

Legislating for Love

Kathleen A Marshall

Abstract

Everyone needs to feel loved. The author examines what 'love' means in the context of residential childcare. She discusses issues of: personal and professional boundaries; power and abuse; people and systems; rights and expectations. She sets out a vision of what residential childcare might look like in the future and concludes that legislating for love is both possible and desirable in setting aspirations.

Keywords

Residential care, child, care, love

Corresponding author:

Kathleen Marshall, childlaw@btinternet.com

Introduction

This is not an academic paper. It is a personal reflection based on more than 30 years' experience of working with, and thinking about, issues relating to children and young people. It represents my groping towards some kind of vision of what a care system might look like that provides a truly loving environment for the children and young people it embraces.

Mine is the perspective of an adult with no personal experience of living within the care system. But that does not relieve me of the responsibility to comment – to try to make sense of what I have heard and what I have learned and to offer it up as a contribution to the debate.

What experience do I bring to this issue?

In 1989, I started work at the newly established Scottish Child Law Centre, and in 1990 was appointed as its Director. From 1994 to 2004, I acted as an independent consultant on child law and children's rights. During that time, I chaired an inquiry into historical abuse in Edinburgh children's homes. The Inquiry arose out of the convictions of Gordon Knott and Brian McLennan for abuse of residents of three children's homes (Clerwood, Dean House and Glenallan) between 1973 and 1987. The Inquiry's report was published in January 1999 (Marshall, Jamieson & Finlayson, 1999).

From 2004 to 2009, I served as Scotland's first Commissioner for Children and Young People, a post with a wide remit but involving a substantial focus on residential care. In 2008, my office published *Sweet 16: the age of leaving care in Scotland* (Scotland's Commissioner for Children and Young People, 2008) and an accompanying information leaflet for young people thinking about leaving care.

My work since demitting office as Commissioner included participation in the pilot study *Time to be heard* for former residents of the childcare system that paved the way for the current National Confidential Forum. The pilot study, whose findings were published in 2011, focused on the experiences of former residents of Quarrier's Homes, Bridge of Weir, which operated from 1871 until

1989 (Shaw, 2011). I also served on the McLellan Commission which reported in 2015 on safeguarding procedures within the Roman Catholic Church (McLellan, 2011).

In this article, I will:

- Acknowledge work already done on 'love' in residential care;
- Ask what we mean by 'love';
- Discuss 'love' in Residential Care;
- Consider the issue of professional and personal boundaries;
- Discuss issues of power and abuse;
- Consider the relative importance of systems and people in shaping a loving childcare system;
- Offer some reflections from my personal life on the 'people' dimension;
- Offer some reflections from my professional life on the contribution a rights-based approach can make to shaping a system able to facilitate love;
- Set out some thoughts regarding a vision for the future; and
- Set out some conclusions on 'legislating for love.'

What we already know

Children and young people living apart from their families face particular obstacles in satisfying the universal need to feel loved. Within the residential childcare system, some of the systemic obstacles are well known, such as the issue of multiple placements, but the personal dimension – the 'love' factor – is more complex.

In recent years, a lot has been written about 'love' in the care system, indeed an entire issue of this journal was dedicated to it ([SJRCC, 13\(3\)](#)).

And the theme of love is prominent in the work of the current [Scottish Independent Care Review](#).

What do we mean by 'love'?

The leaflet accompanying the *Sweet 16* report was written by care-experienced young people. They wanted to include the word 'love' in the list of things needed to prepare them for independent living. This evoked the following response from Glasgow City Council (*Sweet 16*, p. 27):

We are concerned that this leaflet suggests that no young person should be moved on without the proper 'love'. The terminology love is not one we would use in Glasgow, as it is not something we demand of residential staff or foster carers. We would generally use the term 'care', which includes appropriate levels of emotional support.

This caused a great deal of hilarity in the office and I confess that, when speaking about the issue, I shamelessly poked fun at it. However, as I also indicated in the *Sweet 16* report, at one level I could see where they were coming from.

