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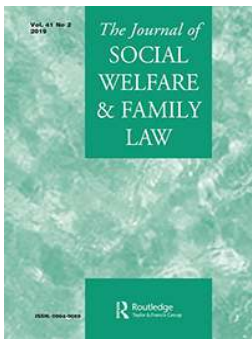
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GENERAL SECTION



Children's and parents' involvement in care order proceedings: a cross-national comparison of judicial decision-makers' views and experiences

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ABSTRACT

This paper presents the views of judicial decision-makers (n = 1794) in four child protection jurisdictions (England, Finland, Norway, and the USA (California)), about whether parents and children are provided with appropriate opportunities to participate in proceedings in their countries. Overall, the study found a high degree of agreement within and between the countries as regards the important conditions for parents' and children's involvement, although the four systems themselves are very different. There was less agreement about children's involvement than parents', and the court decision-makers from Norway and Finland were more likely to express doubts about this. Nevertheless, the main message from the judicial decision-makers is that they are relatively satisfied as to how parents' and children's involvement is handled in their countries. Whether or not this confidence is justified, the emphasis on achieving effective involvement of children and parents in court proceedings is likely to grow, with major implications for the workers, decision-makers and agencies involved.

KEYWORDS

Children's and parents' participation; cross-country study; judicial decision-makers

Introduction

When child protection cases come before the courts, the requirements of justice and children's welfare make it imperative that there are suitable opportunities for children and parents to be heard. The stakes are high. Care order proceedings may result in the involuntary separation of children and parents (temporarily or sometimes permanently), extensive monitoring and oversight of the family, or case dismissal where the family is free from government intervention entirely. Parents' and children's views provide important information to decision-makers. More important, in most nations it is considered a moral obligation and a legal right to involve parents and children – directly or indirectly – in child protection cases. In spite of the aspirations for child and parent involvement, however, issues of court efficiency, limitations on time, and the protection of the child's welfare, may

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constrain opportunities to elicit the concerned parties' wishes and feelings. Their views also are typically not determinative. The interests and opinions of children and their parents have to be considered in the context of the child's interests or welfare (Archard & Skivenes, 2009) and the thresholds of the specific child protection system.

Involving parents and children in the court process of child protection is hardly straightforward. In particular, children may lack the necessary competence and sufficient maturity to participate in decision processes (Archard & Skivenes, 2009, Gal and Duramy 2015, Lens 2016). Research on involvement of children and parents in child protection shows mixed results, and not surprisingly children's involvement is still a challenge (Morag *et al.* 2012, Gal and Duramy 2015, Lens 2016, Liefgaard 2016), even in systems that typically would be described as child-centric (Magnussen and Skivenes 2015, Enroos *et al.* 2017, Pösö and Enroos 2017).

In the study reported in this paper, we surveyed judicial decision-makers in four child protection jurisdictions (England, Finland, Norway, and the USA (California), $n = 1794$) to examine their views on whether and how children and parents are involved in care order proceedings in their systems. By 'judicial decision-makers' we refer to the legally qualified judges, family and child welfare experts and lay members in courts or court-like bodies, as relevant in the different systems (cf. Burns *et al.* 2017). In previous studies we asked child welfare agency workers about their views regarding the involvement of children and parents in care order proceedings in the same countries (Berrick *et al.* 2016, 2016a). The data from judicial decision-makers allow us to expand an understanding of the overall decision-making process. The article is organized in six sections. The next section presents a brief overview of the care order proceedings in the four countries, followed by an outline of theory and research on involvement for children and parents in court. Thereafter is a section on the methodological approach and a presentation of data material. A findings section and a discussion section follow, and concluding remarks finalize the paper.

Care order proceedings in four countries

Child welfare systems in modern states have been broadly categorised into two types (Gilbert 1997, Gilbert *et al.* 2011): child protection-oriented and family service-oriented. (In an earlier paper, the authors argued that these should better be considered two ends of a rather blurred spectrum, rather than two discrete models; Berrick *et al.* 2016). A child protection-oriented system has a relatively high threshold for intervention and a focus on mitigating serious risks to children's health and safety, whereas in family service-oriented systems, the aims are to support families and promote healthy childhoods, although also to mitigate serious risks and prevent harm (Gilbert *et al.* 2011). Finland and Norway belong to the latter category; each state has a child welfare system that is family service-oriented and child-centric (Pösö 2011, Skivenes 2011). England and California (USA) fit into the risk-oriented category, although England has also been described as a hybrid system, leaning towards a family service approach, but reactive and risk-oriented in response to high-profile cases (Berrick 2011, Parton and Berridge 2011). A detailed presentation of the four countries' child welfare systems is presented in Gilbert *et al.* (2011).

