

Social Change, Social Work,  
and the Adoption of Children.

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## ABSTRACT.

This thesis describes the development of legal adoption since 1926 and latterly its increasingly significant role as an alternative disposal for children in the care of local authority Social Services Departments. In achieving such prominence as a function of statutory social work, it is proposed that legal adoption can now be regarded as part of the panoply of ideological domination. This development is but one of a number of modifications of practice taking place within statutory social work. Pressures for change are seen to originate outside of the profession for the most part.

To situate the study within the modern state, practice under the Poor Law after 1834 is reviewed. The developing legal position of children throughout the nineteenth century *vis a vis* their parents and the state, is also considered.

Detailed description and discussion of the official discourse of legal adoption comprises much of the thesis. This consideration is mainly of official government reports proposing legislation, and the legislation itself, together with analysis of legal interpretation and the role of the High Court in determining social work practice.

The development of statutory social work particularly with families and children since the second world war is outlined,

with more detailed consideration given to what is seen to be an increasing emphasis upon surveillance at the expense of assistance in relation to client families. The increasingly significant role of legal adoption within social work practice is seen to have been encouraged by recent inquiries into incidences of abuse of children "in care". Legal adoption should now be considered as only the most far reaching of several statutory social work procedures available in relation to children "in care", under the recently defined rubric "the permanence principle of social welfare". The local authority power to assume parental rights over children in its care is a second social work procedure which has also gained considerably in significance in recent years as an alternative means to "permanence".

It is concluded that the trend towards negotiable parenthood is a powerful symbolic and instrumental force for an altered statutory social work practice, congruent with the aims and attitudes of contemporary ideological domination.

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## Chapter 1.

### Introduction

An unequal society which functions from day to day in an atmosphere suggestive of consensus rather than conflict must rely to a considerable extent upon the power of ideological domination. In an unequal society such as Britain during the latter part of the twentieth century, several significant groups can be seen to be more or less disadvantaged. Yet up to the mid nineteen eighties no really significant or co--ordinated opposition to the *status quo* has appeared. This situation, it is proposed throughout this study, is best explained as the achievement of the dominant ideology.

The hypothesis might be argued by considering the social situation of one or several groups within society, groups associated with class, employment, ethnicity, sex and gender, geographical location, age, etc., etc.. The study will in fact touch upon problems associated with several of these groups by considering the purpose and process of statutory social work. To move from generalisation to detail, it will be necessary to define particular processes and practices within the large

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area of operation covered by social work in the contemporary state. The specific practices to be concentrated upon will be those associated with modifying family composition. Modifying family composition is an inelegant phrase simply to describe legal adoption. However its use is intended to emphasise that legal adoption is not the only social work procedure available to modify family composition. The custodianship order introduced in the Children Act 1975, and implemented in 1985, must also be considered and the extended powers of local authorities to assume the parental rights over children in their care are also relevant. Thus, at the outset this study can be seen to have a dual perspective. An inquiry into trends in social work practice illustrates ideological influences on state procedures, while at the same time a consideration of the incidence of ideological domination provides a model for understanding social work practice as compromise.

Legal adoption is a recent practice, only being available in England and Wales since 1926. It did not come about through an intended development of state policy, so much as a result of the activities of pressure groups. Only reluctantly did the state come to include adoption within its main stream social policy directed at certain sections of the community. Such may well be typical of the process of social policy. However, the point here is that given the specific and relatively short period of time involved, the process of development from peripheral optional power to typical administrative policy can

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be clearly demonstrated. Demonstration is mainly by means of an analysis of the official discourse of adoption. This discourse comprises the official reports proposing reasons why there should be such legislation, and later official reports proposing reforms, together with the statutes themselves. The reason why official discourse is concentrated upon is that it is a prime site of the influence of the dominant ideology. It also aids the argument to concentrate on such an authoritative source to the exclusion of other no doubt interesting and fruitful sources, which must nevertheless be of more questionable authority. An apparent exception to the rule of selecting only official publications might be "A Child In Trust" (1985) considered in chapter 7. As a local authority report it might be seen as semi-official. However, such an assessment would probably be wrong. The question of whether such inquiries and reports are funded centrally or locally is an administrative and procedural one and the topic is considered within the report itself. (A Child in Trust, 1985. p.3) Notwithstanding the nature of its funding, the report is likely to be of significance to contemporary social work practice.

Of course legislation is itself as a result of debate and manoeuvre but undoubtedly the final draft is as close as one might reasonably expect to get to identifying the official will. This is the more so if a series of legislative occasions are considered in terms of both their content and their relation to each other.

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Also considered within the ambit of official discourse are legal judgements. Here the state has the opportunity to re-define or define further, legislative expressions. Thus legal judgements can intervene between statute and practice to ensure that practice is as the state requires. Legal judgement can be seen as a possible curb on the development of a professional practice.

Legal adoption is unique as a disposal associated with destitute children in that orders are more or less permanent and irrevocable and of course they are highly significant. There are indeed few other acts which the state can authorise or instigate which are likely to be so significant in the life of an individual.

The second chapter of this study considers methodology in relation to identifying within official discourse the dominant influence of ideology. However a brief note needs to be included within these opening remarks indicating the definition of the term ideology as used throughout this study. Ideology is associated with domination. It therefore has a political dimension first and last. To be ideological, ideas and attitudes must first become activated through the auspices of some purposive organisation, with the aim of domination. The obvious example concerns a ruling class which has achieved a level of acceptance by a population and whose rule is therefore seen as legitimate, sustained by normative acceptance rather than by force. This does not pre-suppose that a population does

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not recognise the power exercised over it by the ruling group or class. Neither is there a supposition that a population whole-heartedly supports such a regime. Conflict may well be a feature of any society, but ideologically contrived domination is usually resilient in the face of such pressures. The strength of ideology is its propensity to disguise itself as common sense, what everybody "knows" (Habermas, 1976).

Legitimation is the achievement of ideology. The exercise of power sustained by force cannot be perceived as legitimate. Legitimation could ideally be endowed upon a regime by all the knowing members of a society. However, the structure of modern societies is far removed from such utopian concepts as democracy, and in its absence ideological domination holds sway.

Contemporary statutory social work can be seen to date from the establishment of "the welfare state" during the period 1945-1950. This short period saw the final demise of the Poor Law and the setting up of a series of state organisations aimed at specifically dealing with the inevitable, albeit temporary problems of a capitalist society. This at least, was how Beveridge described the problems in his Report of 1942 (Beveridge, 1942). It will be proposed that the period of the late 1940s was a watershed, and though services instigated shortly after the Second World War addressed problems which had been wrestled with prior to the war, the concept of a "welfare state" was qualitatively different from what had gone

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before. This was nowhere more so than in the case of the welfare services set up under the National Assistance Act 1948 to assist the elderly and the disabled, and to an even greater extent those services set up under the Children Act 1948. On the basis of social analysis and with the advantages of hindsight, it may now seem inevitable that the high hopes and fine ideals which inspired the authors of the Curtis Report (1946) and the legislators of the Children Act would no more be realised than would be the aims of the National Health Service Act 1946. (It will be recalled that it was proposed that a health service free at the point of use, would lead to declining demand consequent upon an increasingly healthy population. In the event, demand continued to increase.) The personal social services, as they came to be known, were separated from the income maintenance and employment services upon the break up of the Poor Law and upon the setting up of the welfare state. These services for the physically and mentally disabled, the elderly and families and children, were eventually staffed by a work force containing a new and specifically trained group who only had the merest relationship with any previous statutory professional group.

Inevitably considerations of professionalism and professionalisation will be considered within this study, but it will be seen that this is a peripheral issue. Thus any discussion of professionalisation which takes no account of the social context in which a profession develops ignores a determining factor in the rise or fall of that profession. It

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will be demonstrated that professionals, any professionals, have only a limited ability to develop their profession in terms of power, and are quite constrained within and by the state (Johnson, 1972). This is not say that professionals do not wield great influence, particularly as regards the well being of themselves and the fate of their clients/patients or what ever, within these absolute constraints (Dingwall and Lewis, 1983). And no doubt semi-professionals (Etzioni,1969) are only half as powerful as professionals.

An issue which arises in association with the consideration of the contemporary practice of legal adoption is the limits of professional influence. It will be demonstrated (see Chapter 7 especially) that on the face of it there is a hierarchy of influence among the professions, and the lawyers, in this case the judges, are able to not only define the law, but also define good social work practice. This sort of judicial judgment is of a different order to that which applies where a specific practitioner is arraigned for alleged misconduct or heresy, a situation occurring in relation to the medical profession from time to time (e.g. see Savage, 1986). Judicial pronouncements relating to social work not infrequently specify good practice as an aside. Indeed there are instances where judges have been specified in official reports as experts to be consulted on the day to day problems of bringing up children (see pp.136 and 141 below). A salient conclusion of Chapter 7 is that judicial opinion is of greater significance than developed social work



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practice where these two conflict. Given the overall argument of this study it will be argued *inter alia*, that to suggest that this exercise of power can be explained simply as a demonstration of a hierarchy of professions is simplistic. More accurately it can be seen as an ideological operation, a modification by the state of the ideological state apparatus (Hirst, 1979. Chapter 3). Such an analysis fundamentally challenges descriptions of professions in functional and interest terms, and concepts associated with the attainment of full professionalisation (H. Wilensky, 1964). The object of the "true" professions, the church formerly, the law latterly to an increasing extent, and the army always, is the maintenance of authority. Other occupation groups associated with ideological domination, such as lecturers in higher education or social workers for instance, and other groups associated with the employment of force, the police particularly, are not required or permitted to attain the trusted status of the "true" professions. Medicine and the natural sciences generally occupy an important but peripheral position. Their ideological effects are as much to do with mystification as explanation. The relationship of natural science to the social world is a complicated one though Kuhn (1970) makes the point that even here the status of the professional is very much a negotiated one (see also Gilbert and Mulkay, 1984). Thus, the terms profession and professions are used throughout this study to refer to occupation groups referred to elsewhere as professions, semi-professions, aspiring professions and such (Friedson, 1983). In using the term

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generically to refer to status occupations, the assumption is made that profession is not a particularly significant concept and the suggestion that particular occupation groups might "develop" into "true" high status and pivotal professions such as the law, the church or the army, is based upon a misconception.

It was noted above that contemporary statutory social work is distinct from "what went before." The distinction, it is proposed, is in the professional attitude, the aims of practice, rather than the client group. Much developing social work practice after 1950 was based upon the psychoanalytic model popularised in the United States of America. Client's predicaments were seen to be mainly as a result of inadequate psycho-social development. Practice was primarily aimed at giving clients "insight" into the roots of their own behaviour (Hollis, 1964, Irvine, 1966). While such practice can be seen to be controlling of clients, it does assume a client centred attitude quite distinct from that associated with Poor Law practice. In reviewing the recommendations of the Curtis Report (1946) Packman comments;

"The children 'in care' were in future to be treated as individuals and not as an undifferentiated category of youngsters; and they were to have access to the same range of facilities as any other children. In other words, their

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situation was at last to cease to be 'less eligible', in nineteenth century terminology." (Packman, 1975.p.14).

More recent social work theory and practice has tended to disregard the psychodynamic, in favour of a more practical and immediate approach, but a client centred attitude of assistance remains central to social workers' initial motivation (Reid and Epstein,1972. Wood, 1981). However, if social work in the welfare state can be described as distinct from "what went before" recent developments in the required practice of the profession might question any lingering hopes concerning progress as a positive concept beneficial to a client group.

The enduring problems of any class based industrialised state are the dispossessed and the destitute. They may be regarded as a reserve army, they might serve "*pour encourager les autres*", but the monolithic Poor Law of the nineteenth century and the welfare state apparent for some time during the second half of the twentieth century, are monuments to the state's concern. Obviously legitimacy could not be retained for long without some alleviative policy towards the victims of capitalism, an enterprise designed in part to extract a surplus from labour. In reviewing the operation of the "New" Poor Law, and what has occurred since the partial formation of a welfare state in the late 1940s, the conclusion that asserts itself increasingly is that it was the attempt to inaugurate a welfare state that was an aberration, not its recent undermining in response to general

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economic decline. The service state rather than the welfare state would appear to be the norm. (Titmuss, 1974 p.26 referred to the Law and Order state. Cawson, 1982 p.106 referred to "the dual welfare state.")

A detailed consideration of the development of adoption legislation and the development of the processes of legal adoption since 1926 up to the 1980s illustrates the gradual subsumption of a practice, and so a profession, under a process of ideological domination. It is here that the issue of co-optation is apparent. Considerable collective activity was apparent on the part of social workers in the late 1960s at the time of, and subsequent to the publication of the Seebohm Report (1968). The formation of the Seebohm Implementation Action Group was the most notable expression of collective action by social workers, but also in being at that time and also with a brief albeit more general, for the promotion of social work was the Standing Conference of Organisations of Social Work (P.Hall.1976). Both these bodies comprised representatives of all the main groups of social workers. It is clear that the agitation for implementation of Seebohm and the creation of a unified social work department within each local authority, rather than the existing Children's, Welfare and Mental Health departments, was a desire for the increased status and power which the new and larger department would bring. Indeed the new Social Services Departments were second only to the Education Departments in terms of size within the local authorities and

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expansion during the early years of the departments up to the mid 1970s seemed to justify the aims of re-organisation in terms of an increased power base for statutory social work. Since then, a series of inquiries into social work practice with children "in care" who have died, has quite shaken the once burgeoning confidence of the profession. Between the reports of "The Inquiry into the Care and Supervision Provided in Relation to Maria Colwell" (Colwell Report, 1974) published in 1974, and "A Child in Trust" published in 1985, there have been over twenty such reports all more or less critical of aspects of social work practice. (Child Abuse, 1982 reviews eighteen such reports published between 1973 and 1981.) The desire for a high profile for the profession amongst social workers has now disappeared. (Parton, 1985. Dingwall, et.al., 1983, pp. 280-281.) Significance at the local and national level, and career grades for workers within departments, have not enabled social workers to maintain let alone develop the autonomy of their own profession. Priorities are set elsewhere and the directed priority for the qualified worker is usually the supervision of poor families with children (e.g. see the discussion in Dingwall, et.al., 1983, p. 211)

The above trends within social work can be detected within the enabling legislation without which no local authority Social Services Department can function. For reasons associated with the finite time span and the significance of such decisions noted above, an analysis of adoption legislation and practice

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provides a clear example of these trends. The increasing significance of adoption to the practice of social work can be gauged from the fact that the most recent central government committee report on the practice as a whole resulted in the all embracing Children Act 1975. This Act specified major reforms of practice, and amended all of the other significant pieces of child care legislation operative at that time. Almost as an afterthought, the relevant sections of the act were extracted and collected to comprise the Adoption Act 1976, not yet implemented. In the meantime the operative law remains the Adoption Act 1958, though its authors may now have a difficult task in recognising the legislation as theirs.

To conclude this introduction, some relevant publications will be noted with the aim of situating this study within the literature seeking to describe and/or analyse aspects of the social world. The particular contribution of this study to the social science corpus lies in its development of social theory which avoids functionalism or subjectivity as theoretical pillars. The issue is touched upon here and expanded in the following chapter. To achieve the aim of analysing the development of adoption legislation and linking this with judicial interpretation, the impact of "child abuse inquiries", the recent development of statutory social work and its association with the dominant state ideology, aspects of several disciplines must be considered. These fall under the

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general headings of social work, social policy, law and sociology. Before considering some publications analysing statutory social work, a description of the development of social work practice itself is necessary, together with descriptions of some contemporary influences upon it. There will then be a brief statement concerning sociological analysis and methodology which, as noted above, is described in more detail in the following chapter.

Literature on legal adoption takes the form of discussions of practice and proposals for reform for the most part, rather than theoretical investigation. These are either social work publications (e.g. Triseliotis, 1980, Tizard, 1977, Seglow *et al*, 1972) or law publications (e.g. Cretney, 1985, Bromley & Lowe, 1987, Hoggett, 1981). Here adoption practice will be subsumed within a more general consideration of social work practice. Since the successful challenge to the hegemony of psychodynamic casework in the late 1960s and early 1970s, there have been several competing paradigms of social work practice. This study is not proposing any particular model as likely to be more effective than any other, but in as much as the implications of this study have a direct bearing upon practice, the debate within the profession as to social work methods must be considered. The immediate challenge to casework was made in terms of demystifying practice and entering into a partnership with clients. Task centred casework was popularly defined by Reid and Epstein (1972) in terms of specific and agreed

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contracts regularly reviewed, and with either party, worker or client having the power to terminate at any point. Immediate problems for statutory social work related to say, the agency's obligations in certain circumstances to enforce compliance with a court order, or the situation where a client may have lacked the capacity to enter into a contract. Nevertheless, the principle of a contract was seen to be congruent with the developing professional ethos and it has remained a consideration in many alternative methods of work such as crisis intervention (Clarke, 1971, O'Hagan, 1986) and family therapy, particularly in the popular "structural family therapy" version advocated by Minuchin (1974).

Such developments in social work theorising were the result of attempts to modify practice in the light of radical criticism. But these reforms left intact the traditional social work focus on the client as the person who was in some way problematic. Roberts and Nee (1970) demonstrated well this continuing focus on the individual, in their popular review of practice in the late 1960s. The main impact of the so called "unitary approach" of the mid 1970s was to offer an alternative social work perspective on clients. The two american publications Pincus and Minahan (1973) and Goldstein (1973) were the first to spell out the details of a unitary approach to social work practice. They emphasised the point that in addressing a problem specified by a client, a social worker was as likely to seek to change some aspect relating to another individual or



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organisation as he or she was likely to be attempting to alter the behaviour or self perception of the client. Furthermore, the worker needed to consider whether some other person in some other organisation might not be better positioned to accomplish the proposed change. Thus the social worker was regarded as an agent of change within powerful organisations and with access to other such organisations. Much of this description of "unitary" practice was set out in terms of systems theory, no doubt the American authors seeing this concept as appropriate when proposing organisational change.

At the same time a more overtly radical social work was being proposed in this country alongside the unitary approach, and the links between the two schools were not effectively made. Instead systems theory evoked the criticisms which Talcott Parsons had more justifiably provoked for his systems assertions of a consensus society (Brake, 1982). The various schools of conflict theory within social work practice can of course be seen to have a strong case given that statutory social work can be defined as part of the "poverty industry" (see for instance Bailey and Lee, 1982, Corrigan and Leonard, 1978, Bailey and Brake, 1975). Structural poverty is at the same time and by definition endemic and loathsome. However, as Jones (1983) indicates, even if the case for a radicalised social work practice is well put, the contemporary political barriers to really significant developments in terms of somehow empowering the poor are formidable.

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Alongside the professional issues noted above, there are significant state pressures working on statutory social work. The Barclay Report (1982) spelt out the requirement that social work agencies would in future be required to deal with demands upon them without having recourse to increased resources from the public purse. While there may well be an increasing contribution from the private sector, and the current dramatic increase in the provision of accommodation for old people from this sector is a case in point (CCETSW,1986), the social work task is to be in the direction of encouraging and supporting "community networks" to deal with problems, thus reducing the need for expensive residential accommodation. No doubt many applicants to the social services departments for residential accommodation of one sort or another would prefer to remain in their own homes. This emphasis on community social work, has encouraged innovative practice in the shape of respite care and boarding out schemes of several kinds (e.g. see BASW, 1985). Yet the scarcity of resources to implement the method of work are such as to ensure that community care is will not be seen as a positive development of service but rather another method of cutting public expenditure.

Another significant influence on contemporary social work is the continual negative criticism concerning its function in relation to "children at risk" (e.g. A Child in Trust, 1985, A Child in Mind, 1987) ). The vindictive nature of media criticisms associated with issues of workers' "failure" to remove children

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from their families and workers' "failure" to enable children to remain with their families, might indicate that it is the profession as much as these specific actions that arouse such criticisms. Certainly other professions are not immune from similar occurrences in practice, but none attract similar criticism. Indeed deaths caused by negligence in the National Health Service have recently been responded to by a supplementary vote of funds rather than a public inquiry.

"Child abuse" inquiries play a notable role in determining social work practice to an extent. Such inquiries might be considered along side the critique of "great person" theories of history. Hill and Bramley (1986) consider the concept in relation to accounts of social policy formation. They consider whether the responses to poverty apparent in the actions of the Liberal administrations at the beginning of the century and the first Labour government were better explained by the activities of Charles Booth, Seebohm Rowntree, William Beveridge, Beatrice Webb, and Eleanor Rathbone, or for instance, the extension of the franchise to the working class. They go on to contrast such "great person" approaches with marxist approaches which allow no significant role at all for "leaders" and conclude that the former explanations relied far too heavily for their own credibility upon assumptions of societal consensus and state altruism. Hill and Bramley are considering the origins of the "welfare state" and pose two alternative marxist explanations of reforms as "...concessions wrung from the capitalists..." or

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"...successful use of the state by capitalists to preserve capitalism" (p. 30). Though either case would be simplistic if proposed as a complete explanation, there is no doubt that working class organisations at the turn of the century vigorously campaigned for the establishment of state income maintenance and welfare schemes. As to the state's variable response to proposed reforms, it is the case that while structural functionalist explanations of state sponsored social welfare as simply to head off revolution may be simplistic, a catalogue of long ignored pressures for the abolition of morally indefensible policies, policies associated with say, imperialism, the slave trade, a limited franchise and the subservience of women, do demonstrate that simply to highlight a social ill without being able to apply real pressure for change such as that which became available to the working class with enfranchisement, is unlikely to result in state recognition of the problem. It can be seen that social policy considerations based upon "great person" theory adds little to understanding. This being so immediately throws up a problem concerning the development of children legislation and the recent modification of adoption practice. For the equivalent of great person activity in this field of social welfare is reports of child abuse inquiries. Beveridge (1942) could well be seen to be Blom-Cooper (A Child in Trust, 1985, A Child in Mind, 1987 see also chapter 7 below) writ large.

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*Legal System and Lawyers' Reasoning* (Stone, 1968) incapsulates in a phrase what must be a further area of study relating centrally to this thesis. Chapter 7 (below) *inter alia* reviews the activities of the Courts of Appeal in relation to aspects of adoption and children legislation. Here it is proposed that the activities of these courts is no less open to the effects of unspecified pressures than are the executive and legislative branches of the state. There is a rhetoric of legal precedent and rules to be observed if change is to be made, but as demonstrated below (e.g. p.221) custom and practice of the law is not fettered by such means. In discussing the operation of legal precedent Julius Stone (1964) quotes Judge Konstam who noted that "We have in England a deep distrust of logical reasoning...Fortunately our judge-made law has seldom deviated into that path..." (p.230). Stone goes on to note the views of the academic lawyer Eugene Erlich:

"Eugene Erlich expressed the view in 1913 that the English system of precedent is a supreme example of the "free-finding of law" by judges. Professor Erlich concluded that English judges had to a remarkable degree used this power to endow with the force of "legal propositions" the actual rules of behaviour which from time to time sprang from the inner orderings of English social groupings" (p.230).

Stone accepts that Erlich has a point but sees the achievement of the common law as laudable in spite of rules of precedent. If

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such rules were rigidly obeyed, the law would not be able to adjust to social change over time, except by modified statute. However, it is proposed that such developments over time are of a different order to the situation described below in relation to the operation of the Children Act 1948 (see p.p. 194-209 below). Lloyd (1972), in considering the application of stated rules by the judiciary when seeking to discover the meaning of a statute comments that "...although the books are full of instances where such rules have been ostensibly applied, they are very apt to dissolve away like chaff before the wind whenever the court feels at all strongly that another interpretation is to be preferred" (pp. 736-737). When seeking to understand the workings of the state as a significant entity within the social world, concepts such as altruism and moral rectitude have little role to play.

Much social analysis veers either towards the structural or the interactive. The former, it is argued, is over deterministic leaving little scope for freedom of action and assigning precious little understanding of his or her social situation to the individual. Much marxist analysis can be seen to be based upon economic determinism with the individual being granted little recognition for social understanding outside the realms of what is termed "false consciousness". Burton and Carlin (1979) accept Giddens' maxim that one cannot remain true to the spirit of Marx by staying true to the letter of Marx, but while eschewing economic determinism their analysis of official

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discourse in the form of official reports, retains the structural functionalist perspective. On the other hand, interactionist perspectives concentrate upon inter-subjective encounters to the near exclusion of the material world. The work of Harold Garfinkel (1967) has inspired revealing studies in the area of ethnomethodology but on its own it is proposed that the theory is limited. To define sociology as ethnomethodology is as limiting as to define social work as psycho-dynamic case work (see p.246-248 below). In a situation where the single most oppressive determinant experienced by social work clients is material deprivation, social work concentration upon individuals' early psycho-social development can be seen to be missing the point, or at best not addressing the main problem. Something of this problem can be detected in two recent attempts to analyse aspects of social work in the area of "child abuse". They are the publications by Parton (1985) and Dingwall, Eekelaar and Murray (1983).

In *The Politics of Child Abuse* Parton (1985) sets out to describe and account for the "moral panic" currently associated with the incidence of children under the supervision of social workers being killed by their care-takers, most often their parents. He recounts the history of the phenomenon indentifying moral entrepreneurs in the shape of medical personnel anxious to stabilise and enhance their professional position by demonstrating their essential expertise in identifying incidents of abuse. Later and in conjunction with welfare agencies they

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extended their argument to include an ability to identify potentially abusing situations. Politicians for their own reasons encouraged the development of the "panic" which was eventually taken up by news media. Parton's main point is that there has been a conscious concentration upon the individual homicidal parent to the total exclusion of any consideration of the social situation of that parent. Thus the model used to explain the event is the medical model and the parent is portrayed as sick. This situation has been encouraged all along by, amongst others, one of the original moral entrepreneurs, Dr Henry Kempe (see Kempe and Helfer 1968, 1974, 1981), who continued to claim that "child abuse" was not related to any particular social class. Counter evidence is quoted identifying "child abuse" as clearly class related and also wide spread. The problem becomes one for social work in that the families supervised by social work a) are among the most stressed families in the society, and b) are the most observed and therefore the most likely to be identified as abusers. The "moral panic" produces winners and losers. The uses to professional groups has been noted. Agencies can also benefit from being seen as being able to provide an answer to what might otherwise be an intractable societal problem. Parton notes that the National Society for the Prevention of Cruelty to Children quickly became an agent of Kempe's Denver, U.S. based initiative, and went on to found a Battered Child Research Unit in England and name it Denver House (Parton, 1985,p.61). As can be noted from the above outline, Parton's argument is based upon



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theoretical constructs from the sociology of deviance with the aim of showing how such theories might influence social work practice. "...structural inequality has direct implications for the everyday experience, stress and hardship faced by many children and families" (p.173). Rather than seeking to understand social work Parton takes this as given and goes on to explain what social work's attitude should be to its major current preoccupation. As such he no doubt makes a convincing case but the implications for practice, based upon a structural functionalist model are most general and little more than an over-arching attitude within which practice occurs.

Dingwall *et al* considers much the same subject, social work and "child abuse", at much the same time, the early 1980s, in much the same place, England. The methods and conclusions are somewhat at variance with Parton's. In seeking to examine *State Intervention and Family Life*, the sub-title of *The Protection of Children* the authors "...chose to collect (their) data... primarily by direct observation, supplemented by the questioning of informants and by the scrutiny of documents produced by various agencies" (p.21). The work was done in social work agencies and the book contains many long quotes from observed social work interviews and discussions with agency staff. The question being addressed is how is "child abuse" socially and professionally constructed and processed. While this question is similar to that posed by Parton, where Parton uses Hall *et al* (1978) and its marxist model to a considerable extent to

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understand "moral panics", Dingwall *et al* prefers Garfinkel (1967) and ethnomethodological constructs to understand "the child as a social object". The point is that the process of defining an incident of "child abuse" is far more complicated than it would appear in common sense. Though in recent years the medical profession has become more "alerted" to the possibilities of abuse, the experience of the researchers was that it was only with reluctance that such diagnoses were arrived at. Social workers also did not seek to identify such occasions while other explanations associated with say sub-cultural child rearing practices could be seen to be sufficient explanation. Typically it required discussion and agreement between two or more agencies before the label "child abuse" was attached to a situation. Thus Dingwall *et al* investigates how all the persons concerned make sense of such situations.

Like Parton, Dingwall *et al* concludes the study with recommendations for a reformed practice. But whereas Parton's conclusions for practice are in a rather generalised form, Dingwall *et al* reads as if it is an official report addressing the minutiae of practice. The main concern is to assert that "...states must...reconcile two conflicting objectives: respect for family autonomy and effective surveillance of child rearing." In this context the Health Visitor is seen as a central figure because she has a general duty to visit all young babies and on a voluntary basis. Thus her presence cannot be seen as selective surveillance. In the light of Parton's general criticisms it is

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noteworthy that Dingwall *et al* quotes Henry Kempe as also specifying such a system and for the same egalitarian reasons. Generally Dingwall *et al* sees the medical profession and hospital services as less effective than social services departments in dealing with "child abuse". The main problem for social work is too much supervision and too great a concentration on this client group at the expense of other services. A similar conclusion following similar direct observation of practice is reached by a more recent study (Corby, 1987).

Elsewhere in this thesis (chapter 7) the recent and highly critical inquiry report *A Child in Trust* (1985) is considered. Within the context of this discussion of the partial nature of theories and models, it is of interest to note that the bibliography to the report omits any reference to Dingwall *et al* (1983). Certainly it is one of the most generally respected publications in the field of late and it assumed an individualist stance to the subject similar to that taken by the inquiry report itself. Yet Parton (1985), with its alternative theoretical stance and conclusions is included. It is unlikely that the authors of *A Child in Trust* were unaware of Dingwall *et al*. Yet it is surely even more unlikely that the publication was omitted because of its alternative assessment of the effectiveness of social work in the area of work with abused children? What ever might be the explanation of this apparent aberration, it must be noted that the findings of

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Dingwall *et al* are based upon far more thorough research than that which the inquiry was able to undertake. The concern for social work must be that if the above argument related to "great person" history is accurate, reports advocating change made by significant persons require complementary pressure from more powerful sources if they are to be implemented. The corollary of this must be that for such reports to be used as triggers for government action they do not have to be well argued. They simply have to make a clearly understood, popular and well publicised proposition.

The point of this brief discussion of publications by Parton and Dingwall *et al* has been to contrast styles and findings of social science research, rather than provide any comprehensive account of the publications as a whole. Both make a significant contribution to the social science analysis and understanding of statutory social work and this thesis has benefited from the discussions in those publications. The employment of structuration theory here responds to the criticism that social research concentrates upon either the inter-subjective or the structural rather than seeing both as contributors to the construction of the social world. The next chapter discusses the methodology of this thesis and describes its use of structuration theory.

## Chapter 2.

### Methodology

Over the past forty years or so, statutory social work has become established in Britain. Prior to the setting up of the welfare state in the late 1940s, statutory activities relating to what are now designated the personal social services, were undertaken by the state alongside its involvement with income maintenance, health care and such. While the removal of responsibility for income maintenance meant that the the new personal social services would be very much the "junior partner" in the welfare state enterprise, it also meant that these services were able to develop an ethos of service and partnership with their clients, free of the overwhelming demand by clients or claimants for basic subsistence. While the state always has the opportunity to inject an element of social control into the process of supplying a scarce resource, the social control element within the provision of a subsistence income in lieu of a wage is likely to dominate the relationship of claimant to the state as provider (Jordan, 1974). This separation of the provision of cash from the provision of other services was the chief factor in allowing the personal social services to begin to develop an ethic of service within a context of co-operation, albeit never entirely free of control and surveillance elements. The abolition of the workhouse and

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the Poor Law meant that children and old people in need of accommodation would be the responsibility of different local authority departments and would be accommodated in quite separate establishments. Thus an official attitude of providing minimally for the destitute poor was exchanged for one of providing specialised services to assist in overcoming social crises.

The basic proposition of this study is that while the above description of the personal social services as they applied to families and children, accurately described the intention at their founding in the late 1940s, the period since then has witnessed a steady retreat from that position. No doubt this has also been the case in relation to other such services not considered here. It should however be noted in passing that the case of the needy elderly, another sector of society of central concern to local authority social services departments, is not strictly comparable with that of poor families and children. Destitution of the elderly and so requirements for accommodation do not automatically also bring a "requirement" for elements of "re-socialisation" as is the case with destitute families and children. Considerations here relate to the practice of the former Children's Departments and latterly the local authority Social Services Departments in as much as they are concerned with families and children.

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A problem for this study is one of demonstrating that an official change of attitude towards statutory social work resulted in a modified social work practice. Official in this context relates to the state or segments of the state, both central and local. The attitude of the state is as demonstrated in legislation, government reports and court reports. Because legislation is the primary source, the situation described will be that applying to England and Wales in as much as it is distinct from the situation elsewhere in the United Kingdom.

In short what occurred was that statutory social work was created to deal with the marginal poor and marginal problems which tended to fall outside the concern of the central organs of the welfare state. Given this marginality, the social work profession was left free to develop an esoteric practice calculated to achieve high status for its practitioners. The growing economic stringency of the 1970s necessitated, amongst other things, cuts in public expenditure as an aid to maintaining profitability in the private sector of the economy. Such cuts, and an official attitude increasingly hostile towards welfare and the redistribution of resources, brought statutory social work into the main stream of state activity. As such it was required to adopt to a greater extent than previously, the dominant state ideology. The ideology fitted only approximately with accepted social work practice and so practice was required to reform. The process of adjustment continues.

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This analysis is based upon the application of structuration theory to the situation of social work practice. Giddens (1976, 1977, 1984.) has developed the theory of structuration at length as a distinct alternative to functionalism in all its forms. Not the least remarkable feature of Giddens' work is that what is being proposed is a grand sociological theory applicable to analysis of the social world, rather than a segment of it such as deviance or the law. Thus, though this study aims at a sociological analysis of law it is not a typical study within the ambit sociology of law. Rather, implications will be identified relating to professions, power and ideological domination, concepts which embrace law but also address wider aspects of the social world.

While a basic tenet of structuration is that the social world is produced and continuously reproduced by knowing actors, this must be considered alongside the associated and limiting proposition that ideological domination is a highly significant determinant of "what every one knows". The power of the dominant ideology resides in its covert influence.

"...the study of ideology may be conceived as the study of ways in which meaning (signification) serves to sustain relationships of domination. Just as it cannot be assumed that dominant values or norms are shared by all members of a society, so too it would be misguided to approach a society on the assumption that its unity and stability



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were secured by a dominant 'ideology'. For ideology operates not so much as a coherent system of statements imposed on a population from above, but rather through a complex series of mechanisms whereby meaning is mobilised, in the discursive practices of everyday life, for the maintenance of relations of domination." (Thompson, 1984. pp.63-4).

