

CHILDREN'S AND PARENTS' PERCEPTIONS ON CHILDREN'S PARTICIPATION IN DECISION MAKING AFTER PARENTAL SEPARATION AND DIVORCE*

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This article outlines the views of children and parents involved in family law disputes, about the need for and appropriateness of children's participation in decisions regarding residence and contact arrangements. Ninety parents and 47 children (ranging in age from 6 to 18 years) who had been through parental separation, were interviewed. Both parents and children had a range of views about the general appropriateness and fairness of children being involved, but the great majority, particularly of parents, thought that children should have a say in these matters. Core findings of the study include the considerable influence that older children had over the arrangements either in the aftermath of the separation or in making further changes over time, and the higher stated need of children who had experienced violence, abuse, or high levels of conflict to be heard than those in less problematic and noncontested matters. Parents involved in contested proceedings supported the participation of children at a younger age than those who were not. There was a reasonable degree of agreement between parents and children about the need for children to be acknowledged and the value of their views being heard in the decision-making process. Parents, however, expressed concern about the pressure and manipulation that children can face and exert in this process, whereas children were generally more concerned about the fairness of the outcomes, and maintaining their relationships with their parents and siblings.

Keywords: *participation; parental separation; custody; visitation; children's perceptions; parents' views*

Over the last decade or so there has been increasing recognition of the need to take into account the views of children on various issues in relation to decisions that directly affect them. Increasingly, children have been recognized as active constructors of their own experience and as persons in their own right whose perspectives and interests may not necessarily coincide with those of their parents or other adults responsible for making decisions (Smith, Taylor, & Tapp, 2003). The ethical and practical importance of hearing and taking children's views into account has been highlighted by Smart, Neale, and Wade (2001) who argue that children's viewpoints need to be included if family policy is to proceed from an ethical stance:

... in order to treat children ethically we need to be able to hear what it is they value and to be able to see how they make sense of the social world. [...] Children have standpoints which are not the same as adult standpoints; moreover they know a great deal about parenting and its consequences (p. 156).

This is particularly pertinent for children following the separation and divorce of their parents. Recent studies focusing on children's perspectives of their parents'

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separation and divorce have added to research on the effects of divorce itself on adjustment (Butler, Scanlan, Robinson, Douglas, & Murch, 2003; Mitchell, 1985; Morrow, 1998; Smart, Neale, & Wade, 2001; Trinder, Beek, & Connolly, 2002). A number of studies now provide evidence that most children do want to have a say, but generally do not want to take responsibility for these decisions (Bretherton, 2002; Gollop, Smith, & Taylor, 2000; Morrow, 1998; Murch et al., 1999; Parkinson, Cashmore, & Single, 2005; Smart & Neale, 2000). Murch et al. (1999), like others, have pointed out that many adults, including legal professionals, confuse “participation” with autonomous “decision making” and question children’s competence to be involved in this way and do not see alternatives.

Given reluctance within the legal arena to involve children, and the tendency to rely upon notions of children’s competence and incompetence rather than their right to participate, the current study sought to systematically explore the view from within separated families—specifically the perceived appropriateness of children’s participation in relation to living and contact arrangements postseparation.

METHOD

This study involved 47 children and young people and 90 parents. The children and their parents were recruited for the study through family lawyers, who were asked to write to up to 15 former clients who had resolved matters in the preceding 12 months. The lawyers were also asked to choose a mixture of clients. The first category were those who had been able to resolve their parenting issues with no more than counseling and mediation, either from the Family Court’s Mediation Service or community-based organizations. The second category included those who had experienced a more intense level of engagement with the family law system, either going to trial or at least having an independent expert report commissioned in preparation for a trial.

