

Jurisprudential and Ethical Perspectives on "The Best Interests of Children"

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ABSTRACT: Justifications of policies must be clearly warranted if educational leaders are to continue to maintain integrity and to sustain the trust of those served. Educators are called upon to mediate many private and public interests, including those pertaining to personal, organizational, professional, and societal values. This work of mediating conflicting values often relates to guarding and/or advocating the interests of children. Leaders must understand what they mean when evoking the potent phrase *in the best interests of children*. More importantly, they must avoid the temptations of sophistic misuses of the best interests of children notion. What is meant when we say we are deciding in the best interests of children? Each of the political, psychological, pedagogical, philosophical, jurisprudential, and ethical grounds undergirding the concept of the best interests of the child contributes content and meaning to the phrase. While each of these perspectives merits consideration, this article is delimited to an exploration of three interpretations from the field of jurisprudence and four interpretations from the field of ethics.

KEYWORDS: Best interests of children, decision making, ethics, educational leadership policy-making, jurisprudence, administrative judgements.

Jurisprudential Interpretations of Best Interests

The field of jurisprudence offers at least three levels from which to consider the best interests of children: general jurisprudential theories of interests, special interests of children, and case judgments wherein the best interests of children are considered.

General Jurisprudential Theories

At the first level, Heck (cited in Shoch, 1948) describes one of many schools of jurisprudential thought as the teleological, realistic, and sociological school. This school emphasizes the study, by judges and scholars, of the effects of law on actual life (pp. 31, 32). Heck cites Rudolf van Jhering as the school's original conceptualist because of his notion that law is created not by concepts but by

interests or by the ends pursued by persons. However, Montgomery (1986) says that Pound was the progenitor of this sociological jurisprudence. Pound held that political and legal ordering (*social engineering*) of human relations was necessary to maximize all interests with the least sacrifice of the totality of interests. To mediate this ordering, he placed interests into three categories: individual (civil rights), public (interests of state), and social (general morality). He identified interests by considering the realities of social processes and by determining the wants of people. From this foundation, he established a philosophy of human rights and interests (pp. 90, 91). Regardless of the origin of sociological jurisprudence, its fundamental assumption is evident in Heck's description:

Each command of the law determines a conflict of interests; it originates from a struggle between opposing interests, and represents as it were the resultant of these opposing forces. Protection of interests through the law never occurs in a vacuum. It operates in a world full of competing interests, and therefore, always works at the expense of some others' interests. This holds true without exception. (Cited in Schoch, 1948, p. 35)

The general theory of interests, as presented in the sociological school of jurisprudential thought, places interests in the realm of assessing realities, social processes, and competing interests. Heck (p. 35) suggests that the jurisprudence of interests is complicated by two factors: the obligation of judges to use the law to decide conflicts of interest, and the inadequacy of existing laws in the face of the complexities of daily life. Hermann Isay, (cited in Schoch, 1948), is critical of Heck and supporters of this jurisprudential school of thought:

The notion of "interest" is too colorless and therefore almost devoid of content. It does not become clearer by being defined as man's "desire for the goods of life." Under this definition, "interest" comprises everything that affects human beings either as individuals or as a community: not merely material goods but also ethical, religious, moral interests, the interests of justice, of fairness, "the highest interests of mankind," and the like ... in this way the concept of interest is being inflated to such proportions that it becomes useless. (p. 316)

Isay states that jurisprudence of interests tells the judge to evaluate and weigh interests but does not furnish a method by which to achieve this task (p. 320). Critics also claim that interests are often meaningless because of the difficulties associated with measuring one set of interests against others. These critiques are informative to educators who would suggest that the phrase *best interests* is sufficient. For some, the best interests of children may be a colorless meta-value that is subject to the whims and wiles of irresponsible educational careerists and humbugs (Bailey, 1988).

The Special Interests of Children

In the international context over the last 70 years, the jurisprudence of interests has affirmed, with Lewis (1943a), a special set of interests in regard to children. Children are recognized as having some fundamental rights to protection, aid, and special care. Several international statutes have expressed this *a priori* advocacy of children's interests. Perhaps the most familiar of the international documents is *The Universal Declaration of Human Rights* (1948). Article 2 of this declaration implicitly places children in a co-equal position with adults, with respect to entitlement of the rights and freedoms set forth in the declaration. Article 25(2) entitles children (along with mothers) to special care, assistance, and protection. Article 26(1) is well known for its indication that everyone has the right to at least a free, compulsory elementary and fundamental education. These entitlements are also outlined in the *American Declaration of the Rights and Duties of Man* (adopted by the Ninth International Conference of American States in Bogota in 1948). More recently the *Convention on the Rights of the Child* (1989) was adopted by the General Assembly of the United Nations. This document reaffirms the inherent vulnerability of children and their need for special care and protection. Article 3.1 of this Convention indicates that: "In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration" (p. 2). Article 18.1 states that "Parents or, as the case may be, legal guardians, have the primary responsibility for the upbringing and development of the child. The best interests of the child will be their basic concern" (p. 6). Articles 20 and 21 also invoke the best interest criteria as "the paramount consideration" when a child is temporarily or permanently deprived of his or her family environment by the State or when adoption systems are exercised (pp. 6, 7).

