The Rights of Children in the Child Protection System: a case study in ambivalence?

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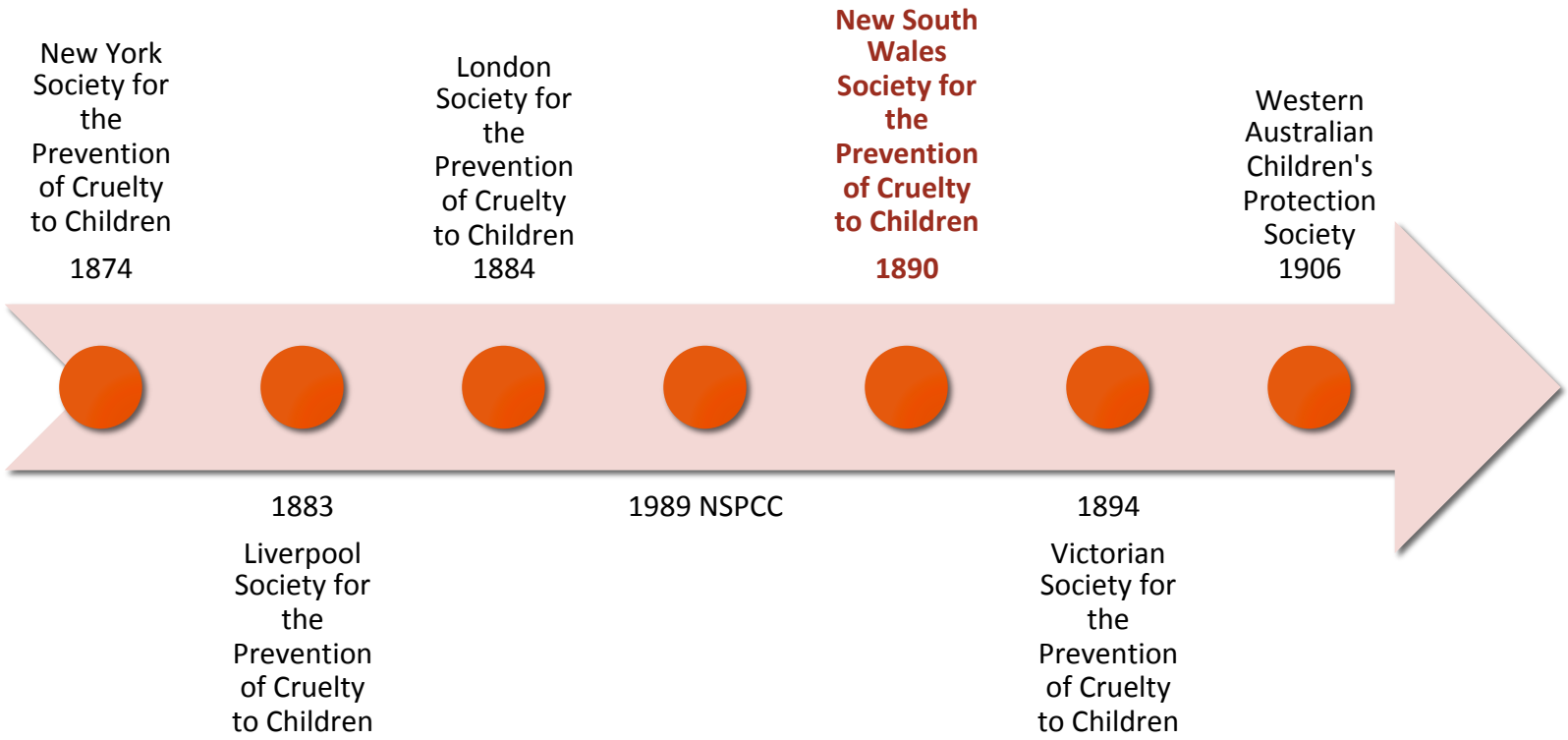
20TH AUGUST 2018

AWCA CONFERENCE SYDNEY

19th century 'child rescue' movements



From Protection to Rights

BY the present Declaration of the Rights of the Child, commonly known as the « Declaration of Geneva », men and women of all nations, recognising that Mankind owes to the Child the best that it has to give, declare and accept it as their duty that, beyond and above all considerations of race, nationality or creed :

I. THE CHILD must be given the means requisite for its normal development, both materially and spiritually.

II. THE CHILD that is hungry must be fed ; the child that is sick must be nursed ; the child that is backward must be helped ; the delinquent child must be reclaimed ; and the orphan and the waif must be sheltered and succoured.

