

# **Child Abuse**

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**Book Review by Sally Ramage**

#### **Introduction**

What qualifies as child abuse and what should be done about it? Policy makers often invoke the law at times of crisis. The presence of legislation on the statute book or the creation of rules and protocols which professionals must follow is one socially acceptable sign that the problem has been recognised. Legislators and the courts in family, criminal, and tort proceedings have constructed different liability and evidential rules.

#### **Violent crime**

Babies and young children are among the most vulnerable victims of violent crime. Child abuse and neglect are found in all cultural, ethnic, occupational and socioeconomic groups. Many persons are in positions to observe the battered and abused child: teachers, doctors, nurses, clergy and religious educators, counsellors, babysitters, neighbours and family members. Abusing a child is a crime. Child abuse consists of child neglect ; physical abuse ; sexual abuse and emotional abuse.

#### **Criminology**

Two out of every three prisoners convicted of first degree murder report previous childhood histories of physical abuse. Hard core juvenile delinquents experienced a history of severe physical punishment and assault in the home. Prostitutes report histories of sexual abuse as children. The definition of neglect is relative to the standards of the society where it occurs. To be sure, there are parental failures, such as starving an infant, whose effects are so physical and, again, so obvious that abhorrence of them hardly seems a matter of culture. Yet, there have been communities as civilized as the Greeks in which damaged infants and unwanted daughters were simply left on hillsides to die of exposure.

#### **Child neglect in the United States of America**

In America, child neglect may be defined federally as a condition in which a caretaker responsible for the child either deliberately or by extraordinary inattentiveness permits the child to experience available present suffering and/or fails to provide one or more of the ingredients generally deemed essential for developing a

person's physical, intellectual and emotional capacities. American culture is strongly influenced by the Judeo-Christian ethic, would regard such actions as more than neglect, as infanticide or child murder. Therefore, it is clear that any definition of neglect is culturally relative, and that the meaning in the United States, or even in one area of the United States, need not be the same as might apply elsewhere. In the context of American society, the definition of neglect cannot stray too far from that which is acceptable to most people, or Child Protective Service workers would not have community support behind them. While blue-collar mothers put more emphasis on physical care, there is also great similarity of opinion about emotional care and cognitive stimulation. Although there is some consensus about what constitutes minimally adequate child care, because of the nature of American society there are limitations as to what professionals can do about neglectful parents; laws protect these families from unreasonable intrusion. Neglectful parents often report profound sadness over not having been loved or wanted by their own parents. Many have been in formal placement as children; even more have been given to relatives to rear for long periods of time. Neglectful parents are more plagued by psychological and psychosomatic systems; socially isolated -- formally and informally; and isolated from informal helping networks

#### **Definition of Child Physical Abuse**

In America physical child abuse is defined as: *'the physical injury or maltreatment of a child under the age of eighteen by a person who is responsible for the child's welfare under circumstances which indicate that the child's health or welfare is harmed or threatened thereby...'* .The issues of discipline and punishment always arise in any consideration of child physical abuse because this is the primary justification given as reason to beat, burn or cut a child.

#### **Definition of child sexual Abuse**

In America, child sexual assault is defined federally as:

*'Contacts or interactions between a child and an adult when the child is being used for sexual stimulation of the perpetrator or another person when the perpetrator or another person is in a position of power or control over the victim'*.

Every state has, in its child protection laws, a definition, often more specific than this general definition. The state's Attorney General's office or the Child Protective Services of the local Department of Social or Human Services can be contacted for a

copy of the law for their state. Sexual abuse of children is often hidden in the corners of family life and social relationships -- with outsiders (strangers who attack, molest, or harass) less often involved.

### **Sex Offenders**

Among child abuse offences are child sex offences, abuse of position of trust, indecent photographs taken of children, child abduction, rape of a child under thirteen and child prostitution offences. The maximum sentence for abuse of position of trust and sexual activity with a child is 12 months on summary conviction. The authors tell us that the Sexual Offences Act 2003 created four offences, in sections 16 to 19, in relation to sexual activity by people who are in a position of trust.