As social work has become more central to the organisation and operation of the state, so it has become increasingly influenced by the dominant ideology in relation to the "welfare" of its clients. This has required a modified structure for practice, modified rules and aims. For instance, the concept "the welfare of the child" has been said to be central to legal and social work decisions since the nineteenth century, but practice in the name of the principle has varied considerably over time. This is not to imply that social workers and lawyers are particularly devious. The operation of ideology is covert and requires a level of sociological analysis to reveal it.

It is usual to propose levels of awareness of the social world or consciousness. Sumner (1979) quotes Marx; "all science would be superfluous if the outward appearance and the essence of things directly coincided", and comments, "If spontaneous consciousness could grasp everything on sight, scientific philosophy would be non-existent" (pp. 16-17). Sumner goes on to identify "spontaneous consciousness" and "philosophical

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consciousness" equating the former more with manual labour and the latter more with mental labour. In his conclusion Sumner equates such dual consciousness with dual observation modes. Thus for Sumner perception is coloured to the extent that subjects do not recognise "the grid or spectacles of particular ideologies, material forms with specific modes of appearance shaped by their presence within a social structure" (p.224).

Though Sumner sets out the problematic nature of the social world, he fails to specify a method whereby the phenomenon might be described and investigated. A final quote from his study catches both his recognition of the problem and his difficulty in proposing a solution.

"The products of philosophical work are thus incredibly complex, reflecting 'professional' ideologies, the practical contexts of philosophical reflection, and the nature of observations analysed, the ideologies embodied in the analysed observations, and, above all, the social structure of the practice of philosophical reflection" (Sumner,1979. p.228).

The problem is a general one for any social scientific enquiry, the problem of the vicious circle, or the hermeneutic. It is also the feature which makes social scientific inquiry distinct from natural scientific inquiry and has led to endless speculation concerning the possible discovery of laws governing the social

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world similar to those which can be specified governing the natural world. Giddens (1976, 1977, 1984) proposes that the task for the social scientist is best described as confronting the "double hermeneutic". The hermeneutic arises because the observer of the social world cannot achieved a privileged position from which to observe; there is no escaping the social world. Thus speculation is placed within the context of that being speculated upon. This does not of course, inhibit actors from endlessly speculating on their circumstances. The social scientist, contemplating this situation is thus seeking to theorise and analyse a situation already subjected to analysis, albeit "common sense". Hence the double hermeneutic.

In seeking to theorise the social world of contemporary statutory social work, the problem posed by the double hermeneutic is well illustrated. Social work as an aspect of the social world has been well analysed by the two professional groups most concerned, lawyers and social workers. The feature most apparent when subjecting this "world" to social scientific scrutiny is the covert power of the dominating ideology operating "...through a complex series of mechanisms whereby meaning is mobilised, in the discursive practices of everyday life, for the maintenance of relations of domination" (see :above,pp. 18-19) The discursive practices of everyday life in social work entail operating the legislation in relation to the "problems" presented, and in the light of, amongst other factors, how courts have interpreted the legislative powers and duties.

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Chapters 5, 6, and 7 comprise a detailed account of such proposals for legislation, legislation, interpretation and practice, with the aim of illustrating ideologically influenced meaning which is believed to be "common sense", or at least informed "common sense". As an example, a Law Lord, considering an appeal to "the highest court in the land" based his decision on the assertion that "It would surely be shocking if the law does compel an authority to hand over a child in its care to a parent who is, for example, a violent alcoholic, likely to neglect, injure and do the child irreparable harm" (Salmon L.J. in *Lewisham L.B.C. v Lewisham Juv.Ct.* (1979) 2 WLR 524. see also Chapter 7 below). There may be a question as to the degree of rhetoric in the remark, but the reasoning nevertheless was central in the final decision, effectively changing the law and practice. The question arises, can an appeal to the court at the apex of the legal structure be justified on the basis of such a situation as described by Lord Salmon? Given the attention which social work and child abuse had received over the years, and particularly since the early 1970s, it is difficult to believe that the law and social work practice were as described by Lord Salmon above, and so required a large group of local authorities to combine to bring a test case to the House of Lords with the aim of having the court modify the law. That the aim of the appeal was to modify local authority powers is not disputed. That the reasons why this reform was perceived as necessary were those cited by Lord Salmon above is disputed. Lord Salmon's statement is best understood as influenced by the

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dominant ideology and disguised as common sense. The issue is dealt with in some detail in Chapter 7.

Giddens' analysis of the social world in terms of his theory of "structuration" illuminates the theory and practice of statutory social work and offers convincing explanations of its contemporary quandries and double binds.

"The characteristic error of the philosophy of action is to treat the problem of 'production' only, thus not developing any concept of structural analysis at all: the limitations of structuralism and functionalism, on the other hand, is to regard 'reproduction' as a mechanical outcome, rather than an active constituting process, accomplished by, and consisting in, the doings of active subjects" (Giddens, 1976.p.121).

Structuration comprises the duality of structure, the rules and resources of the social world, continuously reproduced spatially and temporally by the social activity of actors. "The basic domain of the study of the social sciences, according to the theory of structuration, is neither the experience of the individual actor nor the existence of any form of societal totality, but social practice ordered across space and time" (Giddens,1984. p.2). Thus, the often proposed determining power of institutions of the social world can be seen to be a misconception. Substructure and superstructure are only

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determining in as much as actors agree or enforce the determination. On the other hand, interaction seen as simply rule governed as between the actors concerned is liable to ignore absent actors' abilities to influence behaviour through their access to, and manipulation of a degree of power. The significance of this, for statutory social work in this instance, is considerable. On the one hand, the institutions of local and central government, together with the judiciary, are experienced as powerful institutions by both social workers and their clients, while the process of the social work interview can seem to be simply a "one to one" encounter, at least as far as the social worker is concerned. Structuration theory indicates that both cases are misapprehensions. A more accurate summary would be along the lines that the social worker brings to social work encounters the structural rules and resources of the profession. Clients bring their perceptions and understanding to the interaction and in the ensuing interaction the social world is continuously reproduced. This reproduction takes into account the factor of ideological domination though usually at a practical rather than a discursive level (see below). This is simply an inevitable outcome of statutory social work's being moved to occupy a more central position within the activities of the state.

The three dimensions of structuration can be seen to be signification or meaning, legitimation and ideological domination. The operation of such concepts as constituents of

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the social world are covert, to be revealed by empirical investigation and analysis. However, this returns the argument to the problem of achieving a privileged position, a vantage point from which to view the social world. Extending the concept of the double hermeneutic, Giddens (1984) describes three modes or levels of consciousness/unconsciousness, discursive consciousness, practical consciousness and unconsciousness. The unconscious Giddens deals with at length, developing Habermas's ideas of Freudian explorations. Giddens does go to some length to distance his position from a strictly Freudian one, but nevertheless he uses the concept of the unconscious as a heuristic device central to his scheme. However, for the purposes of this study the discursive and practical modes of consciousness only are relevant for the most part. Discursive consciousness allows actors to explain their actions and beliefs. Structuration theory refers to knowledgeable actors reproducing the social world through their routine mundane interactions. But the structure of intersubjective occasions, social interactions of any type, is as a result of actor's practical consciousness. It is unlikely that actors will be able to give a coherent account of practical consciousness, which is more a product of socialisation than consideration. Practical consciousness has its origins in ethnocentrism, but it is here that the researcher will locate, amongst other influences, the influence of ideology, subverting what Habermas refers to as "ideal speech situations" (Thompson,1982.p.128. McCarthy,1984. Chapter 4. esp.p.307.)

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A major problem for this study of the development of statutory social work and its relationship to the dominant ideology, is to avoid slipping into a trite functionalism. A crude functionalist explanation might be along the lines that the poor are a drain to capitalist profit and a threat to order. By developing a policy of transferring their children to conforming families two major goals will be achieved. Firstly there will be fewer in the poverty classes and secondly the reserve army will be disciplined at the same time as they are held up as a warning to any who would seek to join them. Put in such bald terms only the most ardent supporter of a conspiracy theory would support such propositions. Yet at more subtle levels, social work has been consistently criticised on such functional grounds. Morris and McIsaacs (1978) concentrate on the "failure" of the juvenile justice system, dominated by social welfare ideals as it is, to prevent crime or reform offenders. Indeed, they adopt arguments from labelling theory to support their contention that such intervention only contributes further to the problem. An alternative and rather hysterical critique by Brewer and Lait (1980) attacks social work as being ineffective at any level. Jones (1983) adopts a more interactionist and optimistic stance in applying marxist social theory to the situation of contemporary statutory social work. His optimism springs from an assumption that in raising the consciousness of workers they might thereby effect considerable social change for their clients. On the contrary, one might argue that the growing significance of say the permanence principle to statutory social



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work (see pp. 122-124 below) indicates a distancing of social worker and client.

Such critiques fail to provide an explanation of the totality of contemporary statutory social work. Rather, they suggest discrete areas of concern associated with personal liberty or universal surveillance while ignoring both alternative explanations and social work's own concern with such "problems". Donzelot puts it thus;

"We must cease asking, What is social work? Is it a blow to the brutality of centralised judicial sanctions, putting a stop to the latter through local interventions and the mildness of educative techniques, or is it rather the unchecked expansion of the apparatus of the state, which, under the guise of prevention, is extending its grip on citizens to include their private lives, marking minors who have not committed the least offense with the stigmatizing brand? Instead we should question social work regarding what it actually does, study the systems of its transformations in relation to the designations of its effective targets" (Donzelot, 1980, pp.98-99).

Structuration theory as here applied certainly addresses the question what is social work? without the pre-conceptions apparent within most functionalist explanations. Consider

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Giddens' diagrammatic form of the two alternative accounts of social process as explanation.

1) social activity→purposive action→unintended consequence

2) social activity→functional need→functional consequence

(Giddens, 1984.p294.)

The functionalist model 2) above would seek to explain the recent extension of social work powers to compulsorily transfer children from families perceived as deviant as follows. The functional need for say increased powers within adoption legislation to dispense with parental consents to adopt, would be to further assist in the rescue of children. The functional consequence of thus identifying a pariah group unfit to care for their children would not only be "to encourage the others" but also to discipline the pariahs themselves. Model 1) produces a far more subtle and convincing account. Adoption is commonsensically "a good thing" in certain circumstances. The situation of those orphaned through the carnage of the First World War might be proposed as a case in point (see chapter 5, below). The purposive action is "obviously" in terms of the "best interests of the child". The arrow representing the leap from "purposive action" to "unintended consequence" is vastly over simplified in that if the phenomenon is considered in temporal terms as here, the unintended consequence may be somewhat distanced. However, it does not do violence to the

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concept to suggest that in terms of legal adoption, it is as an unintended consequence rather than by functional design that statutory social work has undergone something of a change of image. In instigating this particular "purposive action" under the conditions of the particular hue of contemporary ideological domination, social work has come to be seen as centrally an agency of surveillance and supervision, rather than one of assistance and supervision.

To adapt the model to the purposes of this study, the concept "purposive action" would have to be more fully defined. As noted above, the dimensions of structuration can be seen to be signification, legitimation and domination. Signification or meaning is at the level of discursive consciousness, that is, at the level of actors' abilities to explain themselves. Thus, this is the level of consciousness which accepts the present situation as legitimate more or less. Legitimacy is the achievement of ideology. As such Habermas (1976, Chapter 7) attributes contemporary stresses in modern society to challenges to bourgeois ideology apparent in art, science, morality and maybe most significant, in the operation of capitalist markets themselves. Public perceptions of the problems posed by the operation of capitalist markets can be seen to be an increasing stress on those seeking to maintain the legitimacy of the state. Challenges of a different order can be seen to arise from modern concepts of race, sex and gender and their previously little questioned ability to determine

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social position. Thus, when discussing the concepts legitimacy and ideological domination, there is no assumption that these terms signify the absence of opposition and conflict. They are features of society in as much as societies, nation states or what ever, are seen to describe large social groups. The diagrammatic representation "purposive action" then, will note that purposive action is still at the level of discursive consciousness and so prey to the distorting effects of a dominating ideology. With this proviso, it can be seen that diagrammatic representation 1) offers explanation and suggestions for further inquiry, while 2) offers a crude, closed and simplistic statement.

To conclude this discussion of methodology which will inform this study, a note should be added concerning the purpose of the extended consideration of official discourse, particularly comprising chapters 5, 6, and 7. The point is that within the context of this discussion, these official pronouncements are at the level of discursive consciousness. To an extent this can be seen to account for the cumulative nature of legislation. The "social activity" is always managing the governance of the state and the "purposive action" in this case is associated with what are perceived to be "problem families". Thus, in as much as the problems are seen to be urgent of solution, and it will be noted that this is variable, the three groups, legislators and parliamentary draftsmen, "the good and the great", and from a slightly different standpoint the professionals concerned, bend

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their minds to the problem. Solutions are sought in the light of what is perceived as the success or otherwise of what went before, and in the light of any recent "moral panic" demanding that something must be done. A detailed consideration of such a discourse would therefore be expected to reveal a trend rather than a series of unconnected leaps, though the occasional leap responding to urgent considerations might also be expected. It will be seen that both situations are present within the discourses considered here. The more problematic aim is to bring out the hidden influence of the dominant ideology, inevitably present within official discourse.

## Method.

Before proceeding to set the study within an historical context, methods used in compiling the information which makes up this thesis will be outlined.

While most studies will have roots in the personal interests of the researcher, in this case an initial recognition of the conflicts and propositions addressed here occurred while practicing social work. The originating interest was therefore to a certain extent an informed one though this is not to suggest that the analysis arrived at is in any way typical of a professional social work analysis as distinct from a social scientific one. Current involvement in the education and training of social workers has continued to provide useful access to the developments and concerns of social work.

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Much of the research time has been spent in libraries and the bibliographies indicate the range of publications consulted. A considerable amount of the empirical information comprising the work on the nineteenth century and the first part of the twentieth century (see particularly chapters 3, 4 and 5 below) came from publications of collected statutes and Parliamentary Papers. The collection of nineteenth century Parliamentary Papers at the British Library of Political and Economic Science was distinctive. The dry and dusty bindings well match the rather dry prose of many of the reports within these discoloured and crusty volumes. They are themselves a study in class attitudes, well illustrated by the horrified surprise and concern of the authors reporting evidence on the state of the poverty stricken street dwellers of London or the exploited factory workers of the north of England among others. An odd association of the condition and content of these volumes poignantly evokes the lost world of starched aprons in the workhouse and dead babies in the streets. (See for instance British Parliamentary Papers. (1871) Vol VII. *Report of the Select Committee on the Protection of Infant Life*). The other library of London University which was used particularly for its law reports was that at the Senate House. Hatfield Polytechnic's facility for accessing a vast computerised data base of law reports, Lexic, was useful in tracking down leading cases. However, the only way to keep abreast of the current situation of case reporting in the area of children law is the

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study of journals, *The Times* and latterly (since October, 1987) *The Guardian*, such is the legal activity in this area at present.

Two central government libraries have been of assistance in providing information, particularly statistical information. They are the library of the Department of Health and Social Security (DHSS) and the library of the Office of Population Censuses and Surveys (OPCS), both situated in London. While much of the statistical information relating to practice prior to the 1970s had to be compiled from several sources and many volumes (see Appendix A), the recently instituted five yearly reports to parliament by the Secretary of State on the operation of children legislation, which will be published by the DHSS, and periodic issues of the *OPCS Monitor* should prove to be sources of comprehensive and reliable information in this field.

### Chapter 3

#### One Hundred Years of Struggle: Parents Children and Paupers, 1830-1930.

Before considering in detail twentieth century adoption legislation, and associated official discourses, it is necessary to set this review within an historical and practical context. To this end this chapter will briefly consider the question of the rights of children and parents, and the plight of poor families under the Poor Law Amendment Act of 1834, the so called "New" Poor Law. Chapter 4 will then outline the major issues and concepts of twentieth century social work. These two chapters will thus provide a back drop for the more detailed discussions of chapters 5, 6 and 7.

Except for matters strictly economic and financial; matters concerning heredity and apprenticeship, the state offered little recognition of the status "child" before the early nineteenth century. Pinchbeck and Hewitt refer to children as being regarded as "little adults" (1973.p.348.) Given contemporary official concern for "children at risk", it is notable that "For parental cruelty of any kind the law provided no remedy until the nineteenth century." (Pinchbeck and Hewitt.1973.p.348.) In this chapter the official attitude to children seen to be in



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some way deprived will be reviewed, from the early nineteenth century onwards.

The developing official concern for children apparent over much of the last two hundred years can be considered within separate categories; employment, destitution, crime, education, health, the family, and such. Though this categorisation is convenient and some such will form the basis of considerations here, it must be emphasised that categorisation can be misleading. Simplistic analysis which might indicate that, say, reform of regulations relating to the hours per day that children might work in industry, was achieved by an altruistic moral entrepreneur's tireless efforts, regardless of the wider social context, is as inaccurate as its opposite, a rigid social determinism springing from whatever situation (Carson, 1974). The altering legal position of children apparent when such a historical review is undertaken, must be understood as a process which can itself be considered in part, but can also be considered as part of a context; at its widest as part of the construction of the social world. Simplistic analysis might also construe the concept "progress" as unproblematic. To avoid this one need only point to Mary Carpenter's use of the concepts "perishing" and "dangerous" in relation to the deprived children she studied in the mid nineteenth century (Carpenter.1851), and note that these self-same concepts re-appear over a hundred years later within the acrimonious debate concerning the Children and Young Persons Act, 1969 (see chapter 4 below),

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though the concepts were retitled the "deprived" and the "depraved" (Berlins and Wansell.1974.).

#### Parents and Children.

At the beginning of the nineteenth century the rights of children were minimal indeed. They had some rights under the Poor Law in terms of basic subsistence but the vast majority of children, who of course never came within the ambit of the Poor Law, were seen by the courts as the property of their fathers. This was even to the exclusion of their mothers who in legal terms had hardly more status than their children. On the death of a father, a testamentary guardian might take over the rights of the father to the exclusion of the mother. Before the passing of the Custody of Infants Act in 1839 mothers had no rights to the custody of their children other than that assumed as wives of their husbands. Thus when the socialite Caroline Norton separated from her husband the Hon. Richard Norton around 1835, taking her three children with her, she discovered on his re-claiming them that she had no rights whatsoever to either custody or even access. Because of her social position the case drew more attention than would normally be the situation. It became a *cause célèbre* and the focus of agitation for reforming legislation which, as noted above, was eventually passed after overcoming considerable opposition, in 1839 (Strachey, 1928,pp.33-40.) Because of a series of such scandals in the early nineteenth century (Pinchbeck and Hewitt,1973,pp.362-386.) there were prior to the Norton case,

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efforts being made to reform the law so that mothers might be allowed some minimal rights of custody. A Bill allowing access for separated mothers was defeated in the Lords after passing the Commons in 1838. An alliance including that Bill's presenter Serjeant Talfourd and Mrs Norton, by now a highly successful pamphleteer in the cause, campaigned for the 1839 Act. In truth it was a most timid reform, allowing the High Court for the first time to make a custody order in favour of a mother. This was always provided that she had not been found to have committed adultery, and the order was only valid up to the time of the child obtaining the age of seven years. Thereafter she could apply for access only. Even this minimal position was interpreted strictly by the courts to the usual disadvantage of the mother. The rule as stated by Turner V.-C in *re Halliday* (1853) 17 Jur.56. was that three factors had to be considered. They were the paternal right to custody, the marital duty and the interest of the child. The particular problem was "marital duty". "Marital duty...includes not only the duty which the husband and wife owe to each other, but the responsibility of each of them towards their children so to live that the children shall have the benefit of the joint care and affection of both father and mother" ( Pettit,1957. p.59.). Given that the initial presumption was in favour of the father, these factors placed the wife, having left her husband consequent upon whatever provocation, under a further presumption of culpability. In commenting upon the case of *De Manneville v. De Manneville* (1804) 10 Ves, 52, Pettit notes that " the very fact that the

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mother was living separate from her husband was apparently regarded as being an argument against any claim that the mother might seek to set up against the father, since it was treated as raising a presumption that she was acting contrary to her duty" (Pettit,1957. pp.57-8).

Yet while these terms are only minimally in favour of the mother, it was the first occasion on which the absolute right of a father to his children had been challenged. Though the arguments against the legislation tended to be phrased as defences of the family and the rights of the children, it is clear that there was no legal concern for children separate from a perception of them as property of the father. It would appear that only in cases associated with the flouting of religious or sexual morality, would the courts intervene to the detriment of the father. Percy Bysshe Shelley was denied the custody of his children in 1817 because he had declared himself to be an atheist. In *Ball v Ball* (1827) 2 Sim. 35, the court, while expressing sympathy for the predicament of the mother, stated that it would not interfere with the rights of the father to the custody of his children even though the couple were divorced because of the adultery of the father, "...unless the father brings the child into contact with the woman" (Pettit,1957 p.57.). Mere brutality towards wife and children were no grounds for depriving a husband or father and Pinchbeck and Hewitt quote instances where lawyers complained of their

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lack of powers to constrain husbands and fathers whom they saw as having behaved reprehensibly.

Pettit (1957,p.64-67.) lists five instances in which the courts were persuaded to act to interfere with the custody rights of the father during the first half of the nineteenth century, but this is very much a case of the exceptions which proved the rule. The court with the prime responsibility for the protection of the rights of children was the Court of Chancery and that court would only act in the event of the child having some interest in property. Pettit quotes the Lord chancellor, Lord Eldon: "It is not, however, from any want of jurisdiction that (the court) does not act, i.e. when there is no property, but from want of means to exercise its jurisdiction, because the court cannot take on itself the maintenance of all the children of the Kingdom." (op.cit.p.67.). While this view seems to have prevailed up to the mid nineteenth century, judicial decisions and statutes effected a reformed practice subsequently.

The Judicature Act of 1873 stated that in matters related to custody and education of children, rules of Equity should prevail over a narrow definition of the court's powers and responsibilities towards children. In other words, the primary consideration should be the welfare of the child. The notion has a very contemporary ring, but on the other hand, it should also sound the warning that the phrase in itself has only relative effect. It all depends upon what is meant by the term "welfare

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of the child." T.E.James was referring to the developing status of adoption law when he remarked that "...til recently the welfare of the child has not been the primary concern of this change of status. Indeed, it is the novelty of this approach that gives the subject considerable interest and importance" (James, 1957.p.46). This perceptive remark applies equally to developments in legislation in the late nineteenth century in relation to custody and access as between parents, noted below, and legislation relating to children deprived or neglected, acts such as the Infant Life Protection Acts of 1872 and 1897. In short, a primary concern for the welfare of children is a legal concept stretching back little more than one hundred years.

The Custody of Infants Act of 1839 was repealed by the Custody of Infants Act of 1873. This Act gave the mother a better standing in custody cases. It empowered the courts to make access or custody orders in favour of mothers operative until the child obtained the age of sixteen years, rather than seven as previous. It also removed the ban on mothers who had committed adultery from applying for rights in respect of their children. The series of legislative interventions culminating in the Children legislation of the latter half of the twentieth century, began in earnest in the second half of the nineteenth century. The Matrimonial Causes Act of 1857 challenged patriarchal rights by empowering courts to , *inter alia*, place children under the protection of the Chancery Court. The Prevention of Cruelty to, and Protection of Children Act of 1889

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seriously challenged parental rights to do as they wished with their children. The Guardianship of Infants Act of 1886 can be seen as extending further the rights of mothers in that in the event of the father's death the mother became guardian of the children either alone or in conjunction with a testamentary guardian appointed by the father. Also the mother was empowered to apply for custody or access. However it was not until the Guardianship of Minors Act of 1925 that the mother could be said to be on an equal footing in law with the father. It was with that act that the welfare of the child became "first and paramount" when the courts were deciding as between the claims of the mother and the father. The rights of women and to a lesser extent children, were marginal but increasing concerns throughout, the nineteenth century.

#### **The "New" Poor Law.**

While the point has been demonstrated that throughout the latter half of the nineteenth century legislation sought to balance to some extent the opposing claims of custody and access as between father and mother, a more significant claimant than either of them also became established at this time. For the first time the state took upon itself a central role in association with the new and developing legal concept "the welfare of the child." Of course the Poor Law was responsible for thousands of children at any one time. In 1849 about 6.5% of the population were identified as paupers and children accounted for nearly half of this total (Children under the Poor Law.

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1910). But the point is that these children were a reluctant responsibility of the state for most of the nineteenth century, to be returned to the protection of their parents at the first possible opportunity. This was as distinct from the role which the state, through new legislation was embarking on in the latter years of the century. As the state oppression of "less eligibility" comprising the workhouse test withered away, so the state's role *in loco parentis* in respect of parental incapacity blossomed.

Notwithstanding the above discussion of legislative developments, the central issue of social policy as regards poor children and their families throughout the nineteenth century was of course, the Poor Law. From 1834 onwards the so called "New" Poor Law was in operation.

A consideration of the monolithic Poor Law throws up identical issues to those which arise when considering more recent adoption legislation, as well as providing a useful platform from which to review the relationship of the state and poor children throughout the latter part of the nineteenth century. This particularly relates to the state's varying attitudes over time, resulting in altered aims for the legislation, so illustrating the generally negotiable nature of legislation. Clearly the process of legal adoption in the latter part of the twentieth century is of far less significance to the state than was the process of relieving poverty in the nineteenth century.



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However, the theoretical proposition concerning the uses of legislation by the state applies equally. Perhaps this statement should be qualified. It is not proposed that the activities of the state in the nineteenth century, given the restricted franchise and the relatively primitive communications media to name but two significant factors, can be equated with the contemporary situation except in general terms. But it is proposed that the salient features of the activities of the state and its use of legislation are directly comparable. A second point is that to grasp the significance and situation of twentieth century adoption legislation one must see it in context, and one of the dimensions of that context is the historical one. Hence a consideration of the nineteenth century Poor Law.

The Poor Relief Act of 1601, popularly referred to as the Poor Law Act 1601, or "the 43rd of Elizabeth" (Fraser, 1973. ch.2) was seen to be in dire need of reform after over two hundred years. The reasons for this were associated with the industrial revolution, and a growing and increasingly urban population which was being slowly enfranchised. The problems which were perceived by the state and which were to be addressed by the Poor Law Amendment Act of 1834 were an increasing public expenditure being demanded to relieve poverty, and the resultant pauperisation of a large section of society. From the perspective of one hundred and fifty years later, these perceived problems and the proposed solutions have a very

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contemporary ring. Too much money was being spent on the unemployed. If this amount was reduced, would-be applicants would find themselves better off taking available but low paid employment. To ensure that this would be the case the situation of anyone being maintained at the public expense was to be reduced below that of the lowest paid worker. The situation of the unemployed dependent of the public purse was to be always "less eligible". Of course, there were no fixed rates of benefit payable at this time. Therefore it was not a matter of paying a reduced benefit or even trying to introduce some sort of sliding scale of benefit. The Speenhamland System, named after the Berkshire parish where it is said that in 1795 justices first subsidised low wages on a sliding scale determined by the price of bread, was thoroughly discredited by 1834. Indeed, such a policy of subsidy was seen to be primarily responsible for the excessive demand upon local rates leading to the urgent need for reform as it presented itself at the time. The deterrent value of the policy of less eligibility was based upon the workhouse. Thus so called "out door relief" was to be abolished for all able-bodied persons, and the relief to be offered to applicants was accommodation for men, women, children, families, elderly, and handicapped in a segregated workhouse, where those who could would pick oakum or break stones. This much "everyone knew".

The basis of the workhouse was to be a strict discipline and it was this rather than overt punishment or privation which was to

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dissuade the poor from joining the ranks of the inmates and so becoming official paupers. (See Foucault,1977, for a discussion of the concept of discipline in nineteenth century institutions of incarceration.) The Royal Commission on the Poor Law of 1832, in its report states that as well as rendering the pauper's position irksome through required labour;

"the strict discipline of well regulated workhouses and in particular the restrictions to which the inmates are subject in respect of the use of acknowledged luxuries such as fermented liquors and tobacco, are intolerable to the indolent and disorderly, while to the aged and feeble, and other proper objects of relief, the regularity and discipline render the workhouse a place of comparative comfort." (quoted in Crowther, 1981.p.41).

The above statement represents in outline what Edwin Chadwick and his colleagues had in mind when they set up and began to administer the "New" Poor Law in 1834 . It certainly is in keeping with the spirit of the Act. Yet even the briefest review of the working of the Act throughout the remaining two thirds of the century and into the present century reveals that the way the Act was applied, the uses to which the Act was put and the way the Act was ignored, make such a statement so simplistic as to be almost meaningless. The problem of applying such accounts to acts is that they invest an act with quite unrealistic powers of determinacy. Efforts to control the

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details of everyday life through legislation are always doomed to frustration in direct ratio to the detail specified.

The "New" Poor Law remained in almost recognisable form for about one hundred years, and was not finally and totally repealed until the National Assistance Act 1948 appeared on the statute book. Then again, it is not difficult to trace more recent legislation which bears considerable resemblance to the Act of 1834. During the nineteenth century, there were periods when "no out relief" was enforced to the letter, but only in some areas of the country. The segregated workhouse offering wards for the elderly, the handicapped, children etc, could often be identified, but alongside others where inmates freely associated. Further, there were parishes which had no workhouse at all, and long before the demise of the Poor Law, institutions were built to remove certain categories from the workhouse altogether. Throughout the period the Poor Law remained a monolithic symbol of state power though paradoxically it was always locally administered.

"The Royal Commission appointed (in 1832) to investigate the Poor Law was faced with unravelling legislation of more than two centuries, local acts affecting parishes, and almost unfettered local discretion in administration, all of which made both the theory and the practice of the Poor Law very complex. The Commissioners, or rather, the dominant figures of Nassau Senior and Edwin Chadwick, were

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fortunate in possessing that ability characteristic of political economists of their day: to reduce the most disorderly social problems to their simplest essentials."  
(Crowther.1981.p.11)

Significant structural change in the early nineteenth century was confronted by a quite unreformed local government jealous of its powers and partial independence from the central government which was itself inadequate to administer the new society evolving. Roberts (1960,p.12-13.) notes that in 1846 France's Ministry of the Interior comprised in excess of 200,000 employees while the British Home Office employed twenty nine officials. Local Government was still in the hands of the Justices of the Peace, local dignitaries, and municipal corporations. J.P.s administered the poor relief and were therefore responsible for the development of the discredited Speenhamland System. The Royal Commissioners were unduly concerned with rural pauperism and gave little consideration to such increasingly significant factors as trade and economic cycles. The concept of the segregated and all embracing workhouse was the wrong answer, and the reason that the Royal Commission of 1832 came up with the wrong answer was that they addressed the wrong question (Crowther,1981. p.271.). Structural unemployment, then as now, was not to be cured by the deterrent policy of a totally discipline based workhouse. However, a basic premis of this study is that legislation is an end in itself and the uses to which a statute is put are quite negotiable in the

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hands of the state. Thus the operation of the "New" Poor Law was simply and continuously switched to accommodate state requirement as they were perceived.

The official version of events placed much responsibility for the perceived increasing problems of destitution on the operation of the relief system itself. "If, in the distribution of poor relief, the parish stands culpable of negligence and mismanagement, it is the J.P.s who gave indiscriminate relief most freely, and to the importunate more than the needy. The result was the growth of a large pauper class" (Roberts, 1960.p.9). Though Roberts' analysis gives undue weight to the significance of the actions of J.P.s as a contributory factor to the economic problems of the 1830s, his judgement of the activities of the municipal corporations of the time is apposite.

"The mayors and aldermen of England were far oftener defenders of ancient abuse than pioneers in municipal government...typical were the indolent, do-nothing aldermen of Bristol, the corrupt burgesses of Berwick-upon-Tweed, the disreputable corporation at Leicester. They were narrow, Tory oligarchies that were not only undemocratic in an age agitating for democracy but administratively ineffective in an age of acute social problems." (Roberts,1960.p.10.)

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Though quite unable to cope with the social problems thrown up by the press of the urban and rapidly expanding population the administrators of the local centres of population vigorously resisted any moves towards centralisation. In the place of thorough going reform the history of nineteenth century adaptation to changing social circumstances is one of *ad hoc* reform often through the creation of specific and largely uncoordinated Boards to manage initiatives. The operation of the Poor Law itself, originally managed by a commission, reverted to management by Poor Law Board in 1847, to be superseded by the Local Government Board in 1871. Generally the thrust of the succeeding bodies administering the Poor Law throughout the nineteenth century was towards humanising its consequences for the sick and old. A consequence of this was that within fifty years of the introduction of the "New" Poor Law, something approaching a free health service had been established for the poorer classes. By the 1870s it was being publicly recognised that to subject the sick to Poor Law deterrence, even if they were poverty stricken, was inappropriate. Florence Nightingale saw no more logical connection between the infirmary and the workhouse than the infirmary and the railway station, and the Metropolitan Poor Act of 1867 placed London infirmaries under the auspices of the Metropolitan Asylums Board. This reorganisation of medical services in London enabled specialist hospitals to be built, and an ambulance service to be created, and is seen as "the starting point for an efficient state medical service" (Fraser,1973.p.85). Official recognition of the

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separation of the infirmary from the workhouse and sickness from undeserving poverty, came with the Medical Relief (Disqualifications Removal) Act of 1885 restoring to the sick their franchise which was until that time automatically forfeited on claiming relief under the terms of the Poor Law, that is on achieving the status "pauper".

Pauper children were accommodated within the confines of the workhouse throughout the nineteenth century, albeit it in decreasing numbers. To some extent education was seen to be the key to unlock the potential of the pauper classes for independent living. Therefore it was accepted by the Poor Law Commissioners that pauper children should receive education. As this was to be in a segregated workhouse, it is proposed by Duke (1976.p.68.) that the expectation was that this would be in an establishment separate from the workhouse. In the event, very few fully segregated workhouses were built in the first half of the nineteenth century, and pauper children usually found themselves in small "schools" within the workhouse being taught by adults of very dubious educational attainment themselves. Efforts to combine workhouse schools' resources and found District Schools comprising one large school enjoying the advantages of scale were never universally successful. Some were established in the 1840s in large centres of population but the cost of building and running such establishments was always a central issue. The Poor Law Amendment Act of 1844 allowed the establishment of school districts, but "...the new powers were so



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circumscribed as to be inoperable" (Duke,1976. p.71). The District Schools Act of 1848 waived many of the regulations which had made the 1844 Act something of a dead letter, at least as far as the development of District Schools was concerned. For example, the regulation limiting the size of districts to fifteen miles across virtually ruled out such developments in rural areas where upwards of fifty per cent of the population still resided. The *ad hoc* nature of nineteenth century social policy is further illustrated by the fact that by the time the 1848 Act became operable administrative enthusiasm for the concept of these large schools was waning. There was also a move to encourage the children of paupers on "out door relief" to attend school and even make such attendance a condition of relief. However, such notions were always seen to contradict the maxim of "less eligibility" and those arguing its case were, of course, for preventing the formal education of such children. Pinchbeck and Hewitt quote from an inspector's report where he objects to the principle of setting up a voluntary "home" where girls might train in domestic skills.

