International Perspectives on the State-as-Parent: Naïve Idealism or Reluctant Pragmatism

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Too many children remain at risk of harm, regrettably, in all too many societies. This is despite the almost universal acceptance of the 1990 United Nations Convention on the Rights of the Child (UNCRC). Its intention, arguably somewhat naïvely, is to create two state imperatives: to protect children against threats of harm; and to advance their welfare. Governments, however, have evidenced a pragmatic reluctance to meet these challenges, perhaps a product of conflicting community expectations on the appropriate role of the state, combined with a scarcity of public resources. For the state to meet its UNCRC obligations requires it to have three crucial capacities. The first is the governance capacity to be able to take the necessary actions to prevent or correct the harm experienced by children. The second is the organizational capacity to direct sufficient resources to do what needs to be done in a timely manner, in a culturally sensitive way, and without causing them other forms of harm. The third is the epistemological capacity to know when it is in the "best interests" of children for the state, in the "public interest," to stop particular child practices or to separate particular children from their families in order to provide the care and protection they need. These are the ultimate challenges facing governments if they wish to achieve the vision of the state as the protector and promoter of the best interests of children that is embedded in the UNCRC, to which almost all states have committed.

KEY WORDS: the state-as-parent, child rights, child neglect and abuse, child protection and welfare

Introduction

Too many children remain at risk of harm, regrettably, in all too many societies (see United Nations Children's Fund, 2011, Table 9, pp. 122–123). This is because of the inability or unwillingness of adults in families, communities, and governments to protect them, to advance their well-being, and to promote their future development. Korbin (1991) defines three categories of harmful practices:

- Harm caused by cultural differences in child-rearing behavior and the practices that may be judged to be harmful by those outside the culture, such as female genital mutilation or the use of insufficiently nurturing institutional care.

- Harm caused by idiosyncratic departure from the parenting norms prevalent in a culture.
- Harm caused because of poverty, war, or lack of healthcare or nutrition.

Societies provide for the needs of children according to their underlying culturally informed values with respect to parental responsibilities and independence, social solidarity, and the worth and dignity of a child (Gilbert, Parton, & Skivenes, 2011; Welbourne & Dixon, 2013). These social constructions inform the way children are—and should be—protected and cared for by their families; the contribution they are expected to make to their family as family members, as income earners, or as commodities for sale; through their responsibility for the continuation of the family line, and their role in upholding the honor and esteem of the family. These give rise to culturally informed constructions of what constitute appropriate parental behaviors, acceptable childcare practices (and child behaviors), and the rights of parents, all of which shape public child protection and welfare policies and practices.

Over 60 years ago, Bowlby (1951) made a simple but seminal contribution to advance the global child protection and welfare discourse by presenting the case for state intervention into the family domain to protect and advance the well-being of children in the event of "family failure." He defined (p. 423) this as situations where:

- a family has never been established (illegitimacy);
- a family is intact but dysfunctional (parental poverty, incapacity, or psychopathy); or
- a family has broken up and is not functioning through, for example, parental death, desertion, separation, hospitalization, imprisonment, relocation due to employment, or social calamities (war or famine).

Children are, however, placed at risk of parental neglect and impaired family care and support for reasons beyond "family failure." Some traditional cultures place children at risk, especially girl-children, by endorsing and tolerating such practices as female feticide and infanticide, female genital mutilation, family honor murders and suicides, and child marriages. There are also family structures that can impact negatively on children as members of the family—such as polygamous marriage—if they are in a disadvantaged position within that family, or on children married under duress into such families. This is happening, for example, in the Middle East, where under traditional cultural values children are the property of parents and the extended family (Al-Krenawi & Kimberley, 2013), and in India, where child neglect is exacerbated by widespread poverty (Stanley, 2013). Indeed, poverty creates risks for all children (Ferguson, 2006), but it is associated with particularly catastrophic risks for girl-children, through child labor, child pornography and prostitution, and child marriages, so graphically portrayed in Stanley's (2013, pp. 172–183) harrowing description of the plight of vulnerable children in India. However, extended families carry benefits for children in some instances and contexts, as discussed by Sossou (2013). The wider

social context that influences the level and nature of choices exercised by the adults with respect to children is a critical factor in shaping the impact that cultural practices have on children.

