The Scottish Government

Children's Hearings
and the International Community

THE 1991 KILBRANDON CHILD CARE LECTURE

Sanford J Fox
Professor of Law
Boston College Law School

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ISBN: 978-1-78045-850-2

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St Andrew's House
Edinburgh
EH1 3DG

Produced for the Scottish Government by APS Group Scotland

DPPAS13045 (03/12)

Published by the Scottish Government, March 2012

The 20th Anniversary of the
Children's Hearing System

Kilbrandon Child Care Lecture

by Sanford Fox
Boston College Law School

in the Bute Hall, Glasgow University
on Tuesday 7 May 1991

courtesy of
Sir William Kerr Fraser
Principal Glasgow University

Sanford J Fox
Professor of Law
Boston College Law School

1950	Graduated AB (High Honors) University of illinois
1953	Awarded LLB Harvard University
1959	Appointed Professor of Law at Boston College
1976-1981	Awarded research grant by US Department of Justice to study Children's Hearings System
1981	Publication of "Children out of Court" written in collaboration with Mrs Kathleen Murray and the late Professor F M Martin

Adviser in drafting of the UN Convention on the Rights of the Child (1990)

Anyone contemplating preparation of a lecture designed to honour the memory and achievement of Lord Kilbrandon faces the daunting challenge of choosing from among a long list of things by which he can be justly celebrated. The core of the lecture could be, for example, on legal scholarship, on the constitutional law of the United Kingdom, on the reform of Scottish law, on the art and craft of judging, on the art and craft of brewing, on the delights of classical music or certainly on the personal virtues of a very caring and a very decent human being. To speak to the subject of such a man is both a humbling experience and a much-prized privilege.

But since this is the Kilbrandon Child Care Lecture, we must concentrate our attention to a considerable degree on the system of juvenile justice that is so inextricably associated with Lord Kilbrandon.

There are 2 reasons why I am particularly pleased to address this subject as the Kilbrandon Lecturer. One is that although I speak as a foreigner, much aware that my comments necessarily lack the nuances available to a UK perspective, I know as well that these feelings might not be very different from those that could have been experienced

by an Edinburgh judge plying his trade in the halls of Westminster.

The second source of some satisfaction is also of a kinship sort. Like Lord Kilbrandon, I see the problems of juvenile justice through the lenses of a lawyer, although I feel cautioned by his own example to avoid becoming bogged down in narrow legalisms. For surely one of the strengths of Lord Kilbrandon's proposals for a new system was its firm foundation in Scottish legal tradition. He perspicaciously recognised, for example, that all of juvenile delinquency could not be viewed merely as the transient maladjustment of youth and that accommodation had to be made for offenders whose conduct was too serious to be considered as anything but grave criminality. He, therefore, drew on the long-standing respect for the office of the Lord Advocate to insure that when prosecution was necessary it would be undertaken in a way that would be widely seen as a professional conclusion reached in the public interest, although he, himself, would later think that the volume of prosecutions was at times excessive.

So, too, did Lord Kilbrandon never lose sight of the need for the new proposals to continue to reflect such core

values as liberty and privacy that had long been protected by Scottish legal traditions. He discerned as well, at a time when ideologies of many sorts clamoured for a dominant position in penal law thinking, that any system that embodied just a single value would be a very bad system. Thus he found ways for the new arrangements to express to children that they were to be held accountable in an appropriate way for their misdeeds while at the same time these very arrangements facilitated and promoted efforts to provide for the child's welfare. The tensions between the system's responsibility principles and its welfare principles have been and always will be troublesome, but to have pursued single-mindedly one and wholly neglected the other would have exposed children to either cruelty or lawlessness and neither of those could have been a product of Lord Kilbrandon's pen. A great debt is, therefore, owed him for an extraordinary and complex blending of innovation and tradition, an accomplishment that lies in the power of few people of any generation.