Burns *et al.* (2017) have attempted to chronicle and categorize the strategies states use to determine whether child removal is required in cases of child protection. Their study suggests that there is no single dominant model across states. There are, however, some

common features, and in the case of the four countries under study here, the court or a court-like decision making body makes decisions on involuntary removals. In the family service-oriented states of Finland and Norway, the proceedings are dominated by the child welfare agencies, whereas in England and California (USA), the proceedings are finalized by the courts.

In England, the family court system is organised in 44 regional areas, each headed by a ‘designated family judge’ (DFJ). Care order proceedings may be heard at different levels of court. Under reforms introduced in April 2014, local authority care applications are reviewed by a ‘gatekeeping team’ of senior judges and officials in each region, and then allocated to the appropriate tier of court, depending on their assessment of the complexity of the case (see guidance from the President of the Family Division 2014). More straightforward cases are likely to be heard by magistrates, although different areas make more or less use of magistrates to hear care order cases. Magistrates, who are also known as ‘lay justices’, are not qualified lawyers, but volunteers who receive training for their role. They hear care cases as a panel of three, and are advised by a legal adviser, who is a qualified lawyer.

The participation of parents and children in care order proceedings in England is usually indirect, via lawyers, paid for out of public funds; additionally, children have a court-appointed ‘children’s guardian’ (explained further below). Furthermore, social workers working for the local authority (the body that makes care order applications) are required to report to the court on the wishes and feelings of the parents, the child (taking account of their age and understanding), and other relevant people (e.g. relatives). Parents are likely to attend the court hearing, and their lawyers (often different lawyers for each parent) will help them to present their views, usually in written statements to the court. Their lawyer usually speaks for them in court and in the negotiations outside the courtroom, but parents may also give live evidence. Although legal representation is free for parents in care proceedings, it is still incumbent on them to find a lawyer, and some parents do not. This is unusual, however, and if they do attend court without a lawyer they would certainly be encouraged to get one. This would be to ensure they are properly represented, but also because lawyers are seen to ‘manage’ their clients’ demands and behaviour, and the smooth running of the court relies on this role (Pearce *et al.* 2011).

All children who are subject to care applications are parties to the proceedings in their own right, and so have their own lawyer, appointed by the court. They also have a children’s guardian, who is a social worker, employed by a national body called Cafcass (Children and Family Court Advisory and Support Service). The children’s guardian reports to the court about the child’s wishes and feelings, but recommends according to his/her assessment of the child’s welfare. Given that the large majority of children involved in care proceedings are under the age of 10, this usually means that the lawyer will follow instructions given on the child’s behalf by the children’s guardian. If the views of older children are different from the recommendation of the children’s guardian, then the child can, in law, instruct the lawyer to argue for what they want, and the children’s guardian will be left to represent themselves and their assessment. This is relatively unusual. It is very rare for the children themselves to attend care hearings.

The Finnish care order proceedings are characterised by two different types of decision-making processes. Parents’ (custodians’) and children’s (if 12 or older) view – consent or objection – on the care order proposal influences the process (Pösö and Huhtanen 2017,

Pösö *et al.* 2018). In an administrative ‘hearing’, parents and children are asked to express their opinion regarding a potential child removal and about where the child should live (Child Welfare Act 417/2007, Sections 43 and 44). If they give their consent to the care order proposal, the decision is made by a social work manager in the child welfare agency. If they object – or one of them does so – the decision will be made by an administrative court. The majority of care orders (75–80%) are based on consent (Pösö and Huhtanen 2017). Administrative courts are thus involved only in a small fraction of all care order decisions and when they are, the cases reflect disagreement of some kind and are typically called ‘involuntary’.

Decisions in administrative courts are made by panels which include two legally trained judges and one expert member. The expert members possess expertise in child welfare and an advanced degree, and are usually drawn from the professions of social work, psychology, medicine or education. Expert members are bound by oath, and their views have the same bearing as the legal judges. Finnish court decision-making in these matters is thus inter-disciplinary by design. Written procedures are dominant in all matters in administrative courts (Nylund 2017). The courts may organise oral hearings, and this will typically be done if it is requested by parents or children, though this is relatively rare: in approximately one third of the cases (De Godzinsky 2012). Oral hearings are, however, more common in child protection matters than other matters in administrative courts (*ibid*).

When courts respond to written materials only, they have an obligation to ensure that the material is sufficient and they have a right to request additional materials, including information about parents’ and children’s views. In general, the involvement of children and parents in court proceedings is guided by legislation addressing the rights of children and parents as well as the duties and obligations of decision-makers and good administration. Children and parents are entitled to have legal representation in their case. Yet recent studies suggest that children face several challenges in the court system in the realization of their rights (Pösö and Enroos 2017, Toivonen 2017): young children’s (below 12) views especially may not be included in the court decision-making process and children of any age rarely have legal representatives or spokespersons of their own. Most interestingly, the studies have not yet explored the impact of written procedures on children’s or parents’ experiences of their rights in these processes. Parents’ involvement has been even less studied regarding their involvement in court proceedings in care order cases.

