damage is assumed to be sitting there waiting to happen as an inevitable consequence of deficient parenting. The review of social work led by Professor Eileen Munro, in which Professors Wastell and White were expert participants, advocated a return to professional discretion within learning organisations, to a spirit of debate and challenging supervision, but there is further work to do in this respect. Professors Wastell and White concluded that: ‘If the judiciary are persuaded that children’s brains are so vulnerable to lasting damage and, if a precautionary principle thus dominates their judgments on early removal, this is a toxic mix for families and for children’.

For many present at the seminar there was indeed puzzlement as to why, in relation to children’s justice, we appear to be enacting the very top-down process-driven regime which Professor Munro identified as having caused so much damage to the effectiveness of social work. The seminar illustrated the dangers, according to the presenters, of too much power being concentrated in too few hands. (The membership of the FJB consists entirely of the leaders of Cafcass and the LSC (now LAA) and various central and local government administrators). This author believes that the fundamental error of the government and Board’s ‘de haut en bas’ managerialism is to assume that a central diktat or the superimposition of a bureaucratic structure can solve the myriad of problems which unpredictable humanity throws up.

There is an abundance of empirical evidence from organisations such as Vanguard and Participle that a systems-based approach, adopted incidentally by the Munro review as its

organising principle, can provide a relational model of public service which is more efficient and cost-effective than top-down managerialism and is more satisfying for both consumers and producers of services. In *The Idea of Justice* (Allen Lane, 2009) Amartya Sen, whose Nobel Prize was awarded in Economics, argues the merits of a realisation-focused view of justice over an arrangement-focused approach. The former broader and more inclusive perspective is linked to what actually happens in the real world in contrast to the latter which is preoccupied with organisational propriety and behavioural correctness.

There was also unease at the seminar that, in the present difficult circumstances for society's least-favoured, social workers may be placed under inappropriate time constraints such that they will have insufficient opportunity to distinguish between those families beset by objective adversity which, with suitable support, are likely to be able to make necessary changes within a child's timescale and those families for whom requisite change is unlikely. Decisions affecting children must be based on sound and thorough assessment not prejudice or fantasies about the undeserving poor. There is certainly abundant scope for improving children's justice and reducing delay – curbing the bureaucratic excesses of Cafcass and the LAA would be a start. But changes should be driven by real evidence of what is likely to improve the quality of children's lives not by gestures from on high.

We must hope that this spirit will inform the House of Lords' consideration of the Children and Families Bill and lead to the restoration of judicial and professional discretion at the heart of the justice system. The permanent removal of a child from his birth family is one of the most draconian actions of the state with life-long consequences. Surely we as a society have a responsibility to our most vulnerable children to ensure that such momentous decisions are made in a timely manner on the basis of the best available evidence by truly independent courts through a process untainted by the preoccupations of the powerful or the imposition of arbitrary timescales.

The founder of Mr Norgrove's original discipline, Adam Smith, was a Professor of Moral Philosophy whose words of more than 250 years ago are as fresh and resonant as if they were written today:

‘This disposition to admire, and almost to worship, the rich and the powerful, and to despise, or, at least, to neglect persons of poor and mean condition ... [is] ... the great and most universal cause of the corruption of our moral sentiments’.
(*The Theory of Moral Sentiments*, 1759)

A copy of the full paper from Professors White and Wastell can be provided on request. Their email contact details are S.White.3@bham.ac.uk or David.Wastell@nottingham.ac.uk.