Almost 40 years after Bowlby made his seminal contribution, children have—after much suffering as defenseless individuals in the hands of adults-as-parents or as exploiters—acquired a universal set of rights. This covenant articulates the rights and, by implication, the basic needs of children in the full diversity of social, political, and economic contexts in which they grow up. It is to this covenant that attention is now turned.

Demarcating the Role of the State-as-Parent

The 1990 United Nations Convention on the Rights of the Child (UNCRC) (UNICEF, 2012) is a declaration of principles by the international community about what children have a right to expect from adults:

> It reflects a new vision of the child. Children are neither the property of their parents nor are they helpless objects of charity. They are human beings and are the subject of their own rights. The Convention offers a vision of the child as an individual and a member of a family and a community, with rights and responsibilities appropriate to his or her age and stage of development. Recognizing children's rights in this way firmly sets a focus on the whole child. Previously seen as negotiable, the child's needs have become legally binding rights. No longer the passive recipient of benefits, the child has become the subject or holder of rights.

It created an imperative for the state to reduce an array of harmful adult behaviors and child practices that threaten the rights of children (Finkelhor & Korbin, 1988; Friedman, Horwitz, & Resnick, 2005; Korbin, 1991), and to take the necessary and appropriate steps to protect and advance their well-being. This it does by giving children, essentially, a universal right to be protected by the state, within cultural and religious constraints, from preventable risks, traumas, commercial and familial exploitation, maltreatment, abuse, and compromises to their normative development as a result of

1. acts of omission by the state (such as failing to act in the event of child neglect, maltreatment, and abuse, or failing to prohibit child labor, pornography, prostitution, marriage, trafficking, female infanticide, female genital mutilation, family honor murders, or recruitment as soldiers); or
2. exposure to traumatic events (such as famine, military conflict, political violence, or domestic violence).

The following principles underpin the UNCRC-endorsed role of the state in advancing the rights and welfare of children:

- That "every child has the inherent right to life" (Article 6 (1)).

- That it is "the right of the child to preserve his or her identity, including nationality, name and family relations" (Article 8).
- That "the best interests of the child shall be a primary consideration" in all institutional actions concerning children (Article 3), and in particular with respect to the system of adoption (Article 21).
- That "every child [has the right] to a standard of living adequate for the child's physical, mental, spiritual, moral and social development" (Article 27 (1)).
- That every "child [has the right] to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development" (Article 32 (1)).
- "That a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child [particularly in cases] involving abuse or neglect of the child by the parents, or one where the parents are living separately and a decision must be made as to the child's place of residence . . . ['on the basis that it is the right of the child who is separated from one or both parents to maintain personal relations and direct contact with both parents on a regular basis, except if it is contrary to the child's best interest' (Article 9 (3))]" (Article 9 (1)).
- That "a mentally or physically disabled child should enjoy a full and decent life, in conditions which ensure dignity, promote self-reliance and facilitate the child's active participation in the community" (Article 23 (1)).

The UNCRC envisages the state as a surrogate parent, intervening in the family domain by abrogating the family's responsibility for the well-being of a child, in the following circumstances:

- When "a child [is] temporarily or permanently deprived of his or her family environment" (Article 20 (1)).
- When in a child's "own best interests [he or she] cannot be allowed to remain in that [family] environment" (Article 20 (1)) because of "abuse or neglect of the child by the parents" (Article 9 (1)), including being subjected to any form of "physical or mental violence, injury or abuse [including 'torture or other cruel, inhuman or degrading treatment or punishment' (Article 37)], neglect or negligent treatment, maltreatment or exploitation, including sexual abuse [including 'the inducement or coercion of a child to engage in any unlawful sexual activity' (Article 34 (a)) and 'the exploitative use of children in prostitution or other unlawful sexual practices' (Article 34 (b)), and 'in pornographic performances and materials' (Article 34 (c))], while in the care of parent(s), legal guardian(s) or any other person who has the care of the child" (Article 19 (1)).