Legal decision making in Norway with regard to child protection happens in the Norwegian County board, an independent court-like administrative body. The general rule is that three members compose the County board including the County board chair, a legal scholar (judge), an expert member (expert on child development and children, often a psychologist) and a lay member. The chair, expert member, and lay member are equal in their influence and decision making authority. All members must ‘vote’ and each case is decided by majority rule. In practice, most care order decisions are unanimous.

In Norway, child welfare workers prepare and provide documentation to recommend the involuntary separation of a child from their parent. Care orders are the most frequently used legal basis when the child welfare system removes children. A care order is rendered either because the child is not properly cared for or because of the young person’s own behaviour. Because of Norway’s family service orientation, care

orders are typically presented to the county board only after extensive services of a long duration have been offered. The main reasons for care orders relate to parental abuse or neglect, in which the child's needs are not being recognised and met (NOU, 2012:12:67). If child welfare staff determine that a care order is required, parents are notified and supported in identifying a state-financed lawyer to represent their interests. In the case of children aged 15 years or older, they too are provided with legal representation. The Administration Act of 1967 and due process requirements demand that parents are informed and involved (Eriksen and Skivenes 1997, cf. Skivenes 2011). The same requirements are made for children aged seven years, or younger if they are able to form an opinion, although there is clear evidence that practices do not follow this standard (Vis and Fossum 2013, Magnussen and Skivenes 2015). Most children above the age of seven will meet and speak with a spokesperson who writes a report to the court about the child's opinion (Enroos *et al.* 2017). The spokesperson may also testify in court. The county board usually consists of three decision-makers; a chair who is a legal scholar (Judge); a professional trained in child development; and a layperson (see Skivenes and Tonheim 2016 for details). The county board hearing is an *in camera* proceeding in which the parties may orally present their arguments, opinions and evidence. Both parties may call witnesses who may be cross-examined by the lawyers, and the chair and co-decision-makers may also ask questions. Typically, the length of these hearings is approximately 2–3 days. The chair and the co-decision-makers meet after the last day of the hearing, discuss the case, and make a decision. Typically, these decisions are unanimous. There are few studies on the decision-making proceedings in the Norwegian county boards (Skivenes and Søvig 2016).

The United States is made up of 50 states operating within a common federal frame, but each functioning somewhat differently. In California, the site of this study, dependency law is governed by the Welfare and Institutions Code 300. The Juvenile Dependency Courts operate as a branch of the Superior Court, organized at the county level (there are 58 counties in California). These courts hear cases relating to children or youths who are not safe living in the home of their parent(s); they also hear cases relating to juveniles who have been accused of breaking the law (www.courts.ca.gov). Cases are heard by a juvenile court judge, commissioner, or referee.

Child welfare workers prepare a detailed report that contains legal evidence to support their recommendation for court action. Parents may secure legal representation privately, or they are assigned an attorney by the state. In the case of parents with separate interests (unmarried or divorced parents, for example), each parent will be assigned a separate attorney. Children, regardless of age, are also assigned an attorney to represent their interests. The purpose of the court hearing is to determine whether the legal standard has been met for court intervention and if so, the appropriate state response. The judge is provided with extensive documentation prior to the court hearing and all of the legal parties convene before the judge. Unless the case is contested, there are typically no oral arguments made, or witnesses called. Parents and children must be notified in advance of the hearing. It is expected that parents will be present; children are invited, but may not attend. In contrast to the lengthy hearings typical in Norway, court hearings in California are relatively short. According to one source, the typical dependency hearing lasts between 10–15 minutes if no witnesses are present (usually an 'uncontested hearing') and are between 15–60 minutes if the hearing is contested (Administrative Office of the Courts

2005). Information about the frequency of contested hearings is difficult to obtain. According to one source, contested hearings (relating to a care order finding) happen 'occasionally' 44% of the time and 'often' or 'nearly always' 11% of the time (Administrative Office of the Courts 2005).

Research on children's and parent's involvement in court proceedings

In general there is a scarcity of research on how care order proceedings in courts are structured or conducted (Burns *et al.* 2017), with England as an honourable exception (e.g. Masson, Pearce, Brader, Joyner, Marsden & Westlake, 2008, Masson *et al.* 2013, Pearce *et al.* 2011). A developing literature suggests that child welfare staff typically intend to engage parents in the decision-making process, and that children should be informed about the unfolding situation regarding their care. In one study including the same countries under study here front-line staff indicated that parental involvement in edge-of-care cases is considered highly important. Furthermore, staff in these same countries suggested that they would usually inform the child (presented in the study as a hypothetical age 11) about the possibility of removal from the home, and many said they would do the same even if the child were relatively young (hypothetical age 5) (Berrick *et al.* 2015). But many court decision-makers harbour concerns that parents' and children's legal representation could be improved. In a study of the same sample of court decision-makers included in the present project, one-third of the judicial actors in England and California indicated that one of the most important aspects of court needing improvement concerned the legal representation for private parties (Skivenes and Tonheim *In press*). Furthermore, when the same sample was asked if the written care order application gave them sufficient information about the child, 52% (Finland), 63% (Norway), 84% (CA, USA), and 98% (England) confirmed this, showing important variation between the Nordic countries and the Anglo-American countries (Berrick *et al.* 2016a).

