



Children's Rights and the Circle of Caring

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Abstract

In considering the morality of public policy, including child protection policy, one must go beyond the logic of the content underlying moral judgments. It is at least as important to discuss the breadth of the *circle of care*—the scope of application of norms of human dignity, as illustrated by human rights law. In essence, we must exercise due care in determining not only *what* human decency demands but also to *whom* the Golden Rule applies. This point was vividly illustrated by the Trump administration's barbaric policy of separation of parents and children as a deterrent to illegal immigration to the United States. In building more sensible and sensitive child protection policy, we must remain vigilant in affirming the humanity of children in general and, in particular, those who live in exceptionally difficult circumstances or whose families are in groups especially vulnerable to injustice.

Keywords Child maltreatment · Circle of caring · Evolutionary psychology · Family separation · Immigration

Both the politics and the substance of public policy sometimes offer windows into the soul of the society in which they are embedded. The involuntary separation of thousands of undocumented children and parents that took place at the southern border of the United States in spring-summer 2018 was revealing in just this way. Apparently as a strategy for deterrence of immigration (including the migration of asylum-seekers) from Latin America, the Trump administration undertook a policy remarkable for its cruelty. Federal border authorities separated even very young children from their parents, initially detained the children in cages in warehouses, and then often sent them hundreds or thousands of miles away for an indefinite period of time, typically without any plan for reunification of the family or even communication among family members.

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The Trump administration's callousness toward immigrant families illuminated the need for care in both deliberation about moral values in the abstract (the *content* of moral judgment) and consideration of the human *scope* of those values. The substance of morality is very important, of course. Of at least equal importance, however, is determination for whom and to whom that moral content applies—in essence, a society's identification of whose human dignity is worthy of respect..

I refer to this fundamental question about the breadth of application of human rights as the *circle of caring*.¹ We can start from the fact that our evolutionary psychology pushes us toward a small circle of caring. In the strictest evolutionary terms, there is reason to expect a morality relevant only to our particular gene pool. Thus, for most people most of the time, the circle of caring certainly includes the family. The principal exceptions are generally psychopaths who care for no one, and therefore for no one's future. Psychopaths may appreciate the inheritors of their genetic heritage, but only in the narrowest, most primitive way, and generally with a strong narcissistic element—pride in passing along their genes at the expense of everyone and anyone else (Garbarino 2018a).

The commitment that “normal” people have to “family” is, from the perspective of evolutionary psychology, arranged in a precise descending order across extended family as a function of relative genetic overlap. Thus, our own children have a higher moral priority than our nieces and nephews, who in turn have higher priority than the children of unrelated persons.

Research conducted by Daly and Wilson (1998) confirmed this principle by showing that this hierarchy is embedded in contemporary human consciousness as a consequence of human evolution. In particular, they showed that the odds that a child will be abused and neglected (even killed) increase as the genetic distance between the child and the caregiver increases. Evolutionary psychologists explain this *Cinderella effect* in terms of differential genetic investment as the biological links between people become more remote weaker and thus their genetic stake diminishes (from the very primitive perspective of heritability). Martin and Daly did acknowledge the “exception” of mentally ill biological mothers who kill their children because their mental illness disrupts the “normal” genetic hierarchy.

But evolutionary psychology does not stop there when it comes to a broader circle of caring beyond the genetic family—call it *altruism*, if you will. Evolutionary psychologists acknowledge the existence of a self-interested commitment to members of the community on whom we depend for our own survival (and thus for the survival of our genetic heritage as part of “our” gene pool). Beyond that? Evolutionary psychology cannot take us much beyond that, and certainly not to a globalized circle of caring in which the entire human gene pool is our moral concern. In the evolutionary period many thousands of years ago, psychology produced the *caveman brain* that all contemporary humans share. This perspective did not involve much beyond family, clan, tribe, and community—and perhaps eventually, race—as in the case of Neanderthals v. *Homo sapiens*.

¹ Others (e.g., Beck 2011; Melton 2014) have cast this question in terms of moral and religious duties toward *strangers*, people who may seem to differ so much from the dominant group that they may fail to arouse empathy or, worse, that they may elicit disgust.

The Legal Atrocity of Separating Children from their Parents

A contemporary example of the limits of compassion occurred in early summer 2018, when a project in legal barbarism was in the headlines in the United States. The Trump administration announced that it would undertake an aggressive program of separation of parents from their children at the U.S. southern border if those parents entered the country without legal documentation and did so at places other than designated ports of entry, even if they were seeking asylum. In a 2-month period in April–June 2018, this practice led to more than 2000 children being placed in detention facilities after being separated from their parents—including infants “ripped” from their mothers’ arms.

