The purpose of this article is to examine the arguments on both sides of the debate on the State's Rights versus Parental rights over children, and to discuss its implications for social work in child protection.

*Dr. Sui Ming Kwok is a Assistant Professor, School of Social Work, King's University College at the University of Western Ontario, Ontario, Canada.*

The debate over the extent to which the State could interfere in the privacy of families with respect to child abuse has been ongoing for a century in Western countries. Recently, the ruling of the Supreme Court of Canada, which supported the rights of children over the rights of parents, seems to end the debate. Is it really the conclusion of the debate, or the beginning of another round of contention? The purpose of this article is twofold: examine the arguments and assumptions on both sides of the debate, and explore its implications for social work.

The discussion of this article is in the Canadian context. Nevertheless, discussion of the assumptions of the debate and the implications for social work could be relevant to other contexts. In particular, this issue could arouse another round of debate in the Asia-Pacific region, where the family's rights are given priority over children's rights.

**THE RULING OF SUPREME COURT OF CANADA**

A Supreme Court of Canada ruling has rekindled the debate of the State's rights vs. parental rights over children. In a ruling given on October 13, 2002, the Supreme Court of Canada declared that social workers did not need a judge's warrant to apprehend newborn babies who were believed to be in danger. The ruling sends a strong message that ensuring a child's safety is the primacy in child protection. The decision was a loss for a Winnipeg mother, whose one-day-old infant was apprehended from a hospital's maternity ward (Tibbetts, 2000).

The judges set a benchmark in child welfare legislation in Canada. In the past, Canadian child welfare legislations have been family-centred; and it was assumed that parents are responsible for the deciding what is best for their children. Legislations attempted to safeguard the rights of parents from any unnecessary State intrusion
(Thomlison and Foote, 1987). However, as a result of this ruling the legislation is now child-centred. The State can now interfere in family affairs on children's behalf whenever the State's agents, usually social workers, deem it necessary. The ruling also sends the message that child protection practice should be more proactive. A child should be apprehended before problems occur. It is used as a prevention for future harm to the child. Nonetheless, this proactive approach is not supported by all parties unanimously. Justice Louise Arbour, who was one of the seven judges in this case, commented that the individual liberty of the parent in this case was already infringed upon (Winnipeg Child and Family Services vs. K.L.W., 2000). This proactive approach could have repercussions in the Asia-Pacific region, where rights of families are given priority over children's rights.

ARGUMENTS ON BOTH SIDES OF THE DEBATE

The debate concerning professional response to child maltreatment is a debate about the nature of a good society (Dingwall, Edkelaar and Murray, 1983). It is about the extent to which the State should respect the autonomy of a family to raise their children and when the State should interfere if the family fails in its job to provide proper care to its offspring (Hall, 1998).

Family-centred Arguments

**Family Privacy should be Respected by the State**

From a legal perspective, the emphasis on child's focus in child legislation is in conflict with the parental rights guaranteed by the Canadian Charter of Rights. Families should have the rights and be allowed to raise their children free from State intervention (Bainham, 1990; Thomlison and Foote, 1987). Traditionally, the role of the State is to enforce needed care by the original family (Swift, 1995). The assumption is that parents are responsible for and capable of deciding what is best for their children, and the interests of parents and child coincide or at least do not conflict (Thomlison and Foote, 1987). The State should provide every support to keep children within their homes. Thus, child legislation is more oriented to family preservation and respect parental rights on how to bring up their children (Davies, 1997; Hall, 1998; Schmidt and McHale, 1996; Thomlison and Foote, 1987). As a safeguard to parental rights, item 7 of the Canadian Charter of Rights is used to protect the rights of individual parents free from the State's interference without reasonable grounds (Winnipeg Child and Family Services vs. K.L.W., 2000).

Moreover, the paternalistic authority of social workers could not be monitored by the judicial system effectively. In North America, legislations prescribe social workers with a statutory role in child protection; social workers represent the State to supervise families and
protect the child from being hurt physically and emotionally. However, the judgments of government delegates — the social workers — are difficult to monitor under the child-centred policy. In principle, Courts are supposed to examine the decision-making in every child apprehension case; nonetheless, the decisions are always determined at the casework level (Walter, Isenegger and Bala, 1995). For instance, around 50 per cent of children in care are by consent order in British Columbia (Ministry for Children and Families, 1999), and, in most cases, the court just endorsed the agreements reached between parents and social workers. The court now becomes even less able to monitor the social workers under the child-centred policy; social workers could apprehend a child first and then apply for a warrant from Court later. Such a practice will disable a mechanism wherein judges can help to keep a check on the judgments of the social worker before apprehending a child. The over-apprehension between 1960s and 1970s, and the incidence in Quensal of British Columbia are best illustrations for misguided judgements of social workers with a child-centred orientation (Children's Commission, 1998).