The literature on children's and parent's involvement in care order proceedings in court is relatively sparse. The research in England (as cited above; see also Hunt *et al.* 1999; Brophy *et al.* 2003, Timms and Thoburn 2006, Masson 2102) is detailed but predates recent changes to reduce the duration of proceedings and so may not reflect current practice. Liefgaard (2016) discusses the child-friendly justice programme that the Council of Europe has initiated, and how this frame demands that children be involved in their legal processes. But other authors have shown children's limited involvement in court (e.g. Krinsky and Rodriguez 2006). Several other authors have written about the purported benefits of child or youth participation in court (Cashmore 2002, Jenkins 2008, Kendall 2010, Gal and Duramy 2015); but few studies have systematically examined the effects on children (Block *et al.* 2010, Weisz *et al.* 2011), and none – to our knowledge – on the effects of child involvement on judicial decision-making.

The effects of parental involvement on judicial decision-making are explored by Lens (2016), in a study in northeastern USA. Observing 94 court proceedings concerning child abuse or neglect over a one-year period, the author examined how judges approach parents' participation and encourage them to fulfill court orders. Judicial interactions with parents were notably varied, from not interacting with parents at all, to the use of shaming and other negative-affect tactics, to judges who used a participatory approach. Findings from one study in the U.S. suggests that parents' presence in court – particularly in the early court processes

relating to child removal – is positively associated with children’s placement with relatives (compared to a decline in placement with non-relatives) (Macgill and Summers 2014). And another study in the U.S. showed a positive relationship between parents’ presence in court and the likelihood of reunification (Wood and Russell 2011). The latter finding may suggest more about the motivations of some parents compared to others, rather than about judicial decision-makers’ response to parents, but the findings are provocative nonetheless. Other studies suggest there may be a relationship between positive child welfare outcomes and quality court hearings, including parental participation and engagement (Summers and Darnell 2014, Summers *et al.* 2017).

Theoretical approach to involvement of children and parents

Involvement of children and parents does not have a straightforward theoretical platform, and in addition its implementation must be related to the legal framework of a country and child protection system. Involvement of children furthermore requires particular consideration as they have not yet reached their full potential as autonomous individuals. Nevertheless, our approach is grounded in the theoretical orientation of Habermas (1996, Eriksen & Weigard, 2004) whose ideas relate to the state’s authority vis-à-vis its citizens. In particular, the state’s legitimacy is enhanced when decisions include the perspective of the governed (Rothstein 2011). With regard to decision making in the courts, this means that parents and children whose lives may be affected are given information to understand the proceedings, that they are heard by decision-makers, and that their perspectives are taken into account. In this paper, we will not go into detail about the various legal definitions of involvement, as it is a requirement in each jurisdiction to involve children and parents in care order proceedings. But we lay out some of the issues at stake, particularly with regard to children’s capacities to be informed about and involved in the judicial process.

Children and parents should be adequately informed about the issues at stake, but the degree to which children have the capacity to understand the information provided may be compromised by age and development. And the information should be sensitive to the character, abilities and circumstances of the individual (Khoury 2010). If and when individuals have questions, they should be comprehensively answered; for children it is crucial that there is someone with whom they can fully and frankly talk through all the issues (Cashmore 2002). Children and parents may need time or a process over time to fully understand the nature of the proceedings, their implications and presuppositions, and the formal and informal means by which the proceedings are conducted (Thomas and O’Kane 1999).

The literature for both adults and children lays out a range of ways in which a person may participate or not participate. For example, the participation ladder of Hart (1992) is much used in child welfare research; it provides a ranking from tokenism and fake participation to full participation. Various models also have been developed to promote children’s participation in court (Archard & Skivenes, 2009, Lundy 2008). The child may be able, in propitious surroundings, to say what she or he thinks. The degree to which courtrooms are considered ‘child-friendly’ might be constituted by the décor, lighting, size or location of any room chosen, whether the child speaks to a judge directly or indirectly, and whether parents are present when a child is asked about his or her views (cf. Berrick *et al.* 2018).

There must also be considerations around how to make certain that the concerned parties' views are well presented. Differences in capabilities may hinder authentic argumentation processes and children, especially, may need support to express their views (Cashmore 2002). There is a notable imbalance of power in the courtroom that may be exaggerated by lack of knowledge, capability, or education and social background. Some families have complex problems and they may have lost their trust in the child welfare system and its representatives and thus are not willing to become involved (Thoburn 2010). Able legal representation can mitigate some of these issues, of course.

