

# The Power to Abuse and the Power to Accuse: Implications of Shifts in the Balance of Fear

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## 5 The Power to Abuse

"Power" is "the ability or capacity to do something."<sup>1</sup> There is a well known saying that "power tends to corrupt, and absolute power corrupts absolutely."<sup>2</sup>

Children are subject to adult power. If there are not appropriate limits to, and checks on, that power, children will tend to be the victims of corruption.

- 10 I do not argue that children should be free of the power of adults. Children need care, support and sometimes direction. Care involves the use of power. The Convention on the Rights of the Child acknowledges this in article 5:

- 15 "States parties shall respect the responsibilities, *rights* and duties of parents or ... legal guardians ... to provide, in a manner appropriate to the evolving capacities of the child, appropriate direction and guidance in the exercise by the child of the rights recognised in the present Convention."

- 20 When the Scottish Law Commission was reviewing family law in 1992, it noted that "parental rights" existed, not as freestanding rights of property in a child, but as the mode of empowering parents to exercise their legal responsibilities towards a child.<sup>3</sup> They were, in fact, not "rights" in the strictest sense of the word, but "powers" to act for the benefit of the child.<sup>4</sup>

Child abuse is an abuse of power by someone who has actual or legal power over the child. The dictionary definition is:

**Child abuse** *n.* physical, sexual or emotional ill-treatment or neglect of a child by its parents or other adults responsible for its welfare.<sup>5</sup>

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<sup>1</sup> *Collins English Dictionary*, Third Edition, Glasgow: Harper Collins, 1991.

<sup>2</sup> Lord Acton, 1887, in Partington, A., Ed., *The Oxford Dictionary of Quotations*. 4<sup>th</sup> Edn., Oxford and New York: Oxford University Press, 1992, page 1, paragraph 10.

<sup>3</sup> Scottish Law Commission, *Report on Family Law*. Edinburgh: HMSO, 1992, para. 2.14.

<sup>4</sup> Scottish Law Commission, *Report on Family Law*. Edinburgh: HMSO, 1992. Footnote 4 to para. 2.15: "It has frequently been pointed out that "rights" is here used in a loose sense. The right of guardianship, for example, is really a power to take legally effective action on behalf of a child. See Dickens "The Modern Function and Limits of Parental Rights" (1981) 97 LQR 462; Bainham, *Children, Parents and the State* 48."

<sup>5</sup> *Collins English Dictionary* Third Edition, Glasgow: Harper Collins, 1991.

Ill-treatment by anyone else might be a crime, but if the person perpetrating it has responsibilities towards the child, it might also be abuse. So, the power to abuse resides in those with the power to care for a child.

"Power" is therefore a double-edged sword. It can be used for good or for ill. We are often told that children need, and actually welcome, boundaries. They want parents or carers who have the ability to protect them from others, and sometimes from themselves. It must be very frightening for children to see their parents *disempowered*, especially in traumatic situations; which is one of the reasons I object so strongly to the practice of handcuffing parents in front of their children in the course of immigration removals.

Adults have always had the power to abuse children. And children subject to the abusive use of adult power have lived in fear. Of course, sometimes, what we would now call an abuse of power was accepted as the norm. Violent or exploitative acts perpetrated on some individuals did not count as abuse:

- In some relationships;
- In some contexts; and
- In some times and cultures.

The recipient of these acts may have been regarded as property, as has been the case with regard to:

- Slaves;
- Women; and
- Children, under some legal systems.

Although, there often seem to have been some limits even there. For example, the right of the father of the household in Ancient Rome to "expose" or otherwise kill his children, was restricted early on:

... for Romulus has the credit of having ordained (1) that he should rear all his male descendants, and at least his first-born daughter; (2) that he should not put any child to death before it had reached its third year, unless it was grievously deformed, and then he might expose it at once, after showing it to his neighbours; and (3) that if he transgressed he should forfeit half of his estate, and submit to other undefined penalties ...<sup>6</sup>

As is the case today, the supreme authority of the father was normally exercised in a benign way, attributed to, "the natural sense of parental duty on the one side and filial affection on the other."<sup>7</sup> And the father's power over those children permitted to live was modified by a rule requiring him to consult with near kinsmen before any extreme exercise of that power – a sort of ancient Roman

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<sup>6</sup> Muirhead, J., Historical Introduction to the Law of Rome. London: Adam and Charles Black, 1899, page 28.