**Turning a Social Issue into a Private Problem**

The whole child protection system is being criticised by those from a sociological perspective, feminist perspective, and critical theory to monitor the less advantaged populations in our society (Callahan, 1993; Jamrozik and Nocella, 1998; Swift, 1995). From a sociological perspective, the active intervention of the State over family matters has the consequence of putting a large number of children under the State's care. Among these children in care, most of them were from less advantaged families (Armitage, 1993a; Jamrozik and Nocella, 1998). For instance, the numbers of native children in the State's care in North America are overrepresented (Armitage, 1993b; Jamorzik and Nocella, 1998). Rather than examining the structural causes of child abuse — child poverty, lack of resources to support families in less affluent communities — the State attributes the problem of child abuse to individual level. For instance, the high rate of child abuse reports in low-cost housing areas are due to the higher chances of case exposure for people living in cramped apartment units. On the other hand, it would be difficult to detect child abuse cases if people are living in affluent independent houses in suburbs, especially for pre-schoolers who might have no contact outside the community. In sum, it is a process of turning a social issue into a 'private problem', and the family is ultimately to blame for the child abuse problem (Jamrozik and Nocella, 1998), especially for the less resourceful families.

Similar to the sociological perspective, critical theory and feminist theory also criticise the family-centred approach as biased against families with less resources, especially the single-mother family (Callahan, 1993; Swift, 1995). More than 30 per cent of the children
being in the State's care were from single-mother families (Swift, 1995). As a result, under the child-centred approach, the lone parent families were held responsible for a problem which is beyond their resources to cope with. A good illustration is the lack of subsidised or low-cost housing for low-income families. Without resources and support, the living environment of single-mother families, of which 75 per cent of them belong to low-income family in Canada (Swift, 1995), might not be up to the standard of child protection practice. Henceforth, apprehension of the children is a double punishment for the single-mother, who is already a victim of structural problems in our society (Swift, 1995).

Child-focused Arguments

**Paternalistic Intervention is in the best Interest of Children**

Proponents of child-centred policy believe that the State, a substitute parent under the authority of *parents patria*, should interfere with parental rights if such action is deemed in the best interests of the children involved (Macintyre, 1993). Since children are the most vulnerable members in our society, and it is necessary to curtail some parental rights in order to ensure their safety (Winnipeg Child and Family Services vs. K.L.W., 2000). Moreover, the individual rights, protected by Section 7 of the Canadian Charter of Rights are applicable only in a criminal context (Winnipeg Child and Family Service vs. K.L.W., 2000). Moreover, child protection legislation is a child welfare statute and not a parents' rights statute. Parental rights should not been covered under this section.

Moreover, it is assumed that the State can fully represent the child to assert his/her rights behind parents if the rights of the child were not coinciding with the rights of his/her parents. Therefore, the State has the necessary right to interfere in family matters when the family fails to protect its children.

**Belief in Paternalistic Authority**

Proponents of child-centred policy have confidence in the legal system and the judgement of social workers with respect to child protection. It is understood that the child protection decision is usually determined at the casework level (Walter, Isenegger and Bala, 1995). However, a wrongful apprehension does not give rise to the same risk of serious, and even potentially fatal, harm to a child, as would an inability on the part of the State to intervene promptly when a child is at risk of serious harm (Winnipeg Child and Family Services vs. K.L.W., 2000). The safeguard is that parents always have the right to appeal. Even before the trial hearing, parents can use the family conference to question the decision of social workers over apprehension (Winnipeg Child and Family Service vs. K.L.W., 2000).
The Relationship between Parents and Children is that of Entrust

The State has the right to interfere because it only entrusts a child to a family. It is assumed that the relationship between parents and children is that of entrust (Dingwall, Edkelaar and Murray, 1983). In the case of parents, the object of the trust is the promotion of children's welfare. When the parents prove deficient, the state could have grounds for legal action to release parents' duties to the children (Dingwall, Edkelaar and Murray, 1983). Goldstein, Freud and Solnit (1979) also advocate that the psychological parents are more important than biological parents when considering the best interests of children. Biological parents should be released of their duties. The children should be entrusted to another family to whom they have an attachment.

A Contrast of the Assumptions between Family-centred and Child-centred Policy

All parties concerned agree that society must protect our children. However, they are different in their assumptions concerning the source of the problem, the role of the State over the problem, the ability of professionals to detect the problem, and the solution.