Jurisprudence has singled out children for special attention by distinguishing between adults and children in physical, psychological, and societal terms. These distinctions limit, as well as entitle, children. For example,

Adults are presumed to be responsible for themselves and capable of deciding what is in their own best interests. Therefore, the law is by and large designed to safeguard their rights to order their personal affairs free of government intrusion. Children, on the other hand, are presumed to be incomplete beings who are not fully competent to determine and safeguard their own interests. They are seen as dependent and in need of direct, intimate, and continuous care by the adults who are personally committed to assume such responsibility. (Goldstein, Freud & Solnit, 1979b, p. 3)

In recent years, this jurisprudential claim has been challenged on the grounds that it is an affront to a child's autonomy and that it represents a paternalistic intrusion

into the life-space of children. The well-known 1992 Florida case of the boy who successfully divorced his natural parents is a case in point (Coleman, 1993). For a further example, Bottery (1992) indicates that four arguments are usually presented to limit or to deny children the rights associated with making their own decisions, expressing opinions, and contributing to institutional decisions. First, Bottery says that the power argument dictates that children must defer to the physical and mental prowess of adults. Second, the noncontributory argument claims that the financial dependence of children excludes them from participation in institutional decisions. The third argument suggests that children's "immature, unrefined reasoning processes, and their limited experiences" (p. 154) ought to curtail their rights of participation. And finally, the imputed apathy argument suggests that children have no interest in participating in the various educative decisions made on their behalf by institutions (pp. 153-156).

Goldstein, Freud, and Solnit (1979a) cite Jeremy Bentham's (1840) observation that:

The feebleness of infancy demands a continual protection. Everything must be done for an imperfect being, which as yet does nothing for itself. The complete development of its physical powers takes many years; that of its intellectual faculties is still slower. At a certain age, it has already strength and passions, without experience enough to regulate them. Too sensitive to present impulses, too negligent of the future, such a being must be kept under an authority more immediate than that of the laws. (p. 7)

Goldstein, Freud and Solnit (1979b) submit that children are not adults in miniature. They are different from their elders in their mental nature, their functioning, their understanding, and their reactions. This effort to highlight the differences between adult and child should not obscure the enormous variations in the quality and degree of such differences not only among different children but also in each individual child during the course of his growth and development (p. 13).

When dealing with particular rights of the child or jurisdictions of care-givers, the 1989 *Convention on the Rights of the Child* uses phrases such as "the views of the child being given due weight in accordance with the age and maturity of the child" (Article 12.1) and "provide direction to the child in the exercise of his or her right in a manner consistent with the evolving capacities of the child" (Article 14.2) to indicate various levels of adult-child dependency.

The educational implications from this second level of jurisprudential literature would indicate that the interests of children are, at least to some degree, under the care of adults. Certainly, children have varying capacities for self-determination of interests. What children purportedly can not do for themselves defines what adults ought to do for them. In short, children require

protection, aid, education, and special, direct, intimate, and continuous care by adults who are committed to this responsibility.

Best Interests Jurisprudence

The third level of jurisprudence literature relative to the notion of *the best interests of the child* is represented by three major constellations of court cases. The first of these concerns relates to the painful efforts of the courts to determine the grounds for child custody necessitated by family disintegration (Clulow & Vincent, 1987; Goldstein, Freud & Solnit, 1979a). The literature outlines the historic pathway that court cases have adjusted to many societal changes and the consternation inherent in difficult children's interests situations. For example, Justice J. Sopinka, in *Young v. Young* (1993), says that:

The best interests of the child gained ascendancy as the proper focus of custody decisions at the same time as courts moved toward the equality of women in custody decisions. The power of courts to rule in the best interests of the child was originally found in the equitable *parens patriae* jurisdiction of the Courts of Chancery. Although this power was at first only exercised in respect of the property rights of the child, the concept of the best interests of the child was gradually expanded to include the emotional, physical and spiritual welfare of the child.

Although the welfare principle long predates the 1970s, it was at that time that the emerging focus on the rights of children began to supplant the tender years doctrine (the proposition that children, in general, under the age of seven needed the care of their mothers) that the best interests of the child be the paramount and even sole consideration (*Young v. Young*, 1993, p. 69).

Goldstein, Freud and Solnit (1979a) reflect on the limitations of the state when trying to serve the child's best interest. They say,

We had to remind ourselves that neither law, nor medicine, nor science has magical powers and that there is no societal consensus about what is "best" or even "good" for all children. More than that, we had to address the tension between the fear of encouraging the state to violate a family's integrity before intervention is justified and the fear of inhibiting the state until it may be too late to protect the child whose well-being is threatened. (p. 133)

Clearly, the jurisprudential consideration of the best interest of children is limited because of an inability to predict, with any certainty, what actual human relations will accompany particular relational impositions. However, despite this limitation, the paramount consideration should be the welfare of the child. In the *King v. Low* (1985) case, for example, it was held by Judge McIntyre that the welfare of the child trumps, but does not exclude, other considerations, including the claims of parents.

