Exploring Boundaries of Legitimate State Intervention

Adoption as a Child Protection Measure in Norway and the United States

Øyvind Samnøy Tefre

Thesis for the degree of Philosophiae Doctor (PhD)
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Scientific Environment

This thesis is submitted to the Department of Administration and Organization Theory at the University of Bergen. At the department I am affiliated with the Centre for Research on Discretion and Paternalism, led by Professor Marit Skivenes, who has also been my thesis supervisor. I have been registered as a Ph.D. student at the Faculty of Social Sciences at the University of Bergen.

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Abstract

This thesis asks how states form and justify policy as guardian of children's right to protection from harm balanced against the rights and responsibilities of parents. To answer this, I have examined how Norway and the United States – two countries with very different welfare regimes and child welfare orientations – have formed and justified their policy on public responsibility for children in long-term care.

By comparing how child protection policy is formed in the two countries we get a clearer image of how different ideas influence and shape the role of the state as a guardian for children and how this affects the boundaries between public and family responsibility in child protection. The thesis examines child protection policy as a result of both political processes in national legislatures, and as processes at the street-level where child protection workers form de facto policy when they make decisions based on discretionary reasoning.

The empirical focus is on policy for children who cannot be reunified with their families of origin, and who will either grow up in foster care or exit through adoption. Adoption is controversial child protection measure in many countries, because it severs legal ties between birth parents and child. However, from the child's perspective it may offer closer integration with his or her de facto family, and research shows that children adopted from care have better transitions to adult life compared to those that grow up in foster care.

Article I examines how the U.S. Congress came to consider adoption the placement of choice when children cannot be reunified with their birth parents. It examines the legislative process that resulted in the "Adoption and Safe Families Act of 1997" (ASFA). By analysing congressional hearings, the article provides new insights to understand how adoption is justified in the United States. The article uses a discourse theoretical framework that distinguishes pragmatic, ethical–political, moral, and legal arguments. It argues that U.S. federal adoption policy is based on three pillars. Pragmatic risk-oriented thinking forms the central knowledge base to inform policy. Parent responsibility ethics stresses individual responsibility for rehabilitation. Child

refamilialization ethics emphasizes decisive and authoritative action to protect the child's needs for safety and permanence.

Article II examines how Norway turned to a more active policy on adoption from care. It examines public records from four occasions when the government and Storting (The Norwegian parliament) debated adoption from care, over the period 2002-2013. The analysis is built on the same discourse theoretical framework as Article I to enable comparison. The findings show that a more active adoption policy is justified by strengthening of child-cantered perspectives. First, research and expert discourse gained influence in the framing of adoption policy over time. Second, the ethical response to this knowledge base has been to shift attention from shared family needs to the child's individual and developmental needs. There signs that legislators view adoption in relation to children as independent legal subjects with rights.

Article III, examines how a sample of 299 child protection workers from Norway, England and California (U.S.) consider the question of adoption in relation to a vignette about a three-year-old boy. Findings show that a majority of the respondents suggest adoption. However, while the English and Californians were close to uniform in their recommendation for adoption, Norwegians were split between 60% favouring adoption and 40% recommending continued foster care. This split among Norwegian child protection workers reflected different normative considerations about parental consent, as well as differences in how national policy on adoption should be understood.

Article IV examines how child protection workers in Norway, England and California (U.S.) assess risk based on a vignette that combines parent intellectual disability and infant neglect. Findings show that workers across all countries agree that this is a high-risk case. However, reasons behind the assessments vary across countries. Californians display a greater range and more uniform reasoning compared to the English and Norwegians. English and Norwegians are generally more similar, but differ on attention to social and environmental factors and attention to the mother's cognitive functioning. I discuss these findings in relation to research on parental

intellectual disability, child welfare orientation and familiarity with assessment tools. I argue that both child welfare orientation and assessment tools are important to understand these differences in reasoning.

In the discussion I chose to emphasize two especially interesting findings. First, Norwegian child protection workers have much stronger discretion compared to their Californian colleagues, which results in more policy formation happening from the bottom-up. While this may be intended to give practitioners greater freedom to tailor services to individual needs, the thesis finds that it challenges central principles of justice because identical cases are treated differently. Second, there reason for differences in official adoption policy between Norway and the United States stems mainly from different normative conceptions about the role of the state in long-term care. The U.S. Congress took a clear stance to limit public responsibility for raising children in foster care, favouring swift public action to refamilialize children with families in the private sphere. This government policy is reflected in the decisions by street-level practitioners, both in terms of their decisions and in their justifications. By contrast, in Norway the political signals from the government on when adoption from care is an appropriate solution to long-term care are mixed and unclear. Political signals to promote more adoptions have not been followed by clear suggestion about when adoption should be regarded in the child's best interests. Norwegian legislators are telling street-level practitioners to forward more cases to adoption, but are unwilling to provide guidance on how to weigh central principles. The lack of clarity about when adoption is to be preferred over foster care is apparent in the findings that Norwegian child protection workers are spilt, and the resulting de facto policy from the ground is inconsistent. This is a serious challenge to the legitimacy of Norwegian child protection, as it challenges central principles in the rule of law – legal certainty and equality before the law. It places a heavy burden of legitimizing individual decisions on street-level practitioners, while the political actors are freed from responsibility.

List of Publications

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1. Introduction

All states with an operating child protection system faces dilemmas about how best protect children from harm and balance this against parents' rights to respect for family life. How states resolve this dilemma and how far the state can go to protect children differs over time and between countries. The boundary of what is acceptable and legitimate public intervention is drawn in political processes that involve both cognitive and normative ideas about the appropriate role of the state as a guardian of children's rights and needs against the rights and responsibilities of parents. Arguably, this dilemma of striking the appropriate balance of intervention has been rendered more acute in later years as children's rights have come on the agenda and children are increasingly seen as independent subjects with rights of their own, apart from the family unit. Exploring how such boundaries are drawn in different states gives us a clearer understanding of how states use their coercive powers, and what ideas direct the state's responsibilities as guardian of children.

The thesis asks how states form and justify policy as guardian of children's right to protection from harm balanced against the rights and responsibilities of parents.

I approach this question by exploring how child protection policy is formed in Norway and the United States, both in the national legislatures (top-down) and by child protection practitioners who form de facto policy in their daily work (bottom-up). By comparing how child protection policy is formed in the two countries, both at the political and the street-level, I seek to get a clearer image of how different ideas influence and shape the role of the state as a guardian of children and how this affects the boundaries between public and private responsibility in child protection.

Articles I (Tefre 2015) and II (Tefre 2020) explore how child protection policy is shaped in the national legislatures of the U.S. and Norway. Here I focus on the arguments and discourses that the government, legislators, and policy advocates present during legislative processes, and how different ideas and ideals are reflected in final policy. Articles III (Skivenes and Tefre 2012) and IV (Tefre 2017) approach policy formation from the bottom-up. By focusing on the rationales provided by child

protection workers for their assessments and decisions in specific cases these articles shed light on how policy is formed by ideas at the street-level.

All articles share a theoretical perspective rooted in the literature of ideas and discourse and use an argumentative approach to explore how different cognitive and normative ideas shape the way child protection policy is formed. Child protection as a field is steeped in cultural values and norms that concern how we view families and the appropriate relationship between the public and the private. If we are to understand and explain the construction of different countries' child protection systems and their institutional arrangements we must understand the ideas that underpin them, and their role in how the systems evolve. Exploring the arguments that governments, legislators and child protection workers present to justify their decisions provides a window to study the ideas that support child protection systems, and what is seen as legitimate state intervention in different contexts.

The main empirical focus of the thesis is policy on adoption from care, and how and when adoption from care is considered an appropriate intervention by legislators and practitioners. In many countries, adoption remains a controversial form of child protection intervention. It involves the permanent termination of parental rights and the transfer of parental rights to new adoptive parents. Often the termination of parental rights is made without parental consent. In cases of involuntary termination of parental rights and adoption the state actively seeks to create new legal families to improve the life of children. From a parental perspective, adoption without their consent is perhaps the most intrusive public intervention possible. At the same time, the research literature is clear that for children who cannot return to their birth families, their expected life outcomes across a range of variables is much better for adopted children compared to children who grow up in long-term foster care (Bohman and Sigvardsson 1980; Christoffersen et al. 2007; Hjern, Palacios, and Vinnerljung 2018; Hjern, Vinnerljung, and Brännström 2019; Palacios et al. 2019; Triseliotis 2002; Vinnerljung and Hjern 2011). This makes adoption a good lens through which to examine the boundaries of legitimate state intervention. Three of the four articles focus on adoption from care explicitly. While the fourth article

focuses on risk assessments and does not consider adoption it joins the other articles in examining practitioner's reasoning of a case associated with high likelihood of resulting in long-term care. In this introduction I will draw on all four articles to discuss how a focus on policy formation of adoption and long-term care for children can shed light on the state's role as guardian of children in Norway and the United States.

1.1 Adoption in Child Protection

Adoption in child protection is a difficult area because it is such an invasive measure, severing all legal ties between a child and his or her birth parents, but at the same time holds the potential to benefit children who cannot return to their birth families in ways that other child protections measures cannot. To explain this, I give a brief overview of the research on adoption as a child protection measure.

Children's need for a stable environment and attachment to loving caregivers for a healthy development has long been recognized in research across several disciplines. Equally well documented are the detrimental effects of abuse and neglect, discontinuity in care, and disrupted attachment to caregivers that come with moving between different placements (Palacios et al. 2019). While all children are vulnerable to disruptions in care, children who have experienced early life adversity through abuse or neglect are especially vulnerable to further disruptions in care. For these children continued instability in foster care or residential placements are linked with negative consequences in growth, behavioural adjustment, mental health, educational achievement, and social integration (Palacios et al. 2019). Children growing up in the foster care system have significantly heightened risk of experiencing difficulties in their transition to adult life (Backe-Hansen et al. 2014; Clausen and Kristofersen 2008). The foster care literature shows that placement instability is a considerable problem in all countries (Angel and Blekesaune 2015; Christiansen, Havik, and Anderssen 2010; House CWM 1996a; Konijn et al. 2019; Oosterman et al. 2007; Selwyn and Quinton 2004, 2004; Stott and Gustavsson 2010), with many children experiencing multiple foster home placements over their childhood. Overall adoption

has proven to be a remarkably stable placement, while breakdowns do occasionally happen, their prevalence is far below that of foster care (Coakley and Berrick 2008; Palacios et al. 2018; Wijedasa and Selwyn 2017). Both adopted children and children growing up in foster care are more likely than the average population to face challenges in their adolescence and transition to adulthood as a result of adverse life experiences (Backe-Hansen et al. 2014; Palacios et al. 2019; Vinnerljung and Hjern 2011). However, outcome studies comparing long-term placement in foster care and adoption find with few exceptions that children who are adopted have better life outcomes compared to those growing up in foster care. This applies to a range of variables, including: health, mental health, disability, criminality, educational level, risk of suicide, income level, and labour marked participation (Bohman and Sigvardsson 1980; Christoffersen 2012; Christoffersen et al. 2007; Hjern et al. 2018, 2019; Lloyd and Barth 2011; Palacios et al. 2019; Quinton and Selwyn 2009; Selwyn and Quinton 2004; Triseliotis 2002; Triseliotis and Hill 1990; Triseliotis, Shireman, and Hundleby 1997; Vinnerljung and Hjern 2011). The observed benefits of adoption over foster care are usually attributed to the stability and security that both children and their adoptive parents experience with adoption, which is key to recovery from past adversity (Hjern et al. 2019). Studies have found that adopted children often feel secure in their family, and felt that they had a 'family for life', while many foster children were well aware that connection to the foster family can be terminated at will by the foster parents or child protection services (Triseliotis 2002; Triseliotis and Hill 1990).

The well-known risks to children associated with placement instability and the firmly established knowledge that children need stable attachment to caregivers have led most countries to move child protection policies in the direction of establishing some form for permanence for the children that promotes continuity and stability. The focus on permanence is not new (Bartholet 1999; Fein and Maluccio 1992), but securing permanence for children is still a major challenge in all countries where there has been research (Palacios et al. 2019). Permanence can mean different things, and we can broadly separate between *legal permanence*, *residential permanence*, and *relational permanence* (Brodzinsky and Smith 2019). *Legal permanence* establishes a

life-long legal tie between child and caregiver that affirms the authority and responsibility of the child's caregivers to make all relevant decisions and to take all appropriate actions in raising the child. Ideally this responsibility rests with the child's birth parents, but when this is not possible it may be given to adoptive parents. An important implication of legal permanence is that the state relinquishes its guardianship and custody of the child, and withdraws from its daily involvement in the child's life. *Residential permanence* refers to placement stability, and concerns continuity of provided care in a designated home. *Relational permanence* refers to maintenance of the child's connections to significant attachment figures. This includes close primary attachments of a child to caregiver(s), reciprocal caregiver bonding for a lifelong commitment, and each person having a sense of belonging to each other (seeing themselves as a family) (Brodzinsky and Smith 2019:185; Palacios et al. 2019:62). Some studies have questioned whether it is relational permanence rather than legal or residential permanence that explains positive child outcomes (Biehal et al. 2010; McSherry, Malet, and Weatherall 2016), but for children who cannot return to their biological families adoption is the only placement alternative that can provide the child with all three types of permanence.

Despite the evidence that adoption can offer substantial benefits over long-term foster care to children who cannot return to their birth families, adoption remains controversial in many countries (Berrick, Gilbert, and Skivenes in press c; Gilbert, Parton, and Skivenes 2011). The U.S. has adoption and permanency planning as a guiding principle, with a clear aim of minimizing the number of children who grow up in non-kinship foster care (Tefre 2015). The UK also has a strong focus on permanency planning and have actively sought to increase their use of adoptions from care in law and practice (Skivenes and Thoburn 2016). The Nordic countries have been considerably more restrained in their view of adoption. Finland and Sweden do not permit adoption without parental consent, (Skivenes and Thoburn 2017; Vinnerljung and Hjern 2011), whereas Norway and Denmark allow adoption without parental consent, but it is still rarely practiced (Helland and Skivenes 2019; Socialstyrelsen 2015). A central question for this thesis is to shed light on how and

why two high income, advanced states, Norway and the United States have taken such different approaches to adoption from care.

2. Child Protection Orientations

Child protection systems can be defined as:

> *the systems designed to protect the rights of children … from abuse, neglect, and maltreatment when parents or family are not able to care for their children or they are a direct or indirect threat to their children's well-being… [Including] the legal authority and responsibility of states that prevails when parents do not, or cannot exercise their parental responsibilities* (Berrick, Gilbert, and Skivenes in press b)

In 1997 Neil Gilbert led a research project comparing child protection systems in nine countries, resulting in a categorization of two distinct orientations to child protection, a more narrow 'child protection' orientation (to avoid confusion I will call this approach risk-orientation), and a broader 'family service' orientation (Gilbert 1997). The two orientations differed on four components; first, the way in which the problem of child abuse was framed. Risk-oriented systems emphasize abuse as an act that demands the protection of children from harm by 'degenerate relatives'. Whereas family service orientations conceive abuse as a problem of family conflict or dysfunction, arising from social and psychological difficulties that can be remedied by help and support. Second, risk-oriented systems respond by investigating deviance in a highly legalistic way, while family service systems respond in a service oriented, often therapeutic way to family needs, with an initial focus on assessment of needs. Third, the social workers in risk-oriented systems function in a highly adversarial way, while family service workers work in a spirit of partnership, particularly with the parents. Fourth, while family-service oriented countries displayed a high rate of voluntary out-of-home placements, the majority of such placements in the risk-oriented countries were usually the result of court orders. The countries could be clustered into three groups. The risk-oriented countries consisted of the Anglo-American countries, while the family service countries were divided into those that operated with mandatory reporting – the Nordic countries – and those without mandatory reporting – The Continental European Countries (Gilbert 1997:232–33).

This clustering also overlaps with the welfare regime clusters of (Esping-Andersen 1990, 1999).

In Child Protection Systems (Gilbert et al. 2011) the same countries are revisited (with the addition of Norway) in order to investigate developments since the mid-90s. The conclusion was that much had changed, and that the dichotomy of service orientations no longer offered an adequate representation. All countries, to varying extent, had adopted elements associated with the competing orientation. However, and importantly, the authors identified the emergence of a third and alternative 'child-focused orientation'. The characteristics of the child-focused orientation borrows from both the risk- and family service orientations but is further shaped by two somewhat contrasting lines of influence. On the one hand it is influenced by ideas from 'the social investment state', on the other it is influenced by ideas stressing the importance of 'individualization'. The term 'social investment state' was coined by Giddens (1998), and in relation to children it takes the view that investment in children has strategic significance for states who wish to equip its citizens to respond and adapt to global economic change, to enhance individual and national competitiveness. As such, ensuring that all children maximize their developmental opportunities becomes a matter of priority for social and economic policy. This is a future oriented approach that considers childhood a preparation for adulthood, such that investment in children now is designed to ensure that they will later become productive and law-abiding citizens (Gilbert et al. 2011:253).

In contrast to this is the rationale and origins of policies and practices that perceive children as individuals here and now, and autonomous bearers of rights of their own. These policies are concerned with the quality of childhood itself, and focusing on the rights of all children to be treated with respect and provided a loving upbringing. In this perspective children are seen less as future workers, but rather as current citizens. This is reflected in the ratification of the UN Convention on the Rights of the Child (UN General Assembly 1989 (UNCRC)), by all countries mentioned with the exception of the United States. It is argued that this reasoning is particularly evident in national legislation that provides children a right to participate and have a say in

matters that concern their lives. However, such rights also have a strong standing in the U.S. even though it has not ratified the UNCRC (Gilbert et al. 2011:254).

This tension within the child-focused orientation means that different countries will likely place different weight on its components in its policies and practices. However, the central point is that a child-focused orientation means that the state takes a greater role compared to the other two orientations, as the orientation puts children's rights above parental rights and emphasizes parental responsibilities and obligations. The suggestion is that these orientations do not form distinct models, but rather than trying to place them along a continuum, countries' child protection orientation may be understood in relation to where they may fall within a three-dimensional framework – closer to some planes than others (Gilbert et al. 2011:256). The framework calls attention to the fact that how child protection systems respond to maltreatment are primarily dependent on how the systems strike the balance between rights and responsibilities and the nature of the relationships among children, parents and the state.

2.1 Comparing Norway and the United States

Child protection in Norway (family-service-oriented) and the U.S. (risk-oriented) takes very different forms. Articles III (Skivenes and Tefre 2012) and IV (Tefre 2017), place and explain how the countries fit within the framework and uses it to form expectation and as a baseline for interpreting the results of the analysis.

There are also more general characteristics of political decision-making in the two countries; Norway is a unitary, parliamentary, consensus oriented, multi-party system, with an advanced welfare state. The U.S. is a federal, presidential, adversarial, two-party system, with a residual welfare state (Christensen and Peters 1999). There are also important differences in the formal allocation of responsibility, and procedures for producing and approving legislation in the two countries. In Norway, legislative bills are normally drafted by the government and sent to consultative bodies in a hearing, with a deadline for response. The government may

then revise its bill proposal after the public hearings, before presenting it to the Storting where it is debated in the relevant committees and in plenary sessions. In the U.S. Congress, bills are drafted and introduced by members of Congress, although the executive branch may participate it does not have the same role as the Norwegian government in preparing and presenting the bill. Importantly any bill must be approved by both chambers of Congress. Hearings also differ, in that these are organized as in-person events arranged by Congressional committees during the legislative process. In both countries witnesses or consultative bodies are invited to participate in hearings (whether orally or written), but any citizen or organization is free to submit a response to public hearings.

The cultural context in the two countries is different; the U.S. has a heterogeneous population, with vast racial, religious, and socioeconomic differences, characterized also by a highly individualized culture, and low generalized trust in government, particularly in the legislative branch of congress. Norway on the other hand, which despite increased immigration still has a more homogenous population and less social stratification, with differences primarily being of a socioeconomic type, and characterized by an egalitarian culture, and with high generalized trust in government (Christensen and Peters 1999). These are factors that may impact on what are viable political solutions to any given problem. This is also reflected in the overarching welfare regime types of Norway (social-democratic) and the United States (liberal) (Arts and Gelissen 2002, 2010; Esping-Andersen 1990, 1999; Ferragina and Seeleib-Kaiser 2011). In a review on the regime-type literature Norway and the United States are placed as polar opposites on a classification continuum, with Norway (along with Denmark and Sweden) representing a ‘pure’ social democratic welfare regime and the U.S. as the only representative of a ‘pure’ liberal welfare regime (Ferragina and Seeleib-Kaiser 2011). According to this literature Norway is characterized by a high level of de-commodification, low level of social stratification, and a high level of de-familialization. In the U.S. on the other hand, public welfare is residual with a low level of de-commodification and targeted services for the poor. This leads to high social stratification, separating between those that can and those that cannot participate in the welfare market. There is also a low degree of de-familialization, as

care arrangements are subject to the market. The welfare arrangements of the countries also affect foster families in the two countries, where Norwegian foster parents have access to a much wider network of public support and services to help in caring for their child, and U.S. foster parents are left more on their own in caring for their child (cf. Berrick and Skivenes 2013).

The countries' traditional orientations to child protection and the wider welfare arrangements are clearly different. Norway, a social-democratic welfare state with a family-service oriented child protection system and the U.S. a liberal welfare state with a risk-oriented child protection system. Norway and the U.S. can be seen as two extremes along some dimensions. Norwegian child protection represents a broad approach to public responsibility for children. Based on the principle of the child's best interests, the state takes on a role of protecting children's well-being within a developmental frame, and directing support toward children's needs (Berrick, Gilbert, and Skivenes in press a). The U.S. has a much narrower range of public responsibility for child protection, and is mainly concerned with children's safety and protecting children from harm by family members. The state generally restricts intervention to preventing serious harm, with a strong family ideology and high thresholds for restricting parental freedom (Berrick et al. in press a). It is precisely these differences that make the countries interesting in a comparative sense. Because comparing the two countries was expected to yield very different answers and justifications to the question of what the appropriate range and mode of state responsibility in child welfare should be. The focus on normative and cognitive ideas that underpin policy formation sheds new light on how states with very different orientations legitimize their responsibility for children in long-term care.

3. Top-down and Bottom-up policy formation

This thesis asks how states form and justify policy that sets boundaries of legitimate public intervention in the private family sphere to protect children from harm. It approaches this research question by examining how policy is formed and justified to come to legitimate decisions both at the political level and the street-level. At both levels I use an argumentative approach to examine the reasoning that actors use to justify legitimate decisions.

Public policies are instruments of political will to exercise control and shape the world (Goodin, Rein, and Moran 2006). A public policy can be defined as a "course of action (or non-action) taken by a government or legislature with regard to a particular issue" (Knill and Tosun 2012:4). This definition emphasizes public policies as actions of public actors, and that the actions are focused on a specific issue and restricted to addressing a certain problem (or aspect of it).

I focus on the arguments of governments, politicians and practitioners who shape child protection policy through their actions, either through legislation or policy decisions (top-down), or through their decision-making with individual children and their families at the street-level (bottom-up). The arguments presented by these actors for their decisions provide a window to understanding the ideas, both cognitive and normative, that shape the final policy outcome.

My primary interest is in shedding light on the ideational and discursive elements that shape and justify child protection policy in different national contexts, and serve as legitimation for division of public and private responsibility for children. However, I also recognize the importance of institutions on policy formation both at the political level and by street level bureaucrats. In this section I will explain in more depth the theoretical assumptions that underlie the thesis.

3.1 Policy study through Arguments, Ideas and Discourse

> *Behind every policy issue lurks a contest over conflicting, though equally plausible, conceptions of the same abstract goal or value. The abstractions are aspirations for a community, into which people read contradictory interpretations. It may not be possible to get everyone to agree on the same interpretation, but the first task of the political analyst is to reveal and clarify the underlying value disputes so that people can see where they differ and move toward some reconciliation* (Stone 2012:14)

I approach the problem of policy formation by examining arguments for policy proposals as they are expressed by participants in the processes themselves, as they engage in discourse to convince others of the validity of their claims. Through an analysis of the discourse and argumentation I seek to shed light on the ideational underpinnings that shape and legitimize child protection policy in Norway and the United States. This approach locates itself within a still growing literature on policy studies that take ideas, discourse and argumentation as important influence on policy formation (Béland and Cox 2011; Blyth 2002; Campbell 2002; Campbell and Pedersen 2015; Daigneault 2014; Ervik, Kildal, and Nilssen 2009; Fischer and Forester 1993; Fischer and Gottweis 2012; Goodin et al. 2006; Goodin and Tilly 2006 Part IV; Kildal and Kuhnle 2005; Kingdon 2011 [1984]; Majone 1989; Parsons 2007; Schmidt 2002, 2008, 2010, 2017; Stone 2012). Importantly, this literature takes ideas and discourse as a distinct logic of explanation alongside structural, institutional and psychological logics of explanation (Parsons 2007).

The policy literature focused on ideas and discourse has gone under different names, such as deliberative, argumentative, discursive, or ideational turn in policy research, and includes a wide range of theoretical and methodological approaches, but all share the recognition that ‘public policy, constructed through language, is the product of argumentation. Accordingly, they see policy making fundamentally as ‘an ongoing discursive struggle over definition and conceptual framing of problems, the public understanding of the issues, the shared meanings that motivate policy responses, and

criteria for evaluation' (Fischer and Gottweis 2012:7). I place the theoretical approach of this thesis within this wider policy literature that focuses on ideas as they are expressed in arguments and discourse. This means a focus on actors' representation of substantive ideas, the discursive interactions through which actors generate and communicate ideas, within given institutional settings (Schmidt 2008:306).

I define ideas as "claims about descriptions of the world, causal relationships, or the normative legitimacy of certain actions" (Parsons 2002:48). The substantive content of ideas have both a cognitive component – beliefs about descriptions of the world and causal relationships – and a normative component – beliefs about norms, values, rights, concepts of justice and fairness (Campbell 2002). Ideas are analytically distinct from the material world, but give meaning to it and thus participate in constructing the world and how actors make sense of their material, social and political environment (Béland 2010:148). Moreover, ideas are dynamic, they do not only establish how actors understand the world, but enable them to reconceptualise the world and thus promote change (Schmidt 2011). This also means that ideas constitute interests, and that interests cannot exist independently of ideas. As such all interests are subjective (Blyth 2002; Hay 2006, 2011). Both material reality and interest-based behaviour clearly exist. This should not be conflated with the idea that actors have objective material interests externally given by their relative position to material reality, and which are something other than their perceived subjective interests. Rather, material reality is part of the setting in which actors conceive of their interests (Schmidt 2008:318). This in no way denies that perceived interests can be and often are powerful drivers in policy formation. However, it highlights the importance of ideas as constitutive of understanding and explaining social action.

March and Olsen (2006:3) define an institution as "*a relatively enduring collection of rules and organized practices, embedded in structures of meaning and resources that are relatively invariant in the face of turnover of individuals and relatively resilient to the idiosyncratic preferences and expectations of individuals and changing external circumstances*". The importance of institutions on action has long been

recognized by the political sciences, although different analytical approaches have considered the causal effects of institutions in different ways (Hall and Taylor 1996; March and Olsen 2006; Sanders 2006; Shepsle 2006). A general characteristic of the institutional literature is that institutions function to constrain action or enable action to take certain forms. Very briefly, rational choice institutionalists consider institutions as more or less stable conditions external to the actors that they must account for in making strategic choices to reach their goals, and for example how institutional design affects moral hazard in principal-agent theory. Historical institutionalists have focused on the lock-in effects of policy choices at critical junctures and how they can establish path dependencies that constrain later policy choice. Sociological institutionalists have focused on how institutional arrangements affect actors' perceptions of normatively acceptable behaviour following a logic of appropriateness. While all of these approaches continue to produce important empirical and theoretical insight to how policy develops, their focus on how institutions (once established) mainly constrain actors to various types of rule-following behaviour (whether through a logic of consequence, path dependence or appropriateness) means that they leave less room for agency when it comes to explaining institutional change (Béland 2005; Blyth 2002; Hay 2006; Schmidt 2010).

While much institutional theory is concerned with how institutions shape, constrain or motivate the actions of actors, I am interested in how actors – both within and outside institutions – act to support, criticise, uphold or change institutions through cognitive and normative ideas that are carried and communicated in discourse. This means taking institutions simultaneously as given (the context in which actors think, speak, and act) and as contingent (the result of actors' thoughts, words, and actions). Thus, institutions are understood as internal to actors, serving both as structures that constrain agency and constructs created by and changed through agency (Schmidt 2008:314). While institutional theory generally accepts this premise that institutions were at least at some point constructs of human agency, they generally focus on their function as structuring actors' behaviour in one way or another. A focus on discourse offers a complementing approach to the three other forms of institutional analysis by

shedding light on how ideas and discursive interaction between actors can affect institutional and policy change, as I show in articles I (Tefre 2015) and II (Tefre 2020).

Institutions are maintained through actors' 'background ideational abilities' which enable them to make sense in a given meaning context in terms of the rationality of a given discursive institutional setting (Schmidt 2011:55). This can be likened to Habermas' (1987) notion of the lifeworld as a background reservoir of shared, and commonly taken-for-granted, meanings and history that shape our personalities and group identities, and which help actors interpret in daily life. Actors can draw upon common interpretations of the situation through already established and shared understandings in the lifeworld (Habermas 1999). Similarly, the concept of 'institutional facts' concerns things which only exist through collective agreement about their status as institutions (Searle 2006). As with the lifeworld such institutional facts (such as money, contracts, family, or nation-states etc.) are taken for granted and internalized as people grow up surrounded by them. In this view institutions are stable carriers of ideas. However, elements of the lifeworld or institutional facts can be subjected to critical examination and re-evaluation through discourse, so that meanings established in the lifeworld can be changed gradually (Habermas 1987:124).

Collective political action always involve processes of articulation, argumentation, discussion, deliberation, bargaining and legitimization for proposed action (Goodin et al. 2006). What Schmidt (2008) calls actors' 'foreground discursive abilities' corresponds to Habermas' notion of communicative action (1984).

Communicative action is oriented towards reaching understanding between participating actors, it locates the concept or rationality in the human capacity to establish intersubjectively shared meaning. Human communication is a medium with a rationally binding character, as it contains the capacity to function in an action-coordinating manner, meaning that an actor's actions will depend on how he evaluates the statements of other actors. Conveying ideas through discourse requires

intersubjective valid reasons to convince others of their acceptability and legitimacy. Both cognitive and normative ideas require justification to be recognized as legitimate. In this regard Habermas (1984:85–94) separates between constative, regulative, and expressive speech acts. Constative speech acts refer to cognitive ideas about the objective world. Actors must be able to provide valid reasons for the truth of their claim, i.e. that the claim is true in relations to empirical facts and circumstances. Regulative speech acts refer normative ideas about the world of intersubjective relations. Actors must be able to provide valid reasons for the rightness of their claim, i.e. that the claim is right in relations to the existing normative context. Expressive speech acts refer to states in the subjective world. Actors must be able to provide valid reasons to support that he is truthful, i.e. that his manifest intention is meant as it is expressed (Habermas 1984:99, 325–26). While norms are not true or false in the literal sense that claims to fact are, they are referred to by Habermas as 'truth analogue qualities' (Eriksen and Weigård 2003:54). The demand that actors provide valid reasons for normative rightness ideally means that "moral conflicts of interaction can be settled with reasons in light of intersubjectively recognized normative behavioural expectations" (Habermas 2003:241), making it possible not only to evaluate the validity of descriptive and causal truth claims but also the validity of normative rightness claims (Kalleberg 2009:254). The crucial point for current purposes is that through the requirement of actors to provide valid reasons for their claims Habermas theory provides standards for evaluation of social norms and normative problems.

A focus on discourse offers a way to study how institutional change can originate within institutions. By engaging each other in discourse actors can think outside of the institutions they inhabit and within which they act, to critique and deliberate about these institutions and seek to persuade others on action to change them (Schmidt 2011). Further, the discursive level of communication between political actors is where we can empirically observe how ideas are expressed, spread and, changed over time within institutions and between different institutional settings. Times when institutions and policies change (whether radical or incremental) are objects of focus

to be studied through ideas and discourse, explaining it by reference to what actors themselves think and say that leads to change.