<sup>7</sup> Muirhead, p. 32.



family group conference.<sup>8</sup> So, even the ancient Romans, with their high perception of the powers of fathers, acknowledged the possibility of abuse.

We can conclude from this that adult power over children has always existed – and will always exist; and it has always been the case that some adults would abuse that power, even if the thresholds of what might be regarded as abusive have changed. And it might reasonably be assumed that children involved in abusive adult relationships would experience *fear*, defined as:

“a feeling of distress, apprehension, or alarm caused by impending danger, pain, etc.”<sup>9</sup>

But how was an abuse of power identified and punished? Who would have both the right and interest to raise the accusation in the first place? At this point, we turn from the power to abuse to the power to accuse.

### **The Power to Accuse**

“Power”, we remember, is “the ability or capacity to do something.” Children with the ability to express themselves in ways adults can understand have always had the power to accuse in that sense, although the counterbalancing and more enduring power of the adults perpetrating the abuse might well be considered to have been an inhibiting factor in many cases. The question arises – what mechanisms exist to make it worth the child’s while to make the accusation, and to protect the child from adult wrath, vengeance or further abuse?

The power to accuse is conditioned by:

- Legal systems that identify who can act as a legal initiator or witness;
- Perceptions of the veracity of the accuser;
- Resources to support the accuser both before, during and after the process; and, linked to this -
- The victim’s assessment of the possible implications of making the accusation – a sort of cost/benefit analysis.

#### *Legal Systems*

Do children have legal status to make a complaint themselves with any expectation of redress or punishment of the perpetrator? Or do they have to rely on a guardian to make a claim on their behalf? In the past, the latter would often have been the case because the claim would have been by the “owner” of the victim against the person who had damaged his property. This may have seemed, in the context of the times, logical in relation to acts perpetrated by outsiders; but what incentive would a person have to pursue a claim against himself for damage that he himself had caused? And who else was there to take the matter forward on behalf of the child or other subjugate family member? In today’s context, the question is, who is there who is both in a position to know whether abuse has taken place, and also has an interest to tell? Young children may not know that something is abusive. Older children may come to realise that it is, but not know who or how to tell. Today, the

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<sup>8</sup> Muirhead, page 32.

<sup>9</sup> Collins English Dictionary Third Edition, Glasgow: Harper Collins, 1991.

legal system *would* be receptive to them as the initiators of a concern, but there are still many barriers in the way of making this a reality.

*Perceptions of the Veracity of the Accuser*

5 We know that in legal systems across the world, the legal capacity of vulnerable groups such as women and children to pursue a claim or to have their evidence regarded as trustworthy, has often been minimal. We know that abusers often say to children that there is no point in telling because they will not be believed. And we know, from the stream of child abuse inquiries over the past couple of decades, that this has sadly often been the case.

*Support for the Vulnerable Accuser*

10 If the accusation is against the child's carer or carers, who will provide support for the child? In recent years in Scotland, the debate about child witness support has been dominated by the need to achieve a balance between the needs of the child and the requirements of the law of evidence. The evidence must not be contaminated or distorted by too much non-professional discussion. The complication is that often, the child *is* the evidence, and the need to protect the evidence can lead to  
15 isolation of the child. We have got better at this, but many believe that the system is still not responsive enough to the child's particular needs.

*The Implications for the Accuser*

The child may be torn between disclosing abuse in the hope that this will cause it to stop, and causing a fuss that will lead to condemnation of adults who may be otherwise caring, or adults who  
20 may have threatened the child about the consequences of disclosure. When it comes to a question of believing and supporting a respected adult or a child victim, historically at least, it tends to be the child that loses out.<sup>10</sup>

And that can still be true today. The standards of proof in criminal matters are very high – deliberately so - to favour the suspect and avoid unjust conviction. But this means that there may  
25 well be cases of real abuse where the standards cannot be achieved. The child who has set the process in motion by telling about the abuse might then be categorised as a malicious liar who has attempted to defame a respected adult. Children know that.

If we, as a society, want to be able to identify abuse of power in relation to children, with the aim of protecting the child from further such abuse, we need to have external scrutiny and powers of  
30 intervention, as well as a legal system that acknowledges the vulnerability of the person whose testimony is often required in order to take forward the process aimed at their protection.

