



Tipping the scales: The power of parental commitment in decisions on adoption from care

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ABSTRACT

This article studies how three groups of professional decision-makers – child welfare workers, experts on children and judges – exercise discretion in decisions on adoption from care in the Norwegian child welfare system. The analysis is based on near 500 decision-makers' responses to a vignette about David, a four-year-old boy whose foster parents want to adopt him. After reading the vignette, decision-makers were asked to choose a measure for David: adoption or continued foster care. They were thereupon asked (1) which specific features of the case were decisive to their decision and (2) in which ways the case would have to be different for them to make a different decision. The objective of the study is to examine how the decision-makers who chose adoption for David reason their decision and to locate the pivotal dimensions in their best interest assessment. Results show that although variance is located between and within decision-maker groups, the similarities in discretionary reasoning are prevailing. The justifications for adoption were varied and generally child-centered, while the factors that had power to transform a decision were mainly parent-oriented and focused entirely on the parents' commitment and capabilities as well as the relationship the child has or could have with his parents. The decision-makers' exercise of discretion mirrors the tensions between children's rights and family preservation in modern child welfare practice and the need for measures to guide decision-making behavior and improve the quality of discretionary reasoning is discussed.

1. Introduction

Professional child welfare decision-makers occupy the role as interpreters of democratically constituted law and policy through their power to exercise discretion. With limited political guidance and ambiguous legal criteria, child welfare workers, experts on children and judges are delegated with the authority to make decisions on the strongest measure in the Norwegian *Child Welfare Act (1992)* (CWA): adoption from care without parental consent (section 4–20). Though all European countries have legal mechanisms that allow for adoption without consent (Fenton-Glynn, 2015), we know very little about the actual decisions. To address this research gap, I examine how nearly 500 professional decision-makers from the County Social Welfare Board (the County Board) and the municipal child welfare services justify their decision for adoption from care when presented with a vignette about a four-year-old boy whose foster parents want to adopt him. The European Court of Human Rights (ECtHR) has stated that adoptions can only be consented to in 'exceptional circumstances' and with an inquiry into the rationales behind adoption recommendations and decisions we are able

to shed some light on what circumstances constitutes exceptionality in the eyes of the surveyed decision-makers.

With the objective to understand and explain discretionary decision-making on adoption, three questions are examined: Which factors are important when child welfare decision-makers decide on adoption? How are different considerations balanced against each other? Are there similarities or differences within and between decision-maker groups and decision-making levels? The justifications they provide for their decision to choose adoption is examined to find out how they reason their decision and to locate the pivotal dimensions in the process. Analyzing responses to a vignette not only enables us to elucidate when decision-makers perceive adoption to be in the best interest of the child and why, it also allows for comparison of what decision-makers emphasize when reading and assessing the same set of conditions and to identify variation and congruence in reasoning for adoption.

In the following section the background and context for decision-making on adoption from care is laid out, followed by an outline of previous research and the conditions for discretion in adoption decision-making in the Norwegian context. Next, a presentation of the conceptual

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and theoretical framework for the study is provided before the data material and methodological approach for the study is described together with a discussion of its limitations. Then the findings are presented, followed by a discussion and finally, some concluding comments.

2. Background and context for decision-making

In 2019, the ECtHR Grand Chamber concluded (by 13 votes to four) that the Norwegian state had violated the right to respect for family life on under Article 8 of the European Convention of Human Rights (ECHR) (1950) on procedural grounds in a case where a young boy had been adopted by his foster parents (*Strand-Lobben and Others v. Norway* [GC] 2019, see [Breen et al., 2020](#)).¹² The decision quickly became a “showcase for the controversies and the tensions in the field of child protection” ([Skivenes, 2019, n.p.](#)) and effectively prompted us of the difficulty of the task decision-makers are faced with when balancing the rights and interests of children and parents in cases on adoption. This balancing act is together with the interpretation of harms and benefits ([Munro, 2019](#)) fundamental to child welfare decision-making ([Munro, 2011](#); [Ward, Brown, and Westlake, 2012](#)) and it requires professional discretion. This exercise of discretionary reasoning is crucial to examine. While discretion is both necessary and inevitable ([Handler, 1986](#); [Maynard-Moody and Musheno, 2000](#)), professionals’ exercise of discretion is famously termed “the black hole of democracy” due to the lack of democratic control and influence over decision-making ([Rothstein, 1998, 80](#)). Discretion thus complicates measures of accountability and furthermore threatens the rule of law and its principles of predictability, legality and equal treatment ([Molander, Grimen, and Eriksen, 2012](#); [Schneider, 1990](#)). In the Norwegian context, the discretionary scope provided for decision-makers to make decisions on adoption and to assess the child’s interests is wide ([Tefre, 2020a](#); [Berrick et al., 2015](#); [Skivenes and Sørdsal, 2018](#)). This leaves room for emotions, assumptions and presumptions to guide decisions on the best interest of the child and for professionals themselves to fill in the ‘loopholes’ left out from the democratically enacted laws and policy ([Artis, 2004](#); [Dworkin, 1967](#); [Elster, 1989](#); [Goodin, 1986](#); [Piper, 2000](#)).

Adoption from care is a strong measure with far-reaching implications and it can be considered controversial (see e.g. [Sloan, 2015a](#); [2015b](#); [Ward and Smeeton, 2017](#)). The measure is also rarely used in Norway with less than one percent of the children in foster care being adopted in 2018 ([Helland, Pedersen, & Skivenes, 2020](#))³. At the same time, studies into adoption of long-term placed foster children show that adoption produces better outcomes in youth and in adult life compared to continued foster home placements, residential care or reunification with biological families ([Brown et al., 2017](#); [Christoffersen et al., 2007](#); [Hjern et al., 2019](#); [Selwyn and Quinton, 2004](#); [Triseliotis, 2002](#); [Vinnerljung and Hjern, 2011](#); see also [Palacios et al., 2019](#)). Though the prospects are generally better for younger placed children, research shows that children that have been in the child welfare system fare worse than their peers in the general population on a range of living conditions both in youth and as adults ([Backe-Hansen et al., 2014](#); [Kääriälä and Hiilamo, 2017](#)). We do not know how many of the children in the Norwegian foster care system remain in long-term placements until adulthood, but there is reason to believe that the number is substantial (see discussion in [Gerds-Andresen, 2020](#); [Helland and Skivenes, 2019](#)). Current adoption policy is somewhat indeterminate, albeit since the early 2000s, there was a shift towards a more active

policy to promote adoptions. This has been interpreted as a move towards a more child centric policy ([Tefre, 2020b](#)) and it is expected that this will be reflected in the decision-makers’ choices and justifications.

3. Research on justifications for adoption

There is a scarcity of research focusing on decision-making practice and the discretion of child welfare professionals, both internationally and in Norway. A study of particular interest for the study at hand is a study from 2012 by [Skivenes and Tefre \(2012\)](#). They use a vignette method to study how Norwegian, as well as American and English, child welfare decision-makers justify their decisions for or against adoption. The authors found that fewer Norwegian child welfare workers suggested adoption (62 percent) than English (98 percent) and American (Californian) (96 percent) child welfare workers and emphasize that the Norwegian decision-makers used their discretion in an evidence-oriented manner and went beyond policy guidelines and instructions. In another study from Norway where 21 adoption agency files (from years 1985 to 2009) are reviewed in order to find out why these cases had ended with adoption, [Young \(2012\)](#) found that there was a lack of attention to the children and that they were generally overshadowed by the social workers’ descriptions of the mothers’ actions and qualities, particularly concerning failures to act a stable parent in relation to visitation. In an analysis of all decisions on adoption (n = 59⁴) made by the County Board in 2016, [Helland and Skivenes \(2019\)](#) found that the decision-makers paid particular attention to the relation between the child and her parents. Another prominent feature of the decisions was the pursuit to determine whether there were distinctive features related to the individual child that would elucidate whether an adoption should be consented to or not, such as the child’s situation of vulnerability. In a recent study of the legitimacy of all judgments on adoption from the Norwegian Supreme Court (four judgments from 2015 to 2019) the court’s argumentation was analyzed ([Helland, submitted for publication](#)). The author argues that while some arguments were considered consistently across the four judgments (arguments related to the child’s right to family life – biological and de facto family – to time and timing, and to the child’s autonomy and development) there was variation in court’s discretion, inter alia in how considerations were justified and how they were weighted and balanced against each other.

Internationally, two relevant studies are identified. [Ben-David \(2016\)](#) has studied how the court decided in 261 cases on termination of parental rights (TPR) and adoption in Israel where as in Norway, the main assessment criteria underlying both TPR and adoption interventions is the best interest of the child. The author found that the courts referred more to treatment-oriented considerations, such as normative parental functioning, parental readiness to change, parental educational capacity, the influence of adoption on a child’s emotional well-being, and parental social normativity, than to legal values in their assessments of whether TPR is in the best interest of the child ([Ben-David, 2016](#)). In a smaller study from 2017 ([Butlinski et al., 2017](#)) on how decision makers understand the adoption of children from out-of-home care, interviews with 21 professionals (child welfare specialists, adoption and permanent care specialists and judicial officers) from a region in Australia⁵ were conducted and the authors identified five common themes as important for the consideration of adoption: parental consent, stability for children, a sense of belonging for children, children’s connection to their birth family and children’s connection to their cultural heritage.

Some common denominators can be drawn from these studies and the expectation is that we will find justifications that relate particularly to parental functioning, capabilities and qualities and, furthermore, to

¹ On March 10th, 2020 the ECtHR judged violation in the case of *Pedersen and Others v. Norway*.

² At the present, 10 cases on adoption are communicated to the Norwegian state and are pending a decision by the ECtHR.

³ See [Pösö, Skivenes, and Thoburn \(2021\)](#) for an overview on adoptions from care in Norway, as well as seven other European countries and the US.

⁴ The analysis included one decision from 2017.

⁵ 143 children were reported adopted by their carers in Australia in the years 2016 and 2017 ([Australian Institute of Health and Welfare, 2017](#)).

features that relate to the child's right to a biological family life in terms of bonds to parents and visitation (contact), and to the child's well-being in terms of concern with attachment, stability and permanence.

4. Conditions for discretion

4.1. Legal regulation and case law

An adoption implies that the parental responsibility is transferred from the biological parents to the adoptive parents, thus terminating parental rights for the former. A decision on adoption is as such seen as intervening with the child's and the parents' right to private and family life (Sandberg, 2016) as protected through *The Norwegian Constitution* (Article 102), *the UN Convention on the Rights of the Child (CRC)* (1989) (Article 16), and Article 8 of the ECHR. While the ECtHR has set the threshold for the intervention high, they do approve of adoption without parental consent (Skivenes and Søvig, 2016) albeit decisions must be justified according to "an overriding requirement pertaining to the child's best interests" (Aune v. Norway, 2010, para. 66). In Norwegian case law, "particularly weighty reasons" is interpreted as representing the same norm (Sandberg 2020, 151).

Termination of parental responsibility and adoption without parental consent is regulated through the Norwegian Child Welfare Act (CWA) (1992), section 4–20 which sets four cumulative legal conditions for adoption⁶: a) The placement is expected to be permanent based on the consideration of two of the alternative criteria: The parents are permanently unable to provide proper care or the child has become so attached to their new environment that removal will lead to serious problems; b) Adoption is in the child's best interest; c) The adoption applicants are the child's foster parents and they have proven fit to care for the child; d) The conditions in the *Adoption Act* (2017) are fulfilled. According to the Adoption Act, the overriding consideration for undertaking an adoption should be the child's best interest and in addition to serving as a concrete condition for adoption, the child's best interest is through section 4–1 a general guiding principle for the application of all provisions implemented by the CWA. This implies that the assessments undertaken should reflect the child's best interest, irrespective of what section 4–20 condition is assessed, and the justifications that are studied in the paper will be interpreted accordingly. Contact visits between the child and his or her parents after adoption (open adoption) can be established by the County Board if either of the parties have requested it and if the prospective adopters (foster parents) consent to such contact (CWA section 4-20a).

4.2. System characteristics

The Norwegian child welfare system is characterized as family-service-oriented and child-centered (Skivenes, 2011). Family-service refers to a low threshold for intervention in order to mitigate serious risk and prevention of harm based on 'a therapeutic view of rehabilitation in which it is possible for people to revise and improve their lifestyles and behaviors (Skivenes and Søvig, 2017), whereas child-centrism signifies an elevated focus on children's rights and best interests and the endorsement of children as independent bearers of individual social and human rights (Skivenes, 2011; James and Prout, 1997). There are four governing principles of child welfare practice in Norway which in many ways epitomize the intersection of interests and rights that are at stake in decisions on adoption (Skivenes, 2011; Lindbo, 2011). First, the principle of least intrusive form of intervention entails that any decision to intervene should seek to limit the level of intrusion into the family. Second, the stability principle refers to the promotion of

stability in the child's relationships to adults and other important persons and to stable surroundings. Third, the biological principle, which builds on the normative idea that it is in the best interest of children to be brought up with their parents (Skivenes, 2002). And fourth, the best interest of the child.

Proceeding an adoption case to a conclusion is a two-level process. At the first level, the responsibility to initiate a case for adoption lies with the municipalities and the local child welfare authorities (child welfare workers), while the County Board (experts and judges) holds the authority to enforce an actual decision to consent to adoption or not, at the second level. The County Board is a court-like judicial decision-making body which serves as an impartial and independent judiciary body that makes decisions in cases concerning compulsory measures pursuant to the Norwegian Child Welfare Act. The County Board is headed by a lawyer qualified as a judge⁷ and is further composed by a layman as well as an expert member (in most cases a psychologist)⁸ (*The County Social Welfare Board, n.d.*) whose role it is to complement the qualities of the judge and the layman. The influence and authority of the members should be equal, and decisions are voted over (Skivenes and Tonheim, 2017). While judges are permanently employed at the County Boards, the laymen and experts are temporary members of two respective panels where they are appointed to the County Board on an individual basis. When referring to County Board decision-makers in the present study, these are judges and experts (see methods and data section).

5. Discretion and the best interest principle

Decision-makers in the County Board and in the child welfare services are authorized with the autonomy to exercise discretion in their application of rules in decision-making. Because of this, it has been argued that these decision-makers, the street-level bureaucrats, are the real policy-makers (Biland and Steinmetz, 2017; Lipsky, 1980; Portillo and Rudes, 2014). Discretion is commonly conceptualized as the choices made in the space between rules (Hawkins, 1992). Discretion is a thus relative concept in the sense that it has meaning only in relation to its context, the rules and standards surrounding a decision (Dworkin, 1967). One should furthermore make the distinction between the space for discretion, the autonomy to judge, and the exercised discretion as a form of reasoning (Molander, Grimen, and Eriksen, 2012). Discretionary reasoning forms the basis for judgements, decisions or choices of actions or inactions that need to be justified (Molander et al., 2012; Feldman, 1992, 164) in order to be perceived legitimate (Feteris and Kloosterhuis, 2009; Alexy, 1989; Habermas, 1996). When decisions-makers are delegated with discretionary powers from the state, he or she is so under the condition that they can be held accountable (Molander, Grimen, and Eriksen, 2012) and Molander (2016, 21) asserts that "judgments and decisions involve reasoning, and we expect agents with discretionary power to act on the basis of their best judgment, which means that their actions are supported by good reasons". Our expectations should thus be that the reasons the entrusted professional decision-makers give reflect what they are convinced are good reasons.

5.1. Professional discretion and the best interest of the child

By adopting a socio-legal approach to discretion⁹, discretion is to be

⁷ For this reason and for the sake of simplicity, I will from hereon use the term 'judge' instead of 'County Board leader' which is the official Norwegian term for this position.

⁸ The County Boards could be composed of five members, should the case in question require it. In these cases, the County Board leader is accompanied by two experts and two lay members.

⁹ According to Mascini (2020), a socio-legal approach furthermore waives the basic assumption that there is a fundamental difference in how judges and others, such as street-level bureaucrats.

⁶ No conditions are given for termination of parental responsibility, but as for all measures applied by chapter four in the CWA (Section 4–1, 1992), decisive importance shall be attached to the child's best interests.

understood within a given political, social and professional context and as the manner in which decision-makers apply such standards and general rules to concrete cases (Hawkins, 2003; Mascini, 2020) and make sense of them in practice:

“Facts do not speak for themselves; they are ordered and arranged by actors for a purpose. Social and ethical commitments, as well as legal principles, also affect ‘legal’ decision-making” (Evans and Hupe 2020, p. 114).

The legal frames and political guidance for discretionary decision-making include national legislation and case law, policies, and regulations, as well as international conventions and treaties. In decisions on adoption, the best interest of the child is the immediate, concrete legal standard decision-makers face and it is also the most contested and disagreed upon condition in decisions on adoption from care (Helland and Skivenes, 2019; NOU, 2012: 5). It is stated in article 3 of the (CRC 1989) that:

“In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.”

The CRC (1989) applies as law in Norway after the incorporation into the Human Rights Act in 2003 (Section 2, with precedence over other laws pursuant to Section 3) (Gording-Stang, 2018; Skivenes and Sørsdal, 2018) and children have a constitutional right to have their best interest considered in matters that concern them (The Norwegian Constitution, Article 104(2)). According to Norwegian child welfare legislation (CWA, 1992 chapter four) the best interest shall have ‘decisive importance’ in all measures taken for them (Archard and Skivenes, 2010). Determining what is in the best interest of a child is a decision that should be based on scientific and professional knowledge of children’s development and needs. In addition, decision-makers are also required to make sense of what is right, good and appropriate for a child in a given situation through a process of reasoning (Skivenes and Pösö, 2017). Following legal scholar Michael Freeman, such best interest decisions “should be supported by reasoned arguments, and bias or worse prejudice should be eliminated” (Freeman, 2007, p. 28). In child welfare matters however, making rational decisions is difficult due to the pressing elements of uncertainty, the balancing of different parties’ needs and interests and last but not least, owing to the ambiguous and normative character of the best interest standard (Archard and Skivenes, 2010; Elster, 1989; Mnookin, 1975; Munro, 2019; Banach, 1998).

5.2. Decision-making – hypothesizing variance and congruence

The expectation is that the analysis of the justifications provided by decision-makers will reveal both similarities and variance in the interpretation of the best interest of the child. On the one hand, we expect similarities within and across decision-making groups – child welfare workers, experts and judges – and levels (between child welfare services and the County Board) as their discretionary space is largely structured by the same rules and standards. More so, decision-makers’ discretion is influenced by forces relating not only to the structures of law, nor solely to formal policy guidelines and political signals, but to the social and professional context and to the knowledge and experiences nested within the networks they are embedded in (Feldman, 1992; Hawkins, 1992). While acknowledging that this could also be a source of inter-group variation, the expectation is nonetheless that the child welfare field is contributing to control discretion (Hawkins, 1992) or at least providing some normative constraints for how discretion is exercised (Feldman, 1992; Oberfield, 2020). Having in mind that the three decision-maker groups are all either experts or experienced within the field of child welfare (the County Social Welfare Board, 2016; NOU, 2017: 8) there is an expectation that their knowledge about children, their needs and development, is to some degree reflected in their responses and that children’s welfare emerge as a common yardstick. On the other

hand, variance between decision-making groups and levels, as well as within decision-making groups is anticipated (Skivenes and Tefre, 2012; Banach, 1998; Berrick et al., 2017). The three decision-making groups inhabit different roles and adhere to their assignment to assess and decide based on dissimilar terms. An important premise for studying discretion at the two decision-making levels is that they do not have the same decision-making power and the implications of their decision differ; the child welfare workers merely have the power to *recommend* a case for adoption, the County Board has the power to *decide*. Individuals also bring with them their own identities and dispositions to the social and organizational context that they enter (March, 1994; Oberfield, 2020) which can influence decision-making (Arad-Davidzon and Benbenishty, 2008; Benbenishty et al., 2015; Gambrell, 2005). More importantly, they have different professional backgrounds and belong to different professional cultures and it is expected that their professional knowledge and experience will influence their reasoning. For starters, one would expect that judges’ discretion is influenced by legal culture and method. Typically, this would be reflected in a stronger conformity to concrete rules and focus on individual rights (Carnochan et al., 2006; Weinstein, 1997). For child welfare workers, decision-making is better understood as belonging to a social service culture where the individual is viewed through a biopsychosocial perspective, in his or her developmental, social, political, and cultural context (Carnochan et al., 2006). Moreover, where ambiguity and uncertainty is an inherent part of child welfare decision-making, one could argue that such conditions match poorly to the instrumental (see Sheehan, 2018) or binary logics of the law in which resolving a case could require that something must be discarded or reconstructed if the information they are faced with is either ambiguous or contradictory (Weinstein, 1997; King and Piper, 1995). The experts are, as I will return to in the next section, a mixed group of professionals. A quarter of the experts have a professional background from child welfare and their reasoning could come close to what we find in the first line. In most cases however, the expert is a psychologist, and is reasonable to expect that experts as a group would emphasize aspects related to psychological theory, such as attachment.

6. Methods and data¹⁰

To study how decision-makers justify their recommendations for action a survey vignette design is applied. The vignette is a widely used approach in social science studies (Finch, 1987; Taylor, 2005) and a range of studies has shown that the assessments of respondents resemble those of real-life decisions (see Peabody et al., 2000). While Taylor (2005) asserts that the vignette is generally suitable when researchers want to study how different case factors affect professional assessments, Wilks (2004; see also Soydan, 1996) emphasizes the benefits of the applicability of vignettes to study sensitive topics and ethical decision-making, such as child protection issues, and its capability to address social desirability issues and reduce observer effects. Several measures were undertaken to facilitate for professional assessments that mirror real life decisions and to motivate the decision-makers to engage in the hypothetical decision-making task they were presented with. The vignette was developed by the author and two fellow researchers on the basis of actual decisions on adoption from the County Board (n = 283 decisions from the years 2011–2016) and have been tested on a panel of experts, end-user organizations¹¹ and on fellow researchers. In the following, a summary of the case description the respondents received, which was about one

¹⁰ Ethical considerations: This study is reported to the Norwegian Centre for Research Data and has received project numbers 52781 and 5490.

¹¹ A County Board decision maker (a judge), two child welfare workers and a manager, representatives from the Norwegian Foster Care Organization, The National Association for Children in the Child Welfare System (LFB), the Joint Migrant Council (Hordaland), the Norwegian Union of Social Educators and Social Workers (FO) and the Organization for Child Welfare Parents (OBF).

page (see full vignette in Appendix section 1), is provided¹².

David is a four-year-old boy, whose foster parents since he was ten days old want to adopt him. During the time he has spent in the foster home, his parents have not filed for reunification. Both parents struggle with substance abuse and the father with mental illness and they have not been able to make use of the measures provided to them. Neither have they received any treatment for their substance abuse problems. There is limited formal visitation between David and his parents. His parents have on several occasions neglected to show up for these visitations. It has been reported that David has reacted negatively to the latest visitations. Other than that, David is said to be developing well but that he has a vulnerability and a need for stability and security. The CWS assesses that it is not likely that David's parents are to be able to provide him with proper care neither now nor in the future and the placement is assumed long-term. In the CWS's opinion, the foster parents are David's psychological parents and there is no attachment to his biological origins besides an awareness of their relation. David's parents oppose an adoption and his foster parents do not consent to an open adoption.

Before reading about David, the decision-makers were asked to envision that this was a case that they were responsible for and told that they would be asked to evaluate David's current situation and conclude on a course of action. After reading the case, the respondents were asked to consider the following question: "Based on this short description of the case, in your opinion, would you suggest adoption or continued foster care for David?" (Q1). They were given two options: adoption or foster care. Following this, they were asked two open-ended questions that they responded to using their own words. First, "Which specific features of this case are decisive to your decision?" (Q2) and then second: "In which way would this case have to be different for you to make a different decision?" (Q3). On average, the decision-makers listed three different case factors for why they chose adoption. The number of factors mentioned varied from one to eight. When asked what would have to be different, they listed one consideration on average. The number of considerations mentioned varied from one to four.

The survey was developed in 2017 and the child welfare workers were recruited from the 15 largest municipalities (>50 000 inhabitants) in Norway (40 child welfare agencies from 21 municipalities: total N = 1444) and the County Board members were recruited from all 12¹³ County Boards in the country (experts N = 365 and judges N = 79)¹⁴. Laymen were not included in the study as most of them have very limited experience with decision-making in the County Board. In total, 781 (41 percent) decision-makers responded to the survey (556 child welfare workers, 183 experts, and 42 judges), whereof 651 (34 percent) responded to Q1 about the vignette (461 child welfare workers, 158 experts and 32 judges). In this study, only the justifications (Q2 and Q3) from those who chose adoption is analyzed (see Tables 2 and 3). The experts that responded to the vignette (n = 158) were mostly psychologists (65 percent), followed by child welfare workers/social workers/child welfare officers (26 percent), other or unknown (5 percent), and medical doctors (4 percent).

The approach to coding the open-ended responses was mainly inductive, but the development of categories was guided by law and jurisprudence, previous research and conceptions of what is considered *reasonable* (descriptions of coding and categorization of the text are

¹² The vignette and the citations from decision-makers' responses to the vignette is translated by the author from Norwegian to English.

¹³ By January 1st, 2020, the number of County Boards is reduced to 10 due to a reformation of the municipality system.

¹⁴ Information regarding data protection ethics and data access for the ACCEPTABILITY project is found at the following website: <https://www.discretion.uib.no/wp-content/uploads/2019/12/INFORMATION-ABOUT-DATA-PROTECTION-ETHICS-AND-DATA-ACCESS.pdf>. See also Helland and Skivenes (2019) for an elaboration of the process of obtaining access to the respondents and data material, and for a full description of the process of constructing the vignette.

Table 1

Adoption or continued foster care for David? Care alternative by percentage and n = per decision-making group.

	Decision-making group			
	Child welfare workers	Judges	Experts	Total
Adoption	86.3% (398)	87.5% (28)	93.7% (148)	88.2% (574)
Foster care	13.7% (63)	12.5% (4)	6.3% (10)	11.8% (77)
Total	100% (461)	100% (32)	100% (158)	100% (651)

provided in the appendix table A1 and A2). As the coding was empirically driven, the codes and the categorization of responses are reflections of how the respondents formulated their answers¹⁵. All text was coded and excerpts that did not fit into any of the categories, that were ambiguous or unclear, or where the respondent did not respond to the question, were coded as "Other" or "Not applicable", respectively, and excluded from further analysis. If the whole response was coded as not applicable, the respondent was taken out of the sample¹⁶.

7. Limitations

The vignette method has known limitations related to realism, complexity and whether the respondents' answers reflect what they would have actually done. It is difficult to say if the vignette is perceived as realistic by the respondents, but the measures taken to ensure realism are considered sound. As for the complexity of the situation, the vignette provides little information compared to what decision-makers would have at their disposal in real life, and two potential weaknesses is that respondents may have too little information to engage in the situation and that more detailed information could potentially impact their decision and how they reason their choice. Furthermore, what is expressed in the respondents' answers may not necessarily reflect how they would act in a real situation and respondents may have several reasons for answering in ways that may seem more socially acceptable or more acceptable to the researchers (Barter and Renold, 2000; Finch, 1987; Wilks, 2004). Nonetheless, their responses do reflect how they respond to a scenario that is likely to be a realistic issue and thus provide us with information about their immediate assessment of what are relevant considerations in a decision. Another limitation is related to sample sizes as there are comparatively fewer judges than experts and, especially child welfare workers. While this could cause an increase in the margin of error in interpretation, a strength of this study is that the entire population of judges (n = 79) were approached in the survey and near half of them (n = 32) are included in sample for this article.

8. Findings

The vast majority of decision-makers, irrespective of professional or institutional affiliation, suggest that David should be adopted (see Table 1). The rates are consistently high in all groups and the highest rate in favor of adoption is found with the experts, where 94 percent suggest adoption.

8.1. Why did they choose adoption?

The five factors that are highlighted the most by the decision-makers

¹⁵ See appendix section 2 for limitations on the coding of the empirical material.

¹⁶ Two percent of the respondents (only child welfare workers) were omitted from further analysis due to non-applicable responses to Q2. For Q3, five percent of the child welfare workers, seven percent of the judges, and 13 percent of the experts were omitted for the same reason.

as a joint group (see Table 2) are the boy's attachment to his foster parents (66 percent), his parents' inability to change and provide adequate care (61 percent), the boy's age – both in present and at the time of placement – as well as the time he has spent with the foster family (55 percent), the poor quality of visitation (contact) and negative reactions (46 percent) and finally, the needs of the child and that adoption provides permanence and has positive effects (45 percent).¹⁷

8.1.1. Attachment to foster parents

The child's attachment to his foster parents is the most mentioned factor by child welfare workers (67 percent) and experts (65 percent), while just above half (56 percent) of the judges emphasize this. In addition to references to attachment or bonds to foster parents, which occur most commonly, notions about his foster parents' parentage and the boy's understanding of them as parents are mentioned. An illustrative example is:

«The boy's attachment to the foster home. They are the ones that are his psychological parents» (Child welfare worker, 308825066).

8.1.2. Parents' inability to change and to provide adequate care

While the parents' inability to change and provide adequate care is a major element in the justifications of child welfare workers (61 percent) and experts (65 percent), judges (37 percent) mention this to a lesser degree. Two interrelated themes are apparent in this category. First, the parents' lack of motivation, ability or potential to change and for not accepting help or treatment and second, they are not in a position to provide care for the child:

«The biological parents' unwillingness and inability to receive treatment and to change their substance abuse problems and their inability to provide the boy with adequate care in the short and long term» (Expert, 341937893).

These considerations commonly arrive contextualized in terms of time, where the lack of change over time and prospects of future change is emphasized. Some assess reunification as unlikely or refer to the descriptions provided by the child welfare services that it is unlikely that the parents will be able to provide care for the child neither now nor in the future.

8.1.3. Time and age

Time and age is the third most mentioned factor by child welfare workers (56 percent) and experts (49 percent) while it is the most decisive element for judges whereof 63 percent have time and age as a determining factor. References to time and age can be interpreted as reflections of the permanence of the placement and include an array of considerations, such as the early placement, the child's current age, the duration of the stay with his foster parents – and consequently, not having lived with his biological parents – and the assumed long-term character of the placement:

«Long time in the foster home from a young age. No prospects of reunification. (...)» (Judge, 341937947)

8.1.4. Poor quality of visitations (contact) and negative reactions

This aspect is mentioned less by child welfare workers (48 percent) and experts (38 percent) than judges (59 percent) and relates to the quality of contact, frequency and outcome of visitations between the boy and his parents. On the one hand, this category accommodates child-centered reasoning concerning the child's negative reactions to

visitation, poor interaction with his parents, that it is harmful or difficult for the child that parents are not following up on visitation and that the visitations do not provide anything to the child in terms of enriching his life or that he is enjoying the visits:

«The quality of visitations and the child's reactions before and after [visitation]» (Child welfare worker, 309229488).

On the other hand, the decision-makers refer to the parents' weak "visitation competency" and their apparent lack of interest in the child, particularly with reference to the missed visitations:

«The parents have not always followed up on visitation as planned (...)» (Judge, 341937971).

There is also the more general argument that there has not been much contact, referring to both the frequency of visitation permitted by the authorities and the lack of follow-up from the parents.

8.1.5. Needs of the child and adoption provides permanence and has positive effects

About half of the child welfare workers (47 percent), 38 percent of the experts and 52 percent of the judges mention aspects which adhere to the needs of the child and the benefits of adoption. First, adoption is seen as providing permanence in terms of clarifying the child's life situation by creating new legal bonds and by hindering future litigation and affirming existing relations between the child and his caregivers:

«The positives about an adoption; that David would become a full worthy member of the family, have the same family name, same rights as potential siblings in the foster home» (Child welfare worker, 308824833).

Second, they argue that adoption would be beneficial for the social and psychological well-being of the child. They emphasize the benefits in relation to the child's feelings, his vulnerability and possible special needs and assert that adoption would strengthen his sense of belonging and provide safety, stability, and tranquility:

«The boy's situation – a vulnerable child with a need for stability and safety» (Expert, 341937839).

Third, there are statements based in general knowledge or research about the benefits of adoption in terms of positive and better outcomes for children in care and of its potential to adjust for previous harm:

«Research show that children who are adopted fare better later in life. Adoption will be in the best interest of the child» (Child welfare worker, 308825063).

Further, some few references to equality, normality and reducing public interference are identified.

8.2. What would have had to be different for them to change their decision to continued foster care?

Biological parents' ability and initiative for positive change (86 percent) is indisputably the most important factor mentioned by all decision-maker groups (see Table 3). Furthermore, one quarter of the respondents (24 percent) would choose differently if there were to be bonds or attachment between the boy and his parents and 17 percent mention considerations related to time and duration of the placement.¹⁸

8.2.1. Parents show positive change and the quality of visitation (contact) is adequate or good

Most child welfare workers (87 percent), experts (85 percent) and

¹⁷ See appendix section 3 for descriptions of factors "Lack of bonds to parents", "Foster parents wants to adopt and are suited" and "The boy's current situation of care and development".

¹⁸ See appendix section 4 for descriptions of factors "Foster parents (home) not suitable or not wanting adoption" and "The child's needs were different".

Table 2

Determining reasons for choosing adoption. Percentage of respondents with at least one mention of the following consideration, by decision-maker group. Number of respondents in parenthesis.

	First line	The County Board		Total
	Child welfare workers (n = 341)	Judges (n = 27)	Experts (n = 130)	Total (n = 498)
Attachment to foster parents	67% (230)	56% (15)	65% (85)	66% (330)
Parents' inability to change and to provide adequate care	61% (208)	37% (10)	65% (84)	61% (302)
Time and age	56% (192)	63% (17)	49% (64)	55% (273)
Poor quality of visitations (contact) and negative reactions	48% (164)	59% (16)	38% (49)	46% (229)
Needs of the child and adoption provides permanence and has positive effects	47% (159)	52% (14)	38% (49)	45% (222)
Lack of bonds to parents	23% (80)	30% (8)	15% (20)	22% (108)
Foster parents wants to adopt and are suited	14% (48)	0% (0)	9% (12)	12% (60)
The boy's current situation of care and development	7% (24)	4% (1)	5% (6)	6% (31)

judges (88 percent) see parental change and better quality of visitations (contact) as something that could turn their decision. This category is layered as it includes two indistinguishable and partly interdependent considerations concerning parents' capabilities and proven ability to make changes to their life and to improve the quality and attendance to visitation. In sum, commitment and reformation are the key elements to understand what would make the decision-makers change their decision from adoption to continued foster care:

«That the parents addressed their own drug abuse, showed good interaction during visitation, were stable in their attendance [to visitation]». (Child welfare worker, 308824606).

They emphasize the parents' will and ability to demonstrate change or that they are motivated or willing to take measures to reform themselves, for example by accepting treatment for their problems or guidance from the CWS. In other words, if the prospects or potential for the parents to become good care givers were better and if they were able to demonstrate a positive development, this could change the decision-makers' decision. Some also specify that the parents should receive help and guidance from the CWS in the process. A significant part of these depictions are related to visitation and 54 percent of the child welfare workers, 46 percent of the experts and 72 percent of judges mention aspects directly related to visitation:

«Parents are sober and manage to follow up on visitation. Treatment of addiction and mental illness». (Expert, 341937784).

The respondents argue that they would choose foster care instead of adoption if the parents were showing up to visitation and if the contact were more frequent. Furthermore, it mattered whether the parents would be able to improve their interaction with the child and carry out visitation that were beneficial to the child, or at least not harmful or

Table 3

Considerations that had to be different for the decision-makers to have chosen differently. Percentage of respondents with at least one mention of the following consideration, by decision-maker group. Number of respondents in parenthesis.

	First line	The County Board		Total
	Child welfare workers (n = 307)	Judges (n = 25)	Experts (n = 110)	Total (n = 442)
Parents show positive change and the quality of visitation (contact) is adequate or good	87% (267)	88% (22)	85% (94)	86% (382)
There are bonds to parents	24% (75)	28% (7)	24% (26)	24% (108)
Time and duration of placement	16% (48)	20% (5)	18% (20)	17% (73)
Foster parents (home) not suitable or not wanting adoption	13% (40)	24% (6)	11% (12)	13% (58)
The child's needs were different	10% (30)	12% (3)	1% (1)	8% (34)

negatively affecting the child. The latter point is important, as in one third of the child welfare workers' and experts', and half of the County Board members', mentions of visitation, the contact is not explicitly described in terms of having to be good, meaningful, developmentally supportive or positive for *the child*. Nor do they express as a necessity that the child has a need for or wants to meet his parents:

«[The parents] showed up for all visitations – That the boy did not have as many reactions». (Child welfare worker, 308824610).

8.2.2. There are bonds to parents

About one fourth of child welfare workers (24 percent), experts (24 percent) and judges (28 percent) say they would change their decision if the reality was that the child had a relation with or an attachment to his parents, or where the parents represented something significant and/or positive in the child's life.

«That the boy had an attachment to the parents. Now he knows of them» (Child welfare worker, 308824174).

8.2.3. Time and duration of placement

16 percent of child welfare workers, 18 percent of experts and one fifth of the judges (20 percent) mention considerations related to time and duration of the placement as factors that could change their decision. They refer to the timing of the decision and the duration of the placement by mentioning the age of the child at the present or at the time of the placement, and/or if the boy had been placed in the foster home at a later point.

«(...) if the boy had been considerably older and had lived with his parents longer» (Expert, 341937635)

9. Discussion

In this study, child welfare decision-makers' exercise of discretion when deciding upon a child's best interest is analyzed to find out which factors are important when child welfare decision-makers decide upon adoption, how these factors are balanced against each other and if there are differences between individual decision-makers and between decision-maker groups and levels in how they reason their choice.

The analysis shows that adoption is the preferred alternative for four-year-old David. Some variance is located between decision-maker groups in how different factors are emphasized where child welfare workers and experts follow a similar pattern, and judges on several occasions diverge from the observed order. As expected, there is also variation within decision-maker groups. Nonetheless, the similarities are prevailing. There is agreement in the decision-makers' overall assessments and the support for adoption is high if certain conditions are present. While the formal structures such as legislation and policy clearly guide the best interest justifications, the similarities between groups in the discretionary application of the law in terms of weighting

imply that child welfare context and wider societal norms contribute to shape the exercise of discretion. This is in alignment with previous research from Norway that show high agreement between child welfare workers and judges (as well as the population) in assessments of what is a neglect case (Berrick et al., 2020) and of what is an adoption case (Helland and Skivenes, 2019). The main features of the findings correspond with previous research on how Norwegian decision-makers reason adoption from care (Skivenes and Tefre, 2012). A number of best interest elements emerge, and the child's attachment to his foster family, his parents' inability to change and to provide adequate care and the child's age, as well as the time and length of placement are the main reasons for choosing adoption. However, when collating the findings for how the decisions were justified with the factors that were found potent enough change a decision from adoption to continued foster care, the decision-makers' consensus is striking and it is evident that the decisive factors are parental capabilities and the quality of visitation between the child and his parents. The findings reveal that though attachment, isolated, is the most important factor in a decision, it is *not* in fact a pivotal reason for adoption. While the rationales behind the justifications for adoption were varied and largely child-centered, the considerations that embodied the power to transform a decision was mainly parent-oriented and focused entirely on the parents and/or the relationship the child has or could have with his parents. This mirrors the tension in modern child welfare law between family preservation and partnership with permanence planning for children in alternative care (Parkinson, 2003). It discloses a paradox within the discretionary process where foster family attachment and the permanence of the placement, deemed as the most important considerations in a decision on adoption, essentially become redundant in the occasion where changes in parental behaviour and the quality of visitation occurs or has the potential to occur. This will be discussed in further detail, but before we return to this matter, some of the observed differences and similarities in the decision-makers' reasoning require closer attention.

9.1. Variances and similarities in discretionary assessments

As expected, there is variance in how decision-makers justify their decision. First, there is variation within the three decision-making groups. A majority of the individual decision-makers agree upon the same set of determining factors, yet a considerable proportion of the decision-makers do not include certain factors in their reasoning. For example, while attachment was the most mentioned factor in favor of adoption by child welfare decision-makers, 33 percent of the individual decision-makers did not mention attachment as a reason. This could reflect different weighting of factors by professional judgment. It could also stem from the lack of clear policy and professional guidelines for decision-making, and insecurity about what is considered good reasons for recommending or deciding on an adoption (Skivenes and Tefre, 2012). Variation could also be attributed to the decision-makers' personal values and convictions (Wallander and Blomqvist, 2005; Terum, Torsvik, and Øverbye, 2017; Arad-Davidzon and Benbenishty, 2008) or stem from individual characteristics such as work experience and age (Berrick et al., 2017) but the extent of such influence is not known as it is not controlled for in the analysis. Second, there is variation between the three decision-making groups. The differences are mainly between different professional decision-maker groups rather than decision-making levels as the divergence is generally starker between experts and judges (the County Board members) than that between child welfare workers and experts, and those between child welfare workers and judges. The diversity of the experts' professional backgrounds complicates interpretation of this finding. As previously mentioned, a quarter of the experts included in this study are either social workers, child welfare workers or child welfare officers. A proportion of this group is thus positioned closer professionally to the child welfare worker respondent group than to the judges, something that may explain some of the convergence between experts and child welfare workers.

While attachment, followed by parents' inability to change and to provide adequate care, is the most important considerations for child welfare workers and experts, time and age are mentioned most often by judges, followed by poor quality of visitation (contact) and the child's negative reactions. There are no timelines given for when adoption can and should be decided upon in the Norwegian system (Helland and Skivenes, 2019; cf. Fenton-Glynn, 2016), but determining the permanence of a placement is of vital importance to establish the legality of a non-reversible and permanent measure such as adoption. This could elucidate why judges emphasize this as strongly (see e.g. Breen et al., 2020). According to Breen and colleagues (2020), time is also essential for the ECtHR when they assess the stability of a placement and in *R. and H. v. UK* (2011) the court emphasize that:

“when a considerable period of time has passed since a child was originally taken into public care, the interest of a child not to have his or her *de facto* family situation changed again may override the interests of the parents to have their family reunited ...” (para. 88).

The authors of this study analyzed all the ECtHR's judgments on adoption from care and discover that the court finds a considerable period of time to be somewhere between three and four years (Breen et al., 2020), leaving David's placement well within the scope of what is considered as considerable time in care. If we were to accept the assertion that law has an inherent unwillingness to hold ambiguous information (Weinstein, 1997), one could also speculate that the unambiguity of time and age is appealing to legal decision-makers and that it compensates for the lack of clear rules that facilitate for subsumption. Furthermore, concerns about parental capability and contact are strongly interconnected. The judges' comparatively lower focus on parents' inability to change and to provide adequate care should thus be interpreted in light of their comparatively higher focus on the quality of visitation and the negative reactions of the child. The reason why legal decision-makers emphasize this more strongly could be traced to the instrumental method of legal decision-making as broadly informed by principles based on case law (Schön, 1983). In Norwegian and international case law, visitation (contact) is traditionally given a great deal of attention and due weight (see e.g. Prop. 7 L (2009–2010), 2009).

9.2. Discretion and the weight of parental capability

Legally, the decision-makers' discretion is constrained by the fact that either attachment or parental inability to provide care must be proven in order to consent to adoption. When analyzing all decisions made on adoption in the County Board in 2016 (N = 59), Helland and Nygård (2021) furthermore found that attachment was an important consideration in the County Boards' best interest assessment. The emphasis these concerns are given is thus not surprising. The decision-makers' initial focus on attachment, together with their general concern with time and permanence, should be understood in connection with the stability principle in the child welfare system (Kilkelly, 2017). Here, children's interests in stable and continuous relationships to adults and other important persons and surroundings are to be promoted in assessments and decisions concerning them (Barne-, ungdoms- og familiedirektoratet, 2019) and the decision-makers reasoning is assumed to be a reflection of professional knowledge on children's attachment relationships, as its importance for children's development and well-being is well-established scientific knowledge (Rasmussen et al., 2019; Sroufe, 2005)¹⁹. Skivenes and Tefre (2012) suggested that the emphasis on attachment in adoption assessments could reflect the child-centric orientation of the Norwegian child welfare system. This may well be the case, yet what the present study shows is that parental capabilities

¹⁹ The usage of methods and interpretations of such relations, however, are not agreed upon.

