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International Perspectives on Child-responsive Courts

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Abstract

Child friendly justice and access to justice for children are explicit concerns for the European Union, the Committee on the Rights of the Child, the Council of Europe and the Child Rights International Network. This study examines court systems as child-responsive by eliciting the views of judicial decision makers on child protection cases ($n = 1,479$) in four legal systems (England, Finland, Norway and the USA (represented by California)), based on an online survey. In this paper, we asked judicial officials who have the authority to make care order decisions how they view the child-friendliness of the courts. We presented them with six statements representing standard features of child responsive courts. Findings show that there is considerable room for improving both structure and practice of the court proceedings, for example the use of child friendly language and child-sensitive time frames. There were variations across states, and some variation across type of decision maker. Implications for the development of education and training about the opportunities for children's engagement are considered.

Keywords

child friendly courts – child participation – child protection decisions – cross-country comparisons

Introduction

Courts or court-like bodies, such as independent tribunals or panels, often serve as decision-making bodies when children's well-being requires outside intervention, when children require involuntary separation from their parents due to child maltreatment, or when children may be beyond their parents' control. In some nations, these court or administrative bodies might be variously named dependency, juvenile, or family courts. The decisions themselves may be referred to as care order, dependency, or removal determinations (Burns *et al.*, 2017). Decisions such as these, typically made under grave family circumstances, are highly consequential for all family members and often the distress for the children is sincere. When the Council of Europe was preparing its Guidelines on Child Friendly Justice (Council of Europe, 2010), it undertook consultation with children and young people regarding their experiences of the justice system (covering criminal, family and child protection courts), and found a high degree of mistrust (Kilkelly, 2010). Furthermore, shortcomings such as 'intimidating settings, lack of age-appropriate information and explanations, a weak approach to the family as well as proceedings that are either too long or, on the contrary, too expeditious' were highlighted (Council of Europe, 2010: 7). Children who are at the centre of these child protection judgments may or may not be engaged as agents in the decision-making process. According to the U.N. Convention on the Rights of the Child (UNCRC), however, children's views of their circumstances should be taken into account. Article 12 states: 'Children shall be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body'. But what does it mean to be heard, are courts considered child-friendly, and how do courts vary as child-responsive settings across varying systems?

Guidelines for the implementation of Article 12 suggest nine conditions that are necessary to fulfil participation rights for children (UN Committee on the Rights of the Child, General Comment 12 (2009), #134). These include processes that are (1) transparent and informative; (2) voluntary; (3) respectful; (4) relevant; (5) inclusive; (6) supported by training; (7) safe and sensitive to risk; (8) accountable; and (9) child-friendly. The Committee on the Rights of the Child offers the following recommendations for achieving a child-friendly context:

environments and working methods should be adapted to children's capacities; adequate time and resources should be available to ensure that children are adequately prepared and have the confidence and opportunity to contribute their views; consideration needs to be given to the fact that children will need differing levels of support and forms of involvement according to their age and evolving capacities.

Because judicial decision makers preside over the courtroom setting in care order proceedings, their views about the child-friendly aspects of courts are highly relevant. We presented judicial decision makers in four countries (England, Finland, Norway, and the U.S.A. (California)), with six statements regarding features of child responsive courts or child-friendly courts ($n = 1479$). This paper examines between-country similarities and differences in their views of their courts as child friendly. It also examines whether there are differences between different judicial actors (e.g., judges versus lay members or experts) regarding their perspective on courts as being child friendly (cf. Lief-aard, 2016).

In the following sections, we outline the debates and research on the involvement of children in court proceedings, suggestions on how to improve child friendliness, and what children themselves believe should happen. The contexts of the four countries under study are then presented, followed by the research methods and findings. The discussion and conclusion finalise the paper.

1 Benefits and Hazards of Children's Participation in Courts

In addition to children's rights to participation, a body of literature from the fields of child maltreatment prosecution to divorce law suggests a range of benefits that accrue to children when they participate in court processes. Because of their opportunity to give voice to their views and perspectives, children may feel empowered in an otherwise disempowering process (Gal and Duramy, 2015; Weisz *et al.*, 2011). Court processes and children's family circumstances may feel chaotic and confusing, but participation may offer children a modicum of control from which they would otherwise be excluded (Cashmore, 2002; Thomas and O'Kane, 1999), and a sense of validation of their feelings, their experience, and their wishes (Jenkins (J.), 2008; Parkes *et al.*, 2015; Strandbu *et al.*, 2016; Strandbu and Thørnblad, 2015). It may also help children see their future as they help to craft it; another indication that they may experience agency in shaping their own fate (Kendall, 2010; Vis and Fossum, 2013). Including children in the courtroom may force the adult actors to make more clear their actions and intentions, and therefore the processes and outcomes for children (Lindboe, 2013; Pitchal, 2008; Vis, 2014). In some nations

where children of colour are over-represented in child protection proceedings, benefits may be especially pronounced. In the U.S., for example, African American and Native American children are two and three times respectively more likely to experience a care order at some point during childhood, compared to European American children (Wildeman and Emanuel, 2014). These disproportionate contacts with the justice system, coupled with disproportionate contact with other justice systems in the U.S. (e.g., the criminal justice system), may be perceived as unfair. Offering children an opportunity to experience the dependency courts may help children view their own circumstances and court processes that direct their families as just (Block *et al.*, 2010).

The putative benefits of children's direct participation in court are countered by important concerns. The topics discussed in courts in these matters relate directly to serious difficulties in the family. Whether children should be asked to state their views about their families in front of parents is questionable. In particular, if allegations of abuse or neglect are being discussed it might be frightening or dangerous to ask children to speak out about their experiences with the alleged perpetrator in the same court room (Jenkins (J.), 2008; Hobbs *et al.*, 2014). Relatedly, ample evidence suggests that many children who have been maltreated by their parents or caregivers want to continue living with them (Block *et al.*, 2010; Vis and Fossum, 2013); as children try to determine what is best, they may be conflicted about describing the circumstances of their family, and may be especially conflicted about knowing what they want for their future. In fact, the demands of the courtroom, or at least the expected demands and the context of court, may increase children's trauma or symptoms associated with post-traumatic stress disorder (PTSD) (Jenkins (J.), 2008). Judicial actions may also be confusing; the language used in the courtroom may be foreign to a child's ear and the actors in the room may be unfamiliar (for a review, see Cashmore, 2002). And although some argue that participation in court may increase children's understanding of the process and the outcome, these assumptions may prove false for young children or children with developmental disabilities who are unable to comprehend the meaning or the weight of the questions they are being asked. In the end, if the ruling requires children's separation from their parents, children may feel guilt for having been implicated in splitting up the family (Vis and Fossum, 2013). Importantly, the same argument that suggests children's participation may be especially beneficial for children of colour, could be false. If court proceedings are neither fair nor perceived as fair, minority children's experience of power and control, and their ultimate considerations about a fair society, may be fundamentally compromised by their direct witness of the proceedings.

There may be advantages and disadvantages to children who participate in court, but the courts themselves may also be improved settings because of children's engagement. Child participation may be considered one of several types of "therapeutic jurisprudence". Barbara Atwood defines therapeutic jurisprudence as 'the study of law as a therapeutic agent' (Atwood, 2003). A therapeutic justice approach allows parties a voice and validation that their concerns have been heard (Perlmutter, 2005). Similar to "drug courts", or "mental health courts", these specialty courts are designed to serve a therapeutic and rehabilitative function as much as they are designed to administer a just solution. Engaging children may be seen as one form of a therapeutic response to extreme family difficulty. Some argue that the presence of children in a court room also helps to keep a judge's focus aligned with the needs and interests of the child (Khoury, 2010). As such, some suggest that the quality of judicial decision making may be improved (Jenkins (D.), 2008).

But including children in the court room may bring complications (Bakke and Holmberg, 2014). It may be administratively inconvenient, it may require that actors behave differently than they would otherwise, and it may be more time consuming if judicial actors are required to translate the proceedings for younger ears (Krinsky and Rodriguez, 2006). Some argue further that the U.N. Convention does not require children's direct participation. In California, for example, all children are assigned an attorney to represent their interests, and in England, all children are assigned a lawyer and a children's guardian (a social worker). In Norway and Finland there is a spokesperson arrangement (Enroos *et al.*, 2017) (see below for more details of the arrangements in the four countries). These safeguards, one might argue, assure that children's views are represented, though indirectly, in court (Edwards and Sagatun, 1995). The indirect representation of children tends to vary from representing children's views and wishes to the guardian's or spokesperson's own view of a child's best interest, as pointed out by Bilson and White (2005) in their comparative analysis.

1.1 *Strategies to Improve Children's Experience in Court*

Given that the introduction of children into court processes might bring new challenges to the structures and actors of court, a number of strategies might be considered to ensure that children's experiences are generally beneficial. Judges, lawyers and other actors may need training to learn effective interviewing techniques and appropriate alternative language customised to children's age and developmental capacities (Jenkins (D.), 2008). The courtroom structure may also need to be re-considered. Some judges speak with the child

in chambers – an environment considered more informal and less intimidating (Bridge, 2010; Kendall, 2010). Certain accommodations may be required in some country contexts to ensure that the parents' and their attorneys have access to the information provided by the child outside of the courtroom (e.g., the conversation may be audio-taped or transcribed and shared, attorneys may be required to submit questions in advance for approval by the parents' attorneys, consent from parents' attorneys may be required (Kendall, 2010)). Other strategies to elicit the child's voice might include a submitted written statement or a video testimony (Pew Commission, 2004). Still other approaches might include a sheltered space (e.g., sitting behind a screen) so that the child is in the court room, but buffered from direct contact with parents who may have harmed the child (Jenkins (D.), 2008). In some courts, therapists are assigned to help the child process the experience before and after a court appearance (Jenkins (D.), 2008). Children may be invited to bring a support person with them into the court room (Khoury, 2010), or they may be invited to bring a comfort item (e.g., a stuffed animal/teddy bear), to offer a modicum of support (Judicial Council of California, 2001).

The state of California has, in some ways, been at the forefront of developing court practices that might be considered child-friendly. In 1999, San Francisco developed a specialised children's waiting room in their court house so that children could wait for their hearing in a comfortable room equipped with art supplies, a television and comfortable furniture (Lynem, 1999). Since then, California state law was amended to require all new court construction or efforts to remodel courthouses to include a children's waiting room (Judicial Council of California, 2001). In several courthouses, all (young) children are given a new, stuffed animal when they arrive so they associate a pleasant, comforting item with their arrival (Judicial Council of California, 2001). And social workers and foster parents are encouraged in some jurisdictions to bring the child to court in advance of the hearing so that the child becomes familiar with the building, the processes, and the procedures of the court environment (Judicial Council of California, 2001).

The EU has been instrumental in developing detailed guidelines for ensuring child-friendly justice in dependency proceedings (FRA, 2015; Leifgaard, 2016). These include protocols regarding the right to be heard, right to information, right to protection and privacy, and non-discrimination. Suggestions for training for professionals, and strategies to promote cooperation, are also provided. The developing literature on child-friendly court rooms is fairly consistent in suggesting that even adapted courts may not be appropriate for all children or all circumstances. Children's age and development should always be at the forefront of decisions regarding the benefits and harms that might accrue to the child (Gal and Duramy, 2015; Khoury, 2010). Significant evidence suggests

that developmental delays are prevalent among the foster care population (e.g., Leloux-Opmeer *et al.*, 2016); as such, children's capacities for managing the court context may vary significantly. Children's wishes should also be taken into consideration (Khoury, 2010). If children would prefer not to participate, a requirement to do so might be especially problematic. Relatedly, participation in court must be weighed against other tasks or activities of import to the child (*Home at last*, 2006). Children's school attendance or participation in important extra-curricular activities may be more valuable to the child; engaging the child as a decision maker in determining *whether* they go to court may be as important as engaging the child *in* court. And some court hearings may be more important for children's attendance than others (Khoury, 2010). For example, review hearings focused on children's needs in care or emancipation hearings to plan a youth's transition out of care might be especially important for children's engagement. There is widespread agreement that children who participate in court will need transportation, supervision (wait times may be lengthy), and support in order to be engaged actors (Khoury, 2010). In Norway, a model labelled "children in mediation" is used in custody cases including high conflict cases, and examinations show that involved children report positive experiences with participation (cf. Strandbu *et al.*, 2016). There is also a model called "children's houses" (*Barnehus*) developed in Iceland and implemented in Norway, Sweden, and Denmark, with a child-centric approach to criminal cases involving sexual abuse or violence towards children (Bakketeig *et al.*, 2012). Testimonies and evidence are collected in a child-friendly environment by inter-disciplinary teams, trained to speak with children who have been exposed to traumatic events. The American Children's Advocacy Center (CAC) and the forensic units for children and adolescents in the university hospitals in Finland (Julin, 2017) have a similar approach.

1.2 *Children's Views about Court Participation*

Some studies have included children's perspectives on court participation. Studies conducted in the U.S. largely suggest that most children do not regularly attend hearings; those who attend do not typically participate actively (Khoury, 2008; Krinsky and Rodriguez, 2006; Pitchal, 2008). But some children want to be involved. Children indicate that they would like to be invited to court (Weisz *et al.*, 2011), and that they want to be heard (Quas *et al.*, 2009). In one study, children were notified of their court hearings and were invited to participate (Quas *et al.*, 2009). One-fifth of children regularly participated; one-third never did so. Among the children who attended court, most indicated that attendance was helpful. The views of children who attended but said nothing during court were similar; they too valued the experience. These children experienced low levels of stress associated with attendance, though they

expressed an interest in preparation prior to court so that they might better understand the process and the language employed. Children who did not attend court were asked the principle reasons for their disengagement. One-fifth indicated that court was too disruptive to their other routines – particularly school activities – and one-quarter indicated that they felt no one would listen to their perspective. In another study of children ages 8–18 years, children who attended court in a county in the Midwest region of the U.S. were more likely than children who did not attend to view the judge as fair (Weisz *et al.*, 2011). There are only a handful of studies on children’s views about participation in Norwegian child protection cases or family conflict cases. Strandbu *et al.* (2016) examined children’s experiences in 217 family conflict cases in which the “children in mediation” model was used. The children largely reported positive experiences, independent of conflict level and family problems, and children recommended others’ participation as well. In England, it is very unusual for children to attend and give direct testimony in “family proceedings” hearings (that is, “public law” child protection hearings and “private law”, dealing with divorce and separation, parental disputes). As mentioned above, in child protection cases, children’s participation is through representation by their lawyer and their children’s guardian (discussed further in Section 3 below). Furthermore, most children involved in public law proceedings are simply too young to play a direct part (Masson *et al.*, 2008). Given this context, it is not surprising that there is little research on children’s direct participation in care proceedings, although there is considerable research on care proceedings more generally (e.g. Family Justice Review 2011, Masson *et al.*, 2017). There is also research on related settings where children’s participation is more likely. For example, it is a legal requirement that all children in care have regular reviews, although these do not involve lawyers and are not held at court. Typically, they are held in the child’s foster home or a social work office. The expectation is that children who are old enough should attend at least part of these meetings. Participation increases with age, and although many of the young people say that they do not really enjoy the meetings, they do tend to say that attendance is worthwhile (e.g. Dickens *et al.*, 2015).

2 The Four Country Contexts for Child-friendly Courts

This study takes place in four country contexts that are known for their distinctive welfare states, child welfare systems, and of course significant differences in demography of their resident populations (Berrick *et al.*, 2015). Other authors have characterised Finland and Norway as “family-service” oriented child

welfare systems, and England and California as “risk-oriented” (Gilbert *et al.*, 2011). In England, as described above, it is very unusual for children to attend and give direct testimony in family proceedings, but this position has been under review in recent years, and particularly since 2014. Children and other vulnerable witnesses regularly give evidence in criminal cases (in youth and adult courts) and there are well-established procedures to enable this (e.g. pre-recorded evidence, giving evidence behind screens, use of video-links). The current thinking, from a judge-led working group that investigated the matter in 2014–15, is that the family courts could usefully adopt suitably modified versions of these processes (Vulnerable Witnesses and Children Working Group, 2015). These recommendations have been rejected by the government on cost grounds; and the proposals focused more on the private law cases than the public ones. In public law care proceedings, the “dual representation” system for children’s representation, through their lawyer and their children’s guardian, is generally held in high regard (Family Justice Review, 2011). All children who are subject to care applications are parties to the proceedings, in their own right (Children Act 1989, s. 41). As such, they are entitled to a lawyer (paid for out of public funds), who will represent them in court. They are also entitled to a children’s guardian, who is a social worker, employed by a national body called Cafcass (Children and Family Court Advisory and Support Service).

Legislation emphasises that local authorities and the courts must take account of the child’s wishes and feelings, in the light of their age and understanding (Children Act 1989, ss. 1, 22). The children’s guardian is required to report to the court on the child’s wishes and feelings, but to recommend according to his/her assessment of what will best safeguard the interests of the child. The lawyer represents his/her client’s views and wishes. Given that the majority of children involved in care proceedings are aged under five (Masson *et al.*, 2008), this usually means that the lawyer will follow the instructions given 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.

In Finland, the U.N. Convention on the Rights of the Child (CRC) as well as principles for child friendly-justice defined by the Council of Europe (Child-friendly Justice, 2010), frame the present approach to children’s participation in courts. Children may come to the court for issues related to family law (e.g. custody disputes), criminal offences and care order decisions and they will be met either by civil or administrative courts. In every case, a child should be met according to the principles of child-friendly courts. Despite the recognition of those principles, there is still a common view that children should not

enter courtrooms, if possible (de Godzinsky, 2015). Children are rarely seen in the courts as their views are mainly heard by social services and their views are indirectly represented by social workers (Council of Europe, 2010; Tolonen, 2016, Pösö and Enroos, 2017). Spokespersons or other indirect representatives are rarely used in the actual court hearings (Enroos *et al.*, 2017). In care order decisions, the tendency is to hear children who are 12 years or older in the court room whereas young children are even more rarely heard by courts. Recent criticisms suggest that the courts should hear children more extensively and that the court practices in general should be more child friendly, including how children are presented information about their case (de Godzinsky, 2015; Toivonen, 2017). Others have suggested that more attention should be given to the multiple and simultaneous court hearings which the child may be involved in due to the nature of family problems (Tolonen, 2016).

The Norwegian state has provided children with strong participatory rights. The Child Protection Act of 1992 states: 'A child who has reached the age of 7, and younger children who are capable of forming their own opinions, shall receive information and be given an opportunity to state his or her opinion before a decision is made in a case affecting him or her' (Section 6–3). This means that decision makers are obligated to provide information and hear the opinion of the child in child protection cases. Fulfilment of this legal right in care order proceedings clearly relies on decision makers' interpretation of children's rights and how they balance the right to participate against other important considerations, such as competency, maturity, age, ability to form an opinion, and the general need for the protection of the child (Magnussen and Skivenes, 2015; cf. Skivenes and Søvig, 2017). In Norway, only children ages 15 years or older (12 years if the legal ground is the child's own behaviour), are a legal party in their own case and, if so, will have a right to their own lawyer (all expenses covered by the state). Younger children will have an opportunity to have a spokesperson appointed, and the County Board makes the decision. Typically, children age seven years and older have a spokesperson (Enroos *et al.*, 2017), but there are exceptions also to this. Worrying from a child rights perspective as well as a legal perspective, is that the practice in court does not follow the law that states that younger children who are capable of forming their own opinions shall also participate, and thus the court disregards undertaking individual assessments of children (cf. Magnussen and Skivenes, 2015; cf. Lindboe, 2013). The county board may, at its own discretion, arrange for the child to meet with the chair before the hearing.

One of the fundamental tenets of the U.S. legal system is the right to be heard. As such, several large, national organisations have highlighted the value

of children's participation in dependency proceedings including the American Bar Association, the Government Accountability Office, and the PEW Commission on Children in Foster Care; each organisation has released policy statements expressing their preferences that children be given notice of their hearing and an opportunity to attend (ABA, 2009; Government Accountability Office, 1999; Pew Commission, 2004). Federal law also requires courts to consult with children in an "age-appropriate manner" when permanency or transition plans are discussed (Social Security Act, 2006). A handful of states have also passed legislation to show their preferences with regard to children's participation. In New York, Michigan, and Virginia, for example, children ages 10, 11 and 12 and older, respectively, are encouraged to attend court at least annually. In New Mexico and Kansas, the law stipulates age 14 and above. Minnesota's law is somewhat vague, simply indicating that children have a right to participate; and in California children both have a right to attend and a right to speak with the judge (Khoury, 2010). Children aged ten and older are required to receive notice of court hearings. A notice provides information regarding an upcoming hearing and serves to invite parties' participation. If a child is not present for a hearing, the judge is obliged to enquire whether the child received notice and to question the child's attorney why the child is not present. For youth present in court, judicial officers are mandated to enquire about 'the people who matter to the youth' in order to clarify placement preferences. In spite of these legal requirements, children and youth do not typically attend court hearings (Jenkins (J.), 2008).

2.1 *Judicial Decision Makers in Four Countries*

Whether children are present in court or are represented by others, the views of children and issues relating to children's care come before judicial officers in each of the four countries under study. In England, the family court system is organised in 44 regional areas, each headed by a "designated family judge". Care order proceedings may be heard at different levels of court. Under reforms introduced in 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 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 usually serve for a few days per month and they are typically drawn from the better-off and/or retired population in

the community. They hear care cases as a panel of three, and are advised by a legal adviser, who is a qualified lawyer. The role of the legal adviser is pivotal. He/she will manage the court hearing and may offer guidance to the parties as well as to the magistrates (Eekelaar and Maclean, 2013). Care order proceedings may also be heard at the County Court level and High Court level. At these levels, they will be heard by a legally qualified judge, sitting by him/herself.

Care order decisions are made in Finland in one of six regional administrative courts which cover all the issues of the administrative courts' jurisdiction. Since the present Child Welfare Act was introduced in 2007, administrative courts make decisions about involuntary care orders. Consent based ("voluntary") care orders are made at the local administrative level and the administrative court is involved in them in cases of appeals. About one-fifth of all care order decisions are made by administrative courts (Pösö and Huhtanen, 2017; Pösö *et al.*, 2016). Administrative courts do not necessarily organise oral hearings in care order cases but usually make decisions based on written material. In the latter case, the written material should present all relevant information to the court decision makers. Care order decisions are made by panels of three: two of these are legally trained judges and one is an expert member. The expert members possess expertise in child welfare 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 (Kuokka, 2015; de Godzinsky, 2012). They work part-time. The case is presented to the panel by an assistant judge, a legally trained person, who may also present the decision of the panel in writing. The assistant judges are not, however, involved in the actual decision-making.

The system in Norway requires all serious interventions such as a care order, and all involuntary interventions to be decided by the county social welfare board (County Board). There are 12 County Boards. Contrary to formal courts of general jurisdiction, the County Board deals with only a narrow type of case, namely coercive child welfare, and is therefore considered a specialised court-like decision making body. A care order decision in a child welfare case typically implies that the child is removed from his/her parents and placed under the care of local child welfare authorities. The child may be placed in out-of-home care only when in-home services have turned out to be ineffective or insufficient. A care order is one of three main types of out-of-home placement decisions, the other two being emergency placements and voluntary placements. Care order cases may occur either because a child's safety, health or development is at risk due to serious failings on the part of the parents or because of serious behavioural problems on the part of the child. Care order cases are prepared and initiated by the child welfare agencies, while decisions are made

in the County Board.¹ The procedure is that the child protection agency prepares the case documents and submits a care order application to the county board. Decision making in the County Board starts with a preparatory meeting between three decision makers – a legally trained judge, an expert member and a lay member – followed by a hearing which normally lasts for about two to three days in which the parties present their case. The court procedures are based on the principle of orality and only what is presented orally during the hearing may count as evidence (Skivenes and Søvig, 2017). Decisions by the County Board can be appealed in full to the district court, and on a restricted basis to an appeal court and supreme court.

In the U.S., child protection laws and practices can vary by state. In California, the Juvenile Dependency Courts operate as a branch of the Superior Court, organised at the county level (there are 58 counties in California). These courts hear cases relating to children or youth who are not safe living in the home of their parent(s)/caregivers; 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. The Presiding Judge (PJ) in the county is typically voted into office by the electorate for a six-year term; he or she is responsible for assigning commissioners or referees who serve as “at will” employees for the county. In very small counties, the juvenile court judge also serves as judge for other civil or criminal issues. In large counties, several judges and referees may be involved in juvenile court decision making. Decisions made by judicial officers are noted by a court clerk in documents called a “minute order.”

3 Methods

This paper examines judicial decision makers’ views about the degree to which their courts are considered “child-friendly”. The analysis is based on the responses of 1,432 court decision makers in England (N = 54), Finland (N = 65), Norway (N = 1290) and the United States (California) (N = 37) about the degree to which judicial actors see dependency courts as child-friendly. These four countries represent different child protection systems and care order proceedings. Finland and Norway have a family service-oriented system that utilises an administrative court and county board for care order decisions. England and CA, USA, have a risk-oriented system (England less so) with a traditional

¹ An overview of the care order proceedings in Norway and the role of the county boards can be found in Skivenes and Søvig (2017), and Skivenes and Tonheim (2016).

family court and a single judge making care order decisions. The questions are a part of a wider on-line survey addressing court decisions on care orders. That survey and the details of the data gathering can be found at the website <http://www.uib.no/admorg/85747/survey-material#court-level-survey>.

In England, we asked each Designated Family Judge (DFJ) ($n = 44$) to announce the availability of the study via e-mail including an explanation of the study and a link to the questionnaire. DFJs were asked to invite one professional judge and one lay judge (magistrate) in their area to complete the questionnaire (or two professional judges if more appropriate). This resulted in a maximum sampling frame of 88. The initial solicitation resulted in responses from 11 judges and 9 lay judges. Follow up emails produced limited success. Thereafter, one of the leading family judges in the High Court emailed the DFJs with a reminder, resulting in a larger response. The final sample of 54 from England included 35 judges and 19 lay judges, a 61 per cent response rate.

In Finland, every administrative court (6) in the country was involved in the study but access to the decision makers was granted differently in each court. Some courts gave the researchers access to e-mail addresses of the judges and expert members involved in care order decision-making; in other courts staff forwarded the research invitation to potential participants. Participants received a letter explaining the study and a link to the on-line survey. A reminder e-mail was distributed about a month later.

The administrative courts employ approximately 115 judges, though only some of these focus their efforts on child protection issues; others may rotate their tasks during the year. Twenty-eight judges responded to the survey, though it is not possible to estimate how many judges working with care orders were in the available sample pool at the time of the survey. The number of expert members recruited for participation is approximately 66, including some people who only work "stand-by"; 30 expert members responded. Seven assistant judges answered.

In Norway, we were granted access to the entire population of decision makers in the County Boards nationwide, including judges, expert members and lay members. The survey was distributed to 74 County Board leaders (judges), 437 expert members and 2,451 lay members. Ultimately, 41 judges (55 per cent response rate), 247 expert members (57 per cent response rate), and 1,351 lay members (55 per cent response rate) participated in the study.

In California, it is estimated that there were approximately 190 judges and referees serving in the juvenile dependency courts at the time of sample recruitment (Borack (J.), personal communication). All judges and referees were sent an invitation to participate along with a link to the on-line survey from a

prominent California juvenile court judge. Following four weekly reminders, 37 individuals participated in the study (20 per cent response rate).

In England, ethical approval for the judges' questionnaire was given by the Research Ethics Committee of the School of Social Work at the University of East Anglia. In order to undertake research with judges in England, permission was also required from the senior judge of the relevant court, which in this case was the head of the family courts in England, known as President of the Family Division. Ethical approvals were also solicited and approved in Norway by the Norwegian Data Protection Office for Research, and in California by the Committee for the Protection of Human Subjects at the University of California, Berkeley. In Finland, the survey was distributed with the administrative courts' permission; additional ethical approvals were not required.

In order to discern the views of judicial decision makers, we devised an online questionnaire, which was distributed in the four countries between December 2014 and May 2015. The questions were developed in British English by the four researchers so that they were relevant to all four systems. They were then translated into Finnish, Norwegian and US terms.

The analysis is based on responses to six questions:

- (1) Children's right to express their views is followed well in my country's (state's) courts.
- (2) Care order proceedings are conducted in a child-sensitive time frame.
- (3) The courts offer a child-friendly environment.
- (4) The courts use child-friendly language.
- (5) Statements by children are collected in a child-friendly manner.
- (6) "Children's rights" serve as the paramount frame for decision making in care order proceedings.

Response categories were offered in a Likert scale from "strongly disagree = 1" to "strongly agree = 5". There was also a "Not applicable (NA)" response. These have been coded together with missing data.² An appendix with detailed information about the material and the analysis, can be found at http://www.uib.no/sites/w3.uib.no/files/attachments/appendix_to_international_perspectives_on_child-responsive_courts.pdf. The analysis is descriptive, and we present the mean values by country using Kruskal-Wallis tests to measure differences in mean scores between samples of different sizes and standard deviation (cf. Table A in Appendix). Furthermore, specific differences between countries are measured on significant level of 1 per cent (cf. Table B in Appendix). We have

² The distribution of NA per statement a-f is as follows: a. N = 54, b. N = 59, c. N = 116, d. N = 126, e. N = 83, f. N = 45.

examined the mean values for each group of decision makers to see if there is variation between them, and although there are some differences they are not big enough to demand a separate analysis (cf. Table C in appendix).

This sample of judiciary decision makers includes a majority of female court decision makers (56 per cent). The median age of all court decision makers is between 46 and 55 years. The judges, expert members and lay persons/magistrates typically have a university degree – BA, MA, JD, or PhD; lay persons/magistrates are, on average, somewhat less educated than other decision makers.

4 Results

Overall the findings show that there are considerable differences between legal systems. Figures 1–6 below show the differences in mean scores by country and total. Judicial decision makers generally consider that children's rights to *express their views* are followed in their courts. The mean score across all four countries in response to this question is 3.73 (where 5 is strongly agree). Respondents in California are significantly more likely to respond favourably to this question (mean value of 4.49), as shown in Table 1 below (cf. Table B in Appendix), compared to the other three countries. Finland (mean value of 4) scores significantly higher than Norway (mean value on 3.7) on this statement.

When asked whether care order proceedings are conducted in a *child-sensitive time frame*, the mean score across all countries in response to this question is 3.3, indicating that more agree than disagree. However, there are significant country differences, with Finnish respondents being less likely to indicate that court proceedings are conducted in a child-sensitive time frame (mean score 2.7) and English respondents scoring highest (mean value 4). The USA and Norway are in between (mean value 3.5 and 3.3 respectively). There are significant differences between the Nordic countries and between England and the USA (cf. Table B).

On the statement that the courts offer a *“child friendly” environment*, the mean score across countries is 3, the lowest of all total scores across all questions. California judicial officers score significantly higher than the others on this statement (mean score of 3.5), followed by Norway (mean score 3), Finland (mean score 2.6) and England (mean score 2.2). The difference between England and Finland is not significant, nor the difference between Norway and Finland. However, Norway differs significantly from England and the USA.

Asked about the use of *“child friendly language”*, the mean for the total sample was 3, however, English and California courts are distinct in their

perceptions of how they use “*child friendly*” language. In California, the mean score offered by judges was 3.6 compared to a mean score of 2.3 among English judges. Norway and Finland were in between with respectively mean scores of 3 and 3.4. The country responses are significantly different between all countries, except for Finland and USA.

Judicial decision makers across all four countries responded similarly (no significant differences) when asked about whether *statements by children* are collected in a *child friendly manner*; in general, judicial decision makers were modestly inclined to indicate that statement-gathering was conducted in a child friendly manner (average 3.6).

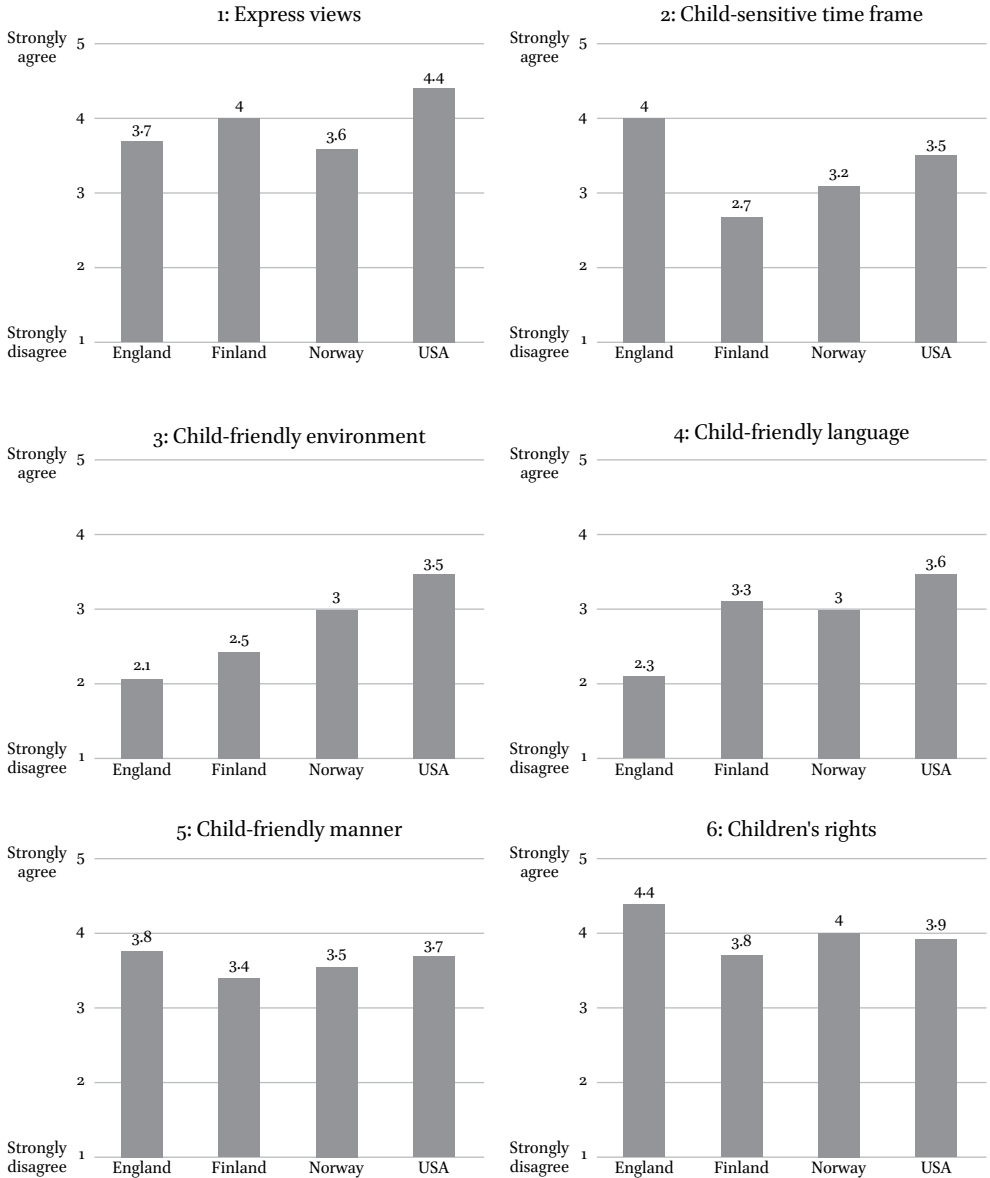
Finally, the English judges were significantly more likely than judicial decision makers in other countries to indicate that *children’s rights* serve as the paramount frame for decision making, with a mean score of 4.5 compared to Finland with a mean at 3.8, Norway with a mean at 4, and, USA with a mean at 3.9.

4.1 *Differences among Judicial Actors?*

As for differences between the various judicial actors in each country, the only significant differences (at one per cent level) were in Norway (cf. Table C in Appendix). Norwegian judges were more positive in their assessment of the question of *children’s right to express their views*, than expert members. Lay members were more likely, compared to judges and expert members, to view the courts as responding to children in a *child-sensitive timeframe* and to offer a *child-friendly environment*. Lay members held more positive views on the courts using *child-friendly language*, compared to judges, but judges were more likely (compared to lay members) to indicate that evidence from children was collected in a *child-sensitive manner*.

5 Discussion

Child friendliness of the courts was one of the criteria in the Child Rights International Network’s (CRIN) global ranking of the extent to which children’s rights are upheld in 197 national legal systems (CRIN, 2016). The national court systems were measured against standards from international treaties on how well they enable children to *access justice* and enforce their rights, rather than how well they actually perform in upholding children’s rights (CRIN, 2016, 6). In the 2016 ranking, Finland stands at number 4, the United Kingdom tenth, Norway thirteenth, and the USA at number 52. Our study complements these results by focusing specifically on child protection proceedings, with the



FIGURES 1–6 Mean scores per statements and per country. 1 = highly disagree, 5 = highly agree.

particular issues they raise for children’s involvement. We asked officials who decide these cases how they view the child-friendliness of the courts. We presented them with six statements representing standard features of child responsive courts. These are relative questions – we do not know the reference

point our participants use in responding to these questions. For example, it may be considered typical, and therefore expected, that child protection proceedings in the U.S. are very brief, where the opportunity for children's participation is extremely limited in objective terms. But relative to the opportunity to participate for other actors in the courtroom, the California respondents may view children's participation as positive. Our study is country comparative, and we examined if there were differences between systems as well as differences between different types of decision makers.

Findings from California stand out, as judicial respondents were more likely than respondents in other countries to suggest that children had a right to express their views, that judicial proceedings were responsive to children's sense of time, that the courts offered a child-friendly environment, and used child-friendly language (it is intriguing therefore, that the USA comes so much lower in the CRIN ranking; perhaps the Californians are not typical of other US judges). The fact that California judges were so positive about their courts as being child-friendly likely reflects that state's concerted efforts in recent years to train judges about children's needs and desires in the courtroom, the advocacy of a few vocal judicial leaders on these issues, and legislative clarification about the opportunities that should be afforded children vis-à-vis court. California is also recognised across the USA as one of the few states that provides an attorney to every child in foster care; an effort to strengthen youth "voice" in court, albeit indirectly. Relative to California courts in previous years, judicial settings are probably much more child-responsive than they used to be. Nevertheless, it is important to bear in mind that dependency proceedings in California and many states in the U.S. are brief events. According to one study of California juvenile courts, the median duration of dependency hearings in California is between 10–15 minutes (Administrative Office of the Courts, 2005), so the opportunity for meaningful youth participation is probably limited in most cases.

In contrast to California, the English judges perceived that their courts were *not* particularly child-friendly, and specifically they expressed that neither environment nor language used were child friendly. Compared to the other countries, English judges were more likely to indicate that proceedings were conducted in a child-sensitive time frame and that children's rights are paramount. A likely reason for the judges to perceive that proceedings are undertaken in a child sensitive time frame is that there have been major reforms in England to speed up the judicial process for care orders. It has been a legal requirement since 2014 for care proceedings to conclude within 26 weeks, save for "exceptional" cases (see Dickens *et al.*, 2014). The average duration fell from 50 weeks in 2011 to 26 weeks in 2016 (Ministry of Justice, 2017, 2). The response about children's rights is somewhat more surprising, given that the principal

piece of legislation, the Children Act 1989, makes the child's welfare the court's paramount concern. It does not explicitly refer to the child's rights, but it does specify the importance of hearing the child's views (through the lawyer and children's guardian). It seems the judicial decision makers interpret the welfare requirement and role of the court in terms of children's rights.

In contrast to the judges in England and California, the Norwegian and Finnish judicial decision makers were in the middle on most of their responses. Only on one issue did they stand out, with the Finns scoring low on the statement that the duration of care order proceedings was child-friendly. Although Finnish legislation requires speed in dealing with child protection issues, there are no timelines specified in the law. As a possible result, these processes can be lengthy; on average 5.3 months (Pösö and Huhtanen, 2017), contributing to respondents' views that care proceedings are not attentive to children's sense of time. Interestingly, this is still lower than the 26 weeks that the English judicial decision makers spend. Judicial decision makers in Norway, with the exception of confirming that children's rights serve as a paramount frame, were not overly positive about the child-friendliness of their courts. They overall placed themselves above the mid-score, seemingly satisfied but not top in class.

Findings from all countries show a strong affirmation that children's rights serve as the paramount frame for court decision making. These results are not surprising in the context of Finland and Norway, where legislation affirms a children's rights framework, but are more intriguing for England and California. England scored especially highly even though, as noted above, the law requires that the child's *welfare* is the court's paramount consideration (Children Act 1989, s. 1). And in California, a child "safety" orientation would typically describe judicial decision making in the context of a balance between children's and parents' rights. As such, we would have expected that the judges in California would report a lower score on this topic.

The findings show that only in Norway were there differences between the types of judicial decision makers in their assessment of the child friendliness of the court, and primarily it was the lay members of the board that differed from the judge and the expert member. Overall, the lay members were more positive as regards the courts' child friendliness than the "professional" judicial decision makers. The reason for the differences may be a combination of lay members having less experience with the proceedings, since typically they are included in only one or two cases a year, and they do not have training in, or experience of, children in child protection cases.

5.1 *Limitations*

Findings from this study shed intriguing light on judicial decision makers' views about their courts as responsive to children as important clients and

possible agents of their fate. Some limitations, of course, bind our interpretations. The study was limited to the field of child protection and did not address other areas relevant to children (divorce or family proceedings, for example). In each country, different strategies were used to engage a sample of judicial decision makers, and each country has response rates that vary. In addition to our sample, we cannot be clear how these judicial agents responded to the survey. To what degree were these judicial actors describing the general tone and tenor of their own courtroom, or were they responding to their perceptions of others' courtrooms, or to a cultural norm of how they think courtrooms should operate? Further, although the authors took pains to ensure that the language used in each survey was appropriate to the participants in each country, we cannot be sure that each question was 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 of child-friendliness. Child-friendly language, for example, can be a different issue for a child psychologist, or an expert member, compared to a legally trained judge. Finally, the comparisons between the countries provide us with an excellent illustration of how respondents' interpretations of a situation are relative to the respondents' context and reality. For example, English judges score high (4 out of 5) on child-sensitive time frame and the Finns score the lowest (2.7 out of 5), yet we know that the Finns use less time than the English judiciary decision makers as mentioned above. Finally, we are acutely aware that this study about child friendly courts, does not include the experiences of the most important stakeholders, the children.

Conclusion

Even though the CRC is clear and there are major efforts from the Council of Europe to ensure children a prominent place in matters concerning them, there remain wide disagreements in the field about the degree to which courts should be or become "child-friendly" to accommodate the participation of children. Widely varying philosophical perspectives on children's capacities and maturity, their sensitivity to the topics under consideration in court, and different views about how or if court participation might be perceived as empowering or disempowering, still animate debates among judicial officers, legal experts and child protection professionals. For those jurisdictions that want to embrace a child-sensitive approach, practical matters limit the development of truly child-centered environments. Many of the courtrooms that hear family cases are harried and over-burdened. Authentic inclusion of

children's participation requires much more than a comfortable waiting room or a stuffed animal gift. Child-responsive courts include – at a minimum – thoughtful architecture, well-trained staff at all levels, therapeutic support and ample time to prepare children before, during and after the court hearing. The dilemmas and the practical considerations mean that children's direct participation in child protection court cases remains contested in all four countries in this study.

Determining if and how children's rights can be genuinely expressed and thoughtfully considered, while children's developmental and emotional well-being is fully protected in the context of highly sensitive family matters, is extremely challenging. Because of the difficulties, we should expect to see great variability not only across countries, but also within countries and across jurisdictions – even between different courtrooms in the same jurisdiction. The challenge is how much variation is compatible with equal treatment and justice for all. It does not bode well for fairness or quality of decision making if children have very different opportunities and support to participate, solely on the basis of which courtroom their case is heard in. In that sense, training for the judicial decision makers is essential, along with the other changes identified above for achieving child responsive courts. One of the challenges for delivering such training is that it must be consistent with the principles of judicial independence and sensitive to the particular circumstances of each case. Furthermore, our study suggests that the responses of the court decision makers are strongly influenced by their own context – for example, the English respondents are highly positive about the timescale of proceedings in their country, but that is because it is so much shorter than it was only a few years ago; and the responses of the California judges reflect the recent efforts made there to enhance the child friendliness of the courtroom. The Finnish respondents' positive view about their use of child-friendly language should be understood in the country context in which children entering the court room are mainly teenagers. So, thinking about child friendliness requires attention to the well-being needs of children as a first start, and a focus on equity married with flexibility; and to widen the lens on what is achievable, it can be instructive to learn from other countries' philosophies and approaches.

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