Family Matter vs. Public Matter

With the belief that interests of parents are not always congruent with the interests of children, child-centred believers feel that the State should have the right to interfere with the privacy of family (Hall, 1998; Tomlison and Foote, 1987). On the contrary, family-centred supporters take a stance that the State should keep its interference to a minimum and allow families to do their job. They believe the best way to protect children is by providing supports to families in which they live (Bainham, 1990; Cameron, 1999; Thomlison and Foote; Swift, 1995).

Social Problem vs. Individual/Family Problem

Family-centred supporter attribute the problem of child abuse to be largely outside the scope of the families. Poverty and discrimination are to blame for the underlying problem of child abuse, which is beyond the control of these families. Therefore, the focus on individual problems or parental lifestyle, as the current child protection practice does, will discriminate against the less advantaged families in our society (Jamrozik and Nocella, 1998; Swift, 1995). On the other hand, child-centred supporters believe that child abuse should be assessed in the context of family. Social factors of the problem should be taken into account; however, the families should also take up its part of responsibilities. Currently, the assessment tool for child protection in western countries is focused on assessing parenting capacity to protect children rather than assessing on the areas which are beyond the reach
of the parents to make any improvement. For instance, child will not be removed because of living in a crime-prone area due to the financial resources of the family. On the other hand, the same child will be removed if the parents leave their child unattended in the apartment for a long period. Therefore, the parents are assessed on their knowledge and skills to ensure the safety of children (O'Brian, 1997). Moreover, the universal mandatory reporting of child abuse in North America is a mechanism to protect all children in our society. Similar to the goal of compulsory education, the aim of mandatory reporting is intended to mobilise societal efforts to protect children regardless of their social status. It is not the intention of child protection policy to target a particular class in our society (Dingwall, Eekelaar and Murray, 1993).

**State's Intervention vs. Family Support**

Giving that part of the child abuse problem is structural and is beyond the resources of the families can cope with, family-centred supporters ask for more resources and support to families or even call for structural social reforms in order to ensure the safety of children (Callahan, 1993; Jamrozik and Nocella, 1998; Swift, 1995). On the other hand, family-centred supporters, supporters of child-centred policy advocate for proactive intervention of the state. Social workers should educate the public that children's safety should be more important any family unity in the context of child protection (Goidstein, Freud and Solnit, 1979).

**Contextual vs. Universal Standard of Child Abuse**

Child-centred supporters believe in a universal standard of child abuse measurement tools. They also believe paternalistic authority is able to detect the child abuse problem (Gelles, 1999). Therefore, professionals and social workers in child protection cases are given great discretion on their practice (Armitagea, 1993a; Gelles, 1999). On the other hand, believers of family-centred are inclined to give less discretion to social workers in child apprehension cases. Therefore, the requirement of apprehension is clearly set in the legislation, and court system should be involved to safeguard, any misguided state intervention on the privacy of families (Armitage, 1993a). For more clarity, the arguments of both sides are summarised in Table 1.

**IMPLICATIONS FOR SOCIAL WORKERS**

Child protection practice is affected by this debate over a century (Hall, 1998; Swift, 1995). Social workers seem to follow the new focus after each shift to a new direction in child protection policy. Should social workers follow the new trend of child-centred focus in child protection after the recent ruling of the Supreme Court of Canada? What stance should a child welfare social worker take in the whole debate?
TABLE 1: Arguments of Family- and Child-centred Child Protection Policy Debate

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<td>Source</td>
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<td>Solution</td>
<td>Interfere parental rights on behalf of children</td>
<td>Support family/Societal reforms</td>
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<td>Detection</td>
<td>Universal principles of child abuse/Relying on the judgements of professionals</td>
<td>Contextual/child protection legislation set clearly the requirements of child apprehension</td>
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**Underlying Dilemmas of the Debate**

Despite the debate between family-centred and child-centred supporters, it is generally agreed that children's and families' well-being are frequently intertwined (Green, 1994). The issue is more complex in that is probably is in many children's, even those who have been maltreated, best interests to remain with their families, with appropriate services and monitoring. It is worth noting that the vast majority of children identified as abused or neglected (approximately 90 per cent) are not removed from their parents (Duowitz, 1997). In practice, parents' and children's interests often coincide; strategies to strengthen families and help protect children are needed. However, in the child welfare debate, children's need for protection and parents' autonomy of how to raise children is assumed in conflict. As such, a resolution of this dilemma weighing the interests of children and families should be sought. In this paper, professional values and assumption of social workers are advised to be used as guidance for how social workers position themselves in the whole debate and face the dilemma. The family-centred and child-centred policy could be on a continuum on both ends of the scale extremes. Rather than ditching oneself on the end of either side of the debate, social workers should stand up for their professional values which are respect for children's rights and the duty to aid vulnerable persons (Madden, 1993).

