



Pathways to permanence in England and Norway: A critical analysis of documents and data

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ABSTRACT

The English language term 'permanence' is increasingly used in high income countries as a 'short-hand' translation for a complex set of aims around providing stability and family membership for children who need child welfare services and out-of-home care. From a scrutiny of legislative provisions, court judgments, government documents and a public opinion survey on child placement options, the paper draws out similarities and differences in understandings of the place of 'permanence' within the child welfare discourse in Norway and England. The main differences are that in England the components of permanence are explicitly set out in legislation, statutory guidance and advisory documents whilst in Norway the terms 'stability' and 'continuity' are used in a more limited number of policy documents in the context of a wide array of services available for children and families. The paper then draws on these sources, and on administrative data on children in care, to tease out possible explanations for the similarities and differences identified. We hypothesise that both long-standing policies and recent changes can be explained by differences in public and political understandings of child welfare and the balance between universal services and those targeted on parents and children identified as vulnerable and in need of specialist services.

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1. Introduction

Child welfare policy makers and practitioners in most high income countries increasingly share the view that an important aim for children who need out-of-home care and are unable to return to their birth parent/s is for them to become members of alternative families (Fernandez & Barth, 2010; Gilbert, Parton, & Skivenes, 2011; Petrie, Boddy, Cameron, Wigfall, & Simon, 2006). Attitudes differ, however, with respect to how they should be enabled to retain meaningful links with their birth families, and to the range of 'permanence options' that should be available. Taking a lead from the USA (Maluccio, Fein, & Olmstead, 1986; Rowe & Lambert, 1973), in all four UK nations the resultant permanence policies and practices to achieve a sense of permanence for children and their families have been part of the child welfare discourse since the 1980s. In Norway, 'stability' was an aim of the 1992 Child Welfare Act, but permanence outside the birth family was less evident in policy statements there until the early 2000s. Although still having much in common with the other Nordic countries, it has recently adopted policies and entered a discourse on permanence that bring it

closer to the UK and USA and slightly distance it from the other Nordic countries. In this paper we examine the reasoning behind permanence policies and their manifestation in current legislation and recent policy statements in England and Norway, and explore some evidence of public opinion about permanency options for children in care. Judicial decisions are touched on but will be explored in detail in a subsequent paper.

England and Norway are selected because the child welfare legislation of each is closely based on the UNHCR and each has its own version of a 'needs based' welfare state. They make for an interesting comparison because there are differences as well as similarities in the way in which each country has sought to operationalize the principles enshrined in the Convention. The differences between Nordic countries and UK nations are often pointed to, especially with respect to the use of adoption from care as a 'permanence' option. However, as we shall show in this paper, a growing emphasis on children's rights in Norway has led to a degree of questioning of the dominance of the family preservation principles that have traditionally informed policy and practice there. In England there have also been moves towards a more diversified understanding of the alternative routes to permanence for children of different ages and with differing needs, as explored in *The Care Inquiry* (2015). Although other commentators on comparative child welfare policies, including the authors of this paper, have included

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Norway and England in their work (Gilbert et al., 2011; Thoburn, Robinson, & Anderson, 2012) this paper provides a further contribution by exploring 'permanence policies' in more detail.

2. Differences and similarities in child welfare systems

In both Norway and England, up-dated legislation around the time of the 1989 UNCRC requires assistance (including out-of-home care) to be provided to vulnerable children and their families. The basic presumption in both countries is that universally available child welfare services, supplemented by a range of specialist 'targeted' social work-led services, should provide assistance and support to prevent more serious harm, and thus prevent the need for out-of-home placements. However, when decision-making and practice on the ground are observed, the two countries have developed different child welfare systems.

In the literature on state welfare provision, Norway along with the other Nordic countries, is representative of a typical 'family service system' (Esping-Andersen, 1990; Gilbert et al., 2011), in that legislation and practice aim to promote a healthy childhood and seek to prevent serious risk of harm through the provision of services to the family and the child, based on the therapeutic idea of people's ability to improve their lifestyle and behavior with the help of early intervention (Gilbert et al., 2011). The threshold for access to family support services in order to assist and support children in their own homes is low. The Norwegian child welfare system is surrounded by a generous welfare state with universal public service provision, in particular available to children and families, including heavily subsidized day care for children age 1–6 years old and a year's paternity or maternity leave (Berrick & Skivenes, 2013).