Children and young people. The 47 children and young people from 28 families included 10 sibling groups of two to four children and ranged in age from 6 to 18 years, with a mean age of 11.8 years ($SD = 3.1$) at the time of the interview. Their ages at the time that their parents separated ranged from 5 months to 16 years, with a mean age of 7.1 years ($SD = 4.6$). Just over half the children (25/47, 53%) had experienced contested proceedings, and 22 had not. Either the parent or the child(ren) made substantive allegations of some form of family violence (allegations of violence between the parents) or abuse or neglect in 9 families affecting 19 children, and most of these cases (15/19) were contested. There was no significant gender difference in age at separation or at interview (average age of girls and boys at separation, 6.4 and 8.1 years and at the first interview, 11.7 and 11.9 years, respectively). Three-quarters of the children were living with their mother ($n = 35$, 74.5%), just over 20% with their father ($n = 10$), and only two boys in one family in shared alternate week arrangements.

The interviews concerned children’s understanding of and participation in decision making about residence and contact issues following the separation of their parents.¹ Children were offered the opportunity either to talk directly with the interviewer or to respond to a specially designed computer-assisted interview with a mix of closed and open questions on a laptop computer. The interviews were tape-recorded and transcribed (including the child’s comments and conversation as they responded to the computer-assisted interview). Most children (29/47), especially those 12 years of age and younger (23/29), elected to use

the computer-assisted interview. All were interviewed at their homes without their parents or siblings being present.

Thirty-five children and young people were reinterviewed in 2005, 18–30 months after the first interview, to explore any changes in their arrangements since the first interview and their involvement in decision making about any changes.

Parents. Thirty-two parents (19 resident mothers, 6 resident and 7 nonresident fathers) from the 28 families (including both parents in three families) were also interviewed, and 25 were reinterviewed at the same time as their children. A further 58 parents (with both parents in a further two families) were interviewed on one occasion, but did not give permission for their children to be interviewed and were not reinterviewed. A total of 90 parents were interviewed; most of the mothers (39/43, 90.7%) were resident parents, and the fathers were mostly nonresident parents (31/47, 66%). One mother and six fathers were in shared parenting arrangements.

RESULTS

The results deal with three main questions: first, how much say did children recall having in relation to their living and contact arrangements and how much did they want; second, how appropriate do children and parents think it is for children to be involved; and third, at what age, if any, do children and parents think children should be involved?

HOW MUCH SAY DID CHILDREN RECALL THEY HAD IN THEIR LIVING AND CONTACT ARRANGEMENTS?

Sixty percent of children (27/45) said they had had some say (either “a bit” or “a fair bit”) in the arrangements about where they would live and when they would see their parents after their parents separated. Overall, children age 12 and older were more likely to report having had “some say” than younger children (19/23 of the children age 12 and older compared with 8/20 of the under-12-year-olds.² Children who were the subject of contested matters were, however, no more or less likely than those in uncontested matters to report having some say in the arrangements, despite the fact that often, their views were sought through a Family Report prepared for the purposes of the proceedings and that many had independent legal representation.

When children's comments about how much say they *had* had were compared with how much say they *wanted* to have and how they wanted to be involved in the decision-making process,³ the main mismatch was between those who wanted more say than they reported actually having. Just over half the children ($n = 22/42$, 52%) indicated that they had had little or no say but wanted more say or to have been involved in the decision making with their parents and siblings and, in some contested matters, with the judge and the counselor. The association with age was significant, with children under 12 being more likely to have wanted more say (79%) compared with those over 12 (35%), who were more likely to say they were happy with the amount of say they had had (63%, odds ratio = 6.4). Only four reported not wanting to have a say; three were under 10 years of age and said they had had no say at all, and only one was in a contested matter.

The most commonly desired change was for children to have more time with their nonresident parent, mostly their father ($n = 15$), although three children wanted less or no time with him. For example: “I would like to see my dad whenever I want to” (Nick, 11,

contested); “I’d make Mum drive half-way and I would see Dad every second weekend” (Skye, 11, not contested).