This assumption of responsibility by the state for child protection and welfare is, however, subject to the following caveats, specified in the UNCRC Preamble:

- "that the family, as the fundamental group of society and the natural environment for the growth and well-being of all its members and particularly

children, should be afforded the necessary protection and assistance so that it can fully assume its responsibilities within the community";

- "that the child, for the full and harmonious development of his or her personality, should grow up in a family environment, in an atmosphere of happiness, love and understanding"; and
- "[that] due account [should be taken] of the importance of the traditions and cultural values of each people for the protection and harmonious development of the child," which requires the state to identify which cultural practices require state attention as child protection and advancement issues.

The UNCRC, thus, cajoles the state to

- "render appropriate assistance to parents and legal guardians in the performance of their child-rearing responsibilities" (Article 18 (2)); and
- "take all appropriate measures to ensure that children of working parents have the right to benefit from child-care services and facilities for which they are eligible" (Article 18 (3)).

The international community has not, however, achieved universal agreement on its child rights program. One country, the United States of America, has not ratified the UNCRC—on the fundamental grounds that the rights granted to a child undermine parental choice—despite calls for so doing from some lobby groups. Other countries have their own concerns about the interpretation and implementation of children's rights. The extent and nature of the points of contention can be observed in the interpretative declarations and reservations expressed by signatory countries.[1] These significantly reduced the effectiveness of ratification as a way of strengthening the child rights that the UNCRC grants.

There is a fundamental disagreement over when a "child" acquires the rights granted under the UNCRC—at birth or at conception—so giving rise to a potential conflict between any right to life of an unborn child, and adult rights to make choices about being a parent once a child is conceived.

- "The United Kingdom interprets the Convention as applicable only following a live birth."
- "The Government of the French Republic declares that this Convention, particularly article 6, cannot be interpreted as constituting any obstacle to the implementation of the provisions of French legislation relating to the voluntary interruption of pregnancy."
- "With reference to article 1 of the Convention [which defines a child as a human being under the age of 18], the Government of Guatemala declares that article 3 of its Political Constitution establishes that: 'The state guarantees and protects human life from the time of its conception, as well as the integrity and security of the individual.'"

Disagreement about when a child ceases to be a child and so becomes eligible to exercise adult rights, such as participation in warfare, is a basis for the expression of reservations:

- "Spain ... wishes to express its disagreement with the age limit fixed therein and to declare that the said limit appears insufficient, by permitting the recruitment and participation in armed conflict of children having attained the age of fifteen years."
- "With reference to article 1 of the Convention, the Government of the Republic of Cuba declares that in Cuba ... majority is not attained at 18 years of age for purposes of the full exercise of civic rights."

The rights granted to children that involve legal procedures are a point of contention. With respect to adoption, for example:

- Egypt opted out of any commitment relating to adoption on the basis that this is not part of Sharia law, with the assertion that although Sharia provides various ways of providing protection and care for children, this does not include adoption.
- Poland reserved the right to limit adopted children's right to know who their biological parents are, instead preserving the right of adoptive parents to maintain the confidentiality of the child's origins where the law provides for this.

Reservations grounded in the compatibility between the rights granted under the UNCRC and religion-based national laws are, in some cases, expressed in general terms:

> "The Government of the Republic of Afghanistan reserves the right to express ... reservations on all provisions of the Convention that are incompatible with the laws of Islamic Sharia and the local legislation in effect."

The incapacity of developing countries to grant immediately all the child rights to be protected and advanced under the UNCRC has also given rise to interpretative declarations that make their national "implementation" an aspirational statement of intent:

- India reserved the right to progressively implement provisions relating to child labour, "[w]hile fully subscribing to the objectives and purposes of the Convention, realizing that certain of the rights of child, namely those pertaining to the economic, social and cultural rights, can only be progressively implemented in the developing countries, subject to the extent of available resources and within the framework of international cooperation; recognizing that the child has to be protected from exploitation of all forms including economic exploitation ... the Government of India undertakes to take measures to progressively implement the provisions of article 32 [relating to child labor]."