In addition, today is also an occasion for celebrating the twentieth anniversary of the Children's Hearings system and that is something very special as well. The anniversary

should be taken as the opportunity to congratulate all the people, most especially the panel members, social workers and the reporters – collectively they must number in the several thousands by now – whose dedication and generous giving of themselves have over the years nurtured the Hearings and brought the Scottish system of juvenile justice to a position of well justified pre-eminence in the world's juvenile justice systems. Among the historic accomplishments already familiar in Scotland, from the renowned scientists of the twentieth century back to the David Humes and the Adam Smiths who constituted the "hotbed of genius" of the seventeen hundreds, the Children's Hearings system has an assured place. So it is with great pleasure that I take this opportunity to tender my own most respectful congratulations and to offer for your consideration avenues for progressing still further towards the goal of ensuring, in its broadest sense, justice for children.

Part of the pleasure of participating in this occasion derives from a longstanding association with the Hearings. I was in Scotland at its inception in 1971 and again in 1976 when the festivities of the fifth birthday enjoyed a sense of relief

that the Hearings had survived its birth pangs and would probably survive local authority reorganisation as well. In all of this, the Hearings had the company of the developing profession of Social Work. Even at those early stages it held promise for becoming a most enlightened approach for dealing with troubled children, one whose evolution would be firmly rooted in the inspiration of Scotland's age of enlightenment. The connections with Scottish history were especially compelling since Lord Kilbrandon's integration of law and the social context of delinquency could be seen as proceeding along the pioneering interdisciplinary path of men such as John Millar, Professor of Civil Law at this University.

The tenth anniversary saw me back in Scotland, this time concluding the Children's Hearings Research Project which I had participated in along with the late Professor Fred Martin and Kathleen Murray. I count the tenth, therefore, as a time of stock-taking and evaluation, a sort of well-baby check on a system that still had to be counted as young and growing. Others were engaging in evaluations as well at this time, one of which was expressed in a consultative memorandum that proposed to engraft additional powers

on the hearings system that would have undermined much of what Lord Kilbrandon had envisioned. But that was rejected and the tenth anniversary, like the fifth, was, among other things, a time for celebrating survival.

And now we are at the twentieth anniversary. The problems of institutional infant and child mortality are now so well behind us that in 1988 David Coperthwaite was able to observe that:

> Criticism has never developed, either in Scottish public opinion or in Parliament, into a concerted demand for the replacement of the system.

There is certainly ample cause now to celebrate much more than survival. The Children's Hearings system has for 2 decades embodied and made operational child-centred concerns that are only now being recognised as goals for national achievement around the world. The idea that children should be active participants in decisions affecting them and that proceedings responding to their delinquencies should respect their worth and dignity as persons within a system of law have only recently been enshrined in the new United Nations Convention on the

Rights of the Child, although these values have been the foundation stones of Scottish juvenile justice for 20 years now. Anyone reading the Convention can hardly fail to see, in the language of our times, the role of Scotland as a major exporter in the process of juvenile justice technology transfer. As far as I can tell, neither the Convention nor any other juvenile justice system has yet been wise enough to copy another major Scottish innovation based on the Kilbrandon Report, namely, the separation of proof-making and trials from intimate discussion and disposition authority.

Since each of the anniversaries with which I have had some connection has had its own peculiar context of the times, it would be appropriate at this celebration of the twentieth to discuss the Children's Hearings system in its relationship to features of the early 1990s.

Before proceeding to identify the aspects of our times that are relevant to this discussion, I would like to suggest that there is one important feature of contemporary life that will not detain us. I refer to an economic climate that leaves the system short of resources. While I do not mean to deny the reality of this shortage, I do not propose to deal with it because it is hardly a characteristic of contemporary

times. Justice systems, adult and juvenile, are chronically underfunded and must always struggle, with degrees of success that fluctuate over time, for the financial support they require. That struggle has serious consequences, but because it is ubiquitous and fails to identify any of the unique conditions of the 90s, it lies beyond my purposes.