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<sup>10</sup> Lessons learned from Marshall, K., Jamieson, C., and Finlayson, A., *Edinburgh's Children: The Report of the Edinburgh Inquiry into Abuse and Protection of Children in Care*. Edinburgh: Edinburgh City Council, 1999.



Today, we do have some external scrutiny, and we have some awareness of the needs of victims involved in legal cases against the powerful people in their lives. Nevertheless, we need to look more closely at what has happened to the power to accuse, and how the adult world has readjusted the system to reduce the adult fear engendered by this shift.

## 5 The Balance of Fear

"Power tends to corrupt, and absolute power corrupts absolutely." I started my lecture with these words. And I defined "fear" as:

"a feeling of distress, apprehension, or alarm caused by impending danger, pain, etc."

10 I hope that we have today attempted at least to *lessen* the potential for fear in the lives of children by setting limits to the power of adults responsible for them, and setting up mechanisms for scrutiny, intervention and support. There is, today, much greater awareness of the abuse of children by adults who are supposed to care for, look after or teach them. Tolerance of physical violence against children has reduced. Emotional abuse is increasingly recognised. Sexual abuse has become a central concern.

15 We have made it easier in recent years for children to tell about abuse. We have produced guidelines and training and encouraged people to respond sensitively to what children are trying to tell them. I am not implying that everything is now alright and that there are no barriers to children speaking out – far from it – but it is certainly easier in some ways than it was before.

20 My proposition is that children's increased power of accusation, and hopefully decreased susceptibility to fear, has been matched by a decrease in the power of adults over children and an increase in their own levels of fear.

It is perhaps the spectre of sexual abuse that strikes the greatest fear into adult hearts today. Adults fear more for their *own* children, because they are aware of the possibilities of abuse; but even more than that, I would suggest, they fear becoming themselves the subject of an allegation by a child.

25 Adult fears for their own children have reached such a pitch that the paedophile is the outcast and enemy of all. Even the slightest suggestion that someone is a paedophile is likely to result in isolation, vigilantism and rough justice. The fact that those suspected can be named, and for all practical purposes shamed, before they have had a chance to defend themselves, makes people feel very vulnerable indeed.

30 The extent of adult fear became very clear to me in the wake of the Edinburgh Inquiry into the Abuse and Protection of Children in Care, which I chaired, and which reported in 1999. It followed on from a high profile conviction of two former care workers for serious abuse of children in their care – and in their power. There was much public and media indignation during the court proceedings and after the

conviction. Everyone was asking – how could this have happened? Why did no-one notice? Why did the children not tell? Having interviewed many of the adult survivors of the abuse, it was clear that those who did not try to tell were inhibited by the same belief that many other children have been shown to have held – that they would not be believed. We also interviewed some who had tried to tell, and sad to say – the perspective of the silent ones was vindicated – because those who did try to tell were not believed. People became very indignant about this and were highly critical of the professionals and volunteers involved.

Not long after the Inquiry report was published, I went to talk to a large group of foster carers in Edinburgh. I told them about the Inquiry and explained the recommendations. But, despite the fact that a central focus had been that children had not been believed, people were straining at the leash to discuss their own main concern – which was the possibility of false allegations being made against themselves. Someone suggested that they should form support groups for each other in the event of an allegation being made. I pointed out that this suggestion presupposed the falsity of the allegation. I pointed out that this would set them out on a path based upon not listening to children – based upon the presumption that the accusations were false. They stopped and listened; but this was just one example of very many experiences I have had of talking with adults about child protection and trying to keep them with that focus as they constantly turned the debate towards their own protection.

Adults' feelings of vulnerability make them fear, not just the slightest prospect of an allegation, but the source of potential allegations. It makes them fear children. The child's fear of being abused is now balanced by the adult fear of being accused. Does this mean that power is also now evenly distributed? I think not. As I will attempt to show, the natural desire to diminish any threat to your own well-being and security has led adults to use their power to create, shape and manipulate systems in a way that seeks to neutralize the threat, but that ultimately disadvantages children. Adults have set up systems and standards in the name of child protection, in an attempt to isolate the threat of accusation. It is questionable whether some of them really protect children from abuse or danger; but they certainly make them vulnerable to neglect. Child protection rules and systems may operate as an antidote to adult fear.

Let us look more closely at this "fear" and how it can be assuaged.

### *Aristotle on Fear*

I have already given you a definition taken from a relatively modern dictionary. But I want to turn back again to the ancients. This time it is the turn of the Greeks. One of the most intriguing legacies of the ancients, to my mind, is Aristotle's *Art of Rhetoric*. Written in the 4<sup>th</sup> century BC as a guide for aspiring orators, it explored issues of style and composition, but it also sought to expose the map of human emotion – which emotion was related to which, and which could be evoked to catalyse



another. With this knowledge, the orator was to *persuade* his audience by inspiring the emotion that suited his purpose.

Aristotle's definition of fear is pretty close to the modern one:

5           Let fear, then, be a kind of pain or disturbance resulting from the imagination of impending danger, either destructive or painful.<sup>11</sup>

"Danger" is defined as, "the proximity of the frightening." One of the indications of impending danger is the existence of:

... injustice backed by power ...<sup>12</sup>

Aristotle adds:

10           ... it is fearsome for the most part to be in the power of another.<sup>13</sup>

So, adults now fear because children have power – the power of accusation. That power is frightening, both because of the proximity of children, and because adults have little faith in the justice or veracity of children.

#### *Proximity and Remoteness*

15   Aristotle advises that the opposite of fear is confidence and that this is inspired by:

The remoteness of fearsome things.<sup>14</sup>

20   Given that it is the proximity of a danger that evokes fear, and that children embody the proximate danger in question, one of the ways in which adults attempt to neutralize their fear of the child's power to accuse is by making children remote from them; by not putting themselves in a position to care, because care involves power and they might be suspected or accused of abusing that power, with consequences too awful to contemplate.

25   So, we have lots of new rules about never being alone with a child (unless you are very closely connected) and never touching a child (even to put sun cream on during a school outing). Some people fear even looking at a child or talking to a child. And activities for children are feeling the effects of the withdrawal of adult support because rules designed to make things safer for children are being experienced by adults as burdensome and full of potential threat – whether of accusation of abuse or, on a more prosaic level – of being sued in the event of an accident.

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<sup>11</sup> Aristotle, *The Art of Rhetoric*. Trans. Lawson-Tancred, H. C. London: Penguin Books, 1991, p. 153.

<sup>12</sup> *Ibid.*, P. 154.

<sup>13</sup> *Ibid.*

<sup>14</sup> *Ibid.*, P. 156.

Some of these rules are good and well justified – so I am certainly not knocking the many good developments aimed at protecting children. But I do think we need to look very closely at the arrangements we are setting in place in order to assure ourselves that these really are about child protection and not about protecting ourselves as adults. If it is true that the power to abuse has been matched by the child's power to accuse; and if it is true that this has caused a shift in the balance of fear, in the direction of increasing the fears of adults; and if it is the case that adults are now using their power to neutralize that fear by distancing children from them, then we cannot claim to be making the world a better place for children, and we must think very deeply about that.

*Injustice and Lack of Trust*

I indicated above, two reasons why, in terms of Aristotle's analysis, adults might fear children. One was their proximity, which I have just discussed; the other was the lack of faith adults have in the justice or veracity of children. This relates to the idea of the dangerous as being connected with "injustice backed by power."

People in the past have been very reluctant to believe what children tried to tell them about abuse, and this has stopped many children from telling. Today, the system tells children that they will be believed or, at least, that their stories will be taken seriously. But this does not mean that adults have learned to trust children. The greatest fear of the adult is the false or malicious allegation. The power of the child to accuse, taken together with adult mistrust of children, leads them to see this as "injustice backed by power", and therefore to view such unjust accusation as an impending danger – and therefore to fear it. And this fear is fed by the way in which our adult-devised system responds to allegations.

Aristotle advised anyone wanting to instil this fear in his audience to:

... put the audience into the state ... of thinking that they are in a position to suffer by pointing out that others, greater than them, have in fact suffered, and ... show similar men suffering or having suffered ...<sup>15</sup>

This seems to me to be exactly what is happening today. The media gives great prominence to stories about child abuse and child abusers; rightly, as it is an important subject. But the public reaction tends to swing between extremes. On the one hand, if there is a proven case of abuse, the abuser is not just ostracised, but the target of loud and public hate, as may be his (or her) family and associates. If a case is not proven or not even prosecuted (which may be because the authorities do not consider that the evidence reaches the high standards required – or because the child victim will be unable to give evidence for various reasons – or because there is no corroboration of the child's story) – the public can turn on the child accuser. This may be because they see celebrities ("others

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<sup>15</sup> Aristotle, P. 155.



greater than them”) suffering from unproven accusations, or they have seen teachers, youth workers and other “people like us” - “similar men” in Aristotle’s terms – having suffered. This instils fear in the hearts of adults, just as Aristotle said it would. The result may be an increasingly punitive approach to those children who are not ultimately believed, through, for example, threatening them with legal action for defamation, redefining the “malice” on which such an action can succeed, or threatening them with prosecution for “wasting police time.”

