



BOOK REVIEW ESSAY

Safeguarding Children and the Overreaching of the State into the Private Realm

Reviewed by Richard House

Lauren Devine, *The Limits of State Power and Private Rights: Exploring Child Protection and Safeguarding Referrals and Assessments*, Routledge, Abingdon, Oxon, 2018, ISBN-10: 1138782262, ISBN-13: 978-1138782266, 208 + xvi pp, price (hardback) £104.00, paperback £38.99, e-book £25.34 + VAT

In the previous issue of the magazine we featured an article by Steve Burchell on safeguarding and its ‘shadow’ side, and its normally ignored vicissitudes (Burchell, 2019–20). This happened to coincide with a legal case I am helping to bring against the UK Department for Education (DfE) and England’s schools inspectorate, Ofsted (see Edwards & Swann, 2020; House, 2020; Crowd Justice, 2020), in which we are challenging the forced closure of a Gloucestershire Steiner School by the DfE in January 2020.

To provide some brief context: the main pretext for closing this school was concerns over the safeguarding of children. Being a strong supporter of Steiner Waldorf education myself (as a trained Steiner class and Kindergarten teacher) and also a strong critic of Ofsted going back to the 1990s (e.g. see Jeffrey & Woods, 1996), I started to research the question of safeguarding, and what seemed to me to be the flimsy and highly contestable rationale that the DfE had given for the school being closed. This in turn led to the hasty writing of a short book

(House, 2020) – and my discovery of the book under review here by law professor Lauren Devine, the arguments in which cohere closely with Burchell’s concerns, and which also confirmed my own concerns about the ideology of safeguarding in UK policy-making.

Burchell’s begins his provocative article in *Self & Society* thus:

For some years now I have been increasingly disturbed by the notions of safeguarding that have been ever-more present in our culture. I began to suspect that such an unexamined dogma might contain deeply buried shadow material. I am now further convinced that not only does safeguarding fail to achieve its stated aims, but that it actively disempowers both those doing the protecting, and those who are seen as needing protection. (Burchell, 2019–20, p. 1)

Burchell explicitly interrogates what he terms the ‘shadow’ side of safeguarding, then, finding in that material a fantasy that we can save people from hurt – which is an impossibility –

and arguing that organisations have colluded with this fantasy to the detriment of the professionals themselves and their ‘clients’. I personally felt enormous relief when I first read Burchell’s article, as he was touching on something vital in the whole safeguarding question (which I’m tempted to call a politically correct ‘regime of truth’) that has long troubled me, yet which I’d never taken the trouble to articulate and flesh out.

I think it is very relevant to be reviewing Lauren Devine’s important book in this magazine because of how it speaks to the role of the State in late-modern society, and the balance between State and private rights in society. These are surely issues that will concern humanistic psychologists and therapists, in this time of massive State intrusions into our personal freedoms under the pretext of the C-virus – and, indeed, the long-running issue of the drive by some within the therapy world to state-regulate the psychological therapies (e.g. *Self & Society*, 2010).

Devine’s book addresses a complex area of law, social policy and social work, posing vital searching questions around the theoretical, practical and legal boundaries of State power in the context of safeguarding and child protection referrals in England. *The Limits of State Power and Private Rights* breaks new ground in arguing that a policy framework that contains a policing agenda that lacks appropriate safeguards and controls creates potentially irreconcilable tensions, which Devine terms the ‘welfare/policing dichotomy’.

Here is a personal–professional anecdote that, I think, casts revealing light on the whole issue of safeguarding and its vicissitudes. When I worked as a professional psychotherapist back in the 2000s, on several occasions I worked with clients whose families had been destroyed as a direct result of unsubstantiated allegations of child abuse. Specifically, these families had been reported to Social Services as a matter of procedure around concerns about suspected child abuse – leading to subsequent detailed investigations of the family. But even though the families were subsequently given a completely clean bill of health and the accusations found to be unfounded, the enormous stress and anxiety generated by the investigations

let to these families splitting up and the family unit being lost.

Understandably, my clients were outraged by what had happened to their families – and who can blame them? This resonates with what Devine (2018, p. 2), in the book under review here, writes; viz. ‘once a family is referred they may find themselves escalated into a process which requires social workers to assess whether a family may need services within *an inflexible framework designed to deal with cases of significant harm*’ (my italics). Under the current UK safeguarding legislation, she continues, ‘the vast majority of cases that are referred to local authorities are not cases where systematic and deliberate abuse is found to be occurring’ (ibid.); and yet ‘the surveillance / policing process is constructed in such a way so as to make it very difficult for a family to extract itself’ (ibid., p. 4). I wonder how many humanistic therapists reading this journal have had comparable experiences?

The author of this book, Lauren Devine, is Director of the Aston University Centre for Law and Language, and was formerly Professor of Law at the University of the West of England (UWE) – a qualified barrister who writes on the themes of State power, private rights and child protection. Devine is also Principal Investigator of the Economic and Social Research Council funded project ‘Rethinking Child Protection Strategy’; and she also chaired UWE’s Research Ethics Committee, teaching Law and Expert Evidence, and Law Experts and Justice; and is the Director of the Social Justice Research Group, the Interdisciplinary & Expert Evidence Network (IEEN) and Solutions for Safeguarding CIC.