In 14 families, parents and children reported that the children were instrumental in seeking changes to their contact or residence arrangements in the years following their parents’ separation. They did this by: refusing contact or overnight stays ($n = 7$) or “pushing” for a resumption of, or an increase in, contact ($n = 3$), two involving unsuccessful court action. In two cases, children changed residence without contest, but in three others their disclosures of abuse, calls to police, or running away to the other parent led to court action that resulted in orders changing the residence arrangements. These children were all 10 years of age or older at the time. Children voted with their feet if the relationship with the nonresident parent was abusive or unsatisfactory. As one 16-year-old, whose parents separated when she was 4, said: “I didn’t see the point in going there [if I was just being ignored]. And it just went on until I was 12 or 13 when I had enough guts to say ‘no’. I said ‘no’ and just didn’t go.”

SHOULD CHILDREN HAVE A SAY? IS IT FAIR?

Both children and parents were asked several questions about the appropriateness, benefits, and disadvantages of children having a say in the postseparation arrangements for residence and contact. For older children and parents, these took a general format (“Do you think it is appropriate for you/children to ‘have a say’ in what is decided? Why/why not? Some people say it isn’t fair to ask children what they want, that it puts you/children in a difficult position. What do you think?”). For younger children, the questions were related to a vignette about a child of their own age and gender (“Do you think Simon/e should say what s/he wants? Do you think it puts Simon/e in a difficult position? What might s/he worried about?”).

Children’s Views

Most children (91%, 40/44 who gave clear answers) said that they should be involved, though not necessarily in *making* the decisions. Just over half ($n = 23$, 52%) gave strong and unqualified responses indicating that children should be involved. The majority of these children were involved in contested matters ($n = 18$, 72% of the 25 children in contested matters). Their views on the importance of having a say were likely to be strongly expressed where violence, abuse, or high levels of conflict were involved.

The next largest group ($n = 17$) gave more qualified responses, with some saying that they wanted to be involved but did not want to make the decision themselves ($n = 14$, 32%); others said that it depended on the circumstances and exactly what decision needed to be made ($n = 3$). These children were more likely to be involved in noncontested matters without high levels of conflict or violence (12/17). Some, like Sophie, saw the process as a shared one, or like Cassandra, as one that was more their parents’ responsibility.

I don’t think they should have the final decision but they should get an audience. They should be able to say, I would prefer this and this and this. “This is what I would like to do”—but the parents should make the final decision (Sophie, 16, contested).

“Simone should have some say but it’s more the parent’s decision. They should listen to her just to mix with their idea what the child thinks” (Cassandra, 9, not contested). The difference between children in contested and noncontested matters was significant.⁴

Most children overall (70%) indicated that “being asked” does put them in “a difficult position.” Of the 11 children who rejected this idea, eight had been exposed to violence or experienced abuse or neglect, and one was unhappy with her father’s continual denigration of her mother. The reasons other children said it *did* put them in a difficult position concerned the consequences for their parents (being hurt or upset, 35%) or for themselves (being sad or worried, 30%) or not wanting to choose or being scared of making the wrong decision (27%). Four children expressed concern that a parent might “hit” or “hurt” them or “not let them in the house.” The ambivalence of some children was captured well by one teenager caught in the aftermath of a high-conflict separation: “I’m not happy that I have to make the decisions but I’m happy that I could make the decisions” (Hilary, 14, contested case).

Children’s Reasons for Wanting to Have a Say

There were several consistent themes in children’s comments about the benefits of being involved: the need to be acknowledged, the belief that this would ensure more informed decisions and better outcomes, and the view that they had the right to determine the arrangements that would affect them most.

Being acknowledged. The need for some acknowledgement and recognition that “it is their lives” that are affected by the decisions that are made about them was the most commonly expressed reason for children wanting to have some say in what happened. Children referred to feeling better if they knew what was going on and had some control over the situation, rather than being entirely at the “mercy” of their parents’ actions and decisions, especially when this involved a substantial move away from their family home.

Better decisions, better outcomes. Related to the view that it is their lives that are affected, children ranging in age from 8 to 16 years in both contested and uncontested matters saw their views as contributing to better decisions and more workable arrangements with which they could be happy. Some children, like 9-year-old Bianca, were concerned that parents know what the children want so that the parents could make the “right decision.” “[Simone should have] quite a bit of say because if her parents said what they thort [sic] if they made a mistake Simone mite [sic] be sad” (Bianca, 9, contested, in response to the vignette-related questions about Simone).

