Schweizerischer Fonds für Kinderschutzprojekte
Fonds Suisse pour des projets de protection de l'enfance
Fondo svizzero per progetti di protezione dell'infanzia

I sistemi di protezione dell'infanzia:

un confronto internazionale tra le buone pratiche in cinque Paesi (Australia, Germania, Finlandia, Svezia e Regno Unito) con raccomandazioni per la Svizzera.

Agosto 2012

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Premessa: Muriel Langenberger

Il Fondo svizzero per progetti di protezione dell'infanzia1 intende contribuire allo sviluppo della protezione dell'infanzia nel nostro Paese finanziando progetti e attività di ricerca. Con il presente studio si sono voluti trarre insegnamenti dalle esperienze maturate all'estero e raccogliere indicazioni per stabilire quali fossero i miglioramenti necessari e il potenziale di sviluppo in Svizzera. Esperti provenienti dal Regno Unito, dall'Australia, dalla Finlandia, dalla Svezia e dalla Germania hanno presentato il sistema di protezione dell'infanzia del loro Paese e, dopo un'analisi congiunta, elaborato alcune risoluzioni applicabili al sistema svizzero.

Benché, da un punto di vista storico, presentino percorsi evolutivi a sé stanti, oggigiorno i sistemi nazionali si basano su due principi comuni. Da un lato promuovono il sostegno alle famiglie per permettere ai genitori di svolgere il loro ruolo in modo responsabile e proteggere i bambini dai rischi di maltrattamento e negligenza. A questo scopo è necessario un insieme di misure a sostegno di genitori e famiglie. Dall'altro, tutti questi sistemi dispongono di un assortimento di misure d'intervento ben coordinate che permettono di reagire appropriatamente quando vi è il rischio o un caso effettivo di maltrattamento o negligenza.

Basandosi sulle esperienze fatte da altri Paesi, i ricercatori hanno formulato una serie di raccomandazioni – poi discusse con esperti svizzeri e adeguate in collaborazione con loro – incentrate principalmente su aspetti strutturali quali la creazione, a diversi livelli, di organi competenti per la protezione dell'infanzia, la definizione di cicli di formazione per le persone incaricate della protezione dell'infanzia e la collaborazione interdisciplinare necessaria in caso d'intervento a diversi livelli.

Molte persone responsabili per la protezione dell'infanzia ritengono che il loro ambito di attività necessiti di una migliore base strutturale. Il presente rapporto fornisce spunti preziosi sulle misure da prendere e sugli ambiti in cui si potrebbe e dovrebbe intervenire. Il Fondo svizzero per progetti di protezione dell'infanzia spera dunque che il presente studio contribuisca all'ulteriore sviluppo della protezione dell'infanzia.

Agosto 2012

Muriel Langenberger

presidentessa

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[1] In precedenza Associazione *PPP-Programme National pour la Protection de l'Enfant*.

Premessa: Jachen C. Nett

La ricerca presentata in questo rapporto è stata resa possibile grazie al sostegno finanziario dell'associazione PPP-Programme National pour la Protection de l'Enfant, un partenariato tra pubblico e privato, ossia tra l'OAK Foundation, l'UBS Optimus Foundation e l'Ufficio federale delle assicurazioni sociali (UFAS).

I nostri più sentiti ringraziamenti vanno quindi a questi enti finanziatori, nonché ai membri della commissione di esperti: Stefan Blülle (Capo della divisione Protezione dei bambini e dei giovani dell'autorità tutoria di Basilea-Città), Andrea Hauri (assistente sociale e sociologo, Scuola universitaria professionale di Berna), Christian Nanchen (Capo dei servizi per la gioventù del Canton Vallese), Stefan Schnurr (pedagogo, Scuola universitaria professionale della Svizzera nordoccidentale), Peter Voll (sociologo, Scuola universitaria professionale della Svizzera occidentale), Judith Wyttenbach (avvocato, Istituto di diritto pubblico dell'Università di Berna) e Marco Zingaro (avvocato, Scuola universitaria professionale di Berna). Oltre ad apportare le sue grandi competenze al workshop degli esperti, Stefan Schnurr ha anche dato un prezioso contributo alla riunione del gruppo incaricato del progetto tenutasi nel giugno 2011. Siamo inoltre molto grati a Jonas Weber (Istituto di diritto penale e criminologia dell'Università di Berna), che ha contribuito a questo progetto con i suoi preziosi consigli sul diritto penale svizzero.

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Basilea, 16 marzo 2012

Per il gruppo incaricato del progetto
Jachen C. Nett

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1 Introduzione

di Jachen C. Nett e Trevor Spratt

Nel marzo 2011, l'associazione PPP-Programme National pour la Protection de l'Enfant ha incaricato il gruppo guidato dal prof. Jachen C. Nett e dal dott. Trevor Spratt, di svolgere uno studio intitolato "I sistemi di protezione dell'infanzia: un confronto tra le buone pratiche a livello internazionale". Nel settembre dello stesso anno, l'associazione ha poi commissionato uno studio supplementare a Jachen C. Nett dal titolo "La protezione dell'infanzia in Svizzera: descrizione del contesto culturale, politico e legale".

Qui di seguito trovate un riassunto degli obiettivi del progetto, il piano di ricerca e i ringraziamenti ai nostri collaboratori, agli autori degli studi di caso nei vari Paesi e alla commissione di esperti per i consigli sull'applicabilità delle nostre raccomandazioni al contesto svizzero. Il capitolo termina con una sintesi dei principali risultati dello studio. La parte principale del rapporto inizia con lo studio "La protezione dell'infanzia in Svizzera: descrizione del contesto culturale, politico e legale", seguito dal rapporto di sintesi intitolato "Analisi comparata delle buone pratiche a livello internazionale e relative raccomandazioni" e dall'allegato con gli studi di caso relativi ai cinque Paesi presi in considerazione dallo studio.

1.1 Obiettivi dello studio

Gli obiettivi del presente studio sono duplici: da un lato analizzare quali servizi di protezione dell'infanzia vengono forniti nei Paesi con un livello di sviluppo economico e sociale paragonabile a quello svizzero, dall'altro individuare degli esempi internazionali di buone pratiche per poi valutarli nell'ottica di una loro eventuale applicazione alla realtà svizzera. Nello specifico, i nostri obiettivi erano i seguenti: (a) esaminare il sistema di protezione dell'infanzia in cinque Paesi paragonabili alla Svizzera ed elaborare uno studio di caso per ognuno di loro. (b) Analizzare gli studi di caso per individuare le buone pratiche. (c) Presentare una serie di raccomandazioni a una commissione di esperti per verificarne l'applicazione al contesto svizzero. (d) Elaborare le raccomandazioni finali all'attenzione dell'associazione PPP-Programme National pour la Protection de l'Enfant.

1.2 Piano di ricerca e limiti

Il nostro piano di indagine non ha avuto bisogno di nuove ricerche primarie. I dati necessari per affrontare le questioni poste dal nostro studio, infatti, erano già disponibili sotto forma di dati quantitativi e qualitativi contenuti in documenti pubblici (testi di leggi, strategie, statistiche ufficiali, servizi giornalistici e critiche accademiche). Per paragonare i dati dei vari Paesi oggetto dello studio, è

stato utilizzato un modello di rapporto. Una volta terminati, i rapporti sui Paesi sono stati dapprima confrontati e poi sottoposti a una seconda analisi da parte del gruppo responsabile del progetto, sempre tenendo conto degli obiettivi dello studio. Le bozze delle raccomandazioni sono poi state sottoposte a un'ulteriore analisi da parte di una commissione di esperti per verificarne l'applicabilità in Svizzera.

1.3 Collaboratori e consulenti

La ricerca è stata condotta da Jachen Nett (Scuola universitaria professionale di Berna, Svizzera) e da Trevor Spratt (Queen's University Belfast, Irlanda del Nord), in collaborazione con Leah Bromfield (University of South Australia, Australian Centre for Child Protection), Johanna Hietamäki (University of Jyväskylä, Finlandia), Lina Ponnert (University of Lund, Svezia) e Heinz Kindler (Deutsches Jugendinstitut, Germania). Ogni membro del gruppo ha elaborato un rapporto sul proprio Paese e ha partecipato all'analisi secondaria dei dati raccolti. Trevor Spratt si è occupato della redazione del rapporto di sintesi. La commissione di esperti era composta da: Stefan Blülle (Capo della divisione Protezione dei bambini e dei giovani dell'autorità tutoria di Basilea-Città), Andrea Hauri (assistente sociale e sociologo, Scuola universitaria professionale di Berna), Christian Nanchen (Capo dei servizi per la gioventù del Canton Vallese), Stefan Schnurr (pedagogo, Scuola universitaria professionale della Svizzera nordoccidentale), Peter Voll (sociologo, Scuola universitaria professionale della Svizzera occidentale), Judith Wyttenbach (avvocato, Istituto di diritto pubblico dell'Università di Berna) e Marco Zingaro (avvocato, Scuola universitaria professionale di Berna).

1.4 Sintesi dei principali risultati del nostro studio

Sotto il profilo storico, si riscontrano insegnamenti convergenti fra i Paesi con un forte senso dello stato sociale, senso che si è cercato di esprimere nelle leggi e nelle procedure concepite per stabilire un giusto equilibrio fra il diritto alla privacy delle famiglie e il diritto alla protezione del bambino. Queste leggi e procedure sono tuttora basate sui dati scientifici relativi allo sviluppo del bambino nell'ottica di un modello ecologico. Tutti i Paesi presi in considerazione dal nostro studio si scontrano però con il grande dilemma di se e quando lo Stato debba intervenire per proteggere il bambino. È stato riscontrato che sia gli interventi troppo pesanti che quelli troppo blandi all'interno della famiglia possono avere effetti imprevisti e indesiderati, e sono stati analizzati i mutamenti sopraggiunti col passare del tempo sul fronte della prestazione di servizi, dovuti al diverso modo di affrontare la questione dell'intervento dello Stato.

I cinque Paesi presi in considerazione dallo studio concordano sulla necessità di intervenire tempestivamente per evitare che i problemi si aggravino e di avere un sistema efficace per proteggere i bambini dal rischio di grave maltrattamento, quando le famiglie non riescono ad assicurare tale protezione o sono restie a farlo. Partendo da questi principi, i cinque Paesi sono giunti alla

conclusione che il sistema ideale per la protezione dell'infanzia deve prevedere da un lato il sostegno alle famiglie, per impedire ai bambini a rischio di avere un futuro difficile, e dall'altro una serie di interventi obbligatori, qualora sia necessaria una protezione immediata. Non esiste un unico sistema per proteggere i giovani che presentano comportamenti antisociali o criminali: in alcuni Paesi, essi rientrano nel sistema di protezione dell'infanzia, in altri sono affidati a un diverso insieme di servizi.

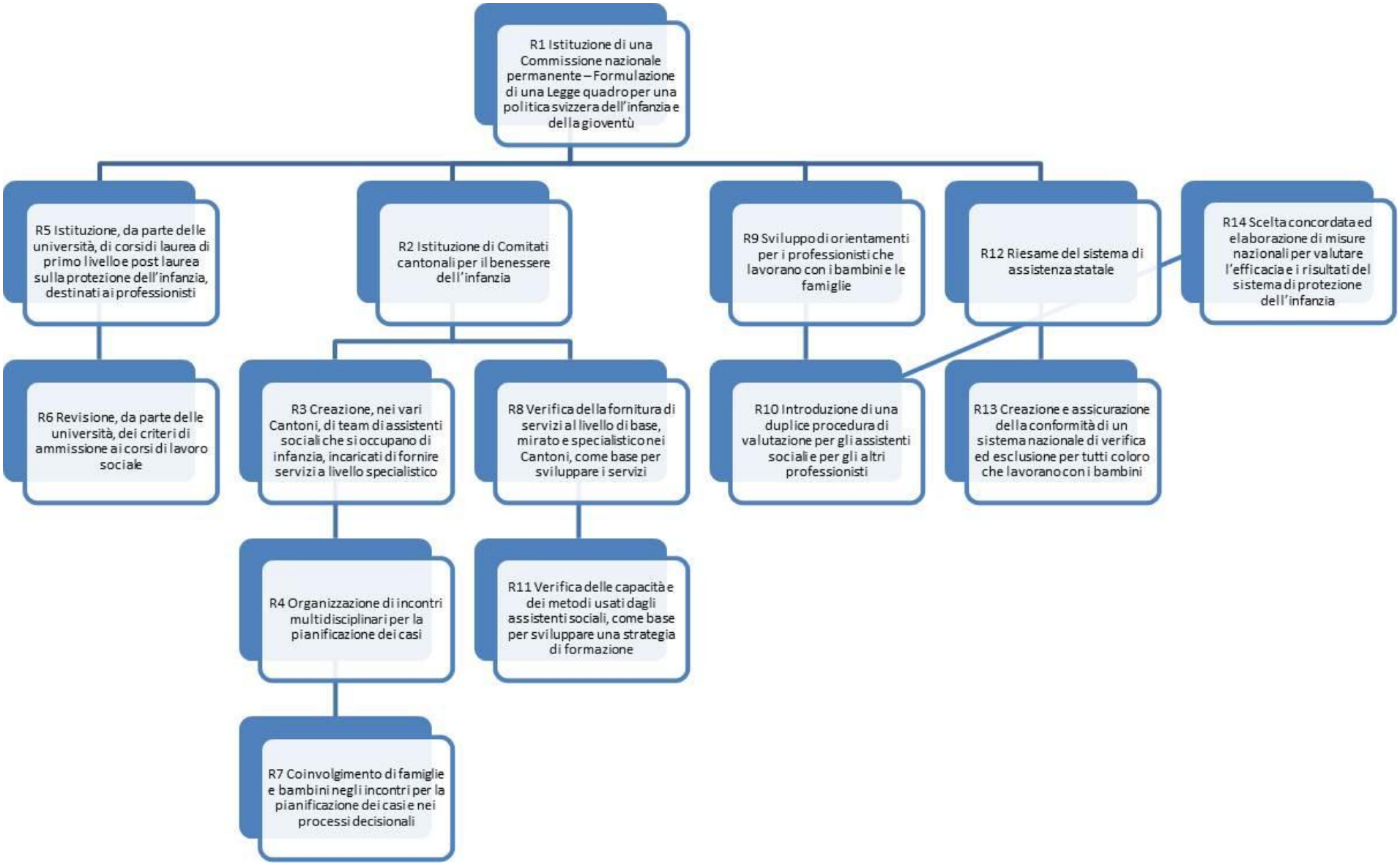
In tutti e cinque i Paesi, l'approccio sistemico ha conferito alle autorità statali un ruolo primario nella gestione dei casi segnalati alle autorità di protezione dell'infanzia. Tuttavia, in termini di prestazione di servizi, la suddivisione dei compiti tra autorità statali, terzo settore e settore privato varia parecchio da un Paese all'altro. Alla luce del ruolo sempre più importante che sta assumendo, lo Stato ha rivisto e rinegoziato i suoi rapporti con il terzo settore.

Indipendentemente dalla suddivisione dei ruoli e dei compiti, in tutti i sistemi di protezione dell'infanzia gli interventi vanno concordati e coordinati a tre livelli: innanzi tutto fra governo federale e governi locali, e fra governi cantonali e terzo settore/settore privato (per rispecchiare i requisiti di governance della protezione dell'infanzia); in secondo luogo fra professionisti e famiglie a livello di territorio (per rispecchiare le caratteristiche che i sistemi di protezione dell'infanzia hanno in comune), e da ultimo a livello pratico, procedendo ad analisi e aggiornamenti costanti, in modo da garantire che siano messe in campo le "migliori pratiche".

Per riprendere le conclusioni del nostro Rapporto di sintesi: "I sistemi per la protezione dell'infanzia sono diventati indispensabili, soprattutto perché oggi sappiamo quali e quanti danni possono provocare sul bambino esperienze negative come quella del maltrattamento. Per lo sviluppo e il rinnovamento del proprio sistema di protezione dell'infanzia, la Svizzera ha un'opportunità unica: potersi avvalere dell'analisi degli attuali sistemi di protezione di cinque Paesi diversi. Dal nostro lavoro emergono insegnamenti (positivi e negativi) molto espliciti e coerenti. Quando siamo partiti con il progetto, temevamo che sarebbe stato arduo trarre una lezione chiara, vista la difficoltà di creare un insieme di dati confrontabili. In alcuni casi (come per l'output dei dati) i nostri timori sono stati confermati, ma in linea di massima abbiamo riscontrato un ampio consenso su quelle che sono considerate le migliori pratiche degli attuali sistemi di protezione dell'infanzia. Le nostre quattordici raccomandazioni rispecchiano ciò che ciascun team di ricerca desidererebbe per il proprio Paese, anche se nessuno dei cinque Paesi presenta tutte le caratteristiche desiderate."

Livello di base: caratteristiche della governance degli odierni sistemi di protezione dell'infanzia
Raccomandazione 1: istituzione di una Commissione nazionale permanente, incaricata di elaborare una Legge quadro per una politica svizzera dell'infanzia e della gioventù, che sarà alla base dello sviluppo delle leggi cantonali e della pianificazione dei servizi. Raccomandazione 2: i Cantoni restano legalmente responsabili dei servizi di protezione dell'infanzia, che vengono tuttavia pianificati e forniti da istituzioni non governative e private nell'ambito dei Comitati per il benessere dell'infanzia.
Livello intermedio: caratteristiche interdipendenti degli odierni sistemi di protezione dell'infanzia
Raccomandazione 3: i team di assistenti sociali impiegati in ogni Cantone dovrebbero farsi carico delle responsabilità legali connesse all'erogazione di servizi specialistici di protezione dell'infanzia. Raccomandazione 4: organizzazione di incontri multidisciplinari per pianificare i casi in ogni Cantone, così da garantire una pianificazione efficace che soddisfi i bisogni e assicuri protezione nei singoli casi. Raccomandazione 5: creazione, da parte delle università, di corsi di laurea di primo livello e post laurea sulla protezione dell'infanzia, destinati ai professionisti. Raccomandazione 6: revisione, da parte delle università, dei criteri di ammissione ai programmi di laurea per assistenti sociali. Raccomandazione 7: promozione della partecipazione delle famiglie agli incontri per la pianificazione dei casi; i diritti dei bambini a essere rappresentati e la possibilità di ricorrere in appello contro sentenze che li coinvolgono devono diventare la norma.

Livello avanzato: caratteristiche dei servizi erogati dagli odierni sistemi di protezione dell'infanzia
Raccomandazione 8: sviluppo di una continuità dei servizi per l'infanzia basati sul modello di sanità pubblica, come punto di partenza per la formulazione della Legge quadro per una politica svizzera dell'infanzia e della gioventù. Raccomandazione 9: sviluppo di orientamenti pratici per gli assistenti sociali, che comprendano le migliori pratiche basate sulle leggi e sui risultati delle ricerche. Raccomandazione 10: introduzione di una duplice procedura di valutazione: specialistica per gli assistenti sociali e generale per gli altri professionisti. Raccomandazione 11: verifica degli attuali metodi di intervento utilizzati dagli assistenti sociali, che servirà allo sviluppo di strategie di formazione e prestazione di servizi, messe in campo dai Comitati per il benessere dell'infanzia. Raccomandazione 12: riesame del sistema di assistenza sociale, che sarà il punto di partenza per elaborare la Legge quadro per una politica svizzera dell'infanzia e della gioventù e per il lavoro dei Comitati per il benessere dell'infanzia. Raccomandazione 13: creazione di un sistema di verifica e di esclusione, che sarà applicato a tutti coloro che lavorano con i bambini. Raccomandazione 14: creazione di una banca dati nazionale per tracciare i risultati generati dai sistemi e ottenuti sui bambini nell'ambito della Legge quadro per una politica svizzera dell'infanzia e della gioventù.