From an adult perspective, 'love' can be experienced as a dangerous word, suggesting inappropriate relationships, sexual exploitation and the undermining of professional boundaries. As in the Glasgow response above, professionals often feel more comfortable with concepts of care and compassion.

From a child's perspective, it seems to me that it is more about feeling valued, feeling special (in terms of the affectionate place held in the life of another) and being able to rely on an enduring commitment. The first point is not a problem from a professional point of view, but the second and third may be. For example:

- How many truly 'special' relationships can one person maintain?
- How do you ensure every child has at least one 'special' relationship? Can you just assign the role or does it have to be built on an emotional bond?
- Would the requirement for a commitment that goes through, and substantially beyond, a young person's time in care be too demanding for the worker? Is there a need for boundaries to prevent workers from becoming overwhelmed?

My conclusion is that a residential childcare system built on love, would need to make space for the nurture of special and enduring relationships in a way that recognises the needs of both the children and the workers.

Love in residential care

The old poorhouses or workhouses, which included children amongst their inmates, were highly structured and, though 'God is Love' might have been plastered across the wall, it was far from the kind of affectionate love that children crave.

Early children's homes set up by passionate individuals often adopted a more compassionate approach. Quarriers Homes in Bridge of Weir is representative of a type of residential care that tried to emulate family life by a cottage-based system centred on house mothers and house fathers. A good Christian character and love for children were the requirements for the posts. The level of formality and the existence or absence of love depended very much on those heading up the cottages. Some participants in *Time to be heard* gave glowing accounts of their time in Quarriers, whereas others suffered years of oppression and abuse.

In a sense, that is quite representative of family life. It is a myth that all parents love their children. Most do, but some do not. For some children, their removal from their families into residential care was a huge relief and the source of great happiness. Modelling a residential childcare system on family life offers no guarantee of love.

Other children's homes were more institutionalised. One of those that featured in the Edinburgh Inquiry was Clerwood, which was described as having at one point a 'matronly feel' about the building with 'brasses well-polished' and a very hierarchical management structure (Marshall, Jamieson & Finlayson, 1999, p. 23). The period addressed by the Inquiry witnessed a general move away from this institutional approach towards a more relaxed atmosphere and a more homely environment, leading to a re-setting of some of these boundaries and introducing the possibility of deeper, more complex and potentially more contentious relationships between staff and residents.

Glenallan children's home experienced such a change of culture. Chid G had experienced various placements before being placed there in 1976. His description of the change from a deprived home, to an authoritarian regime and then to a relaxed one (Marshall, Jamieson & Finlayson, 1999, p. 28) is poignant:

I loved Glenallan at first because I was used to being in a house with no electricity, food or heat. [The former officer in charge] was great. She was religious and strict, but not abusively so. She made us say prayers before meals and going to bed. When she moved, Gordon [Knott] got the job as officer in charge. At first I thought he was a great guy. He lifted the rules. There were no more prayers and we could have sugar puffs instead of porridge.

The relaxed atmosphere clearly facilitated affectionate relationships but, as will be discussed below, this could lead to betrayal of the child's trust.

Many of the former residents of Quarriers said they never experienced any affection while resident in the home. Nevertheless, as part of the philosophy of creating a family-like environment they were required to call their house parents 'mummy' and 'daddy'. This was resented by some of the children who emphasised that they already had a mummy and daddy. I am also aware that some young people prefer residential care to foster care because they do not wish to be shoe-horned into a family environment where they feel they do not fit.

My conclusion is that the institutional models of the past cannot be seen as fertile ground for loving relationships. The surrogate family model will be appropriate for some children and young people, but others will benefit from more creative approaches.

Boundaries

Professional boundaries are more evident in institutional settings and can be reinforced by uniforms and the use of titles. But removing these does not remove the inner boundaries that workers may erect to allow them to:

- Protect their private lives and emotions from being overwhelmed by the needs of the children and young people they care for; and
- Protect their reputations in the face of suspicion of sexual abuse.