In the strongest expression of this view, a small number of children ($n = 5$), like Emma, proposed that their views should prevail, especially in relation to the practicality and ease of the arrangements and them refusing contact.

I think that it’s important for them to have a say because it’s their lives and they’re going to have to deal with it and it’s a choice that I think personally is up to them. It’s not whether the parents want them to be with them because I’m hoping both of the parents want to be with their kids. It should be what the child thinks is best for themselves and how it’s going to be easier. Like I wanted to stay in the same school and the same area and my dad is now living [much further away] so that’s what makes it hard to go and see him often, ‘cause we have to get back to school and that means getting up early and being in traffic and stuff and so that’s a choice that we made (Emma, 13, uncontested matter).

On the other hand, many children indicated that they were concerned about the fairness of the arrangements for their parents and their siblings, not just themselves. All

except one said it was important or very important that they and their siblings were together. Several specifically commented on the fairness of arrangements that meant that they could see both parents, and they were worried about decisions that might hurt one of their parents.

Parents' Views

Like the children, most parents said, with varying levels of enthusiasm and support, that it was appropriate for children to have a say (75/85, 88%, who gave a clear answer). Some ($n = 24$, 28.2%) were very definite. Other parents expressed a more qualified acceptance, depending on children's age and maturity and the context or the circumstances ($n = 32$, 37.6%). For example: "You have to take the circumstances into account . . . and the maturity of the child, and I don't think it should be directed by the children but having their opinion [taken into account], yes" (Resident mother of three children of ages from 6 to 11 years).

The idea that children's views should be heard but should not be decisive or determinative was relatively common ($n = 19$, 22.4%). Some parents were also attentive to the matters that needed to be decided, the options "on offer" and the process by which children were involved. They did not believe that children should be asked to make a bald choice, but could be asked what was important to them and what their preferences might be among various options. "It shouldn't be just as a straight question, you need to know what the reasons are, and that the parent they're living with is not influencing them" (Resident father of a 10-year-old, contested matter).

Well if the child can have a say and say, "Well, look I'm more than willing to do every weekend at Dad's place or Mum's place, and spend the rest of the time at the other's place" that'd be fine. But where there's a residency order where there's no contact with the other parent, that could be harmful to the child where they have to choose (Resident father, of 8-year-old).

Ten parents (11.8%: seven fathers and three mothers), seven of whom were involved in contested matters) rejected the idea of their children being involved in the process for two main reasons: first, the inappropriate pressure and burden of responsibility this places on children, and second, concern about the choice the child might make, especially under pressure or influence from the other parent. For example, one nonresident father of three children ages 5 to 9 years in a shared parenting arrangement expressed his concern about the pressure on the children: "Not at this age, no, not at all. . . . They'd probably feel very guilty, and they'd feel horrible towards the other parent, whoever they've decided to stay with . . . and they'd probably decide to change their minds later on."

Another non-resident father of children ages 10 and 12 years in a noncontested matter admitted: "Early on I suppose I was probably scared that they wouldn't choose to come and live with me. But I'm not sure they know . . . I still think they're too young to be making that decision."

Several parents who saw children's involvement as inappropriate, and nearly half the parents overall ($n = 38$, 44.7%) expressed some concern about children being influenced or manipulated, either in general terms ($n = 16$, 18.8%) or more specifically in relation to their own children ($n = 22$, 25.9%). Both resident and nonresident parents referred to the influences that they or their ex-partners could use or had used in relation to their children. While it was younger children who were generally seen as more vulnerable to manipulation, bribery, and more benign influence, adolescents were not seen as exempt, especially in

relation to their push for independence. Seven parents also expressed some concern about the potential for children and adolescents to manipulate or play their parents against each other, therefore undermining parental authority. On the other hand, several parents explicitly challenged the idea that children are manipulative or easily “bought off,” indicating disagreement with their ex-partner over this issue.