"...mislead by a name (home) the children may be induced to consider them as really their homes, and contrasting the kindness and indulgence they receive there with the sterner realities of actual life, they will feel indisposed to retain service under smart mistresses when they know that they have these refuges to fall back upon... The 'home', as I take it , of these young persons just entering

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upon life, is the wide world...and helps of all description only neutralise the incentives of prudence and independence." (Pinchbeck and Hewitt.1973. p.515)

Despite the built in contradictions of the "New" Poor Law and the education of pauper children at a time when there was no statutory requirement for children generally to attend school, by the time of the 1870 Elementary Education Act the education of paupers was also becoming established. The Poor Law Board's twenty-third annual report noted that all the London Unions maintained an educational establishment separate from the workhouse as did "almost all the large urban authorities." (Duke,1976.p.74.)

With the establishment of universal elementary education in England and Wales, an increasing number of pauper children in the workhouse attended the local Board Schools and fewer attended workhouse schools. Up to 1870 the practice had been officially discouraged and only about 70 unions used local schools as distinct from workhouse schools. By 1896 only 63 workhouse schools remained and the children of 493 unions attended local day schools (Duke,1976.p.82.).

During this latter part of the nineteenth century there was considerable development in the methods for accommodating children designated as paupers either because their families were being relieved "indoors" or because the children had been

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abandoned. Unsegregated workhouses and vast barrack schools were seen as providing a dubious moral upbringing for the children whom the authorities desired to educate out of pauperism and dependence on the state. Cottage homes and other systems where children could be accommodated in small units were becoming recognised as more suitable for the accommodation and influencing of children. Barnardo had pioneered the idea and unions began taking it up in the late 1870s. Also at this time about 10,000 children were boarded out though it was not until 1889 that the Local Government Board formally recognised and attempted to regulate the practice.

Yet these reforms which none argued were not an improvement on alternative methods of accommodating children under the Poor Law, were bitterly resisted by the proponents of "less eligibility". Professor Henry Fawcett, M.P., husband and supporter of the campaigner for women's rights Millicent Garrett Fawcett and colleague of J.S. Mill, published his "Pauperism: Its Causes and Remedies" in 1871. The book generally opposed the operation of the "New" Poor Law on the basis that it was profligate of public funds in relieving the poor, and it also included a damning indictment of the practice of boarding out of children. Yet Fawcett as with Dicey, who will be considered below, cannot be ignored as a backwoods man putting in an occasional appearance to support the cause of the *status quo*.

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The boarding out of children subject to indoor relief was to be achieved in the early 1870s by the payment of an allowance of four shillings per week and the employment of worthy women to offer some minimal supervision. Fawcett agreed that the arrangements would be to the great benefit of the children when compared with the alternative of accommodation in workhouses or barrack schools. But the Poor Law Board order had "...simply been considered in relation to the effect it will have on the children who are boarded out, and not a moment's attention has been given to any ulterior consequences" (Fawcett,1871.p.79.). He saw the practice as introducing far greater evils than those it would cure. He goes on to describe the idyllic situation of children boarded out "in healthy country homes" lovingly cared for by doting foster parents and provided with more than enough cash to ensure their education and any medical treatment which may be required. Fawcett pointed out that the children who were eligible to be thus boarded out were those children likely to to be brought up under the auspices of the Poor Law, abandoned and orphaned children, illegitimate children and the children of imprisoned parents. He then goes on to compare the boarding out allowances most favourably with the lot of children of "an ordinary English labourer." The family described had, we are informed, brought up three children on the wage of a farm labourer and might now be asked to bring up three pauper children and paid an allowance separate from the labourer's wage to do so. Such a system would demoralise the honest hard working parent and "the whole country will in fact be told that

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parents, by deserting their children, will secure for them an amount of physical comfort and other advantages which probably could in no other way be procured" (Fawcett, 1871.p.80).

Argument and diatribe are intermingled as Fawcett complains that the labourer will be discouraged from insuring his life to provide for his orphaned children, immediately following the argument that the labourer earned hardly enough to feed his children. Yet the more serious outcome still of this ill advised scheme would be the encouragement to immorality and the consequent "expense of society to the children begotten in vice and prostitution." The situation is compared with that of Scotland where "10 per cent of all births are illegitimate; in England the proportion is only 6 per cent., and in Ireland only 3 per cent" (Fawcett,1871.p.86.). Fawcett had previously eulogised the operation of the Poor Law in Ireland pointing out that because of the rigorous application of no out door relief, it had less than half the number of paupers that London alone contained. This he saw as a great achievement, indeed the only gauge of what a desirable system of relief might be, even though he notes that the condition of the Irish was greatly aggravated by "a vicious system of land tenure and by many other adverse circumstances" (Fawcett,1871. p.27). The poor may be always with us, but provided they were kept out of sight and did not become a charge on the rates there was no need to concern oneself too much. Fawcett saw the answer as education and the inculcation of intelligence. Education would develop morality which would in

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turn temper the activities of trade unions, for the good of the country. He also noted that the reason why agricultural labourers did not combine was that they were too stupid!

Williams (1981) also considers the operation of the Poor Law at this time, but within the context of the nineteenth century as a whole. The 1870s saw the emergence of the Local Government Board as the controlling body of the Poor Law. The 1870s also saw the emergence of what has become known as the "crusade". The stated aim was to return to the spirit of 1834 and a strict interpretation of "less eligibility" and the workhouse test. Outdoor relief was seen as excessive by the state and in need of severe curtailment. The tightening up of procedures was to be achieved by Local Government Inspectors instructing Guardians as to their functions. Inspector Longley's report, "Outdoor Relief in the Metropolis" was published in the Third Annual Report of the Local Government Board for 1873-4, and it contains instructions as to how the distinction between the deserving and the undeserving poor was to be abolished in favour of virtually no outdoor relief whatsoever. Previously widows with children were seen as usually deserving and so not subject to the workhouse test, and many elderly people were similarly in receipt of outdoor relief. Longley's report now urged, in the case of the elderly for instance, no outdoor relief where the old people were seen to be "of bad character", "where they had made no provision for their future wants" when they had previously received sufficient wages, where liable relatives

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would not contribute to their maintenance or where their home was so squalid as to make home care impracticable. Such rules were to be published to educate the poor so that they might be quite clear as to what personal fault of theirs had brought them to the workhouse and so that they and their family might do better in future. Though Longley's system was never implemented the "crusade" against outdoor relief was fully implemented .

The Crusade.

Year	OUTDOOR PAUPERS		INDOOR PAUPERS.	
	('000)	per 1,000	('000)	per 1,000
		tot. population.	tot. population.	
1871	834	37.5	140	6.2
1876	567	23.6	125	5.2
1893	505	17.2	169	5.7

(Williams,1981.p.102.)

Williams goes on to demonstrate that this decrease in overall numbers being relieved was not at the relative expense of any group of paupers or any particular geographical location. The misery was evenly spread.

"If education of the poor did not work, repression of pauperism did work since, in a large number of unions after 1871, most classes of pauper found it increasingly difficult to obtain out-relief; in 1871. 3.8 per cent of the

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population drew out-relief and by 1893, only 1.7 per cent of the population drew out-relief... There were significant changes in out-relief practices after 1870, but these changes were of a more crude and coarser kind than those envisaged in the Longley Report; the crusade turned into a purge of the out-relief rolls. So, in relief practice, there was a large measure of continuity and development between the outdoor strategies before and after 1870. By the 1860s outdoor relief to able-bodied men had been virtually abolished; in the 1870s, outdoor relief to all other classes was substantially diminished. Under the new poor law, before 1870, the poor were repressed into assuming responsibility for unemployment and after 1870, the poor were increasingly repressed into assuming responsibility for the vicissitudes of the working-class life. In practice, the education of the poor, before or after 1870, was a matter of brutal dispauperisation." (Williams,1981.p.107.)

Several conclusions spring from this discussion. Firstly Fawcett's book can now be seen to be an element in the "crusade" rather than, as he presents himself, a voice crying in the wilderness. The argument on boarding out is more of an aside to the overall argument of reducing all relief and educating and forcing the paupers of what ever category, deserving or undeserving, to live (or die if they must) independent of public funds. Another and central consideration for this study arises.



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At a time when the state was emphasising dispauperisation certainly at the expense of the pauper population, it was also expanding and "humanising" its care of pauper children. The inevitable conclusion is that the state was prepared to take responsibility for the children of the dispauperised as yet another price which the dispauperised were required to pay.

The trend away from accommodating pauper children in workhouses continued so that Pinchbeck and Hewitt (1973,p.540-541) are able to note that "between 31 March 1906 and 1 January 1913 the number of children over three years of age being maintained in workhouses had dropped from 11,072 to 8,206, although the total number of children receiving indoor relief had risen from 56,991 to 70,676." The Poor Law Institutions Order of 1913 stipulated a maximum period of six weeks that a healthy child over the age of three years could remain in the workhouse. Pinchbeck and Hewitt comment that as a result of this order, "After many generations children had been released from the punitive aspects of English Poor Law policy." That may or may not be a consequence of the order. Preventing children from being accommodated in the workhouse did not prevent their parents from being so accommodated or as an alternative, being forced to abandon their children to the state. Thus, in many cases the separating of parents and children must have seemed at best a mixed blessing to the parents and a cause for total despair for the children.

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It is a truism to state that the institutions of the Poor Law were for the exclusive use of the poorest section of society. The full panoply of state organisation and power was brought to bear upon the already wretched of society. As well as being supplied with the minima of societies resources they were unfairly stigmatised and systematically and publicly disciplined as an example to anyone who might favour the idle life without having the material wealth to support such a life style. Thus all those who became a drain on the public purse were subject to the creed of "less eligibility" and stigmatisation. However, even amongst this grouping there were and no doubt remain to this day, sub-groupings of even less favoured persons. The able bodied un-employed were always seen to be the main problem for whose benefit the "New" Poor Law was largely conceived. Of this group the vagrant was seen as the traditional problem. The original 14th century Poor Law legislation addressed what was seen as the problem of the mobile labourer threatening to exploit a scarce labour market consequent upon the ravages of the Black Death. Subsequent Poor Law legislation and particularly the Act of Settlement of 1662 aimed at defeating the mobility of labour and ensuring that a parish would not have to support those who were seen to be the responsibility of another parish or group of rate payers. Yet while such statutes were no doubt effective as regards the mass of the population a small number of vagrants who could not easily be controlled by the Poor Law because of their habit of moving on, continually challenged the system. The Local Government Board's Annual

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Report of 1874 recommended that children of vagrants should be detained by the workhouses so that they might be educated and that their parents might be sent to cultivate the Yorkshire moors to pay the cost of their children's schooling! Duke notes that "the Webbs were clearly disappointed that legal powers of guardianship allowed to the Poor Law authorities were not applied in their case." The other pariah group whose late twentieth century image has no doubt improved considerably as compared to the vagrant, is the un-married mother. Given their precarious financial position in the nineteenth century, the un-married mother and her child were often to be found among the inmates of the workhouse. The First Report of the Ministry of Health (1920) shows the following position as at 1.1.1920.:

Relief of Wives and Mothers.

	<u>Out Relief</u>	<u>Indoor Relief</u>	<u>% Indoors.</u>
Widows & Children	35,061	892	2.5
Deserted Wives	2,356	470	16.6
Separated Wives	1,306	451	25.6
Unmarried Mother	731	2,783	79.2

(Crowther,1981. p.100)

Crowther goes on to note that unmarried mothers;

"still suffered from a social stigma so powerful that the offer of outdoor relief could seem an invitation to immorality. Even deserted wives were under suspicion, at

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least in the first year of desertion: as in 1834 the central authority believed that outdoor relief would encourage collusion between husband and wife to defraud the ratepayers." (Crowther 1981,p.100.)

Deserted divorced and unmarried mothers remained a stigmatised group well into the twentieth century and even Beveridge felt unable to include them in his new insurance plan of 1942.

The "New" Poor Law thus presents a picture of a powerful instrument for the social control of a large poverty stricken working class. The Act was designed to achieve its aims through systems of harsh disciplines and powerful stigmatisation. The powerful stigmatisation was achieved through the agency of a dominant state ideology. By no means is it suggested that the state ideology justifying "less eligibility" was universally accepted or seen to be correct. The "New" Poor Law received a hostile reception especially in the industrial areas and in its ideal type always proved to be unworkable in such situations. Large scale unemployment in times of trade depression could not possibly be dealt with by applying the workhouse test. (For accounts of the reception given to the "New" Poor Law by the working class see for instance, Thompson, 1968, and Roberts,1960.) Nevertheless, a universal and powerful stigma was attached to the label "pauper". The stigma was universal, even or particularly among the poverty stricken who recognised before most, the injustice of it all.

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The final repeal of the Poor Law was achieved with the implementation of the National Assistance Act 1948. However, by this time it had lost most of its significance. The Liberal Governments of 1906-14 introduced alternatives to many Poor Law functions. A compulsory scheme was introduced for health insurance and free medical treatment for many millions of workers. A lesser number of workers were able to insure against unemployment. A non-contributory pension scheme was available to those over seventy. School meals and school medical inspection was provided for children. These and other benefits became available outside of the Poor Law and free of its stigma. No doubt the extension of the franchise and the creation of a political party by the working class was a great encouragement to the liberal party to be seen at last to be taking seriously the demands of the poor. Even so, the liberal administrations in the first decade and a half of this century, arguably has the credit for beginning the momentum which resulted in the post 1945 welfare state. As Frazer (1973,p.163.) notes, "(t)he work of continuing these developments was not performed by liberal hands, for the greatest of all Liberal Governments turned out to be the last."

Hay (1975) sees the liberal reforms of 1906-1914 as initiating a Social Service State rather than a Welfare State, providing minimal rather than optimal services. It is no doubt correct to point out that "welfare" can and to an extent does aid the maintenance of an oppressive industrial state, while only

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marginally redistributing wealth. Nevertheless the fact that many welfare benefits both in terms of cash and services were created as a result of working class agitation makes the argument for their denigration something of an elitist one.

The Great War and subsequent mass structural unemployment meant that the Poor Law was never to re-gain its former significance as a determinant in the lives of the poor. It is therefore instructive to consider a circular, "Children Under the Poor Law", circulated to the Boards of Guardians by the Local Government Board dated 16th June, 1910. The circular was issued both to remind Guardians of their responsibilities, to ensure that they continued to "humanize" the Poor Law to some degree in relation to children in its care, and to inform them of the attitude of the Royal Commission on the Poor Law as stated in the majority report of 1909. The circular was in fact one of several inspired by the Commission's report, with the aim of modifying the image of the discipline workhouse in favour of the refuge workhouse, and these circulars were summarised in the Poor Law Institutions Order of 1913. From 1913 the title workhouse was officially changed to Poor Law Institution, and in future "paupers" were to be termed inmates of wards and patients of infirmaries. With representation came at least a degree of influence such that the wilder excesses of the dominating state were deemed worthy of reform.

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The most notable aspect of the circular "Children Under the Poor Law", is its bland assumption that all the children of all the families being relieved by the state because of poverty were by definition the direct responsibility of the state. From the perspective of the nineteen eighties it is as if there is no distinction between the state's responsibility for children "in care", and all the children living in families who are in receipt of state benefit possibly excluding Child Benefit Allowance. It is only when this fact is fully appreciated that the enormous significance of the insurance based and other allowances brought in by Asquith, Lloyd George and their colleagues at this time, as an alternative to the Poor Law, can be grasped.

After noting the proportional decrease in numbers of children in receipt of relief over the previous sixty years from forty one per cent of the total to twenty five per cent of those relieved, together with an absolute decrease in the extent of pauperism from 6.3 per cent to 2.7 percent of the total population, the circular immediately goes into detail of how the Guardians were required to improve their management of the supervision of children receiving out door relief. While noting that children living with their parents were primarily their responsibility, nevertheless it is pointed out the the guardians are "...bound to see that the relief is properly applied and that the child is not neglected." (Children Under the Poor Law. 1910.p.1.) To this end it was suggested that Guardians might employ extra staff in the shape of women visitors or assistant

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Relieving Officers. At the same time it was also suggested that voluntary agencies might be enlisted in the supervision of such children, though the problems of supervising the supervisors was also recognised. As a matter of course Guardians should obtain copies of the newly instituted medical examinations "...of children who are in receipt of out-door relief." (op.cit. .p.2.) There was no recognition of any requirement, moral or otherwise, to obtain the permission or agreement of the parents, though the circular did indicate that Guardians could only obtain school reports with the agreement of the Education Authority. In similar vein, the circular went on to remind Guardians of their absolute right to remove sick children receiving out-door relief, on the recommendation of a medical officer. "In many instances it will be found that the child's best chance of recovery is in removal to the poor law infirmary" (op.cit. p.2.). Before going on to consider sections such as "Adoption of Children of unsatisfactory parents" or "Training Ships" or "Emigration" it is amply demonstrated in the circular that even in the comparatively enlightened twentieth century there was no letting up on the state's total domination of the poor. Any concessions were always and only achieved through struggle.

Widows with children were seen as presenting special difficulties. The practice of relieving the widow of the responsibility of some of her children so that she might the better care for those remaining with her should not be a blanket policy. Each case should be reviewed on its merits. The



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circular reports the Commissioners as stating that "...money is the least (sic) of a widow's many needs. If her independence is to be preserved and her family to be well started in the world, she must have encouragement to persevere, opportunities for self help, and openings for her children. Such a case should clearly be dealt with by voluntary aid, for voluntary aid is more sympathetic and more elastic than official assistance can be." (op.cit. p.2.)

The circular noted the powers of Guardians under the Poor Law Acts of 1889 and 1899 to assume control of pauper children if their parents were deemed to be unfit to have control of them. It was noted that this power of (*de facto*) adoption was subject to appeal, "but so far as the board is aware such an appeal is but rarely made. The separation of the child from the unworthy parent should be strictly carried out, and, where ever possible, contributions by the parent to the maintenance of the child should be enforced" (op.cit.p.2-3.). The circular goes on to note that that the number of such "adopted" children in 1902 was 7,724 and in 1908 12,417. The Commission were of the opinion that the power of adoption should be more widely used. Guardians were to be discouraged from relieving children living with relatives or friends rather than parents.

The order excluding children from the workhouse except for an initial and short period is clearly stated in the circular though its official date is seen as that of the summarising

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order of 1913 noted above (p.64.) Exceptions were those children in Poor Law infirmaries and such, where these still formed part of the workhouse, and babies under three months of age who were allowed to remain with their mothers in workhouse nurseries. The condition of some nurseries was cause for concern.

There then follows a review of the alternatives available for the accommodating of children subject to in-door relief. The Board, the "Central Authority" refrained from advocating one alternative as against another stating that all had their *pros and cons* and all could be demonstrated to achieve the main purpose. "...all the evidence available shows that children trained under each system are depauperised, and do as a matter of fact succeed in after life" (op.cit.p.4.). The subsequent paragraph reports the Royal Commission's more sanguine view that "children trained and educated under each of these systems do not relapse into pauperism *in any appreciable numbers*" (op.cit.p.4. emphasis added.) While the circular goes to some length to avoid giving the impression that the cost of education and training should be the only consideration, there is no doubt that it is uppermost in the minds of the drafters of the document. However, it is also admitted that there would be occasions when particular children would require specific disposals distinct from the Guardian's usual preference. "For instance, some children should clearly be sent for special treatment in a certified institution, others should be boarded out in specially selected homes, while some boys will get their

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best chance from the ordered life of a training ship, or from the rough discipline of the fishing trade" (op.cit. p.4.).

The Board and the Commission detected some reluctance to board out children especially outside the area of the relevant union. Boarding out was seen by the Board as often successful and involving no capital expenditure. However their note of caution continues as a finding in most research studies of boarding out to this day. "The experience of the Board shows that if the system is to succeed in rescuing the children from pauperism the fosterparents must be selected with the greatest care and the Committee must keep in very close touch with them." (e.g. Holman,1975. Adamson,1973. Stone and Stone, 1983.)

The Guardians were enjoined to give more serious consideration to placement of "poor law boys" on training ships, and emigration was seen to be "one of the surest means of extricating children from pauperism and the influence of evil surroundings." In placing children out in work situations "blind alley" jobs were to be avoided, but as with training within the workhouse, the only occupation considered appropriate for girls was domestic service.

Finally, the Board and the Royal Commission were concerned at the paucity of After Care supervision available to those placed in work situations. It was noted that in the ten year period to 1909 12,500 children were placed for employment in the

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Metropolis from Poor Law schools while only 48 children were returned from the schools to the workhouses as unsuitable to be set to work. The Board and the Commission stated that from what records they had, it seemed that Poor Law care proved successful for the vast majority, yet their directive to Guardians to begin to keep records on children up to the age of eighteen years does not indicate that the assessments on the "success" of Poor Law care were based on full information.

Dominant state ideology was well expressed through the Poor Law. The concept of "less eligibility" was used as a policy of deterrence, and while Inspector Longley's proposition (see pp. 78-79 above) of spelling out to the population how and which personal defects would cause someone to become a pauper was not taken up, the same effect was achieved by the stigmatising effect of the workhouse. The whole oppressive system was of course, of great significance to the whole working class. Anyone without wealth was at risk of falling under the rule of the Poor Law, and so its discipline acted upon the whole working class, not just those who actually applied for relief.

As noted in chapter 2, the dominant ideology acts un-noticed; it is what "every one knows", the every day reality of life. The ideology that has to be imposed by apparent force has failed. Williams may assert that "after 1870 the poor were increasingly repressed into assuming responsibility for the other vicissitudes of a working class life (as well as unemployment)"

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(Williams,1981.p.107), but "everyone knows" that paupers are idle and shiftless, and if you are so labelled, so you become. Not only are poor people and their consequent problems rather invisible, but even the institutions particularly catering for them are also. Hence the poor are not even seen to require law of a proper type. Lawyers notoriously avoid the law for the poor, though Bankowski and Mungham (1976) note that an improvement in remuneration for, say, a duty solicitor scheme at a time of say a fall off in the demand for property conveyancing, can raise interest. This phenomenon of invisibility is well illustrated in relation to the nineteenth century Poor Law. The law, as described above dominated the social reality of the poor, the poor comprising the vast majority of the working class. Indeed there was a voluntary element in claiming relief though the whole process was made so unattractive that it is difficult to imagine applicants who had more than "Hobson's choice". As well as this the statutes contained and were associated with powers of a compulsory nature, powers associated with the incarceration of the insane and the "adoption" of children. These latter powers, though spoken of as adoptive powers were really the fore runners of the contemporary powers of local authorities to assume the parental rights of children "in care". By the Poor Law Amendment Acts of 1889 and 1899 Boards of Guardians were given the powers to assume the parental rights over children in their care (Heywood,1965. p.93.). The Guardians can therefore be seen to have been judge and jury in their own court. Indeed, the

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parents who wished to object to this administrative action could appeal to the court. However, as was noted above (p.89) the Local Government circular on Children Under the Poor Law of 1910, expressed the opinion that "an appeal is but rarely made" and "the Royal Commission were of the opinion that the power of adoption should be more widely used."

On the face of it it is difficult to understand how A.V.Dicey (1835-1922) could ignore the institution of the Poor Law, riddled as it was with discretion and non-judicial tribunals. His Introduction to the Law of the Constitution ran to ten editions from 1885 to 1959, Dicey preparing the first eight up to 1915. The book was seen to be authoritative on the Law of the Constitution at the turn of the century though since his death Dicey's intellectual reputation has declined. In the Law of the Constitution, Dicey deals mainly with two topics, parliamentary sovereignty and what he terms the rule of law. Dicey proposed that:

"(The rule of law) means, in the first place, the absolute supremacy or predominance of regular law as opposed to the influence of arbitrary power, and excludes the existence of arbitrariness, of prerogative, or even of wide discretionary authority on the part of the government. Englishmen are ruled by the law, and by the law alone; a man may with us be punished for a breach of the law, but he can be punished for nothing else." (Dicey,1915.p.198.)

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It is not the purpose here to review The Law of the Constitution. That has already been done by Dicey's biographer in some detail (Cosgrove,1980.). Rather the purpose is to briefly note some points of the argument as examples of received wisdom of the time. There is little doubt that one of the purposes of the book was to demonstrate the superiority of the common law system over the Civil Codes of many European countries. The last sentence of the above quote catches the flavour of his certitude. He particularly compared the English legal system with that of France, the *Droit Administratif* and boldly asserted that there was no such thing as administrative law in England. Unlike France, no English state bureaucrats were above the law and protected from the courts by legislation. Because everyone was equal before the law, there was no need for a Statute of Rights, indeed the very assertion by a state of its championing of the rights of subjects merely indicated the negotiable nature of those rights. Two points can be made indicating Dicey's blinkered vision. The idea that the average working man in the second half of the nineteenth century had recourse to the courts is even more nonsensical than would be such a proposition one hundred years later. As to there being no administrative law in England, the Poor Law was only the greatest manifestation of the state's "arbitrary power" and "wide discretionary authority." But the main point is that Dicey was only arguing "what every one knew." The report of the Donoughmore Committee of 1932 on Minister's Powers (Cmd,4060) "cited Dicey favourably so often that Sir Cecil Carr remarked that the committee investigated

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whether Britain had gone off the Dicey standard in regard to administrative law and, if so, what was the quickest way to return" (Cosgrove,1980.p.97.). de Smith attributes the Lord Chief Justice's dismissal of the idea of administrative law in 1935 as "Continental jargon", to the legacy of Dicey (de Smith, 1973.p.525.) and Friedmann states that "it is no exaggeration to say that the views of this eminent jurist played a considerable part in delaying the growth, not of administration, but of administrative law in the common-law world, for several decades" (Friedmann, 1972.p.379.). It seems to be more likely the case that administrative law has long flourished but it suffers (or benefits) from the tendency to invisibility ever apparent from a societal perspective, when viewing the working class situation and particularly those in poverty. After all, Sir Henry Maitland, a contemporary of Dicey wrote in 1888, "If you take up a modern volume of the reports of the Queen's Bench Division, you will find that about half the cases reported have to do with rules of administrative law; I mean with such matter as local rating, the powers of local boards, the granting of licences for various trades and professions, the Public Health Acts, the Education Acts, and so forth" (Maitland,1908. p.505. & quoted in de Smith,1973. p.525.). Dicey makes only two and passing references to the Poor Law, while the "bastiles" flourished around him. And even one of those references (Dicey,1915.p.lxx.) was omitted from his index!



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At the level of common sense, the degree of invisibility of poverty is notable. The Victorian era is better remembered for its supposed moral values, its imperial domination and its manufacturing capacity, than for its squalor and poverty. While the poor, the majority of the population, were coerced by the prospect of supposed personal incompetence leading to incarceration in the "bastiles" of the Poor Law, the authoritative text on the law and the constitution was blind to such ideological domination. Poverty retains its invisible tendency, and while the "bastiles" have since been stormed, other and no less severe threats oppress the poor.

## Chapter 4.

### Social Work Principles and Ideological Domination.

The latter part of the nineteenth century can be seen as the time when the state began to recognise children as citizens or at least potential citizens, and began to create institutions to take that into account. At that time they amounted to little more than rules for allocating children between parents of a broken family and accommodation for children of the destitute. While there was also a growing concern for offending children they still languished in prisons and the hulks, and the more enlightened reformatories and borstals were only slowly becoming established (Pinchbeck and Hewitt, 1973. esp. Chapter XVI). The twentieth century has seen considerable development in the accommodation and attempted reform of children, usually from the poorest sections of society, who come to the attention of "the welfare".

The main landmarks of state concern in the area of protection and reform of children are the principle Children and Children and Young Persons Acts which have been passed up to 1975. The list comprises the Children Act 1908, the Children and Young Persons Act, 1933, the Children Act 1948, the Children and Young Persons Acts of 1963 and 1969, and the Children Act 1975. With the exception of the Children Act of 1975 which is

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considered in detail later, these acts will be briefly reviewed in this chapter. However, other factors can be seen to have influenced legislation during the twentieth century and must be noted. The social work profession has come to prominence during this time, and, as described in chapter six, that profession has wielded some influence upon legislation. At the same time, the social climate in which social work has been required to operate has itself influenced that practice, and this will be demonstrated by considering the changing prominence given to various social work principles. Possibly the Children and Young Persons Act, 1969 was the high point of the profession's influence and it may or may not be a coincidence that after opposing a powerful group with arguments which, (if narrowly) won the political arguments on that occasion, social worker's credibility has been severely undermined since. The present ideological position may be stated as; the juvenile courts and their magistrates have been proved right in their tussle for control over children subject to care orders of the court. This has been achieved through the agency of a whole series of public inquiries into the misfortunes of usually young children subject to care orders. Most of these children died. It is noteworthy that the widespread criticism of social work and social workers has effectively silenced the only group of workers in the state with a commitment towards the poor and the poorest, coupled with some first hand knowledge of their circumstances. This has been achieved not directly by the responsible ministry, but by "public opinion" forming news

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media, in their interpretation of the interpretations of the public inquiries as to "what happened". In his foreword to the recent review of eighteen published reports of the most serious child abuse cases (Child Abuse,1982.), the Secretary of State for Social Services commends the study to relevant agencies with the hope that it will "...help to make their work even more effective." The operation of scandal, apparent during the nineteenth century, can be seen to be very significant to the contemporary operation of the dominating ideology.

### **Twentieth Century Children Legislation.**

The Children Act 1908 was unoriginally hailed as "the Children's Charter". It was in part a grand consolidating act "which repealed no fewer than 39 earlier measures" (Bruce,1968.p.225.), including the legislation on Child Life Protection and Cruelty to Children. Its most significant enactments related to the prosecution of children for offences. Late in the day, juvenile courts were set up to hear cases involving children. The first juvenile court had been set up in the U.S. in 1899 (Platt,1977), but as early as 1875 Benjamin Waugh had launched a vigorous attack upon the treatment of offending children in his "The Gaol Cradle - Who Rocks It?" proposing a separate system for dealing with them. Under the terms of the Act of 1908 children were hence forth, to be heard separate from accused adults and the juvenile courts were to be closed to the public not immediately involved. Children under sixteen years were no longer to be sent to prison and the act encouraged the setting up of remand homes

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to hold children, if necessary, before trial. The distinction between industrial schools and reform schools was deliberately blurred with the aim of continuing the recent emphasis on treating more than punishing delinquent children. Parents of children appearing in court were required to attend, and the court was given expanded powers to fine parents for their children's misdemeanours. Heywood comments;

"The Children Act of 1908, was a great and fundamental step in child protection, not so much because it was new, or clarified any matters which were controversial, but because for the first time it gathered together into one statute a host of amending laws and piecemeal legislation which publicly emphasised the social rights of children."  
(Heywood.1965. p.108.)

The concept of "the social rights of children", blossoming into the full legal rights of children later in the century, is not as unproblematically "a good thing" as Heywood, amongst others, assumes. The point is that while all children are subject to Children legislation, it is overwhelmingly from one sector of the population that prosecuted children come; the working class, and predominantly the poorest sections of it. It is these parents and children who discover that rights to families are legally negotiable, and the position was to continue to develop throughout the first three quarters of the twentieth century. During the nineteenth century the Poor Law had hit upon the

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practice of separating what were then termed pauper children from their parents, almost by accident: the twentieth century state went on to develop the practice in some detail.

Ideological support for the practice of "care" in all its forms, is maintained by the few hard cases of serious physical abuse of small children by their caretakers. The reality is that in the nineteen eighties there are, at any one time up to 100,000 children and young people "in care" (see Appendix A Table 4) and the most significant factor they share is their poverty stricken homes. It is true that many families in equal poverty manage to maintain the family group in tact, but this no more justifies a blanket policy of "care" for the children of those who are seen to fail, than does the small number of cases coming from families not in dire poverty argue for abolition of all accommodation facilities maintained by the state for destitute children. There will be exceptions to any rule, and in the case of children there will always be some who become totally destitute and in need of state care; but up to 50,000 in any one year in late twentieth century England (see Appendix A, Table 5)? It is only by regarding the separating of children from their families in the numbers which have been apparent since the inception of the practice in the mid nineteenth century, as a state practice of ideological domination, that the policy can be understood. "The social rights of children" do not necessarily include as a high priority of the state, the rights of some children to their poverty stricken families.

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The Children and Young Persons Act of 1933 really continued the direction of reform taken by the Act of 1908. The Act dealt with both the sinning and the sinned against child, and further attempted to see them both as victims of their circumstances and in need of treatment or assistance, rather than punishment. The age limit for consideration by the juvenile court was raised from sixteen to seventeen years and the offending young person seen to be in need of removal from home would in future be placed in an "Approved School". The distinction between the reform school and the industrial school had in practice been all but removed and the Act confirmed this by merging them into the group of schools approved by the Home Office for the accommodation of children and young people sent there by the courts. As well as the offender in the juvenile court, the Act covered the ill used child who might be made the subject of a "fit person" order, the forerunner of the "care" order. Grounds for making such orders, as well as covering delinquency, cruelty and abandonment, covered the much more negotiable areas of "moral danger" "bad associations" or neglect "liable to cause unnecessary suffering or injury to health" (C & YP Act 1933. sec 1.). While eulogising the act, Heywood does sound a note of caution. "It is interesting to see how firmly the concept of training by alteration of the environment had permeated the legislation of the time." (Heywood,1965.p.130.). Heywood goes on to criticise a lack of economic support for what was clearly a problem of poverty. But she fails to develop this aside when

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tracing the development of social work since the second world war.

The Children and Young Persons Act of 1933 followed shortly after the Local Government Act of 1929 which was itself another blow to the significance of the Poor Law. By this act the Boards of Guardians had been abolished and their powers passed to the local authorities' new Public Assistance Committees. Thus, children whose care was taken over by the state were becoming the responsibility of several authorities. A perennial problem associated with children "in care" relates to the different authorities with responsibilities for such children, and how their actions might be co-ordinated (see Child Abuse, 1982, or A Child in Trust, 1985, for recent re-statements of the problem.). While the 1933 Act can be seen to have advanced the liberal attitude towards children "in care" by stating that "Courts shall have regard to the welfare of the child", the problem of divided responsibility was not addressed.

The role of scandal in the reform of welfare legislation, and particularly children legislation is a significant one. It may be argued that there is nothing more effective than public outrage to move so conservative and uncaring a body as the House of Commons. Alternatively, scandal can be seen as a situation prime for exploitation for the political opportunist. A third scenario has scandal as creating the situation for re-emphasising the state ideology as "common sense", and resultant action becomes



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"the right thing to do". No doubt there are elements of all three in most scandals leading to reformed legislation. They are apparent in post war scandals associated with children "in care".