It is not just adults who set up boundaries; children and young people do so too, often with good reason, and we betray their trust if we encourage them to lower their boundaries and then fail to deliver on what we have promised.

From the child's perspective, boundaries might serve to:

- Avoid betrayal through disruption of relationships with workers; or
- Avoid getting too close to other residents.

I was very struck once by a comment from a young person in residential care that you didn't make friends in care, only acquaintances. I had naively assumed that some sort of family-type bond, or at least close friendship, might grow between young people living in the same environment. But, on reflection, I could understand that this would not necessarily be the case and that multiple placements and the complications of difficult personal histories might act as a barrier to this.

My conclusion is that we cannot just dismiss the need for boundaries without addressing the underlying functions they fulfil for workers, children and young people.

Power and abuse

It is unfortunate that, in thinking about the future of residential care for children and young people, the issue of possible abuse has to have such a high profile. Sadly, experience has shown that children separated from their families may be abused, neglected and exploited by those who are supposed to care for them. Those who care for vulnerable people must have some authority or power to promote the best interests of their charges but, as the old saying goes, 'power tends to corrupt, and absolute power corrupts absolutely'.

The abuse that was the focus of the Edinburgh Inquiry occurred during that period when the formality evident in the earlier days of Clerwood and Glenallan

was being dropped in favour of a more relaxed environment, with little external supervision or monitoring. To the children it felt like the officers in charge had absolute power – and they were not far wrong. What was clear from the Inquiry was that the power abused can be rooted either in autocracy (within a formal system) or in emotional manipulation (in a more relaxed environment).

Edinburgh's Children (Marshall, Jamieson & Finlayson, 1999, p. 25) sets out how Child E from Clerwood described the differences in approach of the two workers who she claimed abused her. Knott, she said, displayed a mixture of 'arrogance, confidence and friendliness'. He carried out his behaviour in a 'nicer way' than McLennan who she described as a bully.

A similar distinction was made by participants in *Time to be heard*. Shaw (Shaw, 2011, p. 52-3) observes that some said they did not know the abuse was wrong at the time and saw it as a sign of affection. They had enjoyed the feeling of being special. Others said they hated the perpetrators and the sexual abuse they experienced. They dreaded being approached, cornered, threatened, and denigrated.

Edinburgh's Children (Marshall, Jamieson & Finlayson, 1999, pp. 26-29) notes that, in Glenallan, the informal atmosphere fostered by Gordon Knott facilitated a lot of physical contact between staff and children. At weekends, they sat up late together to watch television and the lights were put out. Staff were aware that Child G (then aged 12) was a favourite of Knott who would cuddle up with him on the sofa and hug him. When the film ended, he would take the boy upstairs for a bath.

Child G said Knott presented himself as an alternative father to him at a time when his natural father was in prison for murdering his mother. Knott accepted that he had a favourite amongst the children, whilst continuing to deny some aspects of the relationship. He said other staff had favourites too, although he did not suggest any accompanying suspicious behaviour.

Amongst the troubling aspects of this scenario is that the cosy scenes and special relationships children craved could act as a cover for abuse, although not, of course, by all staff of all children. It is understandable that the children

would enjoy the closeness and the feeling of being special – of feeling loved. The dilemmas are:

- How the healthy aspects of warm and special relationships can be facilitated without being exploited; and
- How carers can be held accountable for their exercise of power without too much bureaucratic and risk-averse scrutiny.

Which is more important – the system or the people?

Clearly there must be mechanisms in place to safeguard children and young people in all settings – whether in the family or in alternative settings, including residential care – and this requires a system.

One thing that has become clear from a whole swathe of inquiries is that whatever system is adopted, it must be a listening one. It must be able to listen to children and young people, take what they say seriously and respond appropriately to any concerns they may have. It must listen to the friends and family of those in residential care – even those who may be regarded as troublemakers or suspected of having another agenda. (This was an issue in a case reported in *Edinburgh's Children* (Marshall, Jamieson & Finlayson, 1999, pp. 63-66).