(including visitation quality) is not only highly important in the justifications for adoption, it is also the factor that holds virtually sole transformative power, indicating that there must be more to the story. The research review demonstrated that parental behavior and qualities commonly feature in justifications for and against adoption. It was the most frequently mentioned reason for adoption by Norwegian decision makers in Skivenes and Tefre's study from 2012 and in DeRoma and colleagues' study from 2006 parental motivation was found to be the second most important factor in decision-making regarding the removal of children. In Dingwall, Eekelaar and Murray's (2014 [1983]) seminal work *The Protection of Children: State Intervention and Family Life*, the ascription of moral characteristics to parents was revealed to be a central feature of the practices of child protection workers. They also proposed that the threshold for legal intervention was considered met if parental incorrigibility could be proven (Kettle and Jackson, 2017). When determining whether a placement is considered permanent or not, section 4–20 allows decision-makers to bypass a conclusion on parental capabilities by a discretionary assessment of the individual case and permits them to make the decision based on attachment alone (Lindboe, 2011). Even so, the best interest conclusion appears to be dependent on parents that are permanently unable to provide proper care. This points to a discretionary practice where a decision on adoption is reliant on both attachment and parental capability, yet with the latter as the factor that tips the scale. It is thus obvious that the commitment and reformation of the parents and their relationship with the child is a, or maybe *the*, decisive best interest consideration. This raises an interesting question: do decision-makers find it controversial or challenging to conclude that adoption is in the best interest of the child if parents' current and/or future parental capability is considered adequate? Or similarly when parents' predicted capabilities are unclear? If so, this could indicate that decision-makers are safeguarding their decision by holding that both attachment and parental inability to provide care must be proven for them to opt for adoption.

9.3. Liberal ideals and thresholds for intervention

From the perspective of the child, the balancing of considerations essentially becomes a matter of weighting the child's right to a legally established biological family relation and the right to a de facto family life. It is apparent still, that the emphasis on parents' capabilities and ability to change signals that the protection of parents' right to maintain parental responsibility over their biological child is strong, and that legal relations and biology are normatively powerful sentiments that influence decision-makers discretion at the point of tipping the scale in a balancing exercise (Dingwall, Eekelaar, and Murray, 2014; Ward, Brown, and Westlake, 2012; Ward, Brown, and Hyde-Dryden, 2014; Young, 2012). Their focus on visitation indicate that the biological principle in both its 'weak' and 'legal' form, expressed through the valuing of contact (weak) and legal bonds (legal) (Skivenes 2002) holds a particular strong position in adoption decision-making. From this it becomes apparent that the guiding principles of the law, especially the biological principle and the principle of the least intrusive measure, are strongly contributing to shape justifications for and against adoption. Both principles facilitate for decision-making by what Dingwall, Eekelaar and Murray (2014 [1983]) have termed "the rule of optimism". The rule applies as a practical solution to the child welfare systems' inherent task of balancing the respect for family autonomy and parental liberty with the demand to protect the needs and welfare of children – the 'dilemma of liberalism' – where staff become required to think the best of parents (Dingwall, Eekelaar, and Murray, 2014 [1983]). Because operational rules for decision-making are not possible in child welfare, additional assessments of parents' moral character and parental responsibility is applied to determine if a case meets the legal threshold for intervention based on ideas of deviance, assessments that according to Dingwall and his colleagues can be neutralized by cultural relativism and the idea of 'natural love' (Kettle and Jackson, 2017; Dingwall,

Eekelaar, and Murray, 2014 [1983]). In other words, concluding that the threshold for intervention is met becomes harder once deviance cannot (longer) be proven. This can be related further to features of the Norwegian child welfare system. Typically, Norwegian child welfare practice is characterized as influenced by the principle of *positive liberty* – to optimize the capabilities and opportunities of citizens (Berrick and Skivenes, submitted for publication) and the parent-oriented focus of the pivotal factors could reflect the family-service-oriented function of the Norwegian child welfare system (Burns, Pösö, and Skivenes, 2017; Skivenes, 2011) where cooperation with parents and their abilities to rehabilitate and improve their parenting skills is valued in order to secure the interests of children. At the same time, we cannot exclude the possibility that the reluctance to go for adoption if parents commit and reform may also have been influenced by a protection of parental rights from the perspective of *negative liberty* – to be protected from outside interference (Holland and Scourfield, 2004) – inherent in among other ECtHR (Article 8) and The Norwegian Constitution (Article 102, cf. 104) (NOU, 2016) on the right to protection of family life. Alongside the best interest standard, interventions in child protection are often legitimated through the activation of some form of the 'harm principle' (Berrick and Skivenes, submitted for publication), entailing that individuals' freedom can only be restricted if there is danger of harm to others (Mill, 1859). Though not particularly characteristic of the Norwegian child welfare system, the harm principle appears to serve as a threshold for intervention for decision-makers. Believing that parents will not exercise their parental rights in harmful ways could mediate the assessment of risk of harm to the child. Intervening with the parents' parental rights may thus appear as less legitimate and necessary.

10. Concluding remarks

From the discretionary exercise child welfare decision-makers carried out when posed with the vignette about David, we see the reflections of a practice where support for adoption is ultimately dependent on the weighting of two decisive norms: the right to biological family life and the right to a de facto family life. The consistency in how these elements are emphasized and balanced indicate that, within the space of discretion, there is a hierarchy of norms and standards guiding the discretionary application of the law on adoption in decision-making. Though one cannot claim that the decision-makers' reactions to the vignette are necessarily representative of real-life actions, their responses suggest that adoption is understood as the appropriate choice for a child whose attachment is to his or her foster parents. It is nonetheless clear that the legal bonds between the child and his or her parents and the value of parent-child contact tips the scale in disfavor of adoption if parents are able to reform and commit to change. While the uniformity in attitudes do create some form of predictability, what appear as near standardized judgment may indicate that ideology is a force that governs discretion, and the legitimacy of the reasoning can be questioned. Adjusting the law and enforcing 'practice produced' criteria for decision-making challenge the legal structures that constrain discretion in the sense that decision-makers construct their own informal standards to accommodate contradicting expectations. The pivotal weight given to parental capabilities and commitment furthermore suggests that the law is a step ahead of practice. While the child-centered elements of the law are welcomed by decision-makers, they are difficult to implement due to the normative conflicts that arise, conflicts that appear to be enhanced by the contradictory forces of the law's guiding principles. This calls for both structural and epistemic measures of accountability to guide decision-making behavior and improve the quality of discretionary reasoning (Molander, Grimen, and Eriksen, 2012).

To further understand and improve decision-making, we need more research that 1) explores the attitudes and practices of decision-makers and aims to unbox the mechanisms that allow for and guide discretionary practices in decisions on adoption and 2) that address

professional decision-makers interpretations of the law and the best interest of the child and how this coincides with popular opinion and policy. This could be achieved through, inter alia, studies of court judgments and by investigating actual decision-making processes at the street-level.

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Appendix A. Supplementary material

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