In sum, for concerned parties to be involved they at least should be informed about the case and the care order proceedings; their views should be presented, there should be opportunities to ask questions and make clarifications, and there should be lawyers and/or guardians for parents and children so that their legal interests are properly considered. In our study of judicial decision-makers' perceptions on parents' and children's involvement in care order proceedings, we examined three important aspects related to involvement including *being informed*; having a robust *exchange of information*; and having *sufficient legal safeguards*.

Method and data material

This study was funded by the Norwegian Research Council as part of a research project on decision-making in child protection systems in England, Finland, Norway and the USA (California).¹ The survey questions were developed in British English by the four main researchers so that they were relevant for each child welfare system. The questions were then translated into Finnish, Norwegian, and American English by the project researchers. The translations into Norwegian and Finnish were thereafter checked by another researcher. The survey was tested by a small group of court decision-makers in each country to ascertain that the questions were realistic in context. The online survey took approximately 8–12 minutes to answer and was distributed from December 2014 till June 2015, depending on the country. A large sample ($n = 1,794$) of court decision-makers responded to the survey. This included 54 in England, 65 in Finland, 1,636 in Norway and 39 in California. The response rate (based on the total number of respondents invited to respond to the online survey) is 61% in England, 55–57% in Norway, 32% in Finland and 28–48% in California.² A detailed overview of participant recruitment, data collection processes, and ethical approvals are outlined at the following web address: <https://www.uib.no/admorg/85747/survey-material#court-level-survey>

In this paper, we present findings from the responses to a set of questions about children and parents' involvement in care order proceedings. The decision-makers were asked similar questions with minor adjustments depending on whether the question pertained to parents or children. The main questions read as follows: 'In your experience with decision making in care order proceedings in court, would you say that typically parents. . .?' and 'In your experience with decision making in care order proceedings in court, taking children's age and understanding into account, would you say that typically, children. . .?' The following five statements were answered on a Likert five point scale from 1 = highly disagree to 5 = highly agree:

- (a) are well informed about their rights?
- (b) are well informed about the care order proceedings?

- (c) have their views well presented?
- (d) have sufficient opportunity for them or their legal representative to ask questions?
- (e) have legal representation that properly safeguards their interests? (re. children it read: 'e. have guardians or legal representation that properly safeguards their interests?').'

These five statements cover just a few basic topics related to involvement of concerned parties. We have categorized them into three areas related to being informed (a & b); having a robust exchange of information (c & d); and having sufficient legal safeguards (e).

In England, Finland and Norway, the judicial decision-makers included experts on children and/or lay persons, as well as professional judges. We examined if there were differences in responses based on the type of decision-maker. Based on the mean scores, there are no major differences between the results when we look at the type of judicial decision maker, or for 'all' respondents in each country – even with over 1,000 lay members responding to these questions in Norway (cf. Appendix table E and F with testing of differences between the types of judicial decision-makers). Thus, we present the results for 'all respondents' in the paper, and comment on the different sub-samples and highlight particular points of interest.

In the analysis, we have used the mean scores, with the calculations, standard deviations, and other details presented in the appendix (online supplementary material: https://www.uib.no/sites/w3.uib.no/files/attachments/appendix_to_childrens_and_parents_involvement_in_care_order_proceedings.pdf). In the findings section, we provide graphs based on the average (mean) scores and confidence intervals of 99%,³ per country for parents and children respectively.

Limitations

The study is not without its limitations. The researchers faced different constraints in each country to gain access to judicial decision-makers. As such, different strategies were used to engage the sample, resulting in different response rates. Although respondents were asked to answer each question in light of their own courtroom practices, we cannot be certain that some responses also speak to the general tone of courtrooms in their jurisdiction or other jurisdictions with which they may be familiar. Although the authors took pains to use language appropriate to each country context, we cannot be sure that the questions were interpreted similarly by all respondents. It is also likely that the decision-makers coming from different disciplinary backgrounds (legal training, training in child welfare or lay knowledge) used different criteria to assess the dimensions under study. We only report on differences that are significant at 99% level, to ensure that we do not exaggerate findings from an exploratory research project.

Findings

Some patterns emerge across countries. First, we find that judicial decision-makers across countries scored parents' involvement higher than children's. Second, we find that the pattern

of responses for children mirrored the pattern of responses for parents across countries, with some exceptions (cf. Figures 1a- 5b).