In January, 1945, Dennis O'Neill died as a result of blows and chronic neglect. He was boarded out by the local authority in the area of another local authority. Dennis and his brother Terence had experienced successive foster homes since being removed from their parents for long term neglect. But it was , above all, the treatment Dennis suffered at the hands of his foster parents at Bank Farm, Minsterly, his last foster home, that caused his death. The government responded promptly to the coroner's jury finding as to the cause of death and particularly its rider questioning the serious lack of supervision by the local authority, by setting up the Monckton inquiry (Monckton Report, 1945.). Yet before this committee had reported the government set up a more far reaching inquiry "to inquire into the existing methods of providing for children who from loss of parents or from any cause whatever are deprived of a normal home life with their own parents or relatives: and to consider what further measures should be taken to ensure that these children are brought up under conditions best calculated to compensate them for the lack of parental care." (Terms of reference of the Inter-departmental Care of Children Committee.(the Curtis Committee)). The Curtis Committee reported in September, 1946.(Curtis Report, 1946) This governmental

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activity on behalf of poor children was laudable. It might, however, have been more convincing if such unprecedented concern in response to an indignant "public opinion" had not arisen immediately before a general election. A similar situation arose in 1974, associated with the death of Maria Colwell (see p.200 below). The Curtis Committee report was a model of an account of thorough and conscientious investigation, compassion and concern. It was also painstaking in discovering and describing the confusion of interlocking responsibilities between departments for the welfare and supervision of children "in care". The committee recommended as a solution to the perceived problem, the appointment by local authorities of a Children's Officer with appropriate staff to take over responsibility of all children "in care". Children were best placed with families, with the best solution being adoption. Failing that children should be boarded out, and if, as a last resort, children had to be accommodated in local authority establishments, these should be modelled as far as possible on family homes. Certainly the spirit of "less eligibility", as it had applied to children "in care", was allowed no place in this compassionate and indignant report.

By the time that the committee reported, the post war labour government had been in office for one year and the spirit of reform of the report fitted well with a government legislating a small social revolution. The Children Act of 1948 might be described as the epitome of the liberal attitude to caring for

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the destitute children of poor people. Certainly its attitude has not been approached before or since in the field of children legislation. However the tragedy of Dennis O'Neill and his family was used by media and politicians, and however the judicial committee of the House of Lords "re-interpreted" the statute (see chapter 7.), the Children Act of 1948 can be seen as addressing the perceived problems with a degree of empathy and concern. It addressed the problem of multiple centres of responsibility by creating the local authority Children's Departments and it addressed the problem of supervision by granting the Secretary of State powers to make regulations concerning the supervision of children boarded out. Of course, what neither the report or the Act did was to consider in any serious way whether there was a need for these children to be "in care" in the first place. That there was this general need for tens of thousands of children to be brought up "in care", was no more apparent than that some derivation of Parkinson's law was in action, providing children to occupy a given number of local authority vacancies.

The Act, on the demise of the Poor Law, made the local authority's Children's Departments responsible for accommodating and caring for children in need. It also laid on them a responsibility to return the children to their families as soon as possible. Indeed, the Act goes to some length to specify the limited powers which section 1 of the Act gave to the local authority. Section 2 also passed on to the Children's

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Departments the Poor Law power of assuming the parental rights over a child "in care" whose parents were seen as culpable or incapable (see chapter 7.).

The Children and Young Persons Act, 1963 is seen as the Act which remedied the defect in the 1948 Act (Packman, 1975. p.67), and allowed Children's Departments to undertake preventive work. They were enjoined to prevent the need to receive children into care where possible and if necessary they could give material aid to help achieve this aim. The Act was primarily concerned with the workings of the juvenile courts and delinquent children and like the report which preceded it (Ingleby Report,1960), it was seen to be cautious. However, the report did open up a subject which remained a live issue throughout the sixties and is still the subject of lively debate. "Despite its shortcomings, the Ingleby Report did make some important observations which both reflected and amplified the debate on prevention. One was the link between child neglect and juvenile delinquency. (The Committee's terms of reference) assumed a connection between the two and Ingleby was the first of a whole series of reports and white papers in the 60s, which explored this connection." (Packman.1975.pp.64-5.).

Three of the "whole series of reports and white papers" will be noted in describing the development of this debate throughout the 60s. The debate eventually led to the Children and Young Persons Act of 1969, the reform of the juvenile justice system

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which was side stepped by the Act of six years previous. The problem which exercised the Ingleby Committee, a perceived rise in juvenile crime, was by the mid 1960s seen as a crisis which had to be addressed. "By 1959, the proportion of indictable offenders under 17 years was 70 per cent greater than that in 1938. By 1961 it was 107 per cent, in 1963, 125 per cent and in 1965 133 per cent higher than the pre-war figure" (Packman,1975.pp. 112-3.).

While in opposition, but no doubt anticipating office, the labour party had set up a committee under the Chairmanship of Lord Longford to consider crime, including juvenile crime, and on coming into office in 1964 the Labour Government published a white paper "The Child, the Family and the Young Offender" in August 1965. This white paper was based to a large extent on the Longford Committee's report, "Crime - a Challenge to us all" (Longford Report, 1964). The white paper's proposals were radical and similar to those for Scotland contained in the parallel Kilbrandon Report of 1964. In Scotland the Social Work (Scotland) Act of 1968 followed Kilbrandon closely.

"In England and Wales, however, this challenge to existing methods and institutions was too great and it was poorly argued. The white paper was a flimsy document compared with Kilbrandon - insubstantial considering the changes it was proposing" (Packman,1975.pp.115-6.).

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The white paper was proposing no less than the abolition of the juvenile court in favour of a system of family councils for the vast majority of children who had previously appeared before the court charged with offences. As with the Scottish model, only if the offence was denied or agreement could not be reached in the family council, would a court appearance be indicated. This was quite unacceptable to the English courts who argued the need for "due process" . The argument quite ignored the fact that about ninety per cent of juvenile offenders pleaded guilty and so the facts of the case were usually not in dispute. Arbitrary powers were also cited as unjustifiable; the family councils would comprise social workers and informed laymen, not necessarily lawyers. The decisions of such a body, based on the perceived need of the child rather than the offence, may well be seen to be unfair in suggesting fines, for instance, for the middle class boy, while his co-defendant from a deprived home may well be subject to some type of incarceration. Again such an argument might have been met with the observation that that was precisely what was already common practice. However, the point of the argument was that in a contest between the expertise of social workers and the expertise of the courts, the courts could not be seen to lose out.

Priestley, et. al. (1977) saw the proposed reorganisation of the juvenile court as part of a wider process of administrative rationalisation and centralisation in the public sector

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occurring throughout the 1960s, with the aim of preventing overlap and achieving economies of scale. Application of this process "...to the Juvenile Court and its cohorts of agencies was, however, thwarted by the inassimilable and autonomous powers of the police and the magistracy" (p.23). A second and compromise white paper, "Children in Trouble", was published in April, 1968. This white paper was enacted more or less as the Children and Young Persons Act, 1969.

While the Children and Young Persons Act of 1969 can be seen to be a compromise measure, it still comprised what were seen as radical reforms of the juvenile justice system. However, real compromise between the alternative positions of treatment and punishment, welfare and justice, discretion and due process proved to be ephemeral. The new Tory government of 1970 refused to implement vital sections of the act and the moment of welfare influence died with the 60s. Yet something of the spirit of the act survived, so that this tiresome statute eventually demanded the amending attention of the radical right under the terms of the Criminal Justice Act 1982 (McEwan,1983).

Before considering non-implementation and wrecking amendments, a note concerning what was achieved by the Act of 1969. . Firstly the Act substituted for the approved school order and the fit person order, the care order. The care order placed subjects in the care of the local authority, in effect the Children's Department. This was the limit of the court's powers

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in this area. What happened to the children after the making of the order was a matter for professional judgment and not for juvenile court perusal or review. The approved schools were disbanded and hence forth accommodation for children in care and not boarded out, was provided in community homes. Ex-approved schools became "community homes with education on the premises" and were brought within regional groupings of such resources, to be administered by regional committees comprising officers of several local authority Children's Departments. Thus the professional Child Care Officers under the direction of the professionally qualified Children's Officer can be seen to have taken over the responsibility for children "in care". It will be recalled that already, under the Children Act of 1948, children "in care" voluntarily and by agreement were already the responsibility of the Children's Departments. Almost the final act of the Labour government in 1970 before failing to win re-election that year, was the passing of the Local Authority Social Services Act 1970, setting up the Social Services Departments. These local authority departments were an amalgam of Children's Departments, Mental Health Departments, Welfare Services Departments and the Home Help Service, with occasionally other services included. Because the Children's Departments had by far the larger number of qualified fieldwork staff the new departments were taken over by the Children's Departments to a considerable extent. This process was assisted by the emphasis on the workings of the new 1969 Act and the priority given to "child saving". The Secretary of State was



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given similar powers of approval or otherwise in relation to the appointment of Directors of Social Services as had been the case with the appointment of Children's Officers under the Children Act of 1948.

The reformist influence of "The Child, the Family and the Young Offender" (see p.109) could still be detected in the Act of 1969, but with the coming of the new administration in 1970 opponents of the Act recognised a more favourable climate for maintaining the *status quo*. Under section 4 no child under the age of fourteen could be charged with an offence. Under section 5, young persons, up to the age of seventeen could not normally be charged with an offence. In the exceptional case where the police might feel it appropriate to prosecute, they were required to consult with the local authority before doing so, in every instance. Recourse to the courts would have been under the terms of section 1 of the Act, where an offence was one of several alternative conditions which might provide grounds for care proceedings. However, such care proceedings would only be embarked upon if, in addition to meeting one of the primary conditions, the social workers involved deemed that the child was "in need of care or control which he is unlikely to receive unless the court makes an order..."(Sec 1 (2)). The effect of these two sections would have been to remove most offending children and young people from the ambit of the juvenile court, and to curtail the powers of the police. The Conservative government which came to power in 1970 refused to implement

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sections 4 and 5 of the Act, and so any assessment of the effectiveness of the original proposition was rendered impossible. The social workers of the local authorities were made responsible for children coming into care, while being denied the associated influence over police decisions concerning the charging of offenders. In relation to the original proposition, the two powers were as one. By implementing the former but refusing the latter, the spirit of the act was quite defeated.

"As a charter for a new welfare dispensation, the Act was therefore, by the time of its due date, a pretty broken backed affair. The attempted *coup* against the criminal stigmatization of children had failed, and the new order, like the old, reflected deep divisions in both professional and secular opinion over the right approach to the problems of juveniles."(Priestley et al.1977.p.19.).

While Priestley's conclusion is accurate, it must be emphasised that the result of the dispute over "the right approach to the problem of juveniles" which continued throughout the 60s, resulted in the *status quo* remaining more or less in tact. The reformers can be seen to have had some success in wresting responsibility for the "treatment" of children "in care", but the goal of near abolition of court procedures for offending children and young persons was lost in England and Wales. Nor were "the powers that be" content to allow this lesser victory.

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The partial implementation of the Children and Young Persons Act of 1969 heralded a vigorous and continuing offensive against the proposition that social work attitudes towards the poor should gain wide acceptance. At the same time a more covert influence on the profession from within the state sought to redefine social work goals. The success of the former has enabled that latter influence to gain in significance also.

That the basic aims of social work practice are modified from time to time is not of itself cause for comment. Any social institution must alter over time as the social situation alters. Such alterations are as inevitable with professions as with any other social construction. And as with any social change, its causes are several. Thus, to note a possible change in a related profession, any move from curative to preventive medicine would be as a result of a struggle between the professionals themselves, but mediated by "public opinion" and the attitude of the state. While these three sites of influence can be conceptualised separately, each is influenced by the other. Indeed, to a considerable extent "public opinion" is formed by the state, and if these two confront the professional attitude, obviously the professional attitude would have to bend. Of course, the experienced professional group ensures that it avoids a confrontation with the state by inhabiting "the corridors of power" while losing no opportunity to influence "public opinion". That the medical profession are valued if junior partners in the running of the state probably would not

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be disputed. The National Health Service is the organisation with the most employees in Western Europe. An example of its ability to influence public opinion in favour of curative medicine might be the effort it makes to publicise expensive "spare parts" surgery at the apparent expense of preventive medicine. The hierarchy of medicine is often to be found in the Teaching Hospital but only very occasionally beside the leaden motorway or in the acid forest. While the state does not insist otherwise the profession is pleased to nurture its present position (Kennedy,1981).

This section will conclude by considering how negotiable has been the basis of a central sector of statutory social work practice over the last forty years. This will be as a prelude to the more detailed consideration of the requirements of social work by the state in the following three chapters.

#### **Principles of Child Care.**

Since the implementation of the Children Act 1948, three distinct principles of social work with families and children have held sway at different times. They can be identified as "care", "prevention" and "permanence".

Care has been associated with state involvement with children since about the mid nineteenth century. Prior to that, the common law recognised seven years as the age of criminal responsibility, and between seven and fourteen years the

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prosecution was, by the doctrine of *doli incapax*, required to demonstrate an offender's appreciation of right and wrong. "Beyond that, the law made few concessions to children, either by way of procedure, or in sentencing practice. Children were liable to be imprisoned, transported or hanged impartially alongside their convicted elders" (Priestley et al.1977. p.1). The care children received in workhouses, schools and boarding out situations was variable in the extreme but the amount of legislation in the hundred years up to 1948 indicates a growing concern for children by the state. The 1948 Act laid upon the local authorities a duty to receive children into care if necessary for the child's well being, and the only ground which permitted the authority to retain that child in its care was that that course of action was demanded in the interests of the child. Stipulations concerning the accommodation of children in care, and duties to seek to return children to their own homes underlined the element of child centredness of the legislative attitude. This emphasis on care and concern for the child separated from its family soon found expression in a social work practice considering how children might be retained within their families during such crises as saw them received into care. The Boarding Out Regulations 1955, issued as a consequence of the Act and defining specific minimum visiting requirements of local authorities to boarded out children, further demonstrated concern; not least concern to avoid the situation associated with the tragedy of Dennis O'Neill. The pressures consequent of such moral panics lend an increased urgency to

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local authority's efforts at protecting children boarded out (see pp.88-90 above).

Thus, as a further expression of the concern for children, coupled no doubt with Whitehall's recognition of "an even better and even cheaper way of caring for children" (Stroud,1960. pp.242-3.) "prevention" became a new basis for such social work. The concept was introduced in a joint circular to local authorities in 1950 (Joint Circular 1950.) However the basis was only really given legal sanction and material provision by the Children and Young Persons Act 1963 (see section 1 of that act.). As with the concept "care" "prevention" can be seen as a humanitarian and compassionate principle for social work to adopt in relation to families and children. Yet, as with care, prevention also has its "unintended consequences". Jordan (1974) argued at length that it was naive of social workers to attempt to compensate for a rigid state income maintenance scheme by themselves underpinning the scheme with payments available under the "prevention of reception into care" powers of the local authorities. Though such activity was only a small part of the duties of local authority social workers, it is clear that the purposes of such payments were usually to do with supplementing state income maintenance payments in increasing amounts. Jackson and Valencia (1979) note that in the 70s the greatest demand for "Section 1." money was in relation to fuel debts and temporary accommodation, though they do point out the difficulty of generalising in the face of huge

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variations in practice between local authorities. What is clear, is that financial aid given under section 1 of the 1963 Act has been considerable. The Social Security Act, 1986 envisages a developing role for social work in this field of income maintenance. A significant role is suggested for them in the administration of the proposed Family Fund. (Social Work Today, 27.9.1986.)

Financial Assistance Given under Sec.1, C.&Y.P. Act 1963.  
(England)

<u>Year.</u>	<u>Amount.(£)</u>
1966	66,600
1968	188,800
1970	377,000
1972	652,000

Source: Adapted from tables in Jackson & Valencia,1979.

Thus, the above two reforms of practice as a direct result of legislation can be seen to produce effects both supportive of and contrary to a humanistic as distinct from a bureaucratic social work practice. The positive aspects of "care" can be ranged against the difficulties of questioning the whole organisation of removing children from their homes for social reasons. The obvious advantages of "prevention", taking steps to prevent the need to receive or take a child into public care become more questionable when such assistance becomes an alternative form of income maintenance. If social work becomes involved with the routine income maintenance of the poor and

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very poor, the issue will dominate any other social work function. The bureaucratic rationing of money will negate any other role for statutory social work.

If there are such negative "unintended consequences" of the principles "care" and "prevention", the consequences of the third principle, "permanence" would appear to be more clear. Again the argument for a basic principle of permanence can be seen in part to spring from a professional concern for the problem of clients but the "unintended consequences" could be such as to alienate potential clients of social work to a greater extent than was the case hitherto. "Permanence" relates to the child's need for a permanent relationship with a reliable and loving carer or carers, usually the parents. John Bowlby (1952,1953) did most to popularise the idea at a time when social work was establishing itself . Though there have been vigorous debates within social work since, particularly related to the sexist and blood tie implications of Bowlby's findings, the basic idea of the benefits of a dependable carer or carers have never been seriously contested amongst either professional or lay opinion. (For a discussion of the subject see Tizard, 1977. Clarke & Clarke, 1976. Rutter, 1981.) If multiple carers for infants pose serious questions as to their future development and mental health, the implications for children in care are obvious. Further, studies by Trasler (1960) and Parker (1966) and more recently by Packman et. al (1986) Millham et. al. (1986) and Rowe, et. al. (1984), continue to point up the short comings and



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disadvantages of boarding out and life in care. Of course such information is not new, and in part accounts for the reasons why Curtis and the Children Act 1948 placed such emphasis on returning children to the their families as soon as possible. Such arguments also indicate why social work placed such emphasis upon prevention. "Permanence" addresses the question by turning the situation on its head. If multiple carers and multiple admissions to care are detrimental to children, then deal with the problem by placing children permanently with substitute carers who are reliable, loving, etc. etc.. Within one hundred and fifty years, the state's attitude towards children has altered from one of hardly recognising their existence to recognising them as individuals and if need be, quite separate from their parents and family. On the face of it, this development in the perceptive powers of the state is to be applauded. However, the increasing negotiability of parenthood might raise questions concerning such decisions. When it is realised that this negotiability only really relates to the poorest sector of society the practice becomes much more questionable. This new "realism" was being demanded of "woolly" social workers by the state and "public opinion".

Maria Colwell was seven years old when she was killed by her step-father early in 1973. At the time she was under the supervision of the Social Services department having previously been the subject of a care order. The scandal which followed centred upon the role of the social workers concerned and their

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failure to protect Maria (Colwell Report.1975). The tragedy of Maria Colwell proved to be a water shed in the development of social work. Given its proximity to the implementation of the Children and Young Persons Act of 1969, and the continuing series of trials by public enquiry to which the profession has been subject since, it is arguable that if the Maria Colwell episode had not happened it would have to have been invented.

The new realism of the "radical right" has pervaded the social world of the eighties, but there were many such ideas apparent in the seventies seeking to emphasise the authoritarian aspect of social work. This aspect of social work has a long history and certainly flourished in the Charity Organisations Society of the late nineteenth and twentieth century (e.g. see Young, 1976.). But it is proposed that the recent history of the development of statutory social work is marked by an emphasis on the more humanitarian aspect of practice throughout the 1960s. "Permanence" can be seen to represent something of a reaction to the liberal challenge of the 60s. Rowe and Lambert (1973) proposed, on the basis of a small sample that many children languished in child care institutions with little prospect of returning home. Good practice required that such children should be placed on a permanent basis with substitute families. Goldstein Freud and Solnit (1973) drew on psychoanalytic theory to argue that the small child's perception of time cannot be compared with that of an adult. Thus " all child placements, except where specifically designed for brief

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temporary care, shall be as permanent as the placement of a newborn with its biological parents." (Goldstein et al. 1973.p.35.)

A recent publication based upon the authors' D.H.S.S. funded study of this recent development within local authority child care provision recounts a small scale study of children placed for permanence and whole-heartedly endorses the principle and practice. Occasional cautions associated with natural parental rights or the wishes of some of the children concerned, are ultimately ignored in favour of enthusiastic support. The study proposes that the enthusiasm for the idea of permanent placements developed from a recognition that no child was "unadoptable". Such a concept fitted well with a commitment to early bonding, a need to close expensive children's Homes and a willingness to ignore the wishes of natural parents in favour of popular definitions of "the best interests of the child". "Preventive work had had its day following the 1963 Act, and had been judged to be less than successful; and for many of the children needing a secure family placement, attempts at long term foster care, had proved unsuccessful" (Thoburn et. al. 1986.p.8). The authors do no more than assert the demise of "preventive work", an odd statement in view of a decrease in numbers of children entering local authority care in recent years so dramatic as to call forth leader comment in the new year issue of New Society (New Society 2.1.1987).

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"Permanence" is not a development of "care" and "prevention" but an alternative attitude to social work. The ideal permanent placement for a child "in care" not being returned to its home is of course, legal adoption. "Permanence" is a threat to the parent entrusting its child to the local authority with the expectation of return, as was envisaged under the Children Act of 1948. The two concepts have distinct and contradictory elements. While "care" and "prevention" were seen to be principle features of child care social work, adoption remained insignificant and exceptional. With the development of the permanence principle adoption has come more to the fore and with it has come a new ethos, and a new and more suspicious relationship between social worker and client (see Appendix A, Tables 2 and 3).

To explore this change in detail the following two chapters will consider the development of adoption legislation since its inception in 1926. The move from insignificant procedure to principal definer of the practice of a main element of state social work will be traced mainly through the official reports and statutes. In identifying ideology embedded in legislative discourse (Burton and Carlin, 1979) the process by which domination is generally perceived as legitimate can be illuminated.

## Chapter 5.

### Legal Adoption Prior to the Second World War.

In this chapter, relevant legal judgments, government reports and statutes will be reviewed. The overall aim will be to demonstrate the rather negative attitude displayed by the state towards legal adoption during the 1920s and 30s. This is in marked contrast to the contemporary situation which will be considered in chapter 6.

#### The Judicial Attitude.

The reported legal judgments of the High Court are the basis of the common law which can trace its history back over the past one thousand years or so. Problems associated with *de facto* adoption either by individuals or charitable societies were a common place to the High Court well before the passing of the Adoption Act of 1926. Prior to this Act there was no provision for legal adoption in this country, though *de facto* adoption had always existed here as elsewhere. Actions related to contested adoptions during the late 1920s and 1930s continued to be based upon writs of *habeas corpus* to a large extent, and reference to the Act was rare. Hence, a review of the judicial attitude towards "adoption" prior to the second world war will include actions based upon such writs.

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Re J.M. Carroll (an infant) (1931) KB 1 317, was an action brought by the mother to re-claim her young child. She had previously placed her with an adoption society who in turn had placed the child with prospective adopters. The mother relied upon a writ of *habeas corpus*, but the judgement reasons in similar vein to present day cases, considering whether or not to dispense with a parent's consent to adoption as being "unreasonably with-held". Indeed, in all the cases reviewed, some formulation of "the best interests of the child" is always said to operate. A parallel feature of cases decided in the first half of the twentieth century and before is "parental rights", a central feature of re. J.M.Carroll. The rights of parents particularly related to decisions concerning the religious upbringing of children. Many cases arose because catholic parents allowed their children to be cared for by, or after 1926 placed for adoption with, protestant families or charitable organisations, only to later insist upon their children being brought up as roman catholics. This might entail transfer to a catholic family, or more likely, a catholic institution.

The leading case was *Barnardo v McHugh* 1891. AC 388, where the mother's application was successful. The judgement stated that the primary consideration in such cases had to be the wishes of the natural parents, or the mother if the child was illegitimate. The mother had applied for and obtained a writ of *habeas corpus* to remove her child from one of Barnardo's Homes and place it with a nanny. This was eighteen months after leaving the child

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with Barnardo for an agreed period of twelve years. The judgement made the point that the court was not bound to follow the wishes of the parent if it was not seen to be commensurate with the welfare of the child. However, courts usually saw this point as applying only if the parent could be seen to be somehow culpable. One of the strongest statements on this point is to be found in Carey (an Infant) 1883 10 QB 454, where a seven year old child was removed from his life long foster parents on the application of his mother, to live with her sister's family. After noting that the natural relations had a right to the child, the judge said, " ....we cannot interfere with the rights of the mother in favour of persons who are mere strangers."

To return to re J.M. Carroll, the mother had given birth to the child the subject of the litigation, in a workhouse in West London in 1929. Miss Carroll was of the roman catholic faith. She asked a protestant adoption society to place her baby for adoption, complaining that she could not leave the workhouse until her baby was provided for. The society took the child and placed it with prospective adopters. The mother changed her mind several times as to whether the child should be so adopted, or be re-claimed and be brought up by the Crusade of Rescue, a catholic child care agency. The latter course entailed children being fostered until school age, at which point they would be placed in an institution run by the society. Finally, Miss Carroll decided to re-claim her child and applied to do so

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by means of a writ of *habeas corpus*. The action was defended by the protestant Homeless Children's Aid Society. Miss Carroll was persuaded to her action by the Crusade of Rescue. The judgement quotes from a previous similar case where it was noted that *habeas corpus* was becoming more concerned with claiming souls than bodies.

Miss Carroll was successful in her action in the Divisional Court and the defence appealed. Lord Justice Scrutton in the Appeal Court considered that "unless the mother is of so bad a character as to be disregarded.... she has a right" (to stipulate in which religion her child should be brought up). Further "...I cannot regard the difference between home training and training in a respectable institution as sufficiently important to enable the court to disregard the parent's wishes as to religion in the case of a child so young as to have no wish of its own." All this was in response to the judgement of the Lord Chief Justice in the Divisional Court in favour of Miss Carroll. There, he distinguished *Barnardo v McHugh* partly on the ground of a "development of thought" which had taken place within the state, evinced by subsequent legislation favouring the welfare of the child as against the rights of parents. He also thought that infants were better served within the intimate relationships of the nuclear family, than in the impersonal upbringing of institutions. This latter point applied more to infant girls than boys.



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As is common in such cases, the judgement contained a statement to the effect that it was no part of the court's function to judge the merits of one religion (sic) and another, but Scrutton L.J. seems to have had some difficulty in suppressing some non-judicial feelings concerning The Homeless Children's Aid Society. When told that its church, the Evangelical Christian Church was simply a branch of the evangelical wing of the Church of England, he commented with some irony that "evangelical members of the Church of England would be much surprised to hear that their religion (was) the same as their non-conformist brethren." His judgement in favour of the mother criticised the adoption society for not determining the faith into which the child had been baptised, and for requiring the mother to sign a consent form left blank as to the name of the adopter. Yet he avoided any detailed consideration of the welfare of the child.

Greer L.J. did consider the welfare of the child, and quoted with approval Fitzgibbon L.J. in re. O'Hara considering Gyngall's Case (1893) 2 QB 232. Four specific points were made.

- 1) At common law, parents had absolute rights over children of tender years unless forfeited by certain sorts of misconduct.
- 2) Chancery jurisdiction required that decisions were to be taken following the rule "what a wise parent would do", even though the natural parent desired, and had a common law right to do otherwise and had not been guilty of misconduct.

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3) Under the Judicature Act of 1873, it was made a responsibility of all divisions of the High Court to exercise Chancery jurisdiction.

4) Courts were to act cautiously in superseding parents and only when the welfare of the child required it.

Thus Greer L.J. felt no constraint in applying 2) and 3) above and so opposing parental wishes in what he saw as the interests of the child. These would be best served by the child being brought up in a family home rather than a foster home soon to be followed by a Home. He felt that the vacillation of the mother was occasioned by pressure from the church against her taking the course she thought best. His was the minority judgement in favour of the adoption society.

Slessor L.J.'s judgement attempted to find the common ground between the other two judgements, while at the same time finding for the mother. He agreed that Chancery rules rather than common law jurisdiction applied, but saw Chancery as indicating that the welfare of the child was best served by it being with its mother, always excepting the case of the culpable parent. As to the true wishes of the mother, "I prefer to believe her sworn testimony, rather than to draw inferences on very inadequate data to her detriment and to the detriment of those who are supporting her by affidavit in the present case." Slessor L.J. gave considerable weight to the right of a parent to determine the religion of the child and quoted New's Case, (1904) 20 TLR

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515 583, where a twelve year old was removed from foster parents to comply with the mother's requirement as to religion. Slessor L.J. agreed with Scrutton L.J. in allowing the appeal.

The significance of re. J.M.Carroll to the development of social policy concerning those experiencing serious difficulties in bringing up their children, is that it was the first major consideration of parental rights since the passing of the Adoption Act 1926. The permanent threat in adoption legislation, in common with most children legislation, is the power to remove children from their parents. In the context of this threat, no doubt the powers to dispense with parental consent are used much less than are any of the other powers of removal, yet the dispensing powers of adoption legislation make them more final and absolute than powers of removal contained elsewhere. For this reason if no other their significance should not be underrated as both a symbolic and an instrumental power. (For a description of the contemporary situation, see Appendix A, Table 3.)

The Adoption Act 1926 contained an all embracing clause allowing courts to dispense with parental consents not only for objective reasons associated with culpability and incapacity, but also if the court considered it ought to do so (see p.146 below). The effect of re. J.M.Carroll is clear. The majority verdict bound the court in future to consider a restated emphasis of the rights of natural parents to their children. No

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distinction was made between legitimate and illegitimate children except that for the latter, "parent" referred the mother only. Equitable rules relating to the welfare of the child at the expense of the common law absolute right of parents to their children were acknowledged, but Greer L.J.'s emphasising of this point was certainly not echoed in the majority judgement.

Too much should not be made of any single judgement, but as can be seen with this and other decisions to be considered, leading cases tend to fall into line with the contemporary dominant ideology. While, as will also be demonstrated, this is not a strictly determined relationship, even the remote reaches of welfare law that was legal adoption pre-war, fall within the paradigm of state policy. At the time of re. J.M.Carroll the welfare state was little more than the pre-war liberal reforms, encouraged by the Minority Report on the Poor Law of 1909. The Labour government reforms of the 1940s were still a world war away and welfare was still the relieving officer, the "spike" and the despised Poor Law. Social work had barely begun, and the adoption lobby, such as it was, was viewed with some suspicion by a disinterested parliament and judiciary. The idea that it might become an adviser to the state concerning its policing functions towards some families seen as deviant, had not dawned. The tone of the judgement in re. J.M.Carroll reflected exactly that of the Departmental Committee on Adoption Societies and Agencies of 1937 (Horsborough Report, 1937) (see pp.148-152 below) when considering what were seen as dubious

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not to say sinister groups possibly more concerned with increasing church membership or even personal bank accounts, than providing a necessary corrective for society's deviants.

#### **The Official Attitude.**

On 3rd August 1920 the Committee on Child Adoption was appointed under the chairmanship of Sir Alfred Hopkinson K.C., and the report (Hopkinson Report, 1921) was presented to parliament the following year. Their terms of reference were to consider;

- "1) Whether it is desirable to make legal provision for the adoption of children in this country, and
- 2) if so what form such provision should take."

*De facto* adoption of children into families other than their own had always been a common place. What was being contemplated was a law to confirm such transfers as permanent and binding, in line with, as the committee put it, "almost all civilised states."

The committee began its report by briefly reviewing this "civilised" legislation. They discounted continental legislation as inappropriate, with the possible exception of Norway's, but were more enthusiastic about that of the other common law, English speaking countries. They noted that within the United States of America, Massachusetts passed legislation as early as 1851, and had been followed by the other forty seven states

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subsequently. Australia, New Zealand and Canada all had adoption legislation.

The committee were clearly in favour of legal adoption. Increasing numbers of people were wanting to adopt as a result of losses during the Great War. They also detected an increasing interest in England, as elsewhere, in child welfare. They were apprehensive concerning the increasing number of *de facto* adoption with no safeguards available. Such safeguards might include an inspectorate and a register. In any event, adoption would occur in some form or other, and indeed the committee supported the practice in principle, only excepting the cases of those children "clearly physically and morally defective."

The committee were impressed by the London County Council witness who spoke of the positive relationship which developed between foster parents and children and the fact that it was two and a half times as expensive for the local authority to accommodate children as it was to have them boarded out. Subsequently, familiar arguments concerning the assumed propensity of natural parents to re-claim foster children when they attained working age, and the insecurity felt by foster parents in this situation, were put forward. While the committee felt that the interests of the child should be paramount, they suggested that the benefit to foster parents who, under the proposed legislation would become adoptive parents, should be recognised. Their final point was one put to them by the

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National Society for the Prevention of Cruelty to Children (N.S.P.C.C.). The bad results of uncontrolled and ill selected *de facto* adoptive parents were already becoming apparent, along side the good results of successful placements. Legislation was therefore urgently required. The logical conclusion of this argument was that the need for expert assessors, professionals, was undeniable if the welfare of the children was to be the priority.

The committee did not put forward any negative arguments. The catalogue of "civilised states", followed by expert witnesses regarding the emotional, financial and physical benefits amounted to a self evident case for legislative intervention in what might otherwise become " a growing problem".

The remainder of the report was taken up with proposed features for such a bill. Hearings should not be in the High Court because of the costs that would be incurred. However, appeals should be direct to the Court of Appeal. Given the argument concerning the court of first instance, one wonders whether the suggested appeals procedure was designed to discourage appeals.

Consents were to be required of all the principles. In addition, judges would consider the views of legal guardians, near relatives, the Ministry of Pensions in the case of war orphans, and the fathers of illegitimate children. Courts were to be

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empowered to dispense with consent to adoption in six specific instances:

- 1) Parent could not be found.
- 2) Child had been abandoned.
- 3) Parent incurably insane.
- 4) Parent guilty of persistent cruelty.
- 5) Parent deprived by law of custody.
- 6) Conditions existed which were detrimental to the moral or physical welfare of the child.

Adopters would be required to be over twenty five years of age, and single adopters, or married adopters with the consent but not the participation of their spouse, would be required to be over thirty years of age. "Generally adopters (would) be at least twenty years older than the adoptee."

Those making formal inquiries concerning the proposed adoption on behalf of the court would preferably be women. Judges were seen to be competent to advise adopters on all matters associated with adoption. Thus, a single woman adopting a boy might turn to the judge for guidance concerning his upbringing. Judges were also seen by the committee as best placed to oversee an adopted child's interest in any property he or she might own. "As a rule religion of the adopters should be that of the child."



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Natural parents could apply for rights of access, and the child's right of succession and inheritance would remain with the natural family. Further, the child would have no automatic rights of inheritance or succession from the adoptive family. If the adopters wished the child to have such rights this could only be done by specific testamentary provision. This clause addressed the fundamental problem associated with the concept of legal adoption in this country, and was eventually enacted in the Adoption Act of 1926.