R1 Istituzione di una Commissione nazionale permanente – Formulazione di una Legge quadro per una politica svizzera dell'infanzia e della gioventù
R5 Istituzione, da parte delle università, di corsi di laurea di primo livello e post laurea sulla protezione dell'infanzia, destinati ai professionisti
R2 Istituzione di Comitati cantonali per il benessere dell'infanzia
R9 Sviluppo di orientamenti per i professionisti che lavorano con i bambini e le famiglie
R12 Riesame del sistema di assistenza statale
R14 Scelta concordata ed elaborazione di misure nazionali per valutare l'efficacia e i risultati del sistema di protezione dell'infanzia
R6 Revisione, da parte delle università, dei criteri di ammissione ai corsi di lavoro sociale
R3 Creazione, nei vari Cantoni, di team di assistenti sociali che si occupano di infanzia, incaricati di fornire servizi a livello specialistico
R8 Verifica della fornitura di servizi al livello di base, mirato e specialistico nei Cantoni, come base per sviluppare i servizi
R10 Introduzione di una duplice procedura di valutazione per gli assistenti sociali e per gli altri professionisti
R13 Creazione e assicurazione della conformità di un sistema nazionale di verifica ed esclusione per tutti coloro che lavorano con i bambini
R4 Organizzazione di incontri multidisciplinari per la pianificazione dei casi
R11 Verifica delle capacità e dei metodi usati dagli assistenti sociali, come base per sviluppare una strategia di formazione
R7 Coinvolgimento di famiglie e bambini negli incontri per la pianificazione dei casi e nei processi decisionali

2 La protezione dell'infanzia in Svizzera: descrizione del contesto culturale, politico e legale

di Jachen C. Nett

2.1 Introduzione

In questo capitolo vengono descritti a grandi linee gli elementi fondamentali e le specificità del sistema di protezione dell'infanzia svizzero. Agli occhi di coloro che non conoscono il sistema politico elvetico, vi sono alcuni aspetti che possono apparire insoliti perché non corrispondono agli ordinamenti di altri sistemi democratici. Queste particolarità si ripercuotono sia sul processo decisionale a livello nazionale, sia sull'elaborazione delle leggi e sulla loro applicazione ai vari livelli del sistema federale svizzero. Al capitolo 2.2 viene proposta una rapida carrellata - senza alcuna pretesa di completezza - sul sistema politico svizzero, seguita da una breve descrizione del quadro demografico del Paese, che permette di fare alcune previsioni sulle sfide attuali e future che il sistema sociale svizzero dovrà affrontare.

Il capitolo 2.3 è dedicato alle attuali condizioni di vita dei bambini e dei giovani che abitano in Svizzera, anche dal punto di vista economico, scolastico e sanitario. Vengono inoltre fornite alcune informazioni su alcuni recenti sviluppi che mettono a dura prova i rapporti tra genitori e figli. Al termine del capitolo 2.3, si analizzano i dati disponibili sui maltrattamenti infantili in Svizzera. Nei capitoli successivi vengono dapprima delineate le basi costituzionali e legali del sistema di protezione dell'infanzia e discussi i relativi articoli del Codice penale e civile (capitolo 2.4). In seguito, ci si concentra sull'applicazione istituzionale, ai vari livelli del sistema federale svizzero, delle politiche a favore dell'infanzia e della gioventù, prendendo in considerazione anche il ruolo delle organizzazioni private (capitolo 2.5). Il capitolo termina con un resoconto dei recenti sviluppi della politica in materia di protezione dell'infanzia in Svizzera, con particolare attenzione ad alcune modifiche legislative appena entrate in vigore (o in procinto di entrare in vigore) e ad alcune iniziative e programmi lanciati di recente a livello nazionale. Da ultimo, partendo dall'analisi delle questioni cui i media hanno dato particolare risalto, viene messa in risalto la percezione del tema della protezione dell'infanzia da parte dell'opinione pubblica.

2.2 La Svizzera in breve

La Confederazione elvetica è un paese relativamente piccolo (41'000 km²) che confina con l'Austria, la Francia, la Germania, l'Italia e il Liechtenstein. Ampie superfici del territorio nazionale sono costituite da zone montane inabitabili, il che spiega l'alta densità di popolazione del Paese (184 abitanti per km²). Il sistema politico svizzero può essere definito una repubblica *federale,* democratica e

parlamentare con elementi molto marcati di *democrazia diretta*. Il governo, composto da sette Consiglieri federali, è eletto dal parlamento per un periodo di legislatura di quattro anni. Alle sue sedute partecipa anche il Cancelliere della Confederazione.

2.2.1 Sistema politico

Il federalismo e la democrazia diretta sono due tratti caratteristici della politica svizzera e sono profondamente radicati ai vari livelli del sistema politico, legislativo e costituzionale. L'Assemblea federale (il Parlamento) è costituita da due camere: il Consiglio nazionale e il Consiglio degli Stati. In quest'ultimo sono rappresentati i 26 cantoni, sei dei quali per ragioni storiche sono dei cosiddetti semicantoni, il che significa che possono farsi rappresentare da un solo Consigliere agli Stati e non da due.

Qualsiasi modifica alla Costituzione federale della Confederazione Svizzera (Cost.) e alcune decisioni parlamentari di particolare importanza devono essere approvate, in votazione popolare, dalla maggioranza dei votanti e dei Cantoni. Gli effetti del sistema federale sulle decisioni politiche prese a livello nazionale sono notevoli viste le enormi differenze tra un cantone all'altro a livello di territorio e di popolazione (sia il Canton Zurigo, con oltre un milione di abitanti, che il Canton Uri, che ne ha 35'000, eleggono due rappresentanti nel Consiglio degli Stati). Anche se in vari settori della società si registra una tendenza dello Stato a voler regolamentare di più, il che è in parte imputabile alle esigenze del diritto internazionale, i Cantoni continuano a esercitare la loro sovranità in ambiti centrali come la politica fiscale, economica e sociale. Il principio del federalismo è applicato anche a livello comunale. I 2'551 comuni, che rappresentano l'unità politica più piccola del Paese, godono di una notevole autonomia politica. Qualche anno fa, un importante emendamento costituzionale ha confermato la struttura bottom-up (dal basso all'alto) del sistema politico in Svizzera. Nel 2008 è infatti entrato in vigore l'art. 5a Cost. che recita: "Nell'assegnazione e nell'adempimento dei compiti statali va osservato il principio della sussidiarietà." Questo articolo è stato adottato in occasione della votazione popolare del 28 novembre 2004 sul decreto federale concernente la nuova impostazione della perequazione finanziaria e della ripartizione dei compiti tra Confederazione e Cantoni. Tutte le modifiche costituzionali vanno infatti adottate in votazione popolare, ossia applicando la democrazia diretta, l'altro elemento fondamentale del sistema politico svizzero. Le procedure della democrazia diretta poggiano da un canto sul sistema elettorale, visto che i membri delle due Camere federali sono eletti direttamente dal popolo. Se l'elezione del Consiglio nazionale segue regole federali standard, il Consiglio degli Stati è invece eletto in base a disposizioni cantonali. Un ulteriore strumento importante della democrazia diretta sono le votazioni popolari, nelle quali i cittadini sono invitati a esprimersi sulla base di una cosiddetta iniziativa popolare o di un referendum. In quest'ultimo caso, i cittadini sono chiamati alle urne se vengono raccolte almeno 50'000 firme contro un atto legislativo federale, una decisione del Parlamento o, in alcuni casi, contro un trattato internazionale. Di conseguenza, "il diritto di referendum, analogo a un diritto di veto, esercita un effetto ritardante e cautelativo nel processo legislativo, bloccando le modifiche emanate dal Parlamento o dal Governo o ritardandone l'efficacia" (Cancelleria federale, 2011, pag. 17). Le iniziative popolari, invece, permettono ai cittadini di sottoporre a votazione popolare una loro proposta di modifica alla Costituzione federale, di chiedere

l'adozione di una nuova legge o di modificarne una vigente (queste ultime due possibilità solo a livello cantonale). Per sottoporre a votazione popolare un'iniziativa, sono necessarie le firme di 100'000 aventi diritto di voto, che vanno raccolte in 18 mesi.[2]

2.2.2 Demografia

In Svizzera si parlano quattro lingue. Dal censimento del 2000 risulta che la maggioranza della popolazione che vive in Svizzera (il 63,7%) è di lingua madre tedesca, il 20,4% francese, il 6,4% italiana e una piccola minoranza (pari allo 0,5%) retoromancia. Il rimanente 9% della popolazione residente in Svizzera ha indicato altre lingue madri, il che è in parte da ricollegare al numero relativamente alto, cresciuto nuovamente negli ultimi dieci anni, di immigrati presenti nel Paese. Tra il 2000 e il 2009, la bilancia migratoria è più che triplicata, passando dal 2,8 al 9,6 per mille (UST, 2009). Secondo i dati raccolti dall'Ufficio federale di statistica (UST), nel 2010 gli stranieri residenti in Svizzera erano pari al 22,4% della popolazione totale. Stando all'ultimo rapporto sulla popolazione straniera residente in Svizzera pubblicato dall'UST (UST, 2008), in un terzo circa dei matrimoni celebrati nel 2007 un coniuge era di nazionalità svizzera e l'altro di nazionalità straniera (37,5%). Quasi la metà (47,5%) dei bambini nati nel 2007 da donne sposate aveva un genitore di nazionalità svizzera e l'altro di nazionalità straniera. Un quarto circa di tutti i bambini nati nel 2007 erano di nazionalità straniera.

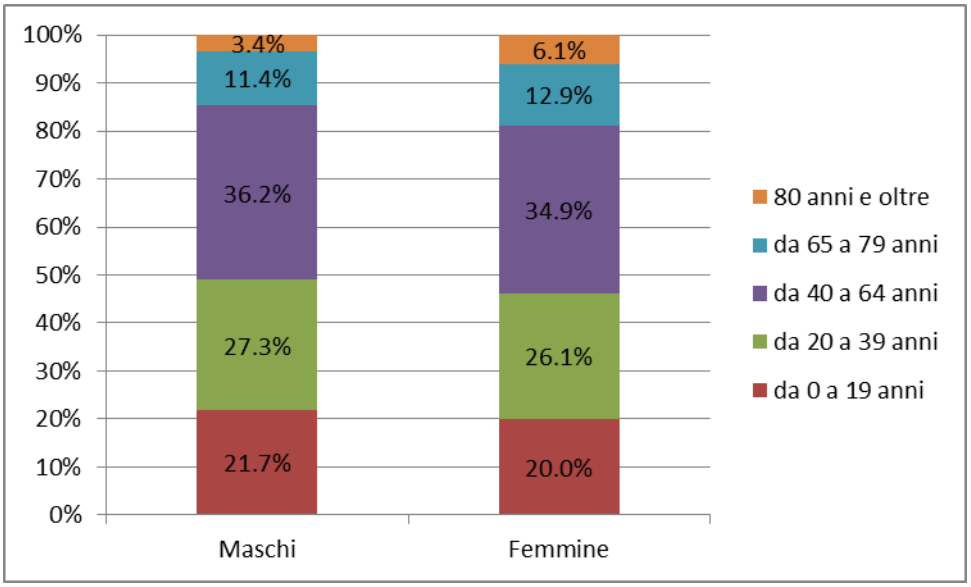


Figura 1 Età e sesso della popolazione residente, 2010[3]

La piramide anagrafica della Svizzera e la sua evoluzione sono paragonabili a quelle della maggior parte dei Paesi europei, dove l'invecchiamento della popolazione è in costante aumento a causa del basso tasso di natalità (2009: 1,50) e dell'aumento della speranza di vita. Per le donne, tra il 1950 e il

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[2] Per una breve panoramica del sistema politico svizzero v. Cancelleria federale (2011).

[3] Fonte www.bfs.admin.ch, dati scaricati l'11 novembre 2011.

2009 la speranza di vita alla nascita è passata da 70,9 a 84,4 anni, mentre per gli uomini da 66,4 a 79,8 anni (UST, 2011b). Come risulta dall'**Error! Reference source not found.**, la differenza tra i sessi si traduce in una piramide anagrafica non uniforme: nelle fasce di età superiori ai 64 anni, le donne sono nettamente sovrarappresentate rispetto agli uomini (nella misura del 19% contro il 14,7%). La tendenza al rialzo dell'indice di vecchiaia[4] ha subito un rallentamento in seguito all'immigrazione di persone più giovani, ma l'indice è comunque passato dal 23,5% del 1990 al 27,1% del 2010, periodo in cui l'indice di gioventù è sceso dal 37,7 al 33,5% (ibid.). Come risulta dall'Ill.2, l'impatto attuale dell'immigrazione in Svizzera è particolarmente marcato nella fascia di età tra i 20 e i 39 anni.

L'invecchiamento della popolazione preoccupa quasi tutti i Paesi sviluppati, in particolar modo perché gli scenari demografici ipotizzano che "questa tendenza continuerà per i prossimi decenni e, con ogni probabilità, sarà la causa di problemi seri, per esempio per la previdenza sociale" (ibid., pag. 531).

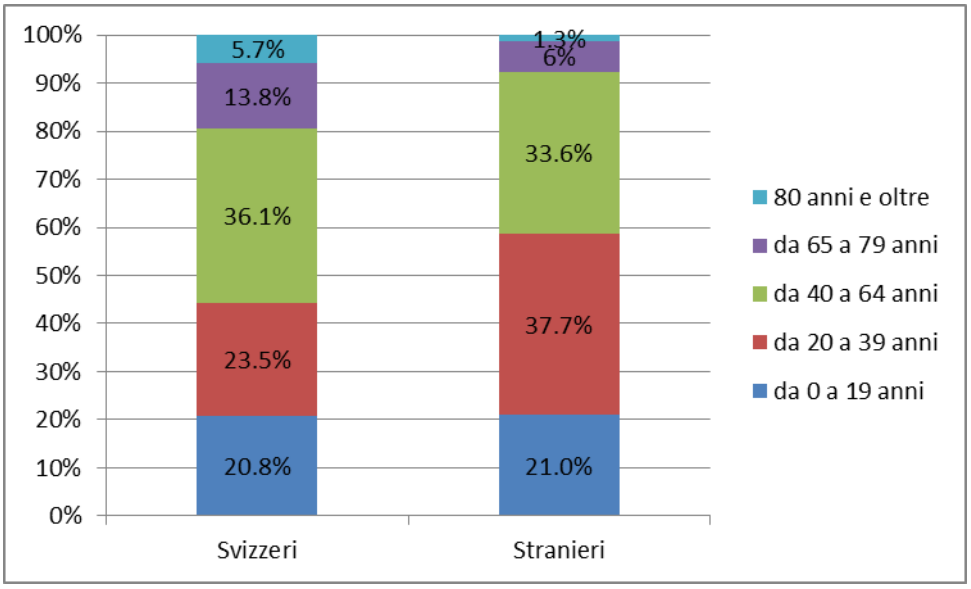

Figura 2 Età e nazionalità della popolazione residente, 2010[5]

2.3 Condizioni di vita dei bambini e dei giovani in Svizzera

Nel 2000, il Consiglio federale ha incaricato il Fondo nazionale svizzero per la ricerca scientifica (FNS) di mettere in atto il Programma nazionale di ricerca (PNR) 52 intitolato "L'infanzia, la gioventù e i rapporti tra generazioni in una società in trasformazione". Questo tema molto vasto è stato affrontato, da diversi punti di vista, nell'ambito di 29 progetti che rientravano nei sei moduli che componevano il

[4] L'indice di vecchiaia indica la proporzione tra le persone di età superiore ai 64 anni e le persone tra i 20 e i 64 anni.

[5] Fonte: www.bfs.admin.ch, dati scaricati il 19 novembre 2011.

PNR-52 (v. FNS).[6] I risultati principali della ricerca sono stati pubblicati nel 2008 (Schultheis, Perrig-Chiello, Egger, 2008). Nei capitoli seguenti verrà fatto riferimento ad alcuni di questi risultati.

2.3.1 Condizioni economiche

La Svizzera è uno dei Paesi più ricchi al mondo. Tuttavia, questo non è un indicatore valido per definire lo standard di vita del 14,6% (2009) della popolazione svizzera che vive al di sotto della soglia di povertà (UST, 2011b). Secondo le direttive dell'UE, la soglia di povertà viene definita calcolando la percentuale di coloro che guadagnano meno del 60% del reddito nazionale medio e che quindi corrono il rischio di venire esclusi dalla società.[7] Va comunque detto che è utile fare un confronto con gli altri Paesi presi in considerazione dallo studio; ciò, infatti, è un indicatore delle disuguaglianze a livello di reddito riscontrate in tali Paesi. Da tale confronto risulta che anche in Germania (2009: 15%), in Finlandia (2009: 13,1%) e in Svezia (2010: 13,4%) la proporzione di persone che vivono sotto la soglia di povertà è simile a quella svizzera, mentre nel Regno Unito (2008/2009: 17%) e in Australia (2006: 19,4%) è maggiore.[8]

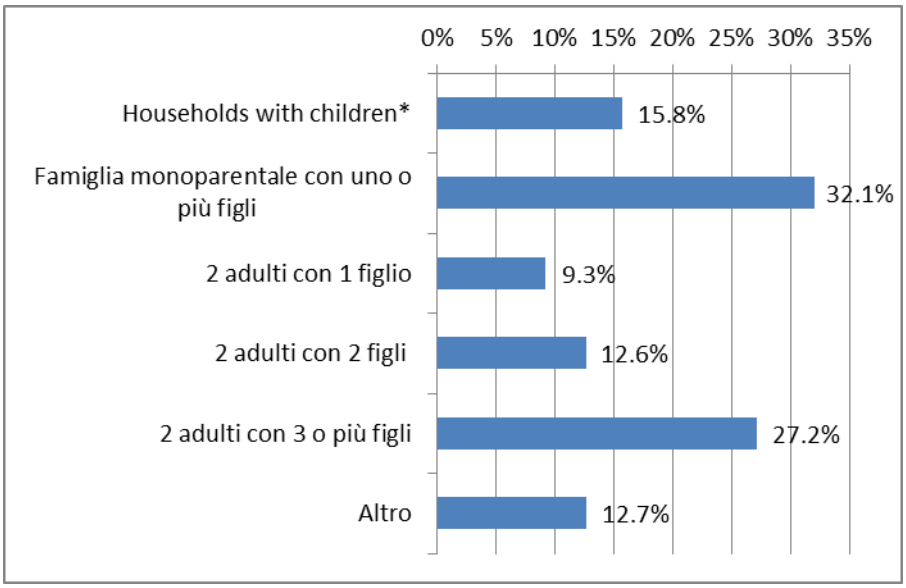

Figura 3 Percentuale di persone che vivevano sotto la soglia di povertà nel 2009 in base al tipo di economia domestica

* Il termine "figlio" indica una persona sotto i 18 anni oppure tra i 18 e i 24 anni che non svolge un'attività lucrativa ma che vive con il padre e/o la madre.

In base alla definizione dell'UE, le fasce di età maggiormente a rischio di povertà in Svizzera sono le persone anziane (gli ultrasessantacinquenni) con il 26,3% e i bambini e i giovani (da 0 a 15 anni) con

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[6] I sei moduli toccano i seguenti temi: 1) Nuovi dati sulle condizioni di vita dei bambini, dei giovani e delle loro famiglie in Svizzera; 2) Aspetti giuridici ed economici; 3) Aspetti generazionali della politica sociale e migratoria; 4) La famiglia al centro dei rapporti intergenerazionali; 5) Salute psicosociale; 6) Aspetti della quotidianità: scuola e tempo libero (v. www.nfp52.ch).

[7] Fonte: www.bfs.admin.ch, dati scaricati il 22 novembre 2011.