On the specific questions, Norwegian and California decision-makers were in agreement that parents in their courtrooms are *well informed* about their rights and about the proceedings in court (mean range from 3.9–4.0) (cf. Figures 1(a,b) and 2(a,b)). Respondents in England and Finland were relatively similar but scored somewhat lower (mean range from 3.5–3.8 respectively). Respondents' views were rather similar with regard to children being *well informed* though scores were somewhat lower (mean of 3.5 and 3.6 for Norway and California respectively, and mean 3.2 and 3.3 for England and Finland). There were significant differences between Norwegian decision-makers and both Finnish and English decision-makers. On the statement of being *well informed about care order proceedings*, there is high agreement overall for the parent, with mean scores of 3.5 (Finland) to 4.1 (CA), but with somewhat less agreement around the child with a mean score of 3.3 for Finland and a mean score of 3.5 for Norway and California, with a significant difference between Norway and Finland.

Questions that elicited judicial actors' views about a *sufficient exchange of information* provided varied responses (cf. Figures 3(a,b) and 4(a,b)). With regard to whether parents have their views well presented in court, and whether parents have an opportunity to ask questions of the court, respondents were largely positive in response. There was little variability between countries (cf. Table B in Appendix), with mean scores that ranged from 4.1 to 4.4. Respondents' views about children were more varied. When asked whether children's views were well presented in court and whether children had an opportunity (either directly or indirectly through their legal representative) to ask questions, the English and California respondents' answers mirrored those about parents almost exactly; judges were positive about the opportunities afforded to exchange information in their courtrooms. In Norway and Finland, however, responses regarding whether children's views were well presented were less positive and significantly lower than England and California. On the issue of whether children had opportunities to ask questions in court (either directly or indirectly), Norwegian responses stand out as significantly lower.

On the question regarding *legal safeguards*, (cf. Figure 5(a,b)) the English and California judges were again in high agreement regarding both parents and children

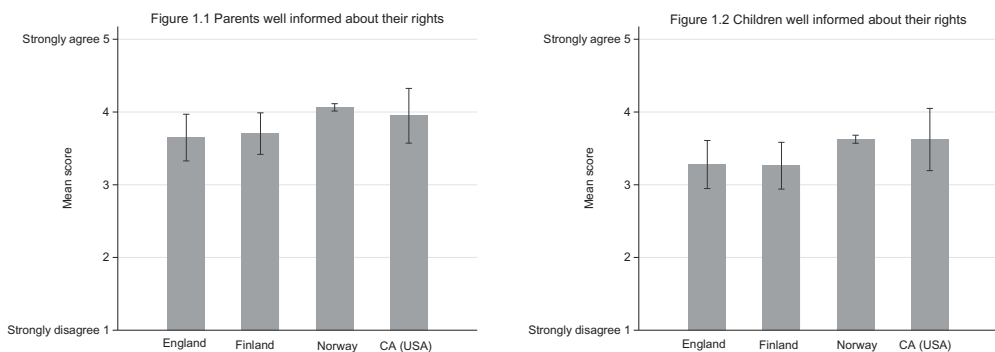


Figure 1. (a) Judicial decision-makers' views: How well are parents and children informed about their rights? (b) Mean scores and confidence intervals (99%), per country. $n = 1330$.

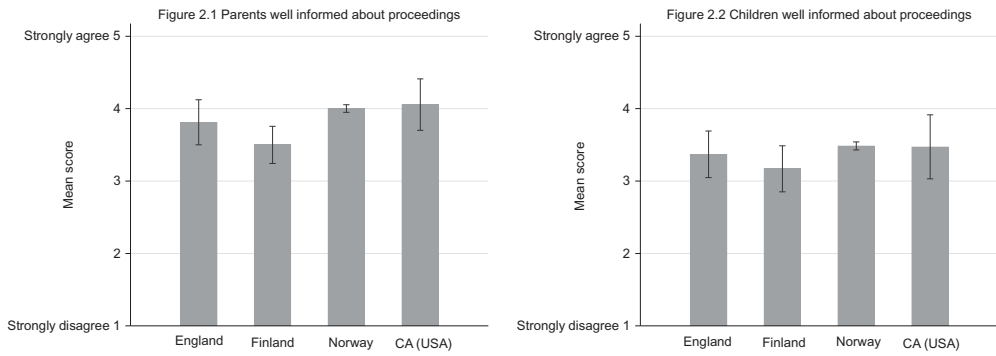


Figure 2. (a) Judicial decision-makers’ views: How well are parents and children informed about proceedings. (b) Mean scores and confidence intervals (99%), per country. N = 1322.