Although the England and Wales Children Act 1989 also requires services to be provided 'as of right' to children assessed as 'in need' and their families, in practice the English child welfare system has become progressively more restrictive (Gilbert et al., 2009, 2011; Stafford, Parton, Vincent, & Smith, 2011; Thoburn, 2013). This tension between the mandate to provide a range of supportive services to children and their families who are struggling with adversities (most clearly illustrated by the English *Common Assessment Framework* (Department of Health, 2000)) and a high threshold for the provision of social work services has resulted in a more 'child protection' or 'child rescue' orientation of service providers (Parton & Berridge, 2011). Here the emphasis on community solidarity is less in evidence compared to the social democratic model, and the universally available child and family services are less generous.

Despite these differences, there is more overlap between the principles, theoretical approaches and direct practice underpinning the child welfare systems in the two countries than might seem apparent from the comparative literature. Norwegian legislation was influenced by the English Children Act of 1989 (Skivenes, 2002): legislation in both countries stresses the 'best interest' of the child and the paramountcy of the child's wellbeing, family preservation, stability, and safety.

Legislation and policy documents also mention the principles of least intrusion, and of the formal child welfare and statutory social work systems only having the secondary responsibility for children when compared to that of the family (Children Act, 1989; Department for Health, 2000; Skivenes, 2011). Additionally, in each country, as in the majority of welfare systems in high income countries, and in keeping with the principles of the UNCRC, there has been an increased emphasis on children's rights and children's agency (Gilbert et al., 2011). However, when professional and judicial decision-making in individual cases is examined, it can be observed that the emphasis placed on these (sometimes competing) child welfare principles differs (Berrick, Peckover, Pösö, & Skivenes, 2015; Križ & Skivenes, 2014). The scope for interpretation about what course of action will be 'in the child's best interest' leaves space for courts, child welfare practitioners, and indeed whole countries, to determine the balance between these commonly accepted

principles (Skivenes & Pösö, in press). It is argued in this paper that differences in welfare state and child welfare system orientations are to be observed in the way in which permanence policies are understood and acted upon in individual cases in these two countries.

3. The 'permanency' framework in Norway and England

In the context of the family service orientation of the Norwegian child welfare system, three principles are prevalent: the first is the child's best interest, the second, which has a high profile, is family preservation, and the third is permanency for the child (Skivenes, 2011). The best interest of the child is a principle that has a strong standing in Norway and has gained more strength with the more child centrist steam of thinking over the past ten years (Skivenes & Søvig, in press). Despite the fact that the principle of family preservation has had a long historical legacy in Norway and remains significant at present, there are not many explicit statements in policy documents about how family preservation is to be balanced with the child's best interest. Permanency, which is the focus of this paper, is another principle that has also had a strong tradition in the Norwegian child welfare system; it is emphasized in the *Child Welfare Act (NCWA), 1992* in the paragraph on the child's best interest. The terms 'stable' and 'continuity' are used and not 'permanence' as favored in UK guidance:

'When applying the provisions of this chapter, decisive importance shall be attached to finding measures which are in the child's best interests. This includes attaching importance to giving the child stable and good contact with adults and continuity in the care provided. The child shall be given the opportunity to participate and steps shall be taken to facilitate interviews with the child. Children who have been taken into care by the child welfare service may be given the opportunity to be accompanied by a person whom the child particularly trusts. The Ministry may make further regulations regarding participation and regarding the duties and function of persons of trust.' (the Norwegian *Child Welfare Act, 1992*, Section 4-1).

The interpretation of the permanency principle has traditionally been related to the family preservation principle and therefore has both encouraged in-home services to secure permanency in the original family as well as a strong symbolic emphasize on the importance of reunification for children that are in care (Skivenes, 2002). However, a tension is built into the legislation as there is also a duty to consider the need for stability for children that have stayed in care for some time. The rule of thumb has been that if a child has lived with foster parents for around two years this would be considered as a stability consideration in favor of the child remaining in care (Ofstad & Skar, 2009; cf. also the *NCWA, 1992* section 4-8(3), and 4-21). The majority of children in care are placed in foster homes, many of which are long-term, and children should only be moved if this is unavoidable, or a planned move is agreed to be in their best interests (cf. the *NCWA, 1992*, section 4-17).

In both Norway and England an adoption order can be made with respect to children whose entry to care results from parental abuse or neglect. Such an order permanently severs the legal connection between the birth parents and the child by transferring all parental rights and duties to the adoptive parent/s. Although there may be an agreement about continuing face to face or indirect links between birth family and child (and in England especially a fairly large proportion of adoptions from care are more or less 'open'), once an adoption order has been made, it is in the hands of the adopters as to whether they adhere to such agreements. However, in Norway adoption has traditionally not been much used as a placement option for children in care, and only rarely after the European Court of Human Rights (ECtHR) judgment in 1996 concluded that the Norwegian state had violated article 8 in the Human Right Convention when terminating a mother's parental rights in an adoption case (Johansen v. Norway, 1996, appl. no. 17383/90).

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