In 1991—the year after the process of ratifying the UNCRC began—Korbin (1991, p. 70) dauntingly challenged the international community by posing the following question: "Is a universal definition ['of the spectrum of caretaker behaviour accepted by different cultures'] possible, or will definitions of necessity be culture specific?" The contemporary answer must reflect that parental agency

occurs in a diversity of sociocultural, religious, and economic contexts, and reflects the informing culture-specific values of a society with respect to children, childhood, and parenting.

There is a clear diversity of public approaches in response to the threats and challenges related to child protection and welfare support in their jurisdictions (Welbourne & Dixon, 2013). At one polar extreme is the proposition that the state's role should be limited to targeted child protection and a residual child welfare support, grounded on the proposition that the state should substitute for the family's fulfillment of its duties only in the event of clear "family—including extended family—failure," which emphasizes safeguarding children against harm (child protection) (Fargion, 2012). This approach has as its focus the protection and support only of children at high risk of harm due to inadequate parental care, ill treatment, or abuse by "degenerate relatives" (Gilbert et al., 2011, p. 3). At the other polar extreme, the proposition is that a child's well-being can be put at risk by parental behaviors explainable by temporary family conflict or dysfunctionality arising from social and psychological difficulties (Fargion, 2012). This justifies the state intervening in the family domain in order to enhance the family's functionality and, thus, advance children's well-being. This approach has as its focus proactive and inclusive child protection and universal child welfare support that enhances parenting capacity by having in place flexible early-intervention and prevention strategies that are able to provide timely family support to all children at risk or in need. This future-oriented approach is grounded in the proposition that society should make a social investment in children (Stafford, Parton, & Vincent, 2011), in recognition that they have positive rights that require society to provide them with an environment in which they can all flourish and achieve, as far as possible, their potential within their birth-family setting. In countries with limited state resources juxtaposed with extensive poverty, however, both intervention models are problematic.

The state's child protection and welfare roles and responsibilities are, of course, contingent upon what it perceives to be in the "public interest."

The State-as-Parent: The Public Interest Issues

The "public interest," which Lasswell (1930, p. 264) conceptualized as the displacement of private interests onto the state, is premised on the proposition that the private sphere—parents and family caring for, and other adults exploiting, children—can do "harm" to others—children—so justifying the state's intervention to "correct" the "adverse" consequences of such private actions (Mill 1859/1963). This brings into focus the need for the state to establish an appropriate balance of individual and collective responsibility, the key to which is the respective importance of the negative and positive right of individuals (Berlin, 1969; Goodin, 1982). A negative right is the right of an individual to be free from collective control, interference, or obstacles—the right of individuals-as-parents to be free from state interference with their legitimate parenting

activities, a right recognized, with caveats, under Article 8 (Right to respect for private and family life) of the 1950 European Convention for the Protection of Human Rights and Fundamental Freedoms (European Court of Human Rights, 2000). A positive right is the right of individuals to be able to take control of their lives—the right of individuals-as-children to have the capacity to be able, eventually, to exercise the adult right of self-determination, so emphasizing the state provision of child protection and welfare support.

The state can choose to use—or not to use—its coercive power to protect and promote the "public interest" by making people do what they would not otherwise have done, but, as Flathman (1980, p. 6) argues, "power as distinct from episodic uses of raw force and violence—is impossible in the absence of values and beliefs shared between those who wield power and those subject to it." The outcome of any "public interest" decision has profound implications for the precise nature of the collective action—if any—that is put in place to manage a society's common affairs (Kooiman, 1993, 1999). Thus, "public interest" decisions on the appropriate balance of individual and collective responsibility for the protection and welfare of children must be at least tolerably in accordance with the culturally and religiously informed shared values that give rise to the social construction of the meaning of childhood, the upbringing of children, and the boundaries of acceptable parenting behavior and child practices. This significantly influences whether compliance or antagonism follows the choice of child protection and welfare intervention and prevention strategies. This depends upon how those affected justify, to themselves and to others, the constraints and costs that they tolerate being imposed upon them by the state in the "public interest" (Dixon, 2003). This, in turn, crucially depends on the level of trust that prevails between the state and its citizens.