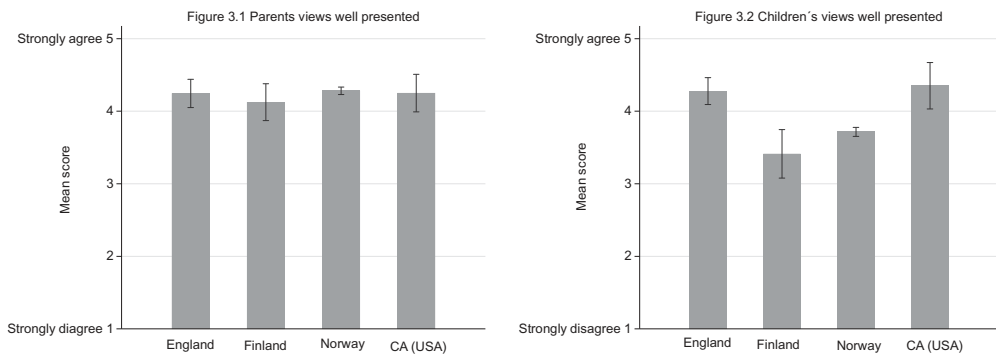


Figure 3. (a) Judicial decision-makers’ views: How well are parents’ and children’s views presented? (b) Mean scores and confidence intervals (99%), per country. N = 1322.

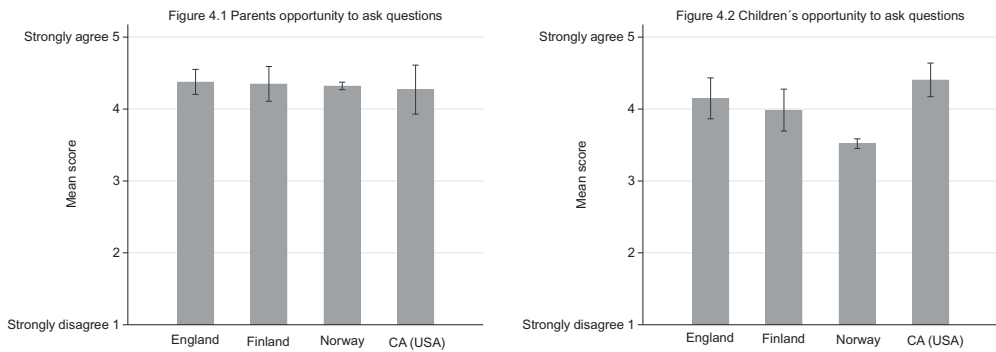


Figure 4. (a) Judicial decision-makers’ views: How adequately are parents’ and children’s opportunities to ask questions safeguarded? (b) Mean scores and confidence intervals (99%), per country. N = 1324.

having adequate legal representation (mean = 4.3 and 4.4 respectively). Finnish respondents were less sanguine and offered significantly different responses about the legal protections for parents (mean = 3.8). Both Finnish and Norwegian judicial decision-

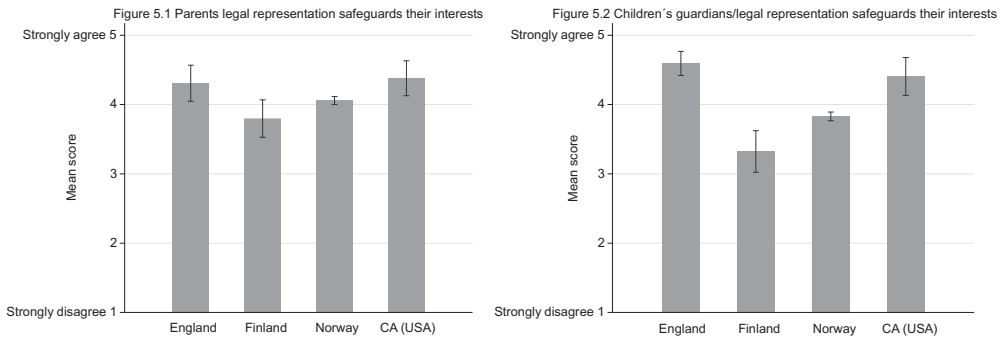


Figure 5. (a) Judicial decision-makers' views: Do parents and children have legal representatives who safeguard their interests? (b) Mean scores and confidence intervals (99%), per country. N = 1323.

makers indicated that children's legal safeguards were less secure (mean = 3.3 and 3.8 respectively) and both respondent groups' scores were significantly lower than the English and California respondents (cf. table B and D in Appendix). In England, the very high score is likely to reflect the positive views that the judiciary have long held about children's guardians.

Discussion and concluding remarks

Findings from this study speak to judicial decision-makers' views about whether parents and children are informed about their rights, whether their rights are sufficiently safeguarded, and whether there is an opportunity for parents and children to ask questions of the court and to make their views known. These are key conditions for involvement in a case. However, our findings also show that there is less agreement regarding the conditions for involving children, particularly from Norwegian and Finnish court decision-makers' perspective. These differences may be related to a number of factors. Children's views may have been solicited prior to court, during the lengthy preparations of social workers and agency staff. It may also reflect the spokesperson arrangement in Norway (Enroos *et al.* 2017), which relegates that individual to a minor role in the court proceedings, and who is not allowed to ask questions (reflected in Figure 4(b)). Another reason, especially relevant for Finland, may be that the child's views are not sufficiently conveyed to judicial decision-makers given that all of the information available is based only on written documents rather than oral presentation by children or by a child's representative. A further factor may be that in both these countries, child protection court cases are decided by panels which include members who are not professional judges. This greater diversity may promote wider thinking, by bringing psychological and other expertise on childhood and challenging ready acceptance of the way that children (and parents) are normally treated in the court system.