The character of carers is of course supremely important. Sometimes in the past this has been a neglected concern. *Edinburgh's Children* (Marshall, Jamieson & Finlayson, 1999, p. 127) described how easy it was in the past to get work in a children's home and observed that even as late as 1993, there was a report of someone being recruited in a pub to do a shift that night.

In Quarriers, there was emphasis on the character of the carers, but it is clear that being a 'good Christian person' in the eyes of the adult community is no guarantee. And the requirement to have a love for children may not have been tested beyond a formal assent by the applicant.

The physical, sexual and emotional abuse perpetrated by some members of Roman Catholic religious orders involved in residential childcare has been horrific. It makes me wonder how people become abusers. Some, no doubt,

seek out environments in which they will have access to vulnerable people in order to abuse them, but others may have entered religious life with high and worthy motives and somehow got caught up in it. It would be interesting to do some research on the perspective of members of those religious orders who were involved in acknowledged abuse to find out what happened. I can see that this might be regarded as giving abusers an opportunity to explain away their behaviour and deny personal culpability, but I think there is an important question that needs addressed: can a bad system or culture corrupt a carer?

If we are talking about love, then clearly the character of the carer is paramount. But how do you assess that accurately? During the Edinburgh Inquiry it became clear that many of the positive traits of an effective worker with children and young people could also facilitate abuse through the appearance of empathy, affection, the ability to get close to children and young people and engage their trust.

My conclusion is that both systems and people are important. You need an effective system to ensure safe recruitment practices and to monitor what is happening in interactions between carers and their charges, and you also need to ensure that those recruited are open to warm and loving relationships with the children and young people in their care.

People: reflections from my personal life

When I think or write about love in residential care, I sometimes feel like a hypocrite. I ask myself whether I am asking more of residential care workers than I would be prepared to give myself.

Before I became involved in child law and children's rights, when my children were still young, I worked as a volunteer for a hospice. I befriended terminally ill people and their families, and the relationships would continue for a period after the death of the family member. I was prepared to get close to people and I believed that closeness was something volunteers had to contribute that was additional to what professionals could give, with their workloads and professional objectivity.

In most cases, I could retire gracefully as the bereaved took up the threads of support from other family members or friends. One case was more challenging – a widow with no supportive family or friends who made increasing demands upon me. I tried to do what I could as she was very needy, but it became clear to me that it was not sustainable; she would never be satisfied unless I left my family and became the daughter she never had. I eventually had to bow out and I felt that I had failed. Sometime afterwards, I started work at the Scottish Child Law Centre. I tried to maintain my person-centred approach on the Centre’s advice line. My approach was that there was no such thing as a legal problem in child and family law, there were only people problems, and the law provided a set of tools to unpick them. But I admit it was a relief to be able to step back a little from the intensity of inter-personal relations in my voluntary work and have a little bit of professional distance.

When I reflected on my experience as a hospice volunteer, I concluded that the magnitude of the kind of need I had encountered in that case could be met effectively only by a group of people – preferably a small and still personal group – rather than an individual.

Later on, in my professional life, I encountered social workers, care workers and foster carers who somehow seemed to maintain intimate and complex relationships with a considerable number of children and young people, sometimes in very difficult circumstances. That gives me faith that what is being contemplated in the ‘love’ agenda is achievable; but my conclusion is that we should be wary of asking too much of the general run of workers and ensure they are not overwhelmed by the demands placed upon them.

Systems: reflections from my professional life

The UN Convention on the Rights of the Child famously proclaims that:

the child, for the full and harmonious development of his or her personality, should grow up in a family environment, in an atmosphere of happiness, love and understanding (General Assembly of the United Nations, 1989).

