

# The Notion of Interdependence and Its Implications for Child and Family Policy

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**SUMMARY.** The authors claim that the recognition of interdependence as a guiding principle of child and family policy has the potential to transform legal systems to make them less punitive and more constructive, less judgmental towards individuals and more empathic to the protection of relationships and self-constructed identities. By embracing the notion of interdependence, our societies can be moved toward greater recognition of our common humanity to the great benefit of children and their families, particularly those who are most vulnerable.

Four lenses are articulated in this paper: Therapeutic jurisprudence, preventive law, family systems theory, and culture. The paper shows how these lenses point toward more supportive rather than punitive types of interventions in the lives of children and their families. The paper demonstrates that, despite the fact that questionable parental behavior may initially engender feelings of anger and aversion, an empathic public response—one that recognizes the reality of the interdependence between parents and children—not only comports with current enlightened interdisciplinary approaches, but also promotes child and family

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## ***INTRODUCTION***

A neighbor hears the cries of young children from the apartment next door. She calls the police, who arrive to find two young children locked in a tiny room no bigger than a storage closet. The children are wet and hungry, but otherwise unharmed. A little while later, their mother, an African-American woman struggling on her own to make a living at a low paying job, arrives home. She states that she had to run to the grocery store to pick up some milk and other necessities and had no one available to look after the children. She thought the safest thing would be to lock them in a small space where they couldn't get into anything dangerous, given that she would be returning soon.

The police are appalled and charge the mother with criminal neglect. The media jumps on the story and uncovers the fact that the mother has a history of involvement with the child welfare authorities, and only recently regained custody of the children. She also has a history of drug addiction. The media and the public are ready to condemn the mother and want to see her severely punished for leaving the two children in such a condition. There is palpable disappointment when she is placed on probation instead of receiving jail time, despite this being her first criminal charge, and despite the fact that the child welfare agency still removes her children from her care.

This is a story taken from today's local headlines. It demonstrates the "*othering*" that takes place in our societies. For every "we" there is "them," the excluded *others*, who might include, for instance, poor, Black, single mothers with a history of drug addiction. We are habituated to construct barriers between friends and strangers. Although the

barriers do not have to be static, they are often perceived as such. We may, as individuals and as societies, see these barriers as an invitation to expand our awareness of injustice toward those who are perceived as the *other* and to overcome a sense of threat when encountering difference, but often we fail to do so. If we see *otherness* as an invitation to care for the *other* and thus respect that person's basic human rights, for example through the universally recognized Golden Rule, we become less alienated from him or her. Identity—"mine" and "hers," "ours" and "theirs"—can be dynamic and can then become more inclusive.

Inspired by Levinas and others (Connolly, 1996; Kleinman, 1996; Levinas, 1988; Minow, 1990; Minow, 1996), we suggest that fully seeing a person is antithetical to his *othering*. Following Levinas, we see the genuine face-to-face encounter with the *other* as an ethical experience with normative implications. In the process of fully recognizing the *other* as a human being, we create the potential for responding to human suffering. When one is open to the humanness of the *other*, a responsibility which is not reciprocal in nature is born (Levinas, 1988; Minow, 1990; Rosalyn, 2000; Smith, 1997). An acceptance of this notion of responsibility is a necessary underpinning of the type of reform this paper advocates.

When considered in this light, it is perhaps unsurprising that the mother in this story is an economically disadvantaged woman of color. Treating her as the *other* excuses us from having to apply the same understandings to her and her children as we would want to have applied if our own children were at stake.

Now let us suppose the mother in this story has also been affected by domestic violence. Suppose she has been a victim of physical or verbal or emotional abuse. Suppose the perpetrator is the father of her children, and she has returned to the relationship with him numerous times after he has demonstrated violent tendencies toward her. The mother in this scenario will then be further vilified by the public for returning to this relationship and for failing to prosecute the father, as well as for potentially placing her children at greater risk. This same indigent woman of color will be subject to further *othering* based on the domestic violence in her life and it may be used as an additional piece of ammunition to remove her children from her care, temporarily or permanently.

Our public policies that condemn this unfortunate mother ignore the interdependence of all of the members of this family system. Such policies fail to recognize the reality that in our haste to punish this mother, we are also punishing her young children by depriving them of their critical need to maintain the continuity of their relationship with her. Further, the policy that demands the universal prosecution of perpetra-

tors of domestic violence fails to account for the roles of a husband and a father in a family system. Perhaps the hypothetical father here should be prosecuted, but perhaps he is willing to acknowledge his responsibility for harm he has caused, receive services and try to mend this harm, and the mother of his children supports his effort to be rehabilitated so that the family unit can be maintained.

