# Preliminary concerns around the decision-making of out-of-home-care children who offend

***Being a briefing note for the Officers of the Court for the Children's Court Section 16 Meeting, 1 November 2013***

In Tolstoy's *Resurrection* (1899), Prince Nekhlyudov finds himself on a jury in a courtroom evaluating the guilt or innocence of his former lover, Maslova, in a murder trial. The slow realization confronts him that he is being asked to evaluate the culpability of someone before whom he is guilty. As a child psychiatrist towards the end of my career, I identify with Prince Nekhlyudov as a person of great privilege, who has been the recipient of a wonderful education, and opportunities to contribute to society. Yet I remain haunted by my inability to bridge the divide between villains and victims, to add colour to the monochrome picture of what has become our perception of troubled youth. In this briefing, I want to convey the depth and breadth of the implications of decision-making – even poor decision-making - and the critical factors leading up to young people offending, especially out-of-home-care young people.

**Decision-making: some background**

Modern research on decision-making emphasizes the *process* rather than the *event* of decision-making. The circumstances preceding a decision-making event, the context of the event, the quality of the information surrounding the event and the anticipated consequences of the event, are all now explicitly examined rather than seeing decision- making as a disembodied, unsullied, cognitive performance in the free exercise of thought. Tolstoy does this through a personal narrative in a way that an impersonal science can never attain.

High quality decision-making is known to undergo developmental maturation, be subject to learning, practice and to show individual variation, so that some are more likely to make high quality decisions on a reliable and consistent basis than others, *prior* to training.

The capacity to be aware of, and to articulate, the process of decision-making may, or may not, correlate with the capacity to undertake decision-making effectively. There are very few circumstances in which the reliable performance of the decision-making process is submitted to sustained scrutiny. Traditionally, decision-making surrounding moral incursions upon others is one such area where a microscopic scrutiny, and documentation around that scrutiny, has occurred. So difficult is it to disengage unspoken, emotionally laden, contributors that insinuate the processes of this scrutiny that a recent metaphor used is that of the rational tail wagging the emotional elephant (Haidt, 2012). Despite this, there is also evidence that this insinuation is not always a corruption of the process and may contribute implicit positive values otherwise overlooked by a purely cognitive analysis. Prince Nekhlyudov appreciates that as he judges he is judged, most of all by himself. There is an indissoluble link between those assessing and those assessed, the villain and the victim, the helper and the helped.

The linkage of behaviour, and self-governing behaviour in particular, as an outcome of the decision-making process has a similar complexity. There is evidence that much of the rationale articulated in decision-making, and the explanations for linkage between decision-making and implementation, is *post-hoc* and represents our best endeavours to explain our behaviour. We, like those we see, seek to find objectivity,

freedom from bias, while also making reparation for what we have been unable to do within the constraints and responsibilities of our roles.

**Decision-making in out-of-home-care youth**

I am engaging, then, in this brief examination of the decision-making of offending youth in out-of-home-care. I do this with a view to providing a small window on the relationship between decision-making, the self-governance of behaviour and the employment of socially appropriate moral sentiments in doing so.

The experience of emotionally traumatic experiences in the developmentally determinative periods of early childhood is often employed in the process of responding to offending in young people. Exculpation, societal guilt and some need for reparative considerations, or, at least, diminished societal retaliation, are considered. Prolonged uncertainty as to whether trauma might continue, or not, accommodation and placement of care might be finalized, or not, and prolonged impaired parenting capacity might be considered, or not, becomes mired in deep philosophical and emotionally fraught issues as the "public mind" is divined on these matters and the legal realities are interpreted. My contribution in this brief paper has little to contribute to the evaluation of the public mind or to the legal realities. I must stay within a quite narrow purview relating to the moral decision-making of the child who is in out-of-home-care and falls within the scrutiny of the Court. I want to answer a much simpler question, which is tractable to analysis, but which will have implications in any evaluation of the individual child or young person:

*Are prolonged emotional and physical trauma, sustained uncertainties about the most fundamental aspects of daily life (such as safety, accommodation and being sustainedly and predictably cared for), and parental absence, neglect or maleficence during the formative years, likely to interfere with the normal formation of the decision-making processes in the child or young person?*

The answer to this is an unequivocal yes. The sheer weight of cumulative, international research on this question is so extensive and the consensus so convergent that, if the question is framed in this way, the task of collecting and collating the already available evidence would take years. However, for all practical purposes, "the public mind", so far as it can be coherently captured from public discourse, is largely unaware of this literature. Perhaps the question might be better framed in the negative.