In pointing out that the responsibility for the welfare of children placed for adoption but not ultimately adopted would be met under the terms of the Children Act 1908 rather than the proposed adoption legislation, the committee at this early stage made a plea for a consolidation of the law relating to children. Notwithstanding the Child Care Act 1980, such consolidation is still awaited (see Review of Child Care Law, 1985.).

The committee concluded their report with a strong plea not to separate parents and children lightly. "Nothing should be done to impair the sense of parental responsibility or, unless essential to prevent injury to the child, to interfere with rights and duties based on the natural tie between parents and children." Far from using economic circumstances as a reason for separating parents and illegitimate children, the committee proposed a cash allowance so that the material disadvantage which inevitably fell upon one parent families might be

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lessened. They thus anticipated the Finer Report on One Parent Families (1974) by fifty years, and such an allowance by an even longer term.

The Hopkinson Committee's report is a notable *tour de force*. Though its inclusion here is as the starting point of a review of official discourses on adoption, it is a report worthy of attention in its own right. It introduces into official discourse in Great Britain the concept of legal adoption, and with it solutions to what were seen as problems associated with adoption. Inheritance and succession were probably seen as the most significant problems, but matters concerning residual rights of natural parents, the dispensing with the consent of some natural parents to the adoption of their children by others, and the required minimum age of adopters, are other matters introduced into official discourse.

Though it is clear from the outset of the report that the committee was whole-heartedly in favour of the introduction of adoption legislation, the tone and construction of the report is rather naive and apolitical. For instance, a catalogue of reasons for dispensing with a natural parent's consent is juxtaposed with a plea for allowances to be made to one parent families. Such a situation takes no account of the ideological significance attached to legal adoption. The powerful arguments advising caution concerning adoption related to property and the way families entailed it. Humanitarian lobbies concerned with

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the plight of some children orphaned during the war, and moral entrepreneurs concerned with illegitimacy or the remnants of "baby farming", took alternative ideological positions. The committee embraced all these positions at the same time and added the perspective of the natural mother as victim for good measure. Later and more successful reports, were to propose a much clearer and less ambiguous message. To date, this is the only government report on adoption which has not resulted in legislation. Maybe the report can be seen as the work of the decent fellow, who never the less did not appreciate the political dimensions of his task. In this context, it is of passing interests to note that Neville Chamberlain was one of the committee members.

The Hopkinson Committee was followed by a second official committee on the subject of a proposed adoption law. The Child Adoption Committee appointed by the Home Secretary in 1924 was an inter-departmental committee in all but name. The Board of Education, the Ministry of Health and the Home Office provided three of the six members under the chairmanship of the Hon. Mr Justice Tomlin. Though Tomlin covered much the same ground as Hopkinson, there is no acknowledgement of the work of the latter committee in the report of the former (Tomlin Report, 1925). Its terms of reference were to "Examine the problems of Child Adoption from the point of view of possible legislation and (to) report on the main provisions which should be included in any bill." One year after their appointment, in

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April 1925, their terms of reference were widened to include a review of "the workings and provisions of the Children Act 1908, the protection of infant life, visitation of Voluntary Homes and any changes which might be required in the law or its administration."

It is doubtful whether this addition to the committee's terms of reference had the significance that was associated with a later Labour government's widening of the Houghton Committee's terms of reference in 1969. The point will be considered in the following chapter. It is sufficient to suggest here that while the Tomlin Committee members represented a cross section of those with responsibility for children deprived of a normal family upbringing, the Houghton Committee was selected overwhelmingly from organisations associated narrowly with the process of the adoption of children. By 1969, adoption agencies were seen as responsible advisers to the government. This was not so between the wars.

Hopkinson and Tomlin had quite contrasting views on the need for and desirability of legal adoption. Tomlin saw the need for legal adoption as to "create artificial families". The committee was unable to satisfy itself that there was an effective demand from those who were *de facto* adopters. The committee also doubted that the absence of legal adoption would put off people who otherwise wished to provide a permanent home for someone else's child. The committee thus directly contradicted the

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conclusions of Hopkinson of two years previous. Tomlin continued by pointing out that any demand for adoption occasioned by losses during the war were, seven years on, of little significance. The continued pressure for an adoption law appeared to the committee to be coming from those with a vested interest in adoption in general.

"People wishing to get rid of their children are far more numerous than those wishing to receive them and partly on this account the activities in recent years of societies arranging systematically for the adoption of children would appear to have given to adoption a prominence which is somewhat artificial and may not be in all respects wholesome. The problem of the unwanted child is a serious one; it may well be a question whether a legal system of adoption will do much to assist the solution of it."  
(Tomlin Report, 1925. para.4)

Tomlin goes on to specify two "evils" which it was proposed to the committee an adoption act would remedy. The first was the insecurity of the *de facto* adoption, always threatened by the potentially reclaiming natural parent. This the committee saw as a "theoretical rather than a practical point, nonetheless understandable." A better solution would be to allow natural parents to legally transfer parental rights to *de facto* adopters. Then judges, the only competent body, would be empowered to review the welfare of the child and take into

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consideration all the far reaching effects of such a transfer. The committee saw High Court judges as being those most competent to make such decisions, but allowed that it would be more practical to give jurisdiction to County Courts and Magistrates Courts.

With no argument to the contrary at this point, the report then runs this discussion of transfer of parental rights into a detailed description of the administrative and legal implications of adoption law. The committee seemed to accept as inevitable the coming of adoption legislation, while themselves remaining sceptical. They gave no more credence to the second "evil" which it was proposed to them that legislation would remedy, than the first. The proposition was that legal adoption would halt the current "traffic in children" and its evil consequences. This was to be achieved by only allowing *de facto* adopters to keep the children if they began proceedings in the court. "This is a proposal, the mere statement of which is sufficient to disclose its impracticability." Better, the committee thought, to strengthen the Child Life Protection clauses of the Children Act 1908. At this time only the most casual supervision of children, living in homes other than their own was carried out under the authority of the Poor Law Guardians. It was this area to which the committee's additional terms of reference referred but reformed practice was legislated for in the Local Government Act of 1929 rather than the imminent Adoption Law.

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Tomlin's thrust seems to have been to make the courts central to most of the decisions concerning the transfer of parental rights, whether by legal adoption or not, to other individuals. The committee was critical of the local authority's executive power to assume parental rights over children in its care, and supported the agitation for an improved local authority supervision of fostered and boarded out children. The report concluded with some details of what an adoption law should include.

It was proposed that an investigator should always be appointed with "a duty of protecting the interests of the child before the tribunal." Provided that all gave consent freely, the guiding consideration of the court was to be the welfare of the child, and this was to include where appropriate, the wishes of the child.

There was an attempt to put a positive gloss on the vexed question of inheritance and succession by emphasising the maintenance of the child's rights within his or her natural family rather than the de-barring of automatic rights within the adoptive family.

Age limits were amended from those proposed by Hopkinson. Twenty five was to remain the minimum age, but the age difference was increased to twenty one years. The thirty year minimum was not mentioned, but married couples were only to be

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allowed to adopt jointly. One member of an unmarried couple could only adopt with the consent of the partner, and single men were to be barred from adopting females.

This in parts rather testy report, maintained its impatient attitude towards the adoption lobby to the end. In a late consideration of confidentiality the attitude is well demonstrated. The issue under consideration was that of not allowing natural parents to know the whereabouts of their adopted children. The committee noted that; "Certain of the Adoption Societies make this feature an essential part of their policy. They deliberately seek to fix a gulf between the child's past and future." This policy was, as far as the committee was concerned, at best misguided, at worse perverse. Provided that the adoption had the force of law behind it, there was absolutely no need for further safeguards. A policy of "...if the eyes can be closed to facts, the facts themselves will cease to exist (was) wholly unnecessary and objectionable in connection with a legalised system of adoption, and we should deprecate any attempt to introduce it."

The second report of the Tomlin Committee (Tomlin Report, b1925) was a draft bill "to make provision for Adoption of Infants." It followed the terms of their first report on the two main issues of dispensing with parental consent and inheritance. Some subsequently familiar features of adoption law such as the banning of payments and the granting of jurisdiction to all



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three courts of first instance appear in this first official attempt at an adoption bill. (Between 1920 and 1926 five private members bills were introduced on the topic.) The rights of *de facto* adopters of over two years standing, to oppose the wishes of the natural parents were granted and subsequently enacted in the 1926 Act. The feature disappeared from later legislation, only to re-appear in the Children Act 1975 under the term Custodianship. More recent judicial interpretation increasing the powers of local authorities to assume the parental rights over some some children in their care has reinforced this recent trend.

Another feature of the draft bill which was included in the 1926 Act was probation. Probation was in terms of a conditional order of up to two years, to be confirmed on the application of the adopters when they were satisfied as to the normality of their adoptive child. This "safeguard" was dropped from post second world war adoption legislation.

#### **Adoption Act, 1926.**

The Act received the royal assent on 4th August 1926, two years to the day after the appointment of the Tomlin Committee. At this point at least, interesting parallels with Houghton and the Children Act 1975 appear to break down. Houghton waited six years for legislative expression. The 1926 Act followed the report closely, with some notable additions.

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Adoption orders were not to extinguish property rights within the child's natural family, nor would it bestow such rights on the child in relation to its adopted family. That was in line with both Tomlin and Hopkinson.

The powers of the courts to dispense with parental consents were not really considered by Tomlin in the first report. The Act follows almost word for word the draft bill, but goes on to include a catch-all clause. Courts were to be able to;

"...dispense with any consent required by this subsection if satisfied that the person whose consent is to be dispensed with has abandoned or deserted the infant or cannot be found or is incapable of giving such consent, or being a person liable to contribute to the support of the infant either has persistently neglected or refused to contribute to such support, *or is a person whose consent ought, in the opinion of the court and in all the circumstances of the case, be dispensed with.*" (Emphasis added.)

Tomlin's lack of concern in failing to specify detailed grounds upon which courts might rely when dispensing with parental consents, contrasts with the attention given to the matter by the Hopkinson Committee (see p.136 above). Tomlin all but ignored the matter except for its financial implications. Ill treatment was of little concern to the committee but parents put

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their rights at some risk by failing to make their financial contributions in respect of their children. The legislature recognised the lacuna but rather than thoughtfully legislating in the manner suggested by Hopkinson, passed the matter over to the judiciary to do as it saw fit. Given this lack of interest in the details of legal adoption one might question why an act was passed at all. Certainly the Act was as a result of compromise between those seeking to protect vulnerable children by promoting "new" families and at the same time secure their field of employment and operation, and a powerful but indifferent ruling class who only recognised adoption as some threat to lineage. Provided this issue was safeguarded they reluctantly allowed the adoption lobby their wish.

It is not proposed that the state was indifferent to the plight of socially deprived children. At the time the Poor Law was disintegrating and legislative activity was not aimed at reinstating it as far as children were concerned. The Local Government Act 1929 and the Poor Law Act 1930 sought to improve the supervision of children under the Poor Law. The Children and Young Persons Act 1933 extended and consolidated the state's powers in relation to such disadvantaged children. There was at this time considerable consideration being given to the plight of children "in care" and how it might be eased. To this end, legal adoption was seen as irrelevant.

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**The Horsborough Report.**

State suspicion towards adoption societies, evident in the Tomlin Report in the mid 1920s, in no way abated as a result of the legislation. Indeed it probably heightened, and in 1936 a departmental committee was set up to "...inquire into the methods pursued by adoption societies or agencies engaged in the arranging for adoption of children, and to report whether and if so what measures should be taken in the public interest to supervise and control their activities." The report of the Departmental Committee on Adoption Societies and Agencies, 1937 (Horsborough Report, 1937), noted how the Home Secretary had received a deputation asking for an inquiry into "...the evils associated with unlicensed, unregulated and unsupervised adoption" in 1935. The committee under Miss Florence Horsborough M.P. produced a detailed report which amounted to something of a review of the working of the Act ten years on.

The report begins by cataloguing the deficiencies of the societies associated with their practice under the act. Generally societies made insufficient inquiries and were lax in visiting prospective adopters and placed children. Societies had a duty towards adopters not to place unsuitable children. Societies should have made far greater use of the Wasserman Test to determine which children were backward and therefore not fit for adoption. The report notes with approval the practice of one society which "...refused many babies for reasons including bad

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health, mental defect in the mother, dubious parentage and lack of information concerning the father."

To guard against the dangers of facilitating the adoption of backward or possibly defective children, there should be a compulsory period of at least three months, and there should be hostels available for the care and observation of potentially adoptable children, together with close medical supervision. The placements should be arranged by professional staff. Placement decisions should be taken by a case committee comprising experienced social workers and married women with children.

It was noted that many adoption placements did not result in adoption orders because prospective adopters did not go ahead with their applications to the courts. This practice was viewed with alarm and reform of the legislation was suggested. Following the majority decision in re. J.M.Carroll, the committee recommended that mothers should not be required to sign blank consent forms. In fact the recently amended Adoption of Children (Summary Jurisdiction) Rules 1936, required names only to appear. This was presumably seen as a compromise, allowing mothers to know the the name of the adopters but not the address.

The committee was concerned for the rights of natural parents, and took some courts to task for not requiring their presence before them. They saw attendance as a vital "...right and duty"

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of the parent to satisfy themselves as to the well being of the child, and to bring home to them that they were "sundering" all parental rights and duties. Also parental attendance would allow the parents to identify their child and so avoid risks of substitution. Attendance would also ensure that the courts would have a date of birth to place on the birth certificate.

The committee then reviewed the financing of societies. That this subject was always a sore point is no doubt associated with the scandals of "baby farming" rife in the late nineteenth century (see Select Committee, 1871) Cretney makes the point:

"The worst features of baby farming were stamped out by legislation, but the commercial exploitation of those who had an unwanted child, and of those who wanted to bring up a child as their own troubled the legislature for many years to come." (Cretney, 1979.p.532.)

Societies derived their income from four sources; contributions from the charitable public including endowments, payments by mothers, payments by putative fathers and payments by adopters. The committee anticipated no problem in the continuance of public subscription provided that the commission claimed by collectors was reasonable. They very much approved of natural mothers making payments. It was "...desirable that she should be reminded of her responsibilities and that the impression should not be cultivated that adoption societies exist(ed) for the

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cheap and expeditious disposal of illegitimate children." On the other hand societies should act responsibly and not, as many did, overcharge. There were examples of societies charging mothers five shillings per week for two years. Some societies pressed mothers for payments they could not afford. Mothers were not informed of their children being adopted, and had continued weekly payments to societies. One society is recorded as charging mothers a fee of £60 to place children. The largest and "best" society charged £9 per adoption to the natural parent. The committee suggested that the Adoption Act should be amended to allow courts to supervise payments in connection with adoption.

All societies invited payments from adopters. This was seen as acceptable provided that the question of payments did not arise until after an adoption order had been made. The report describes in some detail a "one man band" society, hopelessly administered and questionably financed. Generally the committee favoured more organised larger societies and recommended that only those societies should be able to advertise and place children. Private individuals who placed children should not be able to receive payments or advertise. Demand exceeded supply of children for adoption and so the law should be more rigorously enforced concerning foreign adoptions. No child should leave the country for adoption without the express permission of the court.

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The model for adoption practice was the London County Council. They were seen as rigorous vettors of prospective adopters, refusing 37 of 297 applicants. The council would not allow a child to be adopted unless the child was physically and mentally fit and with a good social history; that is, no suggestion of any mental illness or criminal tendencies in the family. If all was well applicants would visit the Home and view the children before making their selection. The children were those over whom the council had parental rights and duties under section 52 of the Poor Law Act 1930. Few children adopted were over five years old, and the council would not allow adoption under one year of age. It is interesting to note that of the six points of good practice noted above in relation to the London County Council, five would now be considered bad practice and the sixth, the administrative point concerning children subject to a parental rights resolution, would be irrelevant.

The committee recommended that adoption societies and other agencies involved, should be allowed to continue to place children for adoption. The societies agreed to a system of licensing and registration by local authorities. Indeed the large societies actively supported such a move. The committee suggested also that local authorities should be encouraged to use their powers to arrange for the adoption of children cared for by them under section 52 of the Poor Law Act 1930.



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#### Adoption of Children (Regulations) Act, 1939.

The resultant Adoption of Children (Regulations) Act 1939 more or less enacted the proposals contained in the report of the departmental committee. Though the purpose of the committee was to specify effective controls of adoption societies, paradoxically the very act of placing official restraint set the societies on their way to becoming a power in the land, at least in terms of processing some unfortunate children. The benefits to large concerns of state regulation in unorganised markets, has been argued in relation to nineteenth century factory legislation (Carson 1974) and regulation in food processing (Paulus 1974). Thus the "enlightened" factory owner campaigning for the restriction of the hours worked by women and children succeeds in putting small competitors out of business as they can no longer exploit cheap labour. By happy coincidence, the larger concern is now more secure with a dominant share of the market. When such a situation occurs in the field of voluntary societies the effect must be very similar. Another "unintended consequence" of regulatory legislation was arguably of greater significance in this instance. By registering societies, local authorities who were delegated the responsibility inadvertently granted to them seals of approval, notwithstanding that the initial aim of the exercise was the more negative one of indicating those societies which should no longer be regarded with odium. Registration may well start out to specify sufficient performance, but inevitably this becomes the accepted standard. Charitable voluntary

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agencies, dependent for their existence on society's approval, and offering no product or generally used service, can only rely on their tutelage relationship with the state (Donzelot, 1980). It is a vulnerable position to be in but by no means a hopeless one. Adoption societies have learned well how to exploit it. So successful have they become, that forty years on it might be argued that it is the societies who now regulate the practice of the local authorities (see chapter 6 below). In 1939 such a relationship was not envisaged.

The 1939 Act required all bodies involved in the process of the adoption of children to be registered, and only registered bodies were hence forth to be allowed to make such arrangements. Only charitable institutions were to be eligible for registration. Section 2 (3) can be seen to favour larger societies at the expense of smaller ones. The section states:

"2. (3) A registration authority may refuse to register an adoption society under this Act if it appears to the authority

(a) that the activities of the society are not controlled by a committee of members of the society who are responsible to the members of the society, or,

(b) that any person proposed to be employed or employed by the society for the purpose of making any arrangements for the adoption of children on behalf of

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the society is not a fit or proper person to be so employed,

(c) that the number of competent persons proposed to be employed or employed by the society for the purpose aforesaid is, in the opinion of the authority insufficient having regard to the extent of the activities of the society in connection with that purpose; or

(d) that any person taking part in the management or control of the society has been convicted of an offence under this act or of a breach of any regulations made under this act.

Natural parents were to be given an explanation of the effects of an adoption order, written "in ordinary language" which they would be required to sign as having understood prior to the order being made. Societies were to set up case committees to receive reports on adopters and children, and these committees were to be responsible for decisions concerning placements. The responsibility was at law, and contravention of regulations concerning payments, prohibited except by leave of the court, and the placing of children abroad for adoption, were punishable by fines or terms of imprisonment. Section 12 states, "Where any offence under this Act committed by a body corporate, is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of any director, manager of committee, secretary or other officer of the body he, as well as the body shall be deemed to be guilty of that

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offence and shall be liable to be proceeded against and punished accordingly." There are echos here of re. J.M.Carroll where the judgement noted that Miss Carroll's action should have named the officer of the Homeless Children's Aid Society, one Mr Besley, rather than simply the body.

Societies were to be liable for the care provided to children prior to placement, and they had to make their books available for inspection by the registration body, the appropriate local authority.

Societies could revoke the placement of a child for adoption, but otherwise adopters were to be required to apply for an adoption order within three months of a placement. Heavy penalties were provided for contravention by either agency or adopter.

Children placed for adoption under nine years of age were to be supervised by local authorities under their Child Life Protection function, except where such placements were the responsibility of an adoption society. Thus, what came to be known as "third party adoptions" were brought under statutory supervision. For the moment societies were allowed to take responsibility for their own placements.

Only adoption societies were allowed to advertise children for adoption. Age limits placed on those wishing to adopt, specified

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in the principle Act (Adoption Act, 1926), were relaxed where such adopters were related to the child.

The rhetorical ring of the committee's terms of reference (see p. 148 above) were attended to by the committee, but they also used the opportunity to take a considered view of the new procedure. The subsequent legislation, following the committee's report closely, added much needed structure to the process of legal adoption and ensured its development in the future.

## POST-WAR ADOPTION.

### Chapter 0

#### POST-WAR ADOPTION

If the inter-war years can be characterised as displaying a state attitude suspicious of legal adoption, the attitude displayed since the late 1940s has been one of increasing encouragement and support. Such an attitude can be seen to reflect the centrality of the nuclear family in our society (Morgan, 1985), and thus concern for those deprived of its benefits. However, with adoption's increasing popularity there comes the danger of its misuse. An over enthusiastic attitude might recognise it as a panacea for the ills of childhood deprivation. Such an attitude would fit well with a public stance of blaming the victim for his or her circumstances of poverty, sickness, ignorance or what ever. A "two nations" attitude encourages "child rescue" (Platt, 1977) rather than support of families. Thus, the situation of an increasingly abrasive state ideology in a class-ridden society suffering economic decline is likely to promote such practice. Since the late 1960s social work has been required to develop the social control aspects of its tasks in line with its increasing significance in the process of disseminating the dominant ideology. Reform of the law and practice of adoption demonstrates the process. By the 1980s, the permanent transfer

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of children between families, even against the specific wishes of the natural parents, had developed to the point where adoption was but one of several such procedures of some significance to social work practice.

The previous chapter described the situation of the introduction of adoption legislation and the less than enthusiastic attitude of the state. In describing a more positive situation post war, the focus will remain upon official reports, resultant legislation and judicial interpretation, for the most part.

Post war reforms establishing the "welfare state" included the passing of the Children Act 1948 (see Chapter 4). This was a radical piece of legislation aimed at assisting families and children through crises which required the provision of accommodation for children for the time being. While adoption was not seen as of equal significance with local authority "care", it nevertheless was also considered within the pervading attitude of reform. The Curtis Report (1946) recommended reform of adoption legislation though its main preoccupation was shorter term care, and the Gammon Committee, an informal committee set up in 1945 to review the acts of 1926 and 1939 also proposed reform. (Gammon Report, 1945).

#### **Adoption Act, 1949.**

When it came in 1949, the new Adoption Act was as a result of a Private Member's Bill presented by Mr Basil Nield. The new Act

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reformed the 1926 Act considerably, but the 1926 Act remained the principle Act. The following year, 1950, saw a consolidating Adoption Act passed taking in both the 1926 and the 1949 Acts. The effect of the Adoption Act 1949 was to insist that an order should only be made if it was in the best interests of the child, but once made the child was to be regarded as more or less on an equal footing with "natural" children of the family.

Firstly those factors most obviously aimed at ensuring that orders were to be made in the interests of the child will be considered. Here it might be proposed that an assumption was that if the child's nuclear family could no longer care for him, the next best alternative would usually be the extended family. This assumption can also be demonstrated within the Children Act 1948, where local authorities were required to consider as an alternative to care, accommodation of the child by relatives.

The Adoption Act 1949 facilitated the adoption of children by their own families by relaxing the rules concerning the age of adopters in such situations. The minimum age of twenty five years, and at least twenty one years older than the child, was reduced to twenty one years of age for close relatives. In these cases the requirement of a twenty one year differential was repealed. Age requirements were dropped altogether if either applicant was the parent.



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A crucial concern related to parental consent to adoption. The Adoption Act 1926's catch-all clause of dispensing with consent on the grounds that it ought to be dispensed with was repealed. The only grounds which a court could rely on in future were to be ;

- a) abandonment or neglect or persistent illtreatment,
- b) persistent neglect or refusal to contribute financially, or
- c) the parent could not be found, was incapable, or was withholding consent unreasonably.

As a leading legal commentary of the time put it, "Thus it follows... that the court's discretion is slightly curtailed. The court will not be able to dispense with a person's consent merely because the court thinks that, in all the circumstances, the consent ought to be dispensed with; the court must be satisfied that the person whose consent is required has unreasonably withheld it." (Butterworth, 1950. p.169.)

All required consents had to be obtained or legally dispensed with. They were to be unconditional except that the parents could specify the religion in which they required the child to be brought up. However, the procedure of consent was specified in some detail with the aim of protecting the rights of natural parents, adoptive parents and the child. Problems with consents related to either confidentiality or change of mind.

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Notwithstanding judicial assertions to the contrary, there was a consistently expressed need for confidentiality on the part of adopters. This was well appreciated by those working in the field and the argument had been presented to Tomlin with no success (see p.144 above.). The issue was also considered in re. J.M.Carroll with respect to general consents and held to be wrong. The Adoption Act 1949 only envisaged consents relative to specific adoptions but allowed these consents even where the name of the proposed adopter was kept from the natural parent. Furthermore, that consent could not be reasonably withheld simply on the ground that the parent did not know the name of the proposed adopter. Consents could be given in documentary form provided that they were properly witnessed by a Justice of the Peace, and the natural parent was not required to attend the court. Rules were to be made to ensure that if the natural parent did attend the court, he or she would not come into contact with the adopters. Thus, the issue of confidentiality required as a safeguard for adopters was subsequently seen to out weigh issues of law and administration which Tomlin had deemed to be paramount. To safeguard the adoption placement, withdrawal of consent once given, would not require the return of the child to the natural parent. Only the court could require such a return. If the court did not so require, the child would remain with the applicants until the hearing and a final decision.

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These amendments should be seen as an attempt to address the difficulties inherent in adoption, rather than indicative of success or failure for a *pro* or *anti* adoption faction. Thus the position of the natural parents was also given sympathetic consideration. They were not to be rushed, and were not allowed to signify their consent to the adoption of their child until the child was at least six weeks old.

General safeguards required applicants to have possession of the child for a minimum of six months prior to the making of an order, and the local authorities were to be responsible for supervising all such placements. Previously they were only required to supervise adoption agency placements.

The contentious issues of heredity and intestacy were reformed under this Act and the hypocrisy of earlier efforts expunged. "The ...Act...is designed to amend the law relating to the adoption of children by creating a relationship ... in all respects as nearly as possible to the relationship between a child born in lawful wedlock and its parent..." (Butterworth, 1950.p.160). The child's rights within the adoptive family were to be identical to those of a natural born child of that family. Henceforth a testator's reference to a child of the family would include adopted children, no matter that those children might have been adopted subsequent to the making of the will. All such rights associated with a child's natural family were to be dissolved with the making of an order. Bearing in mind that it

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had taken the legislature over twenty years to accept what one might argue would be the first tenet of legal adoption, it is not surprising that titles of honour were excepted from this requirement. Nothing is mentioned concerning titles of honour devolving from a child's natural family.

To sum up, early post war reform of adoption legislation saw adoption as appropriate if it could be demonstrated that it was in the overall interest of the child, and this was to be the main concern. Links between parents, particularly mothers and children were not to be lightly sundered and certainly "not only financial considerations (were to be) the test." (Butterworth, 1950.p.161.). Given the decision that adoption was appropriate, then reformed legislation set out to whole-heartedly support the new situation. Thus confidentiality for adopters was ensured, but at the price of a greater legal commitment on the part of adopters towards their adopted children. The child was to be seen henceforth as a full member of the family taking his or her equal place alongside the children of the marriage, in all matters administrative and legal. As well as matters of heredity and intestacy, details concerning name, date of birth and consanguinity were dealt with. Other questions relating to children previously "in care" and/or subject to affiliation orders were dealt with on the principle of a complete break with the past and a new beginning.

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This Act's enthusiastic encouragement of adoption is in contrast to what was still the principle act, the 1926 Act. The spirit of that Act, such as it was, was quite engulfed by the amendments of 1949. A similar fate was to befall the next significant piece of adoption legislation, the Adoption Act 1958, when it was amended out of sight by the Children Act of 1975. An account of these two pieces of legislation and their attendant reports, comprise the subject matter of the remainder of this chapter.

#### **The Hurst Report, 1954.**

The various reports and statutes of the period 1945 - 50 can be seen as presenting an alternative attitude towards legal adoption to that of the inter-war years. The Report of the Departmental Committee on the Adoption of Children of 1954 (Hurst Report, 1954), presents an attitude of continuing support and consolidation for the idea of encouraging appropriate adoption, with effective safeguards against administrative and professional over-zealousness. The spirit of the Act of 1949 finds further expression in the subsequent and quite comprehensive Adoption Act 1958. The Act was described by the then Home Secretary as having "...adopted (sic) many of the recommendations of the (Hurst) report." (Adoption - the Way Ahead. 1969.p.5)

As a review of contemporary legal adoption, Hurst was quite uncontentious. By the mid 50s adoption practice was becoming a familiar administrative and legal process (see Appendix A, Table

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1).The Court of Appeal had heard cases based on the Act (e.g. Hitchcock v W.B. (1952) 2 Q.B. 561. considering the question of dispensing with consents.), and research findings on effects of the Act were beginning to appear (Brenner 1951, Kornitzer,1952.)

The main concern of the committee's report was with the organisation of the adoption process, rather than any issues of principle concerning the Adoption Act 1949. To an extent this is a mirror of what happened between the two world wars, with principles being thrashed first in the Hopkinson and Tomlin Reports of 1921 and 1926 respectively, and issues of process within the finally accepted position being spelled out in some detail by Horsborough in 1937 (see Chapter 5 above).

Hurst returned to the subject of adoption practice and the local authority/voluntary society dichotomy. It recommended that local authorities should have conferred on them all the rights and powers of adoption agencies. It was suggested that they should be empowered to arrange adoption placements for any child, not just those children in their care. They should at the same time act "sympathetically and impartially" when helping mothers to reach decisions concerning their children.

The committee distinguished three types of voluntary adoption society. There were those termed Introductory Agencies. They did no more than bring together prospective adopters and parents wishing to have their children adopted. Then there were the

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established Adoption Societies who also provided care for children not being adopted. Thirdly there were Moral Welfare Agencies concerned for mothers, mother to be and illegitimate children. Hurst endorsed evidence given by the larger and more professional agencies critical of Introductory Agencies. As well as controlling few physical resources, staff of such agencies were largely untrained. It was recommended that those societies and agencies not doing casework should consult with those that did. Local authorities would supervise all the placements and liaise with all the voluntary adoption societies in their area. They might also make financial contributions to such agencies who employed trained workers. The supervising local authority would also have discretion to decide when applicants of a voluntary agency placement should make application to the court.

It was recommended that the *guardian ad litem* should usually be an adoption worker from the local authority, except of course where the local authority was the placing agency. In any event, the committee deplored the practice of appointing as *guardians ad litem* anyone other than a professional adoption worker, a social worker. While the committee was exercised by the practice of third party placements, it refrained for pragmatic reasons from recommending their total abolition.

The committee then went on to consider the legal and medical aspects. It recommended retaining jurisdiction for the three courts of first instance, the Magistrates (Juvenile) Courts, the

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County Courts and the High Court. There were however considerable misgivings concerning the powers held by courts to dispense with the consent of parents, particularly on the ground of it being "unreasonably withheld". In commenting on the consolidating Adoption Act 1950, it was noted that "...the dispensing powers appeared in section 3 and were thus separated from the provisions requiring consent which appear in section 2. Some of the emphasis which had been given in former Acts to the fact that adoption should normally be possible only if it is in accordance with the parent's wishes, seem to have been lost by this separation." (Hurst Report. 1954.p.29.).

The committee disagreed with the current legal interpretation of what constituted reasonableness in relation to consents being withheld. Court practice was to assess what was best for the child. The High Court including the Appeal Court fairly consistently emphasised in judgements that while culpability on the part of a parent may indicate unreasonableness, the reverse was by no means always true. As Cretney comments when reviewing "unreasonableness", "In a series of cases it was held that although it was a prerequisite to the making of an order that the High Court should be satisfied that the order, if made, would be for the child's welfare, the mere fact that the order if made would conduce to the child's welfare did not make the withholding of agreement unreasonable" (Cretney, 1979,p.548). The point will be returned to in Chapter 7. However, it is noted in passing that the test for unreasonableness stated by Lord



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Denning in re. L (1962) 106 SJ 611 amounts to what the reasonable parent would decide in the circumstances. Given that the bench have to decide this, it becomes rather a circular proposition. The bench have to decide what they think would be seen as reasonable on the Clapham omnibus or where ever. It is of course the judges who decide, and it is doubtful whether High Court judges have any working familiarity with any omnibus passengers. The committee's confusion over the point is illustrated by its recommendation that grounds associated with unreasonableness be withdrawn in favour of the substitute ground of "making no attempt to discharge the responsibilities of a parent." The committee's proposed solution actually contradicts its earlier discussion. It proposed a substitute clause related to parental culpability only. Yet as the courts have recognised, there may well be arguments in favour of dispensing with the consent of the non-culpable parent.

To conclude this brief discussion of the Hurst Committee's confusion over consents and their being judged to have been withheld unreasonably, the committee argued against long term pre-hearing consents on both administrative and moral grounds. The committee was generally against making parenthood negotiable to any appreciable extent. The committee also supported recognition of a legal distinction between what is reasonable for a parent to argue and what might be materially best for the child. The case for the child's interests being paramount under the Guardianship of Minors Act 1925 was in no

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way analogous with consideration of the natural parent's case *vis a vis* prospective adopters. That prospective adopters could offer superior material circumstances, was not to be regarded by the court as sufficient argument to justify a finding of unreasonableness against a natural parent withholding consent

The committee did break new ground when considering the role of medical reports in adoption. It was maintained that in the past too much concern had been expressed in relation to the child's state of health (see p.134 above) and not enough in relation to the prospective adopters. It was proposed that in future doctors should make no recommendation concerning the child's suitability for adoption, but merely report on the child's health. "This is a matter for the applicants to decide when they know the facts." (Hurst Report 1954.p.143.).

The committee strongly recommended that strict procedures should be devised for informing people that they had been adopted and allowing them to trace their natural parents.

Any payments associated with adoption and any advertising of children for adoption were matters which the committee felt strongly about, and recommended increased sanctions against such practices.

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### **Adoption Act 1958.**

The Adoption Act 1958 is, at the time of writing (1987) still the principle adoption act, though now substantially amended. However, for the purposes of this paper the Act will be considered first as it was when implemented on 1st April, 1959. Amendments made in the 70s are considered separately as they comprise the third identifiable phase of adoption legislation, displaying an official attitude distinct from both the inter-war attitude of suspicion and the immediate post-war attitude of support and encouragement.

