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Online Publication Date: 01 July 2008

To cite this Article: Campbell, Alan (2008) 'The Right to be Heard: Australian Children's Views about their Involvement in Decision-making following Parental Separation', Child Care in Practice, 14:3, 237 — 255

To link to this article: DOI: 10.1080/13575270802042496
URL: http://dx.doi.org/10.1080/13575270802042496

Child Care in Practice
Publication details, including instructions for authors and subscription information:
http://www.informaworld.com/smpp/title~content=t713410012
The Right to be Heard: Australian Children’s Views about their Involvement in Decision-making following Parental Separation

Alan Campbell

This article describes the findings from a qualitative study that explored the views of a small group of Australian children about their involvement in decision-making processes following their parents’ separation. Sixteen children, aged between seven and 17 years, participated in in-depth interviews that focused on their understandings of the rights of children in decision-making, their descriptions of how decisions about their future were made following their parents’ separation, and their views on their own participation in decisions that directly affected them. Findings indicated that children need information from their parents about what is happening at the time of separation. Children expressed a belief that their opinions should be respected and acted upon, but that final decisions about children following separation should be made by parents. Additionally, the children in this study recognised the importance of members of the extended family in helping separated families to reach important decisions about their children. While this study involved a very small sample, these findings reflect those of other studies in the United Kingdom and New Zealand and underscore the importance for children of being included in the experience of family separation rather than having parents attempt to “protect” them. The findings suggest that such inclusion will ensure that children’s best interests are the central focus of decisions made about them.

Introduction

Recent published works, such as those by Mackay (2001) and McIntosh (2000), indicate the degree of interest, both professional and governmental, in promoting the best interests of children through directly involving them in decision-making processes following their parents’ separation. Mackay (2001) reported that the practices that have been developed as a result of this focus have been both positive and effective in engaging children.

The design and implementation of Australian initiatives, however, have seldom included the views of children themselves about decisions made and actions taken on their behalf. The study described in this paper tried to fill this gap to some extent. Children’s views were sought of their ability to participate in decisions that directly affected them, and whether they thought there was a role for judges and courts in making decisions about their futures. Children were also asked about their understanding of human rights as they apply to children and what those rights might be.

This paper presents the results of this study, which consisted of a set of qualitative interviews with a small sample of Australian children who had experienced their parents’ separation. The paper provides quotes from the children together with discussion in order to “give meaning to the findings” (Liamputtong & Ezzy, 2005, p. 309). A descriptive approach is taken that integrates the children’s comments with findings from the literature in a discursive manner.

### Issues in Research with Children

During the conduct of this research, a number of issues arose that brought into question how, and whether, children should participate in research about “sensitive” topics such as their parents’ separation. These issues reflected current adult concerns about this type of research and included issues related to the intent of the United Nations Convention on the Rights of the Child, ethical considerations in respect of the power differentials between adult researchers and child participants and the accompanying need to ensure that the child’s voice is privileged rather than marginalised, and recruitment of children for research of this nature. These issues will be briefly discussed prior to presenting the current study in detail.

### The United Nations Convention on the Rights of the Child

The Australian Commonwealth became a signatory to the United Nations Convention on the Rights of the Child in 1990 after having played an integral part in its development (Australian Human Rights and Equal Opportunity Commission, 2001). In the years since the ratification of the Convention, the Commonwealth has moved to ensure that its national child-related legislation (significantly, the Family Law Act, 1975 [“the Act”]) mirrors the provisions of the Convention on the Rights of the Child. In particular, the Act (at Section 60CA) supports Article 3 of the Convention, which requires signatories to consider children’s best interests in all decisions that may affect them, while Section 60CC in part reflects Article 12 of the Convention on
the Rights of the Child, which ensures that children who are capable of expressing an opinion should be heard and have that opinion taken into account in decisions about them.

In response to these Sections of the Act, those who work with children of separating families, supported by Government funding, have developed a number of approaches to including children in their parents’ decision-making (McIntosh & Long, 2006; Mackay, 2001; Pike, Campbell, & Hannan, 2006). By and large, however, these approaches have been developed by adults without reference to children themselves (except when evaluating the programmes, post-participation) and without asking them whether they want to be involved. This research represented an approach to address this issue by inviting children to consider whether they wished to participate in their parents’ decision-making post-separation, and if so, how they thought that might happen. Planning for the research project, however, raised a number of other concerns, the first of which related to the power differentials between the adult researcher and the children who participated in this project.