We can separate policy discourses analytically between two communicative spheres that have different roles in the formation and legitimization of policy (Schmidt 2008). In the policy sphere actors engage in 'coordinative discourses' about construction of policy ideas. Participants include individuals and groups who are central to the creation, elaboration and justification of policy – including civil servants, government officials, legislators, experts, interest groups and activists. These processes are akin to the activity described by Kingdon's (2011) policy stream.

In the political sphere actors engage in 'communicative discourse' (Schmidt 2008) which includes the wide range of political actors who bring ideas developed in coordinative discourse to the public for deliberation and legitimation. From the top these actors include government and political leaders, spokespeople, and political party activists who seek to persuade the public to support their policies. On the other hand, communicative discourses also include opposition parties, social activists and movements, experts, organized interests, the media, and the general voting public who may question and criticise policy proposals, and present policy alternatives of their own, and engage in policy change from the bottom-up. Thus, where policy ideas and proposals come from and how they combine with ideas about problems and politics is very much an empirical question (Béland 2016; Kingdon 2011).

3.2 Discourse Ethics and Political Justification of Policy

> *The more concrete the matter in need of regulation and the more concrete the character of legal propositions, the more the acceptability of norms also express the self-understanding of a historical form of life, the balance between competing group interests, and an empirically informed choice among alternative goals* (Habermas 1996:152).

In this thesis I focus on communicative discourses, and I am interested in how policy is formed and justified, and what this can tell us about the state's responsibility for

children, and legitimate boundaries of public intervention. This means that I do not make claims about how policy proposals were shaped in coordinative discourse, but on how they are legitimized in communicative discourse. Institutions feature mainly as contextual backdrop for discourse and argumentation. In both Norway and the US these discourses take place within the 'strong' public sphere of parliament and Congress. I view parliamentary bodies primarily as institutionalized decision-oriented publics "*structured predominantly as a context of justification"* and regulated by democratic procedures (Habermas 1996:307). Accordingly, in articles I (Tefre 2015) and II (Tefre 2020), my focus is not on how problems make it onto the political agenda, but on the political process of how problems are framed and dealt with in communicative discourses, and how policy proposals developed in parliamentary bodies are justified to the public.

I consider democratic legitimacy of policy as a concept with two components, a procedural and a discursive. The discursive component is defined by Habermas (1996:30):

> "*the legitimacy of statutes is measured against the discursive redeemability of their normative validity claim – in the final analysis, according to whether they have come about through a rational legislative process, or at least could have been justified from pragmatic, ethical, and moral points of view. The legitimacy of a statute is independent of its de facto implementation. At the same time, however, de facto validity or factual compliance varies with the addressees' belief in legitimacy, and this belief is in turn based on the supposition that the norm could be justified*".

In this light legitimate policy is respected because it is accepted as reasonable, more than by threat of sanction. The procedural component includes whether the democratic rules of the game have been followed in establishing law, whereas the discursive component ties legitimacy to the ability to provide publicly acceptable reasons for the policy proposals. I also consider that the procedural and discursive demand to legitimacy does not end with parliamentary legislation. The same demands

to procedural and discursive justification apply to the street-level practitioners of the welfare state when they make decisions based on government policy. In this I agree with Rothstein (1998) that policy legitimacy also relies on the output side of how services are received and perceived by citizens – I return to this below (section 3.3).

Public parliamentary debates, hearings and preparatory documents are thus analysed as institutional procedures to legitimize political decisions by allowing both proponents and opponents to offer substantive justifications for their policy positions. Whether participants in these processes may or may not have a priori fixed positions, and may or may not be willing to be convinced by the arguments of others matters less to the analysis than the substantive content of the arguments they present. The focus of analysis in this thesis is primarily on the act of public justification to legitimize state responsibility for children and the ideas and arguments that support different approaches to state responsibility for children. Even when policy is best explained by actions of groups seeking selfish goals, they must still appeal to the public interest on the intellectual and normative merits of their case. Even if these arguments are rationalizations they are still important, because they become integral parts of the political discourse (Majone 1989:2). Argumentation and persuasion is therefore a key component for policymakers and citizens to reach moral and policy choices under any circumstance, because at the very least they must always carry the people with them (Goodin et al. 2006). While acknowledging that there may be private interests behind public arguments, the need for public justification forces participants to at least justify their position in ways that are acceptable to the public, what Elster (1998:111) has called the civilizing force of hypocrisy. Studying public argumentation in normatively contested policy questions such as child protection opens to examine the fundamental assumptions and ideas that underlie what is publicly acceptable reasons for state intervention and responsibility for children, and which ideas are contested and which are widely shared in political fellowships, and how do they differ between political fellowships such as Norway and the United States.

I base my analysis of public justifications for state responsibility for children in long-term care on a discourse theoretical framework developed by Habermas (1996). Discourse ethics is a normative theoretical framework for rational argumentation that distinguishes different types of normative and cognitive arguments in relation to corresponding standards of justification. This lets us disentangle the underlying assumptions and ideas that form the basis of policy arguments, and separate between different types of normative and cognitive assumptions that underlie policy choices. While Habermas' theory includes a strong procedural component (see Bächtiger et al. 2010; Steiner et al. 2004), I employ the perspective as a theoretical tool for analysing the substantive content of policy arguments. As noted the basic premise of this approach is that policymakers must always provide valid public reasons to legitimize policy choices, and these may be scrutinized and contested by opposing parties. Public reasons and arguments for policy must at least be shaped in ways that policymakers assume will be acceptable both normatively and cognitively to the public they seek to persuade. Thus, an analysis of public policy justifications also provides a window for analysing what political fellowships consider to be more or less acceptable or legitimate reasons for state responsibility for children. Tefre (2015, 2020) operationalizes Habermas' discourse ethics to disentangle the ideational components that policy justifications build on, by recognizing four basic claims to validity: Pragmatic, Ethical-Political, Moral, and Legal (Habermas 1996:159–68). With a few notable exceptions (e.g. Eriksen and Weigård 2003; Skivenes 2002, 2010), there has to my knowledge been made little effort to operationalize Habermas' discourse types as conceptual categories for empirical analysis of policy formation (cf. Buchstein and Jörke 2012:275). I use the four discourses; pragmatic, ethical-political, moral and legal, to scrutinize the foundation of these reasons. A thorough explanation of the four discourses are available in Tefre (2015, 2020), and in the discussion section I will focus on what we learn about state responsibility for children through the discourse analysis in these two articles.

3.3 Street-level discretion and policy formation

It is widely recognized that separating the political from the administrative, viewing political leaders as policy makers and street level practitioners as implementers is misleading (Evans and Hupe 2020; Lipsky 2010; Majone 1989; Zacka 2017). One of the key insights of Lipsky (2010) was the recognition that street-level practitioners shape public policy in important ways, and that policy as experienced by citizens, is the result of their interaction with street-level practitioners. Legislative mandates often lack clear standards for street-level practitioners to apply. Legislation may be vague, ambiguous, or contradictory. Even when statutes do set precise goals, the technical knowledge to reach them may be insufficient, uncertain, and there may even be conflicting knowledge bases advocating for different approaches (Majone 1989). Further, practitioners are faced with a plurality of action prescriptions, and must consider and balance different rule sets at once: Statutes from a range of laws, precedents, public policy and political signals, regulations and managerial directives, occupational norms and professional standards, and societal expectations from clients, affected parties, media exposure, and public opinion (Hupe and Evans 2020:411). Thus, rule saturation stemming from a multiplicity of mandates can itself contribute to indeterminacy of policy outcomes because street-level practitioners have to choose and balance how to best address the prescriptions (Evans and Harris 2004).

Child protection belongs to an area of public policy Rothstein (1998:78–79) has labelled *dynamically interventionist*, which are characterized by (a) attempting to influence citizens' behaviour in a dynamic process, (b) the state of knowledge about what works is uncertain, and (c) there are great variations in the field. All of this makes it impossible for centrally located political authorities to prescribe in detail all the various responses that must be taken under particular circumstances in order to meet the identified needs of individual citizens. The paradox is that the need for more precise targeting of policy, in regard to individual needs, requires law and statutes to be framed in imprecise and general ways, in order to grant flexibility to implementers (Rothstein 1998). Rules follow a logic of *if x, then y*, where the antecedent *x* classifies

an action (or nonaction), and the consequent *y* describes the legal consequences of the antecedent. However, for reasons discussed laws and policy frequently leave significant indeterminacy. Discretion is necessary in at least four different circumstances (Grimen and Molander 2008; Molander 2016): (a) the antecedent may be clear, but consequence unclear, (b) the consequence may be clear, but the antecedent unclear, (c) both the antecedent and consequence may be unclear, or (d) even if both antecedent and consequence can be clearly stated as goals the knowledge or tools required to reach them may be uncertain. Accordingly, street-level practitioners are also granted wide freedom of action, i.e. discretion, in deciding the appropriate course of action and which measures to apply in each individual case.

> *They must, that is, be granted the right to judge, independently, and of their own responsibility, which measures are appropriate in a given situation. It is the sum of their actions which constitutes the public program. As to whether these actions reflect the objectives laid down by the democratically constituted organs – this must be regarded as an open question*" (Rothstein 1998:80).

Child protection work relies heavily on discretionary processes, from screening, investigation and assessment of reports of maltreatment to the decisions of what to do if maltreatment is confirmed. Understanding how child welfare workers use their discretion to make decisions in meetings with individual children and families is therefore a key part of understanding state responsibility for children. Laws certainly regulate practitioners' activities, but because legal rules and other action prescriptions are often indeterminate when applied to a specific case, practitioners are granted quite extensive discretionary powers (Molander 2016). The greater the indeterminacy of action prescriptions or rules to guide street-level practitioners, the higher degree of freedom they have shape and form policy in their interactions with clients of the welfare state.

Discretion can be considered both unavoidable – because rules are often indeterminate in the face of complex situations – and necessary – to secure sensitivity to individual circumstances (Molander 2016). However, leaving the important final

step of policy formation in the hands of street-level practitioners also introduces a serious challenge to democratic legitimacy of policy, labelled the black hole of democracy by Rothstein (1998:80). This concerns the lack of transparency with what goes on when street-level practitioners make decisions based on discretion and whether these conform to the legislative intent of democratically constituted organs. Discretion also challenges the moral and legal principle of equal treatment for equal cases, which is central to the rule of law. Even if we disregard the fact that practitioner do make errors and mistakes, the challenge is deeper. Because decisions are made with underdetermined prescriptions, even in ideal circumstances different practitioners may come to different conclusions on the same case.

Child protection workers play a central role in forming policy from the bottom-up through their discretionary decisions in meetings with children and families. To shed light on how states form and justify policy as guardian of children's rights to protection from harm, I examine how child protection workers in Norway and the United States make and justify decisions.

I follow Molander and Grimen (Grimen and Molander 2008; Molander 2016) in defining discretion has having two distinct aspects, a structural component that denotes the *discretionary space* which defines the rules and standards of what practitioners are allowed to do, and an epistemic component for *discretionary reasoning*, the cognitive act of making a reasoned judgment and decision within this space (Molander 2016). Accordingly, having discretion does not imply that practitioners are free to do as they like, discretion is always limited by standards. Dworkin (1978:31) argues that "*the concept of discretion is at home in only one sort of context; when someone is in general charged with making decisions subject to standards set by a particular authority*". To illustrate this, Dworkin (1978) compares discretion to the hole in a doughnut. Just like this hole cannot exist without the doughnut surrounding it, discretion cannot exist without a belt of restrictions that defines the space left open to discretion. As such, discretion is relative in two senses: it is relative to the restrictions that surround it, and it is relative to the authority that impose these restrictions and delegate discretionary power to decision-makers

(Molander 2016:20). Just as the hole in the doughnut can be greater or smaller depending on the thickness of the doughnut, so the space left open to discretion can be greater or smaller depending on the specificity of standards that guide practitioners' actions. Discretionary space can thus be seen as a continuum from strong discretion where decision-makers are subject to very few regulating standards to weak discretion where the decisions to be made are regulated by precise rules that specify what to do under specific conditions. Discretionary space can be greater or smaller, but not eliminated, as discussed above. In articles I (Tefre 2015) and II (Tefre 2020) I examine how legislative processes form the discretionary spaces for street-level practitioners, by focusing on legislative intent and how statutes are justified. In the articles III (Skivenes and Tefre 2012) and IV (Tefre 2017) I discuss the possible implications of clear statutes and the use of decision tools to frame the discretionary space of child protection workers in Norway, England and California (USA), however these are mainly important in the light of how workers use their discretionary reasoning to justify their decisions.

The epistemic aspect of discretion concerns *discretionary reasoning* which "*is a form of practical reasoning that aims to reach conclusions about what ought to be done in particular cases where the warrants are weak*" (Grimen and Molander 2008:179; Molander 2016:25). 'Warrants' refer to the action prescription or principles laid down in statutes, policy documents, guidelines, decision-tools, professional standards and the like, that aim to provide general guidance of how to act in particular circumstances. A challenge in child protection is that action prescriptions and legal principles are often vague (e.g. the best interests of the child) and at times contradictory (e.g. family preservation and child well-being) (Berrick 2018; Križ and Skivenes 2014; Mnookin 1973). As such the discretionary space in child protection decision-making is often large, and child protection workers can be said to exercise fairly strong discretion. However, the legitimacy of discretionary decisions relies also on the ability to hold practitioners to account in different ways (Molander 2016; Rothstein 1998). Legitimacy here relates to a normative conceptualisation of discretion, i.e. that "*the delegation of discretionary powers is based on the epistemic*

assumption that the entrusted actor is capable of passing reasoned judgments" (Molander, Grimen, and Eriksen 2012:219). Professionals who have discretionary power to make decisions that intervene in the lives of clients, are under an obligation to justify their judgments, decisions and actions with reasons which others can understand, assess, accept or reject, and there are sanctions available for transgressions. This is what makes the difference between discretionary power, delegated to advance certain aims, and arbitrary power (Molander et al. 2012:221). The requirement to provide reasons is an important part of both securing legitimacy and accountability, and should ideally bridge the gap between legislated policy and actual decisions practitioners make in their meetings with children and families, and importantly in a way that is understandable to those affected. Importantly these must be public and not private reasons to be considered valid. By this I mean that the personal moral compass or religious convictions of the decision-maker are not valid reasons to justify a decision. Professionals are granted discretionary power on grounds of their specialized competence and knowledge in a specific field (Abbott 1988). There is thus an expectation that professionals use this knowledge, as well as professional and public ethical standards to reach their decision. Justifications are necessary both to hold decision-makers to account, and scrutinize the validity of the arguments they apply to reach their decision, but also because of the indeterminate nature of discretionary decision-making. If we accept that even under ideal circumstances, reasonable and conscientious practitioners may come to different conclusions about the same case, then justifications provided for this is the only window we have to examine the validity of the conclusions.

By comparing the justifications child welfare workers in different countries provide for their decisions we can gain better insight into how similar legal principles are applied and balanced by different states, and thus how important principles in child protection policy is experienced by children and families. In articles III (Skivenes and Tefre 2012) and IV (Tefre 2017) I shed light on the discretionary reasoning of child protection workers in Norway, England and California (USA), by analysing their justifications for the decisions they make in a specific situation, and I will return to this in the discussion section.

4. Methods

4.1 The Comparative Approach

The comparative ambitions of this thesis are modest, and aim at exploring how different cognitive and normative ideas shape the formation of child protection policy in and the responsibility of the state for children's right to protection from harm in two very different contexts. While both Norway and the United States have taken steps to increase the number of adoptions there are clear differences both in their stated policy goals and their institutional design, and as such a comparison does not fit easily into classical small-N comparative designs that often build on either most-similar systems (method of disagreement) or most-different systems (method of agreement) design (Collier 1991; Hantrais 2009; Landman and Carvalho 2017).

One of challenges in the comparative literature is the problem of conceptual equivalence (Hantrais 2009:77–78), the comparative literature on child protection abounds with examples of how seemingly similar concepts can have subtly different meanings. Understanding and content of rights and obligations, what is meant by voluntary and coercive, how to measure the number of children in care, how the child's best interests is understood both between countries, and between different administrative institutions or groups of people in the same countries (Burns, Pösö, and Skivenes 2017; Gilbert 1997; Gilbert et al. 2011).

Christensen and Peters (1999:4) have argued that while there are many important differences between Norway and the United States, there are also similarities, most importantly are fundamental conceptual similarities in the politics of the two countries that should make it possible to use the same concepts for the two countries without a great deal of fear that they have been stretched to a point of obscuring the comparison. However, care must still be taken not to miss the subtle differences. Although concepts such as family, neglect, abuse, permanency, foster-care, adoption, responsibility, obligation etc. are understood in fairly similar ways in both countries, they are not identical. For instance, what constitutes neglect or risk in the sense of

justifying state intervention may differ considerably. An important goal for the comparative ambitions in this thesis is to examine how ideas contribute to situated understandings of such concepts in Norway and the United States. Thus, improving our understanding of how seemingly similar concepts are used and understood can contribute to very different policy outcomes despite superficial similarities in claims to children's interests or rights. But as the examples given show, it is important to always locate the concepts used in a comparative study within the political-institutional and cultural contexts of the specific countries examined, and not take their immediate comparability for granted. A strength of this design then is the in-depth study of the political and practical justifications for decisions, as a key goal is precisely to understand how different conceptualizations and orientations to child protection may impact policy on adoption and long-term care.

The ideational approach to policy analysis focuses on a 'logic of interpretation' (Parsons 2007), which is well suited to exploring how such concepts can shift and change in subtle but important ways between contexts. As such, the comparative strength of this thesis lies in its ability to produce nuanced explanations of similar concepts that can then be used to compare in more detail how these ideas shape policy justifications.

Articles III (Skivenes and Tefre 2012) and IV (Tefre 2017) both use the vignette methodology to provide child protection caseworkers in Norway, England and California (U.S.) with identical cases, and ask them both to assess these cases and make a decision. The strength of the vignette methodology in comparison is that they hold the specific conditions respondents are asked to assess constant, thus freeing the analysis to address how respondents interpret and assess the identical situations across different countries. This allows us to study how street-level practitioners use their discretion in assessment and decision-making and also compare how this aligns with the overarching legal and policy framework of the countries. As such, each of these articles include both cross-country and within-country comparison of the decisions and the reasoning behind them, expressed by the street-level practitioners who participated in the study.

Articles I (Tefre 2015) and II (Tefre 2020) focus on single countries and policy formation in the U.S. Congress and the Norwegian Parliament (Storting), respectively. However, in order to facilitate this comparison I have used the same analytical approach, based on Habermas' discourse ethics (Habermas 1996) in both articles, distinguishing pragmatic, ethical-political, moral and legal discourses. By using the same analytical tools, I have aimed to structure the findings and discussions in the two articles in a way that will allow a coherent comparison. Thus, an important task in the later discussion (section 6) is to draw on the findings from these two papers and compare the political processes and the ideational elements that led Norway and the U.S. to different policies on adoption from care. A strength of using two single country studies as the basis for comparison is that each country has been examined in detail, and I have traced the processes as they unfolded over a period of years in each country. This allows me to also trace developments over time within each country. However, I must also note that the legislative processes in the U.S. took place in the mid-1990s, whereas in Norway I trace a period from 2003-2013. Thus, while the Adoption and Safe Families Act (ASFA) remains a cornerstone of U.S. federal child protection policy, I have not examined in detail how perceptions of children and families may have changed in the political discourse since this time. This must also be kept in mind in comparing findings from the two studies.

4.2 Document analysis

The primary data sources are made up of official government documents that were produced in the legislative processes in Norway and the U.S. Here I will focus on more general methodological considerations of document analysis for policy studies. For an overview of specific documents and analytical approach included in the two countries I refer to Tefre (2015; 2020).

4.2.1 Data Material

The units of analysis are the political actors that participate in the debates on adoption. There are however important differences between the countries in this regard. In the United States members of Congress have a much greater degree of

freedom to act according to their own conviction or interests compared to Norway where party discipline is the norm. A consequence of this is that in the U.S. I focus on individual members of Congress and public witnesses as the units of analysis, whereas in Norway parties, governments and organizations are the units of analysis.

There are important differences between legislative processes in Norway and the United States, as noted in section 2.1, that makes the documents that the studies build on differ in substantial ways. Because of the procedural differences of law-making in Norway and the United States the document material submitted for analysis is somewhat different. In the U.S. the bulk of data for the analysis comes from the public hearings leading up to the passing of ASFA, this is partly because committee reports and other written material is very scarce. In Norway, the written legislative record from government and Storting committees is much more detailed, and also includes overviews of the consenting and dissenting opinions from the hearings. As such, the hearings take a central place in the analysis of ASFA, including the contribution of public witnesses. In Norway the focus is more squarely on the government proposals and the response to these by political parties. While these differences impact on the type of data that is available to the analysis in the two countries, it is not a major problem and they do not prevent a comparison of the ideational elements that unpins policy formation.

4.2.2 Data Analysis

The analytical method is grounded in argumentation theory and the conceptual framework of discourse ethics. The central variables are the arguments of the actors involved in the policy formation processes to uncover the types of knowledge, norms and values that inform policy, both explicit and implicit. This contributes to in-depth understanding of the normative foundations of child welfare policies and the role of the state.

In both Articles I and II, the analysis was done in several steps. First, I identified the basic position that each of the actors had toward the debates' topic at the different points in time. A second reading, established the most central reasons speakers gave

for their position and sorted these according to factual (pragmatic/legal) or normative (ethical/moral) reasons. Importantly this step also traced how speakers changed or maintained their reasoning over time. A third reading focused closer on identifying whether the speakers offered proof of validity for their claims and reasons, and if so which were these.

I structure the presentation and discussion of findings according to discourses in order to make clear what standards of justification apply. However, it is often difficult to locate a specific argument in a single analytical category, because a fully constructed argument may draw on several types of justification. Operationalizing Habermas' discourse theory is challenging as a full political argument may draw on several discourses and thus also make conceptually different claims to validity. As such, it is often not possible to assign a single statement to only one discursive category. However, the idea behind using the discourse theoretical framework is not to sort individual statements into mutually exclusive boxes, but that the theoretical discursive categories themselves are clear and mutually exclusive, so that when I identify one part of an argument as raising a claim to moral validity this is conceptually distinct from identifying an argument as raising a claim to ethical-political validity. Thus, while it may not be possible to categorize a single argument as raising only one claim to validity, the framework allows us to examine the same argument both according to moral and ethical-political claims to validity. The discourses then function more as analytical lenses to make clear the different types of discourses that compose a single coherent argument, and the variety of different validity claims raised in different arguments throughout the debates. The quotations that are included in the articles I and II are thus meant as illustrations of the type of discourse in question, although they may contain elements of other discourses as well.

4.2.3 Limitations

The main limitation of the document analysis in articles I (Tefre 2015) and II (Tefre 2020) lies in the fact that it is based only on the publicly available record, and on instances of public justification for policy. As such, the articles do not address the

coordinative discourses between policy elites that took place outside of the public eye. Nor does it capture whether there were conflicts of interests and power struggles between specific interest groups, and how these may have influenced the shaping of the policy proposals I have debated. I cannot answer with any certainty why the topic of adoption was raised to the political agenda or which actors were instrumental in getting them there (Kingdon 2011). While there are still many questions about the formation of these policies that my analyses do not address, my focus on public justifications gives us important insight into the ideas that give form to policy proposals and provide them with legitimacy. In the final instance, it is the public justifications for policy that are available to street-level decision-makers (child protection workers and judges) when they need to interpret the principles and legislative intent behind child welfare policies.

4.3 Vignette Survey

The methodological section of Skivenes and Tefre (2012) outlines the general design and approach taken in the vignette survey, and the following is a condensed version. The study was reviewed by the office of the Norwegian Privacy Ombudsman for Research, which assesses privacy-related and ethical dimensions of a research project, and by the Research Ethics Committee of the English city where we conducted interviews. In California, our study did not fall within the scope of the rules that the Committee for the Protection of Human Subjects of the Californian Health and Human Services Agency is obligated to review under the Federal wide Assurance.

4.3.1 Data Material

The survey data were gathered as part of the CHILDPRO project (NFR project code: 196766). The survey was answered from January to May 2008 in Norway, from March to August 2008 in England, and between March and September 2010 in California. The data-material consists of convenience samples in all three countries. Child protection workers were recruited from public child protection agencies, all of whom perform assessment work with children and families. We recruited study

participants by first inviting city councils and/or the head of a child protection agency to participate. The child protection agency sent an invitation letter to all workers and supervisors in the defined unit(s) on our behalf. This letter contained detailed information about the research project and stated that participation in this study was voluntary. The letter also discussed the implications for those consenting to participate and stated that participation would occur during non-work hours. Those who wished to participate contacted the principal investigator by email or phone. Workers received an honorarium based on a research reimbursement model that proposes reimbursing participants for their time (Grady et al. 2005). We also followed justice considerations; we wanted all participants in the project to receive the same relative amount, regardless of their country of residence. Workers received NOK 1000 in Norway, GBP 75 in England and USD 150 in California. The honorarium may not only have motivated a broader set of workers to participate, but it may also have skewed the sample towards those who were attracted by the honorarium.

Many of the participants were experienced caseworkers. Our California sample had the longest mean experience of 12 years, a variance of 40 years and a median of 11 years. In England, the mean was 8 years, with a variance of 35 years and a median of 6 years. In Norway, the mean was 9 years, with a variance of 38 years and median of 8 years. The participants from California were also more highly educated than caseworkers in Norway and England. Eighty-nine percent of the Californian caseworkers in our sample had earned a master's degree, and the remaining 11% held a bachelor's degree. In both England and Norway, fewer than half of the caseworkers sampled held a master's degree (40% in England and 37% in Norway), and the remaining workers held bachelor's degrees or an equivalent college degree. In all three countries, the vast majority of caseworkers sampled were female; England stands out with 21% of the caseworkers being male. In California and Norway, the proportion of male to female workers was only seven and five percent, respectively.

The vast majority of our sample has a degree in social work, or a closely related field (such as family counselling). Level of education ranges from BA, through MA and

two PhDs (see author's own in appendix for detail about this distribution). A minority in each country had degrees in psychology or social sciences. 31 respondents did not describe the type of education beyond level of the degree.

4.3.2 Data Analysis

The Vignettes follow a common type of vignette technique in which fixed-choice responses are combined with open-ended questions (Finch 1987). A benefit of this approach is that while the fixed-choice responses make it easier to compare the responses in different countries, the open-ended questions leave room for the respondent to define the meaning of the situation and point to the elements that lead to a specific decision (Finch 1987).

The case vignettes are based on real cases and have been tested and reviewed by child protection workers in all three countries. To determine if the vignette cases in the survey were realistic, if they were sufficiently complex, and if the respondents' answers reflected their opinions rather than those of their managers, we asked about 25% of the sample to respond to these issues. The results show approximately nine out of ten respondents thought the vignettes were realistic (the rest answered 'I don't know' (5), 'in between' (3) and 'no' (2)). Regarding complexity, one-fifth of the respondents found them less complex than real cases, about three-fifths said they had the same complexity level as real cases and less than one-fifth found them more complex than real cases. Although the vignette contains only limited information, it was designed to be recognizable to workers in different countries as an approximation of a real-life situation (Barter and Renold 1999, 2000; Finch 1987; Soydan 1996).

The survey was translated from Norwegian to English and back to Norwegian again to make sure we had the same version of the questions and vignettes. The aim of the vignettes was to capture the workers' professional assessments of cases. We asked the same questions in each country, and we gave participants an option to choose open categories, as an alternative to fixed categories, and to allow them to explain their choice. This was to make sure that if they experience the survey form to be rigid, they had an alternative. Although we aimed for a survey that was similar in each country,

we are aware that this type of comparison involves challenges regarding conceptual differences, legislative framework and cultural factors that have implications for child protection. Therefore, the vignette itself does not include any references to national legislations or other specifics that could make it specific to any one country.

The vignette contains limited information about the case and allows the child protection workers to interpret the case according to their own setting. The open-ended questions are therefore of central importance, and it is through these questions that we seek to understand just how the case is interpreted and positioned within the respondents' respective contexts (Barter and Renold 2000; Finch 1987; Grinde 2004). The questions allow the participants in each country room to provide details that relate to the different policies, laws, social norms and institutional practices that may be influential to their decisions. Finally, although one of the strengths of the vignette technique is the reduction of 'social desirability factors' and the avoidance of observer effects (Soydan 1996; Wilks 2004), we are aware that what is expressed in the respondents' answers may not necessarily reflect how they would act in a real situation. 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).

4.3.3 Limitations

A limitation of our data relates to the differences in samples across countries, which are due to the specific hiring patterns of the public authorities we sampled and the economic recession, which seemed to affect our Californian study sites most. The groups of workers invited to participate in this study differed in England, Norway and California. This is partly due not only to the organization of the agencies in the respective countries, but also the fact that in California we only recruited workers from the Emergency Response unit. The main difference between agencies is in the degree of task specialization. While all who are included in the sample actively perform assessment work some do this exclusively, while others also have other tasks. The highest degree of specialization was in the Californian sample where the agencies delegate assessment work to Emergency Response workers who do this type

of work exclusively. In England and Norway most agencies in the sample divide between a front end and a back end. Those in the back-end work with children who are already placed in care, and are not included in our sample. In the front end are those who respond to reports and carry out assessment and investigative work. In many agencies, those who are in the front will also work with families, providing services and following them up. This differs from the strong specialization in the California sample. Also, some Norwegian agencies operate with a "generalist" model, where case workers are assigned to individual children and families, and follow them through the system even after a child enters foster care. So, while they still do assessment work, their area of focus spans the whole spectrum of possible services. These differences in cross-country samples may affect how workers answered our questions. However, the Californian workers were not completely different from the English and Norwegian workers because most of them had ample experience working in other roles in other child protection units, especially as on-going caseworkers.

The relatively small sample sizes in each country and the hiring pattern mean that the samples cannot be taken as representative of the general population of child protection workers in these countries. Therefore, the findings from theses vignettes should be treated as indicators for future research, and can function to formulate hypotheses for future testing in a more rigorous comparative design with a representative selection of workers.

5. Results

5.1 Article I – The Justifications for Terminating Parental Rights and Adoption in the United States

The article asks why adoption came to enjoy such broad bipartisan support in the US Congress during the period leading up to the Adoptions and Safe Families Act of 1997 (ASFA). It examines how legislators and public witnesses during a series of Congressional hearings from 1995-1997 justified adoption as a legitimate and often preferred permanency goal for children who cannot reunify with their parents. The analysis focuses on two sections of ASFA that established the circumstances when the state can legitimately place children for adoption from care. These sections, Sec. 101(a) and Sec. 103(a) considered the child's need for 'safety' and 'permanency'.

The article is based on written public records from the United States Congress and includes legislative hearings, floor debates, committee reports, and bill proposals from both the Senate and House of Representatives. The analysis builds on a discourse theoretical framework (Habermas 1996) to categorize the substantive arguments presented in the proceedings and examine the ideas and discourses that support them.

First, the article finds that the emphasis on child safety to justify adoption was clearly risk-oriented. The pragmatic argument for adoption as risk management is grounded in ideas that the most abusive parents are unable to change their abusive behavior regardless of services. Family-preservation services were regarded as ineffective, especially to these families, and adoption seen as a safe alternative to the risk of attempting reunification with parents who had already demonstrated severely abusive behavior. The ethical-political justifications for adoption to promote child safety were child centered and argued that efforts to reunify had become unreasonable and centered on adult needs and biological ties, at the expense of children's safety. In essence legislators argued that it was necessary to "push the pendulum of government back in the direction of the children", that is children's need for safety ought to outweigh parent's interests in attempting reunification when the state intervenes.

Secondly, the focus on children's need for permanency was justified pragmatically by referring to research on the importance of stable care and long-term relationships for children and the instability of the foster care system. Research also showed that adoption was an effective way of securing the permanency that foster care lacked, and could demonstrate positive outcomes for children. At the same time psychologists testified that, psychological ties were more important to children's healthy development than biological ties. This emphasized the importance of psychological parents over biological parents to children in the proceedings, where the 'real' parents were those who satisfy the child's daily needs for care. An important ethical-political argument for adoption to secure permanency was that children should not suffer for their parents' behavior. This meant a stronger emphasis on parental responsibility and duties to the child on the one hand and the state's role as guardian of children's needs on the other. Children should not suffer because of their parents' inability to live up to their responsibilities. This demonstrates an adversarial relationship between parents and the state in child protection legislation, and the role of the state as a watchdog. It individualizes the parental responsibility for improving their function as caregiver and legitimizes adoption if parents fail to do so within a reasonable amount of time. Although the state should make services available to aid parents to improve capacity to care, the ethical responsibility to make such changes are on the parents. Adoption than served as a way of providing new permanent families for children whose families would be unable to provide the necessary stability.

The article argues that the ASFA built on three fundamental discourses. First, 'child risk pragmatism' characterized the justifications for adoption. This focused on managing risks to children, primarily to their immediate health and safety but also to risk associated with their developmental outcomes, mental health, and life opportunities. Adoption was seen as an effective way of improving expected life outcomes for children who would otherwise grow up in foster care. Adoptions were also considered necessary to save a foster care system that was never intended to provide permanent care for children from collapse, and offered a cost-neutral or possibly cost-saving way of reducing the pressure on the foster care system. Second,

'parent responsibility ethics' emphasizes the responsibilities that come with parental rights, both to the child and society. Parental rights are conditional (Harding 1997:51) and the state's role is to ensure that parents keep within the acceptable boundaries of parenting. This included a stronger focus on individual parent behavior compared to the socioeconomic conditions surrounding of the family. Both as explanations for parenting failure and in the responsibility to improve their parenting capacity. Third, 'child refamilialization ethics' clearly distinguishes the interests of parents and children, and the state's role as primarily a guardian for children's interests. Legislators argued that children should not grow up as wards of the state because of their parents' failure to provide adequate care. Adoption was seen as the best way securing children's needs for a permanent, loving family. The idea of refamilialization builds on the idea that children ought to grow up in the private sphere. The state's role in long-term care is to facilitate a way back to the private family sphere for children, either through reunification with the biological family, or through adoption, rather than serve as a permanent guardian for the child.

5.2 Article II – The Child's Best Interests and the Politics of Adoptions from Care in Norway

The article asks why adoption from care gained broader political support in Norway in the period between 2003 and 2013, and how the political parties in parliament (Storting) justified their position on adoption from care. The article examines how political parties and governing coalitions draw on different ideas and arguments to justify their view of the legitimate role of the state in long-term care and adoption for children, and how parties' positions change over time.

The article builds on written public records from the government and parliament, including white papers, legislative proposals, parliamentary committee reports and minutes from plenary debates in parliament. It covers all four occasions when parliament discussed adoption during the years 2002-2013. The analysis builds on a discourse theoretical framework (Habermas 1996) to categorize the substantive

arguments presented in the proceedings and examine the ideas and discourses that support them.

The article finds that several discursive shifts in political argumentation occurred under the Stoltenberg-government. I argue that we cannot explain the shift in support for adoption simply on changes in political majority because opposing parties, formerly restrictive on adoption, also became open to using adoption more frequently. The Stoltenberg-government used legal argumentation to expand the room within existing law and conventions to allow for adoption. The Stoltenberg-government did so in two ways, first it challenged the restrictive interpretation of previous governments regarding the European Court of Human Rights (ECtHR) judgment in Johansen v. Norway (app. No. 17383/90), and secondly by latching onto a recent Supreme Court judgment (Rt-2007-561), which it argued opened for using adoptions from care to a greater degree that previously. The analysis uncovers two important developments in argumentation that legitimizes a shift towards a more active adoption policy: First, research-based knowledge and expert discourse on child development has become the central knowledge base framing adoption. This knowledge base places the child and its developmental potential as the central subject of interests. Secure attachment to caregivers and stability for the child are central components to promote development. This child centred knowledge base has been important to shift Norway towards a more active adoption policy.

Second, there is evidence of a normative shift in priorities from addressing the child's interests as part of a family unit towards the child's autonomous interests and aligns with the child-centred knowledge-base. The ethical-political justification is based on the view that children ought to be able to have secure attachments and be safe where they live to develop into healthy adults. If adoptions are superior to foster care at promoting healthy development then the state is justified in pursuing more adoptions in the best interests of children, when reunification is no longer an option. According to this view the state is not just responsible for protecting the child from harm, by placing it in a safe foster home, but ought to actively pursue the best possible

conditions for its development, even if this means setting aside the biological principle through adoption.

There are signs of less paternalistic, moral discourses on adoption that sees the child as an autonomous legal subject and bearers of rights. According to this perspective children have individual rights on par with adults, and we are obliged to consider the individual child's needs and wants rather than view the child as part of the family.

The analysis of arguments and justifications shows that Norway's path to an active adoption policy built on ideas that framed the child's interests and needs as distinct from the family. The biological principle is central to Norwegian child protection policy and practice, but as this analysis shows it is challenged by an emerging child-centred perspective.

5.3 Article III – Adoptions in the Child Welfare System – A cross-country analysis of Child Welfare Workers' Recommendations For or Against Adoption

The article asks how a sample of public child protection workers (N=299) in three different child protection systems (Norway, England and California, USA) decide and justify their decision in a case involving adoption of a three-year-old foster child. The article combines fixed-choice and open-ended questions. By analysing open-ended questions where respondents explain the rationale for their decision the article examines how child protection workers use their discretion to interpret and implement policy on adoption, and contribute to establishing de-facto boundaries for the use of adoption in child protection.

The article finds that while 98% and 96% of child protection workers in England and California respectively would start adoption proceedings, only 62% of Norwegian workers would do so, whereas 38% would continue foster care.

The analysis shows that most workers in the three countries point to several factors to justify their decision. The most important factor is the 'parents' behaviour'. The

second and third most mentioned justifications for adoption are child focused and are about 'permanency' and 'attachment' relations for the child. The fourth justification for adoption is parents' failure to visit the boy. The following two reasons workers give for adoption recommendations are clearly child focused: Benjamin's 'needs' and his 'early placement and age'. The two last accounts relate to the time factor, and the fact that the foster parents 'want' to adopt the boy.

Although there are clear similarities in how the countries view this case, there are also some differences that require examination. The American workers distinguished themselves by putting more emphasis on three factors: 'parental behaviour', the fact that the child is 'wanted' and his 'early placement and young age'. Less emphasis was placed on the child's 'needs'. The English workers distinguished themselves with the issue of 'permanency', and the Norwegian workers put more emphasis on 'attachment', but less on 'time'.

For those that do not recommend adoption, more than half say that their decisions are due to a lack of consent from the biological mother. If the mother had changed her position and given consent, most workers would have considered adoption.

Our analysis of child protection workers accounts for recommendations for and against adoption shows us that the type of child protection system and its policy guidelines play a major role in the recommendations of frontline child protection workers. This finding indicates that workers follows the democratically legitimized instructions for interventions, and more so in England and the U.S. However, we also notice that workers have elaborate rationales for their decisions and demonstrate their in-depth knowledge of the reasons for adoption policies and permanency considerations for children that are looked after. The findings indicate that American and English workers have a clearer perception of the role of public and private responsibility for children and the state's role in a long-term placement situation, than their Norwegian peers.

5.4 Article IV – Maternal Intellectual Disability and Infant Neglect: Child Welfare Risk Assessments in Norway, England and California, USA

The article asks how a sample of public child protection workers (N=297) in three different child protection systems (Norway, England and California, USA) assess risk for a two-month-old infant in a case involving possible neglect and parental intellectual disability (ID). The article first examines how workers score the risk to the child on a scale of 1-5. Secondly, by analysing open-ended questions where respondents explain the rationale for their assessment the article examines how child protection workers use their discretion to interpret and implement policy for thresholds of intervention towards a group of families where children have a significant chance of growing up in foster care.

Two primary conclusions can be drawn from this study: First, the combination of parental ID and infant neglect generates a uniform response of serious risk across all countries. This supports earlier studies that find that parental ID and concern about neglect are red flags to child protection workers. Second, despite the uniformity in risk assessment, there are clear differences both between and internal to countries in how workers justify risk.

The article identified seven risk factors used by at least 20% of workers in one of the countries studied, which could be further associated with three main concerns: First, risk factors associated with mother's parenting included 'parental capacity', 'cognitive functioning' and 'neglectful behaviour'. Second, risk factors associated with the child's vulnerabilities included: his age, safety concerns, and health issues. Finally, risk factors associated with the family environment, which included the lack of support from network.

Californians showed a greater degree of uniformity in their rationale for risk assessment; a large portion of these workers concentrated on four variables – the child's age, the child's health, the mother's parental capacities and the mother's cognitive functioning – all of which are specified risk categories in their Standard

Decision Making (SDM) assessment tool. The composition of the U.S. sample as specialized Emergency Response workers may also account for some of this uniformity.

Californians and Norwegians were more likely than English workers to focus on the mother's cognitive functioning. This finding is consistent with English practice guidelines on working with ID parents which advocate a cautionary approach to interpreting ID and learning difficulties as grounds for action.

Californian workers paid much closer attention to the child's vulnerabilities than either of the other two groups of workers. These results could be interpreted as confirmation of the importance of early identification of risk in child protection systems based on the premise that younger children are more vulnerable than older children, particularly if they have additional special needs (Gilbert et al., 2011, p.248).

Only 13% of Norwegians mentioned the lack of social support networks available to the mother, compared to 40% in England and 35% in California. Both English and Californian assessment tools call attention to 'family and environmental factors' (CAF) or 'the availability of social support networks' (SDM), which may partly explain this. Norwegian Child Protection has also been criticised for paying too little attention to potential support systems around the family, but since this study have taken steps to change this and the result might be different today.

6. Discussion

This thesis asks how two high income, advanced states, Norway and the U.S., form and justify policy as guardian of children's right to protection from harm, balanced against the rights and responsibilities of parents. I will centre the discussion around two interesting findings. First, Norwegian street-level child protection workers have much greater discretionary space to form policy from the bottom-up, compared to their Californian colleagues. Second, the role and of the state in long-term care and adoption in Norway and the U.S. reflects wider differences in the boundaries between public state and private family responsibility for children in the two countries.

6.1 Policy formation from the bottom up is stronger in Norway than the U.S.

A central finding of this thesis, located in article III (Skivenes and Tefre 2012), is that while Californian (and English) child protection workers were united in their recommendation to place Benjamin for adoption, Norwegian child protection workers were divided between 60% recommending adoption and 40% recommending continued foster care. In the article we discussed how these findings could be understood in light of the reasons workers provided, where important reasons why Norwegian workers would not recommend adoption were tied to concerns about the mother's lack of consent, and concerns about the policy restrictions on the use of adoption. In light of the policy framework presented above and findings from articles I (Tefre 2015) and II (Tefre 2020), I argue the reason why Norwegian workers are divided amongst themselves and Californians are united can be explained by differences in discretionary space for child protection workers in the two countries, and thus differences in the degree to which they can engage in policy formation from the bottom-up.

The framework laid down in the Adoption and Safe Families Act of 1997 (ASFA), and which California conforms with in its penal code, sets very clear rules for the type of case that the Benjamin-vignette (Vignette attached in Appendix 2) represents,

and as such restricts the discretionary space available to practitioners. The Benjamin-case arguably falls within both grounds for adoption in ASFA: the exception to reasonable efforts (sec. 101), and adoption timelines (sec. 103) (cf. Tefre 2015). The severe nature of the maltreatment and the injuries Benjamin suffered makes the case a probable candidate for proceeding straight to adoption. And even if this was not the case, Benjamin has spent the last 2.5 years in foster care which far exceeds the 15 (of the last 22) month limit when ASFA requires adoption proceedings to be initiated. Californian workers can thus be seen as operating very much in line with legislative intent, which sets specific time limits for when to start adoption proceedings and also outlines explicit examples of cases when reunification efforts may be abandoned and adoption pursued from placement. Norwegians lack clear legal guidance on adoption. Instead the central question to be determined when the alternatives are permanent foster care or adoption, is whether adoption is in "the best interests of the child" (Child Welfare Act (CWA) Section 4-20, second paragraph, letter c). This leaves the primary responsibility for deciding when adoption is appropriate to the discretion of practitioners. When child protection workers are split 60/40 on a question that has life-long implications for a child, we should also ask what this implies for the credibility and legitimacy of decisions. Rothstein (1998) cautions perfectionist calibration of legal regulations to individual circumstances because of the high demands it places on decision-makers and the increased risk of arbitrary results, in his words "it is better to be vaguely right than precisely wrong" (Rothstein 1998:86). We can apply this argument to the question of the 'child's best interests' principle in adoption, because it places high demands on the reasoning of child welfare workers and judges, while it frees political authorities from having to make any commitments to how adoption ought to be applied in Norway, and also frees them from the responsibility.

As more power to form policy is delegated to the street-level through wide discretionary space for decision-making it also transfers more of the responsibility for legitimizing policy to the street-level, and the requirement to justify individual decisions intensifies. However, findings in article IV (Tefre 2017) suggest that even when practitioners within a country agree on the outcome of an assessment, their

justifications for doing so may vary substantially. The Californian child protection workers in our sample have a Master's degree, a high level or organizational specialization (Emergency Response-workers) and use standardised assessment tools that guide their discretionary reasoning. Norwegian workers mainly have a Bachelor's degree or the equivalent, varying degree of organizational specialization, and still have no officially sanctioned guidelines for decision-making (cf. Falch-Eriksen and Skivenes 2019; Skivenes and Tefre 2012). Thus, in addition to wide discretionary space through less specific legal statutes, Norwegian child protection workers also have fewer tools to aid their discretionary reasoning. Formal education and specialization are two of the principal coordinating mechanisms of professional organizations that justifies their wide discretionary powers (Parsons 1969). Norwegian child protection workers have less of both, compared to their Californian counterparts. The study design in this thesis prevents me from differentiating the relative impact of education, specialization and professional guidelines, but the combined outcome is greater variation in both decisions and justifications for the decisions in identical cases in Norway than in California. Berrick et al. (2017) make similar observations where Norwegian workers are clearly divided in a question of care order than Californian workers. It is still noteworthy that both in article IV (Tefre 2017) and in the study by Berrick et al. (2017) the variance in responses by English workers, who also have comprehensive guidelines, are more similar to Norwegian workers, but they are also more similar to Norwegians in terms of their educational levels and degree of task specialization, at least in our sample (cf. Skivenes and Tefre 2012).

However, in the case of adoption, both the English and Californian child protection workers were united in their response, and both countries have clear policies that guides practitioners in this area. The lack of both statutory clarities to limit discretionary space and decision-tools to guide discretionary reasoning the result in Norway is clearly a challenge to central principles in the rule of law: the principle of legal certainty and the principle of equality before the law.

The variation resulting from strong discretion of Norwegian child protection workers challenges the principle of legal certainty because neither the child, the foster parents, or the birth parents can be assured of which conditions must apply if a child is to be adopted. Child welfare workers have little incentive to pursue adoption once the child is 'safely' placed in foster care, and there is no clear guidance to help them determine when adoption is appropriate. Whether a case is forwarded to adoption in Norway can thus be arbitrary (Helland and Skivenes 2019; Skivenes and Tefre 2012). Starting adoption procedures requires an active effort and justification for doing so. Leaving the child in foster care requires no such thing. Inertia effects are then likely to leave many children with the status quo. Indication of this is found in a report of adoption in Norway (Helland and Skivenes 2019), which found that 94% of adoption cases forwarded to the County Boards during 2011-2016 ended in favour of adoption, and that very few characteristics separated adoptive children from other children residing in long-term care. At the same time there are considerable variation in the relative number of adoption cases between the different County Boards (Falch-Eriksen and Skivenes 2019:127). A minor study also indicated that in the agencies that forwarded most cases to adoption in Norway the local staff or leadership had made deliberate efforts to actively focus on adoption (Tefre and Helland 2019). This makes it likely that contingencies are a serious challenge in Norway to which children get adopted and not. However, if the child's best interest is to be the guiding principle, then surely this must also be taken to mean that long-term foster care should also be an explicit decision, rather than a non-decision. Contingencies also threatens the principle of equality before the law because it requires equal treatment of equal cases. While, this is an intrinsic challenge in discretionary practice which cannot be entirely removed (Molander 2016), it is possible to ameliorate the challenges if the political level is more clear on the circumstances that require adoption to be considered. For example an expert report ordered by the Stoltenberg-government recommended the adoption always be considered within specified time lines for the youngest children (placed in care at age four and under) who face long-term care (NOU 2012: 5). While such a proposal does not address the criteria for adoption it would ensure that a group of children with some similar characteristics are actively considered, and would likely

improve both legal certainty and equality, and reduce contingencies in who gets assessed for adoption. This would also transfer more of the responsibility for legitimizing adoption from care to the political level, thus relieving some of the burdens on practitioners.

6.2 The State's Responsibility in Long-Term Care

The role of the state in long-term care and adoption in Norway and the U.S. reflects wider differences in the boundaries between public state and private family responsibility for children in the two countries. Relating to the analytical framework on the centrality of ideas and discourse to understand policy, the findings in articles I (Tefre 2015) and II (Tefre 2020), it is plausible that institutional context of the welfare state and cultural values influences the states responsibility for children. In the U.S. there is a strong policy preference that children in need of long-term care are reintegrated or refamilialized to the private sphere through adoption. In Norway there is no pressure to refamilialize children, and most children who cannot return to their families will grow up in foster care. The main challenge in Norway is that while the government signalled a clear desire for more adoptions from care, the policy failed to deliver any substantial guidance to practitioners about when adoption should be considered appropriate.

Starting with the statistics, in Norway, when children are placed in foster care following a care order it is the norm rather than the exception that the placement is long-term. Numbers from the Central Unit of the County Boards show that between 2011 and 2016 the County Boards handled on average 1006 care order cases annually, and on average 86% resulted in a care order. In comparison there were on average 300 annual cases of reunification, how many of these cases resulted in reunification is unknown. The relatively low rate of reunification in Norway is often attributed to the requirement to provide in-home services to prevent the need for placement. Thus, when children are placed in care they have often been in the system for an extensive period and the possible in-home services have already been exhausted, or the evidence suggests that further services will be unsuccessful (Backe-

Hansen et al. 2014; Berrick and Skivenes 2013). In the United States roughly half of foster care placements result in reunification, and the majority of reunifications take place within a relatively short time after placement (Child Welfare Information Gateway 2019; Wulczyn 2004).

Both countries experienced an increase in the number of children living in foster care during the time when adoption was debated (USA 1995-1997 and Norway 2003-2013) (see table 1). Between 1982 and 1997 the U.S. foster care population more than doubled, which was an important driver to promote more adoptions from care, as the foster care system was experiencing severe challenges in handling the number of children in care (Tefre 2015). The reduction in number of children placed in care in the U.S. since 1997 is largely attributed to children exiting foster care through adoption and kinship care (Child Welfare Information Gateway 2019; Wulczyn, Chen, and Hislop 2006). Norway has also experienced a significant increase in the number of children in care since the 90s, however this development has not led Norway to emphasize measures to focus on adoption to reduce the number of children in care. Table 1 shows the number of children in care as point in time, and in the final column to the right the number of adoptions in 2016. Children placed in U.S. foster care are more than fifteen times more likely to be adopted from care, compared to Norwegian children in care.

Given the fact that foster care placements in Norway are more likely to be long-term compared to the U.S., where about half of the children reunify, we might have expected that adoptions would be more common in Norway. This is not the case.

Although, as shown in articles I and II (Tefre 2015, 2020), both Norway and the United States rely on very similar knowledge bases to inform legislators about the benefits of adoption to children in long-term care, the policy outcome is very different. The knowledge base has been important to explain the formation of policies to promote more adoptions in both countries. But due to normative ideas about state responsibility, and what the state can effectively do, these two states end up with very different policies on responsibility for children. Key here are different normative

ideas about the appropriate role of the state in relation to the family between the two countries.

Table 1: number of children in out-of-home care, and per 1000 children, and children adopted from care in 2016, and per 1000 children (T in the first row represent point in time, as the years do not always overlap)

	T-1	T-2	T-3	T-4	T-5	Adopted
Norway		5.9[c] (1994)	8.2[c] (2008)	10.1[c] (2013)	11,612 10.3[c] (2016)	59 [d] 0.05 (2016)
USA	262,000[a] (1982)	559,000[b] 8 (1997)	510,000[b] 6 (2007)	5.5[c] (2013)	437,000 5.9[c] (2016)	57,238 [d] 0.78 (2016)

[a] Total number of children in care. Source: (House CWM 1996a:743, Table 12–14) [b] Source: (Berrick 2011:19) [c] Source: (Berrick et al. in press b:Table 2) [d] Source: (Berrick et al. in press b:Table 1).

In the U.S. foster care is by default a temporary solution, and the system is not designed to offer a permanent home for children. In one of the early hearings Shaw (R-FL) chairman of the House Subcommittee on Human Resources, summarized the goal of state responsibility for children in need of long-term care:

> *as a nation, we are seeking a foster care system that meets three goals: First and most important, it must protect children from harm; second, it must remove as few children as possible from their homes; and third, when children are removed from their homes, the system must move quickly to either reunite them with their families or terminate parental rights and have the children placed for adoption* (Rep. Shaw (R-FL) House CWM 1995:4).

The foster care system is deliberately set up as a temporary safety net, and not designed to provide long-term care. Representative Kennelly (D-CT), one of the co-authors of the House bill, expressed this view at the passing of ASFA:

> *our foster care system is an extremely valuable safety net, and I want to emphasize that … What this bill is about really, though, is to have a child in a permanent home. And where that safety net is there in a foster care home, the child knows when the home is not permanent* (Rep. Kennelly (D-CT) CONG. REC 1997a:H10790).

This clearly delimits the public role in long-term care to two central tasks, either rehabilitate the parents and reunify the child with his or her birth family, or move forward with adoption. One of the central justifications for adoption in ASFA was child refamilialization ethics, as shown in Article I (Tefre 2015), which emphasizes a limited state responsibility as parent, and the citations above by Reps. Shaw and Kennelly express this clearly. Foster care is a temporary haven, adoption provides a permanent family. In this view child rearing belongs in the private sphere, not the public. The state is considered both pragmatically incapable and ethically unsuited to the task of long-term parenting. Paradoxically then, the approach that favours a limited state role in long-term care of children also necessitates deep state intervention through termination of parental rights when reunification is not possible to refamilialize children to the public sphere.

This should not be taken to imply that respect for family life and family-preservation is less sacred in the U.S. than Norway, as witnessed by the high rate of reunifications in the U.S. (Child Welfare Information Gateway 2019) and the relatively high thresholds for removal compared to Norway (Berrick et al. 2017). Rather, it reflects an ideal of limited government and children belonging in the private sphere. In light of a hands-off approach and limited belief in state capabilities to intervene positively in the private it makes sense that children should not grow up as wards of the state. Thus, adoption is clearly preferred if the alternative is growing up in public care.

The idea of limited government in responsibility for children's long-term care is also expressed through concerns over public spending. Especially Republicans noted several times during the ASFA proceedings that public tax spending should be placed where it could give maximum effect, and given the poor performance of family

preservation initiatives and the promise improved life-outcomes and permanency through adoption, this placed powerful fiscal incentives to prefer adoption as well:

> *Not only will the provision increase the number of adoptions, but it will actually save money. Members of Congress will seldom have the opportunity to vote for a bill that both does the right thing for children and saves taxpayers dollars at the same time.* (Rep. Shaw (R-FL) CONG. REC 1997b:H2016)

Thus, in a political context that values limited government and minimizing public spending, adoption is easily marketed to legislators looking for best value for money. By contrast, in Norway it is inconceivable that politicians could argue fiscal savings as a positive side-effect of increased numbers of adoption. As noted in article II (Tefre 2020), the Stoltenberg-government was accused of acting unethically simply for stating that the costs of more adoption cases before the courts would be offset by reduction in costs for foster care. The citation by U.S. Representative Shaw may of course be interpreted as a cynical expression of fiscal conservatism. In this light adoption is a way of reducing public spending, especially since states are entitled to per diem federal compensation for foster care expenses for eligible children (under title IV-E of the Social Security Act). Another interpretation would be to view it as a pragmatic argument about spending your resources on what works. Regardless of Shaw's intent, resources in child protection are finite, and it is therefore also necessary that politicians engage in debates over prioritization and how resources are most effectively spent. In Norway, any potential debate about public spending on long-term care and effective management of limited child protection resources was effectively squashed by reducing it to a question of putting a price on childhood.

Norway shares the first two of the goals expressed by Shaw, to protect children from harm (central to the best interests of the child) and prevent the need for placing children in care (the principle of the least intrusive intervention) (Tefre 2020). But Norway differs markedly on the third goal, which focuses on getting children out of public care either through reunification or adoption. Contrary to the U.S., Norway retains a responsibility to facilitate continued contact between children in foster care

and their birth-parents, even when there is no intention of reunification. This responsibility of the state to facilitate continued contact even in long-term care is the primary reason why adoption is rarely practiced in Norway and it is deeply entrenched in Norwegian child protection through the biological principle. Article II (Tefre 2020) identifies the biological principle as the fundamental social value that children should grow up with their parents. The state's role is subsidiary, and even if children cannot grow up with their birth parents, the state should facilitate continued contact. The biological principle was central to the debates on adoption in Norway, although the weight placed on biological ties was reduced over time as more parties embraced a more active role for adoption. However, the fundamental idea of how one should balance different groups of children's needs for continued contact with their family of origin against their need or desire to belong fully to their foster family was never addressed. As noted above, this question was left to practitioners and the courts to deal with in each individual case. In its proposal to promote more adoptions, the Labour led Stoltenberg-government stated that:

> *the child protection agency must practice good professional discretion when it considers if a case should be sent to the County Board. Whether adoption is in the child's best interests relies on an overall assessment, where different considerations are weighed. The assessment must be specific, and based on information in the particular case. Therefore, it is not possible to provide a definitive and exhaustive list of all considerations that may be relevant in the assessment of the child's best interests, nor is it possible to say anything general about how to balance the different considerations against each other.* (Ot. prp. nr. 69 (2008-2009):34)

It is reasonable that the government cannot provide an exhaustive or definitive list of considerations, as the complexity of these cases do not allow for a one-size solutions, and professional discretion is clearly necessary. The government did pledge to provide guidance in the form of a list of factors that are relevant in assessing whether adoption is in the child's best interests. However, the claim that is not possible to say anything general on how to balance different considerations is puzzling, and amounts

to an abdication of political responsibility. Adoption is a highly political question that concerns how the state intervenes in the heart of the private sphere, the family. If elected officials cannot be expected to even make general statements about how different considerations should be weighed, an important source of democratic control is left open. It should also be noted that after ten years, the government has still not produced any guidelines on adoption to municipal agencies. Thus, it is still unclear what the policy on adoption actually is in Norway, and the result as discussed above, is that whether children are placed for adoption or not may be contingent on factors not germane to whether adoption is in the child's best interests.

Comparing foster care in Norway and the U.S., Berrick and Skivenes (2013) find that the Norwegian welfare state takes a very hands-on approach to foster care through law, policy and service provision which clearly marks foster care as a public responsibility. There are universal welfare services available to the families in addition to a comparatively rich access to services, support and resources to foster parents, and foster parents who care for children with special needs are financially compensated for taking time of work to care for their foster child. In comparison, the U.S. state takes a much more hands-off approach to foster care after the child has been formally placed. There are less resources and services available to foster carers, and the lack of universal welfare arrangements for children mean that foster parents also have to spend their own resources to navigate a complex system of entitlements and private service providers, and financial compensations are much less generous. Overall this conforms to the welfare regimes of the two countries where the state takes a back seat to markets in welfare provision in the U.S. whereas in Norway, the state is the main provider of welfare (Esping-Andersen 1990, 1999).

Thus, in Norway, foster care provides a more financially stable solution to foster parents, and comes with public support, whereas adoptive parents lose all access to such services and support. By law, adoptive parents are no different to parents who care for their own children. Thus, making the step from foster to adoptive parent could also be considered costlier to Norwegian foster carers than their U.S. counterparts who receive – compared to the Norwegians – little public support in

their role as foster parents. However, we have no studies that have examined foster parent motivation to adopt in Norway, and it may well be that they have simply never been asked to consider it. Also, this cannot explain findings in article III (Skivenes and Tefre 2012) where 40% of Norwegian child protection workers would not consider adoption, despite the foster parents' desire to adopt. In spite of increased legal emphasis on children's rights to participation in Norway, we still know almost nothing about how children in long-term foster care themselves consider adoption. These are important areas for future research, that may help clarify the appropriate place for adoption in Norwegian child protection.

The question of the state's role and responsibility in long-term care and adoption relies fundamentally on the question of what the state recognizes as 'family'. In the U.S. this question was addressed during the ASFA-proceedings, and the answer is summed up well by Dr. Albert Solnit's expert testimony during the hearings (House CWM 1996b:99):

> "*A parent who can provide day-to day attention to a child's needs for physical care, nourishment, comfort, affection and stimulation will form an attachment with … and will become [the child's] 'psychological parents' … [This role] can be fulfilled by any other caring adult – but never by an absent, inactive adult, whatever his biological or legal relationship to the child may be*."

In the U.S. the question of permanence has long been central to the debate on long-term care and adoption (Bartholet 1999; Fein and Maluccio 1992; Tefre 2015). As noted in section 1.1, permanence has three components: legal permanence, residential permanence, and relational permanence (Brodzinsky and Smith 2019; Palacios et al. 2019). In the U.S. an important argument for adoption has been to place the legal permanence with the caretakers that are expected to provide the child with residential and relational permanence. Thus, U.S. policy recognizes explicitly that the care-takers most likely to constitute the child's de facto family, should also constitute the child's family de jure. This is a political choice that also clearly overlaps with the value of limited government, but explicitly prioritizing psychological ties above

blood ties is also a very child centred idea of what constitutes 'family'. Importantly, legislators in the U.S. emphasized that legal permanence establishes families for life, not just a temporary home where children can live until the reach adulthood. This is a crucial difference between the focus on permanence and the ideas of stability and continuity which dominated Norwegian debates. While children and foster parents may, and often do come to regard each other as family in terms of the psychological ties they establish (Biehal et al. 2010; McSherry et al. 2016), the legal permanence provided through adoption takes a much longer perspective than just securing a stable childhood. It is about creating family ties for life, and into adulthood.

A version of permanence has long been central to Norwegian child protection, especially in long-term care, with a narrow focus on providing children with stability and continuity of care. It is central to policies of early intervention and in-home services to prevent placement. But in the perspective of long-term care the idea of legal permanence has not received much attention (Skivenes and Thoburn 2016; Tefre 2020). A clear sign that Norwegian policy commits to respecting children's need for emotional and residential permanence is evident in the burden of evidence required for reunification, which is higher than for a care order. According to Section 4-21 of the CWA it must be "*highly probable that the parents will be able to provide the child with proper care*" in order to reunify, whereas the standard for care orders is the preponderance of the evidence. Even if the parents are able to pass this threshold, reunification cannot take place if "*the child has become so attached to persons and the environment where he or she is living that, on the basis of an overall assessment, removing the child may lead to serious problems for him or her*". These restrictions were put in place to secure stability and continuity in the child's upbringing (Ot. prp. nr. 69 (2008-2009)). But the paradox of Norwegian policy on adoption from care is only made more apparent. Thresholds for reunification are high, making it less likely that the child will return, and more likely that the child will come to view her foster family as her de facto family, but the state is seemingly reluctant to take the last step of integrating de facto and de jure family, even for children who are very likely to

spend their whole childhood in foster care, and have been placed with the explicit intent of long-term care (‘oppvekstplassering’).

In Norway, the question of legal permanence is treated separately from the question of who provides the child with residential and relational permanence. A plausible explanation for this is that weight afforded to biological ties remains strong in Norway and where U.S. policy clearly favours a refamilialization of children to the private sphere over maintaining legal ties to biological family, Norwegian practice tends to uphold a distinction between the foster family that is expected to function as the child’s de facto family, and the child’s family de jure, which remains with the biological parents. For a child placed in care at a very early age, and who has spent the majority of his or her life in foster care it is well worth asking who the child considers family.

6.3 Concluding Remarks

The thesis started by asking how states form and justify policy as guardian of children’s right to protection from harm balanced against the rights and responsibilities of parents. To answer this, I have examined how Norway and the United States – two countries with very different welfare regimes and child welfare orientations – have formed and justified their policy on public responsibility for children in long-term care, both from the street-level and the legislative level. I will end this thesis by a brief reflection on the current criticism that is directed at Norwegian child protection in light of the findings discussed in this thesis.

The Norwegian child protection system is currently undergoing unprecedented scrutiny by the ECtHR. One of the key findings in this thesis has been that Norwegian child protection workers carry a heavy burden of legitimizing child protection policy through their decisions with individual children, because the law and regulatory guidelines from the political level are vague and conflicting. The strong discretion given to the street-level practitioners require more effort in documenting their justification in any single decision to secure its legitimacy.

However, public audits by regulatory agencies have repeatedly shown that Norwegian child protection workers struggle to provide adequate justifications and documentation for their decisions (Skivenes and Tefre 2020). The same criticism of procedural errors is central to the judgements by the ECtHR which has found Norway in violation of Article 8 of the European Convention on Human Rights (Council of Europe 1953), in three adoption cases in the last year (Strand Lobben and Others v. Norway, appl. no. 37283/13; Pedersen and Others v. Norway, appl. no. 39710/15; Abdi Ibrahim v. Norway, appl. no. 15379/16). Crucially the decisions by the ECtHR do not point at the material question of adoption, but to procedural errors and failure to provide satisfactory documentation at earlier stages of the case. The fact that it is procedural, rather than material aspects of these cases that are being criticised it is poignant to ask whether Norwegian child welfare workers are equipped to take on the enormous responsibility of strong discretionary decision-making, or whether the government and parliament needs to step in and relieve practitioners of some of this burden. This can be done by clarifying how central legal principles should be weighed, both in law and through professional guidelines.

This is the case in Denmark. The Danish government has recently made legislative changes that require child protection agencies to consider adoption whenever a placement is expected to be long-term. It combined these changes with professional guidelines to aid decision-makers and clarify when adoption is the preferred solution, as well as the considerations practitioners need to address to assess and document the case (Socialstyrelsen 2015). Denmark has also downplayed the principle of least intrusive measure in legislation to strengthen the role of the best-interests principle. Thus, practitioners are no longer required to try or exhaust in-home services if an out-of-home placement is in the child's best interests (Hestbæk et al. in press). Through these changes Denmark elevates important ethical and moral questions about how to balance parental and children's rights and needs to the legislative level, and the democratic arena.

The Grand Chamber of the Norwegian Supreme Court recently made important clarifications about the status of Norwegian child protection principles in light of the

verdicts by the ECtHR, including implications for adoption (HR-2020-661-S). And it has been argued that these have provided much needed clarification to practitioners going forward (Sandberg 2020). The clarifications by the Supreme Court are clearly important. However, my analyses of discourses in parliamentary bodies in articles I (Tefre 2015) and II (Tefre 2020) emphasize the inherently normative nature of child protection legislation. Deciding what principles govern child protection and how to weigh them is not merely a technical question of what works. The central differences between Norway and the U.S. are not about pragmatic questions of whether adoption is more stable than foster care, or whether it can secure better outcomes. It is about how to balance deeply held ethical-political values and moral convictions in a political fellowship. These are questions that must be answered in the political realm, and it requires active engagement with difficult prioritizations by elected officials. It is easy to point at weaknesses in the discretionary reasoning of street-level bureaucrats, but the responsibility for structuring the discretionary space and providing guidance for discretionary reasoning must be anchored in the democratic processes and decisions of legislative bodies. If too much is left to the street-level we risk losing important democratic control over children's rights and we are not able to fulfil the promise of the Convention of the Rights of the Child.

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Appendix: Vignettes and survey

The Survey for the CHILDPRO project contained six vignettes, here I include the two vignettes that were used in this thesis. I have included all the questions that followed each of the vignettes. However, in article III we addressed only answers to questions 3, 4, and 7. For article IV I addressed only the answers to questions 1 and 2.

Vignette for article III

Benjamin, 3 years old

Facts

Benjamin is 3 years-old, white, and has lived with foster parents since CYPS placed him when he was 5 months old. The parents, also white, are drug users. Benjamin's parents have visitation rights but have never gone to see him.

History

Benjamin was born 7 weeks prematurely and spent four weeks in the hospital before his parents could take him home. When Benjamin was five months old, he was hospitalized with cranial bleeding. The medical examination indicated that he had been repeatedly physically abused. Both parents were high on heroin when they were at the hospital, and due to their substance abuse problem and the suspicion of physical abuse of Benjamin, the hospital contacted CYPS. CYPS decided to remove Benjamin from his parents, and when he was released from the hospital, he was placed with foster parents. Benjamin has special needs due to the abuse he received when he was a baby.

The relationship between the foster parents and Benjamin is reportedly very good, and Benjamin's special needs are well taken care of. His development is on a very good track. His parents are still heavy drug users, primarily using heroin. They are often seen in well-known drug user milieu in the city. CYPS does not think it is likely that the parents will take part in the rehabilitation program.

Present situation

When Benjamin turned three years old, his foster parents indicated that they want to adopt him. They love Benjamin as if he were their own son and think he would benefit from the stability and predictability that adoption would bring. Benjamin's biological mother will not agree to the adoption. The biological father is in favour of the adoption as long as it is guaranteed that he can continue to have visitation rights.

Question

Based on this information, which is a resumé of information from the case file, please tell us what you would do.

1. How do you assess the level of risk for the 3-year-old?
    a. no risk
    b. low risk
    c. neither low nor high risk
    d. high risk
    e. very high risk

2. What specific factors in the case led you to this assessment? [Open ended]

3. Based on the case description above, what do you do?
    a. Do nothing
    b. Return the 3-year-old to his birth parents and provide in-home services (elaborate below)
    c. Leave the 3-year-old with his foster parents, but do not initiate adoption
    d. Prepare the case for adoption
    e. Another decision (elaborate below)

    If you answered b) ‘provide in-home services’, which services would you provide? [open ended]
    If you answered e) ‘another decision’, please explain here: [open ended]

4. Please explain which specific factors in the case were crucial to your decision? [open ended]

5. Would you speak with the 3-year-old to get his viewpoint?
    a. Yes
    b. No
    c. I don't know

6. If you answered yes, how much weight would you give to his viewpoints in this case?

7. What would have to be different in this case for you to reach a different decision? [open ended]

Vignette for article IV

Andrew, 2 months old

Facts

Andrew is a white 2-month-old baby whose mother, white, age 22, has learning difficulties and has an IQ of 73. The paediatrician has contacted CYPS due to risk for possible neglect. Andrew's father is unknown.

History

In his visit with the paediatrician when Andrew was two weeks old, he showed signs of malnourishment. It became clear that his mother could not figure out how to mix his formula properly. The baby also had severe nappy rash, which he had since birth and which had not been treated properly. According to the paediatrician, it took the mother a long time to learn that she must hold up the baby's head when holding him. Andrew and his mother are staying with his grandmother. Andrew's grandmother works during the day and it is unclear whether she provides help with caring for Andrew.

Present situation

When Andrew is 2 months old, he was hospitalized with a low-grade seizure disorder and an eye problem. While waiting at the hospital, the mother fell asleep with the baby in her lap, and the baby's head fell back. One of the nurses rushes to the mother to wake her up. The hospital contacted CYPS.

Question

Based on this information, which is a resumé of information from the case file, please tell us what you would do.

1. How do you assess the level of risk for the 3-year-old?
    a. no risk
    b. low risk
    c. neither low nor high risk
    d. high risk
    e. very high risk

2. What specific factors in the case led you to this assessment? [Open ended]

3. Based on the case description above, what do you do?
    a. Do nothing
    b. Leave the 2-month-old baby with his mother and provide in-home services (elaborate below)
    c. Place the 2-month-old baby in out-of-home care (elaborate below)
    d. Prepare the case for adoption
    e. Another decision (elaborate below)

    If you answered b) ‘provide in-home services’, which services would you provide? [open ended]
    If you answered c) ‘Place the 2-month-old baby in out-of-home care’, which placement would you make? [open ended]
    If you answered e) ‘another decision’, please explain here: [open ended]

4. Please explain which specific factors in the case were crucial to your decision? [open ended]

5. What would have to be different in this case for you to reach a different decision? [open ended]

Survey Background Information

1. Country [Norway, England, USA]
2. City / County [open ended]
3. Number of years working at current Child Protection Agency [continuous]
4. Number of years working in Child Protection [continuous]
5. Age [20-25, 26-30, 31-35, 36-40, 41-45, 46-50, 51-55, 56-60, 61-65, 66-70]
6. Gender [Male, Female]
7. Race
8. Ethnicity
9. Highest Educational Level [High-School, College / Høyskole, BA, MA, PhD]
    a. If you have a bachelor's or a Master's degree, in which field? [open ended]
    b. If you have any kind specialization or post-qualifying education, please supply information here: [open ended]

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The justifications for terminating parental rights and adoption in the United States

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ABSTRACT

This article examines the normative basis for prioritizing adoption in the "Adoption and Safe Families Act of 1997" (ASFA) as expressed by legislators and public witnesses in congressional hearings. By examining six congressional hearings in the period that led to the ASFA, the article provides new insights to understand how adoption is justified in the U.S. not only as an acceptable form of public intervention but also as an actively promoted and preferred approach when reunification is not possible. The article uses a discourse theoretical framework based on Habermas that distinguishes pragmatic, ethical–political, moral, and legal arguments. It reveals that U.S. federal adoption policy is based on three pillars. Pragmatic risk-oriented thinking forms the central knowledge base to inform policy. Parent responsibility ethics stresses individual responsibility for rehabilitation, with secondary support from the welfare system. Child refamilialization ethics emphasizes decisive and authoritative action to protect the child's needs for safety and permanence.

1. Introduction

The Adoption and Safe Families Act (1997) (ASFA) rendered adoption the preferred solution for the placement of children who cannot or are unlikely to be reunified with parents within a limited period of time. The ASFA was a response to a significant increase in the number of children in public care in the U.S., the continuation of "foster care drift," and highly publicized stories in which children are subjected to continued abuse and neglect after reunification. Focusing on child safety and permanency, the ASFA shifted priorities in the American child protection policy from family reunification to ideals of permanence and adoption. After 16 years, the preferences expressed in the ASFA remain the cornerstone of U.S. federal policy regarding children who are not reunified. Although legislators in some European countries have shown an increased interest in adoptions from child welfare (see Official Norwegian Reports, 2012:5; Ramesh, 2013), adoption remains controversial and is frequently regarded as a last resort (Gilbert, Parton, & Skivenes, 2011; Rees, 2013). The U.S. differs significantly from other countries on the issue of adoption; this issue is addressed in this paper.

Adoption is closely associated with the issue of how countries arrange responsibility for children between the public and the private. It represents the most drastic form of state intervention in the private lives of families[1] by legally severing all ties between a parent and a child. The ASFA was the result of a remarkable bipartisan consensus on the benefits of adoption to children. It passed the House by 416–5 (Congressional Record—U.S. House, 1997b), unanimously passed in the Senate (Congressional Record—U.S. Senate, 1997), and was supported by President Clinton's administration (U.S. Department of Health and Human Services (1997). The severity of the intervention coupled with the enthusiasm it received by Congress makes the ASFA legislative process a highly interesting case for examining the normative and pragmatic reasoning employed by legislators to justify the limits of public responsibility for children. I employ a democratic theory of deliberation (Habermas, 1996) to analyze the normative foundation that supports the ASFA and its emphasis on adoption. Using a qualitative analysis of legislative hearings and congressional records, I employ ideal type discourses of rational justification to contrast how legislators justified their position on the involuntary termination of parental rights (termination) and adoption.

Previous studies of the ASFA that have examined the legislative process or intent have primarily focused on the outcome of the ASFA, emphasized the policy shift it represents (Beem, 2007; Kim, 1999), criticized its shortcomings (Gordon, 1999; Roberts, 2002; Stein, 2000, 2003), identified the challenges of implementation or potential "loopholes" (Bartholet, 1999; Bean, 2009; Gendell, 2001; Herring, 2000), or evaluated its effect on increasing adoptions (Lowry, 2004; Wulczyn, Chen, & Hislop, 2006). Although the emphasis and input from democratic theory to understand the pragmatic and normative influences on the limits of

Abbreviations: COF, Senate Committee on Finance; CWM, House Committee on Ways and Means; DHHS, U.S. Department of Health and Human Services.

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[1] "Few forms of State action are both so severe and so irreversible" (Santosky v. Kramer (1982) 455 U.S. 745).

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public intervention have not been subject to the same level of attention, an understanding of why child welfare policies are adopted is critical. By examining the justifications for adoption and termination in the ASFA via congressional hearings and debates, this paper examines the type of knowledge and evidence that was considered relevant and influential to legislation. It examines the social and cultural norms and values that were considered by legislators and the rights and needs of children and families. Justifications for two sections that were intended to expedite permanency for children constitute the focus of this study: first, the exceptions to reasonable efforts requirement, which allows states to directly proceed to termination in cases of severe abuse or neglect; second, the introduction of a termination timeline that requires states to begin termination proceedings for a child who has spent 15 of the last 22 months in care.

This paper is organized in six sections. Section 2 introduces the theoretical framework for the analysis. Section 3 describes the employed data and methods. Section 4 presents the central findings. Section 5 uses the findings to establish three pillars of reasoning that are combined to support the ASFA. Concluding remarks are presented in section 6.

1.1. The context of child welfare reform

When Congress passed the Adoption Assistance and Child Welfare Act in 1980, it was considered a response to the concern with large numbers of children in foster care and "foster care drift." Its goal was to reduce the number of children in care by requiring reasonable efforts to prevent entry to foster care or to reunify children in care with their families (Bean, 2009; Berrick, 2011). Although initially successful, the foster care population began to increase again, from 262,000 in 1982 to 468,000 by the end of 1994. Urban areas experienced the majority of this growth; the crack epidemic of the late 1980s was significant (U.S. House. Committee on Ways and Means, 1996a). An equally troubling issue was that the age of children in initial entries was decreasing, with a median age of 7.8 in 1990. A contributing factor was the significant increase in the number of infants entering care, which accounted for 24% of the initial entries by 1992 (U.S. House. Committee on Ways and Means, 1996a). Foster care drift re-emerged; in 1990, 57.2% of children in care had experienced more than one placement, and almost 30% of children in care had experienced a minimum of three placements. Although reunifications had significantly increased to 66.7% in 1990, 15% of the total entries in 1990 were re-entries due to failed reunifications, including numerous infants (U.S. House. Committee on Ways and Means, 1996a). As the number of children killed by their parents increased (McCurdy & Daro, 1994), the stories of these killings were featured in major news headlines that emphasized the failure of child welfare to protect children from dangerous parents (Bean, 2009). As a result, legislators in the early 1990s became concerned that reunification efforts had exceeded their limits and that the increase in the foster care population was primarily attributed to reluctance and delays in adoptions, which resulted in adoption backlogs (Wulczyn, 2004).

2. Theory: discourse ethics and principles of argumentation and justification

This article employs a normative theoretical framework of rational argumentation in collective decision making to examine the legislative process. According to the discourse ethics of Habermas (1996), I argue that an informed debate about the challenges and solutions regarding adoption are required to obtain better answers when wrestling with questions of policy choices. The value pluralism characteristic of modern democracies requires active and rational deliberation about conflicting values and viewpoints to reach solutions that can be recognized as legitimate by all. The key objective is to transform private preferences into positions that can withstand public scrutiny and testing via the process of deliberation (Held, 2006: p.237). The rationality and legitimacy of collective decisions are derived from the quality of the decision-making process rather than their outcome. As an ideal type framework, discourse ethics relies on two equally important parts: 'process rules' set requirements for participation to ensure that all affected parties can have their voice heard, and 'content rules' require debate participants to provide rational justifications for their assertions that are open to scrutiny and criticism to be considered valid (see Alexy, 1989: p.187–197; Eriksen & Weigård, 2003: p.206–228). In this article, I will focus on the content of justifications. I will not examine questions about participation or the theoretical details of process rules.

I propose to examine the nature of the arguments presented during the ASFA legislative process and how these arguments were considered by members of Congress to understand the foundation of the resulting policy.

Habermas (1996) argues that although questions about norms, values, or cultural and religious beliefs cannot be considered true or false (like facts about the natural world), we are capable of determining the norms and values that should be considered "right" or "just" for us as members of a society and democratic citizens. Although we will never be satisfied that a single right answer to normative dilemmas has been obtained, pluralistic democracies can achieve better solutions by engaging in rational deliberations in law and policymaking.

Different types of policy questions require different types of deliberative engagement and standards of justification to be considered rational. As previously noted, certain values are not "true" or "false" but can be considered "right" or "wrong," "fair" or "unfair," and "legal" or "illegal" for us. Discourse theory distinguishes four types of discourses with corresponding requirements for the justification of arguments, to which the participants in decision making must adhere in rational deliberation. These types of problems consist of "pragmatic," "ethical–political," "moral," and "legal" discourses.

Pragmatic discourses (Habermas, 1996: pp.159–160) are concerned with establishing the truth of empirical facts, proscribing appropriate strategies for achieving established goals, and evaluating the most likely consequences of possible choices of action. This is the discourse of classic strategic rationality, in which participants have to select the best action for realizing a desired goal but are constrained by limited time and resources. The goal is already established and is not a topic for debate. The standard of justification is based on the evaluation of the solidity of the presented evidence and evaluates if assertions are true or false, sufficiently documented, reliable, and realistic.

Regarding the issue of which policy goals to pursue, we refer to *ethical–political discourses* (Habermas, 1996: pp.160–161). Participants are not only concerned with obtaining an appropriate solution to a problem but also emphasize deeply held values and norms about what constitutes a "good life" for members of society. The standard of justification dictates that the arguments are authentic expressions of their proponents' viewpoints, which can be contrasted with other viewpoints. Although a single solution that is perfectly satisfactory to all may not exist, the process of openly engaging in debate about contested values may increase the chances of finding a solution that can be generally accepted as right and good for us.

Although the normative questions in ethical–political discourses are grounded in a political fellowship's shared history and culture, *moral discourses* (Habermas, 1996: pp.161–162) require us to take a step back from the existing normative context to debate a more fundamental standard of fairness: how can society be regulated in the equal interest of all? Arguments are justified to the extent that a norm is only fair if it is applicable to all in comparable situations and foreseeable typical cases. Although they are very abstract, we delimit moral discourses to arguments that consider different methods of conceptualizing fairness and equality for similar situations.

Entirely normative questions in moral discourses are curtailed by the rule of law. Legislative procedures establish rules that systematize decisions, and any new law must be integrated with preexisting laws and rights to which the political fellowship is bound. *Legal discourses* (Habermas, 1996: pp.167–168) consider the correctness and consistency

of law, which is important for the sake of legal clarity, to ensure that legislative intent is maintained and to ensure that new laws are compatible with the system of individual rights and law. Although legal discourses were a central part of the ASFA, they were concerned with clarifying congressional intent and with providing the best legal tools for courts to execute this intent without interfering excessively with judicial and State autonomy. Based on my reading of the hearings and debates, legal discourses were not central to an explanation of why the increased use of termination and adoption was justified. Therefore, I will not focus on legal discourses in this paper.

As a highly abstract and normative theory, discourse ethics has been criticized for setting a standard for deliberation that is impossible to achieve in practice, thus calling into question its usefulness. However, by applying an ideal type standard for the critical examination of discourse and decision making, I can scrutinize the reasoning for decision making, which may help identify what is omitted from or considered less important to the decision-making process. The intent of this paper is not to establish the correctness or incorrectness of the ASFA but to subject the legislative process to this type of scrutiny.

3. Methods

This study is limited to the congressional legislative process in which a bill is shaped, debated, and passed. The data consist of records of congressional hearings and the Congressional Record on the day that each bill was passed. Including the final ASFA bill, seven different bill proposals were debated at separate times on the congressional floor or in committee meetings. All proposed bills have been reviewed and carefully compared.

The study is based on a qualitative in-depth analysis of six congressional hearings and four congressional debates that concerned changes in federal adoption and foster care law and led to the enactment of the ASFA. Table 1 provides an overview of the hearings and debates included in this study.

The study includes six of the seven hearings that are listed in the "ProQuest Congressional" website for ASFA's (PL105-89) legislative record. The one excluded hearing, titled "Improving the Well-Being of Abused and Neglected Children" (Senate, November 20, 1996), was short. The only legislator present was Senator DeWine who appears in multiple later hearings, additionally three of the five public witnesses also provided testimony in other hearings. A short reading indicated that the relevant information was already covered by the other hearings.

A search at the Library of Congress, the websites of the House Committee on Ways and Means, and the Senate Committee on Finance, reveals other hearings that involved child welfare reform during the same time period as the included hearings. However, a decision was made that those not included in the ProQuest Congressional Legislative Record of ASFA would be excluded.

Identified and excluded hearings include the following: "Child Welfare Programs" (House, January 23, 1995), "Child Welfare Programs" (Senate, April 26, 1995), "Causes of Poverty, with a Focus on Out-of-Wedlock Births" (Senate, March 5, 1996), and "Protecting Children from the Impacts of Substance Abuse on Families Receiving Welfare" (House, October 28, 1997).

There are two main reasons for exclusion. First, these hearings do not have care for children in what is expected to be long-term placements as their primary subject, and although they might contain relevant information they are not considered part of the core material in preparation for the two paragraphs in ASFA that are being studied here. Also, the hearing on substance abuse in the House took place six months after the House had already passed its version of ASFA. Second, the examination of previous studies of ASFA did not reveal any hearings beyond those already mentioned.

The common feature of the included hearings is that they explicitly focus on the question of long-term care and adoption as a response to challenges in child welfare. Four of the six hearings were conducted after the first bill was introduced in the House, and the previous two hearings were closely linked to the development of the bill in their focus on adoption.

Additional limitations in the hearing material were established by focusing on the testimony of invited public witnesses and members of Congress, including opening statements and deliberations after panel testimonies. In situations in which prepared written statements were available with the testimony, I have exclusively focused on these statements and excluded the oral testimony because they are presumed to overlap and the written testimony provides the most complete picture of the arguments. The legislators were presumed to be prepared and knowledgeable of the written testimonies (Leyden, 1995; Talbert, Jones, & Baumgartner, 1995).

Written statements submitted by parties that were not invited to the hearing have been excluded; however, they may be included in the printed record of the hearing. As noted, the focus is not on establishing the participatory quality of the proceedings but on establishing the central arguments that could justify a stronger emphasis on termination and adoption. The invited witnesses were presumed to be those with the strongest influence on Congress and thus were the most important for understanding how the ASFA was justified. Congress did not write a Conference Report for the ASFA, but the outcome of the conference proceedings was presented in brief on the House floor (Congressional Record—U.S. House, 1997b: pp.H10783-H10787).

A total of 46 testimonies were received from 43 public witnesses during the hearings and are included as data. Some witnesses testified more than once, and some organizations were represented at multiple

Table 1
Overview of the ASFA legislative timeline and the debates included in this paper.

Year	1995	1996	1997						
Date	May 10	June 27	February 27	April 08	April 30	May 21	October 08	November 08	November 13
Chamber	House of Representatives					Senate			House and Senate
Place	Committee on Ways and Means Subcommittee on Human Resources				House Floor	Committee on Finance Subcommittee on Social Security and Family Policy	Committee on Finance	Senate Floor	Floor
Bill	–	–	HR 867 IH	HR 867 RH	HR 867 EH	S 511 IS (SAFE) and HR 867 EH	S 1195 IS (PASS) and HR 867 EH	HR 867 EAS (PASS)	ASFA
Action	Hearing: Federal Adoption Policy	Hearing: Barriers to Adoption	Hearing: Encouraging Adoption	Hearing: H.R. 867, The "Adoption Promotion Act of 1997"	Debate on H.R.867 RH Enacted with amendments from the floor.	Hearing: Child Welfare Reform (SAFE ACT and H.R.867)	Hearing: Promotion of Adoption, Safety, and Support for Abused and Neglected Children (PASS Act)	Debate and Pass: H.R.867 EAS (PASS Act): complete amendment to H.R.867 EH	ASFA Passed Conference report presented on House Floor

hearings by different witnesses. A comprehensive list of public and congressional witnesses and their affiliations is provided in the Appendix A.

All legislative records were prepared and coded using Atlas.ti qualitative software (Friese, 2012). The initial reading identified and coded the participants' descriptions of the challenges of the system and their recommendations for policy action. Subsequently, the segments of descriptions and recommendations that were relevant to the provisions being examined were discerned and divided into smaller pieces. The focus of this paper is the limits of public intervention and the relevant segments that address the process of determining when termination and adoption are appropriate and justified. The important part of the coding involved identifying the relevant segments of testimony and deliberations to be included in the in-depth analysis to enable easy access to sorting and retrieving relevant segments of data during the analysis.

3.1. Limitations

The material is limited to the public record and is subject to the distinct limitation that many negotiations and compromises occurred in private arenas. However, the theoretical framework emphasizes the need for political decision-makers to publicly defend and justify their decisions if they are to be considered legitimate. Open hearings and floor debates are vital arenas for legislators to provide the necessary justifications. Because of this they serve as an appropriate source of data for this type of research.

This study does not actively distinguish kinship foster care from non-relative foster care. Kinship care was favored by legislators as a permanency option for children compared with guardianship or non-relative fostering, but the proceedings revealed minimal knowledge of its effects and the stability for children at the time. It was included as an exception to termination and adoption to avoid conflict with kinship caregivers who may feel uncomfortable about creating additional turmoil within the family. Congress ordered a report on kinship care but did not explicitly promote it. Although it received strong support from individuals, this study did not examine its justifications or lack of justifications.

4. Findings—justifications for the ASFA

The ASFA emphasizes two central concerns for the well-being of children: safety and permanency.[2] I shall examine each of these concerns in separate subsections because the provisions are intended to address different segments for parents and children in the system. Each subsection is organized according to the discourse ethics framework of pragmatic, ethical, moral and legal discourses. Emphasizing the discourses facilitates understanding of how different sources of knowledge and values influenced the final outcome.

4.1. Discourses on child safety: exceptions to reasonable efforts

The discourses on child safety are best evaluated by examining the reasoning behind the exceptions to reasonable efforts contained in the ASFA Sec. 101(a), which indicates that some children have been subjected to such severe neglect or abuse that parents should have no chance at reunification and that a child's best interests are served by immediate adoption.

4.1.1. Pragmatic discourses

The central pragmatic argument for bypassing reunification efforts based on child safety was rooted in research that indicated that some abusive parents were beyond rehabilitation. The chief proponent of this viewpoint was Dr. Richard Gelles. According to his research, rehabilitation of severely abusive parents was based on a faulty assumption that abuse is caused by different mixes of internal and external stressors or a deficiency in resources to parents such that if services were targeted to alleviate these stressors or the lack of resources, anyone could be rehabilitated given sufficient time and dedication. Dr. Gelles argued for a different understanding of the reasons for serious abuse:

> "There are, I believe, distinct types of abusers … there are parents who, for whatever social or psychological reasons, set out to severely injure, maim, torture, or kill their children … the upper threshold for these parents' behavior is so high that injury and death are much more likely outcomes of their behavior than it would be for other types of parents … we need to employ a theoretical model that recognizes that in the most serious and harmful cases of abuse, the parents … are probably constitutionally different … [and] are simply non amendable to changing their dangerous and harmful behaviors" (U.S. House. Committee on Ways and Means, 1996b: pp.65–66).

The greatest concern with family preservation and reunification programs was not their lack of proven effect, although this was certainly also an issue, but that they were also applied to families with no real chance of success, and where reunification could pose a serious safety or developmental hazard to the child. This pragmatic risk argumentation had a powerful influence on legislators (Congressional Record—U.S. Senate, 1997: Sen.DeWine, p.S12670). Similar arguments were articulated by several witnesses throughout the hearings (e.g. U.S. House. Committee on Ways and Means, 1997a: Digre, p.116).

This pragmatic reasoning demonstrates how knowledge about the problems of the child welfare system advanced from a social explanation of abuse and neglect to an explanation based on individual behavior and pathology. This reasoning was central in shaping child welfare reform.

The influence of this perspective is also reflected in the de-emphasis of alternative explanations for the challenges of successfully reunifying children with their parents. The link between poverty and maltreatment was rarely debated in the hearings even after Representative Rangel (D-NY) requested Congressional Research Services to produce an oversight on the subject, and which confirmed the strong correlation (U.S. House. Committee on Ways and Means, 1996b: Robinson, pp. 23–29). Although none opposed the claim that some parents were beyond rehabilitation, proponents of reunification and preservation programs had a more optimistic view of the possible benefits of these programs, the main cause of reunification failure and the poor results of preservation programs was that children were reunified without adequate follow-up services due to inadequate funding and budget cuts, high staff turnover, poor implementation of programs, and inadequate supervision. Importantly, these witnesses stressed that more families than was currently the case could be helped by targeted reunification services if these were properly funded and implemented (U.S. House. Committee on Ways and Means, 1996b: Dr. Pecora, pp.76–79; 1997a: Liederman, p.93).

However, these arguments did not convince legislators, especially House Republicans, who emphasized the poor evidence from research on the effects of family preservation efforts:

> "We have examined the research on family preservation, as has the General Accounting Office. I think it fair to say that the scientific community agrees that there is no solid evidence that family preservation leads to better outcomes for children. Given this, coupled with the fact that current law already emphasizes family preservation, why would we push the statutes any further in this direction?" (U.S. Senate. Committee on Finance, 1997: Rep.Camp, p. 51).

Knowledge about the poor evidence of effect from family preservation programs was important to justify reunification bypass in serious cases. There was no real dispute about Dr. Gelles' description of some

[2] ASFA Sec.101(a) amendment of 42 U.S.C. 671(a)(15)(D) details circumstances in which reasonable efforts are not required, ASFA Sec.103(a)(3) amendment of 42 U.S.C. 675(5)(E) details the circumstances in which states are required to initiate termination, and exceptions to this requirement.

parents as being beyond rehabilitation, although there was some disagreement about how large this group was. In order to protect children from the most serious harm, it was necessary to accept that some parents are beyond rehabilitation. This also meant that a social explanation of abuse must be abandoned, at least in the serious cases, and strengthened an individualized focus on parental characteristics and risk-inducing behavior, while weakening attention to external conditions that might affect the family.

4.1.2. Ethical–political discourses

The ethics that support an enhanced focus on child safety comprised the perception that children's needs and rights were being sacrificed by a system that focused too much attention on parental rights and the importance of biological ties. Parental interests were favored because the system "romanticiz[ed] biology" (U.S. House. Committee on Ways and Means, 1996b: Bevan, p.132–133), which caused workers to focus their attention on the needs of parents instead of on the needs of children. Albert Solnit (U.S. House. Committee on Ways and Means, 1996b: p.99) claimed that workers were unable to place themselves in the child's position and, as a result, would favor fairness on adult terms to the situation that is least detrimental to the child. Legislators frequently stressed the importance of considering the child's viewpoint (e.g. U.S. House. Committee on Ways and Means, 1997a: Rep.Shaw, p.44). These considerations and those to follow are ethical because they address the prioritization of two important social norms—a child's right to safety on one hand and the value of the natural bond between parent and child on the other.

The assertion that "reasonable efforts" had become "unreasonable" or "extraordinary" efforts to preserve or reunify families at the expense of child safety was critical to legislative changes. Anecdotes from high-profile cases and major news stories that described the fate of children subjected to horrific abuse and neglect while under or following release from the supervision of child welfare services were important to reinforcing the conviction that child safety was not taken seriously. The content of these anecdotes is summarized by Lt. Governor Binsfield (MI):

> "The children of whom I speak are the shattered bodies in tiny coffins; the little ones who have been raped; the babies who have been shaken so hard the blood vessels burst in their skulls; the children who have been burned with cigarette butts or set on hot stoves or put in scalding water to 'make them behave'; the little faces and bones broken by the people who brought them life or those they allow into their homes. Generally, the public and state and federal officials continue to regard these stories as rare and tragic events. Let me assure you, from five years of experience of working with abused children, they are not rare" (U.S. House. Committee on Ways and Means, 1997a: p.33).

These stories were central to the viewpoint of a system that took "extraordinary steps to protect parents who abuse and neglect their children" (U.S. House. Committee on Ways and Means, 1998: Rep. Shaw, p.6).

> "We are sending *too many* children back to dangerous and abusive homes. We send them back to live with parents who are parents in name only—to homes that are homes in name only" (U.S. House. Committee on Ways and Means, 1997a: Sen.DeWine, p.10, original emphasis).

Senator DeWine's quote summarizes the core reasoning for making child safety a priority, which suggests that parents who severely abuse their children have no right to call themselves parents and should have no right to reunite with their children.

> "The big thing this bill does is to push the pendulum of government concern back in the direction of the children … by allowing States to define … aggravated circumstances that allow them to dispense with services for the family and get on with the business of finding an adoptive home for the child" (Congressional Record—U.S. House, 1997a: Rep. Shaw, p. H2016).

The ethical argument for termination and adoption offered by legislators was the need to realign the system in favor of the persons for which it was established—the children—and not with the parents, who were considered the perpetrators of crimes who forfeited their parental rights.

4.2. Discourses on child permanency: termination timelines

Two central concerns constitute the foundation of the permanency discourses. First, some groups of children spent prolonged periods of time in out-of-home care. Second, the time spent in out-of-home care was highly unstable, with many children experiencing multiple placements during their time in care. To examine the congressional justification for adoption to promote permanency, this section presents findings from debates on ASFA sec. 103(a), which states that in general termination proceedings should be initiated once a child has been in care for 15 of the last 22 months.[3]

4.2.1. Pragmatic discourses

Pragmatic discourses on setting time limits for reunification efforts were heavily influenced by knowledge that emphasized the importance of permanency for children. Children, particularly very young children, need stability in their connections with caregivers to develop healthy emotional, intellectual, and mental development.

> "New research tells us that the first years of life are critical to a child's development. We now know that 90 percent of the brain's growth takes place during the first 3 years … early life experiences help determine the way a child thinks, learns and behaves for the rest of his or her life" (Congressional Record—U.S. House, 1997a: Rep.Pryce, p.H2013).

Testimony based on research and statistics established a distinction between the damaging effects of long-term foster care and the promise of adoption. Many emphasized the importance of understanding that time is experienced differently by children, particularly the younger children, and what may not seem a long time to adults could seem an eternity to a child. The lack of stability in foster care was emphasized; Peter Dirge testified on the experiences in California, in which 1/3 of toddlers (ages 1–2 years) in care had experienced five or more foster homes, and concluded,

> "Long-term foster care is, tragically, neither stable nor permanent … Adoption on the other hand, creates lifetime parents. It is not commonly understood how remarkably stable adoption is. In California, only an average of 14 finalized adoptions are set aside annually out of a potential pool of 15,000, a rate of less than .1% or one out of 1,000" (U.S. House. Committee on Ways and Means, 1997a: Digre, p.113).

The evidence of the effectiveness of adoption was also emphasized by research on child outcomes, measures of socioeconomic circumstances, home environment, access to medical care, health, mental health, and academic performance, which concluded that

> "the impact of adoption on children is overwhelmingly a positive one … Adoptive families provide supportive, nurturing, environments, for young people … The data also underline the importance of facilitating adoption early in the child's life, before neglect, abuse, or family turmoil leave emotional scars that are slow to heal" (U.S. House. Committee on Ways and Means, 1996b: Zill, p.110).

[3] Except if (1) the child is in relative care, (2) termination is not considered to be in the child's best interests, (3) the State has not provided the family with required reunification services.

This argument illustrated to legislators the positive effects of adoption demonstrated by studies and empirical evidence for the importance of swift action, which could be extended to demands for timelines. Swift action was needed because time spent in uncertainty could be harmful to the child's development, and because statistics indicated that the chances of adoption decreased with a child's age.

Dr. Solnit provided testimony on the importance of psychological ties to caregivers:

> "A parent who can provide day-to-day attention to a child's needs for physical care, nourishment, comfort, affection and stimulation will form an attachment with … and will become his (or her) 'psychological parent' … [This role] can be fulfilled by any other caring adult—but never by an absent, inactive adult, whatever his biological or legal relationship to the child may be" (U.S. House. Committee on Ways and Means, 1996b: p.99).

This testimony also provided a psychological knowledge base that was favorable to adoption. Placing greater importance of the psychological relationships of children with their caregivers compared with biological ties strengthens the position of adoption over prolonged reunification efforts based on the argument that the "real" parents are the parents who satisfy a child's daily needs. Pragmatic discourses established a knowledge base that emphasized the documented harms associated with unstable living arrangements while emphasizing the benefits of stable caregivers to children's life outcomes.

4.2.2. Ethical–political discourses

Broad agreement was received for the notion that children were not to blame for their parents' actions and should not be punished for their parents' actions (or lack of actions)

> "It is time to acknowledge in our laws … that parenting is not an absolute right, but carries with it corresponding duties and responsibilities to children and to society, and when parents abuse, neglect or abandon their children, these parental rights may be lost. Protecting children in the foster care system entails promoting policies that are consistent with basic child development principles, including the child's need to grow up in a stable, loving family whether biological or adoptive … Children should not suffer from their parents' lack of personal responsibility or inability to care for themselves or the children in their care" (U.S. House. Committee on Ways and Means, 1996b: Bevan, p.136).

The citation provides a suitable illustration of the two central ethical arguments that favored limits for the required length of time that a child could remain in care prior to termination.[4] Bevan argued that retaining children in care longer than 12 months would significantly hurt a child, which was not fair given that children frequently had no responsibility for their placement. The citation also suggests that parents were individualized and portrayed with a greater personal responsibility for their own rehabilitation.

This logic established an important ethical distinction in the ASFA proceedings:

> "Each report to a child protective service agency involves a victim and a perpetrator, in most cases a child and his or her parent" (U.S. Senate. Committee on Finance, 1997: Sen.Roth, p.1).

The ethical claim distinctly expresses the adversarial understanding of parental, child and state interests in child welfare. The perspective of children as innocent victims of their parents' actions and parents as perpetrators legitimizes the idea that parents must bear the main burden of responsibility for rehabilitation. Although the state should make services available to parents, the overriding responsibility of the state should focus on care for the interests of the innocent child.

This child-centric focus legitimizes early termination when the chances of improvement are slim or when transgressions are serious:

> "If … you really are concerned with the best interest of the child and … what predicts best developmental outcomes, you terminate parental rights as early as possible, and I say that with a small footnote, you are going to make mistakes … Do you want to make mistakes that ultimately end up in children having poor developmental outcomes, or even being killed, or do you want to take children away, maybe inappropriately form parents, maybe a little bit early because the system is tilted toward the best interest of the child? It would be the latter system I think that we need" (U.S. House. Committee on Ways and Means, 1996b: Dr. Gelles, p.93).

The individualization of parents is evident, and the concern for rescuing the child for a better future is evident when the pragmatic and ethical arguments are combined. Minimal attention was given to exploring whether children could have interests in maintaining ties to their parents despite their shortcomings.

Research has associated adoption with positive life outcomes for children. The ethical side of this positive association corresponds with social norms that emphasize the vital role of family in child rearing:

> "Adoption is good for children. The reason is simple. Nearly every adopted child is put in the midst of the best child-rearing machine ever invented—the family … With adoption we change a child's entire life … the intervention stays with the child for her entire childhood—and perhaps her entire life. That's why adoption is probably the most powerful social intervention known" (U.S. Senate. Committee on Finance, 1997: Rep.Camp: p.49).

The protection offered by vesting parental rights within a new family instead of spreading responsibility for the child between foster caregivers and the child welfare system was emphasized as one of adoption's significant benefits by anchoring responsibility for a child's well-being to a single set of caregivers, with the ideal of replicating the "natural" family (U.S. House. Committee on Ways and Means, 1997b: Wulczyn, p.112).

4.2.3. Moral discourses

Although moral discourses were important to some debates during the ASFA proceedings (e.g., all children should be covered by federal foster care maintenance payments, not only children whose biological parents could qualify for TANF), they were less common during debates about child permanency or safety.

Representative Mink (D-HI) opposed the House bill and argued that it would penalize poverty:

> "I cannot vote for a bill that takes welfare reform one step closer to the final penalty of poverty: The loss of one's children by edict of the Government. First you take their money away. Then, you force them into desperate conditions of poverty. Then, you deem them unfit to raise their children and you remove them from the home and place them in foster homes. Then, after 18 months you put the children up for adoption. Whose family values do we stand for?" (Congressional Record—U.S. House, 1997a: Rep.Mink, p.H2023).

The argument refers to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), which she believed deprives poor parents of the necessary resources to adequately care for their children and renders children more likely to enter care and parents less likely to improve their circumstances. The moral argument is that this

[4] The final 15/22 Termination requirement included in the ASFA has no justification in the hearings. Disagreements between the supporters of an 18/24 timeline and a 12/18 timeline were identified. The House bill included the former, whereas the Senate bill included the latter. It seems likely that the final result of 15/22 is a negotiated compromise; however, I will not consider the arguments related to the specific length of time.

situation creates an unfair double standard between well-off and poor parents. Although no response to Representative Mink's argument was identified, similar sentiments that link poverty to the disproportionality of challenges in child welfare were previously raised by Representative Rangel (D-NY) (U.S. House. Committee on Ways and Means, 1996b: pp.23, 30, 83–86) when he argued that the main challenges of child welfare reform could be approached by providing education and job opportunities for young single mothers. However, Representative Rangel eventually supported the House bill (Congressional Record—U.S. House, 1997a: p.H2016).

A less fundamental moral concern with the ASFA was raised by Golden of the DHHS (U.S. House. Committee on Ways and Means, 1998: pp.24–27), who argued that a timeline would not discriminate between children who were suitable candidates for adoption and children who were not suitable candidates for adoption, which could create "legal orphans." A timeline would not be sensitive to the best interests of individual children and introduced the risk of treating different cases as if they were similar. The moral argument is that if different cases are treated as if they were the same, this would require a good reason. Golden advocated that termination should only be pursued for children with a case plan goal of adoption. This sentiment was shared by parts of the judiciary:

> "There is a reluctance on the part of judges across this country to terminate parental rights because they think they are casting the child into the pit where nothing will happen … When a judge is saying there is 50,000 children out there lined up whose rights are terminated already are going nowhere. Whoa, you know" (U.S. Senate. Committee on Finance, 1997: Hon.Grossmann, p.47–48).

Representative McCrery (U.S. House. Committee on Ways and Means, 1998: pp.25–27) defended the bill by arguing that these concerns were unfounded because the bill already addressed them by providing exceptions to termination. He suggested that timelines were a necessary mechanism to pressure courts to make decisions at an earlier stage, regardless of whether that decision would result in termination.

The House bill would only apply the termination timeline to children under age 10. However, this restriction was removed in conference with the Senate, which did not advocate such a restriction. The Children's Rights Council considered the House restriction unfair to older children: "Children above the age of ten are often more difficult to place in adoption but still have the same need for stability and permanency in their placements" (U.S. House. Committee on Ways and Means, 1998: Henry, p.58). Despite removing the "under age 10" clause, the ASFA was distinctly focused on younger children; this is evident when examining the types of examples and concerns that were raised by witnesses and legislators alike, which generally were attuned to the challenges and needs that faced the younger children. However, there were no explicit debates about whether children of different age groups might have distinct needs, or whether termination timelines might affect older children differently from the younger.

5. Discussion—the normative foundations of the ASFA

The remaining issue is the information that can be gained from these findings from the ASFA legislative process about the "normative foundation," which was decisive in how Congress divided the public and private responsibility for children in long-term care. What are the core knowledge, beliefs, values, and social norms underpinning political choices? Laws aimed at protecting or enhancing child welfare are derived from approaches to considering, prioritizing, and responding to contested normative questions about the appropriate processes, lengths, and depths to which the public can intervene in families in the name of child welfare. The most striking finding from the hearings is the extremely high level of consensus between legislators from both political parties, including a majority of witnesses, that permanency for children should be the primary consideration in decisions regarding long-term care and the agreement that adoption is the best approach to securing this goal.

I argue that the normative foundation that supported the ASFA's promotion of adoption was based on three pillars: risk pragmatism, child refamilialization ethics, and parent responsibility ethics. Their combination makes adoption a highly desirable and justified placement option despite the serious implications for children and their families.

5.1. Child risk pragmatism

Child risk pragmatism dominated the legislative proceedings. This pillar consists of risks to children's safety and health from returning home or the risk of poor developmental outcomes, mental health damage, or poor life opportunities due to prolonged periods in unstable foster care or the repeated failure to reunify. Legislators were disillusioned with the promise and effects of family preservation programs, which were unsuccessful in curtailing the increase in the foster care population and the poor rates of successful reunifications. Although some advocated that such programs could still work given the necessary funding, resources, and rigorous implementation, these arguments did not convince Congress. The combination of the potential risks to children if preservation or reunification failed with the poor evidence of effects as demonstrated by research, led Congress to argue that children should not have to suffer uncertainty when no reliable evidence of improved outcomes existed. When critics of preservation and reunification used research findings to indicate that some parents may be pathologically unsuited for raising children, they further emphasized the risks to children. The model of socioeconomic and external explanations for deviant and harmful parental behavior was discredited in the ASFA proceedings, replaced by an individualized approach to thinking about personal risk factors and pathologies associated with specific types of parental behavior and the risks to children exposed to these behaviors.

Adoption, on the other hand, could demonstrate better outcomes for children, both in terms of safety and permanency. Subsequent studies have generally confirmed the positive effects on life outcomes for children who are adopted (see Christoffersen, Hammen, Andersen, & Jeldtoft, 2007; Triseliotis, 2002; Vinnerljung & Hjern, 2011). In a political climate focused on salvaging a child welfare system on the verge of collapse from the number of families it served, adoptions had the potential to effectively reduce caseloads, promise permanency for children, and serve as cost-neutral or money-saving options. In situations in which parents are unable or unwilling to change their risk-inducing behaviors and the public foster care system is incapable of delivering a stable and secure upbringing to children, adoption offers one of the few available options to place children if they are to be protected from the risks associated with the remaining two alternatives. This explanation is a strong reason why adoption became highly favored despite the severity and finality of the intervention. This situation establishes the role of the public as a risk manager, with less emphasis on family welfare services and greater emphasis on identifying and evaluating potential outcomes from different alternatives.

5.2. Parent responsibility ethics

As noted by Beem (2007), the ASFA and the welfare reform of 1996 signified a change in the federal approach to entitlements and responsibility. An ethics of parent responsibility is evident throughout the ASFA proceedings. Parental rights include certain responsibilities to both the child and society to care for the child using methods that conform to important shared norms of childrearing. A *conditional trust* (Harding, 1997: p.51) is a type of trust that can and should be removed if broken. Sen. DeWine's statement about parents and homes "in name only"

should be considered based on this viewpoint. The notion of family is more concerned with the care and nurturing provided to a child than with blood ties. Although these aspects are important, they are subordinated to the importance of securing for the child a family that is capable of satisfying the child's physical and emotional needs.

Minimal attention was given to the differing circumstances of parents that prompted the removal of their children. The focus was on examples of the worst possible circumstances, including child maltreatment and chronic substance abuse; the representativeness of these anecdotes to parents was never addressed in the proceedings. Parents of children in care that were dominantly portrayed as the perpetrators of horrible crimes against their children, but the accuracy of this image is questionable and makes it difficult to distinguish between parents who, for various reasons, are unable to care for their children and those who are outright dangerous. The many examples and descriptions mixed abusive parents and parents who failed to get their life in sufficient order to care for a child and often failed to create a clear image of potential key differences between families that were to be targeted by two distinct paragraphs; the reunification bypass on the one hand, and those who would receive services limited by the termination timelines on the other. The latter group is likely to include a very wide variety of families and circumstances, and probably much wider than what was illuminated in the hearings.

The heavy focus on "horrible" parents and parents who are incapable of change fuels an adversarial understanding of child welfare. Although the interests of children and parents are separate in many cases, the adversarial assumption establishes a divide between *children* who are worthy of state aid and *parents* who are less worthy of state aid. Because children can never be blamed for the actions of their parents, they must be protected by the state. However, parents do not have this same claim to state assistance, which obscures the notion that sometimes children may indeed share interests with their parents and may also benefit from contact even if they cannot live together.

The shift in thinking from external or socioeconomic explanations for maltreatment to individual pathologies and risky behaviors was important to the argument that parents must bear the majority of the responsibility for making the necessary changes to reunite with their children. Although the public has an obligation to help the parents of children who have been removed, public responsibility is weakened by emphasizing parental "willingness" or "ability" to change harmful behavior. The addition of more services is disqualified because if parents do not take advantage of existing services, additional funding is wasted. Successful reunification requires that parents assume personal responsibility for change. The role of government is secondary because a person cannot be forced to change if he or she lacks the ability or desire to change.

The policy decision to place temporal limitations on services, with the threat of termination, is based on ethical considerations of parental responsibility as much as pragmatic evaluations of the likelihood of reunification or ability to change after a given period of time. An explanation based on socioeconomic or external conditions for parental inability to care for a child would likely place more pressure on the public to address these issues and aid parents prior to termination, an explanation that emphasizes the individual's failure to act as a responsible adult does not carry the same level of entitlement to public services or to retain parental rights.

5.3. Child refamilialization ethics

The ASFA ethics of child refamilialization is based on a conviction that at some point the interests of the child and the parents are no longer shared but become distinct, either because of the seriousness of abuse and neglect or because of the lack of parental progress in changing their behavior. At this point, the standard assumption is that the child's welfare is no longer with the family of origin, and the state's only concern should be to provide the child with a new permanent home, preferably through adoption.

This approach is clearly child centered, based on a concern for the child's welfare and development, seeking to remove the child from harmful situations and simultaneously seeking to quickly establish the child in a new and stable placement. To justify quick and decisive action, members of Congress repeatedly emphasized the importance of "seeing the world through the eyes of a child." However, this concern for the child's viewpoint was not taken beyond establishing a set of basic child needs. Children's rights were never examined in terms of autonomy or the rights of individuals with valid concerns and interests in their own future; instead, children's rights were understood in terms of predefined "needs" for protection from dangerous adults and for a permanent and loving home and family. The needs of children are defined by adults, and the state acts as a watchdog because children are unable to care for themselves and needed adult protection, care, and guidance (Freeman, 1983). This understanding of children's rights as primarily responding to threats against their basic needs is a paternalistic approach to children's rights. A positive paternalism where the state acts as guardian of child interests and welfare is also necessary to legitimize the authoritative intervention that comes with adoption. The state is right to exercise this deep and serious intervention because the child's basic needs are threatened. The state can then get to the equally important task of placing the child with a suitable family that is capable of meeting the child's needs on a permanent basis. The need for an adoptive placement, rather than permanent foster care, is justified not only in the poor state of the child welfare system but also because parents make the best decisions on behalf of *their* children. The good family is less about biological ties than with a single set of caregivers that meet the child's needs and act on what they perceive to be the child's best interests, free from public interference. The underlying assumption in legislation is that the state is capable of not only protecting the child from abuse and neglect but also improving the child's life by actively refamilializing the child. The paternalism lies in the belief that active State action can indeed improve the life of these children, not simply protect them from harm (Harding, 1997: p. 53).

In contrast to the individualization of parents, children were considered a much more coherent group, which reduced attention to the fact that children as a group are highly diverse and that different age groups have different needs and viewpoints about their circumstances. Moral arguments that suggest that these differences should also be reflected in legislation were rejected, and the responsibility was transferred to either the state or judiciary level. These moral arguments of fair treatment, in which similar cases are treated equally and dissimilar cases are treated differently, were secondary to the ethical social value that children need to belong to families. Concerns that some groups of children were much less likely to be adopted were cast aside, the soultion was simply for States to make stronger efforts at getting children adopted. Beyond exempting children placed in relative care from the termination requirements, very little attention was given to consider whether children, particularly older children, could benefit from retaining ties to their families of origin despite not being able to live with them. Similarly, the issue of what to do for children who would remain in foster care was more or less ignored by legislators (see also: Gordon, 1999). The message from the ASFA proceedings was clear; no child should be left to grow up in non-relative foster care. No efforts were made to strengthen the foster care system itself, so that children who are not adopted or placed in guardianship could have better chances of attaining the same stability as their adoptive counterparts.

The ethics of child refamilialization is finally also influenced by a desire to secure the good of the future society as more children develop into well-adjusted and productive citizens. Authoritative intervention is ethically justified because it can ensure better outcomes for the child and for the greater good of society. The child refamilialization ethics that justify termination and adoption are strongly paternalistic in the approach to child protection and reflect a strong belief in the

capacity of the state to improve the future of children and society via authoritative intervention.

6. Conclusion

This study sought to further understanding of the types of knowledge, norms, and values legislators have emphasized to justify a policy that considers the termination of parental rights and adoption to be the preferred outcome in child welfare when children are not expected to reunify with their families. By applying a theory of discourse ethics to study the congressional hearings and debates that led to the ASFA, I have identified the central arguments and justifications and their implications for the shaping of federal policy on the termination of parental rights and adoption in accordance with pragmatic, ethical and moral discourses.

By examining pragmatic discourses, this study finds that knowledge focused on potential risks to children is important. Adoption is seen as the most effective path to prevent children from unnecessary exposure to risks associated with particularly abusive parents and risks associated with instability in care. The focus on risk has also meant that explanations and solutions based on social structures have been weakened; they are seen as ineffective at protecting children from harm. In instances of uncertainty, a focus on individual risk justifies resolute, authoritative action earlier than does an approach based on social explanations.

The study also finds that parents are given greater individual responsibility for their circumstances and for making the necessary changes for reunification. The ethical conviction that parents have primarily themselves and their actions to blame for having their children removed lessens the burden of responsibility on the state to provide extensive services. This viewpoint is strengthened by the shift in the knowledge base from explaining abuse by social and socioeconomic factors to individual risk factors.

Finally, the study finds that an ethical child refamilialization discourse was central and tied to both of the above discourses. Although parents had themselves to blame, children should never be blamed for their parents' actions. Thus, the first responsibility of the state is to protect the child and her future before ensuring that the parent is able to reunify. This perspective neglects the often-overlapping interests. The focus on children's needs is predefined as safety and permanence, and authoritative intervention is justified to provide these needs by refamiliarizing children with “proper” families through adoption. However, little attention has been paid to the diversity of children's circumstances and viewpoints.

In the years subsequent to the ASFA, the number of adoptions increased significantly. The ASFA seems to have played a role in this development (Wulczyn et al., 2006). Many children's lives have been improved by these adoptions; the evidence of positive impacts on children's life outcomes after adoption seems strong. However, there is concern with the single-mindedness with which congressional legislators pursued adoption as a panacea in the process of developing the law. According to Berrick (2009), adoption remains the least likely route of exit for a child entering foster care in the U.S., despite the significant emphasis on adoptions in federal law. Moral arguments suggest that although adoption is good for many children, it would also be inappropriate or unrealistic for some children. The ASFA left this group to be addressed by the states and judiciary. The problem with this approach, however, is that Congress took no responsibility for those children who were unlikely to be adopted but who would nevertheless remain in care. The significant emphasis on the benefits of adoption to children and the horrible actions of parents shifted attention from the extremely important systemic challenges of the U.S. child welfare system. In the ASFA, fiscal budgetary concerns and an adversarial approach to the poor choices and terrible actions of parents diverted Congress from focusing on the urgent need for resources and funding to aid the system itself and the families in need of extra help to reunify or to find appropriate, permanent placements for children who were unlikely to be adopted. These are the children who were overlooked in the ASFA proceedings, and future policy developments must focus on the needs of these children.

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Appendix A

Public Witnesses

Witness	Representing	Hearing
Allen, Mary Lee	Children's Defense Fund *Director, Child Welfare and Mental Health Division*	House WAM April 8, 1997
Badeau, Susan	Voice for Adoption *Adoptive Parent*	Senate COF May 21, 1997
Benn, Deborah	Birth Parent, Cleveland, Ohio	House WAM June 27, 1996
Bevan, Carol S., Ed.D.	National Council For AdoptionVice President for Research and Public Policy	House WAM May 10, 1995
Binsfield, Hon. Connie	State of Michigan Lieutenant Governor	House WAM June 27, 1996
Cross, Terry	National Indian Child Welfare Association Executive Director	House WAM February 27, 1997
D'Ambra, Laureen	State of Rhode Island Child Advocate, Office of the Child Advocate	House WAM June 27, 1996
Dean, Robert	Foster Parent, Omaha, Nebraska	House WAM June 27, 1996
Dirge, Peter	Los Angeles County Department of Children and Family Services Director	House WAM June 27, 1996
Gelles, Richard, Ph.D.	University of Rhode Island Professor of Sociology and Psychology Director, Family Violence Research Program	House WAM May 10, 1995
Golden, Olivia	U.S. Department of Health and Human Services Ph.D. Acting Assistant Secretary, Children and Families,	House WAM April 8, 1997
Goodhand, Judith	Department of Children and Family Services, Cleveland, Ohio Director	House WAM June 27, 1996
Grasso, Kathi L.	American Bar Association, Washington, DC Assistant Staff Director, Center on Children and the Law	House WAM February 27, 1997
Grossmann, Hon. David E.	National Council of Juvenile and Family Court Judges, Chair, Adoption Committee Judge, Hamilton County Juvenile Court, Cincinnati, Ohio	Senate COF October 8, 1997
Guttman, obert	Attorney-at-Law Director, Pro Bono Adoption Project, Consortium for Child Welfare	House WAM April 8, 1997 Senate COF October 8, 1997
Henry, Ronald K.	Children's Rights Council Volunteer Attorney	House WAM April 8, 1997
Hoekstra, Richard E.	Michigan Family Independence Agency Director, Division of Adoption Services	House WAM February 27, 1997
Hogan, Maureen	Adopt A Special Kid/America (AASK) Executive Director	House WAM February 27, 1997
Kelly, Susan A.	Michigan Department of Social Services, Office of Children and Youth Services, Director, Division of Family Preservation Services	House WAM May 10, 1995
Leean, Joe	Wisconsin Department of Health & Family Services Secretary	Senate COF October 8, 1997

Witness	Representing	Hearing
Levy, Hon. D. Bruce	Juvenile Division, Miami, Florida Administrative Judge	House WAM June 27, 1996
Liederman, David	Child Welfare League of America Executive Director	House WAM June 27, 1996 House WAM February 27, 1997
Logan, Rose	Catholic Charities USA Executive Director, Astor Home for children	Senate COF May 21, 1997
Loney, Faith S.	Foster Parent	Senate COF October 8, 1997
Maddux, Hon. William D.	Cook County Circuit Court, Chicago, State of Illinois Supervising Judge, Pretrial Mediation	House WAM May 10, 1995
Markowitz, Teresa	Hon. Bill Graves, Governor of Kansas Commissioner, Children & Family Services, Department of Social and Rehabilitation Services, Topeka, Kansas	House WAM February 27, 1997
McDonald, Jess	American Public Welfare Association Director, Illinois Department of Children and Family Services, Springfield, Illinois	House WAM April 8, 1997
Mink, Janice	Hear My Voice, Ann Arbor, Michigan	House WAM April 8, 1997
Murphy, Sister Josephine	St. Ann's Infant and Maternity Home, Hyattsville, Maryland Administrator (Daughter of Charity)	House WAM June 27, 1996
Nadel, Mark V.	U.S. General Accounting Office Associate Director, Income Security Issues, Health, Education, and Human Services Division	House WAM February 27, 1997
Newell, Patricia	Foster Parent, Cleveland, Ohio Assistant Director, St. Martin De Porres Family Resource Center	House WAM June 27, 1996
Pecora, Peter J., Ph.D.	University of Washington Associate Professor, School of Social Work Manager of Research, the Casey Family Program	House WAM May 10, 1995
Pierce, William L.	National Council For Adoption Ph.D., President	House WAM April 8, 1997
Price, Jean S.	Child Welfare League of America, Chairman, National Advisory Committee on Adoption; The Children's Home Society of Florida, Vice President of Social Services	House WAM May 10, 1995
Robinson, Dale	The Library of Congress, Congressional Research Services Analyst in Social Legislation, Education and Public Welfare Division	House WAM May 10, 1995
Solnit, Albert J.	Yale University Child Study Center, New Haven Connecticut. M.D., Senior Research Scientist; Commissioner, Connecticut Department of Mental Health	House WAM May 10, 1995
Stangler, Gary	American Public Welfare Association Chair, National Council of State Human Service Administrators; Director, Missouri Department of Social Services,	Senate COF May 21, 1997
Thomas, R. Dave	Dave Thomas Foundation for Adoption, Founder and Chairman Emeritus of the Board of Directors, Wendy's International, Dublin, Ohio.	House WAM June 27, 1996
Warenda, Patricia	Maternal Grandmother, Fort Lauderdale, Florida	House WAM June 27, 1996
Washington, Valora, Ph.D.	W.K. Kellogg Foundation, Battle Creek, Michigan, Program Director, Families for Kids Initiative	House WAM February 27, 1997 Senate COF October 8, 1997
Workman, Margaret, J.D.	Supreme Court of Appeals of West Virginia, Charleston, West Virginia Chief Justice	Senate COF May 21, 1997
Wulczyn, Fred H., Ph.D.	University of Chicago, Chicago, Illinois Research Fellow, Chapin Hall Center for Children	House WAM February 27, 1997
Zill, Nicholas, Ph.D.	Westat, Inc., Rockville, Maryland Vice President and Director of Child and Family Studies,	House WAM May 10, 1995

Congressional Witnesses

Congressional Witness	Representing	Hearings
Bond, Christopher	R-MO, Senate	Senate COF May 21, 1997
Camp, Dave	R-MI, House	House WAM April 8, 1997 Senate COF May 21, 1997 Senate COF October 8, 1997
Craig, Larry E.	R-ID, Senate	Senate COF October 8, 1997
DeWine, Mike	R-OH, Senate	House WAM June 27, 1996 House WAM April 8, 1997 Senate COF May 21, 1997 Senate COF October 8, 1997
Fawell, Harris W.	R-IL, House	House WAM June 27, 1996
Kennelly, Barbara B.	D-CT, House	House WAM April 8, 1997 Senate COF May 21, 1997 Senate COF October 8, 1997
Landrieu, Mary L.	D-LA, Senate	Senate COF October 8, 1997
Levin, Carl	D-MI, Senate	Senate COF October 8, 1997
Miller, George	D-CA, House	House WAM June 27, 1996

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The Child's Best Interests and the Politics of Adoptions from Care in Norway

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Abstract:

This paper examines how Norway turned to a more active policy on adoption in the child welfare system. It examines the full public records from all four times that the government and Storting debated adoption from care, over the period 2002–2013. I analyse the empirical and normative arguments that shaped policy, through a discourse theoretical framework (Habermas, 1996) to distinguish different types of arguments. The Article contributes an empirical case for analysing the normative aspects of social and welfare policy. The findings show that an active adoption policy is justified by strengthening of child-centred perspectives. First, research and expert discourse gained influence in the framing of adoption policy over time. Second, the ethical response to this knowledge base has been to shift attention from shared family needs to the child's individual and developmental needs. There are signs that legislators view adoption in relation to children as independent legal subjects with rights.

1. Introduction

The responsibilities of the child protection system are characterized by normative dilemmas, where both the goals and the means to achieve them are contested and uncertain. Decision-making takes place within an unavoidable tension between the requirement of helping families stay together and the requirement of protecting children from harmful life outcomes. How states balance the right to respect for family life against the individual child's needs differs over time and between contexts (Gilbert et al., 2011; Harding, 1997), but is a fundamentally normative and political question about how the state defines it responsibility towards children and draw the line between the public and the private.

In this paper, I study policy formation on adoption from care – without parental consent – as a child welfare measure.[1] This is controversial because it breaks with the fundamental value and human right (ECHR Article 8) that children and parents belong together. Since 2015, the European Court of Human Rights (ECtHR) have communicated 26 cases to Norway concerning possible breach of article 8 in child welfare. Ten of these cases concern adoption from care. Two of the adoption cases have thus far been resolved. While the ECtHR found no violation of article 8 in the case of *Mohamed Hasan v. Norway* (appl. no. 27496/15), Norway was found in violation of article 8 in the high-profile Grand Chamber judgment in *Lobben and Others v. Norway* (appl. no. 37283/17). This high number of cases stands in contrast to the relatively low number of adoptions from care that actually take place in Norway (see Helland and Skivenes, 2019). Countries such as England and USA have promoted adoption as a way to secure a permanent family for children who cannot return to their biological family (Tefre, 2015; Skivenes and Thoburn, 2016). In Norway, Section 4-20 of the Child Welfare Act of 1992 (CWA) regulates child welfare adoption. Although the legal threshold is rather similar to England and USA, numbers of adoption are much lower.

[1] In this paper, the term "adoption" exclusively refers to adoption as a child welfare measure without parental consent.

However, during the late 2000s there was a political shift in support for a more active use of adoption from care. During the eleven-year period 2003-2013, political party position on whether to increase adoptions from care flipped from five of seven parties opposed to five of seven in favour. I set out to study this shift, how a policy to promote more adoptions in child welfare has gained much broader political support in later years by examining the political justifications for promoting a politics on increased use of adoptions from care.

I analyse the central arguments that political parties used in the debates to justify their position on adoption through public records. The focus of the study is to understand empirical ideas and normative values as drivers for change, by uncovering the ideas and beliefs about children and families that shape child welfare policy and the justification for state intervention. As a normatively charged field, decisions about child welfare policy are poorly understood if reduced only to bargaining between fixed interests. Following Fischer and Gottweis (2012: 2) I take the policy arguments as the starting point to '*understand the relationship between the empirical and the normative as they are configured in the process of policy argumentation*' and how they combine to shape policy. The analysis covers every occasion when the government and the Norwegian Parliament (the Storting) addressed child welfare adoption for the period 2002-2013, and all publicly available records from these debates are included. By studying arguments and their influence, the analysis will contribute to the policy research that underscores understanding of policy development as a normative project that cannot be reduced to a value-free, technical project.

I start with a short introduction to the Norwegian Child Welfare System and its central principles. Then I explain the theoretical framework that structures the analysis and discussion, followed by methods. I will then present and discuss the findings from the study in three subsections, sorted by type of discourse drawn from Habermas (1996): Pragmatic, Ethical-Political, Moral and Legal. Finally, I will make some concluding remarks.

2. Adoption in the Norwegian Child Welfare System

In an international context the Norwegian child protection system, along with the other Nordic countries, is often tied to a family-service orientation (Gilbert et al., 2011). The approach builds on low thresholds and early intervention with in-home services to support struggling families and help them stay together, and prevent the need for more intrusive action, such as foster care.

Norwegian child protection builds on three fundamental principles. The most important is the principle of "*the child's best interests*", included in the CWA, Section 4-1. The law gives "decisive importance" to the child's best interests over the interests and rights of parents when these diverge. The law gives very little guidance to what the best interests of a child are, but point to three things: '*stable and good contact with adults*', '*continuity in care provided*', and since 2003, the child's right to participate and be heard in matters that relate to their case. In 2018 the child's right to participation and be heard was moved to a new section 1-6 in the introductory chapter to elevate its importance to all aspects of the Child Welfare Act. This did not materially change children's rights to participation. Second, "*the biological principle*" expresses a fundamental social value that children grow up with their parents, and there are strong bonds between children and parents that there is good cause to preserve. This implies that a) The state's responsibility is subsidiary and b) even if children cannot stay with their parents their shared biological ties means that the state should facilitate continued contact (NOU 2012:5). Although the biological principle is not explicitly mentioned in the law, it's legal importance is based on statements in the legislative preparations (Skivenes, 2002). The principle does not distinguish parental and child interests, and it has been argued that when child and parental interests collide the principle mainly protects parental interests (NOU 2012:5: 49)

Third, "*the principle of the mildest intervention*" means that any intervention must be proportionate to the goal. This means that the state limit its intervention to what is necessary. The principle is not explicitly stated in the law, but implicitly expressed for example in Section 4-12 of the CWA where it is stated that even if there are '*serious deficiencies in everyday care*', a care order cannot be made if '*satisfactory conditions*'

can be created for the child through in-home services. The principle is a protection of parental and child rights against excessive state intervention.

In 2012, an expert committee (NOU 2012:5: 15-16) proposed a new principle of "*developmentally supportive attachment*", which it argued should rank above the biological principle. The principle emphasizes secure attachments for children to promote healthy development, and builds on child- and developmental psychology. The principle would imply a reduced emphasis on biological attachments in favour of attachments that support psychological development for decision-making. The principle is not included in law, although it received support in the Storting (Innst. 395 L (2012-2013)).

The language of the CWA does not place a very high threshold on adoption, and there are three main conditions for termination of parental rights and adoption. Section 4-20 of the CWA states that:

> *a) it must be regarded as probable that the parents will be permanently unable to provide the child with proper care or the child has become so attached to persons and the environment where he or she is living that, on the basis of an overall assessment, removing the child may lead to serious problems for him or her and*
> *b) adoption would be in the child's best interests and*
> *c) the adoption applicants have been the child's foster parents and have shown themselves fit to bring up the child as their own*

Importantly, the only people who can adopt a foster child are the child's present foster parents. This is very different to practice in England and the U.S. (Skivenes and Thoburn, 2016). It also means that children being adopted will remain in the family that they are currently residing in, thus being much less intrusive to the child than would be a stranger-adoption.

Adoption places the biological principle and the principle of the mildest intervention in direct conflict with the child's interests in stable care. The Supreme Court (Rt-1997-534) has also stated that weighing these interests against one another is the greatest

challenge in making judgments about adoption. Furthermore, adoption confronts the fundamental legal principle that foster care is temporary and that there should be an intent of reunification, as stated both in legislative preparations (Ot.prp. nr. 44 (1991-1992)) and in ECtHR judgments (see Johansen v. Norway, appl. no. 17383/90).

Adoption as a child welfare measure has never been a major debate in Norwegian child welfare policy. It received little attention in the legislative proceedings to The Child Welfare Act (1992) (CWA) (Skivenes, 2002). Adoption entered Norwegian political discourse after the ECtHR judged that Norway violated Article 8 of the European Convention on Human Rights (ECHR), on the right to respect for family life. The case *Johansen v. Norway* (appl. no. 17383/90) involved the involuntary termination of parental rights and subsequent adoption of an infant. Although Norway is the Nordic country that most frequently uses adoption, they are still rare. The practice was more frequent in the 90s, before the ECtHR-judgment, than in the 2000s (Committee on the Rights of the Child, 1993: para.227). Adoptions dropped from 53 cases in 1995 to 11 by 2007 (Skivenes, 2011), but since 2010 the numbers have climbed and currently number around 50 foster care adoptions per year, this amounts to about 0,6% of the foster care population with a care order (Helland and Skivenes, 2019: 40).

3. Theory

To explore the development in political support for adoption, I turn the spotlight to the content and relationship between different types of arguments and discourse that legislators engaged in during the public legitimization of the policies. Studying the developments of Norwegian politics on adoption over a twelve-year span provides glimpses at what kind of considerations, knowledge, norms and values have been shaping political will on a normatively contested area of public child welfare.

The argumentative turn in policy research includes a wide range of theoretical and methodological approaches, but Fischer and Gottweis (2012: 7) argue that all share the recognition that '*public policy, constructed through language, is the product of*

argumentation'. Accordingly, they see policy making fundamentally as '*an ongoing discursive struggle over definition and conceptual framing of problems, the public understanding of the issues, the shared meanings that motivate policy responses, and criteria for evaluation*'. Importantly, the argumentative approach recognizes the inherent normative nature of all public policy, from its early conceptualization to the public justification of results; and includes tools for analysing the normative foundations of policy. Schmidt (2012: 100) distinguishes between "coordinative" and "communicative" discourses in policy research. Coordinative discourses take place between actors involved in the policy process, where different groups seek to influence the direction and shape of policy. Communicative discourses take place in the political sphere, between political actors and the public engaged in presenting, deliberating, debating, contesting, and legitimising policy ideas. While coordinating discourses take place between policy elites, communicative discourses take place in the public sphere where policy makers are required to legitimise proposals to the public, and where communication may flow top-down and bottom-up. This study examines communicative discourses of how legislators have defended and contested the use of adoption as a child welfare measure to the public. By *arguments,* I refer to how participants in the policy processes express claims, reasons, and objections to justify their position on the issue at hand. By *discourse* I refer to the type of concepts and ideas that circumscribe, influence, and shapes the argumentation (Fischer and Gottweis, 2012: 10).

Habermas' ideas of communicative action (1984) are important influences in the argumentative approach to policy research, and I apply his framework of discourse ethics (1996) to analyse the arguments and the discourses they draw on for justification. Discourse ethics is a normative theoretical framework for rational argumentation that distinguishes different types of normative and factual arguments in relation to corresponding standards of justification. While Habermas' theory includes a strong procedural component (see Bächtiger et al., 2010), I employ the perspective as a theoretical tool for analysing the content of arguments and their corresponding discourse.

Habermas (1996) argues that different types of policy questions require different types of deliberative engagement and standards of justification to be considered rational. Although norms and values are not "true" or "false" in the way facts about the world are, they can be considered "right" or "wrong", "fair" or "unfair", and "legal" or "illegal" *for us*. Justifications are especially important in pluralist democracies because '*once the acceptance of binding political decisions can no longer be based on justifications derived from a substantive world view, or can be expected to be, shared by all citizens, the burden of legitimation finally falls only on what we may expect from the democratic process*' (Habermas, 2005: 386).

Discourse theory distinguishes four types of discourses with corresponding requirements for the justification of arguments, to which the participants in decision-making must adhere in rational deliberation. These types of problems consist of "pragmatic", "ethical-political", "moral", and "legal" discourses.

Pragmatic discourses (Habermas, 1996: 159-160) are concerned with establishing the truth of empirical facts, proscribing appropriate strategies for achieving established goals, and evaluating the most likely consequences of possible choices of action. Justifications are evaluated on the solidity of the presented evidence and if assertions are true or false, sufficiently documented, reliable and realistic. In the analysis, claims to knowledge and beliefs about causal relationships are sorted under pragmatic discourses.

Ethical-political discourses (Habermas, 1996: 160-161) refer to the questions of which policy goals to pursue. Participants are not only concerned with obtaining an appropriate solution to a problem but also emphasize deeply held values about what constitutes a "good life" for us as members of a political fellowship. Justifications require authentic expressions of their proponents' viewpoints, and sincere reflection on what values are being privileged and the reasons why. Ethical-political discourses emphasize values as goals that can be realized through directed effort. They consider who 'we' are and who 'we' ought to be. Given the value pluralist society and normative complexity of child protection, it is not possible to realise all 'good' values simultaneously. What values policy makers choose to place at the front is therefore of

central importance, and their ability to argue *why* may affect the legitimacy of the child welfare system. Questions about the value of biological ties and interpreting the child's best interests are classic examples that require ethical reflection on what constitutes a good life for us collectively.

Moral discourses (Habermas, 1996: 161-162) also address normative questions, but they do not have the goal-oriented nature of the previous discourses. Moral discourses examine how we can regulate common life in the equal interests of all. Moral norms take the form of duties or imperatives that should be obeyed by all in comparable situations, because it claims to be equally good for all. While ethical values prescribe what we ought to strive towards, moral norms claim to be absolutes that must be respected, even in our pursuit of the good life (Habermas, 1996: 255). In the following, I shall consider as moral discourses instances where legislators make claims about fundamental normative rights of children or parents that they argue must be respected in any proposal.

Legal discourses, for Habermas (1996: 167-168), in legislation and policy making concern technical questions of determining fit with the existing corpus of established law, a requirement of coherence. Following Dworkin (1978) I take this to include the interpretation and framing of legal principles. Legal principles concern the more fundamental values from which the empirical valid laws may be assessed (Nilssen, 2007: 25-26). Principles occupy a central place in Norwegian (and international) law (Graver, 2006), and are foundational for the Norwegian CWA. In legal discourses participants consider how to best interpret existing law and harmonize new law with the existing body of law. This includes children's rights as inscribed in the Convention on the Rights of the Child (1989) (UNCRC) and the ECHR (1950), such as rights to protection, family life, and participation. The general character of these legal principles mean that there is substantial room for interpretation and framing, and as such legal discourse includes very much a normative activity of interpreting and framing how we should understand and emphasize existing legal rights and principles.

4. Method

The data for the analysis consists of written government and parliamentary documents, including white papers, legislative proposals, parliamentary committee reports, and minutes from plenary debates in parliament. The study covers all four parliamentary debates on adoption during the twelve-year period 2002-2013, and parliament has not addressed adoption since. To identify relevant debates I searched the publically available records for the ministry of children and equality, and the Storting. All records are available online. I collected supplementary documentation from hearings and reports, not available online, from the government. Prop. 7 L (2009-2010) which introduced Section 4-20 a, open adoption, to the child welfare act was the only one of the four proceedings that changed the law. All four procedures are understood as important instances of policy making and signal political will to how practitioners ought to practice the law.

The study analyses the full set of arguments that parties presented for their position on adoption over the course of the debates. The analysis includes proceedings on open adoption because these were important to how and when adoptions in child welfare can be granted. However, I do not consider arguments about who to include in post-adoption contact, what type of contact to include or how to enforce such contact. The analysis considers all the proceedings as instances of will-formation where political actors, both government and political parties, express their justification for political positions and decisions, in this context both the question of open adoption and promoting more adoptions tell us something about where the state draws the line for legitimate intervention. Further, both governments recognized that including open adoption in law would likely lead to more adoptions (St.meld. nr. 40 (2001-2002); Prop. 7 L (2009-2010)).

The analysis points to several outside sources that influenced the justifications of involved actors, such as expert reports, research, advice from hearings, Supreme Court and ECtHR judgments. I have examined these documents, but in the context of this study, I use them as background to explain how the political actors justified their position, and to show what evidence has influenced the process.

The method is grounded in argumentation theory and the conceptual framework of discourse ethics (Habermas, 1996), and the actors are the governments and political parties that participated in the debates. The central variables of analysis are the arguments of these actors to uncover the types of knowledge, norms and values that inform policy, both explicit and implicit. This contributes to in-depth understanding of the normative foundations of child welfare policies and the role of the state.

The analysis was done in several steps. First, I identified the basic position that each of the actors had toward the debates topic at the different points in time. A second reading, established the most central reasons political parties gave for their position and sorted these according to factual (pragmatic/legal) or normative (ethical/moral) reasons. Importantly this step also traced how parties changed or maintained their reasoning over time. A third reading focused closer on identifying whether the parties offered proof of validity for their claims and reasons, and if so which were these.

I structure the presentation and discussion of findings according to discourses in order to make clear what standards of justification apply. I present a brief overview of the chronology of the adoption debates in the next section. However, in presenting and discussing the arguments I contrast within each discourse how legislators argued and justified their positions at different times.

All source-materials are in Norwegian and the author made all translations. I interpret speakers in the plenary debates as representatives of their party, as party discipline is the norm in Norway, and there are no indications in the record that any parties gave members free votes in any of the debates. Square brackets in quotes contain modifications to the quote to improve clarity, and are not part of the original quote.

5. Developments in Norwegian Adoption Policy

During the period 2002-2013 debates over adoption took place at four different times (see table 1), and covers two different governments. First, the Bondevik-government (2001-2005), a centre-right minority coalition, consisting of the Christian Democratic Party (Krf), the Conservative party (H), and the Liberal Party (V). Second, the

Stoltenberg-government (2005-2013), a centre-left majority coalition consisting of the Labour Party (AP), Socialist Left Party (SV) and the Centre Party (SP). Parliament consisted of seven parties throughout this period. The only party not in government at any point was the Progress Party (Frp).

In a 2002 White Paper on child welfare (St.meld. nr. 40 (2001-2002)) the Bondevik-government raised the issue of introducing open adoption in the Child Welfare Act, following recommendations from the Supreme Court (Rt-1997-534) and an expert committee on child welfare (NOU 2000:12) that it be considered. According to the Supreme Court, open adoptions would prevent the need to weigh benefits of continued contact with biological parents against the benefits of adoption when determining the child's best interests. The government concluded against open adoption, primarily out of a concern that it would lead to an increase in the use of adoptions (St.meld. nr. 40 (2001-2002): 187). SP, Krf, H, and V sided with the government. Only AP and SV argued in favour of open adoption.

In the years 2008-2010, the Stoltenberg-government made two initiatives to promote adoption for children in long-term foster care. First, Ot.prp. nr. 69 (2008-2009), presented an initiative to increase the use of adoption by issuing guidelines to municipal child welfare agencies. Guidelines should the help caseworkers determine whether adoption is in a child's best interests and reduce uncertainty in decision-making. The government's assumption was that guidelines would increase the number of cases forwarded to adoption by the agencies. H, V and Frp opposed the government. However, Krf and SP who previously opposed an increase in adoption now sided with SV and AP arguing in favour of more adoptions. The following year the government proposed to introduce post-adoption contact (open adoption) in the Child Welfare Act (Prop. 7 L (2009-2010)). The government saw the question of open adoption as directly tied to its initiative to promote more adoptions (Prop. 7 L (2009-2010): 15; Ot.prp. nr. 69 (2008-2009): 29). Despite the shared expectation that introducing open adoption would lead to more adoptions, the law passed unanimously in the Storting, and was also supported by the parties critical of any increase in adoptions.

In 2013, the Stoltenberg-government revisited its intent to provide guidelines to promote adoptions in Prop. 106 L (2012-2013) . Its comments on adoption came on the back of an expert report NOU 2012:5 (2012), which had made several recommendations regarding adoption. The report and its recommendations built primarily on psychological theories on attachment and child development. The government again concluded that it would provide guidelines to the municipal child welfare agencies to help decision-making and enable more adoptions. H now joined SV, AP, SP and Krf in support of increasing adoptions. In eleven years, the question of whether to increase adoptions flipped from five against to five in favour (see table 1).

Table 1: Party positions on proposals to promote more adoptions

Government porposal	**St.meld. nr. 40 (2001-2002)**	**Ot.prp. nr. 69 (2008-2009)**	**Prop. 7 L (2009-2010)**	**Prop. 106 L (2012-2013)**
Parliament committee	**Innst. S. nr. 121 (2002-2003)**	**Innst. O. nr. 121 (2008-2009)**	**Innst. 209 L (2009-2010)**	**Innst. 395 L (2012-2013)**
Policy / Legislation	**Open Adoption**	**Adoption Promotion**	**Open Adoption**	**Adoption promotion**
Socialist Left Party (SV)	Yes	Yes*	Yes*	Yes *
Labour Party (AP)	Yes	Yes*	Yes*	Yes *
Centre Party (SP)	No	Yes*	Yes*	Yes *
Christian Democratic Party (KrF)	No*	Yes	Yes	Yes
Conservative Party (H)	No*	No	Yes	Yes
Liberal Party (V)	No*	No	Yes	N/A
Progress Party (FrP)	N/A	No	Yes **	No

* Governing parties

** Subsidiary support

5.1 Legal Discourses

The room for using adoption as a policy instrument is restricted by both national laws and international conventions. Under Norwegian law, the biological principle and the principle of mildest intervention are the most important legal restrictions on adoption. Legislators are also bound to respect the CRC and the ECHR as well as rulings by the ECtHR. Any effort to expand the use of adoptions must therefore take place within the confines of established legal rights of children and parents. It is however interesting to note how differently the two sides in the debates framed the legal restrictions on adoption, especially based in ECHR, and the CRC.

The Bondevik-government argued strongly for giving decisive weight to the biological principle when there was any doubt about the child's best interest in adoption cases (St.meld. nr. 40 (2001-2002)). At the request of parliament in 1996, the government ordered a report on whether the county boards practiced adoption according to legislative intent. For the White Paper (St.meld. nr. 40 (2001-2002)) legal scholar Bendiksen submitted a report to the government which examined termination of parental rights and adoption decisions by the county boards for the years 1994 and 1998 (later published: Bendiksen, 2008). The report laid the foundation for the Bondevik-government's argumentation about the legal centrality of the biological principle and limiting the use of adoption.

First, the report tied the biological principle to quality of legal decision-making. Though the majority of decisions in both 1994 and 1998 were in favour of adoption, there was a drop in the number of cases from 1994 (41 children) to 1998 (17 children). The drop was accompanied by an increased emphasis on the biological principle. The Bondevik-government argued that:

> *In the researcher's opinion all the decisions from 1998 are thorough and given satisfactory treatment, as opposed to the decisions from 1994. The report shows that the 1998-cases call attention to and emphasize the biological principle and the value of visitation between the biological parents and children to a much greater extent compared to the cases from 1994* (St.meld. nr. 40 (2001-2002): 185)

The government considered this development toward a heightened legal focus on the biological principle in decision-making was appropriate and saw the report itself as further contributing to strengthen this focus. The government did not specify what it meant by "*The value of visitation*", nor did it consider what conditions could imply that visitation is valuable as opposed to when it is not valuable or whether children and parents might have attach different value to visitation.

Second, the Bondevik-government saw a strict interpretation of the biological principle as being in line with decisions in the Supreme Court and the ECtHR. Commenting on the reduction of adoption cases between 1994 and 1998 the Government stated:

> *It is not unlikely that the decision against Norway by the ECtHR in 1996 and decisions by the Supreme Court have affected the development. The Decision by the ECtHR has attracted great interest in the expert communities, and there is reason to believe that the decision has led to more awareness around these questions. There is also cause to believe that the discussed research report will lead to further awareness and more discussion around the topic.* (St.meld. nr. 40 (2001-2002): 187)

Especially *Johansen v. Norway* (appl. no. 17383/90) was seen as confirmation of the centrality of the biological principle in the question of adoption. Importantly, the Bondevik-government saw limiting the access to adoption in child welfare as furthering the intent of the ECtHR.

Third, Bondevik-government responded to the call from both the Supreme Court (Rt-1997-534) and an Expert report (NOU 2000:12) to consider introducing open adoptions. Based on the analysis of legal implications of allowing open adoptions (Bendiksen, 2000), the government argued against introducing open adoptions in law. Open adoptions, the report argued, would increase the total number of number of adoptions because it would allow adoptions even when continued contact with biological parents could benefit the child (Bendiksen, 2000: 221-222). The Bondevik-government agreed, and cited the report to conclude:

> *The discussed report argues that adoptions should not be granted in those cases where one considers it good for the child to maintain contact with his or her biological parents. The [government] shares this view and is concerned with identifying the best way to prevent adoption when visitation with biological parents is desirable. [The government] considers guidelines to this effect.* (St.meld. nr. 40 (2001-2002): 187)

Thus, the Bondevik-government was not only concerned with a possible increase in adoptions, it considered measures further restricting the use of adoptions. A majority in the Storting Committee supported the conclusion and added, '*An adoption is final and cannot be dissolved. These members emphasize that the effects of an adoption imply that one should exercise caution with adoption against the will of parents*' (Innst. S. nr. 121 (2002-2003): 42, H, KrF, SP).

Finally, open adoption were considered to undermine the 'adoption institution' because it does not include a full transfer of legal rights and duties to the adoptive parents, as biological parents would retain a right to visitation (St.meld. nr. 40 (2001-2002)). Accordingly, a right to post adoption visitation would be inconsistent with the legal idea of adoption, and would in effect introduce what KrF representative Eriksen dubbed a '*light-version*' of adoption (S.tid. (2002-2003): 1829).

The Stoltenberg-government challenged the legal understanding of the Bondevik-government, and especially its reliance on the biological principle as decisive. Central to this was a reinterpretation of the ECtHR decision in *Johansen v. Norway* (appl. no. 17383/90). While the Bondevik-government saw the decision as placing clear limits on the use of adoption, the Stoltenberg-government argued that the decision did not really refer to the question of adoption, but rather '*termination of parental rights with a view to adopt*' (Ot.prp. nr. 69 (2008-2009): 28). The difference is subtle but important. The Stoltenberg-government argued that the ECtHR really addressed the practice of terminating parental rights (especially for infants) in conjunction with the care order decision. This enables a possible future adoption by the foster parents but severs all contact between child and birth family. According to the ECtHR this practice violated both the child's and parents' right to respect for family life and to attempt reunification

(*Johansen v. Norway*, appl. no. 17383/90: paragraph 78). Accordingly, it was the decision to deny mother contact with her baby following the foster care placement that violated article 8, and not the subsequent adoption, because it prevented mother from ever being able to attempt reunification without proper justification. The government's argument downplays the judgment's relevance for termination of parental rights and adoption cases where the child has already resided in foster care over an extended period, and where reunification is impossible or highly unlikely.

An important Supreme Court judgment on adoption took place in 2007 (Rt-2007-561), which may have provided a window of opportunity for the Stoltenberg-government's effort to promote adoption. In justifying the legal room for promoting more adoptions the government leaned heavily on the recent judgment, which it saw as '*opening for using adoptions in child welfare to a somewhat greater degree than previously*' (Barne- og likestillingsdepartementet, 2008: 39). According to the minister of children and equality: '*We wish to adjust [adoption] practice to align it with the latest Supreme Court verdict*' (O.tid. (2008-2009): 889). The government emphasized three points from the judgment. First, the expert witness believed that generally adoption was preferential to foster care when the placement will be long term and occurs before the child has developed attachments to any biological parent. This gives a legal support for the government's emphasis on research positive to adoption. Second, while the ECtHR has decided that adoption without parental consent requires 'exceptional circumstances', the Supreme Court ruling stated that long-term foster care placements generally occur precisely when the child is in a situation that one would otherwise consider exceptional. Third, the Supreme Court stated there is nothing in the language of the law itself or in Supreme Court precedent that precludes adoption because visitation with biological parents is desirable. The question of visitation is one among many in a total consideration of the child's best interests (Ot.prp. nr. 69 (2008-2009): 28). This goes against the assumption of the Bondevik-government that adoption should be avoided whenever the child might benefit from continued contact with biological parents and weakens the biological principle by placing individual child needs in a broader sense at the centre of the case.

With the exception of FrP, there was no opposition from any parties to the framing of the legal room for adoption by any party. FrP however, have consistently opposed the practice of adoptions from care in any form. In the words of FrP representative Solveig Horne: '*what the Progress Party want to emphasise is that we oppose forced adoptions as a child welfare measure. It is a highly invasive coercive measure and, as I see it, could violate several conventions*' (S.tid. (2009-2010): 2836)

FrP presented these arguments, that adoptions from care violate international conventions, at every debate on adoption:

> *These members are highly critical that one chooses not to abide by the principle of mildest intervention. Adoption is an irreversible action and should be used with caution. These members opine that this could contribute to care orders without attempts at reunification with biological parents. These members view this as a violation of the UNCRC Articles, 7, 8, 9, and 16.* (Innst. O. nr. 121 (2008-2009): 18)

> *These members emphasize that forced adoptions pursuant to the CWA section 4-20 as a child welfare measure is a highly invasive, coercive measure, and could violate the ECHR. These members point to the UNCRC Article 7, which gives the child as far as possible, the right to know and be cared for by his or her parents, and Article 9, which protects the child from separation from his or her biological parents.* (Innst. 395 L (2012-2013): 45)

However, FrP is alone in this interpretation of international conventions. Although other parties may disagree on when adoptions are necessary and legitimate, they all nonetheless accept the basis that in some cases adoption is both legal and in the child's best interests.

5.2 Pragmatic Discourses

Pragmatic arguments about knowledge played only a very small part in the adoption debates under the Bondevik-government. The government recognized research that claimed adoption could have positive effects on child life outcomes (St.meld. nr. 40

(2001-2002): 185-186), and two expert reports (NOU 2000:12: 152; Bendiksen, 2008: 384 ff.) referred to and considered this literature. However, as an argument in favour of adoption the Bondevik-government's did not give it much weight:

> *The [government] considers that based on current knowledge about [open adoption], there is not sufficient grounds to make changes that establishes a right to post-adoption visitation for biological parents* (St.meld. nr. 40 (2001-2002): 186).

As noted, the Bondevik government was mainly concerned with the predicted increase in the number of adoptions that could follow an introduction of open adoption in law. Thus, even if the government did recognize possible benefits of adoption it did not see these as outweighing other concerns.

In contrast, the Stoltenberg-government framed the debate as a question of whether adoption would benefit child development. The research that claimed evidence of positive effects from adoption on life outcomes became central to the government's aim of promoting adoption. The pragmatic arguments for adoption, fronted by the Stoltenberg-government, centre on the claim that adoptions are more likely to produce good childhoods and healthy adults than long-term foster care.

The Stoltenberg-government pointed to '*serious concerns*' from '*various expert groups*' that adoption is used too seldom, and that while the number of adoptions had dropped, the number of children in public care had grown substantially in later years (Barne- og likestillingsdepartementet, 2008: 34). The claim was backed by pointing to overwhelming support for adoption promotion during the hearing, 104 of 107 consultative bodies approved (Ot.prp. nr. 69 (2008-2009): 30-33). As such, there was already considerable support among interest and expert groups for using adoption in more cases, and for issuing guidelines to that effect.

The government continued by arguing that research that comparing adopted children with children in foster care and children of the general population consistently showed better outcomes for adopted children compared to children growing up in care. The government concluded that:

> *There is research that shows adoption can provide a more secure and predictable childhood compared to foster care, because the parents still have access to apply for reunification. The child's uncertainty about the placement duration can have significant impact on their development… foreign studies conclude that early adoption generally gives the best outcome in relation to the child's attachment and its cognitive, emotional, and behavioural development, compared to children placed in foster care or residential care.* (Ot.prp. nr. 69 (2008-2009): 29)

The Stoltenberg-government did not present new knowledge as evidence for the argument, but referred to the report by legal scholar Bendiksen (2008: 384 ff.), used by the Bondevik-government six years earlier, which cited British, American and Nordic studies (see Barne- og likestillingsdepartementet, 2008: 39). There is no indication in the record of the Stoltenberg-government acquiring new knowledge to justify adoptions before the 2009 decision to promote adoptions. What was new was the emphasis the government gave to this research.

This research argument is consistent with the viewpoints of SV and AP since 2003 (Innst. S. nr. 121 (2002-2003): 41), but both SP and Krf shifted their position to support more adoptions in 2009 (Innst. O. nr. 121 (2008-2009): 17-18). As they did so, both parties explicitly embraced the same argumentation about benefits to child development fronted by the Government.

Opponents of adoption promotion rarely addressed the government's claim that research showed adoption to provide significant benefits to children compared to long-term foster care. However, representative Thommessen of the Conservative party did on one occasion question its relevance:

> *The justification provided by the government for its proposal, is that adoption <u>may</u> provide a safer and more predictable framework for childhood than long-term foster care placements. Of course it may, but it is hardly an absolute truth* (O.tid. (2008-2009): 887, H, original emphasis).

Leaving aside the question of what would qualify as an 'absolute truth' in this context the Conservatives were especially critical that the government did not present evidence based on Norwegian data. The government relied mainly on research from the U.S. and England for its knowledge of adoption benefits. The government acknowledged some of these challenges but did not consider in any detail what the contextual differences in child protection systems should mean for adoption in Norway (Ot.prp. nr. 69 (2008-2009): 29). Later, in 2012, an expert report ordered by the Government supported the use of international research, arguing that *'it is unlikely that results from such a wide range of countries should have no relevance for Norwegian conditions'* (NOU 2012:5: 130).

More common than addressing the research provided by the government, parties opposed to increasing adoption argued on their own terms that adoption might harm children. According to FrP: '*Children who are adopted from public care may experience this as highly traumatic later in life'* (Innst. O. nr. 121 (2008-2009): 18, FrP). FrP provided no evidence for this claim but repeated it several times during the debates. Opponents of adoption promotion rarely offered evidence beyond the anecdotal level, as exemplified by Liberal Party representative Grande:

> *I have spoken to several foster children who for virtually no part of their lives have lived with anyone but their foster family, but who still have a hard time turning away from their biological parents, even though they have never been there for them.* (O.tid. (2008-2009): 890, V)

The inability to present evidence beyond anecdotes meant that parties critical of adoption were unable to establish a discourse of knowledge that could contradict the empirical evidence of adoption benefits that was so important to the promoters of more adoption. One exception to the lack of evidence for potential harm of adoption promotion came from KrF and H, who cautioned against taking adoption too far by following the UK. These parties argued that in the UK '*preliminary numbers show that about 20 percent of adoptions of children between 5 and 11 years old, result in the child re-entering public care*' (Innst. 209 L (2009-2010): 9 KrF, H). No reference was provided, but the claim is likely based on the study by Rushton and Dance (2006),

which reports a 23% adoption disruption rate. However, the study is small (99 children) making it vulnerable to selection bias. Further, cherry picking studies does not recognize that there have been several studies of adoption disruption, and that this estimate is among the highest (see Coakley and Berrick, 2008). A recent study which included all children adopted from foster care in England between 2000 and 2011 (36,749 children) placed the disruption rate at 3.2% (Wijedasa and Selwyn, 2017). While it is important to recognize that adopted children do in some cases re-enter public care, this problem is significantly less frequent than claimed by KrF and H.

The Stoltenberg-government also ordered reports to strengthen the knowledge-argument for promoting adoption (Barnevernpanelets rapport, 2011; NOU 2012:5; Skivenes, 2009). However, only the 2009 report by Skivenes on open adoption was submitted before the Storting made its decision.

The expert report on the biological principle (NOU 2012:5) provided a psychological foundation of knowledge. Based on child developmental psychology it argued the importance of secure attachments to child development and was critical of the role that the biological principle had in Norwegian child protection. The expert committee recommended always considering adoption when a child faces long-term placement at an early age (NOU 2012:5, 2012: 133). The report strengthened the Stoltenberg-government's pragmatic research argument for adoption, and the report's general description of adoption benefits was widely supported in the Storting. In 2013, five of the seven parties in parliament jointly stated that:

> *Research demonstrates favourable long-term effects for adopted children compared to children in long-term foster care and children permanently placed in foster care… these studies demonstrate that as adults adoptive children manage as well as children with an ordinary childhood. This is presumably linked to a sense of security in attachment to their family felt by adoptive children. The committee considers stability of care essential for children*. (Innst. 395 L (2012-2013): 44, AP, SV, SP, KrF, H)

This marks the first occasion where the Conservative party also expresses support for promoting more adoptions. While this data cannot tell us why the conservative party

changed its stance, it is interesting to note that support is first recorded in response to the expert report. It could indicate that the Stoltenberg-government was successful in its consistent emphasis on research about individual outcomes, as a way of arguing for more adoptions.

The Stoltenberg-government's child-centric focus is evident in the type of research that it relied on, which is concerned with advancing the child's developmental potential and expected life-outcomes. Knowledge based argumentation, rooted in research evidence, was clearly more important to parties promoting adoption than to the opponents. While adoption promoters sought to establish a clear link between adoption and improved life outcomes, the opponents were never able to establish a discourse that could effectively challenge this view. While adoption can thus be seen as a means to an end for those in favour of performing more adoptions, the reasons for opposing more adoptions do not primarily come from a strong disagreement over what is considered valid knowledge. However, this knowledge discourse did play a large role also in shaping the ethical and moral discourses on adoption.

The expert report's most specific recommendation – to specify time-limits for how long the youngest children could remain in foster care before agencies are required to consider adoption (NOU 2012:5: 133) – was only acknowledged by the government as something for future consideration (Prop. 106 L (2012-2013)). This could imply a reluctance against being too specific and going too far in promoting adoptions, an indication that the topic is still politically controversial.

5.3 Ethical-Political Discourses

Throughout the debates, two major ethical discourses inform the parties' argumentation of a good childhood and family life. First, a 'Family-oriented' discourse that emphasizes shared interests and values of biological and family ties and maintenance of contact. Second, a 'child-oriented' discourse that emphasizes the value of stable care and attachment to psychological caregivers. Importantly, both supporters and opponents of adoption promotion drew arguments from each of the discourses.

However, proponents of adoption promotion tended to emphasize the child-oriented arguments whereas opponents argued in a family-oriented way.

To opponents of increasing use of adoption the prime justification lies in the value of preserving biological ties between child and birth family. V, H, and FrP argued strongly for the shared interests of children and parents in preserving biological ties. V set clear limits on state responsibility, based on ethical considerations of biological ties. The words of representative Grande (V) in the Storting debates are illustrative of several components in the family-oriented discourse:

> *That some are born to parents who do wrong things can never be prevented by political decisions… These children learn to live with it, and that is what we should help them do, teach them to live with it… the biological ties are there no matter what. Children often feel responsible for their parents, even parents who make mistakes. Even parents who cannot be good parents, children feel responsible for and connected with.* (O.tid. (2008-2009): 889, V)

First, this illustrates the axiomatic nature of biological ties to the family-oriented discourse. Biological ties are fundamental and establish permanent bonds between child and parent, and as a society, we ought to preserve these ties. Second, the axiomatic status of biological ties implies clear limits on what the state can and should seek to do for children. Because the child is forever tied to the biological family, severing these ties could risk harming the child. Further, social value of biological ties implies that the state has a duty to protect them. The result is also that children's and biological parents' interests are merged to 'family interests' because both have an inherent interest in preserving the biological ties. Adoption breaks this shared interest. This quote from FrP illustrates the implication of shard bonds to limiting state intervention:

> *[FrP] is very critical of how the [government] chooses to define the role of the public, in terms of what the state may allow itself to do with children in public care. It is important to emphasize that the biological parents always will remain the biological parents* (Innst. O. nr. 121 (2008-2009): 18, FrP)

It is not the role of the state to decide a child's family. Again, the role of biology is axiomatic to the argument. Thus while it may be necessary for the state to place a child in public care, it cannot and should not create new families. FrP's primary position is to abolish adoption, but gave subsidiary support for open adoption because at least it would enable some children to maintain a degree of contact with biological family (S.tid. (2009-2010): 2836, representative Horne (FrP)).

The Conservatives provided a more moderate argument for the importance of the biological ties in the debates about open adoption:

> *The question of a right to knowledge about ones biological parents, biological origin, is a recurring subject when it comes to questions of family and questions tied to children. The Conservatives consider this an important starting point.* (S.tid. (2009-2010): 2837, representative Thommessen (H))

There is little nuance in these statements of the importance of biological ties. It is unclear if – and how – biological ties are understood as different from psychological attachment when it comes to their importance to the child. The underspecified concept of biological ties thus seems to be applicable to groups of children that can be different in crucial ways. To exemplify: a child placed in foster care at birth, and a child placed at five years old, are likely to have very different relationships and attachments to their families. Both have the same biological ties. Do these children share the same interests? There is no evidence in the record of anyone addressing such questions. The lack of attempts at clarifying such questions also means that proponents and opponents may have very different cases in mind when they talk about adoption and talk past each other (deliberately or not).

The 'child-oriented' discourse attacks the biological presumption and builds on the idea that a good childhood requires stable attachments to secure caregivers in order to promote the child's physical, mental and emotional development. What matters for this is the child's psychological attachment to caregivers, not their biological ties. According to Labour representative Olsen:

> *Far too many Norwegian children sorely need a safer life. It is our task to lay the foundation that provides the best possible childhood for as many children as possible… That the child is ensured a stable and predictable childhood must be decisive for the actions provided*. (S.tid. (2009-2010): 2835, AP)

Adoption is justified from an ethical perspective because it is better at securing the child a stable placement than foster care. In this view, stable care is the most central requisite for a good childhood and trumps the necessity for maintaining biological ties. The child-oriented discourse also emphasises the value of belonging to a family that does not rely on biological ties. Centre Party representative Ramsøy argued that many children in long-term foster care:

> f*ace an unstable childhood, maybe in different foster homes, and always uncertainty about contact with biological parents. The question always becomes: How long can one stay in the foster home? Many children will also feel that they do not properly belong to a family*. (S.tid. (2009-2010): 2837-2838, SP)

The representative addresses the value of children's need to '*properly belong to a family*', but does not equate belonging with biological ties. Instead she argues that the stability of care provided by adoption can provide this sense of belonging that foster-care cannot. Instead belonging and family is connected with the caregivers that provide for the child's physical, emotional and developmental needs. The ethical justification is strongly intertwined with the knowledge discourse and argues that if we know that adoption is likely to improve a child's chances in life, compared to long-term foster care, it is in the best interests of children that the government promote more adoptions, even at the expense of biological ties and parental rights. If a child is more likely to form secure attachments to caregivers through adoption than in foster care, then it should also promote a better childhood. As such, adoption in this perspective is a means of realizing important childhood values, including a sense of security and belonging.

This concern with stability was also a central driver for open adoption, as shown in this joint statement by five parties (including the conservatives):

> *The majority emphasizes that the purpose of [open adoption] must always remain to secure the child a stable and predictable childhood with the adoptive parents... that the child may have contact with its origin with absolute certainty that he or she will remain in the care of the adoptive parents*" (Innst. 209 L (2009-2010): 8, AP, H, KrF, SP, SV)

I should emphasize that all parties consider child development and stability of care as essential, where they fundamentally differ is in their view of shared interests. Where the family-orientation presumes a shared interest in maintaining biological ties, the child-orientation consider their benefit to the child. Whether biological ties are worth preserving is, at least in part, dependent on how they affect the child's potential to develop 'normally'. They also differ fundamentally on whether the possible stability benefits of adoption outweigh the costs of severing ties.

Finally, all parties considered fiscal considerations inappropriate in relation to adoption. The government's statement that adoptions would be cost neutral, possibly cost saving (Ot.prp. nr. 69 (2008-2009): 78), was met with condemnation by H, V and FrP who found this statement '*astounding and unfortunate*' (Innst. O. nr. 121 (2008-2009): 18). In the words of FrP representative Woldseth: *'I cannot support such statements. Every child in Norway should feel safe and as far as possible be well, and then money is irrelevant.'* (O.tid. (2008-2009): 885). The government had to reassure that mentioning costs was purely a legal administrative requirement of any proposal, and had absolutely no bearing on the decision to promote adoptions (O.tid. (2008-2009): 889). Most likely, this was a rhetorical argument. It is hard to imagine that legislators are unaware of the government's obligation to account for economic and administrative effects of any proposition. Nonetheless, it is noteworthy there is consensus between both sides of the argument that fiscal concerns are inappropriate to even consider in the context of adoption. Especially considering that child welfare is pressed for resources. This could obviously have been framed as a pragmatic question about how to most effectively prioritize limited public funding. It is instead dismissed on the ethical grounds that we should not consider money when talking about the good of children. However, it is also important to acknowledge that while such fiscal

concerns may work poorly in discourses of public justification, they could be important in coordinating discourses behind closed doors.

The key value difference in the ethical discourses lies in how the parties emphasize the child's individual interests to healthy development, and the child's interests in preserving biological ties to the birth family. The child-oriented discourse is linked with the pragmatic discourse about developmental outcomes, and they inform and reinforce each other to argue that children ought to be brought up in ways that best promote their development to healthy adults. The value of adoption in this aspect is teleological as it is seen to promote good of healthy childhoods and future adults. The family-oriented discourse is based on the inherent value of biological ties. The value of biological ties is justified in separations of state and private responsibility for children, and deeply held social values that children and parents belong together as a fundamental part of the social order (perhaps even the natural order). Even when children and parents cannot live together, their biological ties imply a degree of shared interests. As such, the family-oriented discourse is deeply sceptical about the legitimacy of deep state intervention through adoption, even though its proponent may support long-term foster care.

Open adoptions are a compromise between child-oriented and family-oriented values, where each side is able to offer support but for different reasons. For proponents of adoption it signified a means to secure adoption for children who otherwise would be less likely to be adopted, whereas for parties that do not approve of adoption it seems that an increase in adoptions could be accepted if the child would be allowed to maintain contact with the birth family. A compromise of values, between securing the child a permanent family and maintaining biological ties. Since the Stoltenberg-Government had already decided to pursue increased use of adoption, the fear that open adoptions would lead to more adoptions could also have been of less concern to opponents of adoption, making open adoptions more appealing, but the record cannot confirm this.

5.4 Moral Discourses

Moral norms are deontological and take the form of moral rights that we ought to provide to everyone under equal circumstances. Where the ethical-political discourses questioned how we as a society should best care for children and secure a good childhood and successful transitions to adulthood, the moral discourses question which normative rights we owe to children and parents. While moral arguments were not as prevalent in the debates as pragmatic and ethical arguments, they show the same divide between child-oriented and family-oriented framing that we find in other discourses.

The Progress Party was the strongest advocate for parental rights throughout the debates. In their view, adoption is an injustice to parents, and has no legitimate place in child welfare:

> *To FrP it is still important to maintain an intent of reunification with the biological family. Anyone can change; anyone can get his or her life in order. However, performing a forced adoption is so final that there is no possibility of reunification.* (S.tid. (2009-2010): 2836, representative Horne (FrP))

The argument appeals to moral principles about fairness, to make amends and start anew, or at least to avoid unnecessary punishment. While this leans on the child's right to be cared for by his or her parents, the moral weight is given to parents' right to respect for family life and takes for granted that the child's interests will coincide with parental interests.

While the ethical-political arguments against adoption tend to merge child and parental interests into family interests, the moral rights arguments illustrate how concern for parental rights overshadow the child's perspective. The Bondevik-government stated that:

> *The most important objection [to open adoption] is that [it] may lead to increased number of adoptions under the child welfare act. The [government] does not want this development. Adoption against the will of the biological parents is an exceptionally radical intervention to both child and parents. It will*

> *remain so, even if biological parents in some cases were granted some form of visitation rights*" (St.meld. nr. 40 (2001-2002): 186)

The government here emphasises the '*will of the biological parents*' and frames post-adoption visitation as a *right* bestowed to *parents*. There is no consideration of the child's views on the matter. On the contrary the government was concerned that it would not be able to enforce visitation rights '*if it was sabotaged by the child him- or herself or by the adoptive parents*' (St.meld. nr. 40 (2001-2002): 185). The idea that a child could '*sabotage*' visitation by not wanting to participate further illustrates that the Bondevik-government considered post-adoption contact primarily a right of biological parents rather than the child. It also denies the child agency and a voice in a matter that clearly affects him or herself, a crucial part of children's rights (Convention on the Rights of the Child, 1989: Article 12). The government's rationale was to protect the child from conflicts over visitation between adoptive and biological parents. However, this framing reduces the child to an object of adult interests instead of a subject with his or her own preferences. This paternalistic stance of having to protect the child from active participation was expressed several times as an argument against adoption. Here in the words of Liberal party representative Grande:

> *One could probably find many good examples of cases where it is appropriate to allow foster parents to adopt, but I would like to relieve the child of the responsibility of having to choose between biological parents and foster parents. Having to pick between one's parents is a heavy burden that I do not want forced upon children.* (O.tid. (2008-2009): 889-890)

The idea that it is sometimes in the child's best interests to be protected from participation is not uncommon in Norway (see Parliamentary Ombudsman, 2016). It is, however, an ethical argument about what is good for children that should be considered against a moral and legal question of children's rights to participation in matters that concern them (CRC article 12). The question of how to balance the child's best interests or well-being with the child's right to express their view is complicated, but it would certainly amount to an illegitimate expression of paternalism, and a breach of a right accorded to children to deny the opportunity to express their view

simply by referencing best interests (Archard and Skivenes, 2009). Fenton-Glynn (2014) has argued forcefully that children's voice in adoption proceedings are of particular importance for three reasons: first, one cannot determine the best interests of a child without considering their own views. Second, it has procedural value and shows respect to the child. Success of adoption relies on the child's willingness and desire to integrate with the adoptive family. Third, participation has symbolic value of recognizing the child as a rights-holder. While a final decision may not comply with the child's expressed views any decision about the child's best interests must also consider independently the child's views (Archard and Skivenes, 2009).

However, the debates about open adoption in 2010 showed a more child-centred orientation to right to post-adoption contact. The Stoltenberg-government framed post-adoption contact as a right for the child. While some argued that post-adoption contact could and did take place without court orders, the government argued that '*legal access to adoption with contact is more in accordance with current view of the child as an independent legal subject with independent rights*' (Prop. 7 L (2009-2010): 27). A broad majority in the parliamentary committee, the Socialist Left, Labour, Centre, Christian Democrats and the Conservatives agreed that open adoption should be understood primarily as a right for the child:

> *The Majority emphasizes that the proposal's goal must be to secure the child a stable and predictable childhood with the adoptive parents. The majority also emphasizes that if it is in the child's best interests, this can ensure the child a certain degree of contact with his or her origin. The majority further emphasizes the importance that the child can have contact with his or her biological parents in absolute certainty of remaining with his or her adoptive family.* (Innst. 209 L (2009-2010): 8)

All parties in the committee, with the exception of the progress party, now supported the view of post-adoption contact as a right of the child, not the parents. The same majority also emphasized that the child's opinion or resistance to contact would constitute sufficient reason for the county board to reconsider the decision about post-adoption contact (Innst. 209 L (2009-2010): 11). This emphasizes a degree of self-

determination for the child in the question of contact that was not evident in earlier debates.

The child-oriented arguments emphasized children as autonomous bearers of rights, which also applies to post-adoption contact, a right of the child to have knowledge about his or her biological family. This is a marked shift from how the Bondevik-government framed open adoption, in which post-adoption contact was "granted" to parents. According to representative Barstad of SV:

> *the purpose of these changes is to place contact in a proper framework and secure children's rights… The child is an independent legal subject with independent rights. For this reason, the child's opinion must carry extra weight… Adoption and child welfare is about children's right to a safe childhood, not about biological parents' rights to their own children.* (S.tid. (2009-2010): 2837, SV)

Where the ethical arguments about children's needs is something they deserve to be given because it is good for them, the framing of post-adoption contact as a right to the child implies that it is the child him or herself that should finally determine whether contact actually takes place. This framing of child rights places the child as independent legal subjects with rights of their own, on par with adults.

It is important to emphasize that the child as an autonomous bearer of rights was not a major part of the debates, and it is hard to say how influential this way of thinking was to inform policy, and how much was more an ethical consideration of children's best interests. Arguments about children's desires and opinions were much more pronounced in debates about visitation than in the debates over whether to increase the use of adoption. In the latter, the question of children's participations was mainly reduced to a legal technicality that children always have the right to heard in accordance with their age and maturity, but neither proponents or opponents of adoption argued what role the child's own wishes should have in relation to other considerations about adoption.

6. Concluding Discussion

I have examined Norway gradually shifted to a more active adoption policy by analysing the arguments and justifications provided by the government and political parties in the Storting. The findings from the adoption debates give interesting insight in how Norwegian views on child protection struggles between an emerging child-focused orientation and its emphasis on family-service and biological ties. The contestation between the orientations are evident in the type of knowledge emphasized, the ethical-political values and the way law and legal principles are interpreted and framed. Broadly speaking the adoption debates show a significant shift towards a child-centred approach under the Stoltenberg-government. Importantly, the shift cannot only be attributed to a majority government, as opposition parties also shifted their position during this time.

The analysis uncovers two important developments in argumentation that legitimizes a shift towards a more active adoption policy: First, research-based knowledge and expert discourse on child development has become the central knowledge base framing adoption. This knowledge base places the child and its developmental potential as the central subject of interests. Secure attachment to caregivers and stability for the child are central components to promote development. This child centred knowledge base has been important to shift Norway towards a more active adoption policy.

Second, there is evidence of a normative shift in priorities from addressing the child's interests as part of a family unit towards the child's autonomous interests and aligns with the child-centred knowledge-base. The ethical-political justification is based on the view that children ought to be able to have secure attachments and be safe where they live to develop into healthy adults. If adoptions are superior to foster care at promoting healthy development then the state is justified in pursuing more adoptions in the best interests of children, when reunification is no longer an option. According to this view the state is not just responsible for protecting the child from harm, by placing it in a safe foster home, but ought to actively pursue the best possible conditions for its development, even if this means setting aside the biological principle

through adoption. This line of arguing is very different to an approach where adoptions are a last resort, and where the state's responsibility is to maintain biological ties as far as possible, even when children reside in foster care. This could be seen as a challenge to the family-service orientation, but not necessarily. While the assumption that the state has a responsibility to keep families intact by providing services at an early stage can and should remain, there need be no opposition to thinking primarily about the child's developmental needs when the alternative is growing up in foster care. At the same time, there is missing a serious debate about what constitutes a 'family' for a child who may never have resided with his or her biological parents and whose only point of reference may be the foster parents. Even proponents of adoption focus mainly on the stability benefits to children, but rarely ask the question of what the child sees as his or her family or what the children themselves understand as belonging.

There are signs of less paternalistic, moral discourses on adoption that sees the child as an autonomous legal subject and bearers of rights. According to this perspective children have individual rights on par with adults, and we are obliged to consider the individual child's needs and wants rather than view the child as part of the family. From this rights-discourse adoption is a tool to secure children their rights to a safe childhood and emphasizes that the state's responsibility is to care for the child in the best possible way when families fail in their parental responsibilities. Importantly, this discourse includes an emphasis on the child's own views. While the ethical-political discourse about the 'deserving' child was more pronounced in the debates, both serve the same purpose of isolating the interests of children in long-term care from those of the biological parents. As noted the rights discourse primarily took place during debates about post-adoption contact.

The analysis of arguments and justifications shows that Norway's path to an active adoption policy built on ideas that framed the child's interests and needs as distinct from the family. The biological principle is central to Norwegian Child Welfare policy and practice, but as this analysis shows it is challenged by an emerging child-centred perspective. It is clear that expert discourse about child developmental needs and an

ethics that places the child's interests above parental rights has been central to this development in Norwegian policy on adoption. However, this knowledge discourse is dependent on a normative view of the child as an independent subject, not simply an integrated part of family interests, in order to be effective in shaping policy. The study supports claims by Skivenes (2011) that there are signs of an emerging child-centred orientation in Norway, and offers evidence to how such an orientation is affecting policy. It is possible that this strong emphasis on the child's interests as opposed to family interests is part of the explanation for why Norway currently has had ten adoption cases decided or communicated by the ECtHR since 2015.

The examination of public justifications is an important source to understand why parties have shifted their position on adoption, but I make no claim that it provides the full explanation. I am restricted to what is available in the public documents and cannot rule out bargaining behind closed doors in government coalitions or the Storting committee. Justifications could be window-dressing, as alluded to by the opposition in its reaction to fiscal concerns as an actual reason for increasing adoption. Nor can it make causal claims about special interests that may have affected policy development behind closed doors. It is also important to emphasize that this study makes no causal claims about the effect of these changes in discourse on the actual increase in adoptions since 2010.

However, understanding the normative underpinnings of policy-making (Fischer and Gottweis, 2012; Habermas, 1996), and in social welfare policy in particular (Kildal, 2018) is an important task because it reveals what is often taken for granted, but has important implications for how welfare services and interventions are shaped. This paper is an empirical contribution to this literature on policy studies, by showing how important shifts in discourses that frame the state's normative responsibility for children are central to understand why Norway has taken on a more active adoption policy.

7. References

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Adoption in the child welfare system — A cross-country analysis of child welfare workers' recommendations for or against adoption☆

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ABSTRACT

This paper, through the vignette of a three-year old boy's case, examines how child welfare workers in three countries, Norway, England and the United States (California), decide whether to recommend forced adoption. Legislation and policy recommendations for the termination of parental rights and adoption vary among these three countries, but they all regard permanency for the child as the overarching goal for children in care. We find that a majority of the workers suggest forced adoption, and their main justifications were related to parental behaviour and their failure to fulfil visitation arrangements, followed by arguments about how adoption would provide both permanency and solid attachment for the child. It was Norwegian workers (41%) that decided against forced adoption, and their main objections were the lack of parental consent and the fact that forced adoption is uncommon in Norway. The findings of this study show that the reasoning of child welfare workers clearly reflects the policies and guidelines of their respective countries, which demonstrates the impact of each country's policy instruments. The workers' reasoning also reflects their knowledge of the basic premises for promoting adoption and permanency for children in care. As such, the state power that child welfare workers exercise rests on a rationale that is evidence oriented and extends beyond a mere reflection of policy guidelines and instructions.

1. Introduction

This paper examines how 299 child welfare workers in three countries, England, the U.S. (CA), and Norway, justify their decisions about forced adoption when presented with the same vignette about foster parents wishing to adopt their foster child. All three countries regard permanency for the child as an overarching goal when a child is looked after. However, the Nordic child welfare systems and the Anglo-American child welfare systems have different approaches to the use of forced adoption (Garrett & Sinkkonen, 2003; Gilbert, Parton, & Skivenes, 2011). In England and the U.S., policy programmes and legislation clearly state that if reunification with the biological parents is not possible, then permanency through adoption is the preferred solution (Bartholet, 2009; Berrick, 2011). In Norway, adoption is rare (Grinde, 2005; Skivenes, 2010, 2011). These differences are reflected in the adoption rates in each of the respective countries: seven per 10000 children in USA, four per 10000 in England and one per 100000 children in Norway (Gilbert et al., 2011). This paper examines how child welfare workers mandated to pursue permanency for children but operating within different systems make decisions about forced adoption.

The data consists of the decisions and the reasons why 299 workers in the US (97), England (99) and Norway (103) either support adoption or continued foster care with respect to a vignette of a three-year-old boy, Benjamin. The abridged version of the vignette is that Benjamin has lived with his foster parents since he was five months old. His biological parents were substance abusers and have visitation rights but have never visited the boy. Benjamin's foster parents wish to adopt him, but Benjamin's mother opposes the adoption, whereas his father supports it. Presented with the same case scenario, almost all workers in England (98%) and the US (96%) suggest an adoption, whereas six out of ten workers in Norway recommend adoption. This finding was expected for the English and American workers, but was unexpectedly high for the Norwegian workers.

This paper seeks to explore how workers justify their decisions. We examine their reasoning and evaluate if there are differences between workers and between countries. For example, do workers have different

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opinions regarding permanency or the child's welfare/best interest, and can we identify varying perceptions about the roles of public and private responsibility for children and the state's role in such situations?

Our study is unique in that we have a large number of respondents from three countries that make decisions based on a vignette and give open-ended explanations for those decisions. We have found no studies on decision-making in the child welfare system with respect to forced adoption with a similar design. Thus, this study gives us important insight and knowledge about how child welfare workers within different child welfare systems think about and act on important issues such as forced adoption.

The paper is organised in the following way: we begin with a presentation of what we know about the decision-making rationale of child welfare workers, followed by an outline of the welfare systems of each of the three countries and the basic premises for forced adoption. Thereafter, we describe our method and data, followed by our findings. In the discussion, we address the differences between the countries studied and how workers' justifications for their decisions may shed light on these differences.

2. Theoretical platform and research on the reasoning of child welfare workers

Decision-making in the child welfare system is complex and marked by a high degree of uncertainty (cf. Elster, 1989; Mnookin, 1973; Munro, 2008). In child welfare practice, decisions involve multifaceted normative issues, many types of research knowledge, conflicting legal rights and policy instructions, the unique needs and interests of children and their parents, and the prioritisation of scarce resources, to name a few of the issues that must be considered. Each issue is weighed against the others, evaluated and finalised during the decision-making process. The regulative ideal is, therefore, that the process, not the outcome, defines the quality of a decision. Deliberative theory, as formulated by Habermas (1996) and others, suggests how normative questions and dilemmas can find legitimate solutions through rational discourse when the procedural and content rules of such discourse are fulfilled. The procedural rules refer to the fact that all parties concerned by a decision should be allowed to participate so that all relevant arguments are presented and discussed in an open and free debate (see Alexy, 1989; Eriksen & Weigård, 2003). It follows that the focal points of examination are the arguments and accounts in the decision-making process. The importance of examining how child welfare workers make decisions to further our knowledge of how to improve the quality of decisions is stated in the research (see, for example, Benbenishty, Osmo, & Gold, 2003; Gambrill, 2008; Munro, 2008; Osmo & Rosen, 2002). In this paper, we focus on one important aspect of understanding decision-making, that is, the reasons and justifications workers give for their choices.

Analyses of the rationale for policies (Duffy & Collins, 2010) and examinations of the decisions made by professionals and the courts in child welfare cases are few in Norway (Backe-Hansen, 2001; Grinde, 2003) and internationally. We have found two studies that are of particular interest for our paper. In a paper from 1994, a study of 73 child welfare workers in Israel (Rosen, 1994) analyses workers' use of knowledge in decision-making. A distinction between different categories of knowledge is established. The main conclusion is that this sample of workers underused research-based knowledge and relied on normative assertions (p. 574). In the wake of this study, and the most relevant study for the purposes of this paper, is the comparison of Israeli and Canadian child welfare workers (Benbenishty et al., 2003). A sample of 119 workers gives the rationale behind their risk assessments and decisions in a vignette case. The analysis focuses on the argumentation structure and content of workers' rationales, and shows that workers report that they base their decisions on theory, general knowledge and experience but workers fail to mention values, policy and empirical knowledge. Workers rarely expressed their degree of confidence in their judgements or the reasons why they were valid (p. 144f.). The major difference between the countries was that Israeli workers mentioned 'general knowledge' more often than "theory" and "experience", compared to their Canadian peers. Our aim is to add to this research. In the following section, we outline the country specific policies and legislation regarding adoption in the child welfare system.

3. Policy and system context

Adoption is considered the most effective way of obtaining the security of a stable and permanent family for children who cannot live with their biological parents (see Hollinger, 2002, for a thorough overview of different types of adoption practices). A wealth of research demonstrates the importance of permanency for children (Goldstein, Freud, & Solnit, 1973, cf. Grinde, 2005). Among the Northern European countries, the United States and Canada, the child welfare systems in England and the U.S. most actively use adoption (Gilbert et al., 2011; Thoburn, 2007). Research on the outcome for adopted children in the child welfare system versus children that are in foster care or residential units or reunited with their biological parents, show solidly and convincingly, that adoption gives children the best outcome (Christoffersen, Hammen, Andersen, & Jeldtoft, 2007; Triseliotis, 2002; Vinnerljung & Hjern, 2011). In the Danish meta study published in 2007, examination of available research on adoptions covering a period from 1977 till 2006 from 11 countries, the findings form a strikingly uniform picture. Regardless of whether the focus is on the child's physical or cognitive development, the child's self-esteem or behavioural and emotional problems, adoptive children are managing better compared to their peers who were either reunified with their biological parents, or grew up in residential care or in foster care (Christoffersen et al., 2007, p. 155). Adoptions are also associated with greater stability and continuity in care compared with long-term fostering, particularly if the child is adopted at an early age. Triseliotis (2002) examines the research literature and compares the reported effects of long-term fostering with adoption on six factors (Stability of long-term foster care and adoption, Adjustment, Sense of security and belonging, Personal and social functioning, Subjects' retrospective perceptions, Substitute parents' perspective). He concludes that there are signs that breakdown rates may be diminishing and evening out between foster care and adoptees in some age groups, but maintains in his conclusion that: "*compared with long-term fostering, adoption still provides higher levels of emotional security, a stronger sense of belonging, and a more enduring psychosocial base in life for those who cannot live with their birth families. The main limitation of long-term fostering is its unpredictability and the uncertain and ambiguous position in which the children find themselves.*" (Triseliotis, 2002, p. 31). And, of particular interest for our cross-country study is the Swedish study published in 2011 by Vinnerljung and Hjern, which uses national register data to compare a wide range of long term outcomes for 3951 children who entered the welfare system before age 7 and were either adopted or grew up in long term foster care. After adjusting for birth parental related selection factors and age of entry to out-of-home care they found that adoptees had more favourable outcomes on all factors tested (primary school performance, cognitive tests at military conscription (boys only), educational achievement, and reliance on public welfare at age 25) compared to long-term foster children: "The results from our study indicate that adoption does have stronger compensatory traits over time compared to long term foster care" (p. 1908). It is worth noting that these adoptions are voluntary as Sweden does not allow forced adoptions and that there are no data to explain why some of these children were given up for adoption while others grew up in foster care (Vinnerljung & Hjern, 2011, p. 1908).

This paper compares child welfare practices in societies with different child welfare systems and policies about adoption (cf. Gilbert, 1997; Gilbert et al., 2011). Gilbert (1997) categorised England and the U.S. as 'child protection' systems, which focus on protecting children from risk

and harm. The Nordic countries, including Norway, are 'family service' systems, which focus on needs and therapeutic approaches to helping parents provide for their children. In a later comparative book about child welfare systems (Gilbert et al., 2011), Parton and Berridge (2011) argue that England has been transforming its child welfare system towards a needs-based system, but there are indications that this is being reversed (Parton, 2011).

In both types of child welfare systems, permanency is an overarching goal for children that cannot live with their birth parents. In England and the U.S., adoption is a measure to provide a permanent home for children that cannot be reunited with their birth parents. The United States has explicit guidelines that define how long the child welfare agency should work for reunification and at what time permanent placement should be pursued. If reunification is not possible, then adoption is the next best alternative (Berrick, 2009, p. 53). The child should remain outside of the home for no more than 15 of the preceding 22 months (Bartholet, 1999). Thereafter, adoption is the paramount goal. In this period, the biological parents are entitled to receive help that will enable them to reunite with the child. The main criterion that must be fulfilled is that the child welfare agency must have provided reasonable efforts to help the parents. American legal scholars are critical of the legislation because it contains too many exceptions and gaps that make it possible to circumvent the time limits with the goal of adoption (cf. Bartholet, 1999, 2009).

England also has a policy that involves deadlines, but they are less conclusive. In a case of care order, the case is reviewed one month after the child is moved from the biological parents, and a second assessment is done three months later. After four months, there must be a plan in place to ensure the child's stability and a plan for the parents to regain custody of their child. For example, parents may become part of a binding detoxification programme or participate in anger management therapy. The plans incorporate clear objectives and deadlines. The child welfare agency is required to work intensively with the family before a final decision on placement can be made, but if they do not succeed, then they will put the child up for adoption or foster care. According to the English Public Law Outline 2008 (PLO), adoption processes will begin after 40 weeks, at which point there is a full legal review of the case. At this stage, it will usually be clear how the parents are coping and if services (e.g., rehabilitation or other remedial action) have been effective. In England, it is also possible for foster parents who have had custody of the child for 12 months to require the adoption of the child (Isaacs & Shepherd, 2008, pp. 201).

The Norwegian legislation on adoptions in the child welfare system does not set particular strict restrictions and high thresholds, for the use of adoptions (The Norwegian Child Welfare Act of 1992, 1992 Section § 4–20; Innst. O. No. 80, 1991–92, p. 27, cf. Skivenes, 2009). The law establishes four conditions: (1) there must be a likelihood that the parents will permanently be unable to care for the child properly, or that it would be detrimental to the child to be moved because of attachments formed with foster parents and the environment in which the child resides; (2) adoption must be in the child's best interests; (3) the foster parents must have proven themselves capable of bringing up the child; and (4) the conditions for granting adoption in accordance with the Adoption Act of 1986 must be in place. The legislator was of the opinion that adoption had to be consented to 'in cases where it is better for the child to be adopted than to grow up as a foster child' (Ot. Prp. No. 44, 1991–92, p. 54). It is not evident from the preliminary legislative deliberations that any particular issues beyond those given in the legal text (§ 4–20, points 1–4) ought to be considered, and a unanimous Parliament supported the provision without debate or criticism (Innst. O. No. 80, 1991–92, p. 27). However, although the relevant criteria do not seem to be comparatively strict, adoption with or without parental consent is very rare in Norway (Grinde, 2005), as it is in all of the Nordic countries. In 2007, the Norwegian child welfare service only presented seven cases to the County Social Welfare board (a tribunal) concerning adoption, and, in 2006, they presented 11 cases. Altogether, two-thirds of these cases resulted in adoption (N = 12).

4. Methods and data

This study, which was funded by the Norwegian Research Council, is part of a larger comparative mixed-methods research project on child welfare systems in the United States, England and Norway. We conducted a survey of 304 child welfare workers in public agencies to explore their perceptions of risk, decision-making and knowledge. In Norway, we had 103 respondents, 100 respondents in England and 101 respondents in the U.S. In the survey, we had six vignettes, and we have chosen to report on an adoption vignette in this paper. The online survey was answered from January to May 2008 in Norway, from March to August 2008 in England, and between March and September 2010 in California. The survey took approximately one hour to answer. We recruited study participants by first inviting city councils and/or the head of a child welfare agency to participate. The child welfare agency sent an invitation letter to all workers and supervisors in the defined unit(s) on our behalf. This letter contained detailed information about the research project and stated that participation in this study was voluntary. The letter also discussed the implications for those consenting to participate and stated that participation would occur during non-work hours. Those who wished to participate contacted the principal investigator by email or phone. Workers received an honorarium based on a research reimbursement model that proposes reimbursing participants for their time (Grady, Dickert, Jawetz, Gensler, & Emanuel, 2005). We also followed justice considerations; we wanted all participants in the project to receive the same relative amount, regardless of their country of residence. Workers received NOK 1000 in Norway, GBP 75 in England and USD 150 in California. The honorarium may not only have motivated a broader set of workers to participate, but it may also have skewed the sample towards those who were attracted by the honorarium. However, the samples were representative for their units at the time of data collection.

Many of the participants were experienced caseworkers. Our California sample had the longest mean experience of 12 years, a variance of 40 years and a median of 11 years. In England, the mean was 8 years, with a variance of 35 years and a median of 6 years. In Norway, the mean was 9 years, with a variance of 38 years and median of 8 years. The participants from California were also more highly educated than caseworkers in Norway and England. Eighty-nine percent of the Californian caseworkers in our sample had earned a master's degree, and the remaining 11% held a bachelor's degree. In both England and Norway, fewer than half of the caseworkers sampled held a master's degree (40% in England and 37% in Norway), and the remaining workers held bachelor's degrees or an equivalent college degree. In all three countries, the vast majority of caseworkers sampled were female; England stands out with 21% of the caseworkers being male. In California and Norway, the proportion of male to female workers was only seven and five percent, respectively.

This study has been peer-reviewed as part of the application process for funding from the Norwegian Research Council. It was also reviewed by the office of the Norwegian Privacy Ombudsman for Research, which assesses privacy-related and ethical dimensions of a research project, and by the Research Ethics Committee of the English city where we conducted interviews. In California, our study did not fall within the scope of the rules that the Committee for the Protection of Human Subjects of the Californian Health and Human Services Agency is obligated to review under the Federalwide Assurance (CPHS, 2010 p. 6).

The vignette of Benjamin's adoption is presented as a snapshot in time in which Benjamin, aged three, is wanted for adoption by his foster parents, with whom he has lived since he was five months old. The vignette gives a short description of the case specifics and the background for Benjamin's placement in foster care, his relationship with his biological parents, his development during foster care, and details about his current situation, his biological parents and his foster parents. Benjamin's biological mother refuses adoption, while his

biological father is positive as long as he can retain visitation rights. The workers are asked a series of questions, such as what course of action they would recommend, why they would choose this specific course of action, and what would have had to be different in the case for another course of action to be recommended.

A total of 301 child welfare workers responded to the vignette about Benjamin. Of the participants, 239 stated that they would start preparing for an adoption whereas 30 said they would leave Benjamin with his foster parents but not start preparations for adoption at this time. Eight participants said they would do nothing. For further analysis, the respondents who said they would do nothing were grouped together with those who said they would leave Benjamin in foster care, as these alternatives both result in the same outcome. Twenty-three participants chose "another decision". These participants were then asked an open-ended question to provide an explanation of what this decision would be. Based on an analysis of the answers to this question, 21 of the respondents were assigned to either the group who would prepare for adoption or the group that would leave Benjamin in foster care. The remaining 2 respondents who could not be assigned to either group were then excluded from further analysis. Both respondents who could not be placed were from the American sample. The total number of participants included in the study after the initial round of categorisations and exclusions was N = 299 (Norway N = 103, England N = 99, and the U.S. N = 97).

The case of Benjamin's adoption follows a common type of vignette technique in which fixed-choice responses are combined with open-ended questions (Finch, 1987). A benefit of this approach is that while the fixed-choice responses make it easier to compare the responses in different countries, the open-ended questions leave room for the respondent to define the meaning of the situation and point to the elements that lead to a specific decision (Finch, 1987, p.106).

After providing their recommendations, the respondents were provided with an open-ended question to explain the specifics of the case that led to the decision. Of the 299 respondents, 274 provided an answer. Table 1 shows the distribution of those who answered the open-ended explanatory question. The final question in the vignette asked the workers an additional open-ended question about what would have had to be different about the case for them to have made another decision, and 278 workers provided an answer to this question. Table 2 shows the distribution of the responses.

A limitation of our data relates to the differences in samples across countries, which are due to the specific hiring patterns of the public authorities we sampled and the economic recession, which seemed to affect our Californian study sites most. The groups of workers invited to participate in this study differed in England, Norway and California. This is partly due not only to the organisation of the agencies in the respective countries, but also the fact that in California we only recruited workers from the Emergency Response unit. These differences in cross-country samples may affect how workers answered our questions. However, the Californian workers were not completely different from the English and Norwegian workers because most of them had ample experience working in other roles in other child welfare units, especially as on-going caseworkers. We are aware that the relatively small sample sizes in each country mean that our samples cannot be taken as representative of the general population of child welfare workers in these countries.

Table 1
Distribution, by country, of those who explained their decision.

Recommendation	Norway	England	USA	Total
Stay in foster care	36	2	4	42
	38.3%	2.2%	4.5%	15.3%
Start adoption	58	90	84	232
	61.7%	97.8%	95.5%	84.7%
Total	94	92	88	274
	100%	100%	100%	100%

Table 2
Distribution, by country, of those who explained what factors may have changed their decision.

Recommendation	Norway	England	USA	Total
Stay in foster care	40	2	4	46
	40.8%	2.2%	4.5%	16.5%
Start adoption	58	90	84	232
	59.2%	97.8%	95.5%	83.5%
Total	98	92	88	278
	100%	100%	100%	100%

The case vignettes are based on real cases and have been tested and reviewed by child welfare workers in all three countries. To determine if the vignette cases in the survey were realistic, if they were sufficiently complex, and if the respondents' answers reflected their opinions rather than those of their managers, we asked about 25% of the sample to respond to these issues. The results show that almost all confirmed that they had answered as they themselves would have done, and approximately nine out of ten respondents thought the vignettes were realistic (the rest answered 'I don't know' (5), 'in between' (3) and 'no' (2)). Regarding complexity, one-fifth of the respondents found them less complex than real cases, about three-fifths said they had the same complexity level as real cases and less than one-fifth found them more complex than real cases.

Although the vignette contains only limited information, it was designed to be recognisable to workers in different countries as an approximation of a real-life situation (Barter & Renold, 1999, 2000; Finch, 1987; Soydan, 1996). The survey was translated from back and forth from Norwegian to English to Norwegian again to make sure we had the same version of the questions and vignettes. The aim of the vignettes was to capture the workers' professional assessments of cases. We asked the same questions in each country, and we made an effort to give participants an option to choose open categories, as an alternative to fixed categories, and to allow them to explain their choice. This was to make sure that if they experience the survey form to be rigid, they had an alternative. Although we aimed for a survey that was similar in each country, we are aware that this type of comparison involves challenges regarding conceptual differences, legislative framework and cultural factors that have implications for child welfare. Therefore, the vignette itself does not include any references to national legislations or other specifics that could make it specific to any one country. The vignette contains limited information about the case and allows the child welfare workers to interpret the case according to their own setting. The open-ended questions are therefore of central importance, and it is through these questions that we seek to understand just how the case is interpreted and positioned within the respondents' respective contexts (Barter & Renold, 2000; Finch, 1987; Grinde, 2004). The questions allow the participants in each country room to provide details that relate to the different policies, laws, social norms and institutional practices that may be influential to their decisions. Finally, although one of the strengths of the vignette technique is the reduction of 'social desirability factors' and the avoidance of observer effects (Soydan, 1996; Wilks, 2004), we are aware that what is expressed in the respondents' answers may not necessarily reflect how they would act in a real situation. Respondents may have several reasons for answering in ways that may seem more socially acceptable or more acceptable to the researchers (Barter & Renold, 2000; Finch, 1987; Wilks, 2004). An important caveat is that this study analyses a case of foster parents wishing to adopt their foster child, and as such its results may be of less value for adoption issues in general.

Data files were entered into SPSS. The open answers were entered into Atlas.ti qualitative software. Open coding was used to analyse data for predominant themes. For data analysis, we approached the interview material with an analytical and conceptual strategy (Coffey & Atkinson, 1996) by (1) identifying what accounts child welfare workers gave for their decisions; (2) identifying common themes and patterns in each country, and (3) comparing the themes across countries. Where the

quotations of child welfare workers are presented, they reflect responses that are typical of other workers. We present only themes that are representative of at least 20% of the sample.

5. Findings

Child welfare workers in the three countries examined were asked to give justifications for their recommendation for or against adoption. A majority of workers, 251 out of 299, suggested adoption in this case. However, as expected, there were country differences, and 41% of the Norwegian workers did not suggest adoption. We explore the justifications workers gave for their decision and examine if workers differ in their considerations cross-country. A total of 274 workers gave an explanation for their decision, and 278 explained what factors would have to be present in the case for them to change their decision. Interestingly, workers in these three child welfare systems present rather similar reasons for suggesting an adoption for Benjamin.

5.1. Reasons for adoption

There are eight main justifications that child welfare workers give for suggesting adoption, and we have labelled them as follows: "parental behaviour", "permanency for Benjamin", "Benjamin's attachment to his foster parents", "parents lack of visitation", "Benjamin's needs"; "early placement and young age", "Time, the duration Benjamin has been in foster care", and "Benjamin is wanted by his foster parents". In Table 3, an overview of the major justifications given regarding Benjamin's adoption is provided.

5.1.1. Parental behaviour

Clearly, parental behaviour, as described in the vignette, is the most common justification (68%) for suggesting Benjamin's adoption, and a short explanation from an American worker is illustrative: "*parents inflicting great physical abuse, still using drugs and no visitation*" (P3: 128:128). There are three aspects to the 'parental behaviour' account. First, the biological parents continued substance abuse is a major concern that workers mention, and by this they mean that biological parents have not rehabilitated, have not been able to change their lives, have not used the opportunity and time to access services and have a lifestyle that is detrimental to Benjamin's well being. A second factor is the low probability that the parents will be able to stop misusing substances. A third factor is the abuse that the biological parents inflicted on Benjamin as a baby. For some workers, this factor tells them how the parents might treat the child, and others point to the fact that Benjamin is a vulnerable boy with special needs due to the abuse his parents inflicted on him.

Table 3
Major justifications for deciding to initiate an adoption, cross-country differences marked with yellow (N = 232).

Code	Norway	England	USA (CA)	Total
Parental behaviour	37 63.8 %	55 61.1 %	65 77.4 %	157 67.7 %
Permanency	30 51.7 %	56 62.2 %	43 51.2 %	129 55.6 %
Attachment	33 56.9 %	28 31.1 %	31 36.9 %	92 39.7 %
Visitation	24 41.4 %	36 40.0 %	30 35.7 %	90 38.8 %
Needs	22 37.9 %	33 36.7 %	23 27.4 %	78 33.6 %
Early placement /young age	15 25.9 %	22 24.4 %	29 34.5 %	66 28.4 %
Time	7 12.1 %	24 26.7 %	24 28.6 %	55 23.7 %
Wanted	10 17.2 %	12 13.3 %	27 32.1 %	49 21.1 %

We identify that the majority of American workers (77%) use parental behaviour as a justification versus 64% in Norway and 61% in England.

5.1.2. Permanency

Permanency is the second most common justification. About 56% of the workers gave this reason and included direct statements about permanency and the certainty with which Benjamin can predict his future within this family.

> "*Adoption would achieve permanency, which is in the child's best interests.*" (English worker P2: (82:82))

Sixty-two percent of English workers mentioned permanence, versus about 51% of the Norwegian and American workers.

5.1.3. Attachment

'Attachment' is mentioned by 40% of workers as a justification for adoption, and they emphasise Benjamin's attachment to his foster parents and the emotional bonds that they have established. Some workers also contrast this attachment with the lack of attachment between Benjamin and his biological parents. The following quote from a Norwegian worker illustrates this justification:

> "*The child's attachment to the foster home and his need for predictability, stability and continuity.*" (P1: (10:10))

The Norwegian workers emphasise this reason to a higher degree (57%) than either the English (31%) or American workers (37%).

5.1.4. Visitation

Visitation is mentioned almost as often as attachment, and 39% of workers mention this justification. Visitation includes statements about the biological parents' lack of contact with Benjamin after he was placed in a foster home, and workers find this indicative of their lack of interest in and poor attachment to Benjamin.

> "*Because the parents have not participated in any services to reunify with the child, nor have they exercised their rights to visitation, it appears that the most beneficial scenario for the child would be a permanent, loving home with the foster parents, who have already expressed a willingness to adopt.*" (P3: (136:136))

5.1.5. Needs

Many workers (34%) also mentioned reasons that we have categorised as 'needs', which includes the child's present and future needs and his foster parents' ability to meet them. Also present is the sentiment that Benjamin has special needs because of the harm inflicted on him as a baby.

> "*Benjamin is doing well in his placement, and it appears to meet all of his needs.*" (*English worker* P2: (170:170))

> "*The child is special needs.*" (P3: (16:16))

The cross-country difference for "needs" is that 27% of the American workers mention this versus 38% of the Norwegians and 37% of the English.

5.1.6. Time

About 24% of the workers mention 'time' as a reason for suggesting adoption, and refer to either the eventual rehabilitation of the parents or years that Benjamin has lived with his foster parents. English and American workers note that Benjamin should have been in the process of being adopted long ago, whereas only 12% of the Norwegian workers

mention "time" as a consideration. The following quote from an English worker captures the main sentiments expressed:

> "*Carers who have cared for a child for this length of time can approach the courts for an adoption order.*" (P2: (180:180))

5.1.7. Early placement

Considerations regarding Benjamin's placement in foster care at an early age and his status as a young child are gathered in the category "early placement/young child". Twenty-eight percent of workers provide this as an argument for adoption, and the American workers stress this point more often, 35% compared to 26% and 24% in Norway and England, respectively.

5.1.8. Wanted

Finally, one-fifth of the workers who suggested adoption mention the importance of Benjamin being 'wanted'. In particular, American workers mention that it is important that Benjamin's foster parents wish to adopt him. Thirty-two percent use this argument, a fact that may reflect a higher awareness of the difficulties finding adoptive parents in the U.S.

Overall, the picture that we see emerge is that about half of the sample identifies 'parental behaviour' and 'permanency' as their main reasons for suggesting adoption for Benjamin. Additionally, Norwegian workers regard 'Benjamin's attachment to his foster parents' as a third reason. When we examine co-occurrences of the reasons that workers use to justify their decision, we find that 'parental behaviour' in combination with either permanency (37%) or visitation (36%) exceeds more than a third of all workers. The share of workers who mention both permanency and attachment is 27%, and the co-occurrence is 34% among Norwegian workers. One-fifth of the workers gave three different reasons for their decision. Twenty one percent provided 'parental behaviour', 'visitation' and 'permanency' as the justifications for adoption, while 20% provided 'parental behaviour', 'permanency' and 'attachment'. These triple co-occurrences are strikingly similar in all of the countries studied, and there is a variance of between 19 and 22% in both combinations. To gain a more complete picture of the workers' justifications, we also asked them what elements of the case could have been different to convince them to make an alternate decision.

5.1.9. What could have been different?

When asked about what factors in the case could have been different to convince the workers to choose another decision, the focus shifts to the parents. There are two main justifications that workers in all three countries emphasise, and we have labelled them 'change' and 'visitation'. In addition, one-fifth of the workers mention 'time' as a factor.

First, the code 'change' reflects the parents' willingness and capacity to change their behaviour, and their ability to demonstrate their capacity and desire to be parents to the three-year old. Sixty percent of workers provide 'change' as a condition for considering another decision. Second, and closely related to the change dimension, is the code 'visitation'. Approximately 38% of the workers mention that the parent's fulfilment of the visitation agreement would have been an indication of their interest in Benjamin. The co-occurrence of 'change' and 'visitation' is 32%, which means that over half of the workers who indicated that change is necessary also require that visitations needed to take place. American workers more often stress this combination (38%) than Norwegian and English workers at 28% and 30%, respectively.

A third justification stressed by 22% of the workers is "time", which is indicated by two factors. First, the parents should have made changes at an earlier stage by either entering a drug rehabilitation programme or maintaining a significant period of sobriety. Second, many workers point to the length of time that Benjamin has already spent in foster care and indicate that given this lengthy period, there is little that can be done even if the parents did show signs of change. An interesting difference between the countries is evident, as 27% of the American workers versus 14% of the Norwegian workers stress time as an important factor for making an alternate decision. The following quote from an American worker illustrates what could have been different and confirms the importance of time:

> "*If the parents had been clean and very involved with the child, then maybe they would have a standing to get their child back. However, because so much time has passed, it is by law that the child be given permanency. Thus, he should have already been adopted.*" (P3: (167:167))

A quarter of the workers who stress change also indicated that this change would have had to happen at an earlier point in time. Several workers from the U.S. (17%) and England (20%) state that there is nothing in this case that would have made them change their decision regarding Benjamin's adoption, while only 3% of Norwegian workers indicate this. This point is closely related to those workers who stress that the time that has passed makes it difficult, if not impossible, to consider another decision, and is also related to those that stress that the parents must have shown signs of change at an earlier stage.

What is clear from the above is that given the time frame the vignette describes, the parents' substance abuse and lack of ability and/or will to rehabilitate, together with the lack of visitation and bonding with Benjamin, constitute the main justifications that the sample of workers give for suggesting adoption.

5.2. Why would (Norwegian) workers not recommend an adoption for Benjamin?

Of all the workers surveyed for the study, it is primarily the Norwegian workers that do not recommend Benjamin's adoption (N = 42, 41%). Thus, the following discussion will concentrate on the Norwegian workers and their justifications for keeping Benjamin in foster care. Thirty-six workers explained their decision. There are two primary reasons provided for continuing Benjamin's foster care placement. First, 64% of workers state that the mother's lack of 'consent' is decisive. Second, 44% state that there are policy issues that make initiating an adoption difficult, which include the lack of political support, legal feasibility, and precedent for forced adoptions in Norway. The following quote demonstrated these sentiments:

> "*In Norway, it's not common that children in foster homes are adopted by their foster parents, as, for example, in England. I would not have started proceedings for adoption without consent from the biological mother.*" (P1: (42:42))

Another dimension that we touched upon above is the time factor, as workers worry that parents are not given sufficient time to get back on their feet. Several workers (31%) stated that they would spend time talking to the mother, either to gain her consent for an adoption or to give her another chance at 'becoming a mother' to Benjamin. The following quote illustrates aspects of the need for consent in combination with both policy concerns and a strategy for gaining the mother's consent:

> "*It's important that the mother is heard. One cannot start proceedings for an adoption without the mother after only 2.5 years.*" (P1: (130:130))

5.2.1. What factors may have convinced the workers to support adoption?

Of the 40 workers that provided factors that may have convinced them to support rather than oppose adoption, approximately half of them stated that the mother's consent would have altered their decision. The rest of the workers provided varying accounts of what factors would have to be different. Many did not refer to the option of

adoption but instead gave accounts, similar to those given by workers that supported adoption, for what would have to be different for them to reunify Benjamin with his parents.

6. Discussion

The findings from this vignette study show us that there are many cross-country similarities and some differences in how child welfare workers justify their decisions. In this section, we will discuss some factors that may shed light on the similarities and differences in decision-making processes. Although the majority of workers would suggest adoption in this case about foster parents wishing to adopt their foster child, 41% of workers from Norway would decide against adoption. We believe that the policy differences between the countries examined are the most important factors for understanding this difference. In Norway, there are no timelines or guidelines that "instruct" or direct workers to take steps towards adoption proceedings. Thus, the more surprising finding is that 60% of the Norwegian workers recommended adoption. To better understand this phenomenon, we need to examine the accounts that workers give for and against adoption.

The analysis shows that most workers in the three countries evaluated point to several conditions in the case that defined their decision. The most important factor is the 'parents' behaviour', and we see that workers also state that if the parents' behaviour was to change, then their decision might also change. The second and third most mentioned justifications for adoption are child focused and are about 'permanency' and 'attachment' relations for the three-year-old. The fourth justification for adoption is parents' failure to visit the boy, and if the parents had visited the child, then decision regarding adoption may have been different. The following two reasons workers give for adoption recommendations are clearly child focused: Benjamin's 'needs' and his 'early placement and age'. The two last accounts relate to the time factor, and the fact that the foster parents 'want' to adopt the boy. There are studies about the decision-making processes of child welfare workers, but there are few cross-country studies and none about forced adoption. We see a balance between child-focused and adult focused factoring in the reasoning that we believe reflect the developing child-centrism in modern child welfare systems (Gilbert et al., 2011). The traditional parent-focused approach that these workers displayed also appears in a study by DeRoma, Kessler, McDaniel, and Soto (2006). A sample of 51 American child welfare workers identified the significant factors in placing a child outside of the home. The study asked workers to assess 35 risk/well-being factors and identified two primary factors: parents' boundary settings towards an abuser and parental motives (cf. Christiansen & Anderssen, 2010).

Although there are clear similarities in how the countries view this case, there are also some differences that require examination. The American workers distinguished themselves by putting more emphasis on three factors: 'parental behaviour', the fact that the child is 'wanted' and his 'early placement and young age'. Less emphasis was placed on the child's 'needs'. The English workers distinguished themselves with the issue of 'permanency', and the Norwegian workers put more emphasis on 'attachment', but less on 'time'. We believe that most of these differences are related to system differences, although there are similarities between England and Norway that require additional explanation.

The 'child protection' system, represented by the USA and England (Gilbert et al., 2011), is a system designed to protect children from risk and harm rather than to promote childhood development. As such, it makes sense that American workers are more concerned with parental behaviour than with the child's needs. Further, the strict timelines that the American system uses for children placed outside of the home make the comparatively bigger role of 'early placement and age' more understandable. Finally, the emphasis on the three-year-old being wanted by his foster parents may be due to challenges in recruiting good and stable foster parents in the American foster and adoption system (Berrick & Skivenes, 2012).

The English workers' emphasis on permanency and their agreement with the Norwegian workers regarding 'needs' indicates the turn the English child welfare system has taken from a pure child protection system (cf. Parton, 2009; Parton & Berridge, 2011) to a family service or child-focused orientation (Gilbert et al., 2011). The English Public Law Outline 2008 (PLO) is also explicitly concerned with permanency considerations, and, as such, the English workers are in line with existing guidelines.

The particular focus on 'attachment' among Norwegian workers may be a reflection of the child-centric orientation that characterises the Norwegian child welfare system (Kriz & Skivenes, in press; Skivenes, 2011). The child's attachments are given a lot of weight in questions of removal and reunification, and attachment is an important factor when the child's attachment is to his or her foster parents. The comparatively lower emphasis Norwegian workers put on time may best be understood by the lack of guidelines and policy attention this theme has had in the Norwegian child welfare system.

We believe that the orientation of the Norwegian child welfare system, traditionally focused on family services, sheds light on the finding that 41% of workers do not suggest adoption for Benjamin. The system is set up to provide services to families and is intended to help parents become sustainable again. This is also reflected in the workers' statements suggesting that Norwegian policy does not promote adoption. At the same time, we believe that an emerging child-centric orientation, in combination with professional knowledge about the benefits for adopted children, explains the high number of workers that suggest adoption.

For those that do not recommend adoption, more than half say that their decisions are due to a lack of consent from the biological mother. If the mother had changed her position and given consent, most workers would have considered adoption. In a Norwegian study published in 1998, Christiansen, Havnen and Havik examined 90 child welfare referral case files from four agencies and interviews with 27 case workers and found that when parental cooperation and consent were lacking, even in serious cases, workers showed a strong reluctance to forward the cases to the courts. Bunkholdt and Grinde (2004) found that child welfare workers would use strategic means, and sometimes threats, to gain consent and cooperation from parents when trying to determine whether to place a child in out-of-home care. Bunkholdt (2006) relates this finding to the insecurities workers face when considering whether their decision will stand up in court and their desire to avoid the feeling of defeat after failing to receive the court's approval. Such tactical considerations could also be seen as pragmatic because the court has been very restrictive regarding forced adoption (Skivenes, 2010). Another Norwegian study examined the forced commitment of substance abusers to treatment centres (Lundeberg, Mjåland, Søvig, Nilssen, & Ravneberg, 2010) and generally showed little use of force but nevertheless a marked increase between 2001 and 2009. Our findings agree with the major findings described above. The lack of consent is similar to the general lack of clarity about what constitutes sufficient grounds for a given child protection measure, in our case, the use of forced adoption. The fact that workers are split 60/40 on whether to initiate adoption may be a strong indicator of this lack of clarity. Furthermore, we also find that there is uncertainty regarding the interpretation of the law, and a sense that application of the law is strict, therefore making it difficult to gain court approval for adoption. This strict interpretation may also create strong incentives for workers to attempt to gain parental consent before making a final decision, as indicated by the fact that 31% of Norwegian workers who did not recommend an adoption stated that they would have further conversations with the parents before making a final decision.

7. Conclusion

Forced adoption is one of the most serious interventions the state can enact with respect to a parent and a child. A decisive component for the legitimacy of state power is measured in the quality of justifications

given for an intervention. Our analysis of child welfare workers accounts for recommendations for and against adoption and shows us that the type of child welfare system and its policy guidelines play a major role in the recommendations of frontline child welfare workers. This finding indicates that workers follow the democratically legitimized instructions for interventions, and more so in England and the U.S. However, we also notice that workers have elaborate rationales for their decisions and demonstrate their in-depth knowledge of the reasons for adoption policies and permanency considerations for children that are looked after. The findings indicate that American and English workers have a clearer perception of the role of public and private responsibility for children and the state's role in a long-term placement situation, than their Norwegian peers. However, the political climate in Norway in the last three years suggests a turn towards increased use of adoptions in the child welfare system. In 2009, this was formulated as a political aim (Ot.prp. No. 69, 2008–2009, p. 33–35). While not wanting to change the law guiding adoptions in the child welfare act the government pledged to provide more precise guidelines to aid child welfare workers in making best-interests considerations on adoptions, in order to make it easier to forward cases for individual workers (Ot.prp. No. 69, 2008–2009, p. 34). In addition the government introduced a higher legal threshold for parents to demand reunification (Ot.prp. No. 69, 2008–2009, p. 25). Also, in 2010 Norway introduced open adoptions in child welfare cases (Prop. 7 L, 2009–2010), which is intended to make best interests decisions easier for the courts when the dilemma is between the need for permanency and the child's need for some contact with birth parents. However, in light of the government's previously stated goal of increasing the use of adoptions it should also be seen as a way of making adoptions a more attractive and less severe solution in difficult cases. In addition the two latest reports ordered by the Norwegian Ministry of children, equality and social inclusion, the 2011 "Report of the Child Protection Panel" (p. 47) and the more extensive 2012 Official Norwegian Report — 'NOU, 2012:5' "Better protection of children's development" (p. 133), both recommend that in cases where children are placed at a young age and the placement is expected to be long-term adoption must be considered within specified time-frames and it must be clarified whether or not the foster parents are willing to adopt at time of placement. What will become of these recommendations remains to be seen.

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