### **The Catholic Church's child abuses**

One notable case is the hidden child abuse in the Catholic Church that is at present being investigated . In February 2009 Los Angeles United States Attorney Thomas P. O'Brien began a grand jury investigation into allegations of a child sex abuse cover-up by the Catholic Church's Los Angeles Archdiocese. This Archdiocese has already settled civil claims with over 500 victims for a total of \$660 million and some experts say that the reason for the civil claim settlements was to keep the child sexual abuse for the public domain. The church hierarchy had succeeded in getting many claims consolidated together, so as to avoid individual litigation. Many survivors wanted their day in court and opposed consolidation, but this procedural move by the hierarchy meant that large collections of cases were treated as though they were single cases. The announced criminal investigation has been prompted by many cases such as the following:- Franciscan monk, Gerald Chumik, an admitted child molester, was a fugitive from his native Canada for fourteen years until 2005, when he left because the 'Survivors Network of those Abused by Priests' and others demanded that he be turned over to the authorities. However, Chumik was allowed to move to Missouri instead.

### **Breach of trust**

There are people in our society who prey on children sexually. Many of these people go to great lengths to get themselves into positions that give them access to and authority over children, and then use that position to victimize children. For such people, the betrayal of the trust put in them is secondary to the pleasure of sexual conquest, even over very young children. Single mothers are particularly vulnerable to the designs of the paedophile. It is possible that a paedophile tends to be attracted to a child of the

particular age at which he, himself, was molested as a child. For this reason he may "go through" a family victimizing each child as he or she passes through that particular age window. The masculine pronoun is used to describe the incest offender throughout this section. This is because there is a higher number of male perpetrators than female. This does not imply that there are no female perpetrators. In fact, it appears that either the number of female perpetrators is increasing or that there are now more reports of female offenders. On the basis of major demographic characteristics most perpetrators cannot be distinguished from non-offenders. Incest occurs amongst those of all socioeconomic classes, all levels of education, all occupations, all races and all religions. The difference between incest offenders and others is simply that, whether faced with stress, or simply for personal gratification, they seek emotional outlet through sexual activity with their children. Often incest offenders are authoritarian, with a very rigid belief structure. They tend to want to be in control. Feeling insecure or inadequate, with perhaps marriage difficulties as well, he will seek to find gratification with his children. Often he has inner feelings of helplessness, vulnerability and dependency. When daily stressors of marriage, parenthood and vocation are added to long standing insecurities and to the breakdown of other coping mechanisms, incest occurs.

### **Rape of a child in English law**

In the UK, the rape of a child under 13 is an offence under section 5 Sexual Offences Act 2003. The court in *R v Mulberry*, adopted the principle that a sexual offence against a child is more serious than the same offence against an adult and therefore gives it a longer prison punishment, although it made no distinction between those raped who were aged 13 to 16 and those aged under 13. The defendant is liable even if he thought the child was over 16. The English court also makes it an offence of intentionally causing a person to engage in a sexual offence as per section 13 Sexual Offences Act 2003. In *Jones v R* the offence of incitement does not require the child to be a specifically identified child. Jones had left graffiti messages on toilet doors in trains and stations seeking girls aged 8 to 13 for sex and giving a mobile number or contacting him.

The authors did not address the issue of child sex abusers against other children as in *R v T*, a case in which the appellant R appealed against conviction for twelve counts of causing or inciting a child under thirteen years of age to engage in sexual activity, R being aged twelve at the time he committed the offences. R in his appeal case raised the issue of *doli incapax* and his sentence was changed to a three-year supervision order.

### **UK Offences Act 2003**

As the authors of Child Abuse say on page 195, the Sexual Offences Act 2003 gives a definition of 'touching' in section 79, the definition including the touching of clothing, '*even in circumstances when the body is not touched through the clothing*' as in the case *R v H (Karl Anthony)* [2005] 2 All ER 859 (CA Crim). The authors state their opinion of the Sexual Offences Act 2003 as '*convoluted*'. As to familial sexual offences, section 25 relates to sexual activity with a child family member and section 26 to inciting a child family member to engage in sexual activity. The book mentions sexual offences in Canada and states that in Canada, there are crimes of sexual interference, invitation to sexual touching, and sexual exploitation and for all these offences, the defence of consent is not available.