But I actually don't think children can be brainwashed. I actually think that that's thinking that children are like puppets, or like, that we can coerce them into thinking and believing whatever we want them to think or believe, and that's far from the truth (Resident mother of children ages 6 to 19 years at separation).

Other parents ($n = 20$) were concerned instead about the loyalty conflicts for children trying to please both parents rather than exploiting the differences.

Parents' Reasons for Children Having a Say

Parents, like the children, gave reasons that referred to the need for children to have their feelings and opinions acknowledged and taken into account and the belief or hope that this would ensure more informed decisions and better outcomes. Like children, a number of parents were concerned about the effects of the separation and the decisions made about the residence and contact arrangements on the children; like the children, the comment that “it's their lives” was relatively common.

Being acknowledged and procedural justice considerations. A number of parents ($n = 23/61$ who provided clear reasons) articulated procedural justice considerations and the need for children to feel that they have some control over what happens to them. For some parents, this was simply a matter of respect and recognition that children are people.

Even if you don't go the way they want, you've got to treat them as human beings and talk with them about it. They're people, they're part of the family, why would you not? I've always involved Jade, depending on her maturity and what she could understand, but you just have to do it in a way they can understand. I saw the trauma she went through in moving house but she helped choose the colour of her room and decided to stay at her school (Resident mother of Jade, 13, contested relocation matter).

For others, it was a matter of fairness and due process, and of children feeling they have some control and “can own the process” rather than, in the words of one father, “having mum and dad throwing them around like a beach ball.” One resident mother of three older children involved in a contact dispute said of the judgment:

It wasn't really fair . . . because the kids didn't really have a say. It was the judge who said this is what's going to happen, and that's it. You know, the kids weren't entered into the decision at all . . . no say if they'd wanted longer, shorter or different.

Better decisions, better outcomes. Over half the parents who provided reasons ($n = 31/61$) made reference to children being happier and the decisions being better informed if children's views were taken into account, despite some expressing concerns about children's capacity and their perceived vulnerability to loyalty conflicts or pressure. Some parents—both resident and nonresident parents, but particularly those in contested hearings—saw the benefits in terms of children being able to be with the parent with

whom they felt most comfortable and secure. The benefits of choice were even acknowledged by nonresident fathers who had been through contested hearings:

The benefits would be that the court would hear what the child is feeling, where they're really [wanting to be] . . . I mean sure they can be emotive, they can be unreasoning, but I think all in all they do know what's best for them, and the fact that they're not taken into account at all I think is diminutive to their intelligence (Nonresident father of a 14-year-old, contested matter).

They're the only ones who are in the position to judge what their life is like under the current regime and under the possible alternate regimes, and they are the only ones who are going to be in those conditions (Nonresident father of a 13-year-old, contested matter).

Others saw the benefits in terms of the quality of the relationship with their children and in developmental terms of children's capacity to make decisions for themselves. “. . . [I]f they're included in the decisions then it goes a long way to . . . it's a big step in their development as a human being. They're starting to make decisions for themselves” (Resident father of an 8-year-old).

Some parents, too, indicated that they were prepared to be flexible and “let” their children make the decision to move between homes where there was trust in the other parent. The father of 12-year-old and 16-year-old children who had moved between homes without contestation said, for example: “The kids have got to make up their own minds and they've got to be happy where they are.”

WHEN ARE CHILDREN PERCEIVED TO BE OLD ENOUGH TO HAVE A SAY?

Both children and parents were asked several questions about children's perceived competence to know what is best for them and to be involved in decisions that affect them.⁵ They expressed a range of views about the appropriate age at which children might be involved in the decision-making process.