The important thing to note is that – adults have the power to do this. This is what I meant about the balance of fear that now exists being addressed by the use of the still dominant adult power to neutralise their own fears. But by doing so, they shift the fear back to the children.

## Moving On

Aristotle looks ahead to situations in which, as he puts it, “men become free from suffering” caused by fear. This can happen in two ways:

Either by not having been put to the test or by having protections, as, with the dangers at sea, those unfamiliar with storms are confident for the future and those who have protections because of their experience.<sup>16</sup>

The question for us is, what kind of protections are required to allay adult fears to the extent that they are willing to re-engage in healthy interaction with children? Who are the protections for? For the adults? For the children? For both? We need to recognise and address the fears of both, and the need of both for protection.

The fears of both children and adults may seem to have conflicting elements within them. Children may be afraid of:

- Being hurt;
- Not being believed;
- Being categorised as a liar;
- Getting adults into trouble.

Adults may be afraid of:

- Being found not to have protected a child – which leads them to devise:
  - Ever-more-rigid and detailed guidelines and rules; and to be
  - Reluctant to exercise discretion.

Or, of:

- Being suspected of harming a child – resulting in:
  - Fear of falling foul of the rigid rules and failure to exercise discretion; and
  - Distancing themselves from children as the potential source of trouble.

I believe that we need to have protections for both children and adults if we are to have a system that works. Sometimes people try to put children’s rights and adult rights in opposing corners; as if the fight was for power, and one must win and the other must lose. However, the simple fact is –

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<sup>16</sup> Aristotle, P. 156.

adults will always have the greater power. If children are empowered in a way that strikes fear into the hearts of adults, the adults will find a way to neutralize it. It is my belief that children and adults have a common interest in making the world a fair and safe place for everyone. We must look again at the source of adult fears – which will not be rationalised away with reference to statistics and bland assurances. We must look again at the way our criminal justice systems and media practices might give adults a fair deal. This relates to a subject on which I have spoken on other occasions – the need to review whether it is fair to allow those accused to be named before conviction. But there will be other aspects to it too. We need to create a system that allows children – who will always be the relatively powerless parties – to speak without the fear of pressing the buttons of adult rage.

## 10 Conclusion

I remember hearing someone being made fun of for remarking: "As Jesus said – and I agree with him ..." I may be risking the same kind of ridicule for allying my self-generated thoughts with those of Aristotle. For, when I read Aristotle's thoughts on how "men become free from suffering":

Either by not having been put to the test or by having protections ...<sup>17</sup>

15 it seemed to chime with a comment I have often made about where we are in our thinking about child protection; our place on the path from innocence to wisdom:

We have lost our *innocence* about the abuse of children by those who are supposed to care for them. We cannot reclaim that. However there is currently panic and paranoia about child abuse. We need to move through that to a state of *wisdom*, in which we accept the realities of child abuse, but  
20 acknowledge that we cannot completely stop it. We must develop the maturity to create a system that gives children the maximum possible protection, while supporting loving and caring relationships and an environment that encourages healthy development.

In order to do this, we must take steps to reduce unreasonable and disproportionate fear in innocent adults, and we must, after listening to children, take steps to shape our systems in a way that they  
25 can trust not to harm them even more.

Abuse is *always* a misuse of power. Accusation may *sometimes* be misuse of power. Both engender fear in the persons vulnerable to them. But powerful adults are more able to take steps to neutralise their fears than are the more vulnerable children in their care. I have made some practical suggestions in this paper about ways in which we might move towards a healthier state of affairs. But  
30 my main aim in raising this issue today is to raise our awareness of our enduring adult power and the possibilities that allows us for taking steps to neutralize our fears. Where those fears are personified by the children we must protect and care for, and when we tend to make the fear remote by keeping children remote from us, we do them no favours and ultimately, we do ourselves none either.

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<sup>17</sup> Aristotle, P. 156.



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