This paper proposes that the recognition of human interdependence should be a driving force of child and family policy. This notion of interdependence rests squarely upon principles articulated in the United Nations Convention on the Rights of the Child (CRC), and is also consistent with the child's right to a self-constructed identity. Interdependence is further informed by considerations of therapeutic jurisprudence, preventive law, family systems, and culture. To illustrate how recognition of interdependence can and should drive child and family policy, we will offer examples using the child welfare and domestic violence contexts. Further, the paper demonstrates that this significant reform can best be accomplished by corresponding changes in procedural justice in the form of alternatives to traditional adversarial legal mechanisms.

### ***INTERDEPENDENCE VERSUS INDIVIDUALIST APPROACHES***

The liberal individualist ethos traditionally underlying human rights jurisprudence emphasizes individual rights and remedies. It also provides the conceptual basis for individualistic adversarial representation typical in present day western legal systems (Cover, 1998). This individual or atomistic approach also fits with the traditional medical model, which courts historically have relied upon in legal proceedings (Mulvey, 1982). Further, courts have often interpreted the "best interests of the child" standard, which governs much of the legal decision-making related to children and families, using a psychodynamic approach—one which also focuses on individuals (Brooks, 1996). Courts and advocates thus cling to an individual orientation toward children and families despite the fact that this approach does not reflect the larger scope of current professional knowledge.

Michael Grossberg, an American historian, traces the beginnings of this atomistic approach to the nineteenth century. He states that the legacy of American domestic relations law from this era is the concept of the family as a collection of separate individuals rather than an organic legal entity (Grossberg, 1985). This atomistic approach has also con-

tributed significantly to creating an adversarial individualistic framework for decision-making processes in family law, which has persisted until today in traditional legal systems.

Mary Ann Glendon echoes this concern by observing that our present legal system recognizes only the entities of the state and the individual, with nothing in between (Glendon, 1991; Grossberg, 1985). According to Glendon, the legal image of the family emphasizes the separate personalities of family members rather than its unitary aspect, including the treatment of children as fully independent individuals. Glendon points out that the absoluteness of individualistic “rights talk” heightens social conflict and inhibits dialogue that might lead toward consensus, or at least the discovery of common ground. Moreover, she claims it contributes to the *othering* of vulnerable populations: “[i]n its relentless individualism, it fosters a climate that is inhospitable to society’s losers, and that systematically disadvantages caretakers, young and old” (Glendon, 1991, 14). We suggest such individualism, originating in highly competitive western culture and permeating child law and policy in different jurisdictions all over the globe, is fostering the development of alienated men and women. These men and women are liable to be in denial of their own vulnerability and their dependency needs and thus particularly prone to engage in *othering*.

This discussion points out the pitfalls of *misusing* the terminology of individual rights to frame child and family policy. However, international law, primarily in the form of the United Nations Convention on the Rights of the Child, represents an articulation of children’s rights that demonstrates the potential for a rights-based framework to reflect an ethos of interdependence rather than rigid individualism. The Convention also reflects a strong international consensus, and therefore, provides a solid foundation upon which to construct a regime based on interdependence. Specifically, the children’s rights principles laid out in the CRC affirm the reciprocal attachments of the child and his/her family and community.

An important construct that stems directly from these principles is the notion that our societies should ideally be responsive to the complementing needs “to be” and the need “to become.” This is what we refer to as the child’s right to a self-constructed identity. The notion of a self-constructed identity draws upon the child’s need for both autonomy and connectedness. The granting of a right to autonomy, responding to the child’s need “to become,” is often perceived as the most advanced and most problematic stage in the evolution of child law (e.g., Franklin, 1986, 27-38; Van Bueren, 1995, 15). Of equal importance, though, is

the child's need to be interconnected to significant others, which is often neglected by child advocates (Ronen, 2004).

In addition to the constructs described above, the complementary lenses of therapeutic jurisprudence, preventive law, family systems theory, and culture, support our contention that we need to re-conceive human rights to include an understanding of interdependence—an understanding that recognizes that the “rights” as well as the needs and interests of children and parents generally are intertwined. It thus makes no sense to speak of them as always dichotomous, or worse, as always opposed to each other.

The writings of other feminist scholars, such as Carol Gilligan and Martha Minow, reflect similar perspectives. In her seminal essay, Gilligan (1982) demonstrates how mainstream discourse reflecting an atomistic model of human behavior offends both males and females by denying or ignoring the basic insight that human beings naturally mature to interdependence rather than independence (Cohn, 1991; Freeman, 1997; Gilligan, 1982). Martha Minow (1996) uses a similar approach in writing about children's rights, by emphasizing the centrality of the protection of the child's relationships with significant others founded on an ethos of interdependence.

