

Out-of-Home Placements and Notions of Family in Norway and in France

Aurélie Picot

Oslo and Akershus University College of Applied Sciences
Sosialforsk

Comparative welfare state research has shown that French and Nordic welfare systems provide similar high levels of support legislated for families, but differ in their treatments of the family unit. This article explores notions of family implicit in French and Norwegian child protection laws through a comparison of legal provisions regulating out-of-home placements. Taking as a starting point the concept of filiation bond, which designates the bond between a child and his/her parents, the analysis shows that there are significant differences in how the family is conceptualized in Norway and France. While an individual notion of family is implicit in Norwegian child protection law, the notion of family underpinning French legislation tends to be more collective. The article suggests that these differences may be related to the interplay between different interest groups, and to the disciplines dominating the production of knowledge on which state interventions in the family are based.

Key words: comparison, child protection, family, parent-child relationship, filiation

Introduction

Comparisons of child welfare systems have been object for much research in recent years (Cf for example Achard & Skivenes, 2009; Forsberg & Kröger, 2010; Healy & Oltedal, 2010; Kriz & Skivenes, 2011; Gilbert, 2011; Kojan

& Lonne, 2011). In earlier comparative studies of child protection, both Norwegian and French child protection systems were categorized as "family service oriented systems", as opposed to "child protection systems" (Freymond & Cameron, 2006; Grevot, 2006; Gilbert, 2011; Skivenes, 2011). Family service systems are understood as granting central importance to prevention and family support. This may be linked to the importance given to what in Norway has been called the "biological principle" and in France the "ideology of family bonds" (Skivenes, 2003; Sandberg, 2003; Bloche & Péresse, 2006; NOU 2012). Both entail that children have the right to receive care from their families, and families should be helped to perform their duties. However, in Norway, the family service orientation coexists with a "child focused" orientation, which views the child as an individual with claims on the state, concentrates on the child's developmental needs and emphasizes parents' caring duties (Gilbert, 2011; Skivenes, 2011). At a time when a recent governmental report in Norway recommends subordinating the biological principle to a new principle called "attachment supportive of development" (*utviklingstøttende tilknytning*) (NOU 2012), it is interesting to examine this principle and the understanding of family implicit in this notion.

In researching legal aspects of child protection systems, most studies have been conducted by jurists and political scientists (see, for example, Haugli, 1998/2000; Skivenes, 2003; Sandberg, 2003; Verdier, 2005; Gording Stang, 2007; Bendiksen, 2008). Most often, researchers focus on single countries, with only few exceptions (Ryburn, 1994; Grinde Vogt, 2004). In contrast, this article adopts a comparative perspective drawing on a sociological understanding of the state and the law (Neuman, 2011) to study child protection legislation in the Norwegian and French welfare systems. Following Bourdieu (1986), I assume an approach to laws framing them as documents of a specific genre codifying, objectifying and standardizing social reality: They serve as a source of data about how social problems and solutions are constructed – in this case, out-of-home placements – at particular times and places. Among other things, child protection laws and policy reports express a definition of parental duties and responsibilities in a society, and the state's power to enforce these definitions. In this article, the main focus will be on provisions regulating the parent-child bond when children are in out-of-home placements.

While France and the Nordic countries are similar in many respects in terms of the services and relatively high levels of support legislated for families,

they differ greatly in general policies related to the preservation of the family unit (Hantrais, 2004). The central interrogations of this research relate to the similarities and differences in the legal provisions regulating out-of-home placements, the notions of family implicit in these provisions, and how the differences can be understood. Previous comparative research on child protection focused mostly on variations in the framings of social interventions towards child maltreatment (Khoo 2002, Gilbert 2011), but the variations in the notions of family underpinning legislation remain under investigated. In order to conceptualize the different notions of family and child-parent bonds underpinning the differences observed, I employ Paugam's concept of filiation bond (2008). The filiation bond designates the bond between a child and his/her birth or adoptive parents. This article will show that the filiation bond is understood differently in Norway and in France: Interventions which lead to a breakdown of the filiation bond are conceivable to a higher extent in Norway than in France. Furthermore, I discuss possible explanations for these differences, considering sets of knowledge used in the case of child protection laws to legitimate state interventions as regimes of truth (Foucault 1980). Before embarking on the analysis of the legal principles, I will give a brief description of the methodology and of the main organizational features of child protection systems in both countries.