What does strike me as worthy of consideration as a twentieth anniversary context for looking at the Hearings system is the matter of the degree to which the world has shrunk, creating a qualitatively greater socioeconomic interdependence than was the case even as recently as in Lord Kilbrandon's day. So much have we come to accept that we are all neighbours that it seems merely a cliche to point it out. Everyone knows that 1992 is coming and that trade negotiations at a global level will have significant consequences at home. But it may not be as clear that the Hearings system and Scottish child care are also part of this increasingly integrated world community. I propose, therefore, to focus this first Kilbrandon Child Care Lecture on the Children's Hearings as part of the world community.

More specifically, I would like to address 2 aspects of the subject, one dealing with the impact of influences from

outside Scotland and the other looking at what I have already identified as a technology transfer from Scotland.

By way of introduction, it might be appropriate on this occasion to point out that the Children's Hearings system is, at least in regard to the United Nations Convention on the Rights of the Child, somewhat involuntarily a part of the international community. This comment stems from my experience in attending the meetings of the Working Group of the United Nations Human Rights Commission in Geneva during the period of several years when it was engaged in drafting the Convention. My discussions and observations during that period did seem to indicate that the United Kingdom often participated in the negotiations to produce a draft Convention with what can only be described as a profound lack of knowledge of what was going on in Scotland, particularly concerning the Hearings system. Whether the UK position on various issues would have been different if the delegation had been more adequately briefed from a Scottish perspective, or better still, if it had included a Scottish representative, is the subject of some disagreement. When the UK representative did transmit some of my apprehensions to

the Foreign Office concerning, for example, the effects in Scotland of including provisions in the treaty relating to legal representation of children, the reply from London was to say I was wrong.

Aside from questions of Scottish input to the UK foreign relations process (about which I know nothing except these Geneva anecdotes), a comprehensive assessment of the substantive content of international interactions relating to the Hearings is not very feasible since much of it takes place at an informal level. The international travels of panel members and others connected with the Hearings, for example, have to be counted as sources of international enrichment, as do the visits to Scotland of foreign officials interested in learning about the Hearings. But the mere fact that this to-ing and fro-ing is greatly facilitated by developments such as diminishing border and customs formalities and the appearance of European passports strongly suggests that much of this informal enrichment does take place.

There is, of course, further enrichment gained from the process of comparing juvenile justice developments in Scotland with those taking place in England. Constitutional

formalities notwithstanding, this too needs to be counted as part of an international exchange of ideas and experiences.

Examples of detailed reference to overseas experience for purposes of seeing Scottish theory and practice in a comparative context are already appearing in highly useful publications such as the recent book on Intervening in Child Sexual Abuse. Kathleen Murray and David Gough have made available to those concerned with making more effective the Scottish efforts to deal with child abuse a wealth of American and English experience with sexually abused children. It is also apparent that the Scottish Law Commission has framed its recommendations on the evidentiary problems presented by child abuse cases with a keen awareness of the requirements of international law, in this case the European human rights convention.

On the export side of international exchanges I should cite the Children's Hearings Research Project which I just mentioned, and immodestly add that the report of that research provided for international audiences a description of the Hearings in a wealth of detail that was quite extraordinary.

From these and other examples that time prevents discussing, it would be eminently appropriate to take this twentieth anniversary as a recognition and celebration of the Children's Hearings as an already vigorous and major participant in the internationalisation of juvenile justice.

This internationalisation is not something that has always been with us. With the unerring benefit of hindsight and of our new global perspective we can see that even when the world community was far less integrated, at the time the Children's Hearings were invented, for instance, there were relevant things happening in several parts of the world that might have been taken into consideration in the analysis of common problems.

By way of example, American reforms such as the revisions and codifications of the law governing juvenile courts that came into force in New York and in California in the early 1960s would have profited much from close consideration of contemporary proposals to reform juvenile justice in the United Kingdom. So too, the lengthy public debate in Sweden on the advantages and disadvantages of juvenile courts that resulted in Parliamentary adoption in 1960 of a new Child Welfare Act, one that served to

continue reliance on the informality of Child Welfare Boards, would have provided another useful point of view for American legislatures.