### ***THE UNITED NATIONS CONVENTION ON THE RIGHTS OF THE CHILD (“CRC”)***

The CRC is clearly founded on an ethos of interdependence. Article 5 of the Convention, perhaps the most important article for the purposes of this paper, reads as follows:

State parties shall respect the responsibilities, and duties of parents or, where applicable, the members of the extended family or community as provided for by local custom, legal guardians or other persons legally responsible for the child, to provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise by the child of the rights recognized in the present convention.

The article thus clarifies that the state's primary responsibility towards the child is to respect the role of the nuclear and extended family and of the community in the child's life, rather than to intervene in order to protect the child from them.

A possible tension exists between Article 5 and Articles 12 and 13, which grant the child a right to be heard, a right to participate in decisions relating to him and a right to free expression—rights that theoretically could conflict with parental direction and guidance. Parents entrusted to guide the child in the exercise of his rights might be tempted to obstruct the child from exercising his rights because of their own interests (Fortin, 1998, 42; Freeman, 1997, 68) or because they perceive the exercise of a specific right or the concept of children's rights as detrimental to the child. Nevertheless, Article 5, when understood in combination with Articles 12 and 13, can contribute to a conception of children's rights reflecting an evolutionary process that ultimately advances the child's legal status at the same time as it reinforces the significance of the child's important connections.

In short, the Convention encourages adults with whom the child maintains meaningful ties to find culturally appropriate ways to respect the rights of the child including his right to participation in decisions relating to him. Essentially, through this tension or better yet, balancing, the CRC overcomes the temptation to entertain a crude atomistic vision of the child's interests. The CRC is not a children's liberation manifesto—it does not purport to liberate children from subjugation of adults through abandoning them to adult liberties. Children who are granted the CRC's participation rights and civil rights, and who also enjoy protected adult guidance, enjoy an opportunity to develop into well-rounded, interdependent adults. Such adults not only exercise autonomy, but also function within relationships of commitment and responsibility (Freeman, 1997, 37-40; Smith, 1997, 103).

### ***THE CHILD'S RIGHT TO A SELF-CONSTRUCTED IDENTITY***

Having established a foundation for interdependence using the CRC's definition of children's rights, it is critical to highlight a specific set of considerations stemming from this same framework. These considerations relate to a child's right to a self-constructed identity. This concept of a right to a self-constructed identity reaches beyond the CRC's explicit guarantees related to identity.

Here we are talking about a nuanced definition of identity. A child's right to identity is an entitlement to the protection of ties meaningful to him. These are primarily ties to the human world, but they can also be ties to an animal or to an inanimate object, such as a book or a tree, or to

a geographic place such as a village or a physical home. Moreover, the child does not exist in a universe separate and apart from the child's familial relationships, as may sometimes seem to be the case when reading children's rights texts based on a liberal individualistic ethos. Recognition of a right to a self-constructed identity allows us to see the individual child as struggling to achieve autonomy, not independence.

As explained earlier, children who exercise the CRC's participation rights and civil rights can also enjoy protected adult guidance. The right to a self-constructed identity, which is only partially protected through the UN Convention, enhances the child's opportunities to develop into an interdependent adult by responding to the guidance he receives in consolidating his identity.

At the same time, this "uniqueness" has a universal quality because all human beings develop their own cultural identities as they grow. Thus, we need to appreciate the uniqueness of the culture of all adults as well as children. It is important that this appreciation of difference does not become a license to exclude or marginalize. Rather, the commonality of the experience of identity formation in all of us calls for an empathic understanding of the child's or adult's experience, an understanding that is admittedly difficult to achieve within a traditional adversarial legal setting.

For example, from the child's perspective, it typically makes no sense to prosecute a mother victimized by domestic violence or to punish her for failure to protect her child in any other way. Such an approach often leads to separating the child from her or making it more difficult for her to fulfill her parental role. This separation in turn deprives the child of his right to a self-constructed identity, because often a child's tie to his mother is a most (if not THE most) meaningful tie in the child's life. On the other hand, the child's right to a self-constructed identity would potentially support responding to child abuse by offering some form of protection to the mother that would allow her continued maternal functioning in relation to the child, inasmuch as the child's tie with her is meaningful, given the evidence that mothers who are themselves protected from spousal violence tend to more effectively protect their children from violence (Davidson, 1995).

We have established a solid foundation for the recognition of interdependence based upon principles articulated in the CRC, which have been extended and further developed using the concept of the child's right to a self-constructed identity. Our discussion now turns to several lenses that lend strength to the position that recognition of interdependence should inform child and family policy, and also may contribute to

a broader understanding of the implications of the recognition of interdependence.