The State-as-Parent: The Trust Issues

In any society, the trust that people have in others, individually or collectively, exists only insofar as they all act according to, and are secure in, the expected futures constituted by the presence of each other (Lewis & Weigert, 1985). This trust informs their expectations about the future behavior of others. The importance of trust is that it enhances the likelihood of tolerance and cooperation (Mayer, Davis, & Schoorman, 1995; McAllister, 1995), even to the extent of personal sacrifices made for the collective well-being (Sztompka, 1996). Fukuyama (1995, p. 7) expresses this point admirably: "a nation's well-being . . . is conditioned by a single, pervasive cultural characteristic: the level of trust inherent in a society."

Thus, the level of trust that exists between the state and its citizens significantly influences whether compliance or antagonism follows any "public interest" decisions made that shift the balance of individual and collective in favor of the state in order to better protect and support children. Implementation of any particular child protection or welfare intervention strategy depends on governments building and sustaining the trust of those from whom compliance is

expected; to do otherwise threatens a breach of the "boundaries of distrust" (Scharpf, 1991, p. 297). This means, again, that the development and implementation of public child protection and welfare policies must be on the basis of shared expectations about the future behavior of all the actors involved. Only where levels of trust are high can the state be confident that cooperation and compliance will be the consequences of its choice of child protection and welfare strategies. Where trust is high, citizens may accept, in principle, the state regulating unacceptable behavior more readily, but they still have to make a decision on the ethical acceptability of prohibiting particular parenting behaviors or particular child practices.

The State-as-Parent: The Ethical Issues

Standards of behavior govern the lives of individuals, fashioning their self-image and representing their actuality (Hegel, 1821/1991, p. 190). This requires them to justify, to themselves and to others, what constitutes unacceptable standards of parenting behavior and what child practices should be prohibited. This moral justification can be based on the belief that such behaviors or practices are

- "wrong" because they are contrary to indubitable moral imperatives;
- "shameful" (not "virtuous") because they are contrary to the socially constructed and accepted expectations of a moral group that adjudicates on the morality of behavior and practices of its members;
- "bad" because of their net negative consequences; and
- "unacceptable" because they are contrary to the moral opinions held by those affected.

Any, all, or some combination of these ethical perspectives can influence the beliefs and values about whether, and how, the state should protect its children from harm and promote their well-being. Thus, a law that is premised on a view that there are adult actions that are "harmful" to children, so justifying some form of "punishment," may well alienate those in society who reject the ethical premises underpinning that law. Their antagonism follows their unwillingness to tolerate the limitations that the state imposes upon them in the "public interest." There are also situations in which such adults may be confronted with conflicting imperatives. When the state prohibits a course of action because it is "harmful" to children, but it is one that their moral group (their social, religious, ethnic, or tribal group) permits—even requires—the dilemma they face can only be resolved by compliance with one imperative or the other. An example would be if the state prohibits female genital mutilation, but the responsible parents know that within their cultural context it will be difficult for a girl child to remain within the community without such mutilation, which would isolate and damage her.

The next section examines the implications of different theoretical approaches to ethics for the regulation of parenting by states.

Deontological Ethics

Under this ethical perspective (Fried, 1978), the absolute morality of human behavior is judged by whether it conforms to the imperatives that make certain behaviors intrinsically "right"—a moral imperative (Kant, 1781/1956; see also Kant, 1785/2003). Thus, moral principles emphasize moral directives, as self-evident moral truths, that express the behavioral requirements of the moral rule-givers—those with the moral authority (parents, elders, governments, ecclesiastics, or God) to create moral obligations—a sense of duty—on the part of moral rule-takers. The latter are expected to behave in accordance to what is "right"—do what is permitted or acceptable, and not do what is forbidden or unacceptable—because they accept the authority of moral rule-givers over them.

The dilemma is that there are multiple moral rule-givers. Of particular relevance is moral authority grounded in the principle that a human action is "right" or "wrong" only if God approves or disapproves it. Thus, what is "right" is obedience to the divine will (Quinn, 1999). The moral imperatives traditionally either drawn or deduced from revealed theology (Adams, 1987) or from divine prophecy (Rahman, 1958) are, however, diverse and contending. Thus, the parenting behaviors and child practices that a state deems to be "harmful" to children—the "wrong" behaviors and practices—must not be incompatible with what, under the prevalent sociocultural traditions and values, constitutes the "right" behaviors and practices.

