

Kevin and Peter: responses to two 'preventable deaths'

Graeme Simpson, University of Wolverhampton

g.simpson@wlv.ac.uk

Katja Nowacki, University of Applied Social Sciences, Dortmund

Katja.nowacki@fh-dortmund.de

Abstract:

European welfare states have substantial provision to ensure that children are brought up in conditions, which meet the articles of the United Nations' Convention of the Rights of the Child. In our analysis of two preventable deaths in Germany and England, we focus primarily on Article 18, which directs states to ensure that there is adequate provision to support parents in their responsibilities, and Article 19, which ensures children's safety and protection.

We outline the legal framework, which existed at the time of two child deaths: 'Kevin from Bremen' and Peter in London, both young children who were subject to formal state supervision and oversight. The events – including the press response, their aftermath and the subsequent changes to social work practice through legislation and guidance will be examined.

Our subsequent analysis will evaluate the extent to which events altered the balance between Articles 18 and 19 in the two countries, and the extent to which a Children's Rights approach in this area offers new insights. The analysis will suggest that a rights-based approach offers some benefits for a comparative framework and understanding child and family social work, but also that it is not without some difficulties.

Introduction:

We seek to examine changes in England and German social work legislation and practice, in the light of two high profile child deaths: ‘Baby Peter’ (Connelly) in London, England and “Kevin aus Bremen” in Germany through the lens of two key Articles of United Nations’ Convention on the Rights of the Child (UNCRC).

We begin by advancing our rationale for the selection of the relevant UNCRC Articles, before briefly outlining the core childcare legislation in both countries prior to the two ‘avoidable deaths’. Neither was an isolated case, but we have selected them for two major reasons. First, they both achieved a very high level of media coverage, which continued long after the case first became known. Second, both cases influenced the development of social work law and practice in their countries (see Fegert, Ziegenhain and Fangerau, 2010; Jones, 2014). We are not claiming that these were the only influences on a set of legal and practice changes in both countries, but they were the *stated* ‘triggers’ for a range of new provisions.

Our methodology traces the extent of involvement in such changes through the published literature, the media and the social work profession. A media search was conducted through web-based search engines – although some of the material referred to has since been removed from the internet, but is identified in other work from which we draw.

We revisit the UNCRC Articles to analyse the extent to which the deaths have resulted in a convergence of legislation and practice, or whether existing arrangements have merely been ‘tweaked’ within an established system.

The problems of comparison

There is an extensive literature concerned with the complexities of methods of international comparison (see Hantrais, 2009; Mabbut and Bolderson, 1999). The difficulties of cross-national comparison in social work are also well established and relate to the main areas of language (see below); complexities of comparing legal systems, different political frameworks and, different social work traditions (see Lorenz, 1994 and Siebel and Lorenz, 1996). Specifically within child care practice, there have been attempts to engage in comparison which have resulted in taxonomies, which most significantly identify ‘child protection’ versus ‘family service’ orientations (see Gilbert, Parton and Skivenes 2011). Children’s Rights have also have been addressed comparatively (see, for example Crowley, 2015; Gran, 2010),

however, they have not been a feature in this area of social work practice in relation to Germany and England.

A rights-based perspective lifts the debate out of nation-specific taken-for-granted assumptions (Hetherington, 1996). For example, in England, the 'protection versus support' debate is longstanding; in Germany, it rarely appears in this dichotomous form. Thus identifying a framework within which both countries can be discussed and analyzed, outside of pre-existing debates is important.

Cross-national approaches provide a "lens through which to view local practice" (Lyons, Manion, and Carlsen, 2006:11), and a rights-based approach adds to this, enabling a deeper understanding of each country.

The Convention and its articles

Germany and the United Kingdom are signatories to the UNCRC. Although both countries have made relatively minor declarations concerning aspects of the convention, these have often enhanced its provisions. The United Kingdom is the nation-state signatory for the four countries of the Union: England, Scotland, Wales and Northern Ireland. Each country has its own system for supporting children and families: our focus is England, since that is where Peter lived.