### *The Lens of Therapeutic Jurisprudence*

The first of these lenses is the growing movement known as therapeutic jurisprudence (TJ)—the study of the role of law as a therapeutic agent (Wexler, 1997). This movement, co-founded well over a decade ago by two legal scholars, David Wexler and Bruce Winick (Wexler, 1990; Wexler & Winick, 1996), now has an international following among judges, lawyers, and mental health professionals (Wexler, 1999). Therapeutic jurisprudence promotes exploration of the effects of laws and the legal system on the well-being of the persons they are supposed to serve. A TJ inquiry asks: is this particular law or aspect of the legal system “therapeutic” or “anti-therapeutic” for the persons affected by it? Identifying and understanding what is anti-therapeutic ideally will lead to positive law reform.

Therapeutic jurisprudence provides a lens through which to critique the rules, policies, and practices around children and families to see whether or not they are truly therapeutic. Specifically, TJ would inquire whether the current system serves a therapeutic purpose for children and their families. Even without further analysis, it is readily apparent that this one-size-fits-all approach is likely not to be therapeutic for all children and families, whether we are discussing child welfare, domestic violence, or some other issue.

The assessment of whether child and family policy is therapeutic also requires reference to current mental health knowledge about child and family functioning, as well as important social and cultural realities about the systems affecting children and families. Once these dimensions are fully considered, it will become even more evident that not only is fundamental policy reform necessary, but the recognition of interdependence is a key to moving policy in a therapeutic direction for children and families.

In the child welfare arena, one glaring example is that of traditional closed adoption, which often does not serve a therapeutic purpose for children, especially children in the foster care system. A broader menu of permanency options, including open adoption, must be fully supported in order to be responsive to the needs of these children. In the domestic violence arena, the notion of a categorical approach is just as problematic. Instead, there need to be “flexible packages of responses” (Paradine, 2000). This requires focusing on the unique facts and cir-

cumstances of each case, and allowing the survivors to direct the process, based upon their own definition of their family system.

### ***The Lens of Preventive Law***

Therapeutic jurisprudence provides strong support for arguments favoring reforms in child and family policy that reflect the recognition of interdependence, such as alternatives to traditional adoption and more open-ended domestic violence processes. A second movement, known as “preventive law,” lends additional support. The preventive law movement has developed parallel to the TJ movement, and shares a somewhat similar approach (Stolle & Wexler, 1997). The proponents of preventive law believe that legal practitioners need to be proactive in their work, and to engage clients in the avoidance of adversarial litigation (Hardaway, 1997). The preventive law approach is to a great extent modeled after preventive medicine, including the idea of “legal check-ups” (Stolle, Wexler, Winick, & Dauer, 1997). Preventive lawyering requires practitioners to view their clients in a holistic manner, and to try to anticipate the kinds of legal issues they might confront. By having legal check-ups, the lawyer engages in an assessment process together with the client. Through that process, he or she can help the client to take steps to resolve impending legal issues in a peaceful manner that is conducive to the client’s well-being. This process has also been referred to as identifying “legal soft spots” (Hardaway, 1997).

These two approaches, TJ and preventive law are highly compatible. In synthesizing the two movements, TJ and preventive law scholars have described their work as that of identifying “psycho-legal soft spots” (Stolle, 1997). Accordingly, in the process of regularly checking in with clients, lawyers can be sensitive not only to the potential legal pitfalls of the client’s situation, but also to the client’s vulnerabilities from a mental health perspective.

The child welfare and domestic violence schemes that are currently in place do not adhere to a preventive law approach. In child welfare, this inadequacy is evidenced by the overemphasis on traditional adoption within the system (Brooks, 1999; Ronen, 2004). Adoption is often the result of inadequate or non-existent preventive efforts. Very little support of any kind, let alone legal support, is available to vulnerable families in the U.S., Israel, and other Western democracies to help prevent the need for the families’ involvement with the legal system, or to remedy concerns once they are so involved. Moreover, the failure to provide such preventive and supportive services often leads to the ter-

mination of the parent/child relationship and adoption. The lack of preventive services is exacerbated by the adversarial court processes that prevail around traditional adoption. In order for a closed adoption to take place, it is necessary first to sever the parents' legal ties to the child. The court proceedings through which this severance occurs tend to be highly adversarial because in order to terminate the parents' legal ties to the child, the opposing party, usually the state, must present evidence of parental unfitness (Beyer & Mlyniec, 1986). The present system therefore does not comport with notions of preventive law.

In contrast, alternatives such as open adoption fully embrace TJ and preventive law principles. Open adoption preserves a child's important attachments, including the child's relationship with his or her birth parents. A considerable body of theoretical and empirical literature indicates that children generally benefit from maintaining important family attachments in their lives, even if those attachments are faulty or if the family members have significant deficits (e.g., Brooks, 1996; Davis, 1996; Garrison, 1996). Focusing on maintaining the continuity of those attachments will naturally lead to more therapeutic and preventive efforts aimed at family preservation or, at a minimum, at avoidance of adversarial litigation.

With respect to domestic violence, we need to promote processes that offer acceptance and support for survivors and their feelings, regardless of whether they choose to stay or leave their relationships. While working to ensure survivors' safety, we need to embrace the complexities involved in domestic violence situations. We need to be mindful that "universally applied, inflexible application of criminal sanctions risks disempowering and alienating some survivors, and may ignore their own assessment of their lives" (Paradine, 2000, 45).

Few would argue that generally the law and policies related to children and families should serve a therapeutic purpose. It would also seem that most would agree that optimally the system should minimize children's and families' exposure to adversarial litigation. What is anti-therapeutic about our traditional ways of responding to vulnerable families, both in the fields of child welfare and domestic violence, is primarily the failure to recognize the interdependence of the members of the family. These examples illustrate that the lenses of TJ and preventive law not only lend support, but also shed more light on the case for such recognition. At this point, we will turn to a further explanation of the importance of family attachments, which is a fundamental underpinning of the concept of interdependence.

### ***The Lens of Family Systems Theory***

The reigning approach within the mental health fields focused on the importance of family attachments is known as family systems theory (Babb, 1997; Brooks, 1996). The unifying principle of family systems approaches is the idea that the family is a dynamic system with interacting parts (Brooks, 1996). One statement that captures this way of thinking is that the whole is greater than the sum of the parts—a family is not simply a collection of individuals, but has qualities that belong to the whole family as an entity. For this purpose, family must be defined in a broad manner, using bonds of intimacy rather than blood ties (Brooks, 1996; Ronen, 2004). Members of a family system may include relatives as well as friends and neighbors and foster parents (Brooks, 1996; Ronen, 2004).

Family systems have two other unique overlapping principles: mutual interaction and shared responsibility. Mutual interaction means that any conduct by one family member will affect the other members of the family, and the family as a whole. Shared responsibility means that every family member plays a role in what occurs within a family. It is critical to understand these two important principles in the context of two other aspects of family systems theory. First, family systems approaches are descriptive and not evaluative, and focus more on present situations than past conduct. Second, family systems approaches focus on family strengths rather than pathology. These last two characteristics mean that family systems theory approaches families from a non-judgmental posture (Brooks, 1996).

A family systems approach is completely foreign to the way most legal systems operate, including in the area of child and family law (Brooks, 1996). Legal systems generally are not set up to take account of family systems, but rather focus on individuals' rights and responsibilities (Brooks, 1996). They also do not accept mutual interaction or shared responsibility. A fundamental principle of most legal systems is the fact that in every proceeding, responsibility or liability is attached to one individual (Brooks, 1996).

On the other hand, it cannot be emphasized enough that “mutual responsibility,” when used in the family systems context, is simply descriptive of the family dynamic. It by no means implies mutual “blame” or liability in the legal sense—it is simply a characterization of how a family should function in psychological terms. Although mutual responsibility is difficult to appreciate in the legal context, it is an essential component of the understanding of children and families and how they operate. Moreover, we would argue that the failure to appreciate

this dynamic often undermines the success of efforts to promote the well-being of children and families, whether in the child welfare or domestic violence contexts.

Understanding family systems approaches thus helps to explain why our traditional legal systems are anti-therapeutic, both in the areas of child welfare and domestic violence (Brooks, 1999). Both of these legal arenas reflect failure to embrace the importance of the child's attachments to members of his or her family system, as well as interconnectedness of all members of the family system, which is exactly what we mean by interdependence.

In child welfare, an example of this inadequacy is the priority given to traditional adoption in the current system, in which a child's family ties must be severed prior to the adoption. This means that not only is the child cut off from the birth parents, but also from siblings, grandparents, and other extended family members. The child will likely also be cut off from other important parts of the family system, such as friends or neighbors, as well as larger intersecting systems, like the child's school, religious institution, and neighborhood. Traditional adoption practices tend to be inconsistent with family systems approaches and, accordingly, may be anti-therapeutic for children.

In contrast, adoption alternatives such as open adoption fully embrace family systems principles. When combined with procedural justice, as is reflected in alternative dispute resolution mechanisms such as family group conferencing and mediation, a picture begins to emerge of how policies informed by interdependence would transform child and family policy consistent with TJ and preventive law principles.

In the domestic violence context, it is crucial that legal actors not only understand the experience of fear and real danger, but also understand "the feelings of connection and commitment" experienced by women living through domestic violence (Paradine, 2000, 41). Kate Paradine (1998, 2000), who approaches domestic violence through a TJ lens and also seems to contemplate family systems principles, states that the legal system fails to take account of the complexities involved in the dynamics of domestic violence, and in doing so, plays an anti-therapeutic role in the lives of those affected by violence. "The challenge for legal actors is to condemn domestic violence while understanding the complex journeys of survival, so that women are not judged or blamed for their situation. . . . Blaming a woman for the violence or reprimanding her for her attempts to make the relationship work can only add to her sense of shame and isolation" (Paradine, 2000, 42).

