

Tom, Jim & Harry

... and the law

How should the law look after children? asks Richard Cook

Ten year old Jim Jarvis lurked by the fireside on a particularly bleak and cold night. He hoped he would not be noticed by the Christian medical student who ran the 'ragged school' near The London Hospital, but Thomas Barnardo saw him. 'It's time to go home.' 'Ain't got no home.'

Over supper together Barnardo listened to his story. Jim knew of no father and after his mother's death had been put in the workhouse. He absconded, and found sleeping out of doors, had been arrested and briefly imprisoned. After that he lived on his wits and avoided authority. He told Barnardo of many others sleeping on the streets, boys who also had neither parents nor home, who had run away from appalling treatment, or had been turned out to fend for themselves. Late that night, Barnardo was led through some of the grimmest East End backstreets, sure he was on a wild goose chase, until Jim found for him some dozen boys who despite the cold were asleep on a roof behind a parapet, hidden from the eyes of the law¹.

There was little an impecunious medical student could do, except find Jim a foster home and publicise the problem. 'In season and out of season, he impressed upon his every Christian acquaintance the disgrace of these conditions.'² Publicity

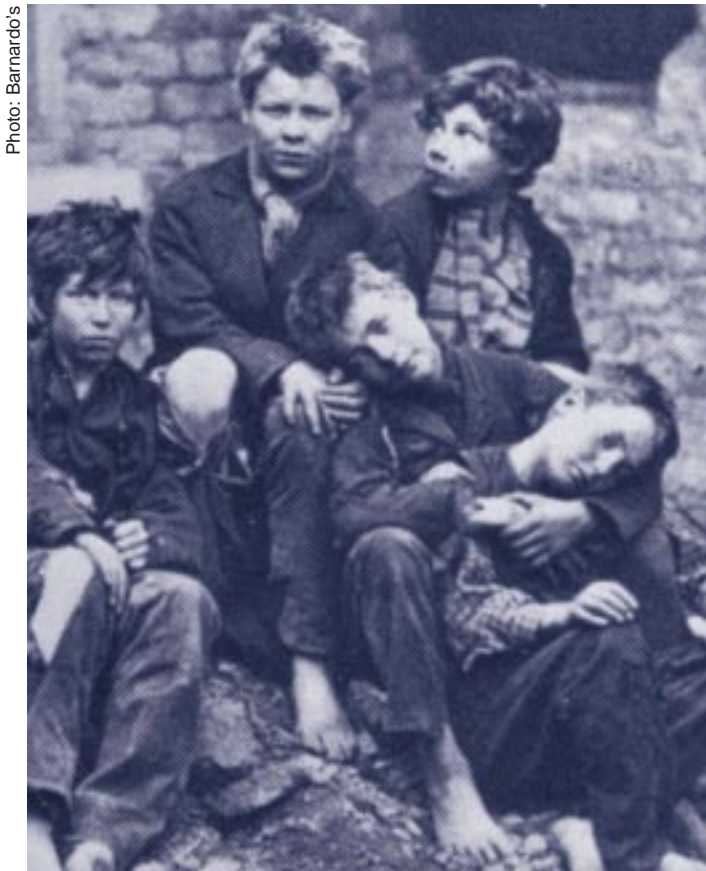


Photo: Barnardo's

Care and justice for children

became one of Barnardo's strong points and a vital means of support and help for what was to be his life's work - the first of his many homes for destitute children was opened in 1870.

It is thought there were 30,000 destitute children roaming the streets of London at that time³ and they came to Barnardo in huge numbers. Policemen brought them to his door so they would have 'visible means of support' and therefore not be vagrants; parents brought them when too sick to care for them; Barnardo himself found them. He took them from the streets by day, he sought them in their 'lays' at night, he snatched them from 'houses of ill-repute' at any hour. This was dangerous, for the law upheld the rights of parents and considered it impertinent 'to question the moral competence of a parent'⁴. Barnardo might distinguish between kidnapping and 'philanthropic abduction', but the Law did not!