Methodology

This article is part of a comparative PhD project about the regulation of the filiation bond in the Norwegian and French welfare states. One part of the project includes qualitative interviews of Norwegian and French child welfare workers in relation to their practices of intervention, while another part comprise an analysis of national contexts based mainly on a study of the child protection legislation in Norway and France. In this article, I concentrate on analyzing child protection legislation, particularly regarding out-of-home placements.

The article focuses on legal provisions regulating the conditions for placement (*omsorgsovertakelse*), rights of access (*samvær*), return of the child to his/her family (*tilbakeføring*), and adoption, as these aspects of the law provide indications of the relative importance granted to bonds with birth families as well as new caregivers and the willingness to sever the initial filiation bond in order to create a new one.

In addition to the formal acts, that is the 1992 child welfare Act in Norway and the section on *assistance éducative* of the French civil code¹, the article also focuses on preparatory legislative documents (NOU, 1985:18; Ot. prp. nr. 44, 1991-1992; Lardeux, 2006; Bloche & Péresse, 2006; Péresse, 2006; Lardeux, 2007; Péresse, 2007; Ot. prp. nr. 69, 2008-2009; Prop. 7 L, 2009-2010) and policy reports (Naves, 2000; NOU 2000:12; St. meld. nr. 40, 2001-2002; De Brossia, 2005; NOU, 2009:8; NOU, 2009:21; NOU, 2012:5). It is important to emphasize that this is not a comparative study of child protection laws in a juridical context; instead, these laws are used to provide a background for discovering some of the cross-national differences in legal frameworks, and how those differences relate to distinct notions of the family.

In order to analyze the problem representations that are implicit in the laws, the research on which this article is based relies on a "What is the problem represented to be" (in short, WPR) approach as developed by Bacchi (2009). The WPR approach is a type of policy analysis that views policy as a cultural product. It emphasizes cross-cultural comparison as a central device to uncover how certain problem representations are linked with specific institutional and cultural contexts.

Organization of child protection systems

A brief description of the main organizational features of child protection systems in both countries will be presented here before embarking on the analysis of the legal principles of the two systems.

In Norway, state authorities at the regional level are responsible for placements into foster homes and for the recruitment and training of foster families (Child Welfare Act, Section 2-3), while municipalities are responsible for day-to-day child protection work, including the follow-up of placements (Child Welfare Act, Section 2-1). A state organ at the county level, the County Social Welfare Board, makes decisions about care orders, (*omsorgsovertakelse*, § 4-12), rights of access (*samvær*, § 4-19), depriving parents of responsibility for their children (*fratakelse av foreldreansvaret*) and adoption (§ 4-20). In Norway, care orders are defined as coercive, even when parents give their consent (Gording Stang, 2007: 371).

In France, the children's judge² decides on coercive measures involving educative action in the home (corresponding supervision orders according to

§ 4-4 in the Norwegian Act of 1992) as well as care orders (corresponding care orders according to § 4-12 in the Norwegian Act of 1992). Municipalities in France have no responsibilities or duties in matters regarding child protection, and it is the *département* – a political-territorial level between the municipalities and regions – which is responsible for implementing all coercive measures decided by the children's judge. The *département* also makes decisions about administrative protection, i.e. voluntarily assistive programs at home and voluntary out-of-home care, though the implementation of those measures can be delegated to NGOs. Hence, a central similarity between the two countries regarding the organization of child protection systems – and specifically the responsibility and decision-making authority regarding out-of-home placements – is that they are divided between a judicial and an administrative system.

Furthermore, while a slightly larger proportion of children receive child protection services in Norway (2,59 % of those aged 0-22) than in France (1,79 % of those aged 0-21), the rates of out-of-home placements are similar (0,87 % in Norway, 0,90 % in France, including both voluntarily and coercive placements) (SSB 2010, Borderies, & Trespeux 2012, INSEE 2012). However, the principles and criteria guiding out-of-home placements are notably different.

Different guiding principles

Each country defines explicit principles applying to child protection. These are central norms which frame child protection interventions. As we will see, there are some subtle differences in the content and formulation of those principles.