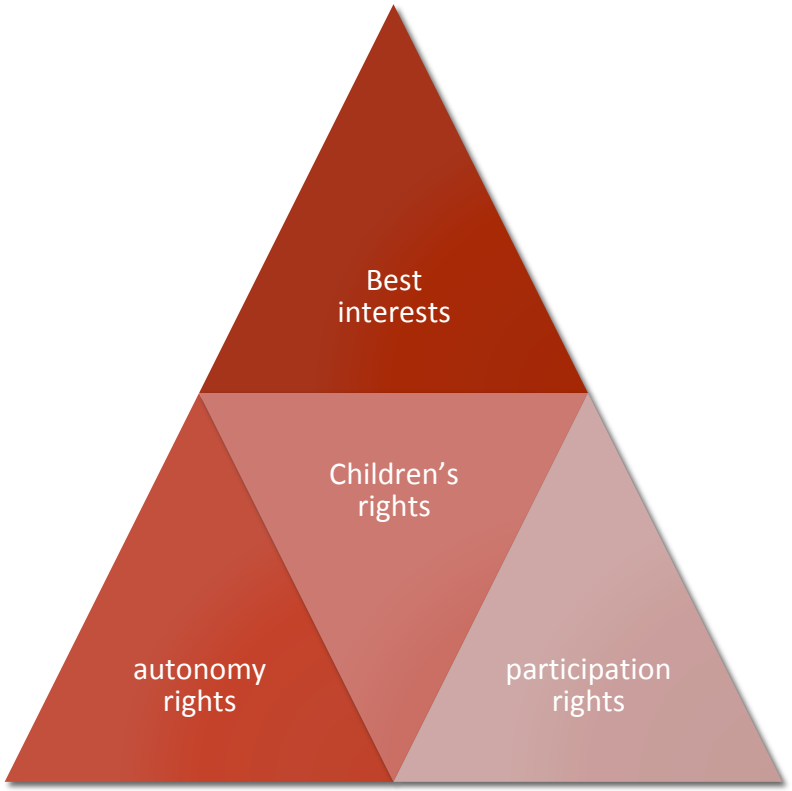
III. THE CHILD must be the first to receive relief in times of distress.

IV. THE CHILD must be put in a position to earn a livelihood and must be protected against every form of exploitation.

V. THE CHILD must be brought up in the consciousness that its talents must be devoted to the service of its fellow-men.

LSE archive Eglantyne Jebb

Welfare principle



New South Wales Children and Young Persons (Care and Protection) Act 1998 s9(1):

This Act is to be administered under the principle that, in any action or decision concerning a particular child or young person, the safety, welfare and well-being of the child or young person are paramount.

Children Act 1989 s1(1):

When a court determines any question with respect to—

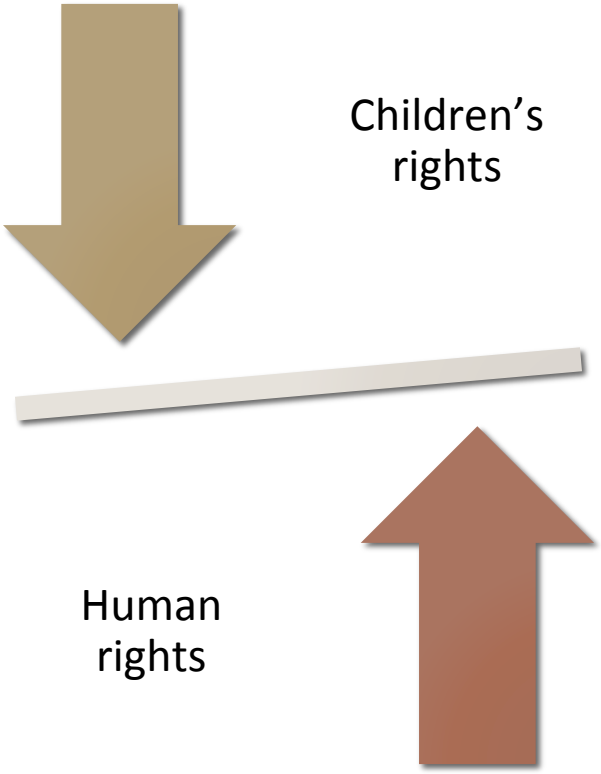
(a)the upbringing of a child….

the child's welfare shall be the court's paramount consideration.

Changing conceptualizations of children's best interests

Moolong Historical Society

Balancing competing rights



Disclosure of maltreatment

INDEPENDENT

News › UK › UK Politics

Ministers drop move over mandatory reporting of suspected child abuse

In 2016 the Government unveiled proposals to introduce a statutory duty to report or act on abuse or neglect.

Shehab Khan | @shehabkhan | Tuesday 6 March 2018 01:07 | 2 comments

Home Office

New duty for health and social care professionals and teachers to report female genital mutilation (FGM) to the police

What is the new duty?

On 31 October 2015 a new duty was introduced that requires health and social care professionals and teachers to report 'known' cases of FGM in girls aged under 18 to the police.

Disclosure

BARRIERS

- Fear of effect on family unit
- Protecting parents from distress
- Finding the language
- Disbelief

ENABLERS

- Anonymity
- Sense of control over process
  - Not being identified until ready
  - Right to decide who knows
- Trusted adult

Children's participation in care proceedings

ENGLAND

- Child a party, represented by solicitor and guardian
- Separate representation if competent child disagrees with guardian's view of welfare
- Very rare to be involved directly before 2010
- Post 2010 court must weigh the advantage of the child's evidence to determination of the truth against the harm to this or another child
  - unwilling child should rarely, if ever, be required to give evidence

NEW SOUTH WALES

- Court to ensure child understands proceedings and has fullest opportunity to participate/be heard
- May be required to attend but wishes to be taken into account
- May be required to leave on grounds of psychological harm
- Rebuttable presumption of capacity to appoint solicitor at 12

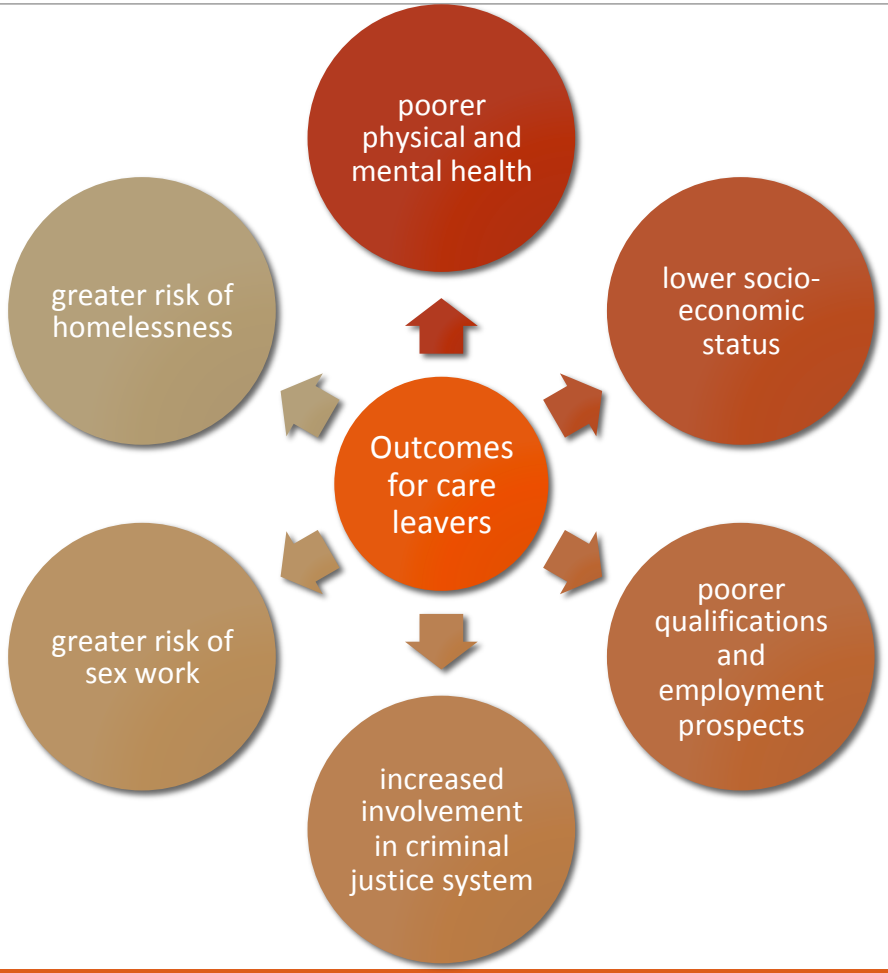
Child-friendly justice

Kilkelly 2010:

- children's sense of justice is about being heard and listened to
- Not expecting to make decisions
- want to talk directly to the people who make decisions about them

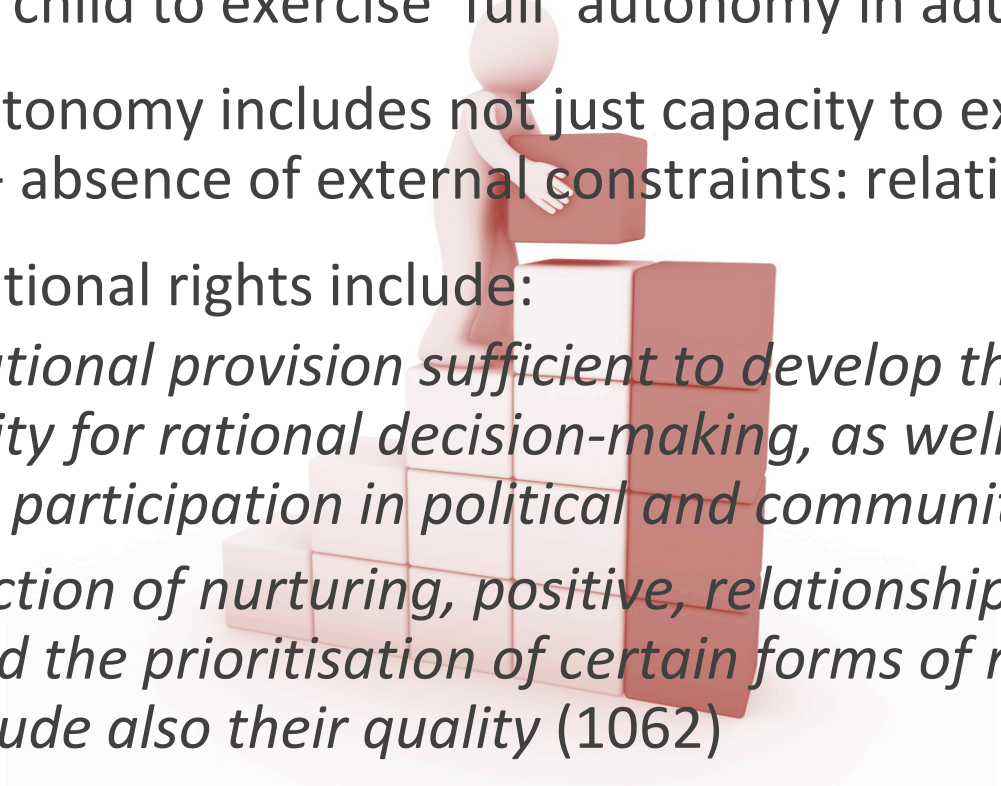
Child-friendly judgements?

Leaving care



Foundational rights (Hollingsworth 2013)

- category of rights which support conditions which will enable a child to exercise 'full' autonomy in adulthood
- 'full' autonomy includes not just capacity to exercise agency + absence of external constraints: relational concept
- Foundational rights include:
  - *educational provision sufficient to develop the child's capacity for rational decision-making, as well as her future participation in political and community life* and
  - *protection of nurturing, positive, relationships that go beyond the prioritisation of certain forms of relationship to include also their quality* (1062)



Conclusions

1. Significance of individual vulnerabilities for the attainment of full autonomy has implications for
   - Support of young adults leaving care
   - Protection of adolescents who are particularly vulnerable to exploitation
2. Language of best interests is open to manipulation and/or the imposition of adult assumptions about child welfare
   - Article 12 participation rights critical to evaluation of best interests
3. Individualistic nature of rights helps to shift our gaze from adult protection to child empowerment

Thank You

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