Children's views. Most children said that children over the age of 7 should and could be asked, with only two (4.3%) specifying a younger age. Almost one-third ($n = 14$, 29.8%) said that there was no specific age for children to know what they want, but that children need to be old enough to understand “what is going on.” Of those who specified a particular age or age range, the most common was from 7 to 10 years ($n = 13$, 27.7%). There was no correlation between the age of the child and the age they nominated as appropriate for being involved ($r = .08$). Some children nominated their own age or a younger age as appropriate, but more commonly, children nominated ages that were substantially younger than their own or refused to specify a minimum age. For example: “Well, it all depends on how old the kid is. I suppose I would have liked [to be asked] when I was 12 or something, and I knew what I wanted. [At what age do you think?] About 9 or 10” (Jade, 13, contested matter).

I don't think there is a “too young.” I mean, even when I was three, I had pretty clear ideas of what I wanted and what I didn't, and even if they were based on completely stupid things, they should at least be considered (Rani, 14, contested matter).

“I think that it's fair to ask them because it doesn't matter how old they are just as long as they know what they want” (Kelly, 12, contested matter).

There were no significant differences associated with gender, or with whether the matters were contested or not, but there was a nonsignificant trend ($p = .08$) for children in

contested matters to nominate a younger age than those in noncontested matters. Only four children said they were too young to know what was best and to be involved; all four were under 10 years of age in noncontested matters.

Parents' views. A number of parents were unwilling to specify a particular age, referring instead to maturity and the circumstances and context rather than age ($n = 15$, 17.2%) or saying that they did not know ($n = 8$, 11.5%). The circumstances mentioned included the presence of violence especially that involving the child, the potential or actual influence or manipulation by the parents, and the joint issues of who was asking the child and interpreting what they wanted. One nonresident father said, for example:

. . . [O]f course they should have a say and they should be able to put it in their terms . . . but I think you need to overlay that with the broader context and contextualise the children's wishes and work out the level of maturity and understanding of what it means (Father of children ages 7 and 11 years, uncontested matter).

Those who were prepared to specify an age or an age range nominated ages ranging from 2 or 3 years through to 14 years, with the responses of parents, more than children's, embracing both the lower and upper extremes of the age groups—children under the age of 7 ($n = 16$, 18%) and adolescents over the age of 12 ($n = 17$, 19.5%). On the one hand, some parents argued that very young children should be listened to:

I've seen very small children, of 3 and 4, who haven't got the communication skills, but a 3-year-old can be very vocal. From 3, if the child is given enough time at the level of cognitive development that they're at, knowing that they're egocentric and all the rest of it, they will love to talk about themselves, and they can give you quite good solid information. So I'd say from 3. But that's my opinion. There are children I've known at 2 that are quite vocal. But a 3-year-old can be very clear (Resident mother, contested case).

. . . [M]y opinion is that from the time a child can string a few words together, and are able to articulate thoughts in relation to other matters, they've obviously got feelings and thoughts in relation to the parents, so I think they should be listened to, and certainly at least in family reports (Nonresident father, contested relocation matter).

The influence of the parents' own experience and the age of their own children and other children they knew, and the difference between their children and others, and between siblings, was clear in many of the parents' comments. One father of children ages 11, 7, and 5 years, for example, referred to the differences between his children and the different approaches they needed:

I don't claim to be an expert but what I would say is that . . . all of this has to be tempered on the child, the individual, and so I could even say from my three. Daniel, at age 7 is far more aware in many respects than Matthew at age 11. . . . [I] think, what I remember was something at age 13 they have a choice, and it seems to me, I'm thinking probably more of nieces and nephews here, but also where my kids are going . . . that's probably not too far off the mark.

There were few differences associated with the gender of the parent or whether they were resident or nonresident parents. Those in contested matters, however, were significantly more likely to say that it was appropriate for children under 10 years of age to have a say than those in noncontested matters (68% compared with 32%).⁶

DISCUSSION

Three main messages emerge from these findings: first, the level of influence that older children can have; second, the similarities and differences in the views of children and parents; and third, the significant differences in views about participation between those children and parents who have experienced contested proceedings and those who have not.