In Norway, child protection policies rely on three main explicit principles: the best interest of the child (*barnets beste*), inscribed in the child welfare Act (§ 4-1), the principle of least intrusiveness (*minste inngrep*) (NOU, 2000:12) and the biological principle (*biologiske prinsipp*), explicitly mentioned in policy reports (NOU, 2000: 12:5). The French civil Code retains two explicit principles: The child's interest and the maintaining of the child in his environment. In the following I will highlight the main similarities and differences between these two principles and the best interest and least intrusiveness principle in Norway and discuss the absence of a biological principle in France.

Child's interest versus child's best interest

The principle of the child's interest (*intérêt de l'enfant*) used in the article 375-1, 375-5 and 375-7 of the civil Code is distinct from the best interest of the child (*intérêt supérieur de l'enfant*)³. Lebreton (2003) argues that the French civil law resists to the best interest of the child, due to its faithfulness to the republican tradition. Indeed, the best interest is according to him the product of an ultra-individualistic thinking; it contradicts the republican tradition, which emphasizes the general will and hence does not recognize the superiority of any interest.

Maintaining the child in his/her environment

The principle of maintaining the child in his/her environment (*principe de maintien dans le milieu*) (Article 375-2, Civil Code) can be compared with the Norwegian least intrusiveness principle. The law indicates that whenever possible, the child should be maintained in his/her environment. Here the environment refers to the child's primary family. This principle can be related to the broader principle of subsidiarity (*subsidiarité*), which entails that the state can only take the role of the family when the family fails.

The status of biological family

The biological principle entails that children should grow up with their birth families; if they are separated, maintaining contact with their biological parents has a value in itself (NOU 2000:12; Bendiksen, 2008: 164). There is no direct equivalent to the biological principle in French legislation. However, the protection of the family unit is strong: Policy documents often refer to the protection of "the child and his/her family" or to "the child and his/her family's interests". It is interesting to note that the terms "biology" or "biological parent" are not used in a child protection context in France. Birth parents are designated as "the parents", and it is taken for granted that a child can only have one set of parents. Still, critical voices have contended that the nuclear biological family definition is too dominant in the law and that such a definition does not serve the interest of the child (Bloche & Péresse, 2006:5).

Criteria guiding out-of-home placements

This brief comparison of the principles guiding child protection in Norway

and France has shown that although the principles are similar in many ways, there are also significant differences. The following section will develop this comparison further, through a detailed examination of the criteria regulating the implementation of care orders, rights of access, the return of the child, and adoption according to the Norwegian 1992 Child Welfare Act and the French Civil Code.

Criteria for implementing care orders

The criteria for implementing care orders in Norway and France are quite similar. In Norway, these criteria include serious deficiencies in everyday care (*omsorg*), mistreatment and serious abuse, as well as serious risks for the child's health and development (§ 4-12). Similarly, according to the French Civil Code, the criteria for implementing a care order include the presence of a danger to the health, security or morality of the minor, and further, the existence of a serious danger impacting on his/her education⁴ and/or his/her physical, affective, intellectual and social development (Article 375).

It is thus clear that the criteria for out-of-home placements in both countries involve assessments of the seriousness and gravity of harmful factors in the lives of children. Nevertheless, despite the gravity of certain situations, in both countries, laws do not offer the possibility to order permanent placements outside the home. In Norway, care orders have no limit on their duration, but are to be revised on a regular basis or at the request of the parents (§ 4-21). Yet, as we will see, there may be other obstacles to the return of the child. In France, placement decisions by the children's judge are limited to a maximum of two years. The children's judge has to strive to obtain the parents' support, although s/he has to adjudicate ultimately in consideration of the child's interest (Article 375-1 of the civil Code). At the end of the decided period, the case is reexamined in court and a new decision is made – either to extend or end the placement. At any time, however, the parents of the child can submit a request to the judge to revise her/his decision about the placement (Article 375-6).

Regulating rights of access

As for the rights of access, the following picture emerges when comparing the Norwegian and French laws: In both countries, parents and children are entitled to rights of access under the law, but those rights can be restricted or blocked in the interest of the child (Article 375-7; Lardeux, 2005-2006:33,

§4-19; Haugli, 2000). In both cases, the granting of rights of access (*samvær*) reflects a fundamental view that contact with the birth parents is perceived by the state as being of major importance for children not living at home (Haugli, 2000). But while in France, the importance of continuity in relations between children and their birth parents has remained uncontested, in Norway, the emphasis on continuity has been increasingly balanced with a concern with stability.