The goal? The official line was that the goal was deterrence, with children used as emotional leverage to dissuade other parents from making the trip, and to force Trump’s political opponents to vote in support of building his “beautiful” iconic wall across the border between the United States and Mexico.

News reports and professional assessments alike documented the emotional savagery of this policy in practice. Colleen Kraft, the president of the American Academy of Pediatrics, visited the border, and her assessment was that this practice was “child abuse”: “This is injustice against the most vulnerable people on this planet: little children.”²

Virtually everyone *not* involved in implementing the policy recognized the accuracy of that charge. I suspect that even some of those who were involved in the implementation saw the policy for what it was, even if they were constrained in speaking up about it. Shock and outrage followed disclosure of what was actually happening. Those reactions revealed the psychological realities behind the Orwellian “objective” language used to describe the policy of family separation.

The tipping point seemed to come in the days following June 17, when an investigative reporter working for ProPublica (a non-profit journalism organization) shared a recording of desperate young children crying out for their parents, a recording that was smuggled out of one of the shelters in which the children were being held. Normal people (in this case members of the U.S. Congress) found the recording “heart breaking,” “absolutely gut-wrenching and beyond disturbing,” and “just awful.” Some journalists (including Rachael Maddow) cried on air when they learned that “tender care” centers had been established for the separated infants and toddlers.

Secretary of Homeland Security Kirstjen Nielsen responded defensively without acknowledgment of the human rights at stake:

I think that (the commentators) reflect the focus of those who post such pictures and narratives. We don’t have a balanced view of what’s happening, but what’s happening at the border is [that] the border is being overrun by those who have no right to cross it.... We will not apologize for the job we do or for doing the job that the American people expect us to do.

Attorney General Jeff Sessions took a purportedly biblical stance:

² Kraft’s remarks and the other “public” quotes that follow were drawn from reporting by CNN, as recorded during spring-summer 2018 at <https://www.cnn.com>.

I would cite you to the Apostle Paul and his clear and wise command in Romans 13, to obey the laws of the government because God has ordained the government for his purposes.... Orderly and lawful processes are good in themselves. Consistent and fair application of the law is in itself a good and moral thing, and that protects the weak and protects the lawful.

Most monstrous of all was Stephen Miller, the White House staffer who claims to have been the architect of the policy of family separation. Everyone with even a basic understanding of immigration policy recognizes the complexity of the interests at stake, and the majority of Americans recognize the morally outrageous nature of separating children from their parents. Absurdly, however, Stephen Miller said, “It’s a simple decision.”

One particularly vivid moment in the public debate came when CNN reporter Brian Karem confronted White House Press Secretary Sarah Huckabee Sanders. Karem was visibly upset when he demanded that Sanders explain how she as a parent herself could justify and rationalize the policy. Not surprisingly, she dodged the question and dismissed him. What was in her heart about this? It’s hard to know if she “got it” but nonetheless suppressed that feeling to do her job of representing President Trump.

How could high-ranking Trump administration officials like Miller, Nielsen, Sanders, and Sessions justify the cruel and psychologically abusive separation of children from their parents at the U.S. border? Public opinion polls (<https://poll.qu.edu/national/release-detail?ReleaseID=2550>) revealed that nearly 60% of Republicans nationwide approved of the policy (versus 27% of Independents and 6% of Democrats)? How did the Administration and the majority of rank-and-file Republicans justify cruelty toward children and their families simply because the parents crossed into our country seeking as undocumented (“illegal”) immigrants or as asylum-seekers at unofficial checkpoints?

The problem is not primarily a matter of values. Most of the supporters of Trump’s immigration policy espouse values most of the time that are, in the abstract, “moral.” They are likely to support common standards of decency regarding the human rights embodied in traditional American statements about “life, liberty, and the pursuit of happiness”—in other words, expressions of “normal” morality. Of course, any open-minded student of American history knows that there has always been a tension between these high values and their application in American society. Slavery, the dehumanization of indigenous peoples, and second-class citizenship for women and children have all co-existed with proclamations of human rights in the Declaration of Independence and the Constitution.