I need to emphasise that to point out any lack of attention to these and other cognate developments in various places is not to imply that the solutions to common problems that were reached in one part of the world would have been appropriate for any other part. But with our current understanding of the value of an international perspective it may not be entirely mistaken to see how much, for example, the program to obtain a Children's Hearings system in Scotland would have been strengthened if it had proceeded with a broader recognition that there were then common problems engaging the minds of concerned people outside of Scotland. The determination to press ahead with the innovative proposals of the Kilbrandon Report could have gained much appeal from an analysis that had explicitly included a reasoned rejection of both the more legalistic American approach and the less legalistic Swedish arrangements that were among the models then available as options to juvenile justice reformers.

The current internationalisation process is, of course, an ongoing one, and in light of the position of leadership that Scotland has established in that process it may be useful to identify some of the areas in which still further advances might take place.

It might be worthwhile, for example, to consider how best to embrace both the letter and the spirit of the juvenile justice articles in the UN Convention on the Rights of the Child. On the “letter” side, one could focus, for example, on Article 37(d) which is only one sentence long and says:

Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action.

This Article creates the opportunity to address a number of questions in Scotland. One of them relates to a child who is deprived of her liberty as a result of a Place of Safety Order. Specifically, does that child have, as the Convention requires, “prompt access to legal assistance to challenge

the deprivation of her liberty?". Can this assistance be provided by the Reporter? Can it be provided by the panel? For a number of reasons that need not be recited in detail, I am inclined to answer both questions in the negative and to believe also that Article 37 creates a gap that needs to be filled. Whether the child actually needs legal assistance is answered I think by a reading of Sheriff Kearney's perceptive discussion of the legal issues arising from the detention of children, a discussion which makes it clear that no reasonably intelligent adult could hope to work her way through the statutory maze without legal assistance.

The matter of the spirit of the Convention comes into focus when the legal assistance called for by Article 37 comes forward in the form of the legal aid that is available for an appeal to the Sheriff by the child in a place of safety. Here again I rely on the authority of Sheriff Kearney who has put his finger on a near-universal problem. He observes that "given the inarticulate nature of many of the parents and children involved the possibility of an early appeal to the Sheriff ... may seem to be a remedy which is more apparent than real."

That observation highlights a fundamental issue in children's rights, one that has caused considerable trouble in the United States and which may also be ripe for attention in Scotland and elsewhere in any juvenile justice system that, like the US and Scotland, guarantees children's rights. In the US we are finding it ironic that our juvenile court system which is defended as an institutionalised recognition of the special, immature, and vulnerable status of children, nonetheless, when it comes to exercising their rights, treats these same children exactly as if they were adults. This is not a question of what rights they have, only of how they are to exercise them. We provide them with a brief verbal explanation of the rights they do have, an explanation that an intelligent adult just might understand, and then we let them immediately engage in a legally effective relinquishment of these rights. Some of us have come to believe that treating children as adults for this purpose surely amounts to providing them with rights that are, in Sheriff Kearney's pungent phrase, "more apparent than real". As a result, we are ready to trade in the juvenile court system for something better.

The view that it is fundamentally unfair to let children be the best judges of their own interests when it comes to giving up their rights is not one, I suspect, that is widely shared, although I do sense a somewhat sympathetic note in the recently produced REVIEW OF CHILD CARE LAW IN SCOTLAND. Among the Principles which the Review Group reports were at the foundation of its work was one which included "the rights of children to participate in and if necessary challenge decisions relating to their care", In addition, the authors of the Report declared that in formulating these Principles it "indicated strong commitment to the principles embodied in the UN Convention on the Rights of the Child". All of this makes it a bit difficult to understand why their discussion of Emergency Protection includes no recommendation for the prompt legal assistance called for by Article 37, But perhaps the Review Group might agree that children should be treated like children when it comes to giving up what rights they do have.

Let me provide one additional example of where developments outside the country might play an important part in the work of the Hearings. I draw again from

American experience because I am most familiar with it and because it may have a bearing on current issues.

In the late 1960s the movement to deinstitutionalise the juvenile justice system in America had become both theoretically and pragmatically powerful. Probably the best known action in this direction was undertaken in Massachusetts where Jerry Miller, then the Commissioner of the Department of Youth Services, the agency that operates the institutions for delinquents, with notice to no one but his confederates in the venture, had a cavalcade of private cars drive up to the training schools and take all the children away, some to dormitories at the University of Massachusetts, some to YMCAs, others to wherever he could find room for them.

The outcry from all quarters was deafening. The juvenile court judges in particular were outraged that their commitment orders to the schools were being disregarded. I was Chairman of the Advisory Committee to the Department during the ensuing turmoil and found myself torn between the demands of the judges that Jerry be hanged, drawn and quartered and my own feeling that he was probably right. Similar conflicts erupted around

the country as a result of the conflict that had emerged between the need to maintain the integrity of judicial decrees on the one hand, and the recognition of the harmful effects of institutionalising children on the other. In the years that have followed, the challenge of finding a balanced accommodation between these 2 considerations has been particularly difficult because none of the states has a single agency responsible for the whole system, as would be the case if he had a Ministry of Justice on the European model. But in the more than 2 decades since the Massachusetts schools were emptied the issue has substantially subsided and no longer dominates juvenile justice debate.

The debate of those decades has left behind it, however, a significant body of literature and experience – both factual and empiric, as well as political and ideological that is available to any juvenile justice system that may conceptualise one of its problems as a concern with the distribution of powers between those bodies that are responsible for the care and custody of children and the agencies that are responsible for determining that there is a need for the care in the first place.

The movement to deinstitutionalise child care is familiar in many parts of the world and has certainly made inroads in Scotland where the proportion of the child population in some form of care was cut in two between 1976 and 1988. But it is difficult to know with much certainty whether this development was accompanied by an American-style rancorous conflict over the question of who has the power to command utilisation of increasingly scarce residential resources. If anecdotal evidence in Scotland is to be credited, however, that sort of problem does surface from time to time in the Hearings system. That it does is not surprising – like scarcity of resources, conflicts over distribution of power is ubiquitous in justice systems. But this does raise the question whether efforts to prevent the problem from reaching crisis proportions have drawn adequately on available relevant experience from elsewhere, such as in the dozens of jurisdictions in the United States that have had to cope with the issue. I do not know what the exact answer is to this question. But to the extent that the answer is negative, there is the suggestion of a need to develop further an internationalist perspective that is more consonant with exploiting the advantages of a global juvenile justice environment.

An absence of such an internationalist perspective can, moreover, manifest itself in more ways than as a failure to take advantage of opportunities to learn from the experience of others. It appears also in the form of unexploited opportunities to export significant experience to others. This is sometimes referred to as "keeping your light under a bushel". For present purposes that translates into letting the world know about the Children's Hearings system, not merely in general terms describing its structure, goals and personnel, but in terms of its demonstrated strengths and weaknesses. The Children's Hearings Research Project which I mentioned earlier was one means of doing just that. In at least 2 very significant ways, however, that research is inadequate in 1991 to raise the bushel very much.

First – while the results of the research project provided a firm foundation for believing that the Hearings system was an eminently exportable model, it also raised an apprehension on the part of some foreign observers about some of the weaknesses that were disclosed, particularly regarding breaches of legally mandated procedures in the Hearings. There is no question but that corrective

steps, mostly in the form of panel member training, have been taken. Moreover, the monitoring of this issue by the Children's Panel Advisory Committees has undoubtedly had additional remedial effect. But still there is absent any methodologically sound research to report to the international community that would verify the results flowing from training and CPAC monitoring. No one can say with any authority just what changes in procedural regularity have taken place. Anecdotal evidence can readily be found that says "very great change" but there is also some other anecdotal evidence that says "very little change". In the 10 years since the research was published no additional research data have been produced, for either domestic or foreign consumption, addressing the question of procedural regularity. Nor does there appear to be any provision for periodically and systematically monitoring such vital signs as adherence to legal rules. Since Lord Kilbrandon clearly saw the Hearings as part of a system of law for children, it would seem that the spirit of that vision, if nothing else, requires steps to verify that measures taken to ensure the integrity of the legal rules have had the desired effect. In the meantime, foreign observers are left with a question.