In countries where the concept of childhood, parenting norms, and acceptable child practices are proscribed by entrenched and uncompromising social attitudes, underpinned and reinforced by religious imperatives, the role of the state is seriously constrained, typically, by traditions and values embedded in hierarchical, patriarchal, patrilineal, and patrilocal societies. In Middle Eastern societies, for example, which are grounded in traditional Arab-Islamic and tribal cultures that reinforce patriarchy and hierarchy, particularly with respect to gender and age (Al-Krenawi & Kimberley, 2013, p. 216):

> Progressive protection and welfare approaches will probably necessitate complex efforts at finding pathways to child-youth centered awareness, visions, policies, and programmes, framed in ways which enable navigating the varied and diverse paths through regional expressions of culture (such as the murder of women and children to uphold family honor), local politics (such as societal conflicts and violence), and religion (such as lack of active prohibitions on child brides). These political-religious interfaces are the contextual considerations facing Arab and external activists, professionals, and governments, as they attempt to create, or expand, social action and social responsibilities in child protection and social care, locally and through multilateral action.

In India, which is largely a patriarchal, patrilineal, and patrilocal society, with a set of values informed to varying degrees by its major religions, the contextual

considerations facing external activists, childcare professionals, and governments, as they attempt to create, or expand, child protection and welfare capacities and capabilities, have prompted the national government to accommodate divergent constructions of the meaning of childhood, parenting, child protection, and family child protection and welfare responsibilities, by allowing each of its major religious communities to have its own laws governing marriage, divorce, succession, adoption, guardianship, and child maintenance (Stanley, 2013). The national government only changes these laws upon the request of a religious community. This approach obviates the need for the state to deal with the nuances of diverse shared values in relation to fundamental family issues that impact on the protection and well-being of children, but it does constrain state power to intervene only when child protection or welfare issues become an imperative. Thus, "[t]he type of family life an Indian child experiences is, therefore, shaped by where they are born, and the religious and ethnic group into which they are born" (Stanley, 2013, p. 171).

Virtue Ethics

Under this ethical perspective (MacIntyre, 1985; Ridley, 1997), a virtuous act is the act of a virtuous individual—one who is naturally predisposed to act in a virtuous way, for virtuous reasons, and will feel pleasure in so doing, thus becoming a flourishing person. Virtue is, therefore, a disposition that precedes the choice of a virtuous course of action. To achieve virtuousness, according to Aristotle (350 BC/2004: I, p. 7), requires individuals to develop this disposition as an intrinsic part of their identity and to acquire their moral precepts from their community participation (Johnston, 1997). Thus, virtuous individuals' choice of the right course of action is determined by the shared moral experience in a particular sociocultural milieu that gives rise to the character traits and behaviors that they agree their moral communities can expect them to exhibit. This makes relative both morality and its derivative, virtuous human behavior (Crisp & Slote, 1997; MacIntyre, 1985).

The dilemma is that there are multiple understandings of what constitutes "virtuous" or "shameful" parental behaviors and child practices. Those behaviors and practices that a state deems to be "harmful" to children—the "shameful" behaviors and practices—must not be incompatible with the sociocultural traditions and values that contribute to the culturally informed constructions of what constitutes "virtuous" parental behaviors and child practices. This becomes problematic in countries with long-standing public child protection and welfare systems that are required, without discrimination, to protect and advance the welfare of children of a diverse array of families who adhere to different parenting norms and standards of acceptable child practices.

In Australia, a culturally, linguistically, and ethnically diverse society, the child protection and welfare systems are increasingly involved with protecting and supporting children of refugee families. Many such families have histories of

trauma, dislocation, and loss (Tsantefski & Connolly, 2013). These experiences, when added to the cultural adjustment problems such families face, pose significant challenges to parenting practices that are the product of their prior immersion in the cultural practices of their country of origin and the consequence of their current social exclusion and isolation in their new country of residence. The outcome may be child abuse or neglect. According to Tsantefski and Connolly (pp. 265–266), difficulties are most pronounced among children from non-English-speaking backgrounds and those whose families arrive with less skills and resources. Overall, however, outcomes for children in immigrant families are comparable with those of their peers (Katz & Redmond, 2010, p. 439).

