Thesis Opposition: Behind Closed Doors: Exploring the Institutional Logic of Child Protection Work

Åse Wagli: Behind Closed Doors:
Exploring the Institutional Logic of Child Protection Work.
Doctoral Thesis, University of Bergen, Norway. ISBN: 9788230809310

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I will comment on three topics. The first topic concerns what Vagli refers to as the "inside" and "outside" of child protection work. The second is about the image of the child as it emerges from the talk of the child protection workers, and the third relates to Jacques Donzelot's book *The Policing of Families*.

Fluttering hearts and gut feelings

According to Vagli, the "inside" and "outside" of child protection work requires different types of knowledge. She quotes (page 245) one of the case workers, B, who in an internal discussion at the office, remarks: "In child protection as an official institution, we must attach a worry to a paragraph in the law. Even if 'D' is worried we must have something concrete to attach to the worry./…/ Can't ease my fluttering heart in a paragraph 4.12 case."

Vagli comments: "With this commentary, B may be seen as voicing a legalistic or bureaucratic formal view on the mandate of child protection. As she emphasises, the tools for establishing evidence are linked to a paragraph in the law to be presented as a certainty to the outside. In so doing, she also makes the point that the tools of feelings and uncertainty (the "fluttering heart") belongs to the inside," that is, the internal discussion of the case workers, not the outside presentation of the case.

On page 268 she formulates the dilemma faced by the child protection workers in this way "In capsule form, their dilemma may be thought of as feeling in one way and have to argue without feeling in the other way." And finally, on p. 271 she sums up with these words: "What we see then is that there are two basic variants of the evidential logic at work: an administrative, legalistic or bureaucratic one and a moralistic one making use of common sense and commonly held cultural knowledge."

I agree that child protection workers that have to argue their case in the county board may feel as if they are in foreign if not enemy territory, and have to speak a foreign language. I also recognize the feeling that the law is more of a constraint than a useful tool – I have myself observed child protection workers hunt for a suitable paragraph to fit the decision that they have already reached for reasons that have nothing to do with what the law says. And lawyers also often accuse social workers of what we in Norwegian call "synsing" – presenting their case in an imprecise, emotional and muddled way. So I think Vagli has captured an important aspect of the way child protection workers experience their situation.

But she does not only relate the experience of her informants. As I understand her, she also describes what she regards as two inherently different systems of knowledge – one based on emotions, intuition, common cultural conceptions, values and morals, and one rational, positivistic, bureaucratic, legalist. The first is represented by the "inside" of child protection work, the second by the law that confronts the child protection workers when they have to take their case to the outside.

I should think that many decision-making systems, including the law, has an inside and an outside, where feelings play a considerable part on the inside. Let me quote Audun Kjus (2007), who has written a doctoral thesis titled (in English) *The facts of the case. Storytelling strategies in penal court cases.* While he prepared for doing observations in courts, Kjus attended a meeting in Rettspolitisk forening, the association for legal politics. He comments on the discussion among the legal experts present at the meeting: "I don't know how many times the participants mentioned the "gut feeling": He quotes one of them: "One has to understand that legal evaluation of evidence have to rely considerably on the gut feeling." There were several similar remarks.

The image of the law as strictly based on evidence and hard facts may be in line with how legal people like to present their practice, but may not be quite true to reality. In the opinion of Kjus, the discussion in penal court cases draws from a cultural reservoir of known narratives, and there may be a competition between the prosecution and the defence about which narrative is to prevail. Certain well known typologies or narratives are called upon, explicitly or implicitly. Court cases often are contests of credibility. In these contests of credibility, common cultural knowledge, mythologies and stereotypes may play a significant part – conceptions of what a proper rape victim is like, for example, or a typical East European burglar. To me, this way of seeking for meaning is not so different from what Vagli has described from the inner discussions at the child protection office.

In her treatment of the topic "inside"/"outside", Vagli, in my opinion, comes dangerously close to reproducing the stereotypes of the emotional, intuitive (female) social worker in contrast to the rational, objective (male) legal expert.

In reading Vagli, one might get the impression that feelings, common cultural conceptions and typologies are the sole sources of knowledge that are in use on what she calls the "inside" of child protection work. What about the child protection workers as professionals, basing their work and decision on established knowledge from psychology and other disciplines about what is good and bad for children and their healthy development? It is noteworthy that knowledge claims of this kind seem to have no place in the discussions of the child protection workers that Vagli observed. In my experience, child protection workers are preoccupied with their status as knowledgeable professionals. Regarding themselves as experts, they are often frustrated by being overruled by judges, who have no knowledge and expertise in the field of child protection. I think I find some traces of this also in Vagli's text when one of the child protection workers comments on the legal adviser who "knows about the formalities, but he does not know much about child protection work" (p. 138). In this context, the *judges and lawyers* might be cast in the role of those who "synser" on the basis of feeling and morals, while the child protection workers *know*, not only through their "gut feeling", but through their professional knowledge.

In my view, the law can hardly be seen as representing positivistic knowledge. The core of the law is a codification of the morals and values of a society. If the law needs positivistic knowledge, it has to go outside its own boundaries. An example may be when the court calls upon legal psychiatrists to tell whether a person accused of a serious crime is likely to commit similar crimes in the future and therefore ought to receive an indeterminate sentence to protect society. In this way, the judges may relieve themselves of the burden of making a decision on very uncertain grounds. Some, including several of my colleagues in criminology, would say that the legal psychiatrists are out of their depths when they make predictions of this kind, and that the judges should rather trust their own common sense and experience.

What the law hopes for from child protection is what itself lacks: scientific knowledge on what children need for their healthy development. What the child protection workers are confronted with in the county board is perhaps their own knowledge claim: that child protection work can be based on scientific knowledge, not only on morals, values, feelings and intuitions. When judges and lawyers accuse child protection workers of "synsing", the allegation may reflect what they expect from "experts": solid, waterproof knowledge.

From Vagli's thesis one gets the impression that such a knowledge claim from child protection workers is a pretence, or an illusion. This is indeed controversial. Perhaps she would say, like my colleagues, that the judges could as well trust their own common sense and experience, since the child protection workers cannot offer anything but morals, values and cultural conceptions anyhow. I am not sure that we should relinquish the hope and expectation that some kind of

knowledge should play a part in child protection work. However, one tentative conclusion may be that both child protection workers and judges should be more honest about their fluttering hearts and gut feelings even when they meet on the "outside", for example in the county boards.

Vagli writes about the burdens that the child protection workers are carrying. One of them is the burden of not really knowing – and having to act all the same, often in a very uncertain situation (p. 286). In my opinion, the obligation to act faced with uncertainty is characteristic not only of child protection, but also of law in many situations. Penal law has the rule of reasonable doubt as guidance in such cases – if there is reasonable doubt of the guilt of the accused, he or she should be acquitted. Perhaps this rule helps to ease the burden for the judges. And we have the saying: Better let ten guilty people go free than one innocent be convicted. This saying and the rule of reasonable doubt may have considerable costs for the victim, for example in cases of rape or sexual violation of children. One may suspect that a considerable number of victims of rape or sexual violation have had to suffer from the experience that the court does not find them trustworthy when they give evidence about their trauma. The rule of reasonable doubt may be regarded as a value that society has decided to uphold: it is more important that an innocent person is *not* convicted than it is that justice is done to a violated person.

It is difficult to think of a parallel rule in child protection. However, I wonder if child protection workers locally try to develop some kinds of rules or guidelines, not necessarily explicit, which help them steer through uncertainty and reach a decision. To put such rules, if they exist, into words, might tell us something, both about values and power relations: Better that ten children stay with abusive parents than that one child is removed from good parents? Or the other way around: Better that ten children are removed from good parents than that one child have to stay with abusive parents?

The vulnerable child

The second topic I want to raise concerns the image of the child as it emerges from the internal talk of the child protection workers in Vagli's dissertation: The child, as seen by the child protection workers, is a vulnerable creature, in danger, a pendant to the family more than an agent in its own right.

The image of the child as a victim and the image of the child as an individual in its own right tend to be seen as contrasts. So does Vagli in her dissertation. And partly I agree. However, I wonder if they may not also be regarded as intimately linked: As the child is increasingly recognized as an individual in its own right, a subject, also a legal subject, not only a pendant to the family, it is granted more rights. The child's integrity and interests receive stronger protection, also legal protection, the possible violations multiply and the child is increasingly prone to be subjected to dangers and victimhood. For example: What was regarded as normal and acceptable methods of upbringing a generation ago are now criminal offences, violations of the child's integrity that the law forbids. This ambiguity is common to the emancipation of both women and children – as women has earned the right not to have to put up with rape, domestic violence, sexual harassment, various types of discrimination etc., their chances of being seen as victims also multiply. One could even say that an important part of women's struggle has been about the right to be *recognized* as victims, instead of indecent flirters and quarrelsome wives that could expect no better than being raped and battered. In the case of children, a similar movement is discernible – the image of the seductive child has vanished from the incest cases, for example. The disobedient child that deserves to be taught a lesson he is sure to remember is also an image that parents and others no longer may call upon to legitimize the use of physical force.

However, in our culture we have some problems with seeing people simultaneously as active agents *and* victims – the role of perpetrator is associated with activity and agency, while the

role of victim is associated with passivity and being an object. So, when women have finally earned the right to be victims of various kinds of oppression, they are repeatedly told that they should *not* act like victims, weak and sulking.

This cultural difficulty with seeing people simultaneously as active agents *and* victims may also have relevance for the image of the child as it emerges in Vagli's study. Vagli comments (page 211) that historically there has been a shift in focus from practices of protection *from* children to those for the protection *of* children. And she is right. Historically speaking, children entered the arena of child protection as agents, as perpetrators rather than victims, as Tove Stang Dahl (1974) has described in her book on the birth of Norwegian child protection.

In Vagli's description, the vulnerable child in danger is the only image that can be extracted from the talk of the child protection workers. She has a footnote on dangerous children today, but no observation of cases of such children. Observations of cases concerning youngsters exhibiting problematic behaviour might have changed the impression that the vulnerable, victimized child is the only image upheld by child protection. It seems to me that youngsters with so-called behavioural problems are still mainly cast as perpetrators and agents in child protection cases, even if their background shows that they may have been victims of negligence and maltreatment from an early age (see Falck 2006). These cases also demonstrate the problems we have with seeing people simultaneously as victims and agents – while smaller children may emerge solely as victims, youngsters tend to emerge solely as agents.

According to Vagli, the child protection workers regard the child as a pendant to the family. The Norwegian researcher Turid Midjo (1997) describes two models of childhood, that she names the family focused model and the child focused model. According to Midjo, the family focused model is oriented to the past and to the family: The way the child is understood is anchored in and limited to the core family and their relations. The child is interpreted as occupying a passive and dependant position as an object of relations. In contrast, the child focussed model takes the child as an individual as its point of departure: The child is understood as individuated from the family and the family relations. The child is interpreted as occupying an active and autonomous position as an agent of relations. Turid Midjo associates this last model with a substantial change in the situation of children – an increasing differentiation of childhood. Children do not live in the family and in the relationship to family members alone. They live in several arenas and several social relationships, separated in time and space and characterised by differing rules and forms of organization. It seems that the child protection workers in Vagli's research adheres to the family focused model.

A central paradox in Vagli's dissertation is the double image of the family as on the one hand indispensable for the child and one the other hand as the prime source of danger for children. The talk of the child protection workers is concentrated on the family and much less on other arenas where the child moves, such as school, kindergarten etc. However, in practice other arenas, not least kindergarten, may be called upon to help and strengthen the child. Perhaps the child protection workers are not so family focused after all? Do they perhaps *act* as if they have the differentiated childhood of Midjo in mind? This may point to a methodological problem: By basing her analysis solely on what child protection workers are saying among themselves, Vagli runs the risk of getting a one-sided picture of the discourses and working knowledge of child protection. There are some problems in giving priority to internal, offstage talk as the stuff institutional logic is constructed through

Power and responsibility in the family

The last topic concerns Donzelot: In Vagli's discussion of the double character of the family – both public and private – she refers to Donzelot's (1980) *The Policing of Families*. Donzelot

describes what happened after the crumbling of the patriarchal family and its all powerful father. The Norwegian historian Sølvi Sogner (1990) has written a book called *Han far sjøl i stua og familien hans* (The master of the house and his family). There she describes the state during the period of absolute monarchy as a "family state". The state did not have contact directly with every single one of its subjects, but only with the head of family, the father. He was responsible for the upbringing of new subjects, and was given the power and obligation to control children, women and servants.

When the patriarchal family structure weakened, the state, according to Donzelot, found other ways into the family – not as before through its most powerful member, but by allegedly seeking to defend the interests of the most vulnerable members, the children, and by forming an alliance with the woman, the mother and wife. Through this alliance, the state and its professionals sought to domesticate and tame working class men and children.

Among several changes from the patriarchal family to the policed family that Donzelot describes, is that the state no longer allies itself primarily with the father, but with the mother. This could be interpreted as a *strengthening* of the position of the mother, as she now has the state as an ally in inter-familial conflicts. Or it could be interpreted as a *weakening* of the position of the mother, as she is now subject to a double set of controls: from the state as well as from the man in the family. Vagli draws a line from Donzelot's description to the situation in Norwegian child protection today, where the mother is the focus of attention. She is expected to protect her children, also from a potentially dangerous father. While the father in the patriarchal family during the time of the family state was expected to control both his children and their mother, the mother is now expected to control both her children and their father. This is interesting in a gender and power perspective, and could have merited a wider discussion on Vagli's part. In her doctoral thesis on cultural codes of love and authority in the family, Nicole Hennum (2002) describes authority as a male gendered concept in our culture. If she is right, one may wonder what consequences this may have for mothers and the expectations they face, not least from child protection workers.

During patriarchy, both power and responsibility was accorded to the position of the father. Perhaps what we now see is that the mother has been given the responsibility, but the power has not necessarily been part of the package.

References

– Dahl, Tove Stang (1978) *Barnevern og samfunnsvern*. Oslo: Pax
– Donzelot, Jaques (1980) *The Policing of Families*. London: Hutchinson
– Falck, Sturla (2006) *Mellom straff og behandling. Tvangsplassering av ungdom med alvorlige atferdsvansker.* Oslo: Kommuneforlaget
– Hennum, Nicole (2002) *Kjærlighetens og autoritetens kulturelle koder. Om å være mor og far for norsk ungdom.* Doktoravhandling. NTNU
– Kjus, Audun Kristoffer (2007) *Sakens fakta. Fortellingsstrategier i straffesaker.* Doktoravhandling. Det humanistiske fakultet. UiO
– Midjo, Turid (1997) Barnet, barneomsorgen og barnevernet. In Alice Kjellevold et al. *Samarbeid for barnets beste*. Oslo: Ad Notam Gyldendal
– Sogner, Sølvi (1990) *Han far sjøl i stua og familien hans: trekk fra norsk familiehistorie før og nå.* Oslo: Universitetsforlaget.