The dominant consideration to which all other considerations must remain subordinate must be the welfare of the child The welfare of the child must be decided on a consideration of these and all other facts, including the general psychological, spiritual and emotional welfare of the child. It must be the aim of the Court, when resolving disputes between rival claimants for the custody of a child, to choose the course which will best provide for the healthy growth, development and education of the child so that he [she] will be equipped to face the problems of life as a mature adult. Parental claims must not be lightly set aside, and they are entitled to serious consideration in reaching any conclusion. Where it is clear that the welfare of the child requires it, however, they must be set aside. (*King v. Low*, 1985, p. 101)

The jurist's challenge is to avoid too much or too little intervention – too soon or too late to serve the best interests of the child. A number of recent Supreme Court of Canada cases address this dilemma using the best interest of children test. In *The Catholic Children's Aid Society of Metropolitan Toronto v. C.M.* (1994) the Court was asked to consider the appeal of a birth mother who had applied to have her child returned to her from six years of protective custody provided by the Children's Aid Society through foster parents. The Court was asked to examine the lower courts' interpretations of the *Ontario Child and Family Services Act* (R.S.O. 1990, c. C.11) which presents the position that a threat to the best interests of child is sufficient cause for depriving a birth parent of their child. In the Court's conclusion to dismiss the birth parent's appeal, the best interest test was affirmed.

[Such cases] inescapably touch on human emotions and are inextricably linked when the determination of the fate of young children and the natural desire of parents to bring up their children collide The law that courts must apply in the present case is the Ontario CFSA which, properly interpreted, mandates a careful balancing of its paramount objective of the best interests of the child with the value of maintaining the family unit and minimizing state intervention. (*Catholic Children's Aid Society of Metropolitan Toronto v. C.M.*, 1994, pp. 86, 87)

The *Young v. Young* case (1993) provides the Court's interpretation of the best interest test as it relates to the *Charter of Rights and Freedoms*. In part, this rather complex access case the Court considered the requirements of the best interests of the child and whether this standard infringed the guarantees of freedom of religion and expression under the Charter, where noncustodial parent's religious beliefs were opposed to those of custodial parent's and where a birth parent was ordered to discontinue religious activities with their children. Interestingly, Justice L'Heureux-Dube stated that there is a difference between a child-centered perspective (children's wishes) and the more favorable to the courts best interest of the child perspective. In his ruling, one of the learned judges indicated that,

The best interests of the child cannot be equated with the mere absence of harm: it encompasses a myriad of considerations. Courts must attempt to balance such considerations as the age, physical and emotional constitution and psychology of both the child and his or her parents and the particular milieu in which the child will live. One of the most significant factors in many cases will be the relationship that the child entertains with his or her parents. Since custody and access decisions are pre-eminently exercises in discretion, the wide latitude under the best interests test permits courts to respond to the spectrum of factors which can both positively and negatively affect a child. What may constitute stressful or damaging circumstances for one child may not necessarily have the same effect on another. The most common presumption now governing the best interests test is the primary caregiver presumption. It explicitly restores the values of commitment and demonstrated ability to nurture the child and recognizes the obligations and supports the authority of the parent engaged in day to day tasks of child rearing ... the best interests test is nevertheless value neutral and does not, on its face, violate any Charter right. Its objective, the protection of a vulnerable segment of society, is completely consonant with the Charter's values. Broad judicial discretion is crucial to the proper implementation of the legislative objective of securing the best interests of the child. (L'Heureux-Dube, p. 13, cited in *Young v. Young*, 1993)

The lack of consensus with respect to what is meant by the best interests of the child in particular circumstances limits the use of this traditional criterion and puts a great deal of pressure on decision makers to use their ethical discretion and dialogical competence to resolve difficult cases. The experience of the courts reminds educators of the limitations of best interests criteria, the resolve of the courts to hold the best interest of the child test as paramount, the need for ethical competence in the exercise of discretion, and of the dangers of statism and potential tyranny of the expert.

The second set of legal considerations pertains to the issue of the state's right to intrude on parent-child relationships where there is an alleged failure on the part of parents to provide adequate medical care. In cases where inadequate parenting is alleged, where there is maltreatment of children, or where the parents are, by commission or omission, preventing the child from experiencing a secure, aided, and happy life (Gaylin & Macklin, 1982; Goldstein, Freud & Solnit, 1979b), the best interests of the children have been considered. Judgments of the courts usually direct efforts towards empowering parents to exercise their responsibilities rather than towards intervening to undermine or usurp those responsibilities. However, courts are often torn between these two alternatives, especially in cases related to proxy and consent decisions.

Goldstein, Freud, and Solnit (1979b) express their concern with “the selection and manipulation of a child's external environment as a means of improving and nourishing his internal environment” (p. 7). They argue that the law must make the child's needs paramount. This preference reflects more than our professional commitment. It is in society's best interests. Educators share the concern of the courts, and often bear the burdens of the children who attend school with empty stomachs, bruised self-images, and multi-dimensional dysfunctions. These legal considerations remind educational leaders that the disintegration of traditional social structures places higher burdens on the remaining social agents and institutions. The question of who owns the right and responsibility of determining the best interests of children is a question that the courts do not presume to treat lightly nor to assume upon.

The third framework relates to the legal and natural law rights of children including such contexts as freedoms, appropriate educational opportunities, certain constitutional rights, freedom to contract, dispose of property, and freedom to engage in employment (Davis & Schwartz, 1987; Schwartz, 1989). The concept of the best interests of the child may be invoked to determine the grounds upon which the state may intrude upon a child's educational program. Certainly educational leaders are confronted with many intervention dilemmas regarding, for example, special needs students. While intervention alternatives are not usually physically life-threatening, nonetheless, the students' life-chances may be placed at risk. In many instances, parents have differed with school authorities regarding the appropriateness of certain learning programs. The best interests of the particular child may be in jeopardy if no agreement can be reached between parental and pedagogical expertise sets.