The Act of 1958, it is argued, can be seen as the high point of efforts to set a legal framework within which something approaching an even handed consideration of the interests of the three parties involved in adoption might be made. Of course a considerable amount of professional influence is apparent by this time and indeed the legislative powers were of considerable assistance to the developing social work profession. Local authority Children's Departments received a considerable boost from the new responsibilities conferred upon them by the new Act. The large voluntary adoption societies had lobbied the Hurst Committee and as a result obtained a new statutory framework of rules concerning their composition and performance. The process and results mirror closely the activities and aims of some large factory owners at the time of the early Factory Acts as described and theorised by Carson (see p.153 above) whereby regulation benefited large concerns in

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as much as smaller competitors were put out of business, being unable to meet the cost of compliance. Yet the point is that the professional attitude was to maintain what might be termed the tripartite consideration in relation to adoption decisions. Adoption was seen as a discrete disposal appropriate to some social situations confronted by some clients and social workers. It was nothing more than this, though relative to other disposals available to families not able to care for their children, it was unique in its irrevocability. Hence it was seen to require considerable specialist expertise and, given its unusual nature, it was very much a minority consideration within the context of the day to day work of the Children's Department. Throughout the 1960s the situation remained much the same, though subsequently there have been considerable shifts.

The Act followed Hurst in further defining the detailed legal and professional practice of adoption. The Act is divided into five parts and six schedules. Part V deals with miscellaneous matters including prohibitions of certain payments and restrictions on advertising as recommended by Hurst. It also deals to some extent with overseas adoptions. Part IV considers the supervision of children awaiting adoption or placed with strangers as distinct from relatives. As noted above, there was a continuing concern that children awaiting adoption should not fall into a limbo. They were designated Protected Children under this Act and became the supervisory responsibility of the local authority.

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Part III again concerns local authorities in their supervisory capacity relevant to "care and possession of infants awaiting adoption."

Part II deals with local authorities and adoption societies. This part bestowed on all local authorities the power to become adoption agencies themselves. The only bodies subsequently allowed to arrange for the adoption of children were to be local authorities and such voluntary adoption societies as had been approved by the local authority. Imprisonment was an optional sanction available to the courts on conviction of unregistered societies operating in the field.

Part I specifies legal procedures and the activities of courts when considering adoption applications. This part comprises about one half of the act but much of it reiterates clauses of the 1950 Act. Alterations only tend to emphasise what has been termed "the spirit of (such) legislation" of the 1940s and 50s.

Following the Adoption Acts of 1949 and 1950, further details were spelled out in section 7 concerning adopted children being seen as full members of their adoptive families. Courts could also require such families to provide for an adopted child by the making of a bond in its favour "... or otherwise to make for the infant such provision (if any) as in the opinion of the court is just and expedient." The section stipulated that the order must be in the interests of the child. To this end courts

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would need to be satisfied concerning the health of the applicants, and the concurrence of those children able to express an informed opinion concerning their proposed adoption.

Age minima favouring those natural parents applying to adopt remained. A three month period subsequent to the infant's sixth week was stipulated as the minimum period during which the applicants had to have full care of the infant prior to the consideration of the making of an order, with a further requirement that non-parent applicants inform the local authority of their intention to apply for an adoption order at least three months prior to the hearing.

Section 4 stipulated that consents were only to be required of parents or guardians, and, notwithstanding Hurst, dispensing powers were stipulated in section 5 (see p. 168 above). They were:

- 5.(1) (a) has abandoned neglected or persistently ill treated the infant; or
- (b) cannot be found or is incapable of giving his consent or is withholding it unreasonably.

Having retained the "unreasonable" clause , the act then goes on to include the ground that Hurst proposed as an alternative

5. (2) (a) has persistently failed without reasonable cause to discharge the obligations of a parent or

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guardian of the infant..."

Evidence of consents were to be acceptable in documentary form, duly witnessed by specified competent witnesses. Commensurate with the recently allowed (1949) confidentiality clauses for applicants (see p.162 above), the withholding or withdrawing of consent because of ignorance of the identity of the applicants was to be judged as "unreasonable".

Along with the emphasis in section 7 on impressing on natural parents the irrevocability of an adoption order, Part I generally reiterated the attitude to legal adoption evident since the 1949 Act. Otherwise the act detailed processes and procedures to be complied with when adopting and the people who "know" were to be the local authority; the recently established Children's Departments.

There were also consequences for the voluntary adoption societies in requirements to keep books and have them available for inspection, employ competent staff, not employ particular categories of persons and generally comply with registration requirements. As noted above, this would inevitable benefit larger societies with the resources to meet the requirements, by eliminating some small competitors. Thus adoption was established and organised and in the hands of local authority social workers to a considerable extent, with strong support from their associates in the voluntary societies. It may have

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remained so for longer than it did had not these professionals agitated for further change.

#### **The Houghton Report, 1972.**

As demonstrated above, with the implementation of the Adoption Act 1958, legal adoption was established and generally accepted as a legal procedure which social work had at its disposal to deal with particular cases of children unsupported by their natural parents. It was seen by the profession as a discrete entity, and for obvious reasons associated with the permanent nature of adoption, it was a very significant one. It was also available to families and children without the participation of social work, though this availability was seen by the profession as something less than desirable. Where natural parents were one of the adopters, the social work task was peripheral and the object of the procedure was at variance with professional aims. These were to only use adoption legislation to create new relationships and social situations for adopted children and their adopting parents. As for the situations analogous to those promoted by adoption agencies but without professional involvement prior to placement, so called third party adoptions, they were frowned upon by the profession but were of no great numerical significance.

The early conflicts associated with adoption were now dead letters. Arguments in support of adoption in official reports became perfunctory during the 50s. The adopted child's place in



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the family was established. Appeals were allowed from any of the courts of first instance, that is Magistrates (Juvenile) Court, County Court and High Court.

The operation of the procedure, particularly in its ideal type, the adoption of an infant by a married couple who were strangers to the child, was largely controlled by adoption agencies and hence the burgeoning adoption social work profession. Adoption agencies comprised voluntary adoption societies and those local authority Children's Departments who chose to take on the task. In 1972 at the time of the publication of the Houghton report, ninety six of the 172 local authorities in England and Wales were so designated. Accountability in relation to the voluntary societies was to the registering local authority, and of course, Children's Departments were publicly accountable.

But if the old areas of conflict were indeed yesterday's arguments, by the late 1960s the professionals were agitating for reformed legal provisions based on their experience of operating the procedures, and desire for enhanced status commensurate with their role and responsibility.

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Two documents were published by the profession in the late 60s arguing for adoption law reform. They were significant in setting many of the parameters for the debate. They also "popularised" the cause of reform in this area at a time when there was much debate and legislation concerning social reform under the Labour administrations of 1964-70. The Standing Conference of Societies Registered for Adoption, the body particularly representing the Voluntary Adoption Societies though also open to appropriate local authorities, published its "Report to the Home Office on Difficulties Arising from the Adoption Act 1958", in 1968. The Association of Child Care Officers, published "Adoption - the Way Ahead", in 1969. A detailed analysis of these two documents is outside the scope of this paper. Suffice it to note that the two publications were in general agreement concerning the problem which mainly related to the requirements of multi-consents by natural parents, the use of adoption by relatives of the child, third party placements, and issues relating to the profession being given greater recognition for its developing expertise. All this, it was proposed, could only be achieved with the implementation of a new adoption act. In this respect the professionals were wrong. All of their major recommendations are now (1987) part of a vastly reformed and altered 1958 Act. A new adoption act, the Adoption Act 1976, is on the statute book consolidating the reforms of the mid 70s, but ten years on implementation is still awaited. "...it is understood that no part of that act will be brought into force until all relevant

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parts of the Children Act 1975 have been implemented." (Cretney, 1979.p.153)

When the issues for reform noted above are considered in detail and placed alongside Hurst and the 1958 Act, they can be seen to be sympathetic reforms and developments of that legislation. They can be seen to be concerned with standards of work, relatives and adoption, and consents. What makes the adoption reforms and amendments of the last ten years no less a contradiction to the late 50s position than that position was compared with the pre-war position, is the inclusion of all children within the ambit of local authority care as potential adoptees. This development has quite skewed the concept "local authority care" as presented in the Children's Act 1948 (see pp.106-108 above for discussion on this point). This is a particularly good example of the tail wagging the dog.

The Houghton Committee was set up in July 1969, and reported in October 1972 (Houghton, 1972). It was appointed as the Departmental Committee on the Adoption of Children, and comprised eighteen persons. Two members died before the report was completed, the committee's chairman, Lord Houghton and Mrs Mitchell, the committee's only representative of local authority members. Of the remaining sixteen members, three were lawyers, three worked for local authority Social Services Departments, (by this time the local authorities personal social services departments had been amalgamated under the terms of the Local

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Authority Social Services Act 1970), and one member represented a Voluntary Agency primarily concerned with keeping single parents and their children together. The other nine persons, fifty percent of the original committee, comprised members and employees of constituent voluntary societies of the Association of British Adoption Agencies.

The committee was selected to comprise a wealth of experience of the process of legal adoption. Its terms of reference were "...to consider the law, policy and procedure on the adoption of children and what changes (were) desirable." They were particularly instructed to consider alternatives to adoption for relatives, and the position of putative fathers. Subsequent to the setting of the terms of reference and the selection of the committee the terms of reference were extended to include a review of "the position of long term foster parents who wish to keep children permanently, by adoption or otherwise, against the will of the natural parents." While a basic proposition of this paper is that to attempt to identify specific cause and effect in relation to influences for social change is a hazardous, not to say foolhardy exercise given the complexity of the subject, it is nevertheless proposed that this extending of the committee's terms of reference was a very significant occurrence when placed in its temporal context. No doubt Leo Abse M.P., a committee member, makes too much of his part in the proceedings when he claims responsibility for both the extension of the terms of reference and the subsequent

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unanimous report (Abse, 1973). Nevertheless there were obviously considerable party political pressures associated with the committee and its report.

Boarding out of children, usually referred to as fostering, is the most popular method employed by local authority social workers to accommodate children "in care". There is no strict or administrative division between short term and long term boarding out. Though most children received into local authority care are discharged home after a short period (see Appendix A Table 5), practice indicates that it is impossible to forecast, in many instances, the length of stay of a child in care on admission. Hence any such review of fostering would be of absolutely central concern to local authority Social Services Departments and of much less significance to voluntary societies.

In short, a committee with the task of reviewing adoption law and practice was seen to require much experience and expertise in the area and was selected on that basis. It was then further required to review a far more extensive and significant field of social work. It was not seen as necessary to ensure that the committee comprised anywhere approaching equal experience and expertise in the additional area of fostering. Not only did the committee make far reaching recommendations concerning fostering; the recommendations were followed. It is proposed that this skew in expertise was a significant factor in shaping

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a new and competing paradigm for social work which has gained ascendancy over the past ten years.

The committee will be referred to as the Houghton Committee though it is recognised that Judge F.A. Stockdale took over the chair on the death of Sir William Houghton almost a year before the submission of the final report to the Home Secretary in October, 1972 (Houghton Report, 1972).

The Houghton Committee published two documents of similar size though different weight. In October 1970 Adoption of Children was published and widely distributed within the profession and associated groups. It was "A Working Paper containing provisional proposals of the Departmental Committee on the Adoption of Children..." (Adoption of Children, 1970) It was stated that it was published "for comment and criticism only, (and it did not ) represent the unanimous...views of the committee" (op. cit. title page).

Overall, it is a far more abrasive and polemical document than is the final report, though both cover well-nigh identical ground and make very similar proposals. Where as the final report has the self assured style typical of such reports, the discussion paper displays a rather desperate desire to convince an ignorant or hostile reader. Total authorial self confidence in the correctness of the proposed case which will be obvious to all right thinking persons, is absent. In place of the

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typical self confidence of official reports there is a considerable tendency toward overstatement. A few examples from the discussion document will help to illustrate this point.

As noted above, an early paragraph in all the official reports on legal adoption had argued, though with decreasing passion, for the need for such legal powers. It might have been thought that by the 1970s the proposition could simply be asserted. To over state the case was pointless. The discussion paper quotes (Adoption of Children,1970. para.9) recent figures for all adoptions as proof of the continuing need for adoption, while later arguing that anything up to 50% of adoptions in any one year, those by relatives, should be prohibited. The document appears to be substantiating its case with what it later states to be inappropriate adoptions. The paper goes on in the same paragraph to state, in support of the need for legal adoption, that if the present annual figure was maintained, "something like one million children would be adopted in the course of 40 years." Whatever else the table in Appendix B of the final report indicates it certainly illustrates clearly that adoption figures hardly remained the same from year to year leave alone for a period of 40 years. In the four years from 1926 the number doubled. Ten years later the figure had double again and again in the next six years and yet again in the next three years. The annual figure then slumped to 13,000 by 1950. During the 50s the figure remained fairly constant to begin to rise again to 14,000 in 1959 and 15,000 in 1960. By 1968 the figure

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had risen to a high point of over 24,000. Thereafter the figures that the committee possessed demonstrated a considerable slump in adoption of children by strangers. Overall figures were held in some sort of check by the continuing rise in adoption by relatives so that the figure for 1972 still remained at about 21,000 (see Appendix A, Table 1). A reasoned argument for adoption by strangers in 1972 might have simply noted the long term trend of increasing numbers of people adopting, but to overstate the case was unconvincing. The final report eschews reference to figures when arguing "The Need for Adoption" (Houghton Report, 1972. para 15). It simply relies on assertion, thus demonstrating an improved political awareness of what was required in the situation. Offering such hostages to fortune may well be a symptom of some lack of self confidence arguing the case of a new (semi?) profession in the corridors of power. Remaining with the "Need for Adoption" (op.cit. para.15), it is also notable that the final report tones down the discussion document's description of adoption as "...one of a number of alternatives, which appears to be the most satisfactory solution in many but by no means all cases" to "...one of a number of alternatives and ...a satisfactory solution in many cases but not in all."

Of course there are bound to be variations between a discussion document and a final report. That after all, is the point of a discussion document. However, the variations referred to here concern style and tone rather than substance. There are many



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instances within the discussion document where social workers are proposed as experts not to be questioned. When authors have to proclaim their abilities for "skilled professional assessment" and that they are "people with a deep knowledge and understanding of child development" they may not inspire great confidence in their own report as a disinterested review of the subject (Adoption of Children, 1970, para 13). Again when considering whether or not statute should contain specific provisions in terms of minimum ages of adopters and minimum length of marriage before being able to apply to adopt, the discussion paper asserts that such provision "...illustrate the way in which skilled professional judgment can be fettered by precise criteria laid down in the law" (op.cit. para 60). The final report more simply states that it does not "...wish to hamper professional judgment by recommending a minimum period because circumstances vary" (Houghton Report, 1972, para.76).

As stated above, the main points proposed in the discussion document were recommended in the final report, with detailed amendment but not wholesale exclusion. Conclusions concerning tone and style relate to a burgeoning professional group striving for recognition, and maybe striving too hard. One wonders whether the modified tone of the final report demonstrates the confident and calming influence of its substitute chairman.

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The burden of the Houghton Report comprised the organisation of an approved and registered adoption service uniformly and nationally available (Chapters 3 and 4 ); the excluding of relative adoption in favour of guardianship (Chapters 5 and 6); the re-organisation of consent procedures (Chapter 8); and some modification of adoption and court procedures (Chapters 9 and 10). All this was, to a considerable extent, previewed in the two professional publications urging reform published by the Association of Child Care Officers and the Standing Conference of Societies Registered for Adoption (see p.178 above). The contentious area not considered by the profession prior to Houghton concerned the specific inclusion of foster children within a discussion of adoption (chapter 7).

A notable difference between this report and previous ones was the emphasis on the role of social work and social workers within it. It is noted in the introduction that "...adoption laws cannot be considered without regard to social work services which operate in this field, since law and practice are inextricable interwoven." (Houghton Report, 1972. p.1.). While Hurst gave considerable attention to the organisation of the adoption service, the role and function of social work, its expertise and responsibilities, did not feature to any marked extent in that report.

The question arises, if law and practice, in social work terms at least, cannot be considered except in relation to each other,

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what is that relationship? The assertions of the discussion paper certainly indicate a belief that at least practice was as influential on the construction of statutes as concepts concerning the rule of law and the rules of law. There is also a suggestion that the strong adoption lobby, evident within the Houghton Committee, took a fairly cavalier attitude towards the central task of their local authority counterparts in respect of social work with families and children. This particularly applies to fostering, or more specifically the boarding out of children "in care". Ignorance and self interest rather than mendacity may have been the cause of this. However, consequences of the committee's recommendations have been no less far reaching in their effect on social work practice in general, for being unintended. As will be shown, these effects on social work practice have not only been as a direct result of the statute, but also of courts' interpretations of the statute. Such interpretations extend to not simply ignoring Houghton but directly contradicting the report. (See Chapter 7.)

Thus a model representing the process of reform of recent child care legislation and practice can be constructed:

- a) The case for reform. In this context this would include Houghton and the professional publications.
- b) Resultant and consequential legislation. The Children Act 1975, plus
- c) Judicial interpretation.

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The social work or professional influence is apparent in a) even if, certainly in this case, it was a naive and partial influence. b) which I have considered elsewhere (Teague,1975) and will only outline here, was the arena where politicians encouraged and responded to a moral panic, and c) considered in the following chapter, provided and continues to provide an arena where the dominant attitude can be reinforced and re-asserted. The power of state ideology is established at c) in its continuing ability to present itself as "obvious", what everybody knows" and "common sense". These are strong counters to any group of "experts" with esoteric theories who nevertheless "continuously" fail to prevent social tragedies from occurring. (As an example see A Child in Trust, 1985. pp.xx-xxiii.)

Before describing in some detail the proposed position of foster children within the report, a brief consideration of the four areas which comprise the bulk of the report and follow the Report to the Home Office on Difficulties Arising from the Adoption Act 1958 (1968), and Adoption - The Way Ahead (1969), is appropriate.

Houghton does not so much contradict Hurst as take those arguments much further as they relate to the provision of an adoption service. It supports the basic structure of local authorities and voluntary agencies sharing the field, though it argues for closer co-operation, and an extended service to cover

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the country uniformly. As in Hurst there is considerable emphasis on the development of a professional practice, and an urging of small societies to come up to standard or shut up shop (Houghton Report, 1972. para. 42). As would be expected, there are recommendations aimed at assisting those voluntary societies able to meet the required standards. These relate to some funding of them by local authorities and a closer working relationship whereby a society might make use of a local authority's material resources in the shape of say, a children's home. This might avoid the society having to set up its own.

All this is in the light of a vigorous though unsubstantiated assertion that there is a need for this duplication of the local authority service. The only attempt at argument is to propose the hoary one of the provision of choice (op. cit. para. 42) It might be argued that the only recognisable choice the voluntary societies ever offered related to religious faith. Many of these societies were founded by denominations of the christian church and the point of placing one's child with one of them was to be assured that the child would be brought up in the true faith. It will be recalled that the condition as to religious persuasion was the sole condition on which a natural mother could insist when placing her child under the terms of the Adoption Act 1958. It may be surprising then that the committee advocated withdrawing this power from the natural parent (op. cit. paras 228-230). Further, para. 229, agreed by all the members of the committee, appears to relegated faith to

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the status of an optional extra when it declares that the power to stipulate religious upbringing "...may be contrary to the best interests of the child in that adopters may be selected not because they are the most suitable but because there is a shortage of adopters of the religious persuasion named by the mother, or there may be a considerable delay in placement while adopters of a particular sect are sought," The overt implication is that suitability does not include, to any significant extent, religion. One may be surprised that those of any religious persuasion are prepared to state this. One could with confidence predict that certain religious minority groups in this country would hotly dispute this point. The committee recognised the point but obviously saw it as one to be legislated against when they stated, "There are now many more mothers of other faiths (than Christian and Jewish), some from overseas". Such "overseas " faiths have to become negotiable in the same way that Christian (and "Jewish"?) faiths have, it is implied, along with natural parenthood itself.

In the event this was yet another right of natural parents removed by the subsequent legislation. In a multi-racial society such a recommendation displays racist thinking and lays the act open the charge of racism. Transracial fostering is being opposed by some local authorities and the whole question brings the insensitivity of the Houghton Committee's discussion into relief (Brockman, 1986).

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Several recommendations concern the development of a comprehensive service with improved standards and centrally rather than locally registered.

Only registered adoption societies should have the power to place children for adoption with non-relatives, thus banning "third party" adoptions. The committee were exercised by adoption by relatives, usually a parent on marriage or re-marriage. The discussion document actually recommended that natural parents might be allowed to adopt their illegitimate child, usually on marrying someone not the parent of the child, but that legitimate children should not be available for such adoptions. The final report did not seek to ban adoption by parents but suggested that any adoption by relatives should be exceptional (Houghton Report, 1972. para.115). The committee proposed that the better course would be for relatives to apply for guardianship under the recent Guardianship of Minors Act 1971. a consolidating act .

Consents had always been problematic in the procedure of adoption and the committee addressed the problem in great detail proposing a new approach which they termed "freeing for adoption". It is quite exceptional for a mother to agree to place her infant child for adoption except with great reservation and under the force of circumstances very adverse to her bringing up her own child. Nothing in the professional literature argues otherwise and it is because of this axiom that

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totally satisfactory procedures in relation to consents have proved to be been impossible to define. Hence the powers in adoption legislation to dispense with consents either on specified grounds or under a catch-all condition. It will be remembered that the original catch-all condition gave *carte blanche* to the court (see p.146 above.). This power was modified under S.3 of the Adoption Act 1949. In future the test would be whether or not the consent was being withheld unreasonably. As has already been noted and will be considered in some detail in the following chapter, this modification still allowed the judiciary ample latitude.

The committee's proposed "freeing for adoption" procedure (op.cit. paras. 173 - 183) was to enable the natural mother to make a once for all decision to allow her child to be placed for adoption. The decision still had to be delayed until the child was at least six weeks of age but the time limits associated with periods of care by applicants prior to a hearing would cease to have any significance as far as consents were concerned. There was to be no requirement that the child should be placed before consents were given. Indeed the discussion paper proposed that the irrevocability of the new form of consent should be such that the mother would lose any right at all to even be informed if it proved impossible for her child to be adopted. The final report withdrew from this hard line and proposed that a mother should be able to indicate if she wished to be informed subsequently, if her child was not



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adopted, and have the right in such a case to apply for parental rights to be restored. A concern about such procedures related to responsibility for the child between relinquishment by the natural mother and an adoption order being made. The committee proposed that responsibility should rest with the agency. Given the committee's stated aim to frame legislation with first interest being the welfare of the child, it is difficult to follow their reasoning in proposing that the natural mother should not have the right to be informed if her child was not in fact made the subject of an order. It is not difficult to imagine a change of circumstances for the mother, say marriage, remarriage, re-housing or such, where an unadopted child would have the opportunity of experiencing the security of family life as a full member. To seek to rule out this possibility would indicate great concern for administrative procedures at the expense of some humanity.

The further ground of serious ill treatment was added to the list of conditions which courts could rely upon when seeking to dispense with parental consent. This could amount to just one episode, but the court would need to be convinced that it would be unlikely that the child could be rehabilitated with his natural family.

The Adoption Act 1958 did not make any stipulation concerning the status of the concept "the welfare of the child" when considering whether parental consent was being withheld

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unreasonably. At the time of Houghton, the High Court demonstrated two opposed lines of thinking. One had it that a parent would have to have behaved in a culpable manner before a court would dispense with her consent, while another line of reasoning held that a reasonable parent would take into account the best interest of the child and therefore if the courts perceived her as not doing so, these were ground for finding her behaviour in the matter unreasonable, and hence grounds for dispensing with the consent. In 1971 the House of Lords on appeal, came down in favour of the latter reasoning. (R.W. (1971) 1WLR 1227.) Houghton opposed this line of argument. Again the final report modified a recommendation of its discussion paper in advocating that in this issue the child's interest should indeed be of first concern, but not that it should follow guardianship legislation and be considered as paramount.

A first interest is significantly different from a paramount one. Paramouncy is a reasonable rule in a situation where divorcing parents claim custody of their child. All other things being equal, both parents have an identical claim and therefore the interests of the child is, on the face of it, the only variable for consideration. However, the interests of natural parents as against prospective adopters is not analogous with divorcing parents. To deny a natural parent a natural right to be heard on her own account may be typical of

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the attitude displayed in the discussion document but arguably such a denial eschews natural justice.

In all the committee made 92 recommendations, many concerning details of process in court, the role of *guardians ad litem*, and medical reports, their quality and cost. Maybe the single recommendation most clearly displaying "the new attitude" to the role of adoption, was that recommending payments of allowances to some adopters to enable them to afford to adopt "...although most of our witnesses were opposed to our suggestion..." (op.cit. paras. 93-95).

Yet it was the late extension of the committee's terms of reference and their response to this in chapter 7 of their report particularly, which separates off their perusal of legal adoption from all former such exercises. Their specific inclusion of foster children as a group who in future would have a special relationship to legal adoption as distinct from all other children within the population, skewed not only the concept foster children, but also the concept legal adoption. The most obvious effect on the latter concept was to place it within a continuum of official care, rather than it being seen as a discrete and uniquely significant disposal of a social problem. What relationship there had previously been between fostering and adoption was accidental and unintended in that the aim of reception into care under the terms of s. 1 of the Children Act 1948 was re-unification of parents and children.

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Only if that seemed unlikely in the immediate or foreseeable future would authorities consider assuming the parental rights over such children "in care". Where such powers were assumed there was little likelihood of parents interfering inappropriately while a local authority looked on helplessly. Thus in social work terms, there was no need for adoption legislation specifically to provide safeguards for children in care. Such children stood in the same relation to legal adoption as all other children. If it was appropriate in relation to the three parties concerned, the child the natural parents and the prospective adopters. then so be it.

In essence, what the committee proposed in relation to foster children was that there should hence forth be a presumption of possible adoptability. While the committee did not put their proposals in such a direct form, it is difficult to see this result as an unintended consequence and particularly not an unforeseen one.

The committee's main recommendation in the area was that any foster parent could apply to a court to adopt a child whom the foster parents had cared for for a minimum of five years. The committee in its discussion paper, had proposed that with the agreement of the local authority, foster parents could apply after one year. In each of these cases the natural parent would lose the power to frustrate the application by removing their

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child, assuming that the parents did not consent to the proposition.

The final report states:

"These suggestions attracted far more comment than any others. While they received considerable support from members of the public, many professional organisations in the child care field such as the British Association of Social Workers and the Society of Medical Officers of Health and some of the large voluntary child care organisations, such as Dr Barnardo's and the Church of England Children's Society, disagreed with them" (op.cit. Para. 145)

In its final report the committee bowed to the opposition which comprised the representatives of workers and organisations boarding out the vast majority of children other than those privately placed by their parents. The committee withdrew suggestions of encouragement of foster parents in claiming legal rights of either guardianship or adoption of children boarded out for less than five years. This was at the expense of suggesting increasing powers for local authorities to assume parental rights over children in their care, or in the care of a voluntary society. However, to a considerable extent the damage had been done. The symbolic effect of statutory powers is as significant as the use of the powers. Thus any increase in powers social work may obtain over children "in care" must

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threaten the families of all children "in care". A new ground was added to those, any one of which would allow the local authority to assume parental rights over a child in its care.

The existing grounds under s.2 of the Children Act 1948 were:

- a) That his parents are dead and that he has no guardian.
- b) That a parent or guardian has abandoned him, or suffers from some permanent disability rendering the said person incapable of caring for the child, or is of such habits or modes of life as to be unfit to have the care of the child.

Further clauses were added by section 48 of the Children and Young Persons Act 1963:

- a) That the parent or guardian suffers from a mental disorder ... which renders him unfit to have the care of he child; or
- b) that the parent or guardian has so failed without reasonable cause to discharge the obligations of a parent or guardian as to be unfit to have the care of the child.

The Houghton committee proposed that a local authority should have power to pass a parental rights resolution in respect of any child who had been in their care for three years (op.cit. para. 156). Further, a local authority could pass a parental rights resolution in respect of any child in the care of a

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voluntary society citing any of the above grounds. (op.cit. para 158)

Where a resolution was in existence in respect of one parent, the local authority, it was proposed, should have powers to frustrate the other parent against whom there were no grounds for an assumption, if it seemed likely that the culpable parent might thereby gain access to the child (op.cit. para 157). Local authorities were also to have powers to apply to the courts for "the permanent transfer of parental rights" including the right to consent to adoption for any child in their care (op.cit. para.225). The power to consent to adoption had not previously been included in the parental rights which a local authority might assume.

Other recommendations included giving to parents explanatory leaflets on the implications of reception into care of their children (op.cit. para 151), a right of appeal from the decision of a Juvenile Court to uphold a local authority's parental rights resolution (op.cit. para. 159), and that there be required of parents a Notice of Removal of children who had been in care for more than one year. The local authority should be allowed to require up to 28 days notice. "...to give time for the child and parent to get to know each other again." (op.cit. para 152). It was noted that "in many cases (the authority) would be likely to agree to the child being returned in a much shorter period." This observation will be considered in detail

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in the next chapter when considering how the Lewisham case (see chapter 7 below) continued the trend set by Houghton.

#### **Children Act 1975.**

The Houghton Committee reported in October 1972 and the main recommendations of the report were enacted in the Children Act 1975. Given the number and significance of clauses not wholly pertinent to adoption, it is unsurprising that this Act was not entitled "Adoption". It is of course the originating report, not the resultant act, that was inaccurately entitled (see p. 179 above). There was more official activity related to children in the care of local authorities, between the committee reporting and legislation. Maybe the most notable event was the setting up and reporting of "A Committee of Inquiry into the Care and Supervision Provided in Relation to Maria Colwell". (Colwell Report, 1974). The moral panic surrounding this case was encouraged by an alliance of a Tory Secretary of State at the D.H.S.S., Sir Keith Joseph, and an opposition M.P. Dr. David Owen who respectively made parliamentary time available for, and presented a Private Member's Bill seeking to enact Houghton late in 1973. This populist effort came to nothing with the fall of the government in February 1974, but David Owen then found himself in a position to present a Government Bill on the subject which was enacted in November, 1975.



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How much significance can be attributed to such moral panics when considering forces for legislation is a matter of some interest, but the question is outside the scope of this study. A definitive argument would probably need to include the correspondence among many items of contemporary legislation to demonstrate a trend, and this would need to be set alongside a demonstrable trend elsewhere in the public sector, "the social" (Donzelot, 1980). However, the present study is more modest in seeking to trace and account for the dynamics of adoption work, social work more generally and the power of legislation. It is proposed though not demonstrated that recently assumed powers over parents and children is only one example of an increasingly authoritarian attitude adopted by the state towards those defined as deviant in the 1980s.

Part 1 of the Children Act 1975 reads as an adoption act. The first seven sections define a nationally available, professional, centrally registered and approved service envisaging a partnership between the public and voluntary sectors.

The new expeditious procedure of "freeing for adoption" is specified in some detail. The procedure follows Houghton precisely (Houghton, 1972, p.165-167). Consent procedures under the 1958 Act were universally criticised, usually requiring the natural parent to consent on three separate occasions. The first occasion would be when the agency received the child for placement. The child would be at least six weeks of age. Then

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official consents would be made and officially witnessed. Thirdly a *guardian ad litem* would interview the mother to ascertain, amongst other things, that the consent was freely given in the full knowledge of the implications of that consent.

Applicants criticised the 1958 Act consent procedures as anxiety provoking. The period prior to the making of an order was one of uncertainty, knowing that the natural parents could withdraw consent at any time. Thus a change to irrevocable consents early in the procedure was desired by all parties. However, such reform is also in line with the trend of limiting the rights and powers of natural parents in the process. It can be seen that in a situation of poor advice and less than the highest professional standards, the practice of "freeing for adoption" could be at the expense of some rights of natural parents.

Under section 9. (7) of the 1958 Act, the court was obliged to appoint a *guardian ad litem* to report to the court on the proposed adoption, and with a duty to safeguard the interests of the child before the court. It was specified that the *guardian ad litem* should not be an employee of the agency placing the child because it was felt that a placing agency was an interested party. Houghton had argued against this on the grounds that as agencies' professional standards improved, so would their competence to report to the court direct. There was some acceptance of this argument, and section 20 refers to the

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subsequent Adoption Rules (1984) allowing some discretion as to whether or not a *guardian ad litem* should be appointed.

As described above (p.191) much consideration had been given to adoption by relatives by the Houghton Committee and it had been recommended that an order under the terms of guardianship legislation would usually be more appropriate. In the event the 1975 Act contained a complete Part (Part II) on such custody matters, and defined a new order, the Custodianship Order.

This discussion of custodianship will be linked with extensions of the rights of foster parents to apply for the adoption of children living with them, described in Part I of the Act. Together these clauses specifically define foster parents as a group with special rights distinct from all other potential adopters. Custodianship orders were introduced as the preferred order where previously a natural parent or spouse might have jointly applied for an adoption order, or where relatives other than parents might have applied. It had been argued that adoption was something of "a sledge hammer to crack a nut" in such circumstances. In the case of a parent's applications, the child's position could more appropriately be confirmed by an order specific to the step-parent. Such an order would also avoid the fiction of parenthood, allowing the natural parent to at least maintain her, or more likely his, symbolic status. Similar arguments were associated with relative adoption. Typical situations involved grand parents or uncles and aunts

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adopting children, with even more likelihood of the physical presence of the natural parent. All this was non-contentious, indeed a generally advocated reform among the professionals. However, Part II goes on to introduce foster parents as a second group for whom custodianship orders were to be appropriate. Thus, any person who had provided a home for a child for twelve months including the three months prior to the application might apply for custodianship with the consent of the parent. After three years of care the relative or foster parent might apply, notwithstanding opposition from the parent (Freeman, 1986).

Similar clauses relate to foster parents as applicants for an adoption order. Under previous legislation it was the case that once a parent had consented to adoption, though that consent could be withdrawn at any time up to the making of that order, the parent could not physically remove the child from the prospective adopters without leave of the court. This was not the case if the applicant had applied without consent, in which case the parents could physically re-claim their child. The 1975 Act gave the right to any foster parent who had cared for a child for five years to apply to the courts for an adoption order and, notwithstanding the opposition of the natural parent, they could not then remove their child without leave of the court. Further, if a child placed with prospective adopters became the subject of a "freeing for adoption" application by an adoption society responsible for the child, again the natural

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parents would lose the rights to re-claim their child prior to the court hearing, notwithstanding that they had never consented to adoption for their child.