Our focus is upon Articles 18 and 19, which we suggest form the bedrock of traditional social work practice and policies for children and families. These develop out of and build upon other Articles, significantly 3 and 5. Article 3 states that the best interests of children should be the primary concern in decisions, which affect them. Social work balances this with Article 5, focusing upon parental guidance. It states that Governments have a responsibility to protect and assist families in fulfilling their role as nurturers of children. Article 18 identifies Governments' responsibility to provide support services to parents, whose main responsibility is to provide appropriate guidance in their child's 'best interests'. Tobin (2013) identifies a collaborative or cooperative approach between the state and family, and such an approach is stronger in Germany than England, as we will argue later.

Article 19 makes it clear that children have a right to be protected,

... from being hurt and mistreated, physically or mentally. Governments

should ensure that children are properly cared for and protect them from violence, abuse and neglect by their parents, or anyone else who looks after them.

The Articles promoting the responsibilities of parents towards their children are contingent upon the fact that they do not harm them. The tension in the Articles is between the needs for family support and that of protecting the child: how this is resolved in the light of public concern about child maltreatment by parents/carers will be the focus of our analysis.

The debate around 'support' and/or 'protection' is a longstanding one within social work, notably social work in England (Featherstone, White and Morris, 2014). A focus on the Articles extends the debate to an audience less familiar with the English dichotomous approach. The discussion around 'support' and 'protection' – or in the English legislature, 'needs' and 'risk' – is less significant in Germany, where the concept of 'support' permeates the legal framework and practice. If German law and practice do not establish an apparent contradiction, then what may be obvious for English practitioners, appears less so for their German counterparts who see a continuum of needs, support and services. (authors, 2014; 2015). Thus, using the UNCRC Articles may be a way to cut through these barriers.

The 'problem' of language

Language, and its use (Glad, 2006; authors, 2014) is important in undertaking any comparison, however limited in scope. We do not provide English translations for pieces of German legislation, and retain several German terms throughout, since either they cannot be 'translated', or standard 'translations' are inadequate. We also clarify some English terms, since language does not describe common realities (Harrison, 2005), and in our attempts to address 'linguistic imperialism' (Groterath, 2011; authors, 2015).

German terminology

Jugendamt: the state social services department. One major duty of the social

workers working for the Jugendamt is to ensure children's welfare and provide help to families (Fieseler and Herborth, 2010).

Vormund: A Guardian (§§ 1773 ff. Bürgerliches Gesetzbuch (BGB)), who can be a social worker employed by the Jugendamt (then called "Amtsvormund") or a freelancer. S/he assumes parental rights and can make all the legal decisions about health care, finances, where the child lives (Aufenthaltsbestimmungsrecht) and can request services for the child and family.

Sozialpädagogische Familienhilfe: is a form of counselling, based on social pedagogy, for parents and children. Its primary aim is to ensure that the family remains together. Whilst typically German it is also practiced widely throughout northern Europe (Stephens, 2009).

English terminology

Local Authority: these vary in size and function, from the largest (Birmingham) to small Metropolitan Boroughs. All Local Authorities have the statutory duty to meet the basic needs of children in their area including that of 'child protection'. They do not lend themselves to an easy cross-national 'comparison'.

Social Worker: in England, only qualified *and* registered personnel are allowed to use the term. The majority of social workers are employed by Local Authorities, although some are self-employed, working on short-term contracts with Local Authorities, but not directly employed by them. The majority of staff in residential settings is not professionally qualified. By comparison, a majority of social workers in Germany are employed in the 'not for profit' NGO sector: the major organizations are connected to the Roman Catholic or Protestant Churches, the Trades Unions, and the Red Cross (Timm, 2014).

The German Legal Framework in outline

Both countries brought legislation into force in the early 1990s. England and Wales saw the passing into law of the 1989 Children Act (enacted, 1991) whilst Germany enacted the Kinder- und Jugendhilfegesetz (KJHG, 1991) more accurately known as Sozialgesetzbuch VIII.