Questions of Power and the Child’s Voice

The way in which the researcher perceives children, both historically and socially, affects decisions about the research method that will be used (Punch, 2002; Thomas & O’Kane, 2000). When children are considered as essentially the same as adults, the researcher will choose methods that are used with adult participants (Christensen & James, 2000). It is possible, however, that this approach ignores the power differentials between adults and children (Punch, 2002). Researchers who perceive children as very different from adults (either in terms of competence to provide reliable and valid information, as belonging to a significantly different culture from that of their adult counterparts, or as gradually developing towards adulthood) may choose an ethnographic method (Corsaro & Molinari, 2000). Punch (2002), however, observes that the use of ethnographic methods ignores the fact that adults are not children and can never be full participants in children’s social worlds. The observations made by adult ethnographic researchers will reflect adult interpretations of the children’s actions and daily lives, rather than seeing children’s worlds from their viewpoints.

Children can also be perceived as both similar to adults and having different competencies. Researchers who take this view (for example, Punch, 2002; Thomas & O’Kane, 2000) will use methods that relate to children’s skill levels, such as drawing, writing narratives and play activities. While arguing that these methods engage children in effective ways, Punch (2002) points out that researchers should avoid assumptions that they are the most appropriate way of conducting research with children, and that other ways are just as valid.

Dahlberg, Moss, and Pence (1999) point out that both children and adult researchers have been raised in modernist traditions and are part of the discourse that arises from modernist views. Theorists such as Alldred (1998, p. 159), Dahlberg et al. (1999, p. 39) and Fine (1994, p. 74) identify that a significant issue underpinning
modernist traditions is the practice of "othering". In this view, children are perceived as very different from their adult counterparts, as developing and vulnerable beings with unformed cognitions and "erroneous" opinions of the world (for example, Piaget, 1969).

Fine (1994) and Frankenberg (1993) argue that "othering" results in adult researchers maintaining control over every aspect of the process and children feeling suspicious of adult researchers' questions. Edwards and Alldred (1999) suggest that "othered" children construct a perception of the researcher in ways that will influence the quality of the information they provide, and try to please the researcher with their responses. This observation was also made by Maundeni (2002) in her study of separated families in Botswana. Additionally, children may feel powerless in the research situation, not understanding that they do have the right to discontinue their participation in the project at any time (Cree, Kay, & Tisdall, 2002).

In response to these concerns, the researcher in this project implemented a number of strategies. These included constantly resisting imposing adult interpretations on the texts of the children's interviews (Punch, 2002), and attempting to engage the child participants collaboratively in the research project by inviting them to direct the interview process (Hartman, 1994; Roche, 1999). Thus, while the researcher had planned to invite the children to draw and engage in play activities during the interview, the children themselves all expressed greater interest in simply talking with the researcher, often in their bedrooms or sitting rooms, in the company of their pets, friends and other family members. Throughout this process, the researcher adopted an attitude of "interested friend" (Thomas & O’Kane, 1998, p. 827), “least adult role” (Mayall, 2000, p. 121) or “naïve enquirer” (my term; see also Butler & Williamson, 1994; Campbell, 1996)—meeting the children in their environments, where they could feel comfortable, relaxed, and in control (Maundeni, 2002; Mayall, 2000), and asking the children to describe their worlds from their viewpoints. During the interview process, the researcher constantly re-negotiated with the children their consent to participate (Cree et al., 2002) and shared information, answered their questions, and offered appropriate comments so that the interview became a two-way interaction rather than a structured information-gathering process (Burgess, 1984; Frankenberg, 1993; Johnson, 2002).

Throughout the entire research project, the researcher maintained a highly reflexive approach to the process. According to Fine (1994), Frankenberg (1993) and Mason and Urquhart (2001), reflexive approaches include questioning the language and processes used in the research as well as challenging the assumptions about childhood and adulthood that the researcher brings to the work. These approaches assisted the researcher in maintaining a focus on the children’s voices and the need to privilege them throughout the research process.

Recruitment and Ethical Approval

One other difficulty that arose in this research related to the processes of recruiting children. It was hoped that the research would recruit a minimum of 30 child
participants but, due to time constraints, delays in ethical approval and referral difficulties, this number was reduced to 16. First, the sponsoring university’s Human Research Ethics Committee took almost eight months to approve the research. The committee’s concerns were that the research had the potential to emotionally harm children due to the “sensitive” nature of the material, and they sought extensive legal advice before approval was given. Their response indicates the protectionist approach that operates whenever issues of separation and divorce are raised (Kelley, Mayall, & Hood, 1997). Second, while it was expected that referrals of families with children would be received from family services organisations in Adelaide, not one referral was received from these sources in eight months. This lack of referrals indicates that the research and professional communities need to think carefully about the ways in which they construct their perceptions of children and their abilities. This researcher received many comments from the university’s Human Research Ethics Committee and from service providers who were asked to assist with recruitment of children which indicated a specific understanding of children as vulnerable, incomplete and incompetent to decide independently on their involvement in the research project. There was also a perception in the professional community that children were somehow not the focus of our work. One account of “child inclusive practices” in Australia included statements such as “… only those comfortable to engage with children should undertake [to work with them]” (Mackay, 2001, p. v), “The child is not usually ‘the customer’” (Mackay, 2001, p. 19) and “Children should be allowed to be children” (Mackay, 2001, p. 20). These statements reflect attitudes that construct children as very different from adults and not the central focus of our work. This is an important issue for researchers and practitioners alike, since our constructions of children can determine when and how, and even if, we will work with them. Moreover, our assumptions about children have the potential to colour the results of any research we undertake with them.

As mentioned, the final group of child participants numbered 16. They engaged in in-depth interviews with the researcher, and this article reports their views about their involvement in decision-making following their parents’ separation.

Methodology

Theoretical Framework

This study used a postmodern framework that blended Foucault’s concepts of archaeology and genealogy to build a “history of the present” (McHoul & Grace, 1993) with Henriques, Hollway, Urwin, Venn, and Walkerdine’s (1984) social constructionist approach. Foucault uses the term “archaeology” to describe the ways in which discourses, or groups of spoken or written statements that contain sets of rules for people to follow, are generated (Kendall & Wickham, 1999). In this way, people make sense of their worlds (Danaher, Schirato, & Webb, 2000). Rules can define what can and cannot be said about specific phenomena. Thus, for example, the rules governing Australian politics ensure a focus on the advancement of a
democratic form of government, with very little (if any) discussion taking place about the possible merits of an alternative political system.

Foucault’s concept of archaeology is complemented by his understanding of genealogy, which involves an investigation of the origins of the “institutions and discourses which claimed to be universal and eternal” (Danaher et al., 2000, p. 24). Genealogy considers the ways in which power is embedded in the statements that make up a discourse, forming a close relationship between power and knowledge, and legitimising the exercise of power through institutions such as politics, law, psychology, social work, medicine and other disciplines.

In analysing social and political processes from these two perspectives, Foucaultian postmodernism focuses on the marginalised and silenced voices of the disempowered, such as women, children, minority and migrant populations and the disabled (Sawicki, 1991). According to Henriques et al. (1984), these groups are also influenced by what is said about them and the interactions between their members and members of the wider society in which they are embedded, thus building a social construction of them that maintains their marginalisation in society. For example, historically, children have been described as vulnerable and developing, not only physically, but also cognitively, emotionally and socially. Children have often not been considered part of society until they reach the stage of adulthood. This construction marginalises them and maintains adult power over them for a significant period of their lives (Hendrick, 2000).

When undertaking research with members of marginalised groups such as children from a postmodern framework, the relationship between reporting the texts of research participants’ interviews and applying interpretations to those texts becomes critical. Pam Alldred (1998, p. 162) uses the term “re-presenting” to describe the process of reporting verbatim what research participants say, and “re/presenting” to describe the process of interpreting the texts of their comments. Alldred argues that researchers have a duty to provide participants with a voice so they may be heard. This is especially important when reporting on research with marginalised groups such as indigenous people, ethnic minorities, women and children. But if we do no more than provide space for their voices to be heard, we ignore the underlying meanings that participants assign to their experiences. Tensions therefore arise for the researcher. As Alldred (1998, p. 151) argues, we assume that “what children say can be represented (portrayed) through research” in a simple manner, but this is not so. Interpretation may mean taking children’s voices out of context and muting them in the interests of identifying themes and building structures around what children say. There is also a potential to move from children’s frames of reference to the researcher’s adult frame, where adults’ understandings, values and beliefs take precedence over those of children.

In reporting what the children in this research project said, these issues were constantly taken into account. Many direct quotes from the children’s texts were used while interpretations of their comments were made within the contexts in which the comments were offered.
Research Questions

The research explored children’s views about their abilities to participate in decisions that affect them following parental separation. Three research questions, posed within the methodological framework of the study, asked:

1. How are children’s views of themselves in relation to adults reflected in their comments about their ability to participate in decisions that directly affect them following their parents’ separation?
2. To what extent do children’s interview texts reflect an understanding about rights and children?
3. How do children construct an understanding of the concept of their “best interests” in relation to post-separation decision-making about their futures?

These three questions are interrelated. Each question considers an aspect of social construction of children, both from an adult perspective and from the perspective of the children themselves. Each question considers the intermediary effects of dominant discourses in shaping how children perceive the world and their place in it. Finally, each question is related to children’s perceptions of their involvement in decisions that directly affect them. While the focus of the three questions differs, together the questions build a picture of the perceived social position of children relative to decision-making activities and children’s own perceptions of their rights and ability to participate.

Participants

The research was conducted between November 2002 and April 2003, and involved in-depth interviews with a total of 16 children and young people between the ages of seven and 17 years, seven of whom were female and nine were male. The participants were recruited using a snowball method of recruitment. The mean age of the children and young people was just over 11 years, with the distribution of ages presented in Table 1.

The time since the parents had separated varied from between one and 10 years, with the mean time being just over five years. Some of the children were very young when the separation occurred, whilst others were much older. This meant that while some children could remember how decisions were made about them immediately following the separation, others had no recollection at all of these events.

<table>
<thead>
<tr>
<th>Age (years)</th>
<th>Girls</th>
<th>Boys</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>7–10</td>
<td>4</td>
<td>4</td>
<td>8</td>
</tr>
<tr>
<td>11–14</td>
<td>1</td>
<td>4</td>
<td>5</td>
</tr>
<tr>
<td>15–17</td>
<td>2</td>
<td>1</td>
<td>3</td>
</tr>
<tr>
<td>Total</td>
<td>7</td>
<td>9</td>
<td>16</td>
</tr>
</tbody>
</table>
Nevertheless, all of the children drew on their experiences to discuss the issues raised during the interviews.

All of the children lived in the Adelaide metropolitan area except for one who lived in Perth, and all but one (a 13-year-old girl) had experienced their parents’ separation. The 13-year-old, Petra, was residing with an aunt and uncle while both parents were living interstate. She reported that her mother and brother were returning to live in Adelaide soon after the date of her interview. She believed that her parents would separate at that stage because her father “has good work and stuff like that” in the state where they currently lived. Petra said that when her mother and brother returned to Adelaide she would stay living with her aunt and uncle because she did not think her mother would settle in one place. She said, “… [I]t’s the same decision, like my mum will come here, she’ll probably move round here and there and everywhere. So it’s just the same”.

Of the others, the majority were residing with their mothers at the time of the interviews. One 10-year-old boy was moving between the homes of his mother and his father on a weekly rotation. Because of his father’s job, however, this rotation sometimes became interrupted when the father was obliged to work at weekends or away from Adelaide.

The children’s contact with their fathers varied significantly depending on where the fathers resided. Table 2 presents the contact arrangements for the children in the sample. Two seven-year-old boys did not know their fathers and had had no contact with them in their memory. One of these boys had had regular contact with his mother’s former lesbian partner for some time following the separation, but he reported that this contact had ceased because the partner had found it too emotionally difficult. He said, “… she sent my mum an e-mail saying that she can’t have me in my life, you know, in her life”. The mothers of both these boys had entered into new relationships (both with men) and were re-defining the families to accommodate them and their children.

**Method**

The 16 children who participated in this research engaged in in-depth interviews (Liamputtong & Ezzy, 2005), each lasting between 40 minutes and one and a half

<table>
<thead>
<tr>
<th>Type of contact arrangement</th>
<th>Number of children</th>
</tr>
</thead>
<tbody>
<tr>
<td>Weekly contact</td>
<td>2</td>
</tr>
<tr>
<td>Alternate weekends</td>
<td>5</td>
</tr>
<tr>
<td>Shared residence</td>
<td>1</td>
</tr>
<tr>
<td>Holiday contact only</td>
<td>5</td>
</tr>
<tr>
<td>Telephone contact, no physical contact</td>
<td>1</td>
</tr>
<tr>
<td>No contact at all</td>
<td>2</td>
</tr>
<tr>
<td>Total</td>
<td>16</td>
</tr>
</tbody>
</table>
hours, depending on the responses of individual children. While the interviews were
guided by a schedule of possible questions and topics for discussion, they proceeded
in a conversational manner, involving a personal interaction between the researcher
and the child participant. The interviewer, whose influence on the process “cannot be
ignored”, became a “co-participant in the discourse” (Liamputtong & Ezzy, 2005,
p. 57), actively involving the child participants in building their stories in ways that
gave meaning to their experiences. This approach is consistent with those used by
other researchers such as Thomas and O’Kane (2000), who argued that the
interaction with children, and the provision of a space for them to talk, is often
more positive than arranging activities for them. The plan for the current research
included inviting the children to draw their families and to engage in play activities
(using human figures and doll houses) as a way of engaging them and helping them
to talk about the issues of concern to the research. In reality, however, no activities
were used, mainly because the children who participated in the research all expressed
a willingness to simply talk and because the interviews were often conducted in places
where it was difficult to arrange for any activities (typically, these places were the
children’s bedrooms, a family room or at the dining table).

Interviews proceeded at the children’s pace, and the researcher responded to their
agenda rather than setting his own (Garbarino, Stott, & Erikson Institute, 1992).
Often, the children introduced their pets (dogs, cats, birds) to the researcher and the
interview incorporated questions about how decisions are made about them (who
feeds them, who decides on when to walk a dog, who decides on their diet, what
happens when decisions must be made about their medical needs). Additionally, the
interviews reflected the children’s interests: around school, weekend activities and
friends. These initiatives attempted to maintain the children’s voices at the centre of
the research process, ensuring that what they said became the prime focus of the
research (Alldred, 1998; Fine, 1994).

Interview questions

Interviews began with some general background information (e.g. “Where are you
living, and who with?”, “How often do you see the parent with whom you are not
living?”) before moving to more specific questions about decision-making within the
child’s family. To establish the focus on decision-making, a series of broad questions
was posed about general issues upon which decisions might be made (e.g. “In your
family, who decides what you will wear each day; what you eat; when you go to bed;
when you come home from school?”) Follow-up questions for these focused on what
the child participants thought about the fairness of these decision-making activities.
The interview then moved to a series of specific questions around decisions that were
made post-separation and included the use of the “miracle question” suggested by De
Jong and Berg (2002) (e.g. “After your parents separated, how was it decided when
you would see the parent you are not living with?” “If you could wave a magic wand,
how would that decision have been made differently?”) Finally, the child participants
were asked about their understandings of the concepts of their “best interests” and
the issue of children’s rights (e.g. “Do you know what a ‘right’ is? Can you give me some examples of any rights that you may have as a child? When parents separate, what rights do you think children should have?”). The interview then finished with a question that asked the children whether they would agree with the idea that children are the only ones who should decide where they will live after their parents separate, and the reasons for their responses. This question was left to the end to give the participants time to feel comfortable with stating their own opinions throughout the discussion and with the idea of chatting with an adult who would listen to them without judging or contradicting what they said.

Results

Children’s Views of their Rights

Some of the children in this study were able to list a number of rights they thought they might have:

Um, I know the ones that, the right to feel safe, I think is one, but the right to be clothed, to have shelter, to be cared for and not to be abused. The right to, I think to be educated, is that one of the rights? ... Um, yeah, that, I think those kind of rights are very important, um, the right to, I think the right to have friends would be a very important thing. The right to be heard and not, yes, um, yeah, definitely to be heard. (Nick, 13 years old)

This statement reflects many of the rights contained in the United Nations Convention on the Rights of the Child (United Nations, 1989) and indicates that some children are aware of them. Most of the children in this study, however, did not refer to the concept of “rights” when discussing the level of care they received from parents or how much decision-making they were involved in. For some, “rights” were about “choice” and deciding whether rights were even needed. To some extent, these alternative thoughts about children’s rights reflect Ife’s (2001) contention that in some cultures the term “right” is not used. Instead, other words are used to convey notions of “human dignity and worth, ideas that all people should be treated according to certain basic standards, ideas that people should be protected from what is frequently termed ‘human rights abuse’, and ideas of respect for the rights of others” (Ife, 2001, p. 2). In discussing their rights, the children who participated in this research often referred to concepts of “fairness”, the importance of their having a voice, and being respected. Their comments indicated the importance of placing “rights” issues into context for children. The adult concept of “rights” per se was understood by the majority of these children in terms of freedom to act rather than in terms of formal, legally-based concepts such as the right to an identity or the right to shelter and food:

Like, you should have the right to go to the tap and get a drink, and stuff like that. Mm. Like if you want to go outside you should have the right to do that. It’s not like your parents can go, ‘I don’t want you to go outside you can stay in here’. Should have a bit of a say. (Callum, 10 years old)
Children’s Views of their “Best Interests”

The concept of children’s “best interests” is a specific issue of concern in considering the rights of children, both in Australian family law and in the United Nations Convention on the Rights of the Child. Both the Australian Family Law Reform Act (1996) and the Convention make paramount the best interests of children in all decisions that directly affect them. The literature, however, argues that the “best interests” principle is vague and open to interpretation. Landerkin (1997), for example, argues that adults have established the “best interests” of children without direct reference to them, while Kelly (1997) and Rayner (1992) suggest that a judicial evaluation of a child’s best interests requires a significant level of adult discretion from the bench.