What, then, do these jurisprudential considerations contribute to our understanding of the best interests of children justification for educational policy? First, Goldstein, Freud, and Solnit (1979a) describe the difficulty with “pouring content into the best interests standard” (p. 6). They say that in the eyes of the law,

to be a child is to be at risk, dependent, and without capacity or authority to decide free of parental control what is ‘best’ for oneself. To be an adult who is a parent is therefore to be presumed by law to have the capacity, authority, and responsibility to determine and to do what is ‘good’ for one's children, what is ‘best’ for the entire family. (p. 7)

MacKay and Sutherland (1992) have warned that “it is dangerous for teachers to continue to view themselves as acting in a parental role” (p. 28). Common law, however, still imposes “the standard of the careful and prudent parent of which all teachers must be aware” (p. 28). These authors argue that the *in loco parentis* doctrine is “inoperative” (p. 32) and “diminished” (p. 141) and that educators are more likely to act as state agents for education, for policing, and for social welfare. As such, determining what is best is no less challenging a task for

teachers and educational administrators than it ever has been for parents or for the courts (p. 32).

Second, Goldstein, Freud and Solnit (1979a) underline the responsibility of the state to safeguard the child's need for continuity of relationships. This concern serves to remind educators of the need to "reflect the child's sense of timing and account for the law's [or the educational institution's] incapacity to supervise interpersonal relationships and the limits of knowledge to make long-range predictions" (p. 6). According to these authors, the courts have attempted to establish a custom of fundamental sensitivity to the child's way of viewing the world. Bronfenbrenner (1970) would seem to agree:

This is the place to start, for that is where the children are. For only a hard look at the world in which they live – a world we adults have created for them in large part by default – can convince us of the urgency of their plight and the consequences of our inaction. Then perhaps it will come to pass that, in the words of Isaiah, "A little child shall lead them." (p. 165)

Finally, Goldstein, Freud, and Solnit (1979b) outline fundamental problems with the traditional best interest of the child approach. The notion, they say, does not sufficiently convey that the children in question are already possible victims of their environmental circumstances, that they are at great risk, and that speedy action is necessary to avoid further harm being done to their chances of healthy psychological development. This guideline has often come to mean something less than what is in the child's best interests. The child's interests are often balanced against, and frequently made subordinate to, adult interests and rights. Many placement decisions are "in name only" for the best interests of the child. Instead, they are fashioned primarily to meet the needs and wishes of competing adult claimants or to protect the general policies of a governmental agency. Potential hazards are inherent when adult interests are weighed against those of children and when children's needs are in conflict with adult claims. Sadly, adult-centricity may be one of the largest obstacles to securing the best interests of children.

Is it possible that, in tough economic times, the domestic responsibilities toward children can be seen by some as subversive to their own ends and that child advocates may be seen as enemies? Caplan and Callahan (1981) warn that:

The attraction of morality in times of affluence is that not much seems to be needed. More choices are available and thus fewer harsh dilemmas arise Matters are otherwise in hard times. Options are fewer, choices are nastier The warm, expansive self, indulgent of the foibles of others, gives way to the harsh, competitive self; enemies abound, foreign and domestic. (p. 261)

Goldstein, Freud, and Solnit (1979b) remind their readers that neither conflicting agency (parents or state) may hold the best interests of children as paramount.

Perhaps in such circumstances, children need separate party standing and representation by counsel (pp. 65-70). Educators Barnett, McQuarrie, and Norris (1991). suggest that:

With increasing moral decay and the deterioration of many institutions of social change, it is not unusual for educational leaders to take a reactive posture when confronting their moral and ethical obligations. Emphasis is placed on determining the appropriate ethical response to external forces that threaten our underlying moral values. Efforts are often focused on: reacting to external pressures, deciding appropriate ways to implement imposed mandates, coping with growing numbers of at-risk, handicapped and bilingual students, managing increasing delinquency, drugs and crime among students, and dealing with diverse cultural groups While these are certainly worthy moral concerns, they represent reactions to an environment that acts upon our educational system rather than a proactive leadership stance that acts, instead, upon its environment. The focus centers on moral solutions to problems rather than on problem identification from a moral perspective ... in short, we contend that our educational system, and especially its leaders, must focus attention on how human beings are treated and the moral decisions that determine our actions. (pp. 5, 6)

These authors seem to suggest that proactive ethical affirmations of the best interests of children provide a more productive approach to securing children's interests than do reactive responses to the impacts of social, political, and economic winds.

Ethical Interpretations of the Best Interests

C.S. Lewis (1943b) uses the metaphor of a fleet of ships to explain the four dimensions of ethical content. An adaptation of his image provides a framework for the ethical interpretations to follow. First, says Lewis, ships need a mission, a purpose for why they are at sea – an ultimate destination. Second, ships need to be operated in harmony with the laws of nature, the principles of seamanship, and the traditions of the fleet. Third, the ships need to perceive and to avoid the probabilities of getting in each other's way. Individual ships should be maneuvered such that the greatest possible gains and outcomes are realized for the fleet. Finally, the various captains and sailors must be characterized by professionalism and by integrity. The personnel – their intentions, discrete acts, and habituated competencies – will, collectively, embody the virtues of good sailing and right decisions. The individual vessels must be well maintained to ensure their integrity. The application of this metaphor to the education context and to a discourse concerning the best interests of children defines the ethics of purpose, principle, probability, and professional character as essential to the overall project. These distinctions and categories of descriptive ethics are overlapping and

complimentary, on one hand, but also, through their epistemological and ontological roots, are different in expression.