It must be emphasised that foster parents have always been able to adopt the children for whom they cared and in many cases adoption orders did little more than confirm *de facto* adoptions. Again many children boarded out by local authorities were subject to a parental rights resolution by the local authority, and so the natural parents could not remove the children at will. Yet rights to apply for adoption orders, in certain cases without the consent of the parents and in other cases even without the agreement of the local authority in whose care the child had been placed by the parents or court, was something quite new. Similarly, priority rights to apply for legal custody of boarded out children, against the wishes of both natural parents and local authority, was also quite new. The rights of parents had been severely undercut. Rights were transferred to local authorities, adoption societies and fosterparents. The process of transferring children, particularly but not only by legal adoption, from natural parents unable to accommodate them for the time being, to families who could so accommodate them, was being greatly encouraged. Encouragement was given to both the local authority in respect of children "in care", and to local authorities and voluntary societies acting as adoption agencies. Also encouraged were private citizens, those families acting as foster parents either by private arrangement with

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natural parents, or by more formal arrangements. Such formal arrangements would be with local authorities or large voluntary societies such as Dr. Barnardo's or the Church of England Children's Society, providing for children "in care". This encouragement of the private individual as distinct from the state agency is emphasised by the conferring of a statutory right to apply to the courts notwithstanding opposition from legal guardians or even the local authorities, themselves standing *in loco parentis*! For some families, parenthood has become quite negotiable.

Part III of the Act was given over to amending previous legislation, to bring it more into line with the recommendations of the Houghton Committee. The 28 days notice of removal required of a parent whose child was "in care", was written into the Children Act 1948 (see p.199). Houghton had recommended the notice period for children who had been in care for a minimum of one year. Section 3A of the 1948 Act now specifies six months. Similar conditions now apply to children in the care of the voluntary societies. More conditions were specified, any one of which a local authority might rely on to assume parental rights over a child in their care. Previously such conditions related to there only being either no parent available or the parent being in some way culpable or incapacitated. A new clause introduced by the 1975 Act simply related to the child being "in care" for a minimum period of three years, no matter what the attitude, behaviour or resources of the parents. The

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Act did introduce a right of appeal to the High Court against the decision of a juvenile court confirming or otherwise a parental rights resolution of a local authority.

To follow through its general attitude of negotiable parenthood as distinct from a basic assumption that parents and children have a right to live together, a new section was inserted into the Children and Young Persons Act 1969 as section 32A.

"If before or in the course of proceedings in respect of a child or young person ....it appears to the court that there is or may be a conflict, on any matter relevant to the proceedings, between the interests of the child or young person and those of the parent or guardian, the court may order that in relation to the proceedings the parent or guardian is not to be treated as representing the child or young person..."

In such cases the court could order legal aid for the parent to allow him or her to take part in the proceedings.

Finally the 1975 Act is noteworthy in that it modified the general duty of local authorities in care cases and adoption. The Children Act 1948 was amended at section 1 so that "...in reaching any decision relating to any child in their care, a local authority shall give first consideration to the need to safeguard and promote the welfare of the child throughout his

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childhood...". Two points are significant here. Firstly, the Houghton Committee debated whether or not the welfare of the child should be "paramount". It proposed that it should be in its discussion document, but opted for the lesser emphasis of "first consideration" in the final report. Discussion of the preposterous nature of the suggestion that identical considerations apply in the situation of awarding the custody of a child as between competing parents, and the situation of deciding as between parents and the state, will not be laboured. Even "first consideration" indicates a presumption rather than an exception that the child's interests are distinct from his or her family's. The second point is that the phrase "throughout his childhood" heralded a new concept within such general duties relating to children "in care". Most children entering into the care of the local authority, do so with the expectation of a short stay and a return home (see Appendix A table 5). While the retreat from paramouncy indicates that the Houghton Committee and the Children Act 1975 could have discounted the rights of parents of children "in care" to a greater extent than was the case, the new statutory general duty to plan long term for all children received into local authority care is an extensive symbolic and instrumental responsibility. Awareness of this feature of "care" must inevitably create apprehension in the minds of families likely to have to deal with "the welfare".



## Chapter 7.

### Courts Inquiries and Ideological Domination

The influence of the dominant state ideology on the development of adoption legislation has been considered in the previous two chapters. The delegation of powers to social services departments enhances the significance of statutory social work as a disseminator of the dominant state ideology. Though the force of legislation can be seen to be irresistible, the practice of a statutory service is also determined to a considerable extent by the judicial interpretations of statutes. This chapter will consider judicial interpretation by reviewing two cases concerning appeals relating to a local authority's power to assume parental rights over children in care. Judicial interpretations can be as significant as legislation in effecting practice. Certainly both statute and judicial interpretation are more significant than "professional standards" as determinants of social work practice. The chapter concludes with a consideration of two recent reports examining, inter alia, social work practice. The reports contradict each other with their proposals for reform. As such they are examples of competing pressures within the state to define social work practice. Practice is as a result of at least three direct influences, statute, binding legal precedent and the

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professional "body of knowledge". Professional attitudes are always more malleable than "the law".

#### **The Interpretation of Statutes.**

By the late 1970s, local authorities were responding to demands for their social services departments to adopt a firmer supervisory attitude towards some clients. Their most obvious efforts were in relation to attempts to extend their powers in relation to assuming parental rights over children in their care. It must be noted that the following discussion refers to judicial interpretation of the Children Act 1948. Since these events the Act has been repealed in favour of the Child Care Act 1980. The 1980 Act is a piece of consolidating legislation re-enacting all of the 1948 Act effective at that time. For the sake of clarity the discussion will be framed in terms of the 1948 Act but it should be noted that sections 1 and 2 of that Act are now sections 2 and 3 of the 1980 Act.

The issue related to sections 1 and 2 of the Children Act, 1948. Before describing the ambiguity which was "discovered" in these sections nearly thirty years after their enactment, it may be helpful to note in part, the wording of the act .

"Sec 1. (1) Where it appears to a local authority with respect to a child in their area appearing to them to be under the age of seventeen -

(a) that he has neither parent or guardian.... or

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(b) that his parents or guardian are...prevented...from providing for his proper accommodation, maintenance and upbringing; and

(c) in either case, that the intervention of the local authority under this section is necessary in the interests of the welfare of the child,

it shall be the duty of the local authority to receive the child into their care under this section. (Emphasis added.)

(2) Where a local authority have received a child into their care under this section, it shall, subject to the provisions of this Part of the Act, be their duty to keep the child in their care so long as the welfare of the child appears to them to require it, and the child has not obtained the age of eighteen.

(3) Nothing in this section shall authorise a local authority to keep a child in their care under this section if any parent or guardian desires to take over the care of the child, and the local authority shall, in all cases where it appears to them consistent with the welfare of the child so to do, endeavour to secure that the care of the child is taken over either-

(a) by a parent or guardian of his, or

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(b) by a relative or friend of his, being, where possible  
( of the appropriate religion)".

Section 56 of the Children Act 1975 added to section 1 of the Children Act 1948 a new subsection (3A) which must also be noted.

"(3A) Except in relation to an act done-

(a) with the consent of the local authority, or

(b) by a parent or guardian of the child who has given the local authority not less than 28 day's notice of his intention to do it,

subsection (8) (penalty for taking away a child in care) of section 3 of this Act shall apply to a child in care of a local authority under this section (notwithstanding that no resolution is in force under section 2 of this Act with respect to the child) if he has been in the care of that local authority throughout the preceding six months; and for the purposes of the application of paragraph (b) of that subsection in such a case a parent or guardian of the child shall not be taken to have lawful authority to take him away".

Section 2 of the Children Act 1948 contained the powers first enacted as the so called poor law adoption powers of the Poor Law Amendment Acts of 1889 and 1899. These were the powers to assume the parental rights over children in care. The 1948 Act

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powers related to children in care voluntarily under section 1 and could be assumed by the local authority if it so decided, at any point when the necessary conditions applied. They were permissive powers and the decision as to their application in any particular instance was a professional one. The grounds for such an action related to the child having no effective parent capable of caring for the child, or that the parent, because of his or her "habits or modes of life (was) unfit to have care of the child." Grounds were added from time to time and the amendment made by the Children Act 1975 required the section to be completely re-written (see Children Act 1975, sec. 57.). The grounds added related to mental illness of the parent, consistent failure to act as an acceptable parent, that a parent not subject to such a resolution may allow the child to contact the other parent subject to such a resolution, or that the child had been in care for the three years previous to the resolution. It can be seen that by the time the Children Act of 1975 had been passed section 2 of the 1948 Act had been considerable extended. The trend was to continue.

To demonstrate this increasing emphasis on the control aspect of social work in the late 1970s two principal cases will be considered; *Johns v Jones* 1978 3 WLR 792 and *Lewisham London Borough Council v Lewisham Juvenile Court* 1979 2 WLR 513. Both cases concerned the operation of section 2 powers of the Children Act, 1948. The former case is a re-statement of "usual practice". The latter represents the new reality.

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Johns v Jones was decided in the Appeal Court in the summer of 1978. It concerned a local authority's powers to pass a resolution under section 2 of the Act, assuming parental rights after the mother had requested the child's discharge from section 1 voluntary care. Section 2 (1) of the Act begins by stating that it only applies to a child "who is in care under the foregoing section..." Thus, the question hung on section 1 (3) which of course specifically stated that nothing in the section could authorise a local authority to keep a child against the wishes of a parent. (See p.211 above.) The local authority's action in passing such a resolution was therefore deemed to be invalid and the mother's appeal was upheld. The Court of Appeal refused permission for the local authority appeal to the House of Lords, and a request direct to the House of Lords Judicial Committee was similarly refused. The Appeal Committee of the House of Lords which dismissed the petition by the local authority to hear the appeal comprised Lord Wilberforce, Lord Salmon and Lord Keith of Kinkel. Notwithstanding that decision, seven months later the House of Lords did consider the point when the three law lords were joined by their colleagues Viscount Dilhorne and Lord Scarman.

In Johns v Jones, Sir David Cairns gave the following judgment;

"In my judgment the words: 'Nothing in this section shall authorise a local authority to keep a child in their care under this section if any parent or guardian desires to take over the care of the child' in section 1 (3) of the

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Children Act 1948, have the effect that, if a parent informs a local authority of his or her desire to take over the care of the child, the child is therefore not in the care of the local authority under the section. I should have formed that opinion without the assistance of any authority. That view is fortified by the judgment in this court in *Bawden v Bawden* (1978 3 WLR 798).

Accordingly I would allow the appeal, entirely agreeing with the fuller reasons given by Orr L.J." (1978, 3 WLR 797).

There had been previous attempts to re-write the 1948 Act, the most notable being in the case of *Halvorsen v Hertfordshire County Council* 1974 5 FAM LAW 79 DC. The Lord Chief Justice, Lord Widgery argued that where section 1 (3) refers to any parent of guardian desiring to take over the care of a child (See p.211 above), it applied only to any parent not disqualified by the reasons which persuaded the local authority to receive the child into care in the first place. This argument is now generally accepted as "wrong" (Hoggett. 1977.p.175.).

Nevertheless, there are echos of the reasoning (and misunderstanding) in *Lewisham London Borough Council v Lewisham Juvenile Justices* considered by the Law Lords in early 1979. This case similarly related to an appeal against a local authority passing a section 2 resolution subsequent to a parent

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requesting the return of her child in care under section 1 of the Act. Unlike *Johns v Jones*, the authority passed its resolution within 28 days of the request by the mother, this in an attempt to comply with the new subsection (3A) (see above p.212). By now of course, the Court of Appeal was bound by the previous House of Lords ruling, and so the appeal went to the House of Lords. While the Judicial Committee of the House of Lords could not agree whether the new subsection (3A) was relevant they did agree to allow the appeal and so add a new vulnerability to all children in care, and a threat to all their parents. Further, another factor was presented for the consideration of all parents who might at some point in the future need to seek local authority care for their children. There is no evidence that such considerations ever impinged upon the Law Lords.

Repeatedly throughout the *Lewisham* judgment, the Law Lords exercised their powers of reasoning to find the "true" relationship between the two points of section 1 (3); the duty to return the child to the parent on demand and the duty to endeavour to secure that the care of the child is taken over by the parent or other, if consistent with the welfare of the child. Viscount Dilhorne proposed, "All that the first part of the subsection provides, in my opinion is that a local authority cannot if such a desire is expressed, rely on section 1 as authorising them to keep it" (op.cit. p.518). He continued further down the page, "the second part of the subsection is



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linked to the first and is not in my opinion to be treated as if it were a separate and distinct subsection. It provided that in all cases the local authority must endeavour to hand over the child if that is consistent with the child's welfare, and its duty so to endeavour does not only arise when a parent or guardian desires to take over the care of the child."

Lord Salmon found himself with similar "difficulties of construction" in relating the duty to return a child, with the duty to advance the interests of the child. "It would surely be shocking if the law does compel an authority to hand over a child in its care to a parent who is, for example a violent alcoholic, likely to neglect, injure or do the child irreparable harm" (op.cit. p.524.). Lord Salmon hesitated to fully support his colleagues Viscount Dilhorne (op.cit. p.512.) and Lord Keith of Kinkel (op. cit. p.536.) in their assertion that subsection (3) allowed the local authority to ignore a parental request for the return of its child and resolve to assume parental rights over the child. He was persuaded however, that the 28 days notice required under subsection (3A) may be used for the purpose of considering whether the local authority might wish to make a section 2 resolution. Lord Salmon saw the opportunity that such a resolution might give to the juvenile court to decide whether or not a child should be discharged from the care of the local authority as a positive advance and safeguard for both parent and child (op.cit. p.526.).

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Lord Scarman noted the knotty administrative problem of maintaining a child in care for up to 28 days after he had apparently been discharged under the terms of section 1. He referred to such matters as problems of construction of the Act. "In seeking to solve these difficulties, different courts have reached different conclusions, the effect of which have been to present the local authorities and their social workers with severe problems in the exercise of their responsibilities under these two statutes (Acts of 1948 and 1975.)." Lord Scarman went on to state of the new subsection (3A), requiring 28 notice in respect of children who had been in care for more than six months: "It is to ensure that, when a child's period in care had exceeded the duration of a temporary family crisis, or emergency, a parent is not to be able to take him back without the local authority having a proper opportunity to consider whether what the parent proposes is really consistent with the child's welfare" (op.cit. p.539.). He agreed with *Wheatley v Waltham Forest London Borough* (1979) 2 WLR 543 that the point of the twenty eight days notice was to give a "breathing space" to the local authority so that it could consider all the options, including a section 2 resolution.

As noted above, the five Law Lords were in general agreement and allowed the appeal. The direct results of the judgment have been significant. It is now common practice for parents to sign a notification on placing their children in care to the effect that after six months, 28 days notice may be required of them

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when requesting the discharge of their child. The negotiable character of discharge from care must make parents pause. "Care" was originally designed as a better alternative to "baby farming". This modification of its procedures has no doubt encouraged a latter day "baby farming" together with a considerable increase in unregulated child minding. The effect of the reform is also reflected to an extent in the paradox of declining numbers of children being admitted to care in an era of increasing privation. (See Appendix A, Table 5)

The Law Lord's statements concerning the purposes of the new (1975) amendment adding subsection (3A) to the Children Act of 1948 is a good example of judge made law. The Law Lords were in general agreement that the point of requiring 28 days notice of discharge for a child who had been in care on a voluntary basis for more than six months, was so that the local authority might consider whether it wished to oppose the discharge and take over the parental rights. No other purpose was stated. The suggestion for such a period of notice comes from the Houghton Committee and they picked the idea up from the publications of the professional bodies which they considered. The Houghton Committee put it thus:

"Notice of Removal.

At present the parents of a child received into local authority care may require his return at any time, irrespective of the length of time he has been in care,

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provided that parental rights have not been assumed. A sudden move, without preparation, can be damaging to the child and can have long term repercussions. We therefore recommend that where the child has been in care for more than one year there should be a requirement to give 28 days notice of removal. Removal within the period of notice without permission, would be prohibited in the same way as removal of a child subject to a Care Order. 28 days would be the maximum period of notice, which could be waived by the authority or voluntary society, who, in many cases, would be likely to agree to the child being returned in a much shorter period. This provision would help to prevent impulsive and temporary removals from care, and would give time for the child and parents to get to know each other again." (Houghton Report 1972. p.44.)

Lord Salmon made it clear in his judgment the the Lewisham case was an appeal brought to the House of Lords as a test case, and the local authority concerned was supported by about 50 other such authorities (1979 2 WLR 523). The authorities got what they came for in terms of a re-definition of their powers to assume parental rights over a child. The Law Lords were obviously persuaded by the appellants, but the decision is questionable if one applies a strict interpretation of the rule of law argument whereby arbitrary decision and discretion are eschewed in favour of strict statute and rule. The practice of

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assuming parental rights over children had been altered and the justification for this reform, where one was alluded to in the judgment, was the new subsection inserted in the act by section 56 of the Children Act 1975. Yet if the judges had bothered to refer to the Houghton report for guidance as to the purpose of the powers mentioned in (3A) they would have seen that the overall purpose was to assist the transfer of children from care back to their parents and family. The Law Lords chose to ignore this fact and interpreted the new power in directly contrary terms.

Had the judges followed their rules for constructing statutes when faced with uncertainties or ambiguities, rules which have developed over centuries of the common law, it is difficult to see how they would have decided that when it was enacted, section 56 of the 1975 Act was meant to extend the powers of local authorities in the direction the local authorities required when they appealed the Lewisham case. Walker and Walker's *The English Legal System* states that "Where a statute was passed to remedy a mischief the court must adopt the interpretation of the statute which will have the effect of correcting the mischief in question." Though courts generally look no further than the statute itself to discover its intention the rules do specifically allow judges in such cases to consult "...extrinsic sources such as reports of Royal Commissions or Law Reform Committees which may indicate the state of the law before the passing of the Act". (Walker and Walker.1972.p.107.) It is not

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proposed that the Judicial Committee of the House of Lords behaved in any way improperly. It is proposed that as one of the very powerful organs for the dissemination of the dominant ideology operating within the state, they provide an excellent example of the process in action. The case also highlights the naivete of the proposition that professional practice is proof against the power of the state. Professional practice can only modify a process, it cannot specify aims contrary to state ideology.

A trend of allowing to local authorities increasing powers in relation to children "in care" can be seen to continue. *W. v. Nottingham County Council* (1981) 3 W.L.R 959, has further serious implications for natural parents desiring the return of their children from the care of local authorities. The Child Care Act 1980 re-enacted substantial parts of the Children Act 1948 including what became section 3 (6) (b). This was to the effect that on appeal against a local authority having passed a parental rights resolution the situation had to remain such that "at the time of the hearing there continued to be grounds on which the resolution under that subsection could be founded..." In the case in question, the local authority passed a resolution on the grounds that the mother had "consistently failed to discharge her parental obligations." The case was adjourned so that the parties might explore methods of work which might lead to a re-unification. In the event this plan broke down, but because of the mother's working with the local authority the

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original ground no longer applied. Nevertheless, the juvenile court upheld the local authority's resolution. On appeal to the High Court, it was held that the resolution could not be upheld by the juvenile court because the original ground no longer applied, and the alternative ground, that the child had now been in care for more than three years, could not be substituted because it was the original ground which had to pertain at the time of the hearing. "The local authority appealed to the Court of Appeal, which held that the Divisional Court had been wrong on both counts." (Lyon, T. 1982)

Given any reasonable reading of the statute, the Court of Appeal is seen to have driven a coach and horses through its logic. Firstly the court dismissed the statute's assertion that the original grounds for a resolution must pertain at the time of the appeal, because to observe the statute might give rise to anomalies. So, to avoid anomalies which might occur say, if parents became unfit to have the care of their children during the passage of an appeal, the letter of the law was deemed to be worthy of no further consideration. The fact that other remedies were available to safeguard children does not seem to have weighed with the court. By this ruling local authorities are presented with the means to manipulate situations and then employ the results of the manipulations to justify their resolution assuming the parental rights of parents of children "in care". If an authority appeals the refusal of a court to grant it parental rights, and if the delay in a decision caused

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by that appeal results in the child remaining "in care" for more than a period of three years, then that very fact can be used as grounds for the resolution. The point has also been raised in this context that while an appeal is pending, the child is "in care" subject to a parental rights resolution, and that is not the same as a child "in care" under section 2, so called voluntary care. While it is true that a child subject to a parental rights resolution is still legally cared for under the powers invested by section 2 (see sections 13 (1) and 15 of the Child Care Act 1980), to propose that a parental rights resolution does not effect the nature or status of the care under section 2, as Ormrod L.J. does in *W. v. Nottinghamshire County Council*, cannot be correct in law: in its social context such a remark is nonsensical. In law "...this remark ignores various ...differences in the status of a child over whom the authority has parental rights and one over whom they have not, for example the power to recapture one who runs away" (Lyon, 1982.p.232). As to the social context of the child and its family, the nature of a voluntary arrangement and the nature of one where the state has annexed the fundamental relationship of parent and child can only appear as opposites. For the state to then maintain that nothing of significance has occurred must encourage Kafkaesque nightmares for such families.



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### **Inquiries and Social Work.**

The legal profession has a central role to play in the dissemination of state ideology though pronouncements are often held to be simply common sense. When the "good and the great" are inquired of to discover a chairman for an official inquiry of one sort or another, lawyers have become an obvious choice. The two most publicised inquiries of (poor) social work practice in recent years, those subsequent to the deaths of Maria Colwell and Jasmine Beckford (Colwell Report, 1975, and A Child in Trust, 1985.), were both chaired by lawyers and both advocated an increasingly legalistic attitude for social work. There have of course been official reports reflecting to a greater extent a social work attitude and the fact that such can still be found demonstrates a continuing challenge to aspects of the dominant ideology, albeit muffled. The fate of official reports which seek to contradict the prevailing morality is often to gather dust in some official pigeon-hole. The Finer Report (1974) on One Parent Families is a good example of such an occurrence, and the Children and Young Persons Act of 1969 noted above (p.113-115) actually contains pro-professional clauses though these suffered a similar fate later in the day by the device of non-implementation by the government of the day. Another example is The Barclay Report (1982) which was more descriptive than analytic but attempted to put forward a social work point of view. Disagreement among the members of the working party was not really surprising given that it comprised eighteen persons. However, two minority reports along

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with the majority report would not inspire confidence in the enterprise, and the report was probably destined to gather dust, even prior to its publication.

There are two publications of very recent date which will be considered. Both can be seen to be authoritative addressing areas of concern to the state and both may well initiate state action. Both concern social work practice but they represent alternative attitudes. There is no doubt that both demonstrate the influence of what was described in chapter 3 as the dominating ideology. However, whereas "A Child in Trust" (1985) is a re-statement in some detail, of the contemporary critique of statutory social work, seeking ever greater emphasis on its policing role, the "Review of Child Care Law" (H.M.S.O. 1985.) is an attempt to re-assert a social work definition within the state attitude.

"A Child in Trust" (1985) is "The Report of the Panel of Inquiry into the Circumstances Surrounding the Death of Jasmine Beckford", and it is indeed an impressive document both detailed and comprehensive. As a result of being seriously assaulted by her step-father when she was two years old, Jasmine Beckford was made the subject of a care order under section 1 of the Children and Young Persons Act 1969. The abuse came to light when Jasmine was admitted to hospital with a broken leg. Her three month old sister had been admitted to hospital three days earlier with a broken arm and she was also made the subject of

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a care order to the local authority. The sisters were returned "home on trial" seven months later when their parents had been re-housed in much more acceptable accommodation. After a further seven months they were removed from the "child abuse" register. That was towards the end of 1982. In June of 1984 while still living at home but subject to the care order, Jasmine was killed by her step-father. At the time, the Social Services Department were preparing to go to court to request revocation of the care order.

Though the department prepared for an inquiry into the event, it did not suspect its own culpability in respect of Jasmine. However, it emerged later that Jasmine had been subject to cruelty over an extended period, and the main reason why this was not detected by the supervising social worker was that she had failed to insist on seeing Jasmine in the face of prevaricating parents. It appears that naive and myopic social workers were duped by cunning and evasive parents while the child in question was slowly battered to death.

The remarkably detailed inquiry apportioned blame to most of the agencies involved, but particularly the Social Services Department and to a lesser extent the local authority Health Department. The findings are depressingly familiar, centring upon very poor communications between those involved. When all the pieces of information held by agencies and individuals were brought together in the inquiry it became crystal clear that

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Jasmine's plight should have been recognised and steps should have been taken to protect her. Reports were lost in files, procedures were forgotten, phone calls were recorded "on backs of envelopes" and magistrates pontificated inappropriately. All this is the stuff of everyday life within a state bureaucracy, indeed some such practices are part and parcel of the "gate keeping" functions of over stretched services. Such a defence would not apply to a "child at risk". Because such occurrences are common knowledge within a bureaucracy such as a busy local authority social services department, steps must be taken to ensure that they do not occur in the particular case. Yet it must be said, as it is after each such tragedy, that it will occur again. Motorists will continue to kill pedestrians, doctors will continue to kill patients, police will continue to kill suspects and parents will continue to kill their children "home on trial". Judges do not now sentence the wrong person to the gallows but only because no-one is now sentenced to the gallows. If no children went "home on trial", what an apt phrase in the situation of Jasmine Beckford, no children "in care" would be killed by their parents.

The social workers involved were dismissed. The supervising social worker and her senior were sanctioned for adopting the wrong professional stance. The inquiry held that the focus of their work was the well being of the parents when it should have been the protection of the children. Yet assuming that social work can alter relationships between marital partners for

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the well being of the nuclear family, such work must be based upon some minimum level of mutual respect between worker and client. Constantly emphasising to a parent that the local authority and not she possesses the rights and powers of a parent over her child, can only reinforce feelings of profound failure. As the report noted but did not appear to understand, it is very difficult for a parent to visit foster parents caring for one's own child. It is the recognition of such overwhelming forces which can determine client's actions, and the readiness and ability to confront them, which distinguishes social work from police work, or the helpful friend. Social work must take account of the inter- and intra-personal pressures when dealing with clients' social worlds, and the balancing of all the forces complicates social work decision making to a degree.

Decisions in relation to Jasmine Beckford were ill informed. While every effort must continue to be made to eliminate errors of commission and omission the debate concerning social work itself could be better informed than is the case with this report. If the spirit and detail of the recommendations contained in the report were accepted, the result would be not a reformed social work but a profession subjected to revolution. The process has been increasingly pressed over the past twelve years and more, but when the relationship between the worker and the client is finally discounted, then a new profession will have superseded social work.

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The report runs to three hundred and five pages with another one hundred and forty pages of appendices and makes sixty eight recommendations. Many of the recommendations are apposite, though they cover ground covered by previous inquiries. This is of course recognised. The thorough consideration of procedures in relation to child abuse, if followed, would no doubt make for a well run service. Throughout, there is a satisfaction with legal training, even though it is noted that welfare law is not particularly popular amongst the profession. This is in sharp contrast with social work training which is seen as slight in relation to the requirement. Yet there is little evidence of any knowledge of contemporary social work training. To note but two examples, there is an unattributed selection from Biesteck (1957) when describing the process of social work (A Child in Trust, 1985.p.294.) As an alternative, social work is then encouraged to reform in as much as it should specify aims and objectives when acting . In moving away from central reliance upon psychological explanations of behaviour such as those to be found in Biesteck, social work has in recent years developed a unitary approach. The central tenet of the unitary approach is the specification of aims and objectives and subsequent assessment of their achievement or otherwise (e.g. see Pincus and Minahan,1973. Goldstein, 1973. Specht and Vickery, 1977.).

Without a moderately detailed review of social work education and training, it is not reasonable to expect a committee of inquiry considering a particular incident of child abuse to be

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informed of the details of social work education. Similarly, superficial comments on the education and training debate at present occupying social work, relating to the alternative patterns of the Certificate of Qualification in Social Work or the Certificate of Social Service , are not helpful. The Inquiry appears to over reach itself when it pronounces on the education and training of social workers on the basis of brief examination. The problem for social work is that in the present uncertain climate such comments are available to support an increasingly controlling state ideology, notwithstanding their flimsy nature.

The "Review of Child Care Law" (1985) was published after the Beckford Inquiry had concluded its main examination of witnesses, but the inquiry report does note the review. There are considerable similarities between the two reports. For instance both make the novel recommendation that magistrates in the juvenile court should be required to give reasons for their decisions in care proceedings (A Child in Trust, 1985. p.171 and Review of Child Care Law. 1985.p.120.). Though the two reports address different subjects, there are obvious overlaps. These overlaps are quite sufficient to demonstrate their alternative attitudes to statutory social work. It must be stressed that these alternative attitudes are both within the parameters of "the state attitude". Neither could possibly be seen as proposing an alternative to the supporting of a dominating state ideology. It is more a question of emphasis.

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The Review Report was prepared by an interdepartmental working party. That working party was set up by the D.H.S.S. as a result of recommendations made by the House of Commons Social Services Select Committee on Children in Care in 1984. The working party's terms of reference were "...to make proposals and to set out options for codification and amendment of child care law." The attitude of the working party to its subject is stated in section 2. They see present practice as unfairly biased against parents "unable to exercise their responsibilities for the good of their children" (p.5.). The report goes on to consider how far the principle of the "welfare of the child" should predominate in decisions made by social workers. They oppose such an idea, recognising that if such an attitude was taken to a conclusion many children from poor and deprived families could be removed on the basis that a better material standard could be provided elsewhere. "But 'the child is not the child of the state.' " A Child in Trust echoes this sentiment in quoting from the Review Report (p.289), only to go on and stress the exception to the rule, whereas the Review Report states;

"2.13 We are firmly of the opinion that....where compulsory committal to local authority care is an issue the present balance between the welfare of the child and the claims of his parent should be maintained." (Review Report,1985. p.6.)



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The tenor of the review gives the reader confidence that the subject of the review, statutory social work, is practiced competently and is of value. Given this attitude, it is proposed that a clear distinction is made between "major issues" such as transfer of parental rights, which should concern courts, and "the management of the case (which) should be the responsibility of the local authority." (op. cit. p.7.). Hence, the working party dismissed the suggestion that courts should have any powers or duties to review cases periodically.

A recommendation to the Select Committee aimed at increasing social surveillance, was that a reporting law should be introduced. As with so many of the initiatives in this area it is an idea based upon a procedure in operation in the United States. The requirement would be for identified professionals, doctors, health visitors, teachers and such, to report any suspected abuse as a legal requirement. The reasons the Review Report gave for rejecting such a proposal would equally apply to many new procedures required of statutory social work in recent years, supposedly contributing to the "welfare of the child":

"12.4 We have concluded that....there is no demonstrable need for a mandatory reporting law. What is more, providing one might, in our opinion, be counter-productive and increase the risk to children overall, first by weakening the individual's professional sense of personal responsibility and secondly, in casting the

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shadow of near automatic reporting over their work, by raising barriers between clients and their professional advisers and even between professionals concerned in the same case. One consequence might well be to set back the advances made over the years in encouraging interdisciplinary communication and co-operation between all those involved in the health and welfare of families and their children." (Review Report, pp.80-1)

It is difficult to understand how legislators might read the above and see the passage as a description of unintended consequences. Alternatively, if these consequences are not unintended, then it must be concluded that the legislators have no concern for the working relationship between what one might loosely term "welfare professionals" and their poor clients. The continuing implementation of this lack of concern would be disastrous for G.P.s, teachers, Health Visitors and such. It would be fatal for the profession of social work as currently practiced. And where would all that leave "children at risk"?

The covert aim of the "Review of Child Care Law", it is proposed, is to counter to some extent, the contemporary thrust of official direction of statutory social work. Reception into care, it is proposed, should be separated into two alternative procedures, one for the very short term accommodation of children, and one for the longer stay. The first is termed Respite Care, where the local authority might provide

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accommodation but only in close partnership with the parents. No powers over the child would be invested in the local authority; it would be little more than a neighbourly act with the parent encouraged to do all or most of the work. Where the situation was more problematic and the period of accommodation likely to be more than a month Shared Care would be provided. Shared Care is the review's proposition of what the present voluntary care under section 2 of the Child Care Act 1980 should become. The main emphasis is to be on involving the parent in the care. Four problems are identified with the present situation. Respective powers as between parents and local authorities are unclear; some parents fear they will lose their children to the local authority; guilt is felt by parents giving their children up to the stigma and supposed second rate care of "Care", (or why should it be so stigmatised?); finally there is the problem of the unwillingness of parents to retain close involvement. The latter problem is seen as the most serious. "This involvement is crucial to achieving a return home which in the majority of cases is the best outcome for the child." (op.cit. p.53)

The review proposes restriction on the use of Place of Safety Orders noting a significant increase in their use. It must be noted that the A Child in Trust argues along very similar lines for a reduction in the availability of the order, but it only stresses the unsuitability of the order in relation to non-school attendance. It could be better argued that the increase

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in the use of these emergency orders, especially for young children, is a direct response to the constant and generalised criticism which social work has been subject to for the past ten years and more. Such generalised criticisms are to be found within A Child in Trust.

As to compulsory care, actions under the Children and Young Persons Act, 1969, would only be undertaken to prevent "harm". As with the argument concerning making the welfare test paramount noted above, to apply "best" standards as section 1 of the act implies could lead many into care. Maybe most children at some time and to some extent have their "proper development ....neglected" or their "health...neglected" or are "exposed to moral danger" and such. But of course not all children are likely to be thus arraigned. The original spirit of the 1969 Act is encouraged by suggesting that it would be as unusual to make a care order on the grounds of commission of an offence as it would to make one on the basis of non-school attendance. In either case, "harm" would have to be proved, and this would be a far stiffer proposition than the existing "care and control" grounds which are frequently taken as read (Priestley *et.al.*,1977).

To emphasise the counter revolutionary style of the Review Report a note of some of its propositions countering significant reforms brought in under the Children Act 1975 and that act's influence will be noted in conclusion.

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Maybe, the most pertinent is the proposition that the ruling in the Lewisham case reviewed above (p.199-206) should be modified, so that the 28 days notice required of parents under what would be "Shared Care" could only be used as Houghton intended; that is as a period of re-introduction of parents and child (Review Report, p.59-60). Local authority's powers to assume the parental rights over children in care would be repealed, care proceedings on the basis of "harm" being the only option (op.cit. p.60). The review proposes that the duty of a local authority "to afford (the child "in care") opportunity for the proper development of his character and abilities", section 12 (1) of the Children Act 1948 repealed by the Children Act 1975, should be reinstated.

It is not that the panel of inquiry relating to Jasmine Beckford's death would individually oppose all or any of the propositions of the Review Committee. As noted, the Child Care Review was seen prior to the completion of A Child in Trust and several of the Review's recommendations appear in A Child in Trust. The point is that the overwhelming impression of A Child in Trust is one of censure of the contemporary practice of social work. The following conclusion flows easily from what went before:

"We fear that (the) attitude regarding the parents of children in care as the clients, rather than the children in their own right, may be widespread among social

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workers. We say this circumspectly, because we have not been able, nor has it been part of our function, to review the training or practice of social workers in the field of child care (sic). But we have listened to a number of social workers and expert witnesses, and in each case we have detected an attitude which is the negation of any authoritarian role in the enforcement of Care Orders" (A Child in Trust, 1985.p.294.).

The circumspection, not in great evidence throughout the report, soon gives way to forthright statements again.