In California and England, both with child protection orientations and more legalistic frameworks, we note that scores were generally much more favourable from the court decision-makers. There were only two questions where their scores were relatively lower, regarding whether parents and children were informed about their rights and the court proceedings. Court decision-makers may be reflecting parents' and children's capacities to understand, as much as legal or welfare actors' efforts to help them

understand. Their views may also be shaped by the process itself, which is indeed complex. In both countries there are initiatives to help parents and children understand and navigate the process. For example, in California staff at the Administrative Office of the Courts have made concerted efforts in recent years to develop teaching tools that can be distributed to parents and children (www.courts.ca.gov). On-line videos, fact-sheets, and pamphlets are now available and can be accessed in several languages. A number of counties also employ 'peer mentors' – men and women who have had previous involvement with the child welfare system – to help parents navigate the court and child welfare system (Berrick *et al.* 2011). Clearly there is recognition that parents and children need assistance if they are going to understand and participate in court proceedings in California. Widely available resources have also been developed and promulgated that outline 'best practices' for court processes concerning child protection court proceedings (NCJFCJ, 2016).

In England, similar efforts have been made by local authorities, which increasingly offer leaflets and/or websites for parents and young people; the Family Drug and Alcohol Court (FDAC) initiative has promoted the use of mentoring from parents who have previously been through the process; third-sector organisations such as the Family Rights Group and 'Grandparents Plus' have on-line guidance and telephone advice lines; and there is a great deal of 'user-friendly' advice on the Cafcass website. (Intriguingly, a key feature of the Family Drug and Alcohol Court is that there are regular meetings between the parent(s) and the judge, *without the lawyers*, the aim being to promote more direct interaction, and thereby greater engagement and motivation for change (Harwin *et al.* 2016.)

The overall findings suggest that judicial actors in all four countries have relatively positive views about the access that parents and children have to information about their rights and about the proceedings, to ask questions and present their views, and to have their interests safeguarded. This claim is supported by the findings of the survey addressed to child welfare workers in child welfare agencies in California, England, Finland and Norway: they highlighted practitioners' intentions to involve parents and children, especially the older children, but research literature demonstrates parents' and children's experiences of their involvement are not so positive (Berrick *et al.* 2015, 2016). It is intriguing to ask whether this confidence is well-founded, given the features of the court systems that we have described – e. g. the very short hearings in California, the limited role of the child's spokesperson in Norway, the relatively small proportion of cases that get to the court's oral hearings in Finland, and the representation system in England with little direct involvement of children or parents. In fact, in all the countries, there is relatively little opportunity for parents and children to participate directly in the court proceedings, so it may be that this confidence reflects an acceptance of the status quo, even complacency.

One of the benefits of cross-country studies is that they can reveal different practices and expose the assumptions behind them, showing that things *can* be different. Simultaneously, it is challenging to make comparisons across systems because we do not know what standards the respondents are using when they respond to our questions (what does 'good' mean to each respondent?). This is a well known problem in surveys that ask for respondents' views, such as citizens' perceptions of democracy, or an individual's assessment of their own health (cf. for example Ekman and Linde 2003,

Jylha, Volpato, Gurlnik, 2006, Ferrin and Kriesi 2016). One solution to this is to provide a detailed operationalization of the standards we seek information about; for example, describing what it means in practice to ‘be informed about their rights’ or ‘have the opportunity to ask questions’.

Not surprisingly, perhaps, judicial actors’ views and experiences of children’s participation are less positive than those regarding the parents. Although children are – ostensibly – the focus of child protection proceedings, it is only relatively recently that there has been a focus on including them as participants in the process, and as we have discussed it is fraught with challenges, notably due to children’s age and understanding – and approaches are different in the different countries in this study. Social workers, lawyers and court decision-makers will be required to develop new skills to meet the demands of this continuously developing ethos, and it is important that this is properly resourced (e.g. with adaptations to make court rooms and court processes ‘child friendly’: Berrick *et al.* 2018). The emphasis on achieving effective involvement of children and parents in court proceedings is likely to grow, as a matter of rights and best interests. Social workers, lawyers, judicial decision-makers, policy makers, agency managers and funders will all have to respond to this.

Notes

1. Project number 217115.
2. An association of judges in California was responsible for survey distribution and could not provide a definitive number of judges who might have been offered participation in the survey. Some counties have referee judges who work for Superior Court judges and we cannot determine exactly how many of these might have been given the survey to complete.
3. The confidence interval, simply put, informs us about how confident we can be that the survey results reported reflects what would be found if the whole sample population were studied. A confidence interval of 99% is a strict standard.

Disclosure statement

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