CHILDREN'S AGE-RELATED INFLUENCE

Clearly, children of some families in this study have had considerable influence over the contact and residence arrangements after their parents separated, not necessarily immediately, but in the years following (especially beyond the age of 12 years or so). In some families, children were instrumental in stopping or reducing contact with their non-resident parent where this was upsetting or causing them problems, and in several others, they initiated or resumed contact with parents they had not seen for some time. In several cases, children changed residence with or without court action. Other studies have cited similar cases and proportions of children influencing or determining the arrangements (Gollop et al., 2000; May & Smart, 2004; Smart & Neale, 2000).

In other families in this and other studies, however, children had little or no say, especially when the children were under 12 years of age. This is quite consistent with other research, particularly that focusing on contested cases and the perceptions of legal and mental health professionals. While a number of children and parents in this study nominated much younger ages as being appropriate for children to have a say, research in other jurisdictions has found that legal and mental health professionals involved in the process have been more willing to take notice of the views of children over the age of 12 or 14 (Crosby-Currie, 1996; Murch et al., 1999) or “over a certain age” when they are deemed competent (Davis & Pearce, 1999).

SIMILARITIES AND DIFFERENCES BETWEEN CHILDREN AND PARENTS

While there was considerable variability among both parents and children in the views about children's involvement in the decision-making process, there were several clear similarities and differences. Most parents, like most children, said it was appropriate for children to have a say; in fact, the proportions of parents and children who said it was unfair or inappropriate for children to have a say were small and similar (12% and 9%, respectively). Both parents and children also gave similar reasons for the appropriateness or fairness of children having a say—acknowledgement and respect for their children's views and as a contributor to better decisions and outcomes. Some parents and children were also keen to distinguish between having a say and making the decision, with reference in some cases to particular aspects of their living arrangements that children might feel more able and more comfortable to comment on, rather than what might be seen as “zero-sum games” of choosing one parent over the other.

The main difference, however, was that parents were much more likely than children to be concerned about pressure on the children—and particularly in its less benign form, manipulation and bribery by the other parent. About one-half of the parents saw children as possible “victims of manipulation” at the hands of the other parent or less commonly as “potential manipulators.” While a minority of children were concerned about pressure

from their parents, children's greater concern was divided loyalty, not being fair, and jeopardising their relationship with both parents. It is clear that most children do consider the effect on others, especially their parents, and do not just want to "get what they want" in a one-off event.

DIFFERENCES BETWEEN THOSE WHO HAD EXPERIENCED CONTESTED PROCEEDINGS AND THOSE WHO HAD NOT

There were marked differences between both the children and the parents in their views on children's participation. The differences were dependent on whether they had experienced contested proceedings. Some children, mostly in noncontested matters, were "content" to have a say, to have their views taken into account or "mixed in" with their parents' views. They did not want to determine or be responsible for the outcome. Like the children who did not and would not wish to talk with the judge (Parkinson, Cashmore, & Single, 2007) and like the children and adolescents in other studies (Gollop et al., 2000; Neale & Smart, 2001; Parkinson, Cashmore, & Single, 2005), these children preferred the decision to be made collaboratively with their parents. Some were explicit in saying that they did not want to have to deal with any emotional pressure from one or both parents to say what they want (Butler et al., 2003; Gollop et al., 2000; Neale & Smart, 1998).

Those children involved in contested matters, particularly in cases involving violence, high conflict, or abuse, were much more likely to say that it ought to be up to the children to choose their residence and contact arrangements. Indeed, only one child in a contested proceeding was against having a say. They were also much less likely to be concerned than children who had not been through contested proceedings about being put in a difficult position by being asked to express a view. In addition, they were likely to indicate a younger age at which children's voices should be heard.

Like some cases cited by Neale and Smart (2001) and Gollop et al. (2000), children who had experienced violence, abuse, or conflict had less reason to respect their parents' feelings or trust their parents' capacity to consider their needs and care for them (Moloney & McIntosh, 2006). Although a few were clearly concerned about the consequences of making their parents angry, these children were much more likely to "insist that they should be able to make an autonomous choice about residence and contact" (Taylor, 2006, p. 163). As Neale and Smart (2001) stated:

It seems that where children are frightened of, undermined or neglected by a parent, then the standard rules of fairness about how family members should treat each other are violated and no longer apply. Inclusive ways of negotiating arrangements, those based on consensus or compromise, are simply unworkable. In these circumstances, different criteria about what is fair (or just), and alternative "rules" of citizenship, those based on individual rights and autonomy, might come into play (p. 17).