The children in this research were asked to comment on their understandings of their “best interests”. Overall, the older children in the study argued that the concept of children’s best interests was probably not a positive concept on its own. Some tried to provide examples of why they thought it was not positive, while others considered that a decision-maker would need a lot of information to understand what the best interests of any given child might be:

Oh, yeah. Yes, I’ve heard of that. Um, children’s best interests, what really are they, it’s kind of so unbelievably general . . . . I think that in best interests is not really the children’s opinion at all, it’s what other people think is best for them. So it’s kind of making the decision for them and not listening to what they have to say, by um, stereotyping their best interests. That is what they think would be best for them, but not necessarily is. (Nick, 13 years old)

Yeah. Cos you can’t really say that every single child is going to have a best interest and this is it. That it’s in their best interest to do this and we say that’s so, so the people are just deciding what other people’s best interests are for them. And what’s good. Like saying, “This is what’s good for you”, when it might necessarily not be. (Nick, 13 years old)

The sort of things that are overlooked or not known without good investigation on both parties and, you know, personally trying to get to know the parents a little more, and the child. (Fran, 17 years old)

Many of the children did, however, acknowledge that sometimes adults and people close to children might understand their best interests better than the children themselves:

Yeah. If there, there definitely should be some times when other people, um, it’s possible that they do know best for you and that you don’t know everything and that you don’t know that what you’re doing is the right thing. And that someone else knows what will benefit you more, and that maybe you should listen to them instead of thinking that you can make every decision. But there are so many times when you should be able to make decisions and people don’t know what’s best for you. They just think from experience, from what they’ve experienced that this is what’s right, but that might not necessarily be so. (Nick, 13 years old)
What’s best for me? Um, I don’t always know what’s best for me, I, like I know what I want, but it’s not always the best for me, and my auntie and uncle and my mum and dad and my whole family, they always support me, um, but they also, like in my decisions, but they also tell me, if they think something’s not right for me, and I’ll listen if I’m smart enough, I’ll listen to them, and you know, I’ll take their advice and make sure that whatever the decision is I can make it right. (Petra, 13 years old)

When asked who should decide on children’s “best interests”, the children in this study replied that they should be consulted. For some of the children, consultation depended upon age; while for others, consultation was perceived as a central part of the decision-making process:

Um, again I think you should ask them, but if they’re not old enough to make that kind of decision, um, I think the, the parents could come to an agreement on what’s best for their children, but in best interest: is there like one best interest for everyone or something? (Nick, 13 years old)

Harry: I was going to say that the child should get an opinion, but adults, yeah.
Interviewer: You’re saying the child should have an opinion?
Harry: No, the adults should have the, the adults should have a lot to say, but oh, have a say in it, not all of it, like the child should at least be able to be heard. (Harry, 13 years old)

I think that they should um, have the child there as well, you know, ask what the child wants. You know, like, the parents can’t just decide, well, I want, say I’m the mum, I wouldn’t just say, “OK, well, um, it doesn’t matter what my kid says because I want her to live with me, so she’s living with me”. You know, what if the kid wants to live with the dad? You know, so, I think that they should have the child to, you know, help make these decisions. (Petra, 13 years old)

In summary, the children in this study recognised the difficulties in the principle of “best interests” in issues relating to them. They rejected discourses that constructed them as being unaware of their “best interests”, but qualified this rejection with reference to discourses about age of children and safety issues.

McWinney (1997, p. 388) argues that “children as a class are not, and cannot be, responsible for themselves”. The children who participated in this research sometimes strongly contested that assertion, arguing that whilst they do not know absolutely what is in their “best interests”, they should be consulted in decisions that are made about them.

Children’s Views on Decision-making

Fifteen of the 16 children who participated in this research considered it important for children to have a right to be consulted about their opinions on issues that directly affect them:
Interviewer: Tell me a bit more about children’s rights to have a voice.

I think if people, if like children aren’t allowed to speak out and be heard by people they kind of think that they never will, and if they do speak out their opinions can be heard, and sometimes a lot of children’s opinions are more logical or sometimes sensible than a lot of ones that adults might have. Say um, you know, and if they are heard then they won’t, they won’t be shy to voice their opinions and, yes. (Nick, 13 years old)

... kids should be involved from the start. If you’re gonna do something that affects them, and yeah, they should have some say of how it’s, how it looks and stuff. (Kane, 13 years old)

... if you don’t have any say in your own life it would be a pretty bad life, I reckon, that you’re, you know, if you’re forced into living a, you know, it’s important that you kind of... the whole thing about making choices is that you kind of enjoy life, kind of thing, cos you have to. (Laurence, 16 years old)

All of the children in this study argued that they were capable of making their own decisions in some situations and of voicing a reasoned opinion when asked. All of them expressed a belief that they should be heard by adults and that their opinions should be taken into account in any decisions that might be made about them by adults. This did not mean that children wanted to make decisions independently. They distinguished between autonomous decision-making and consultation:

Interviewer: ... Cos some, some adults and some children say that the only people who should decide on what happens with children after their mum and dad separate is the mum and dad.