Ethic of Purpose

The best interests of children concept may be understood from the teleological or greatest good perspective. This ethic witnesses educational trustees (elected or professional) setting goals and casting visions that embody their views of what is to be the best interests of children. Kreeft (1990) describes the nature of this ethic of purpose:

Every great philosopher has philosophized about it. Every great writer has written about it. Every thoughtful person has thought about it. And every active person has acted on it. It is the quest for the *summum bonum*, the greatest good, the ultimate meaning and purpose of life, the answer to the question: Why was I born? Why am I living? (Kreeft, 1990, p. 73)

Kreeft (1990) proposes ten candidates for the position of the greatest good: pleasing oneself; helping one's self to wealth; sustaining physical health; gaining honor, fame, and acceptance in sight of others; exercising power over others; experiencing peace and contentment; helping others; sustaining the health of one's soul; gaining wisdom through the knowledge of truth; and experiencing God – five secular (first five) and five sacred (second five) goods. The “good life” has been defined by many writers, including: Plato's “mixed life” of moderation, fitness, beauty, perfection, mind and wisdom, and the pure pleasures of the soul itself (in *Philebus*); Aquinas' “imperfect happiness” of respect, acknowledgment, esteem, freedom, healthy, and individual fulfillment, and “perfect happiness” as participation of and with the Godhead (McGill, 1967, p. 82); Allport's growth, self-esteem, functional autonomy, extension of self and personal Weltanschauung – philosophy of life, creed, ideology (McGill, 1967, p. 324); 151-169), and Wilson's (1992, p. 31) material, social, and virtuous goods.

Aristotle's (384-322 B.C.) determination of a proper purpose or *teleos* (final end) could aid educators in defining the notion of the best interests of the children. For Aristotle, *eudaimonian* (happiness) or flourishing according to one's characteristic being was the highest or greatest good. The attention of this ethic is on the agent and the act. In other words, a particular educational decision is in the best interest of children if it facilitates the development of children's individual potentials as human beings. Scheffler (1985) agrees that policy decisions should be based on an ethic of purpose, but he strongly disagrees with the deterministic views of Aristotle. MacIntyre (1981, 1988) contributes to the Aristotle-Scheffler debate by suggesting a mediating interpretation of Aristotle that would probably be more acceptable to Scheffler. He says that within Aristotle's scheme there is a “contrast between man-as-he-happens-to-be and man-as-he-could-be-if-

he-realized-his-essential-nature" (1985, p. 50). He further distinguishes between external and internal means such that external means are those necessary for attaining a particular purpose but are not a necessary dimension of the ends (1985, p. 172). In his 1988 work, MacIntyre provides a *theoretical* distinction between goods of effectiveness and goods of excellence, but suggests that they are *practically* inseparable (pp. 30-46). Probably he would suggest that best necessitates both goods of excellence and goods of effectiveness. In practical terms for educators, if the best interests of children are determined by the ethic of purpose, then schools ought to be places where children may flourish as human beings, and policy decisions ought to be commensurate with this goal. Resources and means will be related to the ends of helping children realize their potential.

The distinction between organizational purpose and individual educator motive is important as imputed, proposed, and traditional purposes for schools, education, and educators are evaluated with the ethic of purpose in mind. The purpose of educational institutions, according to this ethic, resides in the conscious potential, which in turn directs the organization's resources and which raises some prior questions: What is this educational institution trying to realize? What is the right way to go about the task? Do all policy makers see the purpose in the same way? Does our purpose justify too many means (acts)? An ethic of purpose puts the facilitation of children's ultimate external and internal goods at the center of all decision making. The challenge, issued by Scheffler (1985), is to enhance our understanding of best interest ethics through enriching our notion of human potential. He would urge policy makers to dismiss the myths of fixed potentials, harmonious potentials, and uniformly valuable potentials (1985, pp. 10-16). Rather, he would encourage policy makers to be reflexive and to view children as subjects who are active participants (not merely objects of study) and whose perspectives and perceptions should be respected in the formulation of policies. These policies should acknowledge that there may be many best interests of variable worth residing within each child.

Ethic of Principle

The best interests of children may also be understood from a deontological or principle-based perspective. The ethic of principle judges educational policy decisions according to implicit and explicit rules or duties owed. In other words, the best interests of children are defined by *a priori* duties, rules, or principles. The focus tends to be on the policy decision (means) and on the educator's conformity to an ethical principle or a set of rules.

Kant (1785/1983) is the most prominent of moral philosophers to be associated with the notion that one should act only according to a maxim that would aptly become a universal rule for all. This rule of universality, or the

“categorical imperative,” was formulated in his doctrine of respect of persons. Kant underlines the important obligation of regarding every human being with dignity as one strives to develop a “Kingdom of Ends” (pp. 429, 438). In practical terms, educational leaders should act in such a way that children are never treated as means to ends but, rather, always as ends in themselves. Thus, the determinative criterion for a policy decision based on the best interest of children will be one that affirms the dignity of children as free persons with intrinsic worth and that advocates decisions that might, under similar circumstances, be applied universally to all children, or any person.

Some moral philosophers allow for conflicting but generally equal ethical principles to be used as criteria for determining the best interest of children. Ross (1939), for example, would indicate that educational leaders have *prima facie* duties of reparation, gratitude, justice, beneficence, self-improvement, avoidance of harm, and sustaining of fidelity. Unless over-ridden by competing ethical demands, the educational leader should determine and facilitate the best interests of children in a fashion consistent with each of these duties. For Ross, when these duties are in conflict, then one’s “actual duty” will be self-evident at decision time.

In the *Aspen Summit Declaration* (1992), representatives of over 30 child advocate, education, and service institutions in the United States affirmed six core consensus ethical values that express the concept of the principle ethic. They advocated that these values, “form the foundation of a democratic society, in particular, trustworthiness, respect, responsibility, justice and fairness, caring and civic virtue and citizenship. These core ethical values transcend cultural, religious, and socio-economic differences” (in Josephson, 1992, p. 1).

Similarly, Walker (1992) reports that educational leaders described their core ethical values or duties of principle as:

- 1) caring/respect (related to problems of sexual impropriety and abuse, insecure settings, and personal abuse);
- 2) integrity (related to problems of mediocrity, incompetence, and duplicity); fairness (related to problems of unfair advantage and consensual validation);
- 3) loyalty (related to problems of broken confidences and multiple loyalties);
- 4) professional conduct (related to problems of unfulfilled obligation, diminished objectivity, and threatened respectability);
- 5) honesty (related to problems of lying, deceptive communication, and lack of candor);
- 6) resource stewardship (related to problems of misuse of benefits, misuse of money, stealing, financial grant abuse, and resource abuse); and,
- 7) citizenship (related to problems of disrespect, legalism, and noncompliance or rebellion).

Unethical educational leadership was described by the leaders in this study as any action or attitude that was contrary to these ethical principles. These decision makers were, indeed, concerned with an ethic of principle, as they struggled to define the best interests of children in terms of retrospective or a priori duties, rules, or principles. An ethic of principle would afford to each child the respect and dignity of personhood by highly principled adults fulfilling their respective obligations.

Ethic of Probability

The best interests of children may also be interpreted through a calculation of the probable positive or negative consequences (short and long term) of a particular policy decision for the children within a leader's jurisdiction. Once the likely outcomes are predicted the policy alternatives that result in the greatest benefit and least detriment may be chosen. Of course, many disputes occur over the calculus used to analyze benefits. For example, cost-effectiveness, cost-benefit analysis, risk-cost-benefit analysis, and multi-attribute utility analysis each have advocates, and each are informed by different value criteria. Jeremy Bentham (1748-1832) and John Stuart Mill (1806-1873) are two of the most prominent and progenitive utilitarians cited in the literature. According to simple utilitarianism, one may judge the best interests of children by determining which policy decision is likely to produce the greatest pleasure, happiness, or utility for the greatest number of children in one's jurisdiction. In other words, the best interests of children are served if the negative consequences are minimized and positive benefits are maximized for the greatest number of children in one's care. Disputes among utilitarians regarding the relationship between individual and public interest continues to rage, especially in political and economic philosophy circles. Adam Smith, for example, believed that individual pursuit of interests would have a natural positive consequence for the community. By contrast, the reforms proposed by Bentham's (1781/1988) utilitarianism emphasized the need to artificially identify and legislate interests to ensure that the public interests would be safeguarded.

When applied to the best interests of children, Bentham's approach provides a means for calculating the advantages of one policy proposal over another. Bentham proposed that the state might measure and compare the amounts of pleasure or pain that particular actions produce and thereby calculate the relative merits of one alternative over another. If trustees must, at budget time, decide between resource room material and new bus tires, they might, for example, calculate the relative intensity of safety and learning benefits (or disadvantages) that the supply of (or withholding of) either bus tires or resource room material would have on those involved. Second, the duration of benefits and disadvantages

accrued to students would be calculated. Third, the certainty or likelihood that interests would accrue to children would need to be considered. Finally, remoteness of experience of benefits or disadvantages and the relative fecundities of each option would be weighed using Bentham's approach. The educator might ask: How likely is it that one alternative will produce more advantage or disadvantage over time? What is the likelihood that the alternative will help students to experience personal and/or educational benefit? To what extent are benefits or disadvantages produced in other people's lives? Bentham suggested that, in the case of conflicting interests and values, the decision may be determined by using the descriptive warrants to quantitatively calculate the best option. Ultimately, Bentham's ethic of probability is grounded in his empirical methodology and is secured by his faith in democracy. He believed that people will, in the long term, recognize whether or not particular legislated interests, for children, are best or not, and that they will express their views in amendments to legislation or to their legislative representation.

Mill (1979/1861) hoped to improve on Bentham's approach to the conflict of alternatives by suggesting a more qualitative assessment template. Mill extended Bentham's probability ethic by developing secondary ends "which would serve as guides for action and could be justified by the principle of utility ... [these] became indispensable guides for understanding the primary end of utility" (Brown, 1991, p. 89). He indicated that goods or interests differ in kind, and that higher internal goods are to be preferred over lower external ones. According to Mill, goods do not differ merely in their amount or intensity but also their normative value. For example, he thought that intellectual goods (such as outcomes from resource room material) would be higher than sensual goods (like new tires on buses). Interestingly, an argument can be made that the sense of safety or security afforded by bus tires is a more basic need, good, or interest than is the intellectual good of learning because of its prerequisite nature.

Both Bentham and Mill believed that happiness or felicity for the greatest number of people (children) would be the only legitimate and primary outcome for our educational strivings. The ethic of probability encourages educational leaders to focus on their responsibility for outcomes as well as on inputs. This ethic reminds educators to consider not only principles of due process or just means (as with the ethic of principle) but also to perceive the effect of policy on both individual well being and on social good.