The right and responsibility of biological parents to raise and care for their children is highly valued in Germany, and is established in the Grundgesetz (GG), the substitute for the German constitution. The concept of voluntariness and the right to receive help are enshrined in Children's legislation. The Sozialgesetzbuch VIII (SGB VIII) sets out the responsibilities of the state and others to ensure that services are provided to support children and families. It focuses upon the range of services available and §§ 27 to 35 identify different forms of support services for families and their children.

One core intervention, aimed at supporting parents with the upbringing of their children is "Sozialpädagogische Familienhilfe" (§ 31 SGB VIII). Where family based methods are not successful, the law allows for placement options for children in foster families (§ 33 SGB VIII) or residential home settings (§ 34 SGB VIII). Under (§ 27 SGB VIII) the child's parents or guardians are able to request help, including an 'out of family' placement through the Jugendamt. Children placed in residential or foster care should return to their biological family whenever possible, thus such interventions are, theoretically, seen as a temporary assistance. In reality there are large numbers of children placed in long-term foster and residential care (Destatis, 2014).

The Jugendamt social worker has a legal duty, as a 'state officer', to ensure the child's safety in cases of severe danger. The 'child protection' element of a case runs in parallel to continuing efforts to support the family in caring for the child (Leu and Schelle, 2009). In extreme circumstances, however, children can be taken into care against parental wishes (§§ 8a, 42 SGB VIII), however such measures have to be supervised by a family court, which has the power to replace parental rights and transfer them to a legal guardian (§ 1666 BGB).

Thus, whilst the German system has measures to intervene in situations of danger (Article 19) it primarily promotes Articles 5 and 18, with a strong focus upon supporting parents, which is firmly established in the Grundgesetz.

The English legal system in outline

The core principle echoes Article 3, - the 'welfare of the child is paramount', though, in contrast to German law, the focus is on the child, not the family.

In terms of public provision the Act makes a distinction between children who are 'in need' (s.17) and those who are 'at risk' (s. 47), as being the major determinant of how social workers intervene, in contrast to Germany's emphasis on services (see earlier). Section 17 gives Local Authorities general duties to safeguard and promote the welfare of 'children in need' within their area, and to promote the upbringing of such children by their families.

The Act offers a vague definition of need, ensuring children "maintain a reasonable standard of health and development, which would not be possible without assistance"; and/or "that the child is disabled" [s17(10)] and s17(11). The services, which a child, or a family, may receive are unspecified in sharp contrast to the German framework.

Section 47 deals with protection from *significant* harm. The Local Authority has a duty to investigate if they have "reasonable cause to suspect that a child ... is suffering, or is likely to suffer, significant harm" [s.47 (1b)] and actions must 'safeguard or promote the child's welfare'.

Section 20 refers to 'the provision of foster and/or residential care' (accommodation) typically by agreement with a parent, since s.20(8) allows for the child to be removed at any time by a 'person who has parental responsibility'.

Where there is no parental agreement to accommodate, and a child needs protection, the Local Authority may apply to a court for an order to take the child into care (s.31). The legislation governing 'care' is complex and proceedings can take considerable time to conclude, however the 2014 Children and Families Act sets a 26 week time limit.

There is also provision, under s52, Adoption and Children Act 2002 for parental consent to be dispensed with if this is in the child's welfare interests. England uses adoption as a 'solution' for children who have been taken into care. Although there are similar legal possibilities in Germany, e.g. substituting the consent given by the parents (§ 1748 BGB), these are seldom used: a substantial difference between the two systems (authors, 2015).

Within the English system the only way in which parental responsibilities can be transferred is through adoption, in contrast to the German system where 'rights' can be transferred to a social worker by a judge. However, such measures are relatively rare in Germany, as parents are usually in agreement with the social work plan and invariably work within a system where the longer term aim is to return the child to the birth parents.

The English system, like Germany, is premised upon Article 3, however we suggest the balance between Article 18 and 19 is different in Germany, with a greater emphasis being placed upon the management of risk and 'protection' as opposed to 'support and services'.