Paradine goes on to state that “[w]hen emotional factors like love and attachment are ignored, legal products are not usually flexible enough to meet individual needs” (Paradine, 2000, 45). Legal actors are generally seeking success in the form of a conviction or injunction. However, any identifiable legal process or product is rarely an unqualified success for the survivor, according to Paradine. Most traditional legal processes cause survivors trauma and pain, and most legal products are not really responsive to survivors’ actual needs (Ronen, 1994).

It is important to emphasize that, like TJ and preventive law, family systems theory offers a framework and a thought process. It does not preference a particular outcome. There is no doubt that family members do not always act in ways that are consistent with the family’s best interests. Once a family systems analysis is applied to a particular set of facts, it may lead to a conclusion that a family should remain intact, or it may lead to a different conclusion, depending on the circumstances. This is particularly important to bear in mind when approaching domestic violence situations. Engaging in a family systems analysis does not mean that in every situation the victim should leave, or that in every situation an effort should be made to rehabilitate the perpetrator. Nevertheless, while women should never be encouraged to remain in violent relationships, Paradine encourages us to develop ways of understanding the attachment described by women and supporting those who choose to remain with their partners. A family systems approach offers such a framework.

In sum, family systems theory offers a normative framework that can guide child and family policy toward the recognition of interdependence, especially if we view the law through the lenses of TJ and preventive law. One final important lens, which is linked to the earlier discussion of identity, is that of culture. Further exploration of cultural considerations demonstrates that interdependence does not only take account of familial ties, but also broader connections to one’s community and other “macro-systems” (Babb, 1997).

### *The Lens of Culture*

Culture can be viewed as a subset of identity, as it has been described above. Accordingly, the cultural identity that the child should be allowed to enjoy, whether mainstream or minority, is not an abstract derivative of the decision maker’s theoretical knowledge. The child is entitled to a culture that is part of his personal world; thus, culture is defined by a set of related meanings by which the child interprets the reality of life and its unique circumstances (Ronen, 2004).

This particular vision of culture needs to figure prominently in the effort to reform child and family policy. In the United States, for example, this urgent need is reflected by the disproportionate representation of African-American children and families in the foster care system (Roberts, 1999). The effect of the American child welfare system on African-American children has been likened to a funnel—easier to remain in than to escape.

The American child welfare system, however, has not been structured to support the culture traditions of African-American children and families. American scholars have well documented the informal, communal nature of the African-American extended family, and its cooperative, child-centered focus on child-rearing. Gilbert Holmes (1995) has described how, throughout history, African-American children have benefited from the love, training, and child rearing given by fictive and real kin in their extended families, as well as ongoing contact with and knowledge about their birth kin provided to those children. These informal cooperative parenting and child-rearing arrangements became solidified during the era of slavery, when innumerable children were separated from their birth families.

Holmes (1995) and others have applied this cultural understanding to the support of greater use of open adoption for children in the foster care system. Based upon her extensive research, Carol Stack (1984) advocated over two decades ago that informal adoptive parents in the United States should not be forced to pursue legal adoption and terminate the legal rights of biological parents, in violation of cultural traditions. She pointed out that termination of a biological parent's rights may also violate the rights of her kin group. The focus on protecting individual legal rights may thus be needlessly in conflict with the cooperative and communal values of the African-American community to the extent that the child's right to a self-constructed cultural identity and to guidance of significant others in his family and community are neglected.

A key component of moving child welfare policy in the U.S. and elsewhere toward a more appropriate appreciation of culture, therefore, would be to support alternatives to traditional adoption that allow children to maintain relationships with their birth families and their extended family systems. Instead, in the U.S., there has been a heavy emphasis on "transracial adoption," which has misleadingly been presented as an effort to remove barriers for children awaiting permanency. In reality, however, this effort only serves the interests of white families interested in adopting African-American children. It also reinforces a "deficit view" of the African-American family and community, rather

than addressing the systemic barriers that make it difficult for African-American families to care for their own children within their own communities (Howe, 1997).

Culture includes the intersection of class issues and race issues. Again, using the U.S. as an example, not only are a disproportionate number of foster care children from minority cultures, they are also overwhelmingly poor (Cahn, 1999; Roberts, 1999). These demographics hold true for many other societies, including Israeli society. In practice, our societies generally respect the privacy and autonomy of middle-class families, but we accede to coercive intervention and intrusion in low-income or otherwise excluded disempowered families, by convincing ourselves that such interventions are unavoidable from a child-centered perspective (Ronen, 2005; Ronen & Ben Harush, 2005).

Meanwhile, we discount and devalue the cultural backgrounds and the solid parenting skills of many such parents. In trying to protect children, we are often liable to disregard their parents' needs and interests, and their communities' cooperative values (Stack, 1984), and thus evade the responsibility of mainstream society for the flawed development of children. It is less painful psychologically to point an accusing finger at dysfunctional parents than to face our responsibility to address systemic factors which contribute to such dysfunction (Ronen, 2003).

Leroy Pelton (1999) has castigated the American child welfare system as a coercive system that thrives on punishment and blame of the poor. As he and others describe it, the *othering* of poor families, in the U.S. context, particularly when they are of color, makes it easy for the dominant culture to devalue them: to view them as dysfunctional and not families at all (Appell, 1997; Pelton, 1999). Annette Appell, a proponent of openness in adoption, criticizes the "growth industry" that has arisen from the state's "protective" involvement with poor families and families of color and the state's punitive treatment, particularly of the mothers of these families. Appell describes these mothers as evading white, middle-class mother norms, or myths in a number of ways, including the simple fact that they are poor, but also because they depend upon informal kinship and community networks for child care. Similar observations have been made concerning the Israeli context (Ronen, 2003; Ronen & Ben Harush, 2005).

As stated earlier, many of the same families whose "cultures" are marginalized and misunderstood by the child welfare system are also affected by domestic violence. The preceding discussion thus applies with equal force to the domestic violence context. The *othering* of vic-

tims/survivors makes it easier for us to condemn them for their choices, and to fail to appreciate the complexities of their situations.

### ***Procedural Justice***

The approaches described previously, particularly TJ and preventive law, also emphasize the need for appropriate procedural justice mechanisms, meaning mechanisms that give the parties a greater voice in determining the solutions to their own legal dilemmas. We believe that increased use of these mechanisms needs to be part and parcel of child and family policy reform, and will facilitate the recognition of interdependence in this effort. Examples of processes that tend to offer greater procedural justice include non-adversarial dispute resolution and planning processes, such as family group conferencing (Lowry, 1997) and mediation (Wilhelmus, 1998). These alternative processes are being successfully implemented in many jurisdictions, and are being used in many different types of child and family law proceedings. The use of these non-adversarial processes offers great promise for reform of child and family policy.

*Family Group Conferencing.* The general idea behind the family group conference (FGC) is to empower the family, including as much as possible of a child's extended family system, to develop a plan to keep the child safe, and promote the child's and family's well-being (Brooks, 2004; Lowry, 1997; Ronen, 2003). A basic premise of the FGC is that the family has unique strengths and often has the best information about how to use those strengths to address existing concerns about the child and family. Through the FGC process, professionals are initially given the opportunity to present their concerns to the family members with the help of a professional facilitator. After the concerns are presented, all of the professionals leave the room and allow the family to work on a plan to address those concerns. The family is also given the opportunity to access appropriate services and community resources to assist them in carrying out the plan. Assuming the plan developed by the family is acceptable to the professionals and to the court, it can become the official resolution of the matter (Brooks, 2004; Lowry, 1997).

FGC is a relatively new process, but its popularity has increased dramatically in the past several years. Many states have tried to implement the use of FGCs at the earliest possible point in time, such as when the child or family first comes to the attention of their child protective services agencies. FGCs are a primary tool for identifying and increasing involvement of capable members of the family system, as well as for

preventing more drastic state intervention. Early evaluations of the effectiveness of FGCs have been very positive. Studies have found that families often develop more creative plans and also have a better rate of following through and sticking with the plans they themselves develop (Brooks, 2004; Lowry, 1997). In Israel, it has been extensively and successfully utilized with adolescent offenders and their families, but unfortunately has not been well-supported or funded in the child protection arena (Ronen, 2003; Ronen, 2005).

*Mediation.* Mediation is an alternative dispute mechanism that has become a well-established component of many court systems in the U.S., particularly in the area of domestic relations (Brooks, 2004; Duquette & Hardin, 1999). Often, mediation is an appropriate alternative once a court proceeding has already been filed. It allows the parties to assume greater control over the process, with the assistance of a trained, independent mediator. The parties then have the opportunity to resolve the case in a way that serves both their interests and the child's best interests. Through the mediation process, members of the family system may better identify common interests and be able to work collaboratively to meet the needs of the child (Brooks, 2004; Duquette & Hardin, 1999).