Ethic of Profession

The best interests of children may also be understood in terms of the ethic of profession. According to Barker (1992) the notion of professional has had strong religious connotations. In medieval times, the Latin noun *professionem* had come

to mean the taking of religious vows. The notion of profession is derived from the verb *profiteri*, meaning “to make a public declaration” (Barker, 1992, p. 84). The concept originally evoked the image of skilled helpers expressing their willingness to serve the best interests of others by announcing their availability – putting a shingle of invitation on their door, so to speak. Barker says, “we think of professions as occupations whose ethical ideology constricts the freedom of those who work in them to pursue their own self interest” (p. 92). This ethic of character, of altruistic service to humankind, welcomes strangers and professes uncommon expertise and integrity. The professional ethic is indicative of those possessing both role virtues (in the Homeric hero sense) as well as moral, intellectual, and technical virtues (MacIntyre, 1988, pp. 88-102).

With respect to the best interest of children, Soder (1991) advises educators to release their preoccupation with similitude arguments, that they should hold the same status and place as professions such as medical physicians. These arguments are self-defeating (p. 72), he says. Instead, he suggests that “teachers can legitimately argue for ... worthiness because of the moral imperative that results from the nature of children and the nature of the relationship of the teacher, the parent, and the child” (p. 72). He argues that because “parents are required by law to send their children to school” and, for most, “public schools represent the only means to comply” (p. 73), there is an equal surrender of children of unequal status to a system of equal treatment. Parents “turn their defenseless children over to virtual strangers” with considerable trust for the “general good” and with the understanding that these professionals will serve not their own but the children's best interests. Soder goes on to say that while parents will accept this claim of general good, they “demand in return a guarantee that the child will be kept free from physical and mental harm” (p. 73). This “carries with it immense moral obligations and provides the legitimate basis for restructuring teacher professionalism rhetoric” (pp. 73, 74). Soder's argument that “teachers, by definition of their relationship to children, are critical agents in ensuring children's humanity” (p. 74) is based on “legitimately moral grounds, rather than [as is often perceived] on motives of pecuniary gain or bureaucratic maneuvering” (p. 74). He states that “if teachers wish to have their claims to higher status and respect realized, they must stick with the bedrock argument from definition. No other source of argument will do” (pp. 75, 76). This point of view affirms the claim, made at the outset of this article, that the best interests of children notion should continue to be a shibboleth for educational leaders. Soder reminds educators that to argue from similitude or circumstances will be self-defeating and ineffectual. The only sustainable grounds for the professional legitimacy of educators is their role as the state's educational agents for promoting the best interests of the children. Fenstermacher (1991) adds:

What makes teaching a moral endeavor is that it is, quite centrally, human action undertaken in regard to other human beings. Thus matters of what is fair, right, just and virtuous are always present ... that there are moral qualities to a teacher's actions would amount to little more than a platitude if it were not for the fact that the morality of the teacher may have a considerable impact on the morality of the student. (p. 133)

Sockett (1991) states "teaching is conceived as a profession with complex educational ends" (p. 228) and is a profession for which accountability problems commonly arise. Both Sockett and Wagner (1989, pp. 122-138) may be interpreted as arguing that the best interests of children notion raises ethical accountability issues. Sockett, for example, conceives these problems as follows:

- The problem of balancing consequences and results against principles and standards;
- The problem of teachers' diverse conception of morality;
- The conflict between private and public interest;
- The problem of bringing moral consideration into public debate.

(pp. 230-231)

Sockett, citing Jennifer Nias, points to the argument that trust demands the ability to make accurate predictions about activities and attributes of an enterprise (like public education) and to reach perceived agreement over ends (p. 232). For a trusting relationship to exist, it is not enough that educators be understood as "pro-kids." According to Sockett (pp. 233-234), teachers must be known by the parents and children as people with fidelity, veracity, friendliness, care, and honesty – as people who will shield children from danger, will encourage them, protect them from greedy and ambitious parents, will treat them fairly, will look after their interests, and will not harm them. Sockett argues that the ethic of profession is the synchroneshing ethic that draws together the complexities of all four ethics in the best interests of children.

Determining the Case-Specific Best Interests of the Children

Educational leaders are often called upon to mediate specific public and private interests that involve children. Together with societal and other interests, educators ought to be determinate with respect to the educational best interest of children. In other words, professional educators should take a major practical and ideological role in mediating values and asserting the jurisprudential and ethical perspectives, described above, in aid of the best interests of children. Complicating this educational advocacy is the fact that conflicts often occur within and between different cultures, organizations, and traditions, in addition to the involvement of varied personalities and circumstances. What all of the best interests of children doctrines have commended, at least implicitly, is that the interests of children supersede the interests of all other interests. This holds true whether those be

career aspirations of educators or the economic constraints of rate-payer sensitive trustees. Of course, it can be very difficult to know, with accuracy and appropriateness, what these best interests might be for a given set of children. There is no singular right, good, or virtuous pattern for all children. The fallacies of determinism, rationalism, and relativism must be displaced with jurisprudentially and ethically defensible expressions of the best interests of children. These defensible expressions should be based on a distillation and application of principles that a leader can confidently claim are critically warranted by responsible conceptions of justice and caring.