The 2018 response was certainly more evolved than how American—and American leaders—responded to the infamous My Lai massacre in Vietnam. On March 16, 1968, regular American soldiers—most of them barely beyond adolescence—massacred upwards of 500 defenseless and unarmed old men, women, children and babies (raping many of the women and then mutilating their bodies) in a small hamlet in Vietnam. When the war crime was exposed by the few soldiers who refused to cooperate in the massacre and/or the Army cover up and a small band of brave journalists it became an international scandal. Nonetheless, a *majority* of Americans reported in a public opinion poll that that supported the American soldiers. The separation of children from their parents at the U.S. border does not compare to the My Lai massacre in the level of

its barbarism, of course. But the fact that a majority of Americans then and a majority of Republicans now voice their support for these human rights abuses says something powerful about the dark side of our culture. I have been to My Lai, and know first hand what a moral stain it is—a stain mitigated only by the actions of the few military personnel who stood against then and the fact that it is taught now in American military academies as a case study of the higher standard to which our warriors are expected to live by. This recognition has not prevented subsequent massacres (in Afghanistan, for example), of course, but it does show a higher consciousness emerging, a humanistic psychology beyond the caveman brain.

Why are “values” not the central issue? Because the problem is not simply one of the content of morality. Of at least equal importance is an appreciation of to whom and for whom that moral content applies. We must consider the scope of the Trumpian circle of caring. This question brings us back to evolutionary psychology.

The Caveman Brain Versus the Better Angels of our Nature

Human behavior reflects, in large part, a struggle between the impulses of our *caveman brain*—the brain that evolved many thousands of years ago—and our capacity for *humanistic psychology*—the consciousness that enables and arises from advanced civilization, reflection, and profound introspection. It seems that the evolutionary psychology that comes with our caveman brains pushes us towards a small circle of caring. In the strictest evolutionary term. This limited range of social concern implies a morality relevant only to our particular gene pool. In contrast to evolutionary psychology, humanistic psychology aspires to a circle of caring that extends beyond an individual's narrow gene pool as defined by direct genetic heritage. It seeks to create a moral space beyond self-interest, and even beyond the altruism of *indirect* genetic self-interest.

For Americans, confrontation of global issues like immigration can lead in two directions. The first is what is represented by the Trump administration and his political “base.” This is the primitive thinking of tribe, of the caveman brain. The second is the humanistic mind and heart that transcends evolutionary psychology.

It is evident in expanding circles of caring to global proportions, by building upon “traditional” American values like justice, liberty, and equality, and upon “universal” values like caring for children. The outpouring of support across the United States in response to the child separation policies exemplifies that “higher” calling. This impulse is the foundation for child protection grounded in human rights (Thompson and Flood 2002). As documented by the U.S. Advisory Board on Child Abuse and Neglect (1993), the recognition of “personhood” of *all* children is at the heart of both the informal impetus to help children that exists in communities and in the formal system of state-sponsored child rescue, support, and treatment when children are exposed to psychologically toxic environments in the home, and by extension, in the community and institutional settings.

One impediment to the humanistic development is the fact that “global sociopaths” play a significant role in our political life, in 2018, a disproportionate role. Although true psychopaths are rare, and have virtually no circle of caring, sociopaths are more common, and are distinguished by the fact that they do have a circle of caring in which

they may operate “morally.” However, outside that circle they demonstrate the same moral insanity that is at the core of being a psychopath. Enter Stephen Miller, Kirstjen Nielsen, Jeff Sessions, Sarah Huckabee Sanders, and Donald Trump and apparently, much of the Republican Party. As the days wore on, however, some Republicans, including former First Lady Laura Bush and a sprinkling of U.S. Senators and members of the House of Representatives, spoke out against the policy, despite the fact that a majority of self-identified Republicans supported the policy.

The emotional callousness of those who supported the Trump policy was on public display. For example, a focus group of Trump supporters generally blamed the parents for the separation of their children. These respondents appeared to be ignorant of the fact that these parents were, for the most part, legally entitled to a hearing of their claim of asylum (to escape the violence and trauma that afflicted them in their home countries)—until the Trump administration issued new regulations limiting the scope of such asylum claims.

The Bible Tells me so

Some of the political battle over the failure to protect these children and the aggressive psychological maltreatment of them by separating them needlessly from the parents was fought on biblical terrain. New York Cardinal Dolan spoke for the best of biblical messaging in his response to Sessions’ claim of biblical justification for the policy: “I don’t think we should obey a law that goes against what God intends that you would take a baby, a child, from his or her mom. I mean, that’s just unjust. That’s un-biblical. That’s un-American. There could be no biblical passage that would justify that.”