The preparatory work for the Norwegian Child Welfare Act refers to psychological knowledge about the importance of continuity as a key element in determining the best interest of the child (*barnets beste*) (Ot.prp. nr. 44 1991-1992: 51; Haugli, 2000, § 4-1 Child Welfare Act). In 2000, this point was re-emphasized in a public document also containing references to psychological theories used to point out that the rights of access might become problematic in the cases of youngsters in long-terms foster care (NOU 2000:12: 213). The rights of access end up being perceived as a burden (Haugli 2005), especially when a child is placed in foster-care with a long term perspective, notably because it may impede on the building of attachment bonds with the new carers (NOU 2000:12: 213, St.meld.nr 40, 2001-2002: 168). In such cases, the goal with the rights of access is not to create or maintain the emotional bond with the birth parents, but rather to allow the child to gain knowledge about his/her origins (NOU, 2000:12:211). The recent report by a government commission chaired by the child psychologist Magne Raundalen (*Raundalen utvalget*) suggests that rights of access should be maintained only to the extent that they allow the development of a bond of attachment supportive to the child's development (*utviklingstøttende tilknytning*) (NOU 2012:5:111-112).

Rights of access assume a different role in France: Parents are considered by French child protection policies to be irreplaceable in the upbringing of their children and they are expected to play an active role even when their children are placed outside the family home (Naves, 2000: 66), which requires frequent access to the child. Bloche and Péresse thus argue that a central goal for these placements is to control "the exercise of parental authority without undermining it, by providing help and counseling to the family" (2006: 271). Parents' competencies, no matter how impaired, should be encouraged and supported (Bloche & Péresse, 2006: 332). This means that in France, out-of-home placement is used not only to improve care for the child, but also to rework the relationship between the parents and the child. Still, the children's

judge may suspend temporarily parental rights of access or decide that these rights may only be exercised in the presence of a third person if it is felt that this is in the best interest of the child (article 375-7 of the civil Code).

The return of the child

In both countries, out-of-home care placements (*omsorgsovertakelser*) are understood as being temporary according to the Norwegian Child Welfare Act of 1992 and the French Civil Code (NOU 2000:195; NOU 2012: 114; Civil Code Article 375). In Norway, like in France, child welfare services have the duty to constantly follow up the birth parents of children in out-of-home placements, while also providing them with help and support necessary to enable them to take care of their children in the future (§ 4-16). The County Social Welfare Board has the duty to revoke a care order when it is highly probable that the parents will be able to provide the child with proper care (§ 4-21, Ot. prp. nr. 69 2008-2009). There is, however, an important difference between the two countries which emerges already in the Norwegian 1992 child welfare Act: Article 4-21 states that if the child has become so attached to his new caregivers that the removal may lead to serious problems, the child cannot be returned to his or her family.

It is conceivable that the interpretation of this clause has evolved during recent years. Indeed, while the preparatory work to the 1992 Child Welfare Act underlined that attachment (*tilknytning*) between birth parents and children represented a resource in itself that had to be taken into consideration in decisions involving returning children in care to their families (*tilbakeføring*) (Ot.prp. nr. 44 1991-1992: 55), a decade later, the White Paper no. 40 emphasized children's specific vulnerability and their particular need for a stable and secure care situation in such decisions (St. meld. nr. 40 2001-2002: 33). This reflects an understanding of good contacts with adults as an important element in providing children with equal opportunities for development in out-of-home placements (NOU 2000:12). These obstacles to returning children to their families are suggested reinforced by the recent governmental report by the Raundalen commission (NOU 2012:5:122).

In France, care orders tend to be conceived as temporary to a greater extent than in Norway, as there are no clauses or provisions in the French Civil Code allowing for maintaining placements in cases where children have been attached to their new caregivers. Moreover, the Civil Code does not specify criteria for the return of the child to the family: It only asserts that beyond

the fixed duration, the care order may be renewed by means of a new juridical decision (Article 375). The French civil Code does not grant any legal recognition to the bonds of attachment constructed with other adults, which reflects a distinctive view on family, in which the parent-child relationship is understood as constituted once and for all.