*Is it possible, probable, or at all reasonable, to consider that individual decision-making of children and young people in these circumstances will remain uncorrupted, without distortion and free of moral consequence in relation to social judgment?*

Over my thirty years of practice in child psychiatry, I have met a handful of young people who seem to have survived the ravages of these traumas, uncertainties and parenting failures, intact and without any deformation of the moral sentiment. Terms such as "resilience" and "invulnerable children" are invoked and much discussion goes into how this was accomplished. This does not mean that there are not many children and young people who will become, and have become, positive contributing members to society. But I am referring to the quality and effectiveness of their decision-making, especially under circumstances of duress, adversity or sustained uncertainty.

**Developmental distortions of moral sentiments: impulsivity and moral indifference**

There are two corruptions, or malformations, of the decision-making process that are particularly relevant in those in out-of-home-care who offend: one is impulsivity and more common and the other is moral indifference and less common. In clinical practice, at first blush, the former invites our frustration and the second our abhorrence. In public discourse the first is often represented as stupidity and the second as evil. Be that as it may, these two represent key aspects of decision-making relevant in our population.

In relation to impulsivity, we have good evidence that it is responsive to modification over time with predictability of an adult presence, a safe and benignly managed environment and some form of moral example. Some social restraint on behaviour may be necessary, even beneficial, such as with detention, or some form of mandatory hospitalization. Medications, which reliably help reduce overwhelming emotional arousal, anxiety and aggression, can assist in reducing impulsivity. The benefits of socially competent caregiving, credible moral exemplars and peers who are further along the pathway to social maturity, have all been shown to help. These are perhaps deemed basic requirements in a civil society, but they have been shown again and again to reduce impulsivity, especially the highly reactive aggression that is likely to result in offending. As the caregiving system becomes more predictable, less chaotic, less capricious and more reliable, so too do the young people in out-of-home-care. Decision-making arises within the context of support, in a context that makes the outcome of the decision-making meaningful and as part of process that is likely to yield higher quality, lower risk and socially appropriate outcomes. Central to reducing impulsive offending is the creation of safe environments that have a capacity to anticipate sources of conflict and frustration, and to reduce adverse outcomes, when poor decisions are made by children and young people. For a very small number, this will mean a secure child protection environment in which offending is not the main portal for entry, but protection from harms arising from help-rejection and the provision of needs that are unavailable, so long as they require a cooperative posture by the young person toward the care-system.

Ameliorating moral indifference has been, until the last five years, more difficult for us as a profession to approach with a coherent narrative of our endeavours. Attempts at both an explanation of the significance of moral indifference and responses that might address its corrigibility have been largely ideological, or belief-driven, rather than pragmatically derived. The current descriptors in the psychological literature are “callous and unemotional” children and those who lack empathy. More recently refinements have been made between affective and cognitive empathy (the difference between the capacity to imagine another person’s feelings and another person’s thoughts) and empathic response (the capacity to respond in a manner that is helpful, or beneficial, to the individual within the spotlight of an empathic focus). I have contributed to the proliferation of terminological confusion surrounding the word empathy by introducing the notion of visceral empathy; a very basic, largely unarticulated physical response to the pain and distress, or anticipated pain and distress, of others. As an aside, the word empathy has only been in the English language for the last hundred years, while, prior to this, the word sympathy had a much more extended set of associated meanings (see Smith, 1759).