**Child's Rights**

Child's rights should be respected. In the context of child welfare, it is the rights of the child that should be respected. Nevertheless, the rights of child are not the focus in the debate. The contention over child protection policy seems to be a debate between the rights of the state and the rights of parents over the child. Nonetheless, the rights of child are missing in the debate. "Within child protection action, however, the child, who is the subject of the protection application, is generally not a part to the action as a right" (Thomlison and Foote, 1987: 238). It is either assumed that parents are responsible for and capable of deciding
what is best for their children (Thomlison and Foote, 1987) or that the 
state knows and acts in the best interest of the child when the parents 
have failed to act so (Robershaw, 1980; Royal Commission on Family 

Respect of child's rights is consistent with the international policy 
regarding the protection of children. The Convention on the Rights of 
the Children requires States, in its article 19, to protect children from 
"all forms of physical and mental violence" while in the care of parents 
and others (International Federation of Social Workers, 2002). However, there is no mention about the rights of the child in the debate 
between the supporters of family-centred and child-centred. 
Child-centred supporters take child's rights seriously in the debate, but 
they assume that the state could represent the children. A number of 
children in the 1960s and 1970s were apprehended under child-centred 
policy without considering child's rights. Thus, the perspective of the 
child in the whole debate should be respected. The desire of the child 
should be taken into consideration in the process of apprehension. For 
instance, the child could be asked regarding his or her feeling toward 
the apprehension, and, more importantly, the child could be consulted 
with the placements after apprehension. The child might come up with 
some alternative placements — living with other relatives outside the 
city — which helps the child to settle down more quickly in a new 
environment. Numerous research has found that placement against 
child's will have adverse impact on the child's later emotional 
development (Swift, 1995). Even more, a child advocate could be 
appointed by the state as an impartial authority to safeguard child's 
right. In British Columbia, a child advocate is appointed by the 
provincial government in late 1990s to examine all child dead cases in 
the province (Children's Commission, 1998). The authority of the child 
advocate could be increased to review and examine all cases being 
apprehended by the social workers. The examination is significantly 
especially for those children who cannot represent or articulate 
themselves very well because of their young in age. The focus of the 
examination is on whether the child's right is respected in the process of 
apprehension; and what are the reasons behind if the child's right is 
denied in the process. Over the past decade, the awareness of children's 
rights is on the increase, such rights are still largely discretionary and 
not automatic at this time (Hall, 1998). Social workers should empower 
the children and bring their rights to the attention of both the parents 
and the state. The appointment of a child advocate is more pressing in 
Asia-Pacific region since the region has a tradition of prioritising the 
family over child's rights.

Duty to Provide Assistance to Vulnerable Persons

Social workers should be consistent with its ethics that vulnerable 
persons should be protected and helped. The International Declaration
of Ethnic Principles of Social Work and the International Ethical Standards for Social Workers state clearly that social workers are expected to provide the best assistance to people who are seeking help and the vulnerable members of the society (International Federation of Social Workers, 1994). It is well understood that social workers' personal beliefs and stand on the debate can influence decision taken by the workers. In particularly, it would be difficult for those workers who strongly believe in family preservation is for the best interest of the children's well-being even though the state's ideology is for proactive intervention. Nonetheless, one should be reminded that children now are seeking help and they are vulnerable members in our society and should require special attention (Rooke and Schnell, 1983). As child is heavily relied on family for safety protection, any failure on the part of the family in providing such protection could put the child in a dangerous position. Social workers have a professional obligation to provide the best assistance to the vulnerable members of our society.

Safely of Children is the Anchor of Child Welfare Social Work Practice

Reviewing these values in the profession, social workers should put children as an anchor of child welfare practice. Safety of children should be the primacy in child welfare practice. Resources should be anchored around how to ensure the safety of the child. However, this paper is not suggesting that families are to blame for all child maltreatments. Forensic gaze by the workers on parenting style should not replace helping relationship between social workers and the child within a family. In some cases, providing supports to families could be an effective way to protect children, and families might be used as a means to protect children. Nevertheless, the goal of providing supports and resources is not to ensure family preservation, but for the protection of children. However, it is found from literature that social workers in Asia-Pacific region give priority to parents’ right than the child's (Fong, 1994; Humphreys, 1999). Even though corporal punishment is forbidden legally for many countries in Asian-Pacific region, it is still socially acceptable in Asian communities (Lee, 1997). Henceforth, social workers in Asia-Pacific region should be well aware of their family-focused oriented, and reminded themselves that the client of child protection is the child rather than the family.

CONCLUSION

It is not the intention of this paper to provide an answer of where social workers should stand in the continuum of the debate. Rather, this article suggests social workers should clarify their mission and client in their practice in child welfare. The pendulum might swing again in future. Social workers should practice according to their professional values.
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