Having established the legislative framework for England and Germany we now turn to the two chosen 'preventable deaths' and summarize the cases of 'Baby Peter' and 'Kevin aus Bremen'.

The case of 'Baby Peter'

Peter was born in 2006, and lived with both parents. A few months later his mother began a relationship with another man and Peter's father left. His mother's new boyfriend moved into the home in November. When seven months old he was taken to the GP (local doctor) with bruising to the head and chest. His mother said he fell over. Two months later the GP sent Peter to the local hospital after seeing further bruises on his head and chest. At this point, Peter was placed on Haringay Local Authority's child protection register and went to live with family friends. He was returned to his mother and her boyfriend's care after five weeks.

When 13 months old, he was admitted to a different hospital with bruises: his mother said another child had pushed him against a fireplace and the police were not informed. In July, the social worker visited and Peter was taken to hospital with twelve areas of bruising. His mother was arrested, but she claimed another child injured Peter. Around this time, the boyfriend's brother moves into the home. On 30 July, 2007 there was a visit by the social worker who did not notice that Peter had bruises, because Peter's face had been covered with chocolate to conceal them.

Two days later Peter was examined at a child development clinic. Two days after that, Peter was found dead in his cot.

In November 2008, the case became national news following the conviction of his mother and two others for causing his death. There was intense media reporting of the case, which occurred in the same Local Authority as an earlier child death - Victoria Climbié. A week after the conviction the Home Secretary ordered a full enquiry and in December the leader of Haringay Council and the cabinet leader for Children and Young People both resigned. A week later the Director of Children's Services was suspended and later dismissed following direct Government intervention.

The pediatrician who saw Peter before his death was suspended and the social worker and three managers were dismissed in 2009. In May, 2011, the Court of Appeal ruled the Director's sacking was procedurally flawed; she won her appeal and received substantial compensation. In March, 2013 the Court of Appeal ruled the social workers were *not* unfairly dismissed. In November, 2013 Peter's mother was released from prison. Her boyfriend remains in prison; his brother was released, but then re-imprisoned for breaking the terms of his parole.

“Kevin aus Bremen”

Kevin was born in 2004 in Bremen. His mother had a HIV infection, was a user of methadone, and refused treatment in her pregnancy. Kevin was born prematurely and had severe withdrawal symptoms. The man believed to be his birth father (although the autopsy after Kevin's death showed he was not) was also drug-dependent, had drug-related convictions, and a conviction for violence. He was in a drug substitution programme at the time of Kevin's birth.

After his birth, Kevin remained in intensive care. During this time the mother lacked the capacity and parenting skills to meet his needs; Kevin's father showed repeated aggressive behaviour, and was banned from the hospital. Nevertheless, the parents were allowed to take Kevin home with them, with the plan that they would attend a rehabilitation clinic together, which they did for a short time. They subsequently refused any further help offered from the Jugendamt.

When he was eight months old, Kevin was sent to a child clinic with a fracture in his leg: several older fractures were discovered and developmental delay identified. The parents provided various explanations; denied responsibility for the injuries; and Kevin returned home. Two months later, his mother was found intoxicated at home and Kevin was lying next to her with numerous injuries. Unsurprisingly, the professionals in the clinic were concerned about the mother's ability to look after him, and Kevin was placed in residential care for a week.

Kevin's father regularly attended the drug substitution programme, and, following the doctor's professional advice, was allowed to take care of Kevin, who returned home. The parents attended a counselling programme run by "Familie im Mittelpunkt" ("Family at the Centre") which was judged by the professionals to be a success; and so, the case was closed.

After a miscarriage, Kevin's mother was found intoxicated again; his father, however, always appeared to provide good enough care for Kevin. The Jugendamt was informed that the parents did not take Kevin for his regular check-ups (Vorsorgeuntersuchungen). When they did, however, the pediatrician and the doctor in charge of the father's drug programme said that the situation was acceptable.

Kevin's mother died in suspicious circumstances, and the father appeared to be acting very aggressively as paramedics attempted to provide emergency treatment for her. Kevin was taken into residential care and parental rights were transferred to the Vormund in the Jugendamt.