Soon after this book was published, in July 2008, some amendments to the Sexual Offences Act of the UK were brought into force. Section 73 was amended to become a charge of grooming whether the abuser travelled to the child or the child travelled to the abuser. Section 72 of the Sex Offences Act 2003 was amended to all the prosecution of UK nationals for an offence committed abroad, even if it is not a crime in the jurisdiction in which the abuse took place. There is also, since January 2008, an offence of 'extreme pornography' and under section 66 (3) of the Sex Offences Act 2003, non-consensual harm is an offence defined to include harm to which a person cannot bin law consent. Disappointingly, in this book of 1,000 pages only one chapter of less than 20 pages is devoted to this very important topic.

### **Sexual Addiction**

This matter is dealt with in chapter twelve of the book under the heading '*Expert evidence relating to psychological signs of abuse or neglect*'. It would be classed as offender profiling and the authors tell us on page 915 that 24 percent of admitted paedophiles had been inaccurately classified as non-paedophiles. The nature of any addiction is that the experience used to create a desired mood becomes a central focus of the addict's life. This is true of sexual addiction. The compulsion for sexual behaviour pervades the consciousness. The addiction begins with a delusional thought process, often fortified with rationalization. These thoughts create justification for the act. The addict does not always perceive on the conscious level that he is engaging in this type of activity because of other issues, such as stress, insecurity, low self-esteem or need for control. However, these factors are usually contributory. Yet he does consciously create the climate for deviant sexual behaviour first at the level of thought, enhancing the impulse. Child sexual

abuse (molestation) is an intentional activity. The first requirement (with rare exceptions) is that the offender be alone with the child. The child is often induced into being alone with the perpetrator by his suggestion of some activity like playing a game. The authors suggest that the English legal system must not go into the territory of offender profiling, though not mentioning that the Criminal Justice Act 2003 does in fact allow evidence of bad character, albeit this is profiling. The provisions of section 103 (2) of the Criminal Justice Act 2003 permit a person's previous convictions to be admissible in evidence with a view to proving his propensity to commit the offence charged. The

On page 927, the authors remind us that '*there are many identified points at which the criminal and family systems of justice are incompatible*'. They say that the '*rules of third party disclosure are also incoherent, as local authorities are mired in guidance which fails to clarify which tests apply when: public interest immunity, the mere credibility rule of disclosure, and the rights of the defendant to a fair trial under the ECHR Article 6.*'

### **Sexual Interaction**

Child molestation, like other addictive behaviours, is progressive. It may start with touching or fondling, but can progress to some form of penetration -- vaginal, oral, anal...or all three. Keeping the secret is absolutely necessary in order to avoid consequences and to allow continued availability of the victim. The longer the secret is held, the longer the behaviour is able to continue. The offender usually knows that this conduct is against the law, and is, therefore, not adverse to telling the child that bad things will happen if the secret gets out. Violent offenders may be more specific, telling the child that bad things will happen to her/him if the secret is told. Many wonder why children do not tell. This threat aspect is the reason. Nevertheless, child sexual offender may, in his position as an adult authority, attempt to undermine the victim's account. In a debate between an articulate adult and a child, the child, unless believed, can often come out the loser... in more ways than one. Non-offending spouses, on the other hand, must deal with important issues also. The first is whether to believe the alleged offender. If the allegations are accepted as true, in addition to the above listed consequences, she must deal with the possible loss of financial security, the possibility of having to testify against her husband or partner and, perhaps even being victimized herself by physical or other forms of retaliation. Also, the non-offending spouse may feel guilt for not protecting the child. In the process of looking the other way for fear it might be true, she may have known and yet not known.

### **Definition of Child Emotional Abuse**

Rejection is an explicit refusal to accept the child. Children thrive on acceptance -- they need it to grow and develop into healthy adults. On the other hand, their self-concept, behaviour, and emotional stability are negatively affected by rejection. Children need a rich and varied emotional experience with their parents if they are to form a valid and reliable picture of the world and place themselves appropriately within that picture. When the parent-child relationship is cold, the child is deprived of a necessary element of social experience. Without this experience to work with, the child develops gaps in his/her social skills and emotional development. The child who is exposed systematically to coldness from the parent is seriously impaired in future relationships. Abdication of responsibility for disciplining children or dictatorial over control place children at risk for impaired development, particularly if inappropriate control is coupled with rejection and coldness. Extreme inconsistency in which the child is not given a firm foundation of reality is a common form of emotional maltreatment. When there is no consistent presentation of reality or when there is little clear definition of what is real, what the standards are, what is expected, and how social relationships (including the family) work, the child's development is in jeopardy. These four forms of maltreatment may affect children in different ways. The available research suggests that rejection leads to negative self-image; coldness leads to inadequate emotional development ; inappropriate control leads either to self-destructive or antisocial behaviour and extreme inconsistency may well lead to the development of a bizarre picture of reality The definition of emotional abuse includes verbal or emotional assault, close confinement, and threatened harm. The definitions of emotional neglect include inadequate nurturance/affection, knowingly permitting maladaptive behaviour (for example, delinquency), and other refusal to provide essential care.

### **Indicators of Possible Emotional Maltreatment**

The presence of any one, or even a few of the following indicators does not necessarily determine that the child is being emotionally abused according to legal definition. However, the larger the number of indicators present, the more likelihood there is of emotional abuse. Clergy are, of course, encouraged to be alert for indicators in children with whom they come in contact. Emotional maltreatment, often less tangible than other forms of child abuse and neglect, can be indicated by behaviours of the child and the caretaker. When the child's behaviour appears overly compliant, passive, undemanding ;is extremely aggressive, demanding or enraged ;shows overly adaptive behaviours, either inappropriately

adult (e.g., parents, other children) or inappropriately infantile (e.g., rocks constantly, sucks thumb, is neurotic); lags in physical, emotional, and intellectual development ; and attempts suicide.

### **Is the state intruding into private family matters?**

Although the right of parents to raise their own children is accepted as a fundamental right in our society, intervention is justified by a paramount social interest, the safety of the child. The Fourteenth Amendment of the United States Constitution states that everyone has equal protection under the law. Intervention for the protection of a child may involve a broad range of possible action, including counselling and treatment for the family; referral to community assistance programs; the filing of criminal charges; and/or the removal of a child from the control and custody of a parent, guardian, or other caretaker. In establishing child abuse laws, the US states are affirming that they have compelling interest in protecting children from abuse and neglect. The U.S. Supreme Court rendered a decision in a 1943 case wherein a child was being used to sell religious literature on the street. It weighed ‘the obviously earnest claim for freedom of conscience and religious practice’ against ‘the interest of society to protect the welfare of children’. The latter interest was held to prevail. Judge Wiley Rutledge, in the majority opinion wrote that ‘the power of the state to control the conduct of children reaches beyond the scope of its authority over adults, as is true in the case of other freedoms...’. The court also stated in this decision that ‘the right to practice religion freely does not include liberty to expose the... child... to ill health or death’. In a free democratic society, however, all citizens, certainly including religious leaders, while providing public officials with the means to fulfil their obligations, should also hold them accountable for proper exercise of these responsibilities. For this reason, all citizens keep informed as to the needs and the methods of those agencies which have been established to protect our children, disabled and elderly. The court in the United States always appoints a child counsel in the case of intrafamilial abuse and counsel for the child victim can either be appointed by the court as *guardian ad litem* or can be retained just to serve as the child’s attorney.

### **What about information received in confidence?**

The issue of the clergy privilege of confidentiality versus the legal requirements to report child and elderly abuse merits serious consideration. The requirement that clergy report suspected child and elderly abuse leaves the minister, priest, rabbi, or imam with a dilemma. For many, the tenets of his or her faith, denomination, or personal and professional ethics, require that matters divulged in

confidence to be so held. In considering the issue of the privilege of clergy confidentiality, it is important to understand the difference between secrecy and confidentiality. Giving assurance to the one divulging facts that these facts will never, under any circumstances, be divulged to anyone, is secrecy. Obviously suspected child or elderly abuse from information received in such a circumstance could not be reported; and the child would, in all likelihood, continue to be harmed. To give assurance of confidentiality, on the other hand, is to give assurance that the recipient of the information will hold it in trust. To hold information in trust means that it could, with permission, be shared with others when to do so is in the best interest of the person giving the information, or of someone about whom the information is given. The purpose of the privilege of confidentiality is not to protect perpetrators of abuse from possible penalty or required treatment.

This book is a piece of work that took years to write and has been intensively researched. In sum, this impressive tome on child abuse, 1,000 pages long, is an impressive exposition of the subject. It is necessary reading for anyone who seriously wants to reform child abusers. As the authors say in their final paragraph on page 934, 'we are acutely aware that it is easier to criticize than to reform'. It is an awe-inspiring volume of good work.

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