The use of these alternative processes has increasingly become accepted in the child welfare arena. With respect to domestic violence, it has been more controversial; however, courts are beginning to experiment with more problem-solving approaches and other alternative processes in domestic violence matters as well (Eaton & Kaufman, 2005). Paradine (1998) suggests that family group decision-making may be constructive in domestic violence situations in a number of ways. By widening the circle of support around the family, the process may help the family face up to the violence. Further, by empowering the victim, the conference may help her overcome the shame that she often experiences, and also reduce the tendency of the criminal justice system to "re-abuse" the victim. "Researchers have seen families develop in a conference from feeling ashamed of their failure to protect relatives to a strong sense of pride in their capacity as a family to act responsibly" (Paradine, 1998, 639). In general, a recognized strength of alternative dispute mechanisms, which Paradine (1998) also acknowledges in the domestic violence context, is the ability of families to discover unique solutions which could only be known, and, therefore, offered by the families themselves.

## **CONCLUSION**

This paper has articulated a vision for child and family policy reflecting not only current thinking in the mental health fields, but also an emerging perspective of scholars, judges, and advocates in the field of law. It is hoped that this convergence, exemplified by the therapeutic jurisprudence and preventive law movements, signals the evolution of traditional ways of approaching law and policy.

We firmly believe the recognition of interdependence as a guiding principle of child and family policy has the potential to transform legal systems, to make them less punitive and more constructive, less judgmental towards individuals and more empathic to the protection of relationships. By embracing the notion of interdependence, we can move our societies toward greater recognition of our common humanity, to the great benefit of our most vulnerable children and families.

We opened the paper with a story that suggested children were placed at risk by the actions of their mother. To demonstrate how the proposed lenses would affect child and family policy, let us revisit this scenario as it might have unfolded in a legal system incorporating the notion of interdependence. Recall that the mother in the scenario, who was young, single, poor, and also happened to be African-American, locked her two young children in a closet as a way of trying to ensure their safety while she ran to the store to buy some necessities. The authorities who discovered the children were quick to file criminal charges against the mother and to remove the children, despite the fact that the children appeared to be unharmed.

Had the notion of interdependence prevailed, in the first instance, the authorities would have paused and given greater thought to the situation before pressing charges. Under the general principles articulated in the CRC, and Article 5 in particular, the authorities would have recognized that because their primary responsibility towards the child is to respect the role of the child's family and community, they needed to work with the mother to identify supportive services for her and her children rather than responding punitively.

This same supportive response would be consistent with the children's right to a self-constructed identity. The rights of the children in the scenario, assuming they were not only unharmed, but otherwise were generally receiving good care, were essentially violated by the state authorities who removed them from their mother on that day. By punishing the mother, the authorities also punished her children who, as

stated earlier, were then deprived of their most meaningful relationship—their relationship with their mother.

We may now turn to the four lenses articulated earlier in this paper. Therapeutic jurisprudence and preventive law both would have encouraged responses that would enhance the well-being of the children by providing additional resources and supports to their mother, rather than removing them from her care. Therapeutic jurisprudence and also preventive law would have embraced offering preventive services to this family to attempt to avoid more drastic interventions, such as removal and criminal prosecution. As stated earlier, focusing on maintaining the continuity of important attachments, such as the attachments between these children and their mother, is consistent with both therapeutic jurisprudence and preventive law approaches.

Family systems theory and cultural competence, taken together, would also have urged more supportive rather than punitive types of intervention in this instance. There was every reason to believe that this mother and her children were inextricably connected as part of the same family system. Given that this was an African-American family, there may well have been extended family members or even “fictive kin” who were also part of the family system.

With respect to procedural justice, an approach consistent with these lenses would have been to convene a family group conference. The facilitator or convener of the conference would have located as many members of the family system as possible, and would have invited them to attend. He or she would also have asked the mother to invite anyone the mother wished to have present at the session. At that conference, the authorities who investigated and discovered the children would have stated their concerns, as well as anyone else who was present. The participants would also focus on the family’s strengths—in particular, the mother’s strengths—and any resources available to the family.

Next, the convener would have given the family the opportunity to discuss privately possible solutions and to develop a plan to address whatever concerns were raised. For instance, perhaps someone in the extended family would have been able to provide child care assistance to the mother so that she could have the necessary time to do her grocery shopping. Perhaps the family could have created a phone tree or some other system so that in an emergency, the mother would have known that there were family members who were willing to step in and care for the children. Assuming the family was able to develop a plan that the authorities believed addressed their concerns, undoubtedly the children would have been better off and the family as a whole would have been

strengthened and probably follow through more effectively as a result of being given the opportunity to develop its own solutions.

This discussion demonstrates that, despite the fact that this mother's behavior may initially engender feelings of anger and aversion, an empathic public response—one that recognizes the reality of the interdependence between this mother and her children—not only comports with all of the approaches that have been presented in this paper, but also promotes children's well-being. We suggest that such a response not only be contemplated and understood, but that it should also frame child and family policies and practices.

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