The essence of this literature and the current debate focuses on three relatively enduring concerns; does moral indifference represent a permanent deficit in moral development? Or is moral indifference a delay, or deviation, in moral development, whose maturation and restoration to a normal trajectory may be attained over time? Is moral indifference a modifiable feature of the human condition in the developmental period of children and young people which, given best endeavours, may be corrigible? Or is it a non-modifiable factor, which must be accepted in any management of their care and disposition? The final background concern is that those with moral indifference may not always be more problematic to manage, or more likely to offend; moral indifference, like remorse, although a powerful factor in contributing to someone's likeability, does not always map directly onto transgression in the public domain. Some are morally indifferent, unlikeable and largely passive. Others might be actively and persistently offending in a morally indifferent manner, either as a solitary individual, or part of a morally malignant peer culture. The key determinant may not be the moral indifference but the active pursuit of suffering, or the situation-specific domination of the peer culture.

Responding to each of these issues with an unseemly haste and brevity, I have taken the view that it is premature to apply the adult-derived conceptual framework of psychopathy as a, more or less, permanent deficit state of the individual and apply it to children and adolescents. I think this is where the current public interpretation of the research literature is headed and those in academe have not been able to correct that misinterpretation and overextension of their findings. There is an extensive literature on moral development and we are faced with a substantial arrest in moral development in those who have been enduringly traumatised, neglected or subjected to unremitting uncertainty in the progress of its trajectory. It may be that there are individuals who have a deficit state of moral development without being subject to these environmental vicissitudes and in the context of a benign environment. I have seen more allusions to them in cinema than I have seen children like this in reality. The *de novo* emergence of the evil child, or "the bad seed", is a recurrent motif in literature and television. I have no accumulated wisdom to offer on this mercifully rare phenomenon. I do have an extensive experience of the attainment of a more normal moral development and the attenuation of moral indifference in those described as callous and unemotional in the out-of-home-care population. These features of development do seem to me to be modifiable, and subject to very basic interventions over extended periods of time. "Growing consciences" in the young is a worthwhile enterprise within our out-of-home-care population and one worth doing in a more planned, systematic and explicitly intended manner. Finally, the active pursuit of suffering, or the situation-specific domination of a peer culture, on moral reasoning needs to be considered as a crisis of sorts which requires a secure context in which to deliver therapeutic care and a societal response which assists in dismantling a dangerously toxic peer group culture. Moral indifference and the active pursuit of suffering in others need to be distinguished even though they may have common roots in adverse experiences.

Much of the discourse around offending in the young surrounds the value, or otherwise, of secure settings. More recently, there has been an interest in identifying those who have the hallmarks of future offending in their "personality". I have tried to avoid enduring notions of personality in understanding the young in place of assessing those factors most likely to predispose to poor decision-making and impaired moral sensitivity, on the one hand, and the promotion of help-acceptance and socially cooperative behaviour, on the other. To do this, I have attempted to highlight the context and process likely to foster the development of better decision-

making and to distinguish between impulsivity, moral indifference and the active pursuit of suffering in others.

It has always been difficult to convince successive governments that secure settings that address therapeutic ends are very necessary for those who are impossible to contain within a safe context and unable to benefit from consistent care-giving because of their own chaos and resistance to stability of placement. Provision of persistent moral exemplars, role models and fundamentally decent people, requires that contact between out of home care youth and them be greater than with toxic peer groups of similarly traumatized, impulsive and morally indifferent young people. Sherwood House represents the sort of exception that, in the future, within the right governance and supervisory structure, might become the rule for the most troubled young people in out-of-home-care. Provision and protection within secure settings that does not require offending as a portal and impending crimes against the public as a justification, seems a modest and achievable goal. Tolstoy finishes his story, not with a utopia of reparation, but with a shared inculpation and reform based on a recognition that punishment is often necessary, appropriate, but almost irrelevant to the larger drama of what must be done towards the condemned. Punishment is the *necessary but not sufficient* societal response that is needful but inadequate to fulfill our responsibilities to address the wrong that has been done to those who offend.

I hope these briefly stated concerns inform the officers of the Court in the time for discussion and reflection on 1st November.

Yours sincerely

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