In the multi-ethnic United Kingdom, Colton and Welbourne (2013, p. 85) highlight the dilemma being faced:

> The cultural diversity...has challenged, and continues to challenge, [child protection and welfare] services to find positive ways of responding to the needs of children who have equal rights to protection under the law to any other child, but whose families apply the cultural standards and practices of their country-of-origin. So-called female circumcision or female genital mutilation, and child marriage, are examples of areas in which there has needed to be recognition of cultural diversity, and an increase in awareness and understanding of the cultural expectations of people in different minority groups. At the same time, however, a strategy is needed to protect children in those communities from actions that would be considered harmful and abusive if they were done to a child in most other communities.

In Sweden, where there is increasing multi-ethnicity, immigrants are arriving with different parenting norms originating in the diverse religious and cultural beliefs and traditions in their countries of origin. This has challenging socio-political implications. As Hessle (2013, p. 51) observes:

> Secular Swedish society is challenged by a prism of religions carried by migrants from all corners of the world. The strong generous Swedish Welfare State, with its basis on trust-based peaceful agreement between the individual and the state, is a challenge for migrants who have been pushed out of their country-of-origin, where the only people one can trust are those belonging to the same clan, church or family.

In Italy, although it is still a relatively homogeneous society—albeit with a significant number of Islamic migrants—in which the Catholic Church has a very significant voice in all moral debates touching upon the family, Bertotti and Campanini (2013, p. 118) foresee: "The challenge that Italy will face in the very near future is to rebuild a welfare system...that will [among other things] be able to guarantee the inclusion of immigrant [non-Catholic] families and children...."

Consequential Ethics

Under this ethical perspective (Scheffler, 1988), the morality of human behavior is judged by its consequences (Smart & Williams, 1973): the value of its actual, or even intended, effects in terms of producing the greatest happiness (pleasure) for the greatest number of people (Bentham, 1789/1970)—"the most good"—even if this is not the intention (Gouinlock, 1972; Meyers, 1986). Hence, a behavior can be deemed "bad" only if its negative consequences outweigh its positive consequences, which means that if the ends justify the means, then a behavior or practice is intrinsically "good" (Scarre, 1996; Scheffler, 1988).

The dilemma is the parenting behaviors and child practices that a state deems to be "harmful" to children—the "bad" behaviors and practices—can produce "good"—albeit perhaps illegal—consequences for others, which means collective actions that reduce the "harm" to children—so producing "good" consequences for them—gives rise to "bad" consequences for others. At issue is whether a certain state of the world—a world in which a child is relieved of any threats to his or her rights and well-being—is of such supreme importance that all human behavior impacting on that state of the world must be judged by its contribution to the production in that state of the world. Where there are other competing interests, the question is, how far should the interests of children— achieving "good" outcomes for them—prevail over the loss of "good" outcomes for others?

In countries with extensive family poverty, the economic necessity of child labor for a family's well-being makes it difficult to distinguish between parental neglect and the effects of poverty. This can be difficult when parents are struggling to provide basic care for their children. India, for example, at the time of ratifying the UNCRC, reserved the right to progressively implement provisions relating to child labor.

Ethical Skepticisms

Under this ethical perspective (Bambrough, 1979; Lom, 1998), moral beliefs lack truth-value, either because it is not possible to obtain the evidence to justify any moral belief, or because moral truths are simply unknowable. Thus, the morality of human behavior can only be judged on the basis of moral opinions, formed on the basis of the judgment makers' direct apprehension of *a priori* emotional appreciation; the opinions are simply values grounded in their lived experience (Scheler, 1987; Stewart, 1828/2005a, 1828/2005b). Such moral opinions require no further justification, as they are matters of self-determined personal taste (Nietzsche, 1888/1969, p. 121). There are, then, as many distinct moral beliefs as there are people in the world.