Adoption criteria

In Norway, in particular in situations where the initial child-parent bond is likely to be disrupted or broken due to a long-lasting impairment of parental abilities, both the breaking of the legal bond between children and birth parents as well as the creation of a new filiation bond through adoption are conceived as an option if it is in the child's best interest. This is especially so in cases where it has been determined that such decisions will provide the child with a higher degree of stability and belonging, and in cases where having access to his/her parents is viewed as being of little use to the child (Bendiksen, 2008; NOU 2012:5: 130). Depriving parents of responsibility for their children (*fratakelse av foreldreansvaret*) is one of the conditions required for implementing an adoption (§ 4-20, Bendiksen, 2008), and in cases of adoption, parents and children lose their rights of access (*samvær*). The County Social Welfare Board can decide that limited contacts can be maintained, provided that the adoptive parents give their consent to these (§ 4-20a, Prop. 7 L 2009-2010), and the Ministry of Children and Equality since recently encourages increased use of adoption as a child protection measure (Ot. prp. nr. 69 2008-2009).

In France, children can be adopted without parental consent only in those cases where the child has been declared by the family court to be abandoned, which is defined as the cases where it has been proven that the parents show "manifest disinterest" towards the child (Article 350 of the Civil Code). Parents are considered as having shown disinterest when they do not maintain the contacts necessary for preserving affective bonds during one year (Article 350). Furthermore, the threshold for adoption has long been high, although a recent law proposal replaces the criteria of manifest disinterest by that of parental desertion, which takes into consideration not only contact, but also parental involvement and contribution to the child's upbringing and development (law proposal on deserted childhood and adoption, adopted by the French National Assembly on March 1, 2012). This could contribute to an increased use of adoption as a child protection measure.

Thus, in both countries, adoptions are conceived as a last resort solution. A central difference in the provisions relative to adoption is that in France, unlike in Norway, the status of "the parents" remains uncontested whatever their caring abilities: Indeed, emphasis is put on the parents' degree of involvement rather than on their incompetency.

Differential interpretations of the filiation bond

What can be concluded thus far from this comparison of the treatment of the filiation bond for children placed in care in these two countries? In Norway, stability in care, and attachment bonds, tend to be prioritized over the preservation of bonds with birth families when this is viewed as in the child's best interest. Although the biological principle underlies the provisions regulating out-of-home care, such as rights to access, and conditions for returning children in care to their families, it is not decisive, as a consequence of the paramount status of the best interest of the child (Sandberg, 2003:77). In contrast, in France, the central focus of the law and policy documents is on the involvement of parents. Rights of access are perceived as essential in the task of reworking the parent-child relationship. Furthermore, the attachment of the child to his/her new environment is not a legitimate motive to prevent family reunification. Finally, it is not possible to implement an adoption against parental will unless the child has been declared abandoned.

Based on the examination of the different criteria involved in implementing care orders, regulating rights of access, the return of the child, and adoption, I suggest that the understandings of family and the filiation bond underlying child protection legislations in Norway and in France differ perceptibly. In Norway, there are circumstances where it is deemed acceptable to break a filiation bond, while such interventions lack the necessary legitimacy in France. Before examining in more details how the filiation bond is understood in both countries, I will shortly present Paugam's concept of filiation bond.

According to Paugam, individuals are integrated within a society through a plurality of bonds that offer them material protection and recognition. These include bonds of organic participation⁵, elective participation, citizenship and filiation. According to his understanding, every social bond is defined by two dimensions: protection and recognition (Paugam, 2008)⁶. The filiation bond

– including biological and adoptive filiation – is understood by Paugam as having a socialization function, in addition to acting as a support for identity. The material protection provided to children by this bond may include housing, clothes and hygiene, while recognition involves affective contacts and security. Paugam views insufficient protection and recognition experienced by children who have been mistreated or rejected by their parents as disruptions of the filiation bond (Paugam, 2008). Although he mentions attachment as an important component of the filiation bond, attachment is neither an autonomous basis for filiation nor for parenthood. Furthermore, although like other social bonds, the filiation bond may be disrupted or broken, e.g. by the parents' or child's death, Paugam argues that "the filiation bond is not modifiable, whatever the quality of the relationships" (Paugam 2008: 67). Here, it is unclear whether Paugam intends to mean that this applies universally or to the French society; the concept of filiation bond defined this way seems to fit better to the French case than to the Norwegian case. It can nonetheless help us to shed light on some differences in the legal regulation of the parent-child relationship in the two countries.