It, and a number of subsequent international documents, set out a whole swathe of standards for residential care to respect the rights of the child residents.

Rights are important and they can be useful. They can help shape an environment that allows loving relationships to grow.

In April 2004, just before I took up my appointment as Scotland's first Commissioner for Children and Young People, I gave evidence to an All-Party Parliamentary Group at Westminster which was considering proposals for a Children's Commissioner for England, and this is what I said:

Rights are sometimes presented as the common currency of a selfish, individualistic society. However, it is my contention that the rights of the child represent:

- A *promise* by a society that cares about its children;
- A *claim* by those children upon that society, to keep it to its promise; and
- A *positive standard* against which the quality of our children's lives can be measured.

One could characterise Children's Commissioners as the 'guardians of the promise', acting on behalf of children and young people to hold our society to its own promises, even when the going gets tough, when the standards that were set in the cool light of day become inconvenient or over-burdensome, or politically inexpedient.

The last sentence is important because, if rights cannot be easily enforced, they are merely a fair-weather friend.

Edinburgh's Children (Marshall, Jamieson & Finlayson, 1999, p. 152) reported that, in order to effect necessary savings, Edinburgh City Council was applying a 'performance factor' to achieve budget cuts across the local authority. This had also been applied to residential childcare, meaning some posts had to be left vacant. Extra temporary staff were employed, but this disrupted key worker relationships with children, undermining the flourishing of a loving environment.

Edinburgh's Children (Marshall, Jamieson & Finlayson, 1999, p. 262) commented:

The United Nations Convention on the Rights of the Child requires local authorities to regard the welfare of children as a primary consideration in all matters that concern them. This applies also to the allocation of resources. Children looked after by the Council cannot be regarded as another budget heading to which savings can be applied.

In response to the Inquiry's recommendation, the Council removed the performance factor from residential care.

I wish I could say that battles once won are won forever, but that is not the case. The rights of the most vulnerable in society will always be at risk of being undercut by those with greater power and resources. It is and will be a continuing battle to make sure the rights of children and young people are enforced.

I am aware that there has been discussion about the impact of more recent budget cuts on services for children. My conclusion is that it is imperative that children and young people, particularly those at risk, have adequate, appropriate and accessible means, and advocates, to challenge abrogation of their rights, especially where they impact upon nurture and love.

Towards a vision for the future

Here are my conclusions so far:

1. A residential childcare system built on love, would need to make space for the nurture of special and enduring relationships in a way that recognises the needs of both the children and the workers.
2. The institutional models of the past cannot be seen as fertile ground for loving relationships. The surrogate family model will be appropriate for some children and young people, but others will benefit from more creative approaches.

3. We cannot just dismiss the need for boundaries without addressing the underlying functions they fulfil for workers, children and young people.
4. A residential childcare system must be designed to:
 - a) Facilitate the healthy aspects of warm and special relationships while mitigating the possibility of these being exploited; and
 - b) Hold carers accountable for their exercise of power without too much bureaucratic and risk-averse scrutiny.
5. Both systems and people are important. Effective systems should ensure safe recruitment practices and monitor what is happening in interactions between carers and their charges. Those recruited should be open to warm and loving relationships with the children and young people in their care.
6. The system should also take care that workers are not overwhelmed by the demands placed upon them.
7. No system is perfect, and no person is perfect, and we should never be complacent. It is imperative that children and young people, particularly those at risk, have adequate, appropriate and accessible means and advocates to express their concerns and to challenge abrogation of their rights, especially where they impact upon nurture and love.

What might a residential childcare system look like that was built upon these principles?

First of all, I should say that this focus on residential care in no way undermines or contradicts the need for kinship care or foster care which will be the most appropriate solutions for many children and young people. Residential care provision should be flexible, allowing options to meet the needs of individual children and young people.