The second reason why our research is inadequate today is that when the data was gathered in the late 1970s for that project, child abuse generally and child sexual abuse in particular, constituted only a very small proportion of the cases taken into the system. Over the decade of the 1970s referrals alleging that the child lacks parental care or has been the victim of an offence did increase steadily, but by 1979 these care and protection cases were still only a little more than 5 per cent of all referrals. What we could learn in the research project about how the Children's Hearings dealt with these kinds of cases was, therefore, severely limited.

By the end of the next decade, however, the proportion of care and protection referrals had nearly quadrupled, a phenomenon similarly experienced in the United States and in other parts of the world. And yet, there is still nothing to export in terms of empiric research about how the Hearings System operates in these cases. It is widely acknowledged in all places that child abuse cases are highly complex – legally, socially, psychologically and intensely stressful for all concerned. As a result, in Scotland the burden on reporters has grown, the need for

specialised training for panel members and others has been acute, and research has been called for relating to treatment measures in these cases. Response to demands such as have been initiated and developed in Scotland, but there appears to be at present no prospect for determining how the massive influx of very difficult child abuse cases affects such key Children's Hearings issues as what their impact is on communication in the hearings; whether panel members find procedural regularity more or less difficult to achieve than in offence cases; the sort of filtering system reporters and the sources of referrals have adopted in these cases; the ways panel members use the information in social work and other reports; how parents and children evaluate their experiences in hearings; and a host of other questions. Systematically obtained answers could accurately paint a picture of the Hearings system as a valuable and innovative method for dealing with child abuse, a picture that is sorely needed all around the world by those groping for sound approaches for dealing with child abuse. Let me suggest an example of this need from my own recent experience.

A couple of years ago I had a visit from someone interested in knowing about the Hearings. I saw her again at a meeting a few weeks ago in Washington where she is now a senior staff person with the Senator who chairs the committee of the United States Senate that is concerned with federal action in the field of child abuse. She told me that she is now in a position to secure support for pilot projects modelled on the Hearings system to see how such a system copes with child abuse cases. The fact of the matter is, however, that we can pursue this only with a severe handicap stemming from there having been no systematic research or assessment in Scotland itself to determine just how the Hearings operate as a tribunal for confronting the complexities of child abuse. So there is a backlog of orders from at least one of your overseas markets.

The conversation in Washington which I just mentioned was at a meeting of the Juvenile Justice Committee of the American Bar Association at which the agenda included the planning of programmes to discuss the controversial issue of abolition of our juvenile courts. For the abolitionist side of that debate, identifying a body to succeed to the

responsibilities of the juvenile court is a central challenge. My own guess is that the leading candidates to inherit the juvenile court's work are a reformed criminal court and a non-judicial body modelled on the Scottish Children's Hearings. Even if there are more contenders, the Hearings model is likely to be near the centre of the discussions on juvenile justice reform in America.

But it would be very mistaken to see the United States as the sole, or even the most important, export market for the juvenile justice ideas developed in Scotland. If we look in the direction of Eastern Europe, for example, the Hearings system takes on additional international relevance.

Developments in Eastern Europe over the past 2 or 3 years sharply highlight the overseas significance of the Hearings system. It seems fair enough to characterise those developments as proceedings, at least in part, on a realisation that the purported concern of the Socialist states for the welfare of their citizens had produced obviously insufficient real benefits for the population as a whole, and that it had in fact, rather produced regimes chronically engaged in a disregard of the rule of law, greatly concerned with the strengthening of centralised control and operating

to produce an enrichment of elites. Change is consequently taking place which appears to be in the direction of civil and political freedoms, towards guarantees of a government under and not above the law, and in a quest for the widespread material benefits of a market economy.