Pope Francis weighed in with his support for this interpretation of scripture. The Pope is fond of recalling the admonition of St. Francis himself who said, “Preach the gospel.... If necessary, use words” to make clear the biblical preference for moral deeds over moral pronouncements. However, appeals to biblical morality are insufficient, whether for better (“Suffer unto me the little children”) or worse (“the law is God-given”), unless they are grounded in universal brotherhood—a globalized circle of caring if ever there was one. But assertions of morality—biblical or otherwise—are not enough if the core problem lies with a small circle of caring. Why? Because a small circle of caring allows otherwise “moral” and “good” people (setting aside whether Miller, Nielsen, Sanders, Sessions, and Trump belong in that category of humanity) to justify and rationalize the barbaric and abusive—shamefully, to affirm barbaric treatment of asylum-seekers whose greatest sin has been to seek sanctuary from the violence, trauma, and poverty in their homelands.

Evolutionary psychology naturally breeds such sociopaths—above and beyond conventional criminal behavior—because it offers a brain inclined to embrace only close in circles of caring. They can do so without sacrificing or even compromising their “values,” by virtue of the fact that their circle of caring does not include these parents and their children. Once you accept the proposition that these are not “our” children, the moral battle is already lost. The underlying racism behind the policy pushed through the rhetoric repeatedly, as when President Trump warned that without “secure” borders the United States would be “infested” with immigrants. “Infested?” Enough said.

Actually, there is more to be said. The barbarism of the child separation policy speaks to a larger breakdown in American consciousness regarding the human rights of children and the moral imperative for child protection. After all, the United States stands almost alone among U.N. members in its failure to ratify the Convention on the Rights of the Child (1989). Periodically for more than a decade, some Supreme Court justices have denigrated this international effort, as applied in *Roper v. Simmons* (2005) and its progeny to capital punishment, mandatory life sentences, and life imprisonment without parole (but see Breyer 2016; Garbarino 2018b). It seems safe to assume that the same ideology that guides politicians and religious leaders to block ratification of the Convention supports the separation of children from their parents at the United States' southern border.

Thus, I must disagree with President Obama when he famously said in 2004, "There is not a liberal America and a conservative America—there is the United States of America. There is not a Black America and a White America and Latino America and Asian America—there's the United States of America." The child separation issue proves him wrong in this. When 60% of Republicans support this policy, there is a Caveman America and a Humanistic America.

The Last Word

The policy of separating children from their parents as an exercise in political leverage makes sense in a way that has never been captured better than by the nineteenth-century Russian novelist Fyodor Dostoyevsky (1881/1992) when he put these words into the mouth of a character in his book, *The Brothers Karamazov*:

"Imagine that you are creating a fabric of human destiny with the object of making men happy in the end, giving them peace and rest at last, but that it was essential and inevitable to torture to death only one tiny creature—that baby beating his breast with its fist, for instance—and to found that edifice on its unavenged tears, would you consent to be the architect on those conditions?" (pp. 126–127)

This passage from Dostoyevsky's *The Brothers Karamazov* captures one of the most important human rights issues for children. Whether acceptance of the torture of children occurs sadly or gladly, anyone who said "yes" to the family separation policy is also saying "yes" to the question posed by Dostoyevsky more than a century ago. Whenever political leaders endorse political violence, whether it be separating children from their parents at the border or the use of terror tactics to achieve social change, leaders answer "yes" to the question, "Would you consent?" They justify and rationalize their "yes" vote precisely along the lines that Dostoyevsky suggested, namely that this act of violence is necessary because by engaging in such policies and actions we "are creating a fabric of human destiny with the object of making men happy in the end, giving them peace and rest at last."

Just this one time, they ask, suspend your moral objections to the torture of children in the name of the greater good, the higher principle, national honor, liberation from oppression, defense of the homeland, or "secure borders." Just this once. And just this

time. And just in this case. But it never ends. No discussion of the human rights of children can proceed until this point is swallowed, digested, and absorbed. Without it, child protection is always a hollow reed in the political arena. Indeed, without it, children's experience may be the most important missing element in child protection policy (Thompson and Flood 2002; U.S. Advisory Board on Child Abuse and Neglect 1993).

The moment of hope is found in the recognition that the Trumpians stand in opposition to the many Americans (fortunately, a majority according to polling) who viscerally and intellectually recognize the wrongness of the child separation policy, and who more generally support the human rights of children. Although authoritarian impulses have long been found in U.S. culture, in the end the soul of America has rested on the endurance of respect for human dignity (Meachem 2018).

The modern child protection system in the United States and much of the rest of the world was grounded in the recognition of the precariousness of the inclusion of children, especially those who are maltreated, in expectations for respectful, humane care. It is worth remembering that the principal designer and advocate of that system was the late C. Henry Kempe, a young refugee (an unaccompanied minor at the time of his arrival) from Nazi Germany to the United States (A. Kempe 2007). The successful protection of children's safety and security, regardless of their national origin, must be grounded in due respect for their humanity.

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