As indicated, educational decisions and policies related to children must be, at the very least, grounded in applied jurisprudential and ethical considerations. The plurality of understandings related to the best interest of children concept does not and should not deter the leader from taking responsibility for the influence and direction for this mediation work. The more articulate a leader is regarding the various notions and visions of the best interests of the children, the better are constituent stakeholders served. The well-considered shibboleth that the best interests of children will be taken to override conflicting interests may be considered both a safe and essential grounds for educational decision making. Moral diversity and disagreement seem never to have been more apparent than during these last decades of the 20th century. The symptomatic malaise and the semantic maze characterizing our moral philosophies have engaged thinking persons for the last 3000 years, with very little consensus being achieved. Educational leaders need to be increasingly discerning relative to the values and interests of the people they claim to lead and serve. Burke (1969) has suggested that when there is disagreement in the language of our judgments and motivations, then attention to the adequacy of our answers to five basic questions will help agreement to be restored: "What was done (act), when or where it was done (scene), who did it (agent), how she or he did it (agency), and why (purpose)" (p. xv).

A number of more specific questions may be used to determine or clarify the best interests of children in varied circumstances, especially where interests seem to be in conflict. The so-called "golden rule" continues to be a useful tool for presenting interests from the position of the party most affected. This role-reversing instrument attempts to determine what the response or effect might be from the other's perspective. Asking what a child or a caring parent might think or feel may help to the educational leader to reverse roles and anticipate the possible benefits and harms resulting from a decision. There are many other variations on this and other themes that can be used: What would we do if our own children were watching and learning from the example of this decision-making process and its effects? Would this be our decision if these were

our own children or those of a person we had particular respect for? Is the justification for this decision, over its alternatives, sufficiently explainable to the people (including the children) for whom it has the most relevance? As community educators, have we addressed this decision in a fashion consistent with our professional mission or our institutional mandates? Is this a policy that we believe would be right and just for other children in this or any other jurisdiction given similar circumstances? How do the long term benefits from this decision compare with the short or intermediate term gains or losses to the children? Are we allowing the long term interests of all the children concerned to trump the short term interests of some? Are any children, anywhere or at any time likely to be hurt or suffer disadvantage from this decision? If they are, do the varied types of benefits, that are sure to be derived from this decision, clearly outweigh these potential harms? If we allow this unequal distribution of educational resources, is it safe to say that the maximum numbers of children have benefitted and not a single child has been significantly disadvantaged? Does this decision give an appropriate reflective ratio to both the individual best interests of a particular child and the collective best interests of all the children in our school or system? Could we unashamedly tell our respected professional peers or a group of caring parents our reasons for this decision with full confidence that given the same circumstances and information they would agree that we had carried forward the best interests of the children in our deliberations? Would our decision be seen as choosing the most caring and just alternative for the best interests of children by an all knowing, just, and loving Judge? Are the particular standards or external obligations entrusted to us with respect to the social definitions of the child's best interests satisfied by the decision taken? Is the decision we are making consistent with our careful stewardship of the public trust? These examples are simply illustrative of questions used as instruments for reflecting on important jurisprudential and ethical aspects of the best interest of children rather than using the best interests of children phrase or cliché as an instrument of sententiousness.

I suggest that all educational leaders should be equipped with a critical view of the best interests of children. This will give them added acumen for mediating value conflicts and disagreements related to children. When proposals, policies, and alternate decisions are put forth we must not only clarify the empirical facts but also generate and recognize the varying grounds and warrants that commend particular alternatives. I believe leaders need to be encouraged to ask questions of themselves and their colleagues that help to ensure the best interests of children and avoid platitudes, sophisms, and manipulations.

Conclusion

At the very least, educational decisions and policies related to children must be grounded in applied jurisprudential and ethical considerations which have been contextualized through pedagogical research and practice. It is to be assumed that leaders influence and empower others to take ownership of the educative mandates. As I see it, one of the most important functions of an educational leader is to enlist others to help facilitate the best interests of children. When carefully considered, the shibboleth of the best interests of children is a safe grounds for a great deal of our educational decision making.

Leaders need the capacity to mediate value conflicts and disagreements using jurisprudential and ethical understandings of the best interests of the children. Where there are competing advocates, it is a core responsibility for leaders, with their collaborators, to help negotiate the various interests. When proposals, policies, and alternate decisions are put forth, leaders must not only clarify the empirical facts but also generate and recognize the varying grounds and warrants that commend particular alternatives. Leaders ought to be suspicious of any advocate who claims to be able to accurately predict the long term consequences of interventions for children. However, some people are in better positions relative to particular children than others. It may be wise to exchange the question "What is best for these children?" with the question "Who should decide what is best for these children?" The power to decide what is best can reside with a variety of persons. It makes sense to either share the decision making or encourage those who might know better to contribute their particular relational expertise. Leaders need to be encouraged to ask hard questions of themselves and their colleagues that help to ensure the best interests of children.

Many decisions by educational leaders regarding children require the wisdom of Solomon to do justice to the conflicting needs of children, parents, teachers, and other stakeholders. The real mother, in the Court of Solomon, won the day because she was willing to respond to what the King deemed to be a deep and responsible commitment to the best interests of the child. Likewise, this article encourages educational leaders to continue their efforts at creating schools that work for the best interests of children by bringing to the surface commonly taken-for-granted meanings that are embedded in the cliché-oriented notion of the best interests of the children and collaborating with others who share their vision for and commitment to the best interests of children.

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