Yet, time and again one comes across Eastern Europeans expressing a reluctance to embrace the more impersonal and egotistical aspects of capitalism and an unwillingness to abandon all commitment to the idea of a collective responsibility for the welfare of individuals. The moral and ideological appeal of being one's brother's keeper may well survive the destruction of socialist political and economic institutions. But it cannot be expected that this kind of continuing commitment to welfare principles will be accompanied by a broad acceptance of the bona fides of government and its agents, or that broad discretionary official powers, unconfined by rules of law, will be permitted back in. This is clearly being signalled by the recent Hungarian and Czechoslovak signing of the European Convention for the Protection of Human Rights and Fundamental Freedoms and by the applications for membership in the Council of Europe by Poland,

Yogoslavia and Bulgaria. As members of the Council they will then become eligible to join in the legal restrictions on government represented by the European Convention process.

To countries rapidly reforming themselves in these ways the Children's Hearings system as a model for restructuring juvenile justice systems would appear to have a strong appeal, especially in Poland where the historic concern for children has most recently expressed itself in that country taking the lead in the drafting of the UN children's convention. For nations such as Poland, which has also become the first East European State to accept the compulsory jurisdiction of the International Court of Justice, the system developed in Scotland would represent a demonstrated commitment to child welfare in the context of a system of law, 2 values that occupy centre stage in national reorganisation. It should be added that Eastern Europe is clearly not the only part of the world where one party socialist states have taken root and if these countries – mostly in Africa and Asia – follow the European lead away from those roots the Scottish Hearings would command still more of the eyes of the world.

Bearing in mind that a critical pillar of the national reforms I have just mentioned is a renewed commitment to the rule of law, I return at this point to the Children's Hearings Research Project's findings on adherence to legal procedures, the need to verify change and to the matter of a critical examination of the requirements of the UN Convention. It is more than a fidelity to Lord Kilbrandon's vision of a system of law that is at stake when procedural regularity and the impact of international legal standards are left unaddressed by sound research. A demonstrated ability of the Hearings model to operate as a system of law and respect for children's and parent's rights is a major source of the overseas attraction exerted by the Hearings in the United States as much as in regions experiencing the demise of centralised authoritarianism.

In the United States the effort to ensure children's rights in the juvenile courts has had far less success than had been expected 20 and 30 years ago and it is this kind of failure that is fuelling the call for abolition of the juvenile court. Much of the failure seems to be attributable to our ready willingness to provide rights to children in theory, but

in practice to permit them to give them up as if they were comprehending adults.

That is a crucial shortcoming. And without any accompanying means for implementing any child welfare principles, we end up providing American children the worst of both worlds – no rights and no welfare. In this context, it can readily be appreciated why I count myself as an enthusiastic advocate of a Children's Hearings model, but one whose advocacy is vulnerable to the claim that, for all we know as fact, the Hearings may be weak in delivering one of the values whose absence justifies putting the juvenile court out of business, namely, a strict adherence to legal procedures and respect for the reality of children's rights.

Thus far I have tried to indicate some of the reasons for believing that there might be distinct advantages to the Hearings system accepting responsibility as a part of a worldwide juvenile justice community, advantages that would accrue both to Scotland and to others. It needs to be added that such an undertaking need not be borne by Scotland alone, although I do think that when you have something as good as the Children's Hearings there is,

to some degree, an accompanying responsibility to share findings and experience with those others.

It is with this in mind that I would like to suggest that consideration be given to the establishment in Scotland of an INTERNATIONAL CENTRE FOR THE COMPARATIVE STUDY OF JUVENILE JUSTICE, an institution that would serve as a market place of ideas – a Mecca in the field of juvenile justice. The mission of the Centre would be to enrich our mutual understanding of juvenile justice by promoting the generation and the dissemination of information concerning juvenile justice systems in all corners of the globe, including, as a priority matter, the one in Scotland. The rationale of this proposal rests on the twin beliefs that the Hearings system is a beacon that can light the path of reform that is being traversed in so many places and second, that the Hearings themselves can only benefit from a process of systematic international exchanges.