Both resident and nonresident parents who had been through contested proceedings were more likely than those who had not to regard hearing children's voices as an avenue to better decisions being made and to believe that children would be able to indicate which parent they felt most comfortable with, if a preference needed to be given. Parents in contested matters were much more likely to indicate that children under 10 years of age should be involved than those who did not go through contested proceedings. On the

other hand, 7 out of the 10 parents who considered that children should not have a say had also been involved in contested proceedings. In many of these cases, this reflected concerns about the views that children would express if they were given a say and that they could be manipulated by the other parent.

CONCLUSION

Children can be involved in the process of resolving parenting arrangements after separation in a variety of different ways, depending on the circumstances (Chisholm, 1999). They may be consulted in the course of negotiations between the parents on contact arrangements where the issue of primary residence is not in dispute; they might be interviewed by a counselor and their views fed back to the parents in the course of mediation; they might have their views included in a family report; and they might be involved in the trial process as well, at least through having an independent lawyer to represent them and perhaps also by having the opportunity to talk with the judge (Parkinson & Cashmore, 2007; Parkinson, Cashmore, & Single, 2007).

In developing a policy on children's participation that is sensitive to the different views and perceptions of children and parents, it is important to be aware of the different contexts in which children can be involved and how the issues and concerns about their involvement might be affected by that context. While the small minority of parents who do not want children to be involved are most likely to have experienced contested proceedings, the evidence from this study is that children do not feel the need to be protected from involvement in contested matters and that most parents support their participation. The parents may nonetheless have concerns about the weight that is to be placed upon those views and the need to be aware of the influences that pressure and manipulation may have had upon the development of those views.

No policy on children's participation in resolving parenting disputes will command universal assent. The evidence from this study, however, posits the result that more efforts could be made, at least in Australia, to close the gap between people's beliefs and their experience of the system.

NOTES

*We acknowledge the contribution of Judi Single, who was responsible for recruiting and conducting the interviews with the children and parents, and we appreciate the cooperation and willingness of the parents and children involved.

1. The interviews were conducted as part of a wider study on children's participation that includes interviews with parents, counselors, and mediators involved in family dispute resolution; family lawyers (including lawyers with experience representing children); and judges. The project was funded by the Australian Research Council and had ethics approval from the Human Ethics Committee of the University of Sydney; it was also endorsed by the Research Committee of the Family Court of Australia. Dr. Clare Wilson, then of the Department of Psychology, University of Sydney, was involved in the design and early stages of the project before she left Australia to work in Britain.

The ethics conditions on interviewing children provided that the researchers could interview the children with the consent either of both parents, or the permission of one parent without the refusal of the other, having given that other parent the opportunity to object. The informed consent of children was also required. All interviews were conducted without the parents or siblings being present.

2. $\chi^2 = 4.93$, 1 *df*, $p = .024$; odds ratio = 6.3.

3. These questions were: Who was involved in making decisions about where you would live and how often you would see [the other parent]? Who would you like to have been involved? And did you want to have more or less say, or were you happy with the way things were arranged?

4. $\chi^2 = 10.8$, 2 *df*, $p = .004$, odds ratio = 8.6.

5. For older children and parents, these questions took a general format ("Some people say it's not fair to ask children what they want to happen because children are too young to make decisions like that. What do you think?" and "some people also say that children are too young / not experienced enough to know what's best for them?" *Probe*: "At what age do you think children are old enough to be asked what they want to happen?"). For younger children, the questions were related to the vignette ("Do you think Simon/e is old enough to know what is best for him/her? How old do you think children should be before they are asked what they want to happen?")

6. $\chi^2 = 5.49$, 1 *df*, $p = .019$, odds ratio = 4.74.

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