Amy: Mmm. I think it should be all of us: to sit down and say, “Oh, what do you want?” or “What do you want?” or “What do you want?” (Amy, nine years old)

Interviewer: Are you saying kids should have a say?

Callum: Well, y-ess, but not tell the parents what to do, “I wanna do that”, mm, so the parents should um yeah, talk about it and then the, they’ll probably tell the kids and then if they don’t want that to happen then they’ll figure something else out. Cos it kind of depends on how many kids... sometimes. (Callum, 10 years old)

Um, I think they should ask them what their opinion is. Say, say, for example, they could ask their children, “We’re separating and we don’t know where you want to live, where do you, um, do you want us to make that decision or would you like to make it, and do you like to live at one person’s house, or move frequently?” I think they should, they should ask. Before they tell them to make a decision cos that like puts people under pressure and makes, will make the children more stressed. (Nick, 13 years old)

Having an opinion and being heard equated to feelings of being respected and valued in the child–adult relationship.
Interviewer: So, what you’re saying is that it’s important for adults to listen equally to children as they listen to other adults.

Nick: Yes. Yes, which is something that’s not really happening much in the world at the moment, but I think that kind of thing should happen, where people should have equal social rights and they should be able to be heard, as equals. (Nick, 13 years old)

Decision-making does not occur in a vacuum, however. As Hubble (2000) argues, other considerations, such as personal and interpersonal responsibility, must be accounted for. Eight of the 16 children in this study considered that if something was bothering them about the way their families were operating, they had a responsibility to speak with their parents about it.

Children also thought that if their parents were experiencing difficulties in reaching decisions about the children’s futures, they might consult others such as members of extended family. Their understandings of “extended family” differed somewhat from adult understandings of this term, mirroring the findings of a 1998 British study of children’s perceptions of “family”. In that study, Morrow (1998) reported that children defined “family” in terms of emotional bond as well as in terms of blood ties. Children described step-siblings and half-siblings as integral to their concepts of the family to which they belonged. Other researchers have pointed out that a child’s concept of “family” appears more “fluid” than adult concepts and can include friends as well as members of the extended family (Neale, 2002; Smart, 2001). The quality of the relationships children experience is more significant than a legal or genealogical concept of “family”.

Comments from all of the children in the current study concurred with this emphasis on relationships. Children suggested that family members or friends know the family better than anyone else does. Therefore, if parents were experiencing difficulties in decision-making they should consult these people in preference to others such as professionals or the court:

I think um, if that did come to that, I think, you know, just like friends and family, like what they think’s better. Um, not that they’ll make the complete decision, but just, you know, give some advice on, because they know, because they’re family and friends . . . (Petra, 13 years old)

A thing you could do is, um, well, instead of having the judge investigate, you could um get members and relatives to come in. They will know the people, they might know the people. (Harry, 13 years old)

Um, they could talk to their relatives or their friends or, like, people who have gone through the similar situation and had to resolve it the same way. (Nick, 13 years old)

[. . .] They should just all go to someone in their family, like an auntie or a nanna. (Ellen, 9 years old)
In Australian family law, the final arbiter in situations where parents cannot reach a decision about their children’s futures is a Family Court judge. The children in this study were asked what they thought of the appropriateness of judicial decisions in issues relating to their residence and contact following their parents’ separation. Ten of the 16 children in the study considered that taking decisions outside the support of family and friends was inappropriate. For example, 11-year-old Matthew argued that while judicial decisions might be OK, “sometimes they’re wrong and like stuff”. For others, such as 10-year-old Callum, parents’ decisions to seek a judicial decision about their children represented drastic action: “It’s kinda like stubbing your toe and then like suing the ground or something”.

The children in this study, including the seven-year-olds, were very concerned about fairness in decision-making (Emler, 1991). Their assessment of “fairness” was often related to their understanding of the family as a “complete” unit, a source of support and nurturance (Morrow, 1998), and their loyalty to this ideal. The children’s comments indicated concern for parents who may be unfairly treated by a judicial decision that may shut a parent out of a child’s life. They recognised, however, that attempts to be fair towards both parents in relation to choosing where to live could result in decisions that appear unfair to one or both of them:

**Interviewer:** What do you think about the idea of someone like a judge deciding where children should live?

**Olivia:** Oh, well, I don’t think that would be very fair, because the child . . . if they just have to live with their dad, or they just have to live with their mum, it wouldn’t be very fair on both of them . . . I don’t think it would be very fair on the mum or the dad, because they choose when they see, when the kids see them. (Olivia, nine years old)