The social worker (case manager) in the Jugendamt wanted to return Kevin to his father despite strong concerns expressed by the residential home. A child-minder was found for Kevin, but the father refused other offers of assistance. Several months later, the child minder contacted the Jugendamt to report that Kevin had only been to her house three times, and she expressed concerns about the father's ability to look after Kevin.

The father stated that he planned to move in with his own mother, but it later transpired that his family was afraid of him because of his violent behaviour. The father was repeatedly seen intoxicated with Kevin, and received a conviction for an offence of physical violence.

There was continuing pressure from a range of professionals, who all expressed similar concerns, and after repeated unsuccessful attempts to talk to the father and see Kevin it was decided to admit Kevin to care because of immediate danger. When the Vormund visited to explain this in 2006, Kevin was found dead in his father's flat; his frozen body parts were in the fridge.

Kevin's father was convicted for neglecting his responsibility to care and causing physical injury resulting in death (Körperverletzung mit Todesfolge in Tateinheit mit Misshandlung von Schutzbefohlenen). He was sentenced to ten years imprisonment.

Media reporting

In Germany, social workers may be charged with professional negligence. In the case of Kevin the social worker (case manager) from the Jugendamt was declared unfit to stand trial when he became ill through stress. The Vormund was charged with negligence, and was given a token fine, payable to a children's charity in 2010, reflecting the fact that his caseload was over two hundred children. The Minister responsible in Bremen immediately resigned, and the Head of Service was suspended.

Initial reporting was critical of the Jugendamt, particularly in the local press. Der Spiegel (2006) had drawn attention to the manner in which warnings about Kevin were overridden, but stopped short of criticizing family oriented policy, preferring to focus upon the fact that the father refused help. The report of Die Zeit (2006) claimed that 'no-one wanted to take responsibility for his death', and criticized social work practice with the comment:

'...Kevin's file is centimetres thick stuffed with information. Plenty of theory. Little practice ... deathly results'

The piece stops short of singling out specific social workers, turning its attention to budget reductions, high caseloads and the system of case management, a development, which had also been subject to a level of criticism by the profession (Hansen, 2005).

The German press quickly moved away from sensationalist reporting, and, in comparison to the English press, offered a more balanced view of the case. The social worker and especially the Vormund were often portrayed in a sympathetic light with criticisms being primarily directed at the organization of social work in the Jugendamt, and the high number of cases they dealt with (Der Spiegel, 2010). The picture created was not one of incompetent social workers failing a child, but rather of high social work caseloads and 'system failure'.

The English media, especially in the immediate aftermath, saw *individual* social workers as the 'cause' of the preventable death. *The Sun* newspaper promoted an online petition calling for the social workers involved to be sacked, which received over 1 million signatures (Jones, 2012). Much tabloid coverage portrayed the parents as 'monsters' and 'evil', whilst Peter was 'tragic' and 'cherubic'. Jones (2014) argues that media coverage of Peter's case intentionally created an anti-social worker bias, in a politicized manner. Warner's (2013) textual analysis of the newspaper reporting identified the following themes: a general disgust at the way Peter lived, what she terms 'a glimpse of an earthly hell' (ibid: 224); how social workers lacked 'common sense' - 'tick-box social work and the cold hearted bureaucrat' (ibid: 226); and what she termed 'the competent 'us' versus the 'incapable them''. She cites Phillips, a right wing commentator, who provided a typical attack on the 'incompetent' profession:

... bending over backwards not to pass judgments on those who were demonstrably incapable of looking after a child, that same social work establishment refused to place children for adoption with ordinary middle-class families. ... inquiry has followed inquiry into social work failings – only to be followed by one shocking case of abuse after another (Phillips, 2008 in Warner, 2013: 227-8)

The media in both countries began their reporting, perhaps understandably, with a focus upon the child protection aspects (Article 19) – in Germany this shifted to a focus about systems in general and the nature of family support provided by social services in general (Article 18). In England media coverage intensified around Article 19, the child protection question.

Professional responses

In both countries there were internal reviews about the nature of social work and how it should respond. In England this led to a substantial overhaul of the system with

inquiries, task forces, reports and reviews being commissioned. These included, the Social Work Task Force (2009-11), followed by the Narey Report (2014) and the Croisdale-Appleby Report (2014) examined the nature of social work education and new arrangements were put in place for the BA(social work), notably with regard to practice education. The Munro Review of Child Protection (2011) focused upon practice arrangements for child protection and family support.

These reviews were officially 'welcomed' by the social work profession and the Directors of the Social Services Departments. The social work profession accepted the need for 'change', although there was some resistance (see Ferguson and Lavalette, 2009) and some pointed out that the social workers involved in the case had not studied under the degree programme. Professionally, there was considerable interest expressed in the "Hackney model" (Munro, 2011) which argued for a more child & family focused approach, noting that almost 80% of social workers' time was spent on routine office based bureaucracy.

Kevin, like Peter, was not the only child death, but was a high profile case, which sparked a national 'debate'. In Germany, an immediate consequence may have been increased levels of anxiety and uncertainty in how professionals should respond. There were also a series of conferences for professionals working in childcare and child protection, where lessons learned were disseminated. Fegert, Ziegenhain and Fangerau (2010) identify other outcomes as an increase in documentation, greater interdisciplinary collaboration, and more knowledge about parental mental health issues.

Since the deaths, both countries have seen a rise in the numbers of children taken into care, arguably as a result of a more cautious policy towards child protection. In Germany the numbers have steadily increased since 2008 (Destatis, 2014) and a similar trend can be seen in England (DoE, 2014).

Legal responses

Notwithstanding the possibility of other potential influences upon legislative and practice changes, we suggest that the two child deaths had a *significant* impact upon the development of legislation, and to this we now turn.

In England the Children and Families Act, 2014 was implemented. This affirms the existing legal framework outlined earlier, and includes new measures in relation to adoption. The Act places considerable emphasis upon adoption reform relevant to this discussion. To speed up the court process there is a 26 week timetable for the conclusion of Care applications [s14 (2)]; time limits for interim orders (s. 4). S.3 repeals earlier provisions to take a child's ethnicity into account in adoption placements. Finally the Act gives greater flexibility to allow foster carers to adopt children placed in their care (s.98).

Local Authorities are required to 'have regard to' statutory guidance issued by the Secretary of State (s16 Children Act, 2004) published in addition to the new legislation. The most recent (DoE, 2013) guidance was concerned with strengthening inter-agency working (s10, 204 Children Act). Earlier guidance (DCF 2010) –the last offered by the Labour Government - also promoted interagency and collaborative working and re-established that the threshold for compulsory intervention is 'significant harm', although there are 'no absolute criteria on which to rely' to make this judgment (DCSF, 2010:5). The guidance, mainly reaffirms earlier legislation and restates core themes around child and family social work: promoting and safeguarding the welfare of the child and working collaboratively (Munro, 2008).

Germany has seen the introduction of new 'child protection' legislation. Bremen, the Federal State where Kevin lived, very quickly implemented a system in 2007 whereby parents had to take their children to a family doctor for early check-ups. These doctors were *obliged* to alert the Jugendamt if the parents missed appointments. This Landeskinderschutzgesetz has been adopted by other, but not all, Federal states (Wabnitz, 2010). Fegert, Ziegenhain and Fangerau (2010) argue that the measures appear to have been largely ineffective in that there are reasons a doctor can cite for not reporting a missed appointment to the Jugendamt – notably missing an appointment does not necessarily mean the doctor is worried. In other situations the system has generated criticisms since parents have been pursued by the Jugendamt when they missed an appointment whilst they were on a family holiday for example. Thus, in contrast to England's centralized state, German Federalism allows for and encourages different levels of practice – even within the

same national law, in ways which does not happen in England. Whilst a sophisticated level of analysis of this is beyond the scope of this paper, it is worth commenting that it could encourage levels of innovation with regards to new practices, but also allow older, more traditional practices to remain.

There was also an addition to the Sozialgesetzbuch VIII, which compelled professionals working with children to report any concerns about the welfare of a child to the Jugendamt. This development runs counter to, and in some cases overturns, existing laws relating to professional confidentiality (§ 203, Strafgesetzbuch). Moreover, it begins to erode ‘voluntariness’ from the Sozialgesetzbuch VIII, in an echo of a more authoritarian approach in the Jugendwohlfahrtsgesetz (1961).

In 2011, legislation limiting the number of cases a Vormund can hold at any time (§ 55 Abs. 2 Sozialgesetzbuch VIII) was implemented. A section was included in the BGB (§ 1793, Abs. 1a) stating the Vormund has to see the child once a month, and must *personally* support and monitor the child’s development.

The most significant development was the Bundeskinderschutzgesetz (BKISchG) in 2012, which consolidates other laws concerning the welfare and wellbeing of children, and adds new legislation (BFSFJ, 2013) to all federal states in Germany. Prevention is emphasized in the principle of early help (“Fruehe Hilfen”) and the law identifies various programmes, including visits to families with newborn babies. A newly created professional group ‘Familienhebammen’ (‘family midwives’) will undertake this. They will have specialized knowledge about families and young children, a role similar to English “health visitors”. Familienhebammen have a double legislative duty: first, they offer and provide families with a variety of help and support; second, they have a monitoring role, being *enabled*, but not legally *mandated*, to report cases of child danger to the Jugendamt (§ 8b SGB VIII and § 4 Abs. 1 Nr. 1 BKISchG).

There are further changes to professional confidentiality. All professional groups, who have contact with children, including family doctors, therapists and dentists are enabled to report cases of potential child abuse or neglect to the Jugendamt (§ 4 Abs. 3 S. 2 BKISchG). Crucially, they do not have a *duty* to break confidentially whereas social workers and teachers have a *mandatory duty* to report suspicions,

Inter-professional working with children is strengthened, with the implementation of 'round table conferences' to discuss possible prevention strategies for suspected child abuse or neglect. Germany's very decentralized system means that significant differences between Federal States, and even cities and towns in the same Federal State, exist (LWL, 2013) in how the new legislation is being implemented.

Discussion: Kevin, Peter and the UNCRC.

We now turn to the question, 'to what extent have the two child deaths altered that original balance?' between Articles 18 and 19 in Germany and England.

In Germany, there has been a stronger emphasis on the child protection element in Article 19 – although tempered by a continuing emphasis on Article 18. Parental rights and obligations to raise and protect their children are confirmed in the Grundgesetz (§ 6, Abs 2). Children have a right to live with their parents and family support (Förderung) continues to be promoted. The BKiSchG, despite being ostensibly concerned with 'protection' continues with the theme of support by stressing early help and intervention *for families*.

There are measures, which introduce stronger monitoring; for example, in relation to families who fail to bring their children to child health appointments. Yet the legislation makes this possible, not mandatory, leaving the Jugendamt in a position of having responsibility but with limited options should the parents fail to comply.

This weakening of Germany's law around confidentiality represents another potential rebalancing towards Article 19, with a greater set of obligations placed upon professionals to share information about families. Again this is limited, unless the professional role is explicitly in 'child protection' for whom this sharing of information is mandatory.

Social workers in the Jugendamt have to balance these competing 'rights' and, under the new legislation could still find themselves in situations where the actions of other professional groups may leave them exposed or lacking vital information. For these

other professional groups, patient or client confidentiality still out-weighs the child's right to safety.

For social workers, increased responsibility has not been met with increased powers; little has changed in relation to provisions to take children into care where there is no parental agreement, unless suspicions are very clearly grounded.

We therefore suggest that whilst there has been a marked shift toward the provision of Article 19, the provision of support for parents, outlined in Article 18 remains the bedrock of the German system and that the more interventionist policies of recent legislation represent merely a more authoritarian version of 'family support'.

In England, we suggest the picture is somewhat different. Despite Government rhetoric about family support, a combination of social and fiscal policy shifts have left the reality of family support significantly eroded (author, 2015). This alone has led to a shift towards Article 19, since family support is weakened. Strengthening powers for adoption, not merely in relation to time constraints but also in the repeal of provisions to ensure ethnic matching has further weakened provision under Article 18. The move towards early resolution of care proceedings can be seen as a distinct weakening of Article 18, if not even an attack upon the concept of support for the birth family, as the short time scales can too readily be seen as 'inhumane' (Featherstone et al, 2014) or punitive (author, 2015).

Kirton (2013) makes the link between the increased emphasis on adoption post-2010 and the case Peter Connelly, marking a distinct shift from earlier policy:

A key difference between the Blair review and coalition policy is the latter's stronger endorsement of the benefits of child removal in cases of maltreatment and especially neglect (Department for Education 2012a). This is partly explicable as a reaction to the death of Peter Connelly and the failures of professionals to protect him, but also reflects the policy consensus relating to early intervention and its attendant neuroscientific evidence of 'brain damage' among maltreated children (Allen & Duncan Smith 2008).

The Government, and others who welcome the move towards quicker adoption, may claim that it promotes both the child's right to protection (Article 19) and 'best

interests' (Article 3). Following a reduction in the number of adoptions in 2014-15, the Government first announced a 'clarification' of the law and then proposed new measures to speed-up adoption (DfE, 2015). Launching a new set of adoption policies in 2016, Government Ministers, Nicky Morgan and Edward Timpson argued that '... for those children who cannot live with their birth parents, it is vital we find them permanent new homes as quickly as possible' (DoE, 2016: 3). Significantly whilst the report began with what could be termed a restatement of the need for family support (Article 18) this disappeared after the opening short paragraph. Furthermore, as many have pointed out, the 'proactive support for strong parental and family relationships' (ibid, 2016: 3) has not only disappeared in a series of cuts to Local Authority budgets (see, author, 2015), this report made an express commitment of £14m to Regional Adoption Agencies as well as a whole raft of other 'uncosted' level of expenditure to achieve the aim.

Conclusion: the strengths and weaknesses of a rights based approach

Following our analysis it is clear that in both countries there has been a significant shift towards Article 19 and an increased emphasis on protection, although the starting point for this shift was significantly different.

Given the starting point, the shift in German provision may be regarded as the more significant, and yet the emphasis upon Article 18 remains strong. In England, the changes have, we suggest paid scant attention to this with a drive towards a strengthening of Article 19. Whilst there is a clear 'rebalancing' in Germany, which arguably drives it closer to the English model, England, as most certainly lost balance in its drive towards Article 19. Had the English system remained more or less unchanged we would have suggested that we are witnessing a slight 'convergence'. However, given the English changes the two countries remain quite distinct. Nevertheless, perhaps the final conclusion here is that for both systems little has fundamentally changed despite some 'tweaking' at the edges. The German system has also retained very strong elements of Article 18 and perhaps what this might herald is the emergence of a new debate in Germany, which perhaps reflects the longer-standing English question around 'support' or 'protection'.

With this in mind, the strengths of a rights based approach is that it offers a supra-national means of analysis. This is important for two reasons: first, it removes the debate from country specific language; second, because it allows a focus upon ‘the child’ even if this is a part of a family.

There are weaknesses. First, the very concept of rights is contested and questions about how such rights can be realized will vary, especially when children’s rights are set against ‘parental’ or ‘family’ rights (see Franklin, 2001). Second, the approach can be criticized for paying little attention to existing regime types and long-standing social and political organization, which is staple of existing taxonomies (see earlier). Third, it is perhaps too reliant upon an interpretation of rights, since those who legislate, and often those who practice, do not couch their interventions in the language of ‘rights’. Perhaps were they to do this, greater clarity could be afforded to the debate.

No framework for comparison is without difficulties and we suggest that a renewed discourse around rights, extended to the arena of ‘protection’ and ‘family support’ may provide both a language to invigorate the debate in this area and help rebalance the question of how best to address children at risk in the context of continuing family support.

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