The French civil Code puts forth the permanence of juridical bonds between children and their birth or adoptive parents, rather than "juridical acknowledgement" of social and psychological bonds constructed with persons other than the juridical parents. Indeed, underlying the French child protection legislation is a collective concept of family⁷, in which children are viewed as being dependent on the filiation bond for access to welfare. Although children are entitled to protection from harm as future citizens, protection for the child against the hazards of life relies not only on the social rights of citizenship but also on belonging to a family. Furthermore, the family, too, is viewed as in need of protection in a context of a perceived "crisis of the family institution" marked by rising divorce rates and the diversification of family forms with an increasing number of step families. These transformations are conceived as a burden and a probable cause, among others factors, of parental difficulties (Commaille & Martin, 2001). In contrast, the Norwegian legal provisions regulating out-of-home-care are based on an individual concept of family where children are viewed as autonomous individual subjects with rights, and foster parents can be included in the child's family (Skevik, 2003; Bendiksen, 2008; Kjørholt, 2010; Ellingsen, 2011). The emphasis on the psychological aspects of parenthood may lead to deemphasizing the significance of the initial biological and juridical bonds with birth parents for children in care.

Understanding Differences: Knowledge and Power Relations

During the 1980s, in France as in Norway, there was increased emphasis on preserving and strengthening biological bonds in the area of child protection. However, despite this common emphasis on the bonds with the primary family in public discourses, there are major differences between Norway and France regarding provisions regulating rights of access, returning children in care to their families and adoption. As we have seen, those differences reflect distinct understandings of family and the filiation bond.

In this section, I will attempt to explain those differences, relying on a WPR approach. The central goal of a WPR approach is to assess rationalities and techniques of rule in public policies. This assessment relies on a critical examination of problem representations, their underlying assumptions, the origins, the silences, the effects and the supporters of the problem representations (Bacchi 2009: 2). In order to understand differences in the problem representations underlying child protection laws, I will focus on the interplay between interest groups and knowledge-based state interventions in families. According to Foucault (1980), the choice of knowledge by the state is not neutral. The state uses knowledge satisfying two criteria: 1) knowledge must have legitimacy; 2) knowledge must not prevent the state from assuming its functions (Scott, 1998; Hennum, 2010). Thus, in order to understand why a particular form of knowledge has been viewed as legitimate in a given social context, it is also necessary to consider the power relationships at work in the larger environment.

In many ways, Norway and France have followed different paths. During the 1960s, Norwegian child welfare services were criticized for their encroachment of parental rights, but from the 1970s and onward, these criticisms have been muted by emphasis on the conflict of interests between parents and children (Ericsson, 1996). From that point on, parents' rights have been granted less importance than children's rights and interest (*ibid.*). The reference to the biological principle first appeared in the form of an act proposed by the *Sosiallovutvalget* in 1985. According to the Raundalen's commission, it is conceivable that the introduction of the biological principle in preparatory legislative documents at that time has been motivated by a political need for underlining parents' rights (NOU 2012:5:26). The influence of the biological principle culminated in the early years of the twenty-first century with the publication of the Befring commission's report (NOU 2000:12) and the White Paper on Child Welfare in 2002 (St. meld. nr. 40, 2001-2002).

In Norway, psychological knowledge about children, more specifically developmental knowledge, acquired a hegemonic status in the field of child protection and more broadly in the child welfare policies for children (Andenæs, 2006; Hennem, 2010). Today, this knowledge is firmly anchored in Norwegian child protection law and policies (White, 1998; Sandberg, 2003). Attachment theory, as represented by the writings of Bowlby (1951) and Ainsworth (1982) on attachment and Main's theories on disorganized attachment (Main, 1995), features prominently in governmental reports and related documents (NOU 2009:8; NOU 2012:5). As a consequence of the dominance of such psychological understandings, children subject to out-of-home placement are framed in governmental reports and legislation as somehow detached from their socioeconomic environments, and, this way, class-related issues are effectively silenced (Kojan & Marthinsen, 2012).

In attempts to resist these understandings, some parents of children in care have joined together, primarily in internet forums, to express their views in such organizations as GFSR (*Gruppen til Familien Selvstendig Rett*), *Redd Våre Barn* and *barnasrett.no*. Even so, it seems that these groups have little support from civil society. The fact that the scope of social inequalities and poverty has been rather limited in Norwegian society compared to France or England, may help explain why it has been more difficult for deprived parents in Norway to gain significant voice, visibility and influence. Furthermore, several researchers have remarked that social workers in Norway often deny or understate the impact of poverty among the parents of children in care, and emphasize instead moral and psychological explanations for family disorders (Vagli, 2009; Andenæs, 2004; Ericsson, 1996).

An additional factor is represented by groups such as *Landforening for Barnevernsbarn*, which was organized in 1997 by those who were previously in care (Gording Stang, 2007). This and related organizations comprised mainly of former child and adolescent clients of the child welfare system have gained visibility in the media, which has further amplified these groups' claims that child protection services either came too late in their lives or failed to protect or hear them (ibid). The efforts by these groups and the publicity they have generated may have contributed to reduce the legitimacy of the claims of parents whose children have been placed in out-of-home care.

In France as well, the 1960s and 1970s represented a turning point in the history of out-of-home placements. At earlier times, such placements entailed severing of bonds with birth parents whose places in their children's lives were

then often forgotten. But in the late 1960s, bonds between children in care and their birth families began to be progressively taken into account (Cadoret, 1995). Moreover, the report authored by Bianco and Lamy in 1980 represented a central step in asserting that children as far as possible should stay with their families (Eloi 2007). While psychological knowledge in the form of attachment theory has not been as widely diffused among professionals (Savard, 2010), sociological knowledge has been very influential in the area of social assistance and child protection policies in France compared to Norway. Much research carried out by social scientists in France has focused on the social control of families, especially by the state (Donzelot 1977, Verdès-Leroux 1978), as well as on processes socially disqualifying social assistance recipients (Paugam 1991). These findings have documented many of the negative effects of social intervention on individuals and families. The sociological knowledge these and other investigators have produced has made a considerable impact on professionals working in child protection and social services, making it difficult for some social workers to assume their duty of monitoring families (Serre, 2009). Paugam describes the impact of the criticisms addressed by Foucauldian intellectuals to social workers as "a traumatism of the profession"⁸. Teachers of the schools of social work have played a central role in the diffusion of such knowledge among their students (Serre 2009).

Starting in the 1990s, the discovery of new forms of poverty, marginalization and social exclusion has directed public and policy attention in France to family and community bonds, with family being increasingly viewed as protection against social exclusion (Commaille & Martin, 2001). Furthermore, organizations of parents with children in out-of-home care have emerged in France, such as *Le Fil d'Ariane*, and their claims have been supported by family organizations such as the National Union of Family Associations and various NGOs sponsoring anti-poverty programs (Verdier, 2005). One organization, ATD Quart Monde, documented the impact of poverty and precarious living conditions on placement decisions which led the Ministry of Social Affairs and the Ministry of Justice to ask their inspectors to conduct investigations of these areas (Grevot, 2006). This led to the publication in 2000 of a report by Naves and Cathala (2000). Its authors stressed the need to understand placement in out-of-home care as a "temporary separation in the frame of a social and educative strategy elaborated in discussion with parents" (Naves, 2000:72). Finally, it should be

noted that in contrast to Norway, there is no equivalent in France of organizations among those formerly in care and, as a consequence, children's voices are mostly invisible in the public debate.

Thus, when considering the social and political contexts for child protection in Norway and France, one should take into account the interplay between knowledge packages and interest groups, which themselves relate to different notions of family. Child protection in Norway is characterized by emphasis on conflicts of interests between parents and children, on listening to children's voices and by the weight given to developmental psychological knowledge. These factors may be seen as both underpinned by – and underpinning – an individual notion of the family, while in France, emphasis on sociological knowledge, discourses about social exclusion, and organizations of parents separated from their children tend to favor, and are reinforced by, a collective notion of family.

Conclusion

This article has shown that although in both Norway and in France, the filiation bond appears to be a central issue in the determination of the child's interest, the meaning of and the weight given to the filiation bond varies noticeably between the two countries. In Norway, the weight given to the biological principle is now counterbalanced by another principle giving priority to secure and stable attachment as a condition for the child's development (*utviklingsstøttende tilknytning*). Here, individual children are viewed much more as autonomous individuals with claims on the state than in France, and the bond of citizenship plays a central role in the protection of children in out-of-home care: In Norway, therefore, the state tends to act as a substitute of birth families. In this way, the child's dependency is masked, but it cannot be totally blocked out. Rather, the child's dependency on parents is replaced by a dependency on the state and the law.

In contrast, the responsibilities for child protection in France are shared between parents and the state. Child protection interventions attempt to articulate citizenship and filiation by promoting coeducation and involving parents of children in care in the life of their child. The type of knowledge produced by the state and the nature of the power relations conceivably account for these differences.

These conclusions are based mainly on an analysis of legal provisions regulating the filiation bond when children are in out-of-home care. However, because child protection work is not entirely guided by law and procedures, discrepancies between the law and its implementation can arise (Weyland, 1997). As researchers in Norway and the United Kingdom have shown, criteria for interventions in child protection are also based on moral judgments which are necessary to get the work done (Vagli, 2009; Parton, 1997). Thus, professional norms and values influence the content given to legal rules implemented into practice. Consequently, giving an exhaustive picture of the legal regulation of the parent-child relationship requires other sources of data yielded by observations, interviews and analyses of case documents.

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Notes

1. Norwegian Child Welfare Act 1992, § 4-1, § 4-12, § 4-16, § 4-19, § 4-20, § 4-20a, § 4-21 and the French Civil Code recently modified in 2007, articles 350, 375, 375-1, 375-2, 375-3, 375-4, 375-5, 375-6, 375-7, 375-8, 378, 378-1. The 2007 Act reforming child protection modified several articles of the civil code.
2. In France, the children's judge, an agent of the state, is responsible for the protection of endangered minors as well as the repression of delinquent minors.
3. The term best interest of the child (*intérêt supérieur de l'enfant*) is used in the French Code of Social Action and Families, which regulates administrative (child) protection, but, according to Lebreton, even when the French law uses the notion "best interest of the child", the child's interest is not placed in a position of superiority with regard to other legitimate interests.
4. The official translation of the civil code retains the term education. However, it is important to underline that the French term *éducation* is neither restricted to school education nor to moral education (*oppdragelse*), but covers broader aspects of parenting.
5. The term "bond of organic participation" (*lien de participation organique*) designates the learning and exercise of a given function within the division of labor.
6. Paugam borrowed the notion of protection from Durkheim to refer to material support, including physical care (Durkheim, [1897] 2007; Paugam, 2008). In addition, Paugam uses the concept of recognition, first developed by Honneth (2002), to designate "the social interaction that supports the individual by offering him/her the proof of his/her existence and value in the eye of others" (Paugam, 2008: 63).

7. The distinction between individual and collective concept of family is borrowed from Skevik (2003).
8. Personal communication. Additionally, a study of the diffusion of *La disqualification sociale* conducted by the publisher uncovered that this book has also been broadly diffused in schools of social work.

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Sammendrag

Ifølge komparativ velferdsforskning kjennetegnes både den franske og de nordiske velferdsstatene av høy grad av lovfestet støtte til familier, men statene behandler familien som enhet på ulike måter. I denne artikkelen utforskes implisitte forståelser av familien i lovverk som regulerer omsorgsovertakelse i

Frankrike og i Norge. Teoretisk tar artikkelen utgangspunkt i Paugams begrep *filiation bond*, som referer til slektskapsbåndet mellom barn og deres foreldre. Analysen viser at mens en individuell forståelse av familien understøtter den norske barnevernsloven, ligger en kollektiv forståelse av familien til grunn for den franske. Artikkelen konkluderer med at disse forskjellene kan forstås i lys av samspillet mellom ulike interessegrupper, og ulike fagdisipliners posisjon i utviklingen av barnevernets kunnskapsgrunnlag.

Nøkkelord: sammenligning, barnevern, familie, foreldre-barn-relasjon, slektskapsbånd