Her book under review here consists of eight chapters. Framed within a contextualising introduction and an integrating concluding chapter, Chapter 1 looks first at the development of the State’s role in relation to child welfare and family policing. Chapter 2 then discusses the definition and measurement of the problem (i.e. defining child abuse, measuring its prevalence in England, whether child abuse can be predicted and prevented, and exploring notions of risk prediction). Chapter 3 then looks at procedures for identifying families for policing (including the modern surveillance role of

the State, how children are identified for referral, the introducing of mass surveillance and recording of information about children, and the policing of families by data gathering and its limits). Chapter 4 explores social work involvement in this system, focusing for example on the Munro review of child protection, and safeguards and controls over State powers of assessment.

Chapter 5, 'Paradigms, policy and policing', then looks at Dorothy E. Smith's work on the 'fractured lens' (Smith, 1990), and stages of the assessment procedures in 'child protection' and 'safeguarding' schema, with Chapter 6 then exploring the balance of State power and private rights from the standpoint of protecting children and parents, looking at the question of 'harm', and the issue of families harmed by State surveillance and assessment, and unsubstantiated allegations and unfounded concerns.

Chapter 7 moves on to looking at possible remedies, examining complaints procedures and Judicial Review, defamation, the European Convention on Human Rights 1950 and the Human Rights Act 1998, and common law negligence. And Chapter 8, 'Reforming policy: the politics of change', looks at reform and possibilities for a much-needed new approach to safeguarding – including exoneration and redress in unsubstantiated cases, and specific remedies in unsubstantiated cases.

It might seem unusual to be reviewing a book intended for lawyers, social workers, policy-makers and service users in a Humanistic Psychology journal, but I hope this review will illustrate why the arguments in this book are so important for psychologists and therapists who frequently work with issues of abuse. Certainly, the book is written for a multi-disciplinary audience, and yet does not trim on the detailed legally informed arguments needed to make her case.

How could a practising therapist not have major concerns when we read that 'once a family is referred they may find themselves escalated into a process which requires social workers to assess whether a family may need services within *an inflexible framework designed to deal with cases of significant harm*' (Devine, 2018, p, 2, my italics).

And under England's current safeguarding legislation, 'the vast majority of cases that are referred to local authorities are not cases where systematic and deliberate abuse is found to be occurring' (ibid.); and yet 'the surveillance / policing process is constructed in such a way so as to make it very difficult for a family to extract itself' (ibid., p. 4).

For Devine, then, 'Assessment does not only investigate the reason for the referral, but assesses every aspect of a family's private life.... [T]he rise of policing and surveillance ideology has not triggered appropriate safeguards and protections for families caught within its net' (p. 198). She goes on to refer to 'an unprecedented level of State paternalism and surveillance of families....', concluding that 'The claim that this rise in State powers and erosion of private rights is justified... is weak.... State power is excessive and not adequately balanced with private rights' (p. 199).

Wrennall (2010) has also shown how child protection has been structured by the information-sharing model (or so-called 'dataveillance' – ibid., p. 305) introduced under New Labour via the 2004 Children Act, to benefit the sectional interests in surveillance, and the negative consequences that this has for children – and with the discourse of child protection being only loosely targeted on preventing child abuse and rehabilitating errant families, but rather, furthering agendas that are contrary to the interests of children and other citizens. For Wrennall, the 2004 Act purveyed 'mystified processes conceal[ing] strategies of power by providing a noble cover story that disarms the usual defences that populations have developed to protect their liberties, dissensions and colourful diverse lifestyles against state intervention' (p. 306).

Little wonder, then, that Devine refers to 'the adverse consequences of England's approach [to safeguarding]' (2018, p. 2); and that as a result, school teachers, for example, knowing the unforgiving nature of this 'surveillance / policing process', might understandably be very reluctant to report families they know into a system that will possibly chew them up and generate enormous stress and anxiety, whether there is a genuine safeguarding issue in that family or not.

In a statement that will shock both social liberals and those favouring a sensitively appropriate balance between State power and private family life, Devine writes that

All children and families are now intended to be subject to continual State surveillance.... Consent is not required for intelligence gathering and all families are now subject to surveillance via a plethora of State data bases.... The relentless profiling is analogous to the type of data collected and stored in relation to citizens in the criminal justice system. (2018, pp. 53, 56–7)

Thus, under section 11 of the 2004 Children Act, professionals working with children are required ‘to report *any* concerns under the broad concept of “safeguarding”’ (ibid., p. 53, my italics). With due cause, perhaps, does McGillivray (1997, p. 10) refer to society being “beset” by the irrational fears of exploited childhood; and sociologist Nikolas Rose refer to childhood being ‘the most intensively governed sector of personal existence’ (Rose, 1989, p. 123).

Devine further points out that under current safeguarding law going back to the 2004 Children Act, under section 11 of the Act there have been significant increases in the number of safeguarding referrals to the authorities from professionals and agencies working with children – yet ‘there has been no corresponding proportionate rise in the amount of child abuse detected following referral’ (p. 54; see also p. 44; and for detailed research evidence, see Devine & Parker, 2015) – something that should gravely concern all policy-makers, State agencies and professionals working with children, in the light of the widely documented damage that such unwarranted intrusions into family life can and do cause (the distressing details of which investigative procedure are set out in Devine, pp. 65–6). Devine refers to this as failing to give ‘adequate consideration [to] the adverse consequences of categorising large sections of the population as “risky”’ (ibid., p. 44).

Put bluntly, what is arguably a blunderbuss of a safeguarding policy may well be causing far more State-sanctioned abuse of families, than it is preventing the abuse of children *within* families – a classic example, perhaps, of how overly and disproportionately controlling policy interventions

can commonly bring about precisely the opposite of their original intention.

Devine continues:

This is achieved via mass surveillance of all families to identify children for referral to local authority children’s social care departments. These developments have created an increasingly low threshold for referral, dramatically increasing the number of families referred for assessment by 311 per cent over the past twenty-two years.... The expansion of the level of intrusion... [has] eroded privacy and increased the risk of families becoming stuck in a cycle of continuing intervention once under the State’s intensive scrutiny.... This is counter to the aim of the Children Act 1989 to interfere into private family life only where necessary, thus preserving parental autonomy unless there is a real danger of significant harm to a child. (pp. 53–4)

It is clear from Devine’s careful analysis that there exists considerable *interpretative latitude* for agencies of the State, and their employees, in terms how they interpret, and then implement, the law on safeguarding; and anyone who claims otherwise, and that the law is clear and unambiguous on these complex questions, is either being disingenuous or is deluding themselves. According to Devine, ‘*Subjective interpretations* of children’s behaviour, interpreted as ‘signs’ of abuse, are also triggers [for referral to the authorities]’ (ibid., p. 55, my italics). Yet there is an increasingly prevalent view that what is arguably safeguarding law’s over-intrusion and over-surveillance are actually *harming* children and childhood – Devine again:

data that is based on vague impressions about ‘signs’ embedded in children’s behaviour meant every child subjected to endless scrutiny and recording of their demeanor, attainment and behaviour. This amounts to profiling of every child and inferences drawn about parental behaviour on a grand scale (p. 67).

It could conceivably be argued that, notwithstanding the wealth of evidence pointing to what Devine calls ‘the adverse consequences of England’s approach [to safeguarding]’ (p. 2), in practice statutory agencies like the schools inspectorate Ofsted, and schools themselves, have no choice but to interpret England’s current

legislation on safeguarding in an inflexible, procedural way. I am not a legal expert, and so am not qualified to comment on this key point. But what seems clear is that if, legally speaking, there does exist no latitude in the system for considered and proportionate *professional judgement* and flexibility to be exercised by dedicated professionals in school and other cultural communities, then the law is a demonstrable ass – with the public–private balance having shifted much too far towards State intrusion.

It can be very difficult even to speak of these issues in the way that Devine and Burchell, and the likes of Frank Furedi (Furedi & Bristow, 2008), Tim Gill (2007) and others have done, because it can open one up to the charge of not caring about child abuse and safety. In my view, nothing could be further from the truth. It's *mom 'n apple pie* stuff to be in favour of protecting children from abuse – thankfully, virtually no one in our society would question that. But from a psychodynamic viewpoint, and engaging with Burchell's 'shadow material' perspective, I would venture the view that what can sometimes shade into manic child-protection obsessions often says far more about the need for policy makers and State gate-keepers to help *themselves* feel better that they're *doing something* about abuse, than it says about the objective net impact of policy interventions and their accompanying ideology – and with the latter being so hard to challenge, for fear of being erroneously labelled as being 'against abuse prevention'.

On this view, and as courageous analyses like that of Devine help us to realise, narrowly conceived, control-fixated policy intrusions into the social and cultural realm have a highly disconcerting tendency to completely ignore the wider context of these intrusions, to ignore their unintended consequences, and at worst, to bring about the very opposite of their avowed intention. In this book, Lauren Devine has had the courage to bring an unerring legal eye to these issues, and to step outside of the politically correct regime of truth, and thence to pose highly uncomfortable questions to the safeguarding industry – and I, for one, am delighted that she has done so.

Humanistic psychologists and therapists have a deep interest in the question of fear, and how it affects us individually, institutionally and culturally; and we are also very concerned with the difficult task of finding a healthy and appropriate balance between social justice and freedom. In this important book, Devine poses this question in clear terms: '[W]hat is the appropriate balance between the powers of the State and the private rights of citizens, including children, to question and prevent unwanted or unwarranted intrusion and interference?' (p. 2) As we live through unprecedented intrusions into civil liberties as a result of the C-virus pandemic, this question could hardly be more prescient; and this book casts a searching light on what can go wrong when this delicate balance shifts too much towards State interference in our lives. I wish all politicians and policy-makers would read it.

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