Others, like nine-year-old Ellen, expressed concern about the fairness of a judicial decision for the children themselves:

**Interviewer:** What do you think about the idea of someone like a judge deciding where children should live?

**Ellen:** Not very nice. Cos if they want to live with their dad and they were living with their mum and they had to stay with their mum and they didn’t want to, it wouldn’t be very fair. (Ellen, nine years old)

The children’s comments mirrored those made by children in a British study of separated families (Neale, 2002). In describing children’s responses to their contact with counsellors and social workers, Neale reported that they “saw professional involvement not so much as ‘support’ but as ‘intervention’” (Neale, 2002, p. 466). Comments from the children in this study reflected this view in relation to the involvement of judicial officers. They “othered” judicial officers and constructed them as different from family members in ways that determined children’s expectations of them (Neale, 2002, p. 467). It may be that greater information needs to be provided to children about the role of Family Court judges (and to judges...
concerning the specific children about whom they make decisions). This may increase levels of understanding and acceptance between the two groups.

Discussion

Some of the findings of this research are at odds with the way that Australian family law operates. First, there is a need for adult professionals to reconstruct children as autonomous beings and social agents in their own right, as people needing some “guidance” and “protection” while at the same time having an ability to make informed decisions on their own, as the comments of children in this and other studies demonstrate. A construction of children as social agents who operate on their worlds in effective ways and who sometimes (rather than always) require assistance to negotiate difficult issues and events would help to establish greater cooperation between children and adults and greater communication about the needs of each. Consideration might be given to the direct involvement of children in all decisions that affect them, including those related to their inclusion in research, the development of social policies that directly affect them and family law matters. For professionals who work with families, there is a clear need to consider children as clients in their own right and to respect their position as social actors independent of parents and other adults. The challenge before us is to find creative ways in which this can happen.

Comments made by the children in this and other studies (for example, Bagshaw, Campbell, & Jelinek, 2002) indicate that they will talk with friends and peers long before they talk with adults about “emotional” issues such as parental separation. It is also likely that they are more knowledgeable about parents’ difficulties than parents and other adults realise. Indeed, in one Australian study (McIntosh, 2000) parents indicated that they had little understanding about how the children in their families were addressing the separation issues. Were parents more open to hearing from children and listening to their opinions, it is possible that the stress experienced by children at separation would be reduced. As 13-year-old Petra observed, “I think it’s gonna be stressful anyway, whether they make the decision [about where to live] or not”. At a minimum, divorce mediation and counselling might provide children with opportunities for their opinions to be heard in decisions that directly affect them. Opportunities for children to talk with parents, both formally and informally, and to have their opinions taken into consideration, have the potential to improve decisions that directly affect them. Forums in which children might talk with parents include family conferences, counselling, mediation and group activities. In this respect, the establishment of 65 new Family Relationship Centres across Australia between 2006 and 2008 has the potential to build on current child-centred practices and to develop innovative approaches that will increase our understanding about how to work more effectively with children.

When children do provide their opinions in family law matters (indeed, in any matters than directly affect them) those opinions should be respected. The current practice of seeking the “truth” behind a child’s opinion (based on assumptions that it
has faulty logic, that it reflects parental views, that the child is not sufficiently "competent") denies that a child’s opinions are authentic. There seems no point in seeking a child’s opinion if it is then to be challenged for its “truthfulness”.

The children in this study emphasised the importance of extended family in decision-making processes. It is interesting to note that the July 2006 reforms to the family law system—Australian Family Law Amendment (Shared Parental Responsibility) Act 2005—provides for a child’s time with grandparents, but whether this will be enough is arguable. Comments from the children in this research indicated their support for the concept of family group conferencing (as described by authors such as Bargen, 1996; Murray & Hallett, 2000), which could include extended family members and family friends. Bargen (1996, p. 225) warns, however, that “procedural and other safeguards” for participants would be essential for families to feel satisfied with the process. Were family group conferencing to be attempted, issues surrounding abuse of children, family violence and levels of conflict between family members would need to be closely addressed prior to the conference.

In conclusion, it seems increasingly important for us to hear directly from children on every occasion that we can. It is only by taking children’s opinions seriously, especially in issues that directly affect them following their parents’ separation, that we can ensure a strong focus on their best interests and ensure that their needs are met.

Note

[1] There appear to be two conventions in relation to references to the work of Michel Foucault. A number of authors, among them Cheek (2000), McHoul and Grace (1993) and Sawicki (1991), prefer the term “Foucauldian”, while others such as Danaher et al. (2000) used the term “Foucaultian”. In this work I have chosen to adopt the convention of Danaher et al., using the term “Foucaultian” to refer to Michel Foucault’s work.

References