Where children or young people are likely to be in residential care for a number of years, I would like to see thought being given to matching small peer groups and setting them up in houses chosen to meet their needs. These would not be 'children's homes' with 'statements of functions and objectives' but more-or-less

ordinary houses (perhaps two houses or flats knocked together) designed around the needs and legitimate wishes of the children and young people resident there. There would be no pressure on them to leave their home when they reached a particular age, though the type of support provided to them might change. Indeed, one or all of the young people might subsequently rent or even buy the house and live in it for many years. Of course, you cannot rely on peer relationships enduring any more than you can assume that siblings will care for each other and want to have a special place in each other's lives, but it may be that, for some young people, their peer relationships turn out to be more enduring and loving than relationships with adult carers.

There would, of course, have to be a facility for staff to live in. Ideally, this would be the usual place of residence of two staff who are committed to stability, but it would also have to be recognised that this could not be guaranteed. The live-in staff should be supported by others who visited regularly and stayed over at times, just like relatives in any family. The aim would be to set the scene for children and young people to develop strong peer relationships as well as loving relationships with those who care for them. It would provide extra eyes and ears for the purpose of monitoring, as well as widening the network of love and support for the children and young people and avoiding burn-out of staff.

Of course, this model would not be appropriate for all children and young people: some will need more support and specialist intervention. But the principles of facilitating as normal a life as possible and warm loving relationships should guide whatever provision was designed around the young person's particular needs. It should not be a 'children's home': it should be *their* home.

As well as this focus on particular small groups of children, there might be a hub of support and friendship open to all care-experienced young people and their current or former carers. This would have a social element as well as providing advice and assistance and might be particularly helpful as a point of contact and support for those who have become estranged from their peer group or their former carers, allowing new relationships to be established.

This hub might also be a place where young people, staff and former staff could express concerns about current or past care with full confidence that they will be listened to and taken seriously. The hub would have ready access to legal, advocacy and other support services.

Can you legislate for love?

It is, I believe, reasonable to introduce the word 'love' into a law for children in order to set out an expectation that forces us to wrestle with the complicated demands it makes upon us. That does not mean love will magically appear. 'Love thy neighbour' has been a religious command for millennia, but not even the threat of eternal torment in the fires of Hell has forced religious people to comply.

Nor does inserting love into the job description of a care worker guarantee a loving approach to their engagement with children and young people. It was part of the requirement for work as a Quarrier's house parent, but that does not seem to have been a barrier to neglect and abuse.

Nor can we guarantee that any love offered by staff will be reciprocated by children and young people. They have to go through a process of learning to trust and to let down any barriers they have erected to avoid further hurt. And if they do so, we must not let them down.

We cannot command love, but we can and should aspire to it. We should name it as our aspiration and do our best to create the conditions in which it can be nurtured.

References

General Assembly of the United Nations (1989). *United Nations convention on the rights of the child*. Geneva: United Nations.

McLellan, A. (2015). *The McLellan Commission: A review of the current safeguarding policies, procedures and practice within the Catholic Church in Scotland*. Edinburgh: APS Group Scotland.

Marshall, K., Jamieson, C., & Finlayson, A. (1999). *Edinburgh's children: The report of the Edinburgh Inquiry into Abuse and Protection of Children in Care*. Edinburgh: City of Edinburgh Council.

Scotland's Commissioner for Children and Young People (SCCYP) (2008). *Sweet 16?: The age of leaving care in Scotland*. Edinburgh: SCCYP.

Shaw, T. (2011). *Time to be heard: A pilot forum. An independent report by Tom Shaw commissioned by the Scottish Government*. Edinburgh: The Scottish Government.

About the author

Kathleen Marshall is a retired solicitor and child law consultant. From 1989 to 1994, she was Director of the Scottish Child Law Centre. For the next ten years, she was a child law consultant and one of her tasks was to chair an inquiry into historical abuse in children's homes in Edinburgh. In 2004 she was appointed as the first Commissioner for Children and Young People in Scotland. On demitting office in 2009, she undertook a number of consultancy projects, particularly in Northern Ireland and Guernsey.