The Centre should be governed by a Board of Directors composed of persons from a variety of cultures, all of whom would be committed to the principle that juvenile justice means promoting the welfare of children within a

system of law that takes at least as seriously the rights of children as it does the rights of adults.

As a starting point, this market place of ideas could undertake to clarify some of the key ideas associated with a Hearings system by generating data on such pressing issues as how the Hearings can lead the way toward devising a system of rights that is real and not apparent. There are no easy solutions to that issue, but Scotland is a promising place to begin looking for them. Similarly, the Hearings have much to tell about a new approach to the problem of child abuse. All of us need these kinds of information. We similarly need to know something of the life history of people whose childhood included interactions with the Hearings – longitudinal studies would be of great value in evaluating the role of the Hearings.

In addition, work of the Centre could focus on the standards embodied in the UN Convention on the Rights of the Child and seek to develop indicators for the achievement of those standards, much as the World Health Organisation has developed health indicators as a means for estimating national achievements in the field of health. Such an effort would be invaluable, especially to the

Committee on the Rights of the Child that is established under the Convention to monitor implementation of its provisions.

The Centre could also make a major contribution to the exchange of juvenile justice ideas by building on existing electronic communications capabilities such as the new data base of Scottish child care law, the National Criminal Justice Reference Service in the United States, and the burgeoning international systems of electronic mailboxes and bulletin boards for facilitating the informal interchanges that are essential to a dynamic juvenile justice community that transcends national boundaries.

Such a Centre should, moreover, take the lead in stimulating and co-ordinating local and comparative studies of juvenile justice operations. A major advantage flowing from this would be in the form of technical assistance from the Centre in deliberately designing research studies so as to make the findings maximally useful to a broad international spectrum of juvenile justice interests. For example, a series of co-ordinated national studies focusing on children's participation in the juvenile justice system could produce a rich inventory of forms of participation

as well as a useful range of techniques for measuring the actual participation of children.

Establishing such a Centre in Scotland would need to take care to attract the co-operation of overseas groups and individuals, primarily by avoiding the appearance of seeking to create a monopolistic control of the field. If this effort developed from the outset links with existing juvenile justice bodies in other parts of the world who would be assured that the Centre would serve only to enhance and facilitate their work; if stress were laid on the co-ordinating and clearinghouse functions of the Centre; and if the individuals constituting the founding body were of sufficient stature and internationalist outlook, then Scotland's demonstrated achievements in juvenile justice should permit withstanding any challenges to locating the Centre in Scotland.

There is, of course, much more to discuss concerning this proposal. I have mentioned nothing, for example, about the international sources of initial and continuing funding for the Centre. I refrain from that partly because there is simply not sufficient time to explore the subject and partly because of my belief that our real shortage is in ideas and not in

money, and that if the idea is acceptable the resources can be found.

In closing, I would like to reiterate my sincerest congratulations on 2 decades of achievements in juvenile justice. I hope that what I have said is not taken as being overly critical. I have meant much more to highlight the opportunities for further achievement that are open from the heights that have already been attained rather than to reflect negatively on past experience. But to any who might be of a mind to believe that I have inappropriately stressed shortcomings, I would ask you to recall the final scene of a movie that was popular some years ago in which Tony Curtis and Jack Lemon masquerade as female musicians in order to escape the vengeance of a mob of gangsters. It was called "Some Like It Hot". In the course of these impersonations Tony Curtis becomes romantically involved with Joe E Brown. At the end, Brown proposes marriage to Curtis who finally abandons his female role and exclaims, "I can't marry you, I'm a man!'' But Brown calmly replies, "Well, nobody's perfect."

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ISBN: 978-1-78045-850-2

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APS Group Scotland
DPPAS13045 (03/12)

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