"'Authority' is not a dirty word. Indeed, it must be brought officially from behind the arras of social work training onto the public stage, not just of child care law but also into the practice of all social workers. We regard it as an essential ingredient in any work designed to protect abused children. At the same time one has to recognise that social workers have a difficult task to perform, but it will not be made easier by being deflected from a proper appreciation of what society is demanding of them in the protection of children at risk." (op.cit. p.295)

Two points stand out from this brief consideration of two recent reports. Firstly the reports are incompatible one with another, in that if the assessment of the incompetence of

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contemporary social work which is A Child in Trust is accepted, then the confidence in social work implicit in the Child Care Review must be misplaced. Secondly, A Child in Trust advocates an altered social work practice strongly emphasising surveillance in what it terms "high risk" child abuse cases. The report does not appear to accept that the demand is not new. It has been a recurring theme since the mid 1970s, and far from authority needing to be "brought officially from behind the arras of social work training onto the public stage." the increase in Place of Safety Orders and Care Orders in relation to under fives are causing concern, concern incidentally, which the report notes . It would appear that the increase in these orders reflects a profession confronted with difficult decisions attempting to "play safe". Social work must be by now very clear what it is that is being demanded of it. These demands do not come from "society" but rather from the proponents of the state ideology.

It has been demonstrated that the state ideology can be detected in what might be termed extra official texts as well as obviously official texts such as statutes and official reports. Strong support for the official position can be found in judicial pronouncements. Here the appeal courts have a vital role to play in that their decisions can determine the actions of lower courts. The role of inquiries, in this case child abuse inquiries also provides practical support to bolster the official ideology. Their effect over the past ten years or so

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has been very significant in modifying social work practice to emphasise a policing role. It cannot be too strongly emphasised that this process is quite distinct from acts of conspiracy or totalitarian domination. Alternative court decisions and official reports have been considered. The point is that given the dominating ideological position practice attitudes based upon it become "obvious" and "common sense". The Law Lords deciding the Lewisham case were not instructed to change their attitude of a few months previous as displayed in Johns v Jones. Rather, they "recognised" the folly of their ways when this was explained to them in some detail by the local authorities. It will be interesting to see whether the Child Care Review can turn back the tide. On the basis of this analysis, the document, in its present form, is more likely to suffer the fate of the Finer Report (1974) (see p.190 above) and gather dust.



## Chapter 8.

### Conclusions.

In this chapter the main conclusions of this thesis will be briefly re-stated and juxtaposed with a consideration of the recent development of professional social work practice. This exercise highlights a fundamental conflict within social work relating to, on the one hand its helping ethos, and on the other its surveillance function. Some implications of this contradiction for social work organisation and practice are noted.

This thesis has been concerned to illustrate how statutory social work in local authorities has attained prominence in recent years. This prominence was sought by the burgeoning social work profession in the late 1960s and early 1970s, flushed with what it saw as its achievement in successfully arguing for a comprehensive statutory social work organisation, social services departments. The move to prominence has been illustrated by a detailed consideration of adoption legislation, associated reports and relevant appeal court decisions, as they have appeared since the early 1920s. The significance of inquiry reports concerning the killing of children "in care" by their parents and others has also been considered. Overall, the

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state's relationship to particularly poor families and children has been a central point of concern, and the dynamic nature of this relationship over the last one hundred and fifty years has been reviewed.

While there was a growing concern for the welfare of children seen to be the responsibility of the state, throughout the nineteenth century, and this could be seen in the establishment of schools and a system of universal primary education, the position of children of the poor law at the turn of the century was still a rather gruesome one. While young girls of the poverty classes were no longer to be found in the pits or factories, the height of their ambition, as described by the Royal Commission on the Poor Law which reported in 1909, was to be placed in domestic service. There was an argument for a more imaginative approach towards tapping the full potential of boys, but this only amounted to specifying a range of more or less hazardous occupations. And of course both sexes were seen to be appropriate and unquestioning material for the population of the Empire. There could not be said to exist any particular concern for the individual child.

Such a state attitude of poorly informed unconcern can be seen to provide the context for early adoption legislation. Though Private Members introduced several bills on the subject and the concern was well expressed in the Hopkinson Report of 1921, it was a further five years before a somewhat reluctant parliament

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legislated. A notable feature of that legislation was that even though it enabled children to be legally adopted, in terms of inheritance and wills the child's rights remained with his or her family of origin and no such rights to the property of the adoptive family came with the adoption order. It had to await the changed political climate of the immediate post war years before the principle that adoption involved full transfer of rights from the family of origin, the natural family, to the adoptive family, was recognised. Obviously the main beneficiary of this change was the child and thus the move can be seen to signify a growing concern for the individual child. This concern can be seen to be a considerable development of the state's previous expression of some minimum responsibility for children who were its direct responsibility.

The post-war years are seen as a period when there was a concern for the users of state welfare and the attitude noted above in the Adoption Act of 1949, and the Hurst Report of 1954 reflected this. The Hurst Report (1954), taking its lead from the spirit of the 1949 Act, attempted to spell out in some detail an adoption procedure which could be seen to be fair to all parties. The parties were seen to be essentially three: the natural parents of a legitimate child, or the mother of an illegitimate child, the adoptive parent or more usually parents, and the the child. In stipulating the responsibilities as well as the rights of adopters, Hurst can be seen to be emphasising the welfare of the child as a primary concern. This committee

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was by no means the first to advocate the welfare principle in relation to legal action concerning children, but it can be seen to seek to conscientiously operationalise the concept. The Committee's faith in the informed judgement of professionals is demonstrated by its advocacy of an increased role for the social worker and the adoption agency in the operation of the procedures. The Adoption Act 1958 followed Hurst closely to establish adoption as a secure and well administered disposal for the very small minority of children who were seen to stand in need of permanent substitute families.

The re-organisation of local authority social work under the terms of the Local Authority Social Services Act 1970, saw the social work profession brimming with self confidence and pressing for greater powers to enshrine the professional attitude in reformed adoption legislation. The Houghton Committee's Report (1972) indeed pointed the way towards the professional legislation requested of it by the adoption professionals, both statutory and voluntary, but it also did the state's bidding in recommending radical reform of the powers and procedures associated with the boarding out of children in the so called voluntary care of the local authority. In successfully recommending that local authorities needed these rights and powers over children "in care" under the Children Act 1948 sec. 1, Houghton can be seen to have been responsible for fundamentally altering the relationship of the local authority social worker and families of children "in care". What is more,

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these rights and powers which amounted to a procedure for the negotiation of parenthood, would also be a factor influencing potential clients of the social services departments and indeed, the population in general. The Children Act 1975 can be seen to be the key piece of legislation reforming most areas of social work practice with families and children. The 1975 Act followed closely the recommendations of the Houghton Report of 1972, the "Report of the Departmental Committee on the Adoption of Children". Both the report and the Act would have more accurately been entitled "Social Work" rather than "Children" or "Adoption of Children" respectively, so wide have been their significance for contemporary social work practice.

Of course, had not the Houghton Committee been appointed, then some other such committee would have had to have been created. The whole development of statutory social work has been in the direction of increasing powers in recent years. As the Children Act 1975 was being implemented, greater powers were being discovered by the Appeal Court within the legislative powers used by local authorities to "receive" rather than "take" children into care. This was particularly so in the case of local authority powers to assume parental rights over children "in care". Along side these developments, a series of central and local government inquiries into children who local authorities and their social workers failed to protect from harm, encouraged a popular opinion of an inadequate social work profession. This really makes the point that the increasing powers were powers

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against the poverty stricken clients rather than powers for the social workers. In as much as social workers are seen to advocate some measure of empowerment for the poverty stricken, they are popularly coupled with their pariah clients.

The contradictions within statutory social work have been referred to on several occasions. However, before conclusions can be reached on the effect that these recent developments are likely to have on social work practice, some mention must be made of what Evans (1976) refers to as social work practice theory and theory for practice.

The legion of social work practice publications fall into two broad categories; those written with the aim of advancing practice and those written with the aim of expressing destructive criticism of practice. Of course the former group is of a far greater number than is the latter, though it may well be that the latter group obtains a wider notice. No doubt the reasons for this are associated with trends which comprise much of the subject of this thesis, trends associated with state influence and professionalism.

Until the 1960s social work was synonymous with social case work. Throughout the sixties unease was becoming increasingly apparent within social work itself at the theoretical reliance upon psychodynamic theory, and at this time a more sociological orientation began to developed. Too much should not be made of

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this development. Probably of greater importance than the move to distance social work from psychodynamic theory, was the continuing commitment to a client centred approach. Though there was no reluctance to emphasise the social work aim as one of achieving social change, and it was the social work task to specify the direction of change, the assumption was that the social worker and the client would engage together in the enterprise. If the force of social and community pressures were given increasing consideration in assessing the difficulties of clients, it became increasingly recognised at this time that people could not be defined in social terms without giving priority consideration to them as family members. This developing focus on the family was of course, apparent in fields other than social work (for a recent review of the topic see Morgan, 1985). It was a central theme of much social policy at the time and found political expression in the Children and Young Persons Act of 1969, and the series of reports leading up to that Act (see Chapter 7 above). The pressures to widen social casework, and at the same time some reluctance to do so, permeates the National Institute for Social Work Training's "New Developments in Casework" (1966) compiled by Eileen Younghusband, later Dame Eileen Younghusband. In a perceptive paper Elizabeth Irvine (1966) "...record(s) a change of heart", acknowledging the need for a broader focus for social work. "We need to develop more appropriate and effective techniques for all types of clients in all kinds of agencies..." (Irvine, 1966. p.46). Francis Turner, explaining the need for a second edition

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of his U.S. social work compendium, well illustrates the dilemma of social case work in the early 70s. Writing of the concept diagnosis in social work, a concept particularly linked to the treatment ethos of psychodynamic casework, he goes on; "Although we have often said diagnosis should never, and was never intended to be unidimensional, I think that we have nevertheless projected a view that it was a more easy manageable phenomenon with rather clear boundaries than in fact it is." (Turner, 1976.p.xx). In having recantation forced upon him, Turner would no doubt have sympathised with the Lords of Appeal in Ordinary when confronted with the appellants of the Lewisham case discussed above (pp.215-221).

At the same time so called "family therapy" was developing to take account of this wider perspective. This development as many others in this field, was initiated in the U.S. (Satir, 1967), but was taken up in England by social work and psychiatry (Skynner, 1976). By the 1980s the perspective had led to the founding of several English and continental schools of family therapy. Social work and psychiatry have shared this development at some cost to any development of individual psychotherapy (Treacher and Carpenter, 1984). As noted above (pp.24-5) in parallel with this development has been a somewhat functionalist systems approach to social work problem assessment, which has nevertheless aimed at concentrating workers' attentions on addressing concrete social problems, again at the expense of the psychodynamic (Evans, 1976).



### Conclusions.

Arguments persist concerning the efficacy of the various approaches, but it must be conceded that as social work's *raison d'être* is structural poverty, concrete problems rather than intra-psychic problems are more immediate to clients, more available to modification and so more appropriate concerns for statutory social work.

Critiques of social work at most levels usually address the point concerning intra-psychic problems *versus* material problems, but many also go on to assume that social work continues to attempt to meet contemporary material problems with an esoteric clinical practice. Probably the best known recent attempt at this "straw man" argument is that by Brewer and Lait (1980). Better informed and more reasoned arguments would include those by Sheldon (1978) advocating a behaviourist perspective, and Bottoms and McWilliams (1979) taking a more existential attitude.

At some danger of over simplification, the problem may be stated thus. In attempting to work with clients by exerting influence through the medium of a personal relationship both social worker and client will inevitably identify with each other to some extent. Through such detailed and intimate work, social work is able to make a fairly comprehensive assessment of the situation of its generally poverty stricken clients (Becker and Macpherson, 1986). But in attempting to effect some structural change for the benefit of the poverty classes,

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statutory social work is immediately confronted by a dominant state ideology of which it is itself a part. When the object of the ideological process of the state is to, at best, maintain the *status quo*, the inbuilt contradictions of the situation become chronic. It is not proposed that statutory social work is unique in this respect. However, it may be that the problem is more apparent with social work because of its uniquely contradictory position. Other state occupation groups concerned primarily with policing such as prison officers or the police themselves are trained narrowly for the specific task without expectation of their initiating novel forms of practice. Members of such groups may well feel the frustration of such a position but it is unlikely to be a major issue within the group. Status groups, what have been referred to here as professions, those usually advocating education as well as more narrow training for qualification, are expected to advance their own practice. Doctors, lawyers, architects, librarians, teachers and such fall within this group. The ability of status professions to regulate their employment will always be circumscribed, but the extent of circumscription varies. As the policing functions of social work are accentuated, to the inevitable detriment of a helping ethos, so the contradiction between a narrow policing job and a "helping profession" becomes critical. The recent modification to the general duties required of Social Services Departments in relation to children "in care" is a case in point (see p.207 above).

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The demise of the Poor Law can be seen to have been central to the creation of the personal social services. The question arises as to whether the demise of statutory social work might herald a late twentieth century version of the "New" Poor Law. Certainly the Central Council for the Education and Training in Social Work (CCETSW), is now engaged in the process of totally reorganising social work education and training (CCETSW, a1985, b1985, c1985, 1987). Immediately prior to undertaking the task, the Council itself was re-organised. Its membership was cut by two thirds, and the new council is now appointed by the Secretary of State rather than nominated by social work agencies as previous. As a further post script to this note on the organisation and direction of social work training, a new Director of the CCETSW was appointed in the summer of 1986. He was the only short-listed applicant not trained or experienced in social work. He was, however, the Chairman and Secretary of the British Association of Adoption and Fostering Agencies. The influence of the profession on this re-organisation has been minimal as compared with that of the state.

Two central questions arise from this study. Firstly, with the changes which have been brought about in the practice of statutory social work, has any thing of value been lost or gained? Secondly, does this account of the process of contemporary social change add anything to an understanding of the process and the structure of society? These two questions will be considered in turn.

### Conclusions.

Firstly the point concerning the value of such changes. Such a subjective question immediately prompts the further question, from who's point of view? For instance Roberts, in his study of the origins of the welfare state, considers the contribution of Sydney and Beatrice Webb. He notes that a decade after their minority report of the 1909 Royal Commission on the Poor Law, they wrote *The English Poor Law History, Part II, the Last Hundred Years*, published in 1929. Here, Roberts proposes, the Webbs displayed an ignorance of the concept of less eligibility:

"The Webbs were critical of the Law's policy of a strict workhouse test and maintained that the authors of the Law did not seek to remove the cause of destitution. Filled with a socialistic desire to end poverty they overlooked the belief of Chadwick and the assistant commissioners that the end of easy relief, along with better education, improved health in towns, and workhouse schools for the young, would remove the cause of destitution. The Webbs' hostility to individualism prevented them from understanding the philosophy of the new poor law..."  
(Roberts, 1960.p.337).

Roberts is surely wrong in this instance. To assert that a hostility to individualism prevented the Webbs from understanding "the philosophy of the new poor law" is to assert that their collectivist attitude, such as it is maintained it was, sprang from some unconsidered reflex. No doubt personality

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and socialisation contributed to their standpoint, but for them above most, it was informed by study. In as much as the same can be argued for Chadwick's point of view their difference has a basis in value rather than ignorance. Value and opinion must have a central part to play in social science. Indeed, the notion that it plays no part in the practice of the natural sciences is also quite mistaken. (See for instance Kuhn, 1970, generally, Gilbert and Mulkey, 1984, concerning experimental chemistry, and Chalmers, 1982, for a recent review of the field of "philosophy" of science.)

The value of what has been put at risk by the reformed social work practice for social work itself, concerns relationships with clients. The trend from an ethos of treatment to one of helping in the sixties removed much of the mystification from the concept of the social work relationship. Help and trust can be seen to be associated concepts and can be simply understood. Statutory social work was never particularly simple because it always carried the dominant ideology within it. Nevertheless, social work clients are well used to confronting state employees who view them through "the grid or spectacles" of a dominant ideology. It is from this perspective that it is maintained that statutory social work could then be encountered as bureaucracy with a human face. Davies (1983) analyses the situation of professions within bureaucracies, rejecting earlier discussions which concluded that the two were quite incompatible structures. Professional statutory social

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work no doubt often made a welcome change for clients, from the harassed world of the perspex, shatterproof screens and screwed down chairs of the D.H.S.S. Supplementary Benefits waiting rooms, another familiar feature of the state for many social work clients. Simplistic definitions of the "welfare of the child" entailing "child saving" attitudes (Platt, 1977) at the expense of any consideration of the claims of parents or indeed children, to the maintenance of their nuclear families, are an anathema to any concept of state promoted social welfare (see pp.228-234 above for a detailed discussion of the point). Already British statutory social work cannot be forced much further in this direction without its practice becoming unrecognisable as social welfare work. Probation Officers in the U.S. carry hand guns!

The cost for clients will be greater. In as much as reception into care for children meets a perceived need, this need will be met less frequently. No matter that the standard of care "in care" is high and improving; the more that families perceive local authority care as a threat rather than as a service, so the more will they accept continuously lowering standards of substitute care free of the state. State care has never been just a service. There is a stigma attached to being unable to provide for one's offspring, the more so if one has not even a friend or relation to take over. Reception into care is, in itself a major trauma for any family and child. It is to be expected that parents will find it immensely difficult to visit their children

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"in care", particularly so when that visit entails admitting one's incompetence to a peer, a foster parent (Holman, 1975). Nevertheless, it is reasonable to argue that the price must be paid, because usually foster care is preferable to institutional care for young children. Other things being equal, transfer to another nuclear family and one permanent carer, is likely to present a more familiar situation to the young child, than transfer to a Home and several transient carers. To all this has been added the stigma of "everyone knowing what happens to children whose parents put them 'in care'", and the real threat of not being able to reclaim one's child. The time limits of care which now form a "contract" (hardly between equals), state clearly what was often suspected: the authority may negotiate concerning the parental rights of children "in care". Thus, in this instance the cost to parents concerns some peace of mind when committing their children to the substitute care of the local authority. Costs for the children themselves are difficult to assess. If what went before in terms of an unsupervised and exploitive child minding service summed up in the nineteenth century phrase "'baby farming", occurs again, the child may have to pay a heavy price.

It was argued in Chapter 2 above that legitimation is the achievement of ideology. In a modern industrialised society "the haves (continue) to come out ahead" (Galanter, 1974), but as long as the regime is granted legitimation by the majority of the populace a social and political revolution will not occur.

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The legitimation of a regime, a social order, is achieved covertly through unthought and unrecognised agreements which mundanely and continuously structure the social world. Giddens' detailed and comprehensive study identifies the whole process as structuration, the process whereby all societal members continuously reproduce the social world in their interactions. These interactions are structured on the basis of unrecognised rules of speech, expectation and perception. This Giddens terms practical consciousness which informs and is informed by discursive consciousness, the process and method whereby we routinely account for ourselves and each other. Using this model to account for contemporary statutory social work, one might suggest that recent reforms of social work are emphasising what were previously rules in the realm of practical consciousness. The poverty classes are having their poverty thrust upon them, and services which formerly could be seen to ease their lot somewhat are being reformed in more oppressive terms. Habermas published his *Legitimation Crisis* almost twenty five years ago and it is proving prophetic. For if the oppression of significant sections of the population increases to the point where legitimation is withdrawn, when the practical becomes available for discourse, then ideological domination has to surrender to a more overt form of domination or the society undergoes revolution.



Appendix A

This appendix comprises a series of tables followed by a short commentary on their relevance to the arguments put forward in this thesis.

Table 1.

The Incidence of Legal Adoption in England and Wales, 1927 - 1984.

Year	Total Number of Adoptions. (1)	"Parent's Own" Adoptions. (2)	Non-Parental Adoptions. (3)
1927	2,943		
1928	3,278		
1929	3,294		
1930	4,511		
1931	3,777		
1932	4,465		
1933	4,524		
1934	4,756		
1935	4,844		
1936	5,180		
1937	5,547		
1938	6,193		
1939	6,826		
1940	7,775		
1941	7,429		
1942	10,409		
1943	11,548		
1944	13,027		
1945	16,319		
1946	21,279		
1947	18,255		
1948	18,540		
1949	17,317		
1950	12,739		
1951	13,850		
1952	13,894		
1953	12,995		
1954	13,003		
1955	13,001	4,519	8,486
1956	13,198	4,727	8,974
1957	13,409	4,720	8,683
1958	13,303	4,328	8,976
1959	14,103	4,814	9,295
1960	15,099	4,487	10,612
1961	15,997	4,470	11,530

(cont.)

Appendix A

	(1)	(2)	(3)
1962	16,894	4,369	12,525
1963	17,782	4,650	13,132
1964	20,412	4,651	15,090
1965	21,033	5,784	15,258
1966	22,792	6,898	15,894
1967	22,802	7,189	15,613
1968	24,831	8,647	16,184
1969	23,705	9,335	14,370
1970	22,371	10,361	12,012
1971	21,495	10,751	10,743
1972	21,603	12,233	9,211
1973	22,200	11,677	8,459
1974	22,502	14,835	7,508
1975	21,299	14,567	6,580
1976	17,621	11,852	5,661
1977	12,749	7,783	4,867
1978	12,121	7,444	4,590
1979	10,870	6,534	4,254
1980	10,609	6,150	4,364
1981	9,284	5,057	4,153
1982	10,240	5,807	4,343
1983	9,029	4,939	4,008
1984	8,648	4,459	4,078

Sources: Years 1927 to 1973 inclusive; *The Registrar General's Statistical Review of England and Wales, Pt. II*. Published Annually. London. HMSO.  
Years 1974 to 1984 inclusive; *OPCS Monitor, F.M.3*. London. Government Statistical Service.

Appendix A

Table 2.  
Children Adopted from Care Annually, as at 31 March, 1953-1984.  
(Thousands)

Year.	Total.
1953	1.0
1954	1.0
1955	---
1956	1.1
1957	1.0
1958	1.1
1959	1.1
1960	---
1961	1.5
1962	---
1963	1.6
1964	1.7
1965	1.7
1966	2.0
1967	---
1968	2.1
1969	2.2
1970	2.2
1971	1.9
1972	1.7
1973	1.6
1974	1.7
1975	1.5
1976	1.6
1977	1.5
1978	1.6
1979	1.5
1980	1.6
1981	1.7
1982	1.9
1983	2.2
1984	2.0

--- Figures not available or obviously incorrect.

Source. *Children in the Care of the Local Authorities in England and Wales*. Published annually in London by HMSO up to 1978; since 1979 by the Department of Health and Social Security.

Appendix A

**Table 3.**  
Number of Adoptions where Parental Consent was Dispensed with.  
England and Wales, 1977 - 1983.

Year.	a)No. of occasions when consent adjudged. to have been "unreasonably" withheld.	b)Total No. of occasions consent dispensed with.	a) as % of b).
1977	225	869	26%
1978	243	773	31%
1979	253	673	38%
1980	317	763	42%
1981	372	731	51%
1982	511	898	57%
1983	580	956	61%

Sources: (i) Children Act 1975. First Report to Parliament. (1979)  
*A Report by the secretary of State for Social Services and  
the Secretary of State for Wales as required by Section 105  
of the Children Act 1975 on the Operation in England and  
Wales of those sections of the Act which are in force.*  
London. HMSO.  
(ii) Children Act 1975. Second Report to Parliament. (1984)  
London. HMSO.

Appendix A

Table 4.

Total Number of Children in the Care of Local Authorities in England and Wales at 31st March, and Total Population of U.K. in Age Group 0-14 in Sample Years for Comparison.

Year	Total.	0-14 years Population in Sample Years.
	(1)	(2)
1951	62.7 Thousand.	11.4 Million.
1959	61.6 "	
1961	62.2 "	12.4 "
1965	67.0 "	
1966	69.2 "	
1967	69.4 "	
1968	69.4 "	
1969	70.2 "	
1970	71.2 "	
1971	*87.4 "	13.4 "
1972	90.6 "	
1973	93.2 "	
1974	95.9 "	
1975	100.6 "	
1976	100.7 "	12.9 "
1977	101.2 "	
1978	100.7 "	
1979	100.1 "	
1980	100.2 "	12.9 "
1981	96.9 "	11.6 "
1982	93.2 "	11.3 "
1983	86.6 "	11.4 "
1984	78.9 "	11.0 "

\* The 1971 increase is mainly accounted for by the abolition of the Approved School Order and its replacement with the Care Order to the local authority under the terms of the Children and Young Persons Act, 1969.

Sources. Col. (1)

(i) *Social Trends*. (Published Annually) Nos. 6, 8, 10, 12, 13, 16. (1975-86) Central Statistical Office. London. HMSO.  
 (ii) Children Act 1980. Social Services for Children in England and Wales, 1982 - 1984. (1985) *A Report by the Secretaries of State for Social Services and for Wales with respect to the exercise by local authorities of the function specified in Section 79(5) of the Child Care Act 1980, the provision by voluntary organisations of facilities for children, and other matters relating to children*. London. HMSO. 1985. (cont.)

Appendix A

(cont.)

(iii) Health and Personal Social Services Statistics. (1973)  
 London. DHSS  
 Col. (2)  
*Social Trends*. (Published Annually) Nos. 6, 8, 10, 12, 13, 16.  
 (1975-86) Central Statistical Office. London. HMSO.

**Table 5.**

Admissions to Care of Local Authorities by Type, Total Number of Discharges from Care and Total Numbers in Care at 31st March: England Only. (Thousands)

Year.	Admission Sec.2 Child Care Act 1980 or previous equivalent: "Voluntary Care".	Admission C.&Y.P. Act 1969 "Care Order".	Total Discharges.	Total No. Children In Care. at 31 March.
1972	41.9	9.2	48.7	86.5
1973	42.0	8.9	49.1	88.8
1974	40.3	9.6	48.1	91.3
1975	37.7	10.8	45.6	94.2
1976	37.7	11.5	48.3	95.8
1977	29.4	10.0	47.0	96.2
1978	26.5	9.2	45.2	95.8
1979	24.4	8.4	41.8	95.2
1980	25.4	8.7	44.3	95.3
1981	23.8	8.0	44.5	92.3
1982	22.7	7.2	43.7	88.7
1983	20.9	6.0	42.0	82.2

Sources. Personal Social Services Local Authority Statistics.  
 Children in Care of Local Authorities. A/F/76/12 (1976)  
 and A/F/83/12. (1983). London. D.H.S.S..

**Table 6.**

Place of Safety Orders in Year to 31 March, England and Wales.  
 (Thousands)

	Year.								
	1972	1975	1978	1979	1980	1981	1982	1983	1984
Children aged under 15 yrs.	0.2	0.7	5.5	5.8	6.6	6.2	6.3	5.7	5.2

Sources: (i) Norris, T & Parton, N. (1987) "The Administration of Place of Safety Orders." in *The Journal of Social Welfare Law*. January, 1987. (Figures for 1972 and 1975.)  
 (ii) Children in Care of Local Authorities. Personal Social Services Statistics, DHSS. 1980 and 1981.  
 (iii) Children Act 1975. Second Report to Parliament. HMSO. 1984.

## Appendix A

### Commentary.

#### Constructing Official Statistics.

The use of statistics, official or otherwise, is a hazardous undertaking within a sociological thesis. A thorough if brief consideration of the subject by Kitsuse and Cicourel (1963) is framed as a critique of R.K. Merton's assertions on the subject in his *Social Theory and Social Structure* (1957). The authors are considering the use of official statistics related to forms of deviance. Merton is taken to task for warning against the use of statistics, in this case because they are not organised with sociological research in mind, and because for various reasons the statistics may well be unreliable. On the contrary, Kitsuse and Cicourel argue, official statistics are a reliable source of data. Merton's mistake was to seek data which could not possibly be found within official statistics. For sociologists to use data as presented is naive. Official statistics on crime accurately portray the official definition of crime. The sociologically interesting questions associated with this are not so concerned with the numbers of recorded offences, as what actions in what circumstances are officially defined as "crime", and what significance if any can be observed from variable rates of "crime". Thus, for Kitsuse and Cicourel, the aim of a sociological investigation of official statistics would be to reveal information concerning the definers of the subjects of the statistics, rather than the subjects themselves.

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W. Yule (1971) also investigated aspects of statistics in a Critical Note concerning the the National Child Development Study report, "From Birth to Seven". His main contention was that in any use of statistics, allowance must always be made for error. As an example of error he noted a study with which he was associated, where experienced doctors mismeasured eight of 99 children by more than 5 cm.. "By now all researchers should realise that all measurement includes error." (ibid. p.329.).

Huxley (1986) reviewed the first fourteen volumes of the British Journal of Social Work and identified thirty nine papers containing statistical error. He compared his finding with the results of a similar piece of research applied to the British Journal of Psychology. His Table 5 is reproduced below. The layman's suspicion of statistics summed up in the popular association between statistics and "damn lies" may be a harsh judgement on the competent statistician. Nevertheless, it would not be difficult to support a conclusion that statistical results, no more that the results in the natural sciences, should provide data for decision making in the social world only after placing them within the context of the social world and subjecting them to critical analysis.



## Appendix A

### A Comparison of Articles in the BJSW and the BJP.

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	BJP		BJSW	
	n	(%)	n	(%)
Total number of papers examined	168		348	
Papers with numerical results	139	(83)	97	(28)
Papers also with statistical analysis	103	(61)	59	(17)
Papers with statistical analysis containing one or more errors.	63	(61)	39	(66)
Containing serious errors likely to affect one or more conclusions.	47	(34)	19	(32)
Inadequate analysis.	10	(10)	4	(7)

Source: Table 5 in, P. Huxley (1986) "Statistical Errors in Papers in the *British Journal of Social Work*. (Volumes 1-14)", in *The British Journal of Social Work*, Vol. 16 No. 6. 12.1986. pp.645-658.

The statistics quoted in this study of the adoption of children are by way of illustration and have been kept to a minimum within the text. The theoretical and empirical points noted above were familiar and accepted "truths" at the outset of this project. In line with Kitsuse and Cicourel, Tables 1 to 6 relate to clearly social legal constructs of the state and it is not proposed that

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perusal of them reveals anything other than the incidence of official decisions. Adoption Orders no more account for all children living permanently with other nuclear families than their own, than do Place of Safety Orders number all instances of children being moved from their parents to safer situations. And it would come as no surprise to learn that some totals had been mis-calculated. The statistics are only being used to demonstrate trends and minor errors are of little significance.

While it remains the case that the figures can be seen to illustrate trends in official actions, the error apparent is noteworthy. Here error is revealed through contradiction between different government publications purporting to convey identical information. Two glaring examples will be cited. Lesser examples were so numerous that a conclusion must be that precise figures are usually not available.

The first example of error relates to numbers of recorded Adoption Orders made in England and Wales in specific years. The Office of Population Censuses and Surveys publishes through the Government Statistical Services, OPCS Monitor. The issue of 17 June 1986 quoted in its Table 5 the number of Adoption Orders made in England and Wales for various years. The numbers quoted for the years 1979, 1980 and 1981 are 10,870, 10,609 and 9,284. The report of the Secretary of State to Parliament on the workings of the Child Care Act 1980 for the years 1979 to 1981 (Social Services for Children in England and Wales 1979 - 1981. London. HMSO.

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1982.) reported these figures as 11.7 thousand, 11.0 thousand and 10.3 thousand respectively. The second example relates to numbers of children in the care of the local authorities. Social Trends, published annually by HMSO for the Government Statistical Service quoted figures for total numbers of children in care of local authorities in England and Wales for the years 1979 and 1980 as 105.0 thousand and 105.1 thousand in its 1982 edition (*Social Trends* No 12. (1982) London. HMSO). The following year the figures for the years 1979 and 1980 were stated to be 100.1 and 100.2 with no note of amendment.

All six tables in this appendix are compilations of various tables. Sources are official ones Considerable efforts have been made to obtain accurate returns but all figures must be treated as approximate. Where contradictions of the magnitude noted above came to light, the most frequently quoted figure has been used. All tables relate to England and Wales except Table 5. Apparent accuracy took precedence over uniformity at this stage, with the availability of a run of internal DHSS tables providing the information.

### **Statistical Trends as Indicators.**

While taking full account of the cautions issued by Kitsuse and Cicourel (see above), no doubt the trebling of the number of adoption orders made when comparing 1941 and 1946 was directly related to an increase in illegitimacy (see Table 1). Yet even this observation can be seen to be simplistic, in that an increase

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in illegitimacy in the late 1960s was not matched by a similar increase in adoption by strangers. The increase in the late 60s is to a considerable extent accounted for by natural parents adopting their own children rather than the ideal type situation common during and after the Second World War.

In direct contrast to the decline in both types of adoption over the last ten years, the most notable recent trend is the steady increase in numbers of children adopted from "care". When the trend apparent in Table 2 for figures since the mid seventies is viewed within the context of an otherwise recent dramatic decrease in numbers of children being adopted, it can be seen to illustrate a major contention of this study.

Table 3 can also be seen to be central to the proposition of an increasingly hard line being taken by the state towards the families of children "in care".

Table 4 makes the point that there is no direct correlation between the overall size of the population and numbers of children "in care". From Table 5 it can be seen that there is a considerable population moving in and out of "care". Though those subject to court orders (see also Table 6) are in the minority, if an increasing one, the large (and decreasing) majority are received into "care" short term. The decrease between 1980 and 1983 of about 20% in numbers received into care is probably the

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most stark illustration of the modification being brought about recently in state social work.

When considering discernible trends within these tables, three factors have explanatory value. Firstly, there have been significant demographic changes to the population in recent years. The decrease in the birth rate at the end of the 1960s is largely responsible for the situation of a decreasing school age population throughout the 1980s. This fact can certainly be seen to account for most of the recent school closures in England and Wales and the effect is mirrored in the decrease in "demand" for the residential facilities provided for children by social services departments. All services for this population will be more or less effected by this decline in population, albeit a temporary decline. Secondly, specific social policy changes will be reflected in an altered social work practice. Thus the increased emphasis being put on "community care", resulting in increasing investment in services such as Intermediate Treatment, day care and day assessment at the expense of residential provision, will effect numbers "in care". A third factor effecting numbers "in care" is the altered image projected by the concept 'local authority "care"'. If a service which was formerly regarded as more or less benign, is subject to forces which result in its coming to be regarded as increasingly authoritarian, the voluntary rate of application for the use of that service is likely to alter. This, it has been argued throughout this thesis,

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is the case regarding local authority "care", particularly that under the terms of the Child Care Act 1980, section 2 .

An awareness of these factors will enable understanding of the statistical trends apparent within Tables 1 to 6 above.

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Note With some exceptions, the Bibliography and References section is in alphabetical order of authors. Where appropriate, reports are listed by the name of the Chair. Three exceptions to this rule are "A Child in Mind" (1987), "A Child in Trust" (1985) and "Adoption - The Way Ahead", (1969).

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