While the acceptance of the value of moral diversity may make this ethical stance attractive, because it avoids making judgments about the relative value of different cultural valuations of different parenting behaviors and child practices, it fails, ultimately, to offer any way of informing a state's responses to child

protection and welfare issues, other than delegating them to individual communities to resolve, as Stanley (2013) indicates the Indian government has done.

Conclusion

Despite the almost universal acceptance in principle by the international community in 1991 of a naively idealistic—unrealistically optimistic—declaration about what children have a right to expect from adults, too many children remain at risk around the world. Parenting behaviors and child practices continue to create physical, emotional, and moral hazards for children that threaten to interfere with their development and education, or that are harmful to their health, or physical, mental, spiritual, moral, or social development. Governments evidence a pragmatic reluctance to prohibit questionable administrative practices (such as the recruitment of children as soldiers) and the commodification-for-profit of the poorest and most vulnerable children (such as child trafficking, and child pornography and prostitution); or to take all possible steps to protect children from misguided actions that place children at risk, from neglect, and from abuse by parents, the extended family, and kinship networks; and to provide them with an adequate standard of living. The state may well be a "reluctant parent" in many countries because of the dominance of powerful community expectations hostile to its intervention into family affairs, or, at least, the existence of irreconcilable competing community expectations on the appropriate role of the state, and, of course, the insoluble problem of the scarcity of public resources.

This brings into focus the extent to which a state, in the "public interest," can —is willing and able to—protect and advance the welfare of children within its jurisdiction, particularly in situations where any such interventions necessitate a redefinition of the boundaries of what constitutes acceptable parenting behaviors or child practices in a way that would impose constraints or costs on others. To expect the state to prevent or address the consequences of particular parenting behaviors or prohibit particular child practices because they are hazardous to children brings to the fore the crucial capacities a state needs, without which the prospect of governance failure looms. The first is its *knowledge* capacity—being able to gather the appropriate information and to make the judgments of its truth-value in order know

- when parents and other adults are behaving in a way that threatens to "harm" children;
- what the "adverse" consequences are for children of those adult behaviors;
- how "harmful" these consequences are to children;
- how to protect children from "harm" and advance their well-being without offending the underlying cultural constructions that inform the way children are and should be cared for within a society;
- what preventative or corrective actions can be taken by the state to address those "adverse" consequences;

- under what circumstances it is in the "best interests" of the child for the state to separate him or her from his or her parents; and
- that a decision by the state to separate a child from his or her parents against their will is, in fact, in the child's "best interest" and made in accordance with applicable law and procedures.

The second is its *governance* capacity—having the appropriate public policy instruments to be able to take the necessary preventative or corrective actions to prevent or correct the "harm" experienced by children by soliciting the desired changes in adult cognitions and behaviors. The third is its *organizational* capacity—being able to direct the available resources to do what needs to be done in a timely manner, and in a culturally sensitive way, to prevent or correct the "harm" that has been experienced by children as a result of "harmful" adult behaviors, without causing, inadvertently or otherwise, other forms of "harm" to those children.

For governments, this scenario brings into focus a salient governance threat that they ignore at their peril. Any shift in the public-private boundaries of child protection and welfare responsibilities in favor of the state that create antagonisms brings into question the legitimacy of the governance authority of the state. This is grounded on the unacceptability—intolerability—to those upon whom behavior constraints or costs have been imposed by the state in the "public interest," particularly if those impositions are in conflict with the socially constructed views on the rights of parents and other adults with respect to children. Noncompliance with the policy instruments in place becomes more prevalent. Distrust in government and its organizational capacities builds up. Governance failure looms.

Governments can enact laws to protect the rights and promote the welfare of children, but their effectiveness depends on them being supported by their communities at large, on public resources they provide to enforce and implement them, and on their capacity to know what needs to be done in a timely manner, and in a culturally sensitive way.

These are the ultimate challenges facing governments if they wish to achieve the vision of the state as the protector and promoter of the best interests of children that is embedded in the UNCRC, to which almost all states have committed.

Note

1. All the national interpretative declarations and reservations are recorded on the United Nations CRC treaty web pages. All quoted interpretative declarations and reservations below are available at http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV11&chapter=4&lang=en.

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