Five year old sold to organ grinders

Harry Gossage's illiterate mother had sold him to a couple of organ grinders¹, who later abandoned him. He was rescued from the workhouse by a local parson and sent to Dr Barnardo's in Stepney. Routine enquiries located Harry's mother who put her mark on a consent form for his admission. She was sent a more detailed agreement that listed, amongst other things, the possibility of emigration. After some delay, Mrs Gossage sought help in reading and filling in this form, this time from a Roman Catholic priest. The result was a letter written in her name demanding that Harry be transferred to an RC institution. Too late! By the time the letter was read Harry was already on his way to Canada. More embarrassingly, he was with an adoptive father who had insisted that their precise destination should not be known. Harry was untraceable.

A writ of *habeas corpus* was applied for on the mother's behalf, and the case wound its way slowly up through the courts, each ruling for the mother being appealed against by Barnardo, until it reached the House of Lords. The judgments were critical of Barnardo and his organisation, but it was agreed he stood on the moral high ground. Public attention had been focused on the way that the Law as it stood 'protected the rights of vicious and brutal parents to make their children brutal and vicious'^{5,6}.

A Standing Committee of the House of Lords looked at the workings of the Poor Laws particularly in relation to the plight of destitute children, the ones we call today 'at risk'. *The Custody of Children Act 1891* resulted. It was so in line with what Barnardo was fighting for that his opponents mockingly referred to it as the 'Barnardo Relief Bill'.

Although the child's welfare was stated to be paramount under this Act, parents were still regarded as having the right of custody of the child, and the courts' powers only really came into play when parents made application for the return of a 'lost' child, when they had to prove their fitness. Intriguingly

modern is the clause that gives the courts 'power to consult the wishes of the child in considering what order ought to be made'. Also, the parents had the right 'to require that the child be brought up in a particular religion', countering the sectarianism that had caused so much of the previous litigation.

'Poor Law' lasted 350 years

All this was only just over a century ago. At the time, the Elizabethan *Poor Law Relief Act* of 1601 still largely governed society's behaviour towards the destitute, including children. It was a period of unprecedented social upheaval, of increasing wealth but ever more poverty, of disease and high mortality but a rapid learning of 'public health', of callous indifference to others' needs but also of sacrificial caring service. Barnardo was one among many⁷ who fought for a more just and caring approach, especially to children.

The last 150 years have seen revisions of the law, but earlier ones were relatively minor adjustments. Indeed the pejorative title was kept in the *Poor Law Act 1930* which set down the responsibilities of local councils in minimalist terms: 'To set to work or put as apprentices all children whose parents are not . . . able to keep them'⁸.

Fifty years ago, the strains and turmoil of war which stole half the childhood of many children around the world brought into sharp focus society's shortcomings in relation to its children. As the National Health Service was being devised and launched, children were recognised as important enough to merit an Act of their own. A radical and comprehensive attempt was made to 'make provision for the care and welfare . . . of boys and girls when they are without parents or have been lost or abandoned . . . or when their parents are unable to take care of them'⁸. *The Children Act 1948* was born.

Responsibilities for child care and welfare were brought together under the Local Authority, and were spelled out in rather warmer tones than in previous acts - 'to further the child's best interests and to afford him the opportunity for the proper development of his character and abilities . . .'⁸.

Are children any safer now?

But what are a child's 'best interests'? And who is to judge? Society's views and standards have changed, and as in Barnardo's day⁷ voices other than those of Christians have been heard.

The Children Act 1989 has made the child's rights paramount, stressing and defining parental responsibilities⁹. As its clauses were being debated (all too briefly it seems¹⁰), the Lord Chancellor stated that 'the overwhelming purpose of parenthood is the responsibility for caring for and raising the child to be a properly developed adult both physically and morally'¹¹.

Christians and all of goodwill have no difficulty in agreeing with these words, but how the 1989 Act is being applied has caused serious misgivings. Its stress on 'rights' undoubtedly came from the hedonistic and libertine attitudes of many of those instrumental in proposing its measures, and matches the postmodernist ideas of our age¹². 'Rights' language always



Home for destitute children, Stepney Causeway

stresses individuality at the cost of community, and autonomy at the cost of subjection to any independent moral standard¹³.

It is here that application of the Act falls short of ideal. The difficult issue of when a child is competent to take responsibility for his or her own actions is unresolved. We live in a fallen world, and our children need protection sometimes from themselves, sometimes from the state, and sometimes from their parents. A perfect 'Children Act' is still awaited.

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