[8] Fonti: Australia (ACOSS, 2010), Finlandia (pxweb2.stat.fi, dati scaricati il 28 novembre 2011), Germania (www.destatis.de, dati scaricati il 28 novembre 2011), Svezia (www.scb.se), Regno Unito (www.ons.gov.uk, dati scaricati il 28 novembre 2011).

il 18,3%. Analizzando il tipo di economie domestiche (UST, 2011),[9] emerge che le famiglie monoparentali sono maggiormente a rischio di povertà (15,8%) rispetto a coloro che non hanno figli a carico (13,5%). Come risulta dall'Ill.3, quindi, il rischio di povertà è legato al tipo di economia domestica ed è superiore alla media per le sempre più numerose famiglie monoparentali[10] (32,1%) e per le famiglie composte da due adulti che vivono con tre o più figli (27,2%).

Per quanto riguarda la disoccupazione, finora la Svizzera si è trovata in una posizione privilegiata rispetto ad altri Paesi. Nell'ultimo decennio, il tasso di disoccupazione calcolato in base allo standard fissato dall'Organizzazione internazionale del lavoro (OIL) è passato dal 2,7% nel 2000 al 4,5% nel 2005, per poi scendere al 3,4% nel 2008 e risalire al 4,5% nel 2010 (UST, 2011[11]). Nel 2010, tutti i Paesi presi in considerazione dallo studio presentano invece tassi di disoccupazione più elevati (Australia: 5,1[12]; Germania 7,1%; Finlandia: 8,4%; Svezia: 8,4%; Regno Unito: 7.8%[13]). Come nella maggioranza degli altri Paesi, anche in Svizzera è la disoccupazione giovanile a destare particolari preoccupazioni. Dall'Ill.4 risulta infatti che nella fascia di età tra i 15 e i 24 anni la disoccupazione è aumentata, soprattutto negli ultimi dieci anni.

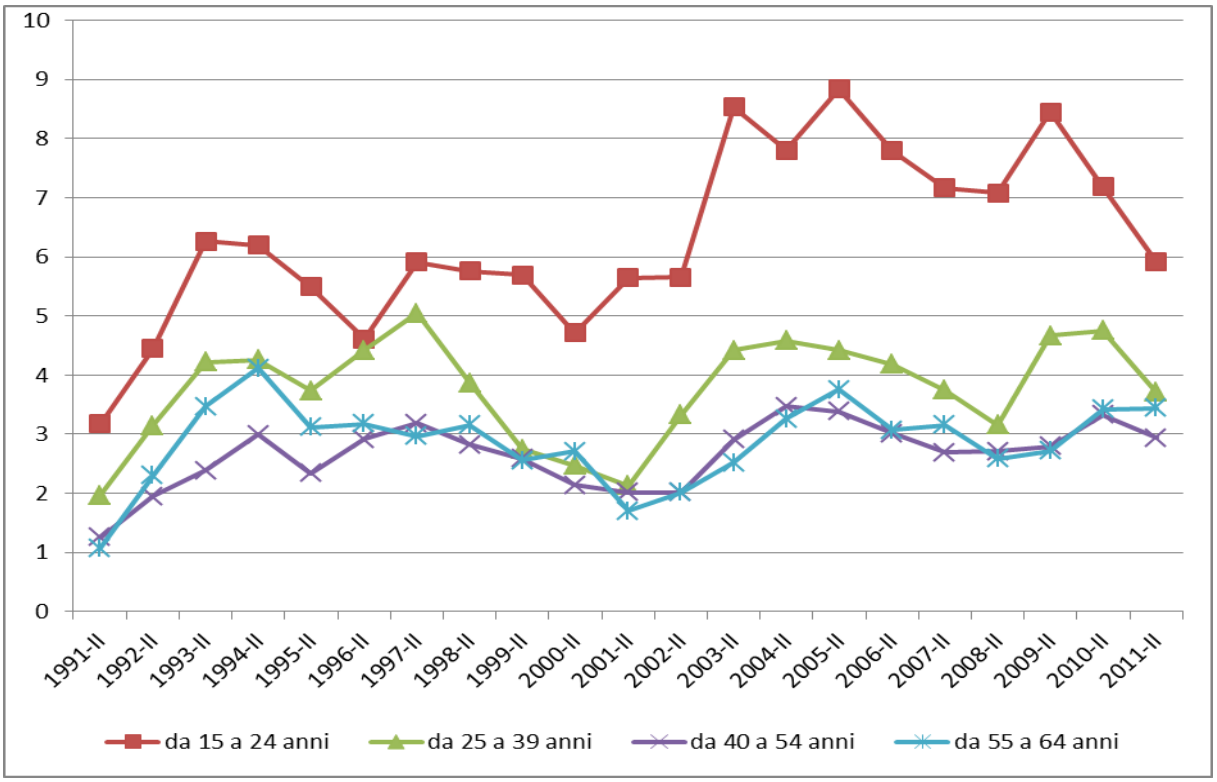

Figura 4 Tasso di disoccupazione per le varie fasce di età in base allo standard dell'OIL[14]

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[9] Fonte: www.bfs.admin.ch, dati scaricati il 22 novembre 2011.

[10] Tra il 1970 e il 2008, il numero di famiglie monoparentali è passato da 106'258 a 181'000, quindi è aumentato del 70,6% (UST, 2009).

[11] Fonte: www.bfs.admin.ch, stato della banca dati: 29 settembre 2011.

[12] Fonte: ACOSS (2010).

[13] Fonte per la Germania, la Finlandia, la Svezia e il Regno Unito: http://epp.eurostat.ec.europa.eu, dati scaricati il 3 gennaio 2012.

[14] Fonte: www.bfs.admin.ch (adattamento da parte dell'autore). I dati si riferiscono al secondo trimestre dell'anno d'indagine.

Se le differenze tra disoccupazione maschile e femminile sono esigue, sussistono differenze sostanziali tra le varie regioni svizzere. L'UST (ibid.) riporta tassi di disoccupazione relativamente alti per la regione del Lemano (2010: 6,7%), nonché per il Canton Ticino (2010: 6,1%); viceversa, le regioni centrali e orientali del Paese denotano tassi di disoccupazione più bassi (2010: 3,0 rispettivamente 3,5%).

2.3.2 Sistema scolastico

In base agli ultimi dati emersi dal Programma per la valutazione internazionale degli studenti (PISA), che si riferiscono a uno studio condotto nel 2009 (Nidegger et al., 2010),[15] gli allievi svizzeri ottengono risultati migliori in tutti le materie prese in considerazione (lettura, matematica e scienze naturali) rispetto alla media dei risultati registrati nei Paesi dell'OCSE. Se paragonati ai Paesi presi in considerazione dallo studio, però, statisticamente gli allievi svizzeri si posizionano nettamente al di sotto di quelli finlandesi e australiani nella lettura e nelle scienze naturali. D'altro canto, sono più bravi in matematica rispetto agli studenti australiani, tedeschi, svedesi e britannici (ibid.)[16].

In base alle condizioni attuali[17], i bambini svizzeri di quattro anni hanno davanti a sé una formazione formale che durerà in media 17,1 anni, di cui un anno e mezzo trascorso alla scuola dell'infanzia e nove anni e mezzo nella scuola dell'obbligo. Sebbene esistano disposizioni vincolanti per tutti i Cantoni relative alla durata (9 anni) e all'inizio della scuola dell'obbligo (a 6 anni), i Cantoni sono responsabili del loro sistema scolastico. Di conseguenza, l'organizzazione della scuola dell'obbligo varia notevolmente da un Cantone all'altro: esistono per esempio diversi tipi di scuole medie, le ore annue variano da 7'100 a 8'900 per bambino, e alcuni Cantoni hanno integrato la scuola dell'infanzia nell'obbligo scolastico. I tentativi di armonizzare il sistema sfoceranno probabilmente nell'estensione della scuola dell'obbligo a undici anni su tutto il territorio nazionale.

Nel 2008, l'86,8% dei giovani ha raggiunto il livello secondario II e il 33,7% ha terminato una formazione di livello terziario (UST, 2011a). Il sistema di formazione professionale svizzero ha una specificità, nel senso che si basa tuttora su un approccio duale. In altre parole, dopo aver terminato la scuola dell'obbligo, la maggioranza dei giovani inizia un apprendistato in un'azienda di tirocinio e nel contempo frequenta una scuola professionale. Nel 2010, il 65% di coloro che hanno terminato il livello secondario II ha superato un esame finale di tirocinio. Una delle spine nel fianco della politica svizzera in materia di formazione consiste nel fatto che i figli delle famiglie di migranti sono particolarmente rappresentati nelle scuole con pretese modeste a livello di rendimento e, viceversa, poco rappresentati nelle scuole che richiedono un rendimento maggiore (UST e CDPE, 2002). L'Ill. 5 mostra alcuni degli iter possibili nell'ambito della formazione professionale svizzera. Sebbene la percentuale di studenti stranieri ammonti al 22,6%, solo il 10,3% segue una formazione che avvia alle scuole universitarie professionali e solo il 13,8% ne segue una che prepara agli studi accademici. Gli

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[15] Lo studio PISA viene condotto regolarmente a livello internazionale tra i quindicenni per misurare le loro capacità e nozioni verso la fine della scuola dell'obbligo (v. www.pisa.oecd.org).

[16] Inoltre, statisticamente in scienze gli allievi svizzeri hanno ottenuto risultati nettamente migliori degli allievi svedesi.

[17] I dati si riferiscono al 2008.

studenti stranieri sono invece sovrarappresentati nelle formazioni professionali destinate ai giovani con un rendimento scolastico scarso (formazione empirica e tirocinio di base), che non godono di particolare prestigio sul mercato del lavoro, a meno che non siano seguite da ulteriori qualifiche professionali.

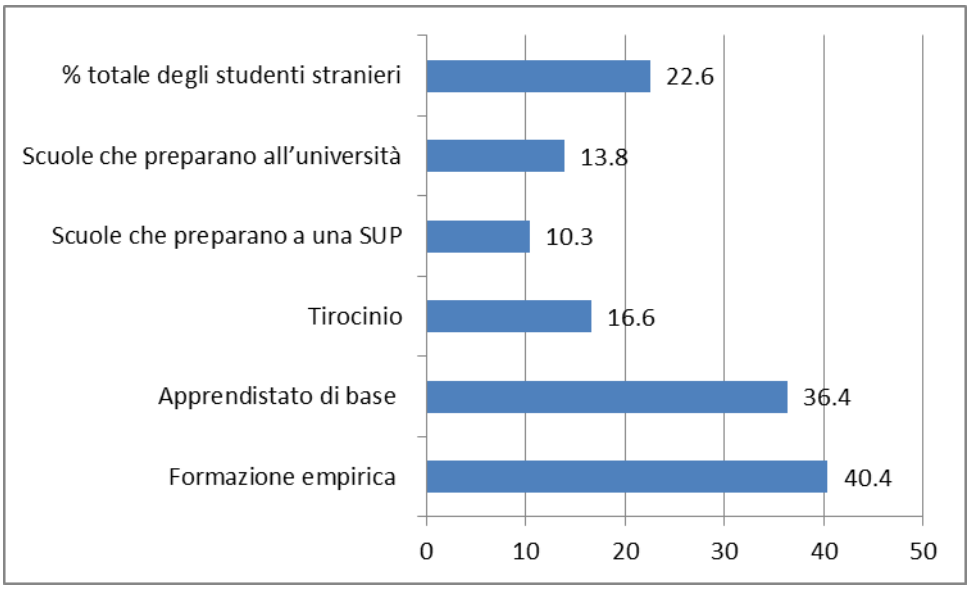

Figura 5 Quota (in %) degli studenti stranieri al livello secondario II nel 2009/2010[18]

Come emerge dall'Ill. 6, oltre a questa disuguaglianza, sussistono altre differenze sostanziali, come quella relativa agli studenti e alle studentesse che ottengono un diploma coi massimi voti al livello secondario II e al livello terziario. La quota di ragazze che conseguono un diploma di livello secondario II (che dà accesso alle università) è in crescita (2010: 57,6%), anzi le studentesse hanno addirittura più successo dei loro compagni quando si tratta di ottenere un diploma da uno dei due tipi di università (2010: rispettivamente 62,1% e 55,3%)[19]. Viceversa, a livello di dottorato, le studentesse sono ancora in minoranza (2010: 43,4%).

[18] Fonte: www.bfs.admin.ch, dati scaricati il 22 novembre 2011.

[19] L'aumento del numero di studentesse che ottengono un diploma presso una Scuola universitaria professionale va visto alla luce dei cambiamenti intervenuti nel mondo degli studi superiori in Svizzera. Con la creazione delle SUP all'inizio del XXI secolo, la formazione in molte professioni tradizionalmente femminili (lavoro sociale e, dal 2007, anche la formazione di infermiera, fisioterapista, levatrice ecc.) è stata elevata al livello accademico.

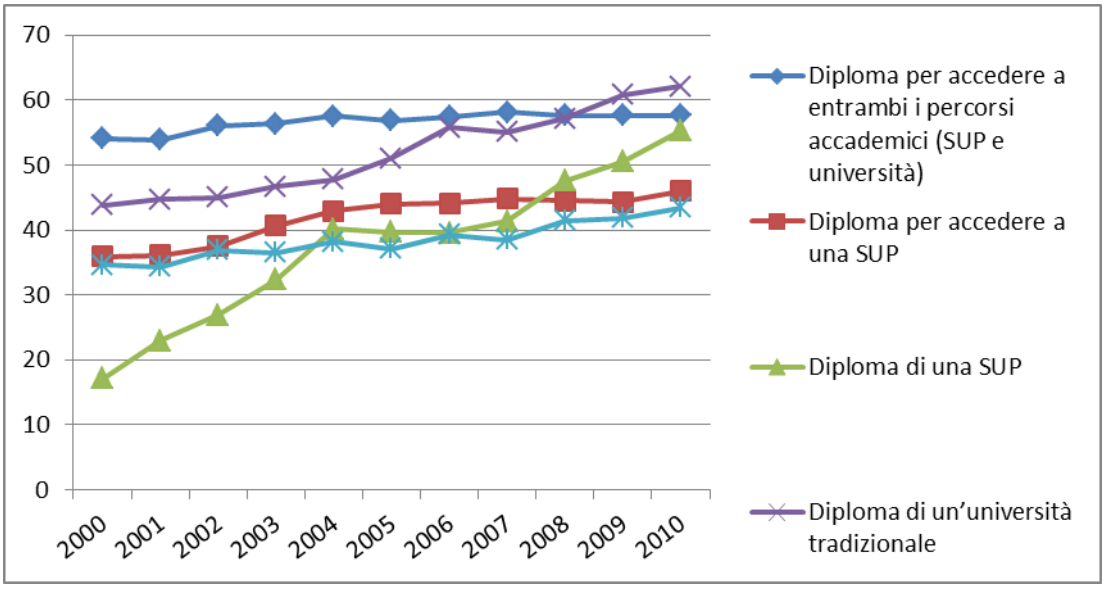

Figura 6 Quota di donne (in %) con una formazione di livello secondario II e di livello terziario[20]

Queste differenze di genere destano preoccupazioni sull'adeguatezza del livello secondario II. A quanto pare, esiste tuttora una certa tendenza a non incoraggiare le ragazze a optare per le professioni tipicamente maschili; occorrerebbe quindi tenere maggiormente conto delle differenze nello sviluppo psicosociale dei due sessi durante l'infanzia e l'adolescenza.

2.3.3 Mortalità infantile e rischi per la salute

La situazione sanitaria dei bambini e degli adolescenti che vivono in Svizzera presenta alcune tendenze che dimostrano chiaramente come negli ultimi anni le cose siano cambiate in meglio. Come risulta dall'Ill. 7, tra il 1995 e il 2008 la mortalità dei maschi e delle femmine sotto i 14 anni è diminuita, passando da 383 a 238 decessi per i maschi e da 258 a 180 decessi per le femmine.

[20] Fonte: www.bfs.admin.ch, Statistica sul grado di formazione della popolazione residente (stato della banca dati: giugno 2010).

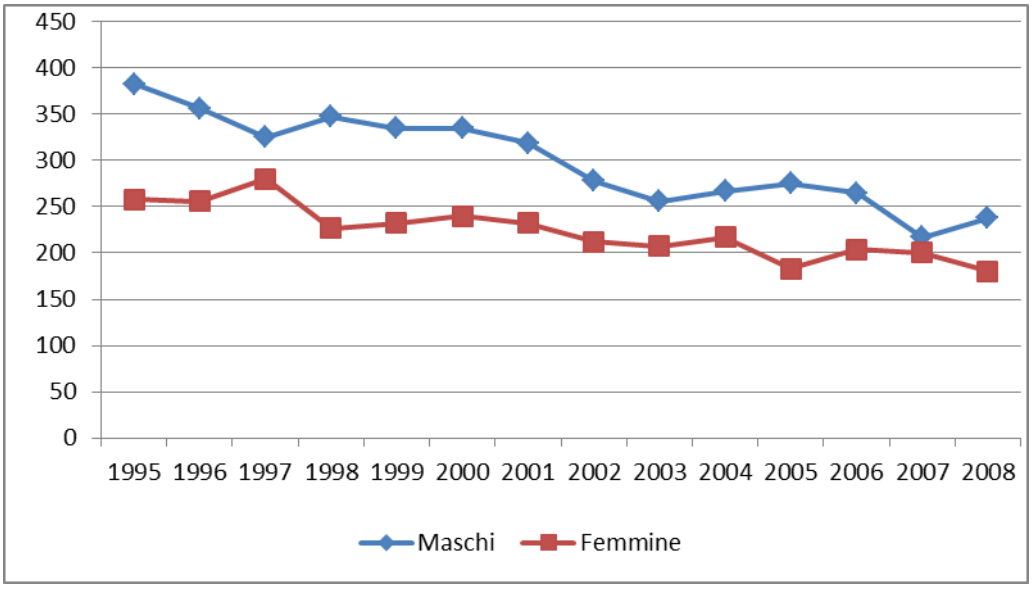

Figura 7 Mortalità infantile tra 0 e 14 anni (1995-2008) [21]

Se si analizzano le cause della mortalità infantile, risulta evidente che i progressi registrati a livello diagnostico e medico hanno dato i loro frutti. In tutte le cause di morte, infatti, si riscontra una diminuzione (v. Ill. 8). Particolarmente degno di nota è il calo dei casi di "morte bianca" (*sudden infant death* o SID), in quanto a volte viene associato ai casi di maltrattamento infantile con esito fatale (Committee on Child Abuse and Neglect, 2001; Reece, 1993).

Nel corso degli ultimi decenni, in Svizzera il traffico stradale è aumentato in maniera esponenziale, tuttavia il numero di pedoni sotto i nove anni vittime (feriti o uccisi) di incidenti stradali è in diminuzione (v. Ill. 9). Questo gruppo è particolarmente vulnerabile, perché a questa età i bambini non sono completamente responsabili delle loro azioni e quindi meritano una protezione speciale. L'evoluzione positiva dei dati citati va tuttavia contrapposta al fatto che l'intensificazione del traffico ha ulteriormente limitato la libertà dei bambini di giocare all'aperto.

[21] Fonte: www.bfs.admin.ch, Statistica delle cause di morte (stato della banca dati: 23 novembre 2010).

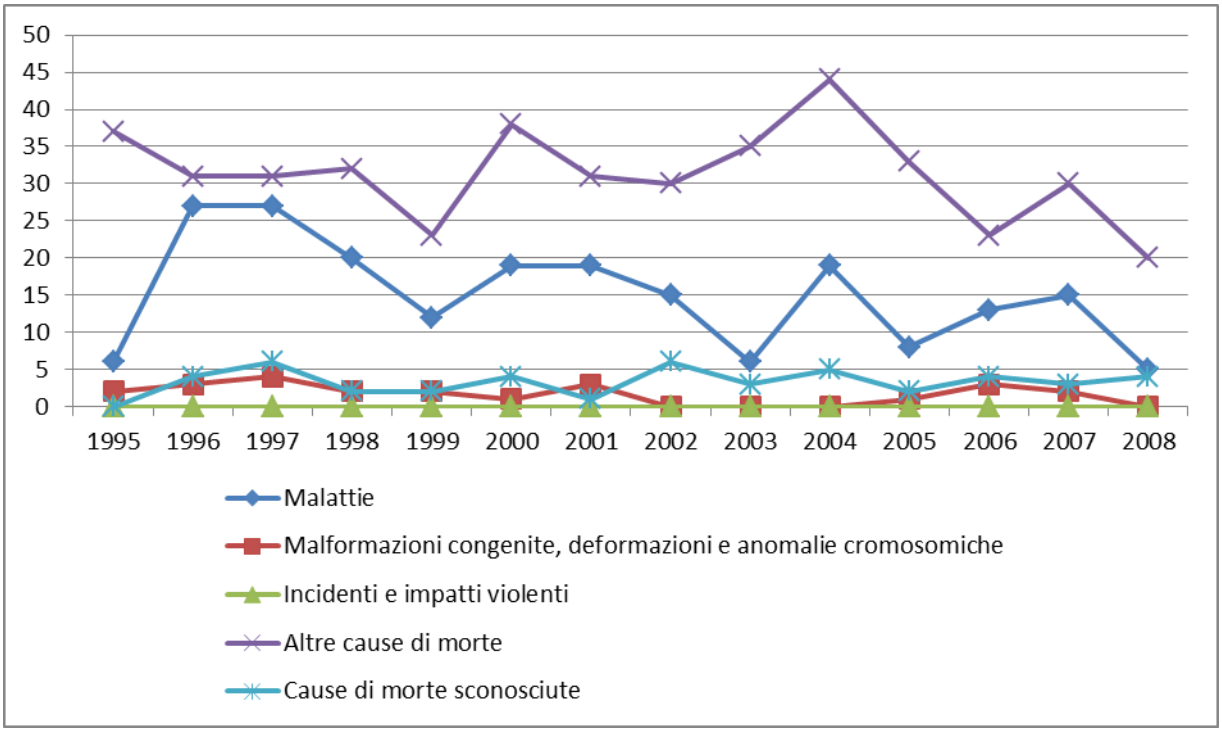

Figura 8 Cause della mortalità infantile (1995-2008) [22]

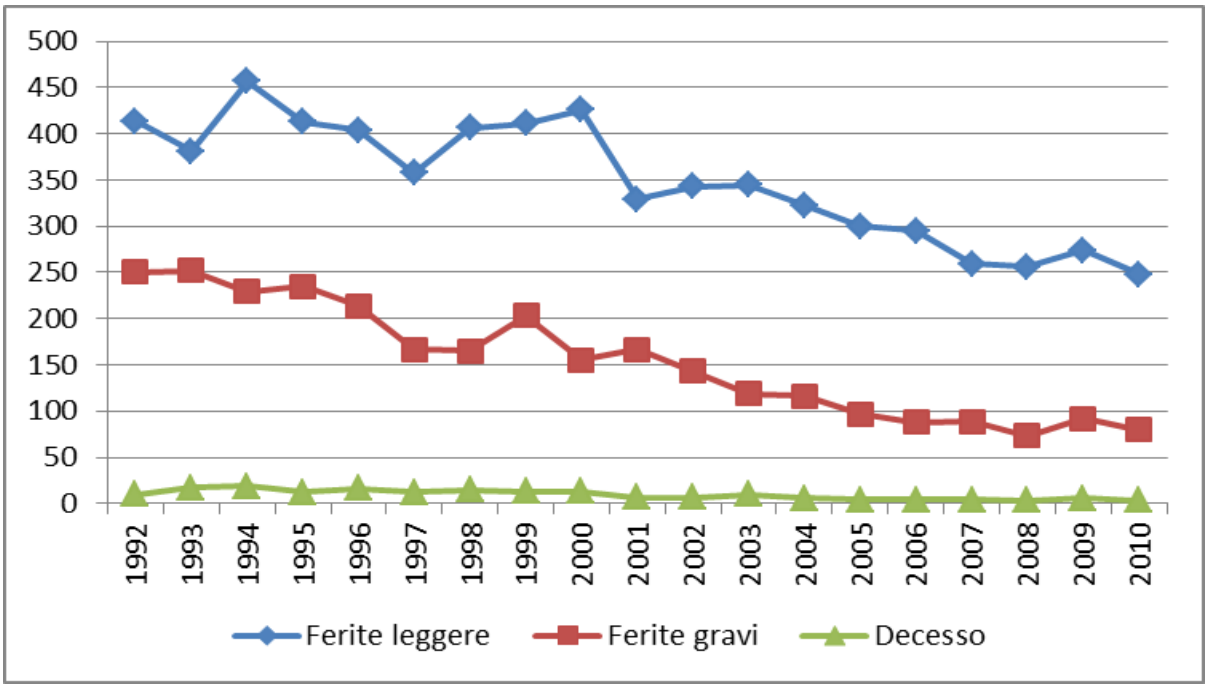

Figura 9 Pedoni tra 0 e 9 anni vittime di incidenti stradali (1992-2010) [23]

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[22] Fonte: www.bfs.admin.ch: Statistica delle cause di morte (stato della banca dati: 23 novembre 2010).

[23] Fonte: www.pxweb.bfs.admin.ch (adattamento da parte dell'autore).

Quando i bambini diventano adolescenti, c'è un altro aspetto della sanità pubblica che acquista importanza: secondo l'Ufficio federale della sanità pubblica (UFSP, 2005), infatti, la percentuale degli anni di vita persi per suicidi commessi prima dei 70 anni supera di almeno due volte quella dei decessi per incidenti stradali. Con 19,1 decessi per suicidio su 100'000 residenti, il tasso di suicidio in Svizzera è tra i più alti al mondo.[24] Il tasso di suicidio (principale causa di morte tra la popolazione maschile di età compresa tra i 15 e i 44 anni) subisce un'impennata all'inizio dell'adolescenza, per raggiungere il suo primo culmine tra i 20 e i 30 anni. In questa statistica i ragazzi sono nettamente sovrarappresentati rispetto alle ragazze. Stando ai dati raccolti nel 1992 e nel 2002 (Narring et al., 2003), nonché nel 1997 (Rey Gex, Narring, Ferron e Michaud, 1998) su un cospicuo campione di giovani, il 3,4%-3,9% delle ragazze e l'1,6%-2,6% dei ragazzi tra i 15 e i 20 anni hanno affermato di aver tentato il suicidio nei dodici mesi precedenti l'indagine. In questo studio, i dati relativi alla prevalenza dei tentativi di suicidio riportati da Delgrande e Messerli (2003) mostrano che il 4% delle ragazze e il 2,6% dei ragazzi tra i 15 e i 16 anni hanno tentato almeno una volta di togliersi la vita.

Tra gli altri temi riguardanti gli adolescenti che preoccupano maggiormente le autorità sanitarie svizzere rientrano l'obesità, il consumo eccessivo di alcol e di droghe illegali, in particolare di canapa.

Stando ai risultati del progetto di ricerca "BMI-Monitoring"[25] lanciato da Promozione Salute Svizzera, una fondazione costituita e sostenuta da tutti i Cantoni, il sovrappeso e l'obesità sono un fenomeno diffuso tra i bambini e gli adolescenti. Tuttavia, a causa delle trasformazioni fisiologiche che caratterizzano l'infanzia e l'adolescenza, non esiste una definizione semplice e universalmente accettata dei criteri che permettono di formulare una diagnosi affidabile di sovrappeso e obesità (Stamm, Wiegand e Lamprecht, 2010). Rispetto al passato, l'indice di massa corporea dei bambini e degli adolescenti che vivono in Svizzera (IMC o, in inglese, BMI) sembra essersi stabilizzato (Aeberli, Amman, Knabenhans, Molinari e Zimmermann, 2009). Tuttavia, i dati relativi alla prevalenza suggeriscono che è troppo presto per abbassare la guardia: a seconda della città o del cantone, infatti, la percentuale di bambini in sovrappeso o obesi varia dal 10% al 26% (ibid.). In media, in Svizzera dal 15 al 20% dei bambini sono in sovrappeso e il 4% è obeso. Esiste un nesso ben documentato tra un basso livello socioeconomico e il sovrappeso, rispettivamente l'obesità (v. per es. ISPA, 2009; Robertson, Lobstein e Knai, 2007; Stamm et al., 2011; OMS/Europa, 2006 e 2012). Per esempio, il fatto che le famiglie meno abbienti di solito vivano in zone più esposte al traffico intenso, porta a ipotizzare che tali condizioni di vita limitino le attività all'aria aperta, il che ha un effetto nocivo sulle attività motorie dei bambini (v. Sauter e Hüttenmoser, 2006).

I dati relativi al consumo di alcol e canapa da parte degli adolescenti che vivono in Svizzera sono stati pubblicati da uno studio condotto su incarico dell'UFSP (Schmid, Delgrande Jordan, Kuntsche, Kuendig e Annaheim, 2008). In base a tale studio, risulta che il 7% dei ragazzi e quasi il 3% delle ragazze quindicenni consuma alcol su base quotidiana; il 40% si è già ubriacato e l'1% è addirittura finito all'ospedale. Dallo studio risulta inoltre che l'età media in cui si è bevuto alcol per la prima volta è di 13,3 anni (ibid.). Per quanto riguarda invece la canapa, che rappresenta la droga illegale

[24] Tra i Paesi presi in considerazione dallo studio, solo la Finlandia ha un tasso di suicidio più alto della Svizzera (UFSP, 2005).

[25] BMI significa Body-Mass-Index, ossia l'indice di massa corporea, l'unità di misura usata per calcolare il sovrappeso e l'obesità.

nettamente più consumata, il 34,2% dei ragazzi e il 26,8% delle ragazze interpellate hanno affermato di averne già fatto uso almeno una volta.

2.3.4 Preoccupazioni sul controllo parentale e influenza crescente dei media elettronici

Come in parecchi altri Paesi molto avanzati, la società svizzera è confrontata con alcuni fenomeni che sono al centro di un ampio dibattito pubblico e che quindi si ripercuotono sulla politica dell'infanzia e delle gioventù. Negli ultimi anni, le abitudini di consumo e le attività del tempo libero dei giovani sono cambiate moltissimo. Soprattutto negli agglomerati ad alta tensione abitativa si è imposta la cosiddetta "società delle 24 ore", il che significa che, in particolare durante i fine settimana, le attività del tempo libero dei giovani si protraggono fino all'alba. Di conseguenza, è aumentato anche il tempo a disposizione per l'abuso di alcol, i comportamenti indecenti, gli atti di vandalismo e tutti gli altri tipi di reati. Questa tendenza è responsabile di alcuni sviluppi deplorati dall'opinione pubblica, come il *littering* e gli atti di vandalismo che deteriorano le aree pubbliche e l'aumento reale o percepito[26] della violenza giovanile. Tuttavia, ci sono ottime ragioni per supporre che questi fenomeni siano anche legati a un declino del controllo parentale. Da due studi condotti nelle scuole medie del Canton San Gallo (Walser e Killias, 2009) e in tre comuni dell'agglomerato di Berna (Urwyler, Nett e Rondi, 2011) emerge un nesso tra il livello di controllo da parte dei genitori e i comportamenti problematici dei giovani (consumo di alcol, gioco d'azzardo, ricorso alla violenza, appartenenza a gruppi devianti ecc.). Il controllo parentale è stato misurato in base alla consapevolezza che i genitori hanno rispetto a quello che i loro figli fanno quando escono la sera e dalla volontà dei genitori di fissare e far rispettare delle regole. I risultati di entrambi gli studi dimostrano che le famiglie con un background migratorio sono meno disposte o meno in grado di controllare i propri figli; inoltre, dal secondo studio (ibid.) emerge che le famiglie monoparentali e ricostituite esercitano meno controllo sui giovani. Di conseguenza, l'aumento dei comportamenti devianti potrebbe essere collegato all'aumento delle famiglie monoparentali, allo sgretolamento delle famiglie tradizionali, rispettivamente alla loro ricomposizione nelle cosiddette famiglie patchwork (o ricostituite), nonché al minor controllo esercitato dalla società tra la popolazione migrante, in costante crescita.

Il problema del minor controllo parentale si riflette anche nella minor influenza che i genitori hanno sui loro figli per quanto attiene all'uso dei media elettronici. Il secondo studio succitato ha addirittura identificato un nesso tra un basso controllo sull'uso dei media elettronici e un comportamento criminale o a rischio. Nel considerare eventuali misure preventive, occorre tenere conto del fatto che un minor controllo da parte dei genitori sull'uso dei media elettronici si osserva in particolare nelle famiglie con un background migratorio e nelle famiglie "non tradizionali" (ibid.).[27] Stando alle dichiarazioni di un terzo (36%) circa degli interpellati, nello specifico ragazzi tra i 12 e i 18 anni (età media: 13,9 anni), i genitori non stabiliscono regole per limitare il consumo televisivo dei figli, mentre

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[26] In realtà gli esperti non sono unanimi nell'affermare che la violenza giovanile sia veramente aumentata negli ultimi anni (Consiglio federale, 2009; UFAS, 2010; Nett, 2010).

[27] Nell'ambito del PNR 52, un progetto di ricerca diretto da Heinz Moser e Heinz Bonfadelli ha analizzato le attività del tempo libero e il consumo dei media dei bambini e degli adolescenti tra i 9 e i16 anni della regione di Zurigo. I risultati dello studio hanno rivelato differenze sostanziali nel consumo dei media elettronici dei giovani con e senza background migratorio (v. Bonfadelli e Bucher, 2006; Bonfadelli e Moser, 2007; Moser, 2006).

un numero maggiore di genitori (47%) ha cercato di disciplinare l'uso del computer. Controllare l'uso dei media elettronici diventa sempre più difficile perché molti bambini e ragazzi dispongono di apparecchi elettronici mobili e hanno la televisione e il computer in camera. Il 66% degli interpellati ha affermato di avere accesso a internet (ibid.). Questo risultato corrisponde all'incirca a quanto emerso da uno studio rappresentativo condotto anch'esso a livello svizzero nel 2010 (lo studio JAMES[28]) tra 1'000 allievi tra i 12 e i 19 anni (Willemse, Waller e Süss, 2010). Secondo questo studio, tre quarti del campione preso in esame ha un computer con accesso a internet. In questa fascia di età internet è usato molto spesso: in settimana in media due ore al giorno e durante il fine settimana un'ora in più. Va tuttavia detto che il *range* è ampissimo e va da un paio di minuti a molte ore al giorno.

Molte attività del tempo libero, però, sono tuttora legate all'appartenenza ad associazioni classiche. Ciò vale in particolare per gli sport: il 65% dei ragazzi e il 53% delle ragazze interpellati nei tre comuni del Canton Berna ha affermato di far parte di un club sportivo; il 28% ha detto di essere membro di un altro tipo di associazione e il 21% di diverse altre associazioni. Per lo più si tratta di associazioni a carattere musicale o di associazioni giovanili, come gli scout (Urwyler e Nett, 2011). Se si analizza lo sviluppo delle attività del tempo libero, risulta evidente che nell'ultimo decennio si è verificato un cambiamento radicale (v. Ribeaud e Eisner, 2009): se alla maggioranza dei giovani continua a piacere incontrarsi regolarmente con gli amici e praticare sport (l'82%, rispettivamente il 70%, afferma di svolgere attività sportive più volte alla settimana), al momento attuale le due attività del tempo libero preferite dai giovani sono l'uso del telefonino e di internet. Anche se il terzo posto della classifica non è occupato da un'attività mediale, la top ten è nettamente dominata dalle attività mediali. I social network (come Facebook), che fanno parte del cosiddetto Web 2.0[29], hanno assunto un'importanza enorme per i giovani: secondo lo studio JAMES, l'84% dei ragazzi interpellati è registrato in almeno un social network. I giovani hanno comunque affermato che le vere amicizie di solito nascono a scuola (94%) o nel luogo di residenza (56%), ma spesso anche all'interno delle associazioni frequentate dai ragazzi (38%) o nella cerchia delle conoscenze familiari (30%). Ciononostante, è degno di nota il fatto che il 16% dei giovani citi internet come fonte di nuove amicizie.

L'uso sempre più diffuso del Web 2.0 si ripercuote sul controllo della sfera privata, visto che crea nuove possibilità di usare in modo improprio i dati personali messi online; ciò è particolarmente preoccupante nel caso degli adolescenti. Durante la pubertà, uno dei principali compiti evolutivi consiste infatti nel socializzare all'interno dei gruppi di pari e nel definire la propria identità sociale al di fuori dalla famiglia di origine (v. Harris, 1995; Hurrelmann, 2005). Per questo motivo gli adolescenti sono più vulnerabili alle violazioni della sfera privata attraverso un uso improprio delle informazioni personali messe online senza alcuna cautela. A tale proposito, lo studio JAMES ha rilevato diversi aspetti interessanti: il 29% dei giovani intervistati ha affermato che loro fotografie o video sono finiti su internet senza il loro consenso, un altro 18%, invece, si è trovato coinvolto in comunicazioni online durante le quali venivano usate espressioni volgari o ingiuriose (il cosiddetto *flaming*) e un ulteriore 8% ha ammesso di essere già stato oggetto di diffamazione o insulti online (Willemse et al., 2010). I

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[28] "JAMES" è un acronimo che sta per "Jugend (gioventù) - Aktivitäten (attività) - Medien (media) - Erhebung (rilevamento) - Schweiz (Svizzera)".

[29] Web 2.0 è un termine usato per definire gli aspetti interattivi di un numero sempre maggiore di servizi su internet.

risultati emersi dallo studio riguardanti la disponibilità a rivelare dati personali mostrano una differenza tra maschi e femmine. Di solito, le ragazze sono più riluttanti a fornire informazioni personali, tuttavia con un'importante eccezione: caricano con maggior facilità video e fotografie che le ritraggono. Questa differenza può essere ricondotta alle diverse strategie di corteggiamento tra i sessi, anche se risulta difficile capire come mai (come emerge a più riprese dallo studio JAMES) i giovani della Svizzera tedesca, francese e italiana presentino notevoli differenze nel loro comportamento online.

2.3.5 Indicatori di maltrattamento e di trascuratezza a danno dei bambini

In seguito a un'iniziativa parlamentare[30], nel 1988 il Dipartimento federale dell'interno aveva incaricato un gruppo di esperti di allestire un rapporto per fare il punto della situazione sul carattere, sulla prevalenza e sulle cause dei maltrattamenti infantili in Svizzera. Inoltre, il gruppo di lavoro era stato invitato a formulare delle proposte per colmare le lacune più gravi e a indicare quali misure preventive si sarebbero potute adottare. Ai fini del rapporto era quindi stata creata una banca dati ampia ed eterogenea (comprendente una raccolta prospettica di dati che aveva coinvolto 5'000 strutture mediche e 800 servizi sociali, un sondaggio rappresentativo a livello Svizzero tra i genitori, interviste con i detenuti di sette prigioni, colloqui con esperti ecc.). Nel 1992, il gruppo di esperti ha così pubblicato i risultati del proprio lavoro in quello che è stato il primo e a tutt'oggi l'unico tentativo di tracciare un quadro nazionale sulla realtà multiforme e complessa dei maltrattamenti infantili ("Infanzia maltrattata in Svizzera", 1992). In seguito, molte proposte formulate nel rapporto sono state inserite nei testi di legge e applicate nella pratica.

Dopo la pubblicazione di questo rapporto nazionale, sono state ben poche le informazioni (oltretutto selettive) supplementari raccolte per aggiornare i dati sulla prevalenza dei maltrattamenti infantili in Svizzera. Tuttavia, siamo fiduciosi che la ricerca in corso, finanziata dall'UBS Optimus Foundation, darà un'immagine più aggiornata e accurata della realtà. Stando alla descrizione online dello studio Optimus[31], esso "fornirà un quadro esaustivo della portata della violenza, dei maltrattamenti e della trascuratezza subiti dai bambini e dai giovani, permettendo di quantificare i danni che causano sui diretti interessati e fino a che punto i vari progetti, come i programmi di aiuto alle vittime, sono in grado di aiutare questi bambini e questi giovani."[32] L'auspicio è che i dati raccolti dallo studio Optimus possano almeno in parte fare luce sui maltrattamenti e sulla trascuratezza infantili in Svizzera. Prima che i risultati siano disponibili, quindi, è possibile valutare la portata del problema solo sulla base di diverse statistiche relative ad aspetti specifici del problema.

L'Ufficio federale di statistica (UST) ha iniziato ad analizzare e a pubblicare dati sulla violenza domestica[33], che in parte contengono informazioni sui maltrattamenti infantili. L'illustrazione 10 riporta una selezione di tali dati, estrapolati sulla statistica criminale di polizia, che includono tutti gli atti di

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[30] Il cosiddetto "postulato" presentato al Consiglio federale dalla consigliera nazionale Judith Stamm il 18 giugno 1987.

[31] I seguenti membri del team di ricercatori dell'Università di Zurigo hanno sviluppato sul piano progettuale lo Studio Optimus in Svizzera: Ulrich Schnyder, Meichun Mohler-Kuo, Markus Landolt e Thomas Maier. I dati per questo studio sono stati raccolti grazie a un'indagine condotta tra 6'000 scolari che frequentavano il nono anno di scuola.

[32] Fonte: www.optimusstudy.org, dati scaricati il 1º novembre 2011.

[33] Fonte: www.bfs.admin.ch, dati scaricati il 22 novembre 2011.

violenza tra la vittima e i genitori (compresi il patrigno, la matrigna e i genitori affidatari) e le persone legate da un altro legame di parentela. I reati riportati sono classificati in base ai vari articoli del Codice penale svizzero (CP). Di conseguenza, la maggioranza dei reati su minori nel quadro della violenza domestica sono reati contro la vita e l'integrità della persona, in particolare le vie di fatto (art. 126 CP) e le lesioni semplici e gravi (artt. 123 e 122 CP). Va sottolineato che i casi di violenza domestica con connotazione sessuale riguardano maggiormente i bambini più piccoli e in misura minore i giovani.

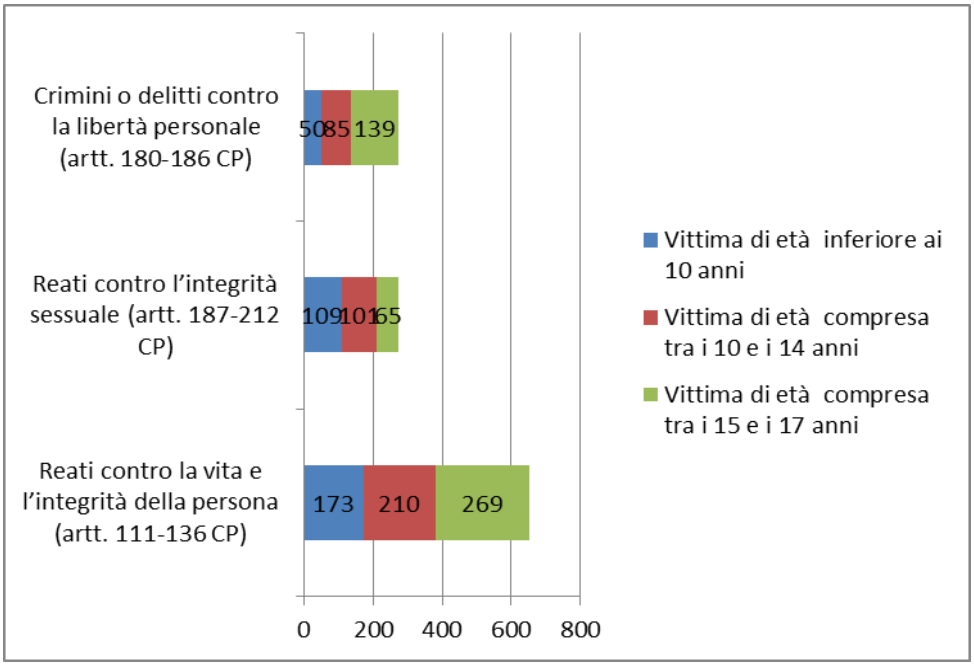

Figura 10 Giovani vittime di violenza domestica in base all'età e al tipo di reato denunciato alla polizia nel 2010[34]

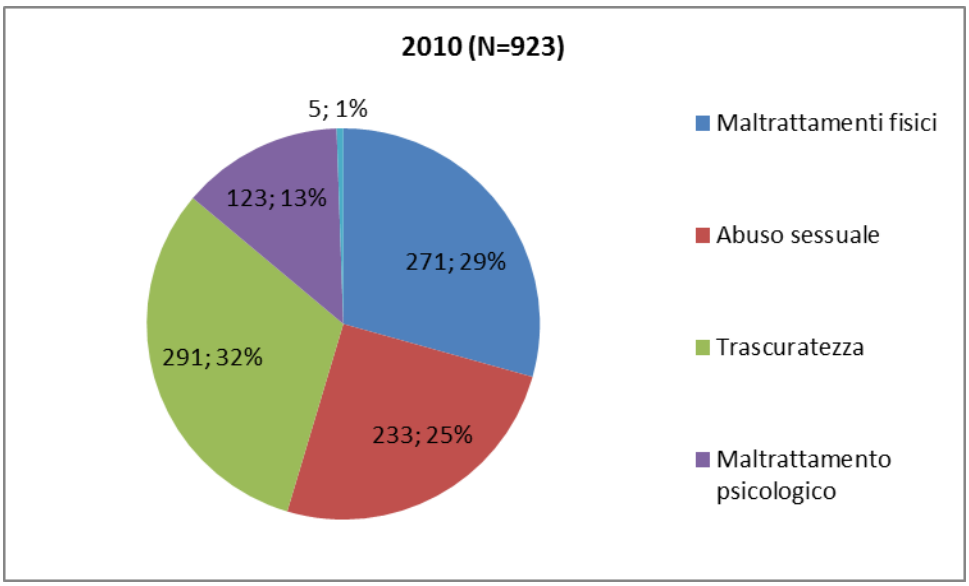

Figura 11 Casi confermati o sospetti di maltrattamenti infantili, suddivisi per categoria (nelle 15 cliniche pediatriche svizzere, sulle 26 interpellate, che hanno aderito al progetto) [35]

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[34] Fonte: www.bfs.admin.ch: Statistica criminale di polizia (stato della banca dati: 2 novembre 2011).

Un'altra importante fonte di informazione è la statistica fornita dal gruppo di lavoro per la protezione dell'infanzia della Società svizzera di pediatria (SSP), che dal 2009 pubblica i dati raccolti nelle cliniche pediatriche svizzere. Dando un'occhiata più approfondita ai dati relativi al 2010, si scoprono alcune cose interessanti (Società svizzera di pediatria, 2011): dei 923 casi di maltrattamenti infantili confermati o sospetti di cui all'Ill. 11, bisogna innanzi tutto dire che solo la metà si basa su una diagnosi totalmente affidabile, il 19% sono casi probabili e il rimanente 31% deve essere confermato. Nello specifico, quasi un terzo delle segnalazioni raccolte nel 2010 riguarda casi più o meno confermati di trascuratezza infantile, un altro terzo circa dei casi rientra nei maltrattamenti fisici e un quarto circa negli abusi sessuali. Va sottolineato che le bambine sono sempre in netta maggioranza in tutte le categorie: rappresentano il 60,5% di tutte le presunte vittime e il 75,9% delle vittime di abusi sessuali. Le vittime sono spesso bambini piccoli: i neonati sono i più a rischio, visto che quasi un quarto delle vittime hanno meno di un anno (ibid.).

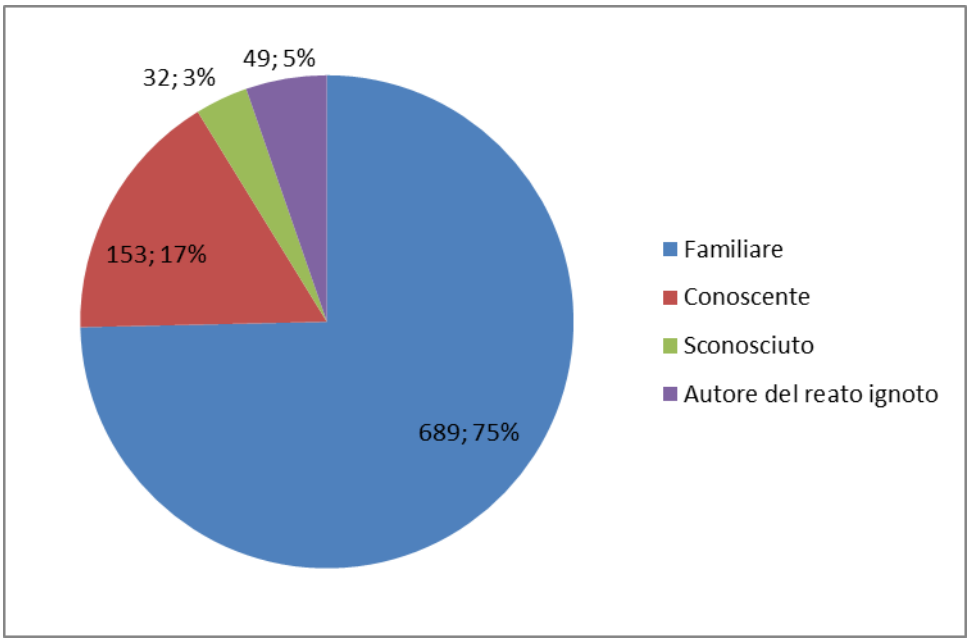

Figura 12 Rapporto tra autore e vittima del reato (nelle 15 cliniche pediatriche svizzere, sulle 26 interpellate, che hanno aderito al progetto) [36]

Stando ai dati forniti da 15 cliniche pediatriche, nel 75% dei casi l'autore del reato è un familiare (v. Figura 12), il che conferma l'importanza delle statistiche sulla violenza domestica come indicatore dei maltrattamenti infantili. Tuttavia, la quota non indifferente del 17%, che comprende conoscenti del bambino, sta a indicare quanto sia importante coinvolgere negli sforzi preventivi tutto l'ambiente educativo. Nella stragrande maggioranza dei casi, gli abusanti sono adulti (82,2%), per lo più di sesso maschile (48,1%). Ciononostante, se si tiene conto del fatto che nel 14,5% dei casi gli autori sono di entrambi i sessi, ciò significa che le donne sono coinvolte quasi nella metà dei casi (v. Figura 13).

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[35] Fonte: Società svizzera di pediatria (2011). La sindrome di Muenchausen per procura va spiegata: si tratta di un comportamento, generalmente della madre, che spinge chi ne è afflitto ad inventarsi una malattia o a causarla ai figli (v. Stirling e Commitee on Child Abuse and Neglect, 2007).

[36] Fonte: Società svizzera di pediatria (2011).

In base alle loro diagnosi, nel 22,2% dei casi i gruppi di protezione dell'infanzia presso le cliniche pediatriche hanno inoltrato una segnalazione di pericolo alle autorità preposte e nel 7,5% dei casi hanno raccomandato misure a protezione dei bambini; per il 20,7% dei pazienti tali misure erano già state ordinate da terzi. Inoltre, nell'8,4% dei casi, la denuncia penale era già stata presentata o raccomandata dal gruppo di protezione dell'infanzia, mentre nel 14,5% dei casi era stata presentata da terzi (ibid.).

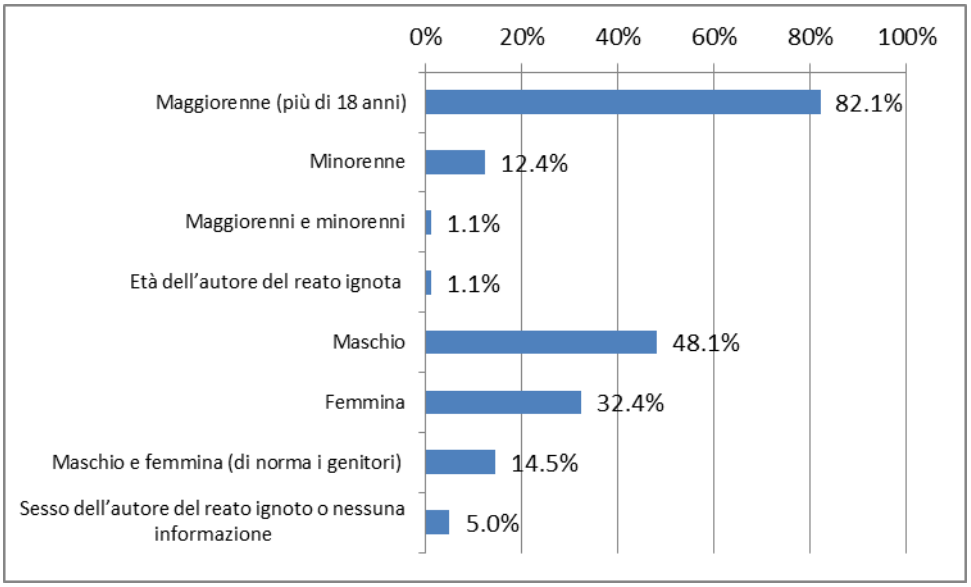

Figura 13 Età e sesso dell'autore del reato (nelle 15 cliniche pediatriche svizzere, sulle 26 interpellate, che hanno aderito al progetto) [37]

Ovviamente, i casi di maltrattamento infantile individuati nelle cliniche pediatriche rappresentano solo la punta dell'iceberg. Ciò vale anche per i casi che compaiono nelle varie statistiche ufficiali che si occupano delle attività dei tribunali penali e civili, o di altre istituzioni con mandato legale. Torneremo su questi dati al capitolo 2.4. Come abbiamo già avuto modo di dire, in Svizzera non si procede a una raccolta sistematica di informazioni relative alle esperienze personali di violenza e abuso subite dai bambini. Tuttavia, uno degli studi summenzionati (Urwyler et al., 2011) fornisce alcune informazioni che potrebbero fungere da indicatori della prevalenza della violenza dei genitori sui figli. Stando a questo studio, l'80% dei ragazzi e delle ragazze tra i 12 e i 18 anni intervistati ha affermato di non essere mai stato picchiato dai genitori,[38] mentre coloro che hanno ricevuto colpi e botte che hanno procurato loro ematomi o hanno addirittura reso necessario l'intervento di un medico corrispondono solo al 2,9% del totale. Tuttavia, un'analisi che si basava sulla posizione professionale e sul background migratorio ha rivelato che esiste una discrepanza relativa soprattutto a quest'ultimo aspetto: il 31% dei bambini con background migratorio hanno segnalato atti di violenza da parte dei genitori, contro il 13% dei bambini senza background migratorio. Questa tendenza è più prevalente

[37] Fonte: Società svizzera di pediatria (2011).

[38] Questi valori sono nettamente inferiori a quelli rilevati in uno studio rappresentativo risalente a una ventina di anni fa. Tuttavia, la percentuale relativamente maggiore di vittime emersa da quello studio (pari al 35%) va probabilmente attribuita a motivi di carattere metodologico.

nella prima generazione di immigrati rispetto alla seconda, e sottolinea gli effetti positivi dell'integrazione degli stranieri nella società svizzera (ibid.).

2.4 Basi costituzionali e legali della protezione dell'infanzia

In Svizzera, quando si parla di "protezione dell'infanzia"[39], generalmente ci si riferisce solo all'azione legale delle autorità. Tuttavia, essa va vista come parte integrante di una politica nazionale per l'infanzia e la gioventù, ancorata alla costituzione e al diritto internazionale. Secondo una distinzione suggerita da Christoph Häfeli (2005), il sistema di protezione dell'infanzia svizzero può essere suddiviso in quattro ambiti che si occupano a diversi livelli della protezione dei minori: una protezione volontaria, una specializzata, una di natura civile e una di natura penale. Nel settore della protezione volontaria rientrano le associazioni, le organizzazioni e le fondazioni private (come i consultori familiari, la formazione per i genitori o la psichiatria pediatrica) che si adoperano su base volontaria a favore della protezione dell'infanzia e alle quali possono rivolgersi i genitori, i bambini e gli adolescenti. Il settore della protezione specializzata, invece, è costituito da organizzazioni e istituzioni con incarichi pubblici, come gli uffici di consulenza alle vittime di reati e i gruppi per la protezione dell'infanzia presso una clinica pediatrica, ed è caratterizzato dal fatto che tali servizi si occupano di un compito ben definito. La protezione dell'infanzia di natura civile contempla i diritti e i doveri dei genitori e costituisce la base legale dell'intervento dello Stato nella vita delle famiglie. La protezione di natura penale si concentra invece sul perseguimento degli adulti e dei minorenni autori di reati perpetrati a danno dei bambini, in modo da impedire la vittimizzazione dei bambini. A tale scopo, prevede procedure penali specifiche e un sistema di sanzioni a se stante per perseguire gli autori di reati minorenni, tenendo conto delle esigenze di protezione e dei bisogni specifici dei bambini. Nel capitolo che segue verranno descritte più dettagliatamente le basi giuridiche della politica svizzera di protezione dell'infanzia.

2.4.1 Diritto internazionale e costituzionale svizzero

Anche se il diritto internazionale è vincolante e ha il primato sul diritto nazionale, esso non può prevalere sulle leggi svizzere, visto che, in linea di massima, la ratifica completa di una disposizione del diritto internazionale avviene unicamente dopo che sono entrate in vigore le modifiche costituzionali e legali. Se il diritto nazionale non permette una ratifica completa, generalmente vengono sollevate delle riserve.[40] Siccome generalmente queste riserve hanno carattere provvisorio, l'evoluzione del diritto internazionale ha un impatto notevole sul sistema legale svizzero. Per quanto

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[39] I termini usati in Svizzera nel contesto legale, a seconda delle regioni linguistiche, sono: "Kindesschutz" in tedesco, "protection de l'enfant" in francese e "protezione dell'infanzia" in italiano.

[40] A mo' di esempio, sia la Convenzione ONU sui diritti del fanciullo (1989) che il Patto internazionale relativo ai diritti civili e politici (1966) chiedono che i bambini e gli adulti vengano separati nei penitenziari, rispettivamente nelle carceri: anche se questi accordi sono stati ratificati dalla Svizzera (nel 1997 e nel 1992), sono state sollevate delle riserve. Nel secondo caso, la riserva è stata sciolta (v. www.humanrights.ch).

attiene al sistema legale che disciplina la protezione dell'infanzia, gli accordi internazionali rilevanti sono quattro, anche se l'atto che ha avuto l'impatto maggiore è la Convenzione ONU sui diritti del fanciullo del 1989, ratificata nel 1997. Gli altri tre accordi internazionali sono meno determinanti perché si occupano degli aspetti civili dei rapimenti internazionali di minori,[41] della competenza, della legge applicabile, del riconoscimento, dell'esecuzione e della cooperazione in materia di responsabilità dei genitori, e delle misure a protezione dei bambini,[42] nonché delle normative legali sull'adozione internazionale.[43]

La Costituzione federale (Cost.)[44] prevede solo pochi, ma importantissimi, articoli che trattano direttamente i capisaldi della protezione dell'infanzia. Si tratta degli articoli: 11 (Protezione dei fanciulli e degli adolescenti), 13 (Protezione della sfera privata), 14 (Diritto al matrimonio e alla famiglia) e 67 (Promozione dell'infanzia e della gioventù),[45] che è stato recentemente aggiunto alla Costituzione. L'articolo più importante, l'11, nel suo primo capoverso recita: "I fanciulli e gli adolescenti hanno diritto a particolare protezione della loro incolumità e del loro sviluppo." Il secondo capoverso, invece, afferma che i bambini possono esercitare autonomamente i loro diritti "nei limiti delle loro capacità". L'art. 13 è importante per quanto riguarda la protezione dell'infanzia, in quando da un lato limita la possibilità delle autorità di interferire nella vita delle famiglie (cpv. 1); d'altronde, il secondo capoverso protegge tutti, quindi anche i bambini, da un impiego abusivo dei loro dati personali. Da ultimo, il primo capoverso dell'art. 67 stabilisce che nell'adempimento dei loro compiti "la Confederazione e i Cantoni tengono conto degli speciali bisogni di incoraggiamento e protezione dell'infanzia e della gioventù." Il secondo capoverso, invece, legittima il coinvolgimento della Confederazione per assolvere questo compito, in quanto "a complemento delle misure cantonali, [...] può sostenere l'attività extrascolastica di fanciulli e adolescenti" (ibid.).

Meno vincolanti sono invece gli obiettivi sociali di cui all'art. 41 Cost. Rientrano in questa categoria l'accesso alla sicurezza sociale e alle cure necessarie alla salute, la promozione e la protezione della famiglia "quale comunità di adulti e bambini", condizioni di lavoro adeguate, l'accesso a "un'abitazione adeguata e a condizioni sopportabili", l'istruzione e il perfezionamento secondo le capacità individuali, l'incoraggiamento e il sostegno dei bambini e degli adolescenti "affinché diventino persone indipendenti e socialmente responsabili" e, da ultimo, l'assicurazione contro le conseguenze economiche della vecchiaia, della maternità o contro le avversità imprevedibili come l'invalidità. L'art. 41 sancisce che, "a complemento della responsabilità e dell'iniziativa private", quindi solo in via sussidiaria, la Confederazione e i Cantoni si adoperano per assicurare che tali obiettivi siano raggiunti. Nel terzo e nel quarto capoverso, questo sforzo viene ulteriormente relativizzato dall'affermazione "La Confederazione e i Cantoni perseguono gli obiettivi sociali nell'ambito delle loro competenze

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[41] V. la Convenzione dell'Aia del 25 ottobre 1980 sugli aspetti civili del rapimento internazionale dei minori.

[42] V. la Convenzione del 19 ottobre 1996 concernente la competenza, la legge applicabile, il riconoscimento, l'esecuzione e la cooperazione in materia di responsabilità genitoriale e di misure di protezione dei minori (Convenzione dell'Aia sulla protezione dei minori)

[43] V. la Convenzione dell'Aia del 29 maggio 1993 sulla protezione dei minori e sulla cooperazione in materia di adozione internazionale.

[44] Costituzione federale della Confederazione svizzera del 18 aprile 1999 (stato al 1° gennaio 2011).

[45] Accettato in votazione popolare il 21 maggio 2006.

costituzionali e dei mezzi disponibili" e dalla precisazione che "dagli obiettivi sociali non si possono desumere pretese volte a ottenere direttamente prestazioni dello Stato" (ibid.).

2.4.2 Codice civile svizzero

Si può senz'altro affermare che il Codice civile svizzero (CC) rappresenta il fulcro della protezione giuridica dell'infanzia, in quanto si concentra sulla protezione e sul sostegno dei minori per fare in modo che i loro diritti vengano rispettati. Essendo una legge federale, il CC ha validità su tutto il territorio nazionale, anche se si limita a definire un quadro di standard legali minimi, nell'ambito dei quali sta poi ai Cantoni sviluppare la propria politica di protezione dell'infanzia. Con gli artt. 307-314 CC, di particolare rilevanza per la protezione dei minorenni, il legislatore ha definito i diritti e i doveri dei genitori e delle autorità di tutela, nonché, in maniera generale, i vari interventi dello Stato e le relative condizioni. Gli artt. 315*a* e 315*b* CC si occupano delle competenze del giudice in caso di procedura giudiziaria e di quelle delle autorità di tutela. Gli ultimi due articoli di interesse in questo contesto sono l'art. 316 CC, che si occupa della vigilanza delle famiglie affidatarie, e l'art. 317 CC che obbliga i Cantoni a collaborare "nel campo della protezione dell'infanzia secondo il diritto civile, in quello del diritto penale per gli adolescenti e in genere dell'aiuto alla gioventù".

Qui di seguito figura una panoramica dell'evoluzione delle misure definite dal Codice civile. I dati sono stati estrapolati dalle tabelle pubblicate annualmente dalla Conferenza dei cantoni per la protezione dei minori e degli adulti (COPMA). Occorre sottolineare che questi dati forniscono unicamente informazioni sugli interventi del sistema e che il numero di misure ordinate non dà alcuna informazione sugli effetti del sistema, di conseguenza non dice nulla sull'efficacia delle misure ordinate (v. Raccomandazione 14).

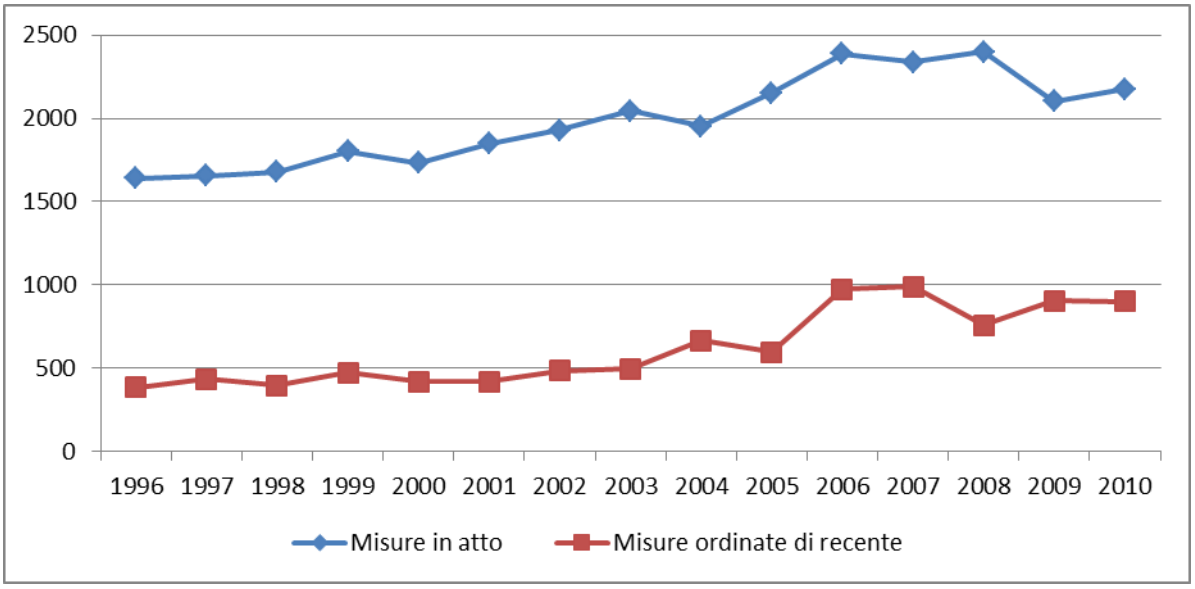

Figura 14 "Misure opportune" già in atto e ordinate di recente ai sensi dell'art. 307 CC[46]

[46] Calcoli eseguiti dall'autore sulla base dei dati pubblicati dalla COPMA (v. nota 46**Error! Bookmark not defined.**).

L'Ill. 14 si riferisce alle cosiddette "misure opportune" di cui all'art. 307 CC, che prevedono interventi meno invasivi e più preventivi da parte delle autorità tutorie, che possono ricordare ai genitori, ai genitori affidatari e ai figli quali sono i loro doveri, ma anche "impartire loro istruzioni per la cura, l'educazione o l'istruzione e designare una persona o un ufficio idoneo che abbia diritto di controllo e informazione" (ibid.). L'Ill. 14 mostra, sulla base dei dati estrapolati dalle tabelle pubblicate dalla COPMA[47], l'evoluzione delle misure già in atto e di quelle ordinate di recente. Tra il 1996 e il 2010, le misure già in atto sono aumentate del 32,6%, mentre quelle ordinate di recente sono più che raddoppiate (+134,1%).

Il successivo passo, più invasivo, delle autorità tutorie consiste nel nominare un "curatore perché consigli e aiuti i genitori nella cura del figlio" (art. 308 CC). Se lo ritiene necessario, l'autorità tutoria può conferire al curatore speciali poteri, che potrebbero interferire con l'autorità parentale.

L'Ill. 15 mostra che anche il numero di curatori nominati è notevolmente aumentato tra il 1996 e il 2010, mentre, in contrasto con l'Ill. 14, le misure già in atto sono aumentate più di quelle ordinate di recente (rispettivamente del 147,5 e del 108,1%).

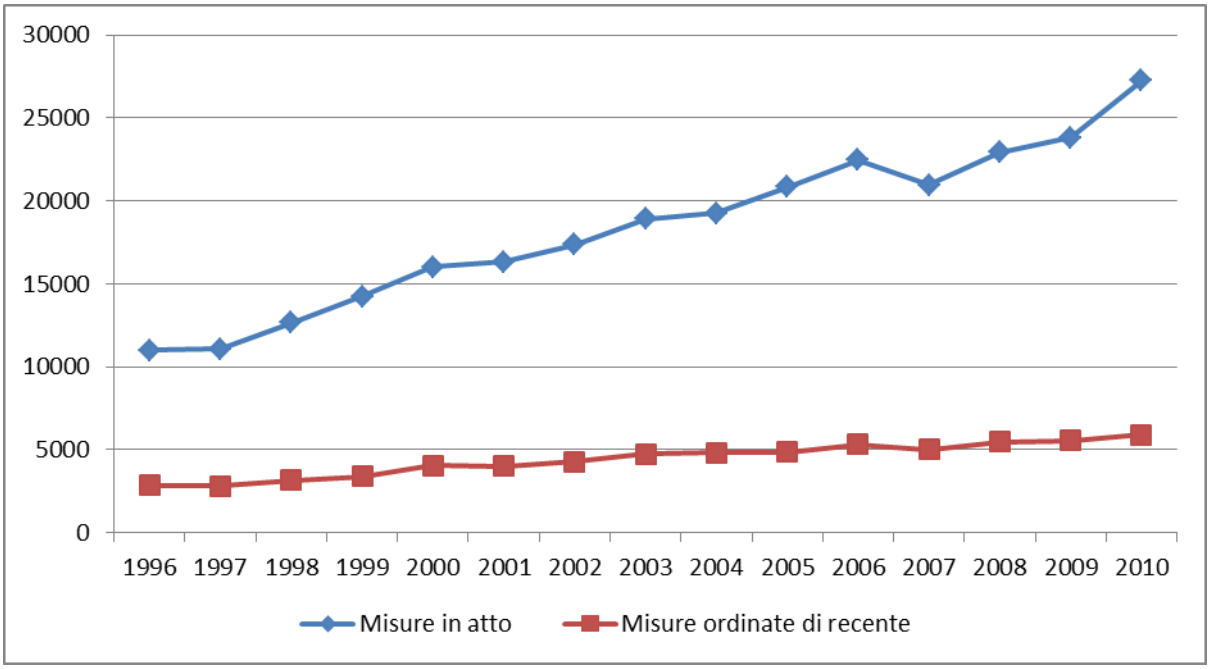

Figura 15 Nomina di un curatore quale misura ordinata ai sensi dell'art. 308 CC[48]

Quando vengono applicate le disposizioni contemplate dagli artt. 310 e 311 CC, il bambino viene tolto dalla custodia dei genitori, o dei terzi presso cui si trova, e collocato altrove. L'art. 310 CC, comunque, ha un tenore piuttosto vago. In pratica, l'autorità tutoria può decidere di togliere un bambino ai suoi genitori o dal luogo in cui vive abitualmente per collocarlo in un luogo più adatto. Questa misura si rende necessaria se l'autorità tutoria ritiene che "il figlio non possa essere altrimenti sottratto al

[47] Fonte: www.copma.ch, dati scaricati il 23 ottobre 2011.

[48] Calcoli eseguiti dall'autore sulla base dei dati pubblicati dalla COPMA (v. nota 46**Error! Bookmark not defined.**).

pericolo" (art. 310 cpv. 1 CC) o se, su richiesta dei genitori o del minore, l'autorità tutoria giunge alla conclusione che "le relazioni siano così gravemente turbate che non si possa più esigere ragionevolmente la convivenza ulteriore e, secondo le circostanze, non si possa rimediare altrimenti" (art. 310 cpv. 2 CC). Le disposizioni di questo articolo possono essere applicate anche nel caso in cui i genitori vogliano riportare a casa il figlio, che per lungo tempo ha vissuto presso genitori affidatari, e se i propositi dei genitori possano compromettere lo sviluppo del figlio (art. 310 cpv. 3 CC).

L'art. 311 CC, invece, implica conseguenze più pesanti, in quanto "la privazione dell'autorità parentale vale anche riguardo ai figli nascituri" (ibid.). Questa misura, estremamente invasiva, può quindi venir imposta contro la volontà dei genitori dall'autorità di vigilanza sulle tutele.[49] Per ordinare questa misura, deve essere soddisfatta una delle due seguenti condizioni: i genitori non sono in grado di esercitare l'autorità parentale "per inesperienza, malattia, infermità, assenza o analoghi motivi" oppure "non si sono curati seriamente del figlio o hanno violato gravemente i loro doveri nei suoi confronti" (ibid.).

L'art. 312 CC si riferisce ai casi in cui i genitori facciano espressamente richiesta di venir privati della loro autorità, vuoi per motivi gravi, vuoi perché hanno l'intenzione di dare il figlio in adozione a terzi non designati. In quest'ultimo caso, la decisione spetta all'autorità tutoria.

Da ultimo, l'art. 313 CC stabilisce che, in caso di modificazione delle circostanze, le misure prese per proteggere il figlio devono essere adattate alla nuova situazione. Per quanto attiene al ripristino dell'autorità parentale, essa non può venir riassegnata prima di un anno da quando i genitori ne sono stati privati.

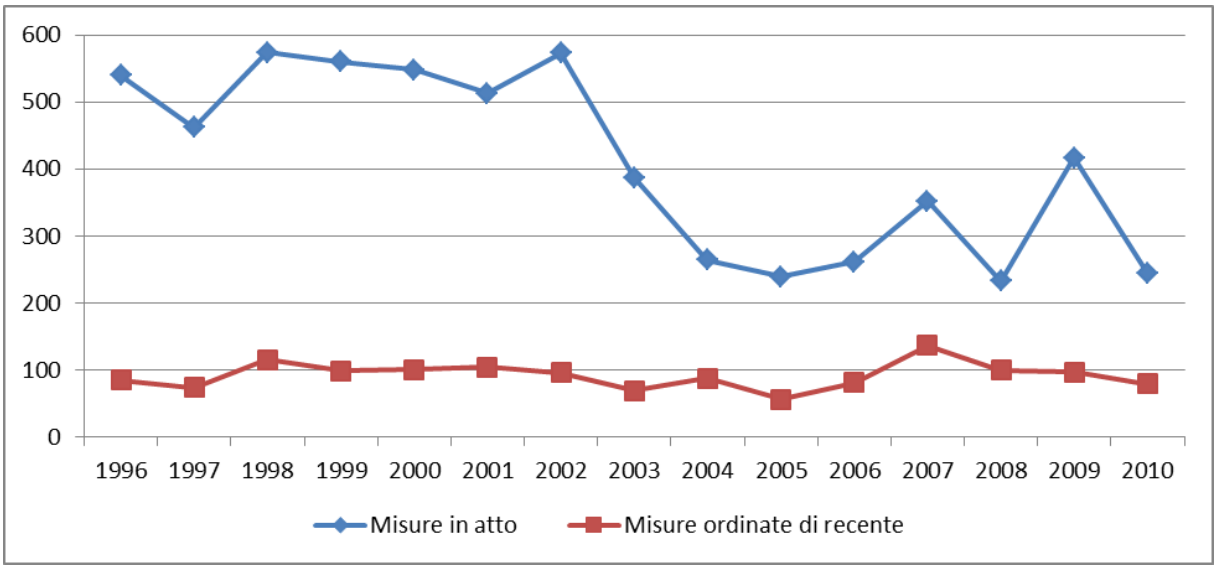

Figura 16 Privazione della custodia parentale quale misura ordinata ai sensi degli artt. 310 o 310/308 CC[50]

[49] Nel 2013, con l'entrata in vigore di nuove disposizioni, questa prassi cambierà. A partire da allora, l'autorità di vigilanza sulle tutele non sarà più autorizzata a emanare decisioni di prima istanza.

[50] Calcoli eseguiti dall'autore sulla base dei dati pubblicati dalla COPMA (v. nota 46).

I diagrammi riprodotti alle Oll. 16 e 17 danno, da un lato, un quadro del numero delle misure ordinate conformemente all'art. 310 CC, in parte in combinazione con l'art. 308 CC (Ill. 16) e, dall'altro, del numero di decisioni relative alla privazione dell'autorità parentale (imposta e volontaria) ai sensi degli artt. 311 e 312 CC (Ill. 17).

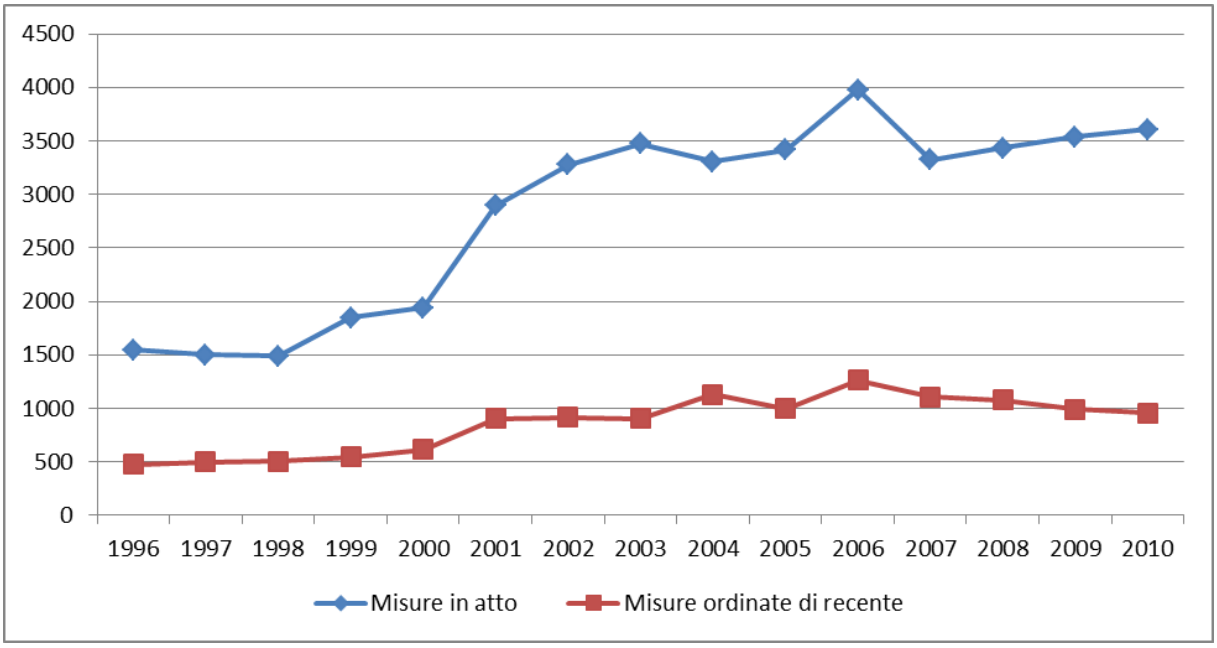

Figura 17 Privazione dell'autorità parentale quale misura ordinata ai sensi degli artt. 311 e 312 CC[51]

Confrontando i due grafici, emerge una differenza. Se i bambini tolti alla custodia parentale sono aumentati fino all'inizio dell'ultimo decennio e poi si sono assestati a un livello elevato, la privazione dell'autorità parentale si era già stabilizzata all'inizio del periodo preso in considerazione, ossia nel 1996, quando il numero delle misure ordinate di recente era all'incirca allo stesso livello. Il fatto che, dal 2002, il numero delle misure in atto sia calato indica che, prima del 1996, le privazioni della custodia parentale erano più frequenti e che, forse in seguito a nuove decisioni, le misure in atto sono state revocate. I due diversi andamenti delle curve sembrano inoltre suggerire che si sia in parte passati da una misura all'altra, ossia che nei casi più recenti l'autorità tutoria abbia prevalentemente scelto di togliere il bambino dalla custodia dei suoi genitori piuttosto che optare per la misura più drastica della privazione dell'autorità parentale.

Analizzando gli incarti sulla protezione dei minori (N=164) tenuti dalle autorità tutorie della Svizzera tedesca e francese (Voll, Jud, Mey, Häfeli e Stettler, 2010), emerge che la misura prevista dall'art. 308 (nomina di un curatore) e dall'art. 310 (privazione della custodia parentale) tocca in misura maggiore le ragazze (56%). Nel caso della privazione della custodia parentale, la percentuale di ragazze è ancora più elevata (62%, ibid.). Si presume che questa differenza sia dovuta al fatto che spesso i ragazzi nei confronti dei quali andrebbero ordinate simili misure delinquono e quindi diventano sì

[51] Calcoli eseguiti dall'autore sulla base dei dati pubblicati dalla COPMA (v. nota **Error! Bookmark not defined.**).

oggetto di misure protettive, ma non di quelle previste dal Codice civile, bensì di quelle del diritto penale minorile (v. Cottier, 2006). Va tuttavia sottolineato che, secondo Voll et al. (2010), il motivo principale per cui vengono ordinate misure protettive ai sensi del CC va ricercato nei conflitti tra i genitori in cui vengono coinvolti anche i figli. Nel 70% circa dei casi presi in esame, le misure ordinate avevano lo scopo di tenere i figli fuori dai conflitti tra adulti.

Di particolare interesse è l'art. 314 CC perché risponde a una richiesta della Convenzione ONU sui diritti del fanciullo, ossia di dare "al fanciullo la possibilità di essere ascoltato in ogni procedura giudiziaria o amministrativa che lo concerne, sia direttamente, sia tramite un rappresentante o un organo appropriato, in maniera compatibile con le regole di procedura della legislazione nazionale" (art. 12 cpv. 2 della Convenzione ONU). Anche se, in linea di massima, la procedura è di competenza dei Cantoni, l'art. 314 cpv. 1 CC dichiara, in conformità con la Convenzione ONU, che i Cantoni devono ottemperare alla regola secondo cui, prima di ordinare una misura a protezione del figlio, l'autorità cantonale o il terzo incaricato lo devono sentire personalmente.[52] Ciononostante, nel capoverso successivo questo diritto viene limitato da un ricorso contro la misura a protezione del figlio, in quanto "l'autorità disponente o di ricorso può togliere l'effetto sospensivo al ricorso" (art. 314 cpv. 2 CC). Sostanzialmente, in Svizzera le esigenze procedurali delle audizioni dei minori e il ruolo del rappresentante del minore non sono chiaramente definiti. Tuttavia, secondo gli esperti, nella pratica non capita ancora molto spesso che i bambini e i ragazzi vengano ascoltati; inoltre, in Svizzera non vi è ancora un numero sufficiente di professionisti con una formazione adeguata per effettuare tali audizioni (Hanhart, Hauri e Fondazione Svizzera per la Protezione dell'Infanzia, 2009a).

Al momento è in corso una revisione parziale del Codice civile svizzero, che riguarda sostanzialmente la protezione degli adulti vulnerabili. Tale revisione, però, avrà ripercussioni anche sul sistema di protezione dell'infanzia. Anche se non sono da prevedere cambiamenti sostanziali degli articoli sui quali ci siamo chinati finora, questa revisione implicherà cambiamenti profondi nell'organizzazione delle autorità tutorie. Il Consiglio federale ha stabilito che la nuova legge entrerà in vigore nel 2013.[53] Fino ad allora, dal punto di vista organizzativo, le autorità tutorie cantonali dovranno soddisfare gli standard minimi stabiliti dalla legge federale. Anche se i Cantoni sono ancora liberi di scegliere se la loro autorità tutoria dev'essere rappresentata da un tribunale o da un'autorità amministrativa, devono comunque garantire che sia composta da persone provenienti da diversi settori e che dia prova di un certo livello di professionalità (v. Häfeli, 2010).

2.4.3 Codice penale svizzero e Legge federale concernente l'aiuto alle vittime di reati

Contrariamente all'era premoderna, quando la pena inflitta all'autore di un reato e le pretese della vittima formavano un'entità inseparabile (v. Berman, 1983), ai giorni nostri il diritto penale si concentra sugli autori dei reati, mentre le pretese delle vittime sono relegate nei tribunali civili e soggiacciono

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[52] Il figlio dev'essere sentito "personalmente e in modo appropriato, a meno che la sua età o altri motivi gravi non vi si oppongano" (ibid. CC).

[53] Come annunciato dal Dipartimento federale di giustizia e polizia il 12 gennaio 2011.

quindi al Codice civile.[54] Per quanto riguarda i mezzi legali a disposizione per proteggere i minori, il diritto civile e quello penale possono essere considerati due facce della stessa medaglia. Il Codice civile si prefigge di garantire i diritti dei bambini, quello penale di dissuadere le persone dall'ignorare, trascurare e violare questi diritti. Il diritto penale si concentra quindi sui potenziali autori di reati e su quelli già condannati, affidandosi agli effetti positivi della dissuasione in generale e, nella fattispecie, della dissuasione specifica basata su sanzioni che dovrebbero dissuadere chi ha commesso un delitto dal delinquere nuovamente. Tuttavia, il diritto penale non dovrebbe limitarsi a proteggere i bambini dai reati ma, nel caso in cui ne diventassero comunque vittime, anche dalle tensioni causati da una procedura penale. Il Codice di procedura penale (CPP)[55] recentemente adottato in Svizzera non è quindi stato elaborato unicamente per standardizzare il diritto processuale penale, bensì anche per garantire che alcuni principi fondamentali siano rispettati in tutti i Cantoni.[56] Quello che è particolarmente rilevante ai fini del nostro discorso è che questa nuova normativa federale prevede un articolo che contempla disposizioni sugli interrogatori delle vittime minorenni (art. 154 CPP). Un'altra legge, recentemente sottoposta a revisione, la Legge federale concernente l'aiuto alle vittime di reati (LAV),[57] anche se non riguarda esclusivamente i bambini e i ragazzi, ha migliorato la situazione sia delle vittime minorenni che dei bambini i cui genitori sono vittime di reati, soprattutto perché li autorizza a fare valere le loro pretese nei confronti dello Stato indipendentemente dal fatto che l'autore sia stato rintracciato, si sia reso colpevole o abbia agito intenzionalmente o per negligenza (art. 1 LAV).

In linea di massima, i bambini possono essere vittime della maggior parte dei reati. Tuttavia, ci sono alcuni tipi di reati nei quali le vittime sono molto spesso bambini o adolescenti; in alcuni casi, le vittime sono per definizione minorenni. I reati che possono essere commessi solo contro minorenni sono rappresentati schematicamente nelle illustrazioni che trovate qui di seguito. C'è comunque un'eccezione: le disposizioni relative alla fattispecie penale della pornografia (art. 197 CP) si riferiscono a oggetti e rappresentazioni che vertono sia su "atti sessuali con fanciulli" che su "animali, escrementi umani o atti violenti" (ibid.). Ciononostante, si può partire dal presupposto che la maggioranza delle condanne basate su questo articolo comprende fattispecie in cui le vittime del reato sono minorenni.

I dati presentati più avanti sono tratti dalla Statistica delle condanne penali comminate agli adulti (quindi le persone sopra i 18 anni), elaborata e regolarmente aggiornata dall'Ufficio federale di statistica.[58] I reati presi in considerazione dalle due illustrazioni sono stati raccolti in base al numero

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[54] Tuttavia, il ruolo della vittima nei procedimenti penali è stato notevolmente rafforzato solo di recente. Ora, a certe condizioni, la vittima può far valere delle pretese civili anche nei procedimenti penali ed è altresì autorizzata a ricorrere contro le pretese civili (v. artt. 37 e 38 LAV e, dal 2011, artt. 122-126 CPP).

[55] Il Codice di diritto processuale penale svizzero (Codice di procedura penale) è entrato in vigore il 1° gennaio 2011.

[56] Prima del 2011, l'organizzazione delle procedure penali era interamente di competenza cantonale.

[57] La Legge federale concernente l'aiuto alle vittime è stata introdotta nel 1993. Dopo alcuni anni di valutazioni, si è deciso di sottoporla a una revisione totale. La nuova versione è entrata in vigore il 1° gennaio 2009.

[58] La Statistica delle condanne penali presenta alcune caratteristiche di cui tenere conto: i dati si riferiscono unicamente alle condanne per crimini e delitti iscritte nel Casellario giudiziale svizzero; le contravvenzioni, ossia i reati puniti solo con una multa ai sensi dell'art. 103 CP, non sono incluse nella statistica perché non tutte vengono iscritte nel Casellario giudiziale. I dati vengono registrati solo quando le condanne sono cresciute in giudicato, ossia quando tutti gli eventuali ricorsi sono stati respinti. Visto che i ricorsi possono durare anche diversi anni, i relativi reati potrebbero essere inclusi nelle statistiche molto tempo dopo che sono stati commessi.

relativo di condanne inflitte sulla base dei vari articoli. Di conseguenza, le condanne più frequenti, ossia quelle riferite agli artt. 187 e 197 CP, sono riportate all'Ill. 18, mentre le condanne meno frequenti, ossia quelle riferite agli artt. 188, 136 e 219 CP sono riportate all'Ill. 19.

Come risulta dall'Ill. 18, le condanne ai sensi dell'art. 187 riferite agli atti sessuali con fanciulli sono restate piuttosto costanti nel corso del periodo preso in esame (1984-2009). Viceversa, le condanne riguardanti gli atti di pornografia sono aumentate notevolmente dalla seconda metà degli anni Novanta in poi. Questa evoluzione va considerata in relazione al rapido sviluppo del web, che non solo costituisce un nuovo luogo dove commettere reati di questo genere, ma ha altresì comportato l'adeguamento delle leggi che cercano di stare al passo con la cibercriminalità. I picchi della curva corrispondono ai successi delle indagini su larga scala nel campo della pornografia su internet, che sporadicamente portano alla condanna di un gran numero di autori di reati.

L'evoluzione delle condanne di cui all'Ill. 19 è in parte da ricondurre a cause di diversa natura. Analogamente all'art. 187 (atti sessuali con fanciulli), anche le condanne ai sensi dell'art. 188 CP sono rimaste costanti nel corso dello stesso periodo, seppure molto meno frequenti. Le condanne relative alla "somministrazione a fanciulli di sostanze pericolose per la salute" iniziano lentamente ad aumentare nel 1989 con l'introduzione dell'art. 136 CP, poi il loro numero subisce un'impennata all'inizio nuovo millennio. Si presume che gli sviluppi registrati negli ultimi anni siano dovuti alla maggior attenzione della società nei confronti della protezione dei minori per quanto riguarda il consumo di bevande alcoliche, sigarette e canapa, il che ha intensificato il perseguimento dei relativi reati.

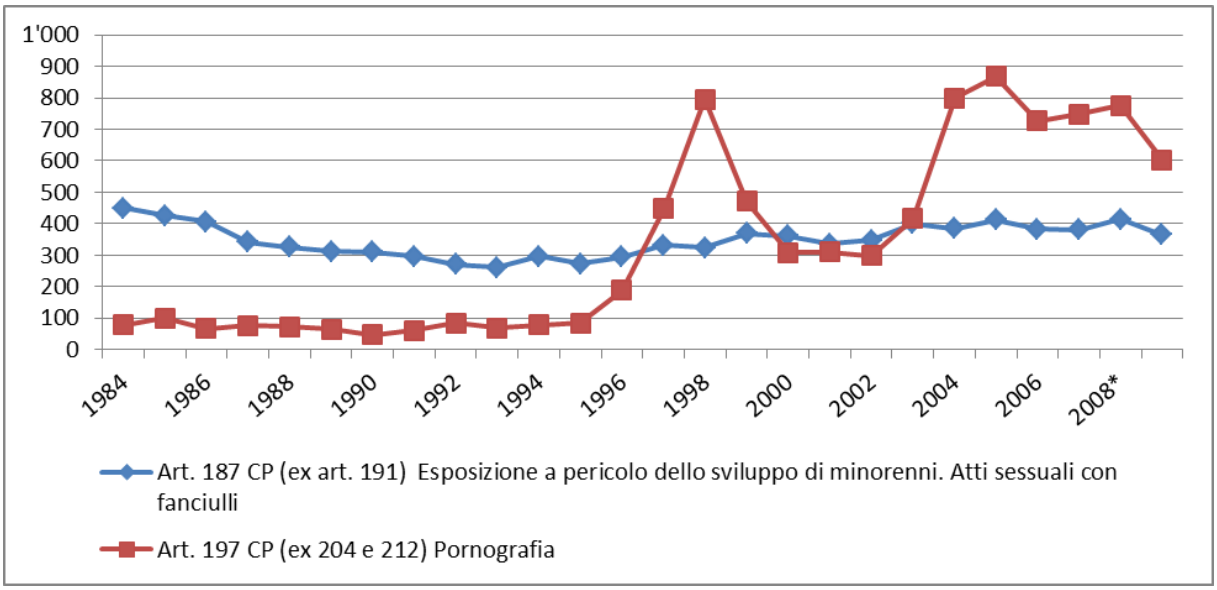

Figura 18 Reati penali contro minorenni conformemente agli artt. 187 e 197 CP[59]

[59] Considerato che nella statistica vengono prese in considerazione unicamente le sentenze passate in giudicato, risulta arduo interpretare i dati degli ultimi anni (v. nota 57).

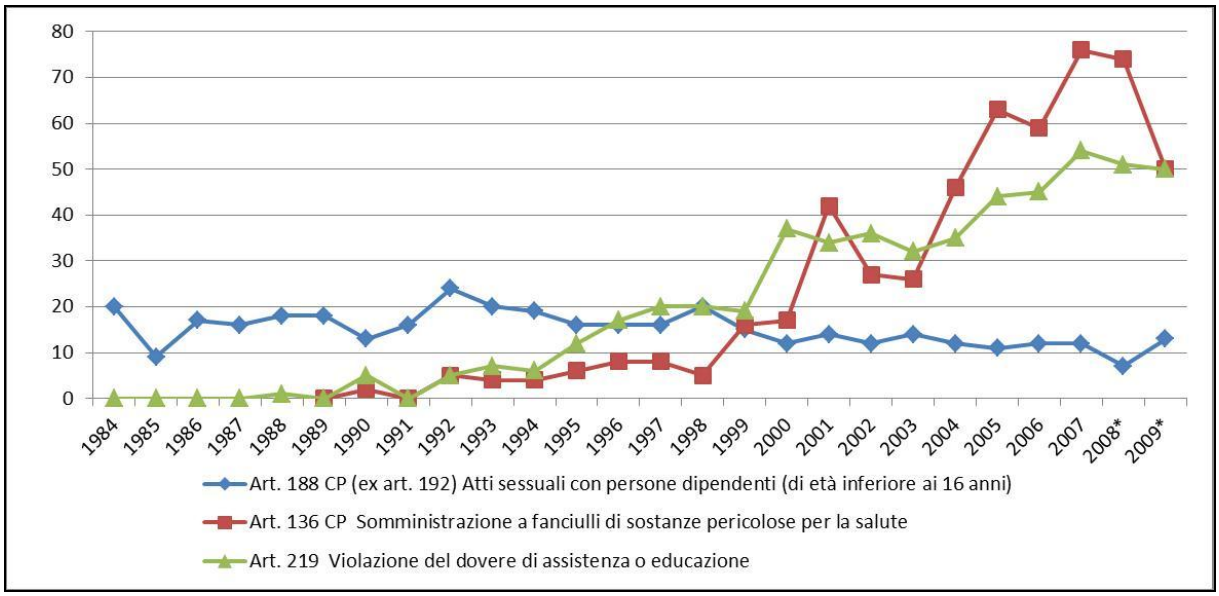

Figura 19 Reati penali contro minorenni conformemente agli artt. 188, 136 e 219 CP[60]

Meno ovvi sono invece i motivi dell'aumento delle condanne per violazione del dovere di assistenza e di educazione, che indubbiamente nella maggioranza dei casi vedono coinvolti in prima persona i genitori. Va anche detto che questa realtà può essere dovuta ai cambiamenti sociali di cui parlavamo precedentemente: il numero sempre maggiore di famiglie monoparentali e ricostituite, nonché il declino del controllo parentale (in parte legato a questo fenomeno sociale). D'altro canto, questo sviluppo potrebbe rispecchiare una tendenza più importante nella nostra società, ossia l'onnipresenza della legge nei rapporti sociali privati (v. Nett, 1999), e in particolare all'interno della famiglia, che spinge le autorità statali a intervenire molto più spesso.

A parte i reati che possono essere compiuti esclusivamente su minorenni, la statistica delle condanne non fornisce informazioni sulle vittime di tali reati. Inoltre, non esiste (né peraltro si prevede di elaborare) una statistica nazionale delle condanne civili, che potrebbe anche venir usata come fonte per il numero di vittimizzazioni dei minorenni. Va comunque detto che la statistica criminale di polizia sui reati commessi in Svizzera, i cui dati sulla violenza domestica sono già stati presentati al capitolo 2.3.5, fornisce questo tipo di informazioni; sfortunatamente, questa statistica è stata introdotta solo nel 2009 e quindi, almeno per il momento, non consente un'analisi di lungo respiro. Esiste comunque un'altra fonte di dati sulle vittime: l'Ufficio federale di statistica pubblica regolarmente dati che risalgono fino al 2000 e che forniscono informazioni sui servizi prestati dalle organizzazioni impegnate nel campo dell'aiuto alle vittime. Le due illustrazioni seguenti presentano un estratto di questi dati. Entrambi i grafici si riferiscono alle consulenze fornite a minorenni vittime di reati.

Per quanto attiene all'Ill. 20, che riporta il totale annuo delle consulenze e quello dei provvedimenti ordinati a protezione dell'infanzia, salta subito all'occhio che, nel periodo 2000-2009, in entrambi i casi si è registrato un aumento chiaro solo tra il 2000 e il 2001. Non c'è dubbio che questo aumento iniziale

[60] V. nota 59.

sia stato causato da problemi nella raccolta dei dati o da un aumento dei servizi di consulenza forniti. Di conseguenza, dai dati dell'Ill. 20 si può desumere che o c'è stata una riduzione a livello di fornitura dei servizi di consulenza, risultante in un numero costante di casi per anno, oppure la domanda di questi servizi non si è modificata di molto. Si può inoltre affermare che il numero di provvedimenti a protezione dell'infanzia sembra essere rimasto costante.

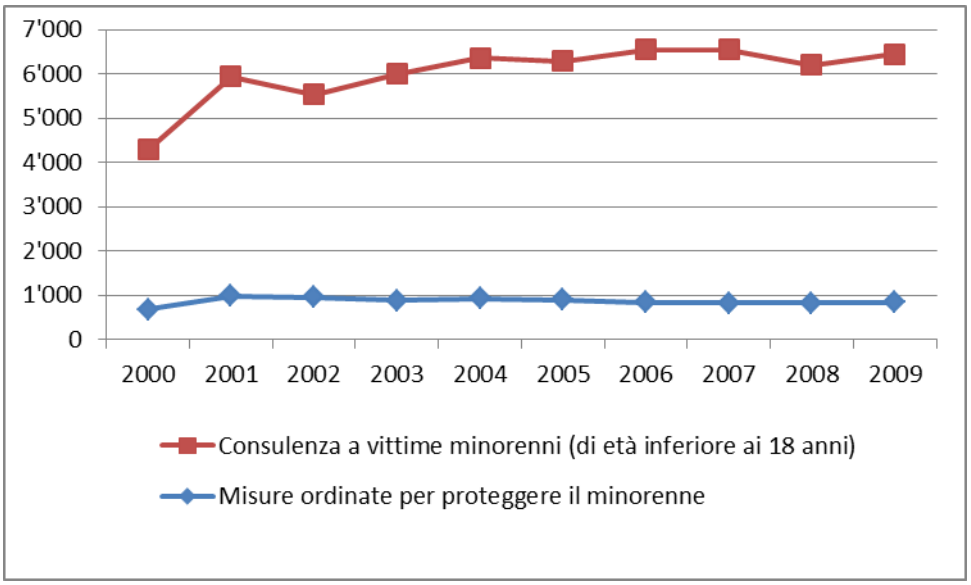

Figura 20 Vittime minorenni e provvedimenti ordinati a protezione dell'infanzia (consulenze fornite alle vittime)

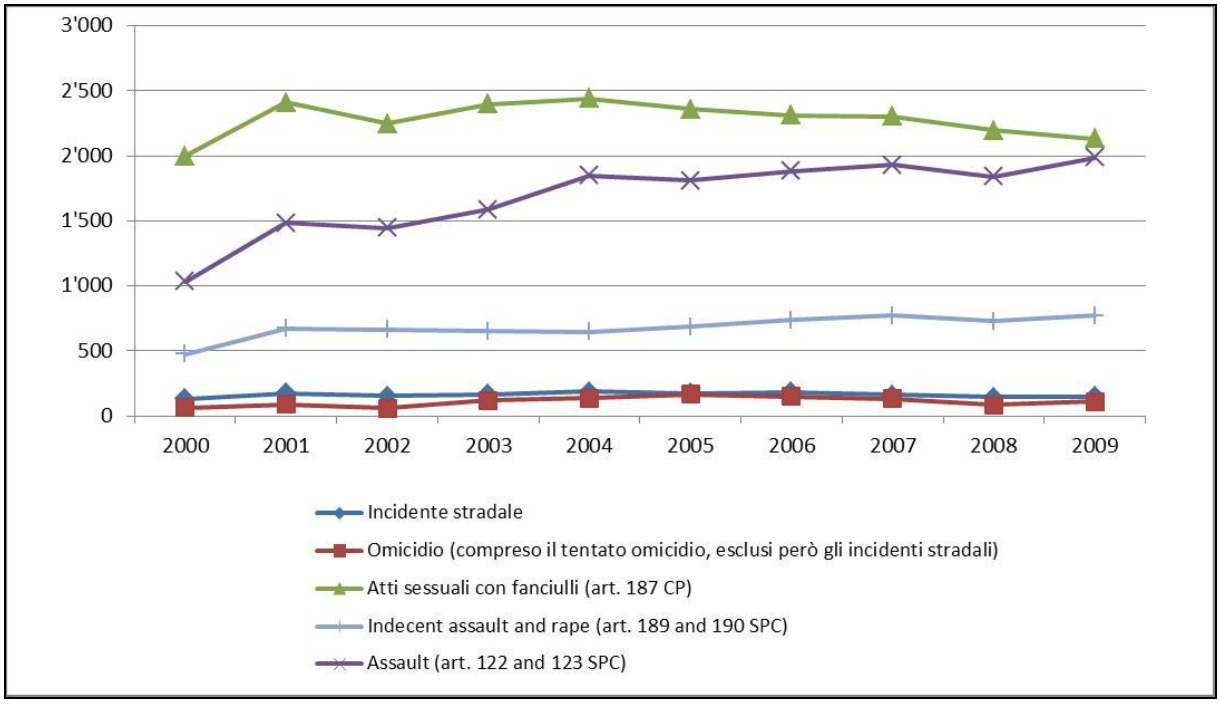

Figura 21 Vittime minorenni in base ai reati (consulenze fornite alle vittime)

Più interessanti sembrano gli sviluppi risultanti dall'Ill. 21, che forniscono maggiori dettagli sulle cause della vittimizzazione e sulla loro evoluzione nel periodo preso in esame. Gli atti sessuali con fanciulli (art. 187 CP), per esempio, sono scesi dal 46,6% nel 2000 al 33% nel 2009. Viceversa, durante lo stesso periodo, le lesioni (artt. 122 e 123 CP), come causa di vittimizzazione, sono salite dal 24,1% al 30,8%. Anche se in termini assoluti non risulta dall'illustrazione, la percentuale di coazioni sessuali e violenze carnali (artt. 189 e 190 CP) è rimasta più o meno invariata dall'inizio alla fine del periodo preso in considerazione (rispettivamente 11,1% e 11,9%).

2.4.4 Legge federale sul diritto penale minorile

Prima del 1° gennaio 2007, le disposizioni penali riguardanti gli autori di reati minorenni erano parte integrante del Codice penale svizzero. Da quella data, però, sono state raccolte in una legge separata, la Legge federale sul diritto penale minorile (DPMin).[61] La revisione del Codice penale inerente ai minorenni si è basata sull'idea di fondo del reinserimento sociale tramite misure educative (UFG, 2010; Consiglio federale, 1998). La revisione del Codice penale mirava inoltre a rafforzare i diritti degli autori dei reati nella procedura penale e durante l'esecuzione delle condanne, stabilendo degli standard minimi (ibid.).[62] Tuttavia, alcune disposizioni in questo senso sono risultate ben presto viziate dall'introduzione della Procedura penale minorile (PPMin).[63]

I cambiamenti principali apportati dalla Legge federale sul diritto penale minorile possono essere riassunti come segue.

- L'età della responsabilità penale è passata da 7 a 10 anni (art. 4 DPMin).
- Le misure che possono essere ordinate in caso di condanna sono maggiormente orientate a quelle del Codice civile; di conseguenza sono state chiamate "misure protettive".
- Si è rinunciato alla distinzione legale tra pene e condanne che prevedevano misure; di conseguenza, ai minori autori di reati che hanno agito in modo colpevole di solito viene inflitta una pena a complemento di una misura protettiva (v. art. 11 DPMin). Tuttavia, se è stata contemporaneamente pronunciata una privazione della libertà e ordinata una misura di collocamento, quest'ultima misura ha la priorità e, se il collocamento ha raggiunto il suo scopo, la privazione della libertà non viene più eseguita (v. art. 32 DPMin). Nelle condanne è sempre possibile rinunciare a comminare una pena se si presume che quest'ultima potrebbe mettere a repentaglio una misura protettiva in corso o prevista (art. 32 DPMin).
- Per i minorenni che al momento dei fatti avevano compiuto 16 anni, la durata massima della privazione della libertà è stata prolungata a quattro anni (art. 25 DPMin).
- Le misure ordinate dall'autorità cessano con il compimento dei 22 anni, in precedenza venivano ordinate fino a 25 anni (art. 19 DPMin).

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[61] L'introduzione della DPMin è frutto della revisione integrale del Codice penale svizzero.

[62] Attualmente si sta valutando se i vari effetti della nuova legge corrispondono agli obiettivi che si era prefissata (Urwyler e Nett, in elaborazione).

[63] Entrata in vigore il 1° gennaio 2011 con il Codice di procedura penale (CPP).

- Il numero di pene, e soprattutto la possibilità di combinarle tra loro, è notevolmente aumentato.

Tutte queste modifiche sono state apportate affinché le disposizioni corrispondessero meglio agli scopi preventivi della legge, in particolare affinché permettessero di sanzionare in maniera adeguata i minorenni autori di reati, che è uno degli obiettivi dichiarati del diritto penale minorile svizzero. Contrariamente al diritto penale degli adulti, il diritto penale minorile non si focalizza sul reato, ossia sulla sua gravità, bensì sull'autore del reato stesso e sui provvedimenti che vanno adottati affinché non delinqua di nuovo. Di conseguenza, si può affermare che in Svizzera il diritto penale minorile è orientato al reinserimento sociale.

Ciononostante, non bisogna dimenticare che alla maggioranza dei minorenni condannati viene inflitta una pena, ossia un'ammonizione, una prestazione personale, una multa o la privazione della libertà. Secondo la Statistica delle condanne penali dei minorenni (SCPM), le misure protettive costituiscono solo una piccola quota (7,8%) sul totale delle condanne: nel 2010, solo nel 6,1% delle condanne sono state ordinate misure ambulatoriali, e nell'1,5% misure stazionarie (Urwyler e Nett, in elaborazione). All'Ill. 22 figurano le misure protettive ambulatoriali, mentre nell'Ill. 23 le misure protettive stazionarie.

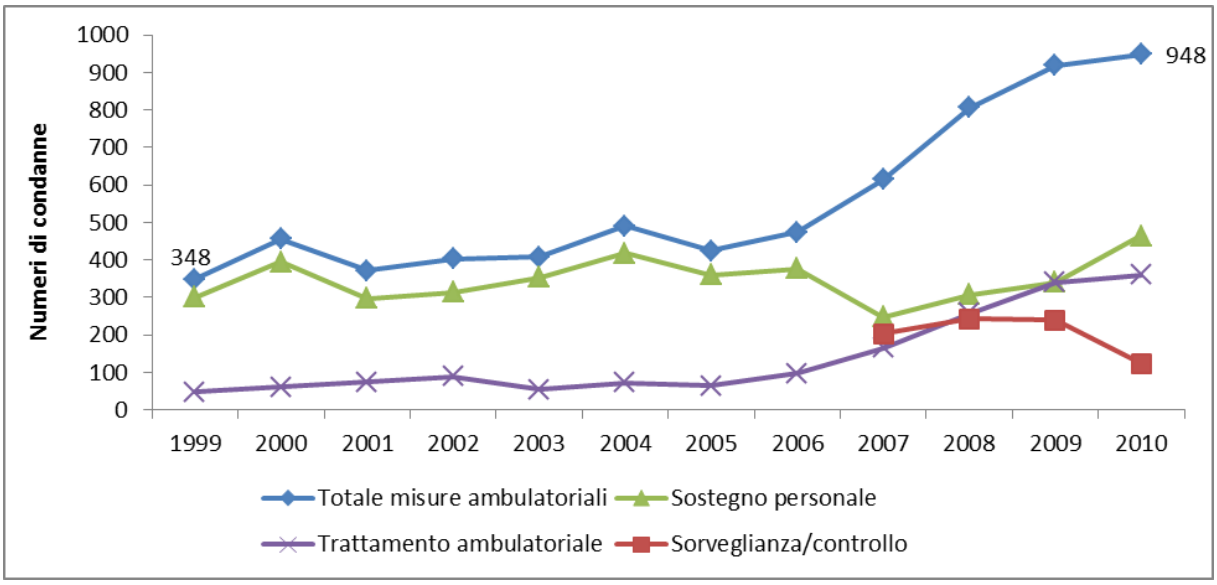

Figura 22 Numero di misure protettive ambulatoriali ordinate in virtù del DPMin[64]

[64] V. nota 58.

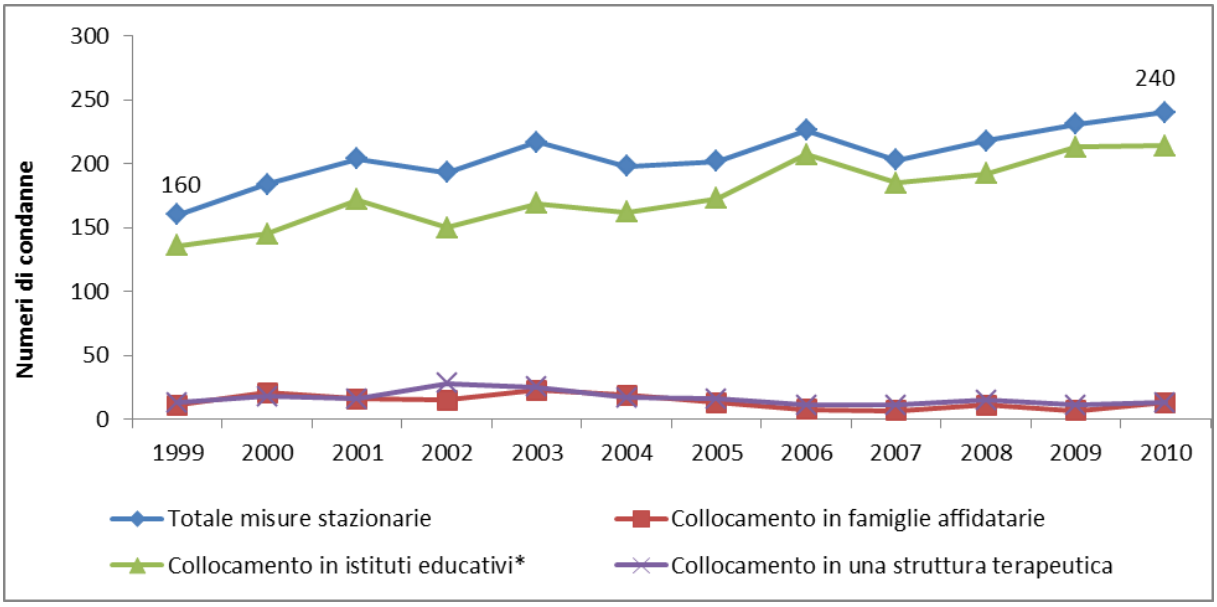

Figura 23 Numero di misure protettive stazionarie ordinate in virtù del DPMin[65]

* I collocamenti in istituti educativi si riferiscono alle istituzioni in cui vive un gruppo di ragazzi.

Da ultimo, va sottolineato che la nuova Legge federale sul diritto penale minorile tiene conto dell'art. 37 lett. c della Convenzione ONU sui diritti del fanciullo sulla separazione tra bambini e adulti nei penitenziari;[66] il DPMin chiede infatti ai Cantoni di mettere a disposizione istituti per l'esecuzione della privazione della libertà e del collocamento per procedere ai sensi dell'art. 27 DPMin. L'art. 48 DMin, tuttavia, concede ai cantoni un periodo di transizione di dieci anni fino al 1° gennaio 2017 per attuare questa disposizione[67].

2.5 Prospettive istituzionali sulla protezione dell'infanzia

In questo capitolo verranno descritte le modalità di applicazione delle disposizioni legali in materia di protezione dell'infanzia a livello federale, cantonale e comunale, con particolare attenzione alle differenze tra una regione e l'altra del Paese. Inoltre, si cercherà di fare una panoramica sulla relativa suddivisione delle responsabilità e dei compiti, nonché delle principali istituzioni, associazioni e organizzazioni che si occupano di protezione dell'infanzia. Al termine del capitolo, ci si chinerà sul significato conferito alla protezione dell'infanzia nei curricoli di studio degli istituti che si occupano della formazione professionale degli assistenti sociali.

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[65] V. nota 58.

[66] V. inoltre la nota 39.

2.5.1 Ruolo dei Cantoni e dei Comuni

È importante iniziare parlando del ruolo dei Cantoni e dei Comuni. Come risulta dalle spiegazioni fornite nel capitolo 2.4.1 e dal principio della sussidiarietà (art. 5a Cost.) citato al capitolo 2.2.1, in Svizzera i Cantoni e i Comuni sono le principali istituzioni responsabili della politica a favore dell'infanzia e della gioventù, e quindi anche dell'attuazione di un sistema di protezione dell'infanzia coerente con le disposizioni legali a livello federale. Ciò si traduce in una realtà contraddistinta da notevoli disparità a livello del significato assegnato alla politica a favore dell'infanzia e della gioventù e, di conseguenza, anche a livello di stanziamento di risorse ai servizi attivi in questo ambito. Una decina di anni fa, l'Istituto di alti studi in amministrazione pubblica di Losanna ha effettuato un'ampia e approfondita analisi delle varie politiche cantonali a favore dell'infanzia e della gioventù. Lo studio (Frossard, 2003) ha fornito una descrizione della situazione, che in gran parte è tuttora valida. Tra l'altro, lo studio sottolinea che sono pochi i Cantoni ad aver adottato procedure appropriate per coordinare le misure di politica a favore dell'infanzia e della gioventù; infatti la globalità di tale politica dipende soprattutto dalla concentrazione di risorse amministrative, dal potere decisionale centrale e dall'introduzione di una legge cantonale che si occupi in particolare dei bisogni dei bambini e degli adolescenti. Nello studio si sottolinea inoltre che la presenza delle Commissioni cantonali dei giovani, istituzionalizzate nei Cantoni di Berna, Lucerna e Svitto, garantisce una politica dell'infanzia e della gioventù più proattiva. Da ultimo, lo studio rileva enormi differenze tra i Cantoni a livello di sostegno dei giovani, eccezion fatta per il contesto istituzionale, emblematizzato dalla scuola (v. Wyttenbach, 2008).

Per quanto attiene alle caratteristiche organizzative delle autorità preposte alla protezione dell'infanzia, si nota una notevole differenza a livello regionale: se nella maggioranza dei Cantoni della Svizzera tedesca tali autorità sono composte da non professionisti, nella Svizzera francese sono generalmente costituite da avvocati professionisti (v. CAT, Conferenza delle autorità cantonali di tutela, 2008b). Le differenze, tuttavia, non si fermano a livello regionale e cantonale, risultano evidenti anche a livello comunale. I Comuni, infatti, godono di un buon livello di indipendenza nell'adattare la loro politica a favore dell'infanzia e della gioventù ai bisogni locali. Tale indipendenza, però, non si limita alla fornitura di servizi a sostegno delle famiglie e dei giovani, ma si riflette altresì sulla gestione dei casi di protezione dell'infanzia e sull'attuazione delle relative misure. Basandosi sulle analisi degli incarti di casi di protezione dell'infanzia, Voll et al. (Voll et al., 2010) sottolineano che il contesto organizzativo ha un'influenza fondamentale sulle decisioni prese dalle autorità tutorie. I comuni più piccoli, per esempio, tendono a intervenire con misure più restrittive, il che risulta in una maggiore riduzione dei diritti dei genitori (v. Schultheis et al., 2008).

Ai sensi dell'art. 44 cpv. 1 della Costituzione federale (Cost.), la Confederazione e i Cantoni "collaborano e si aiutano reciprocamente nell'adempimento dei loro compiti". Inoltre, ai sensi del cpv. 2 "si devono rispetto e sostegno" e "si prestano assistenza amministrativa e giudiziaria"; qualora sorgano delle controversie, esse "vanno composte per quanto possibile con il negoziato e la

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[67] Questo periodo di transizione piuttosto lungo è stato criticato dal "Secondo Rapporto ONG" (2009) sulla Svizzera, elaborato dalla Rete svizzera diritti del bambino all'attenzione del Comitato ONU dei diritti del fanciullo.

mediazione" (art. 44 cpv. 3 Cost.). Per questo motivo, sono stati siglati diversi concordati, istituite conferenze intercantonali e nominati direttori di uffici o funzionari preposti alle questioni riguardanti l'infanzia e la gioventù. Per quanto riguarda la politica a favore della protezione dell'infanzia, sono soprattutto due le istituzioni degne di nota: da un lato la Conferenza dei Cantoni per la protezione dei minori e degli adulti (COPMA) e dall'altro la Conferenza svizzera dei delegati alla protezione dell'infanzia e della gioventù, che dal luglio 2011 è inglobata nella Conferenza delle direttrici e dei direttori cantonali delle opere sociali (CDOS). Da luglio 2011, anche la Conferenza dei delegati cantonali alla gioventù (CDCG) fa parte della CDOS. Inoltre, è stato creato uno speciale settore per le questioni riguardanti i bambini e i giovani, di conseguenza la CDOS è diventata il fulcro coordinatore in questo settore e ha raggiunto il potenziale per istituire una base istituzionale sulla quale poter poi creare una Legge quadro per una politica svizzera dell'infanzia e della gioventù (v. Raccomandazione 1 al capitolo 3).

Oltre alla Conferenza dei Cantoni per la protezione dei minori e degli adulti, alla Conferenza svizzera dei delegati alla protezione dell'infanzia e della gioventù e alla Conferenza dei delegati cantonali alla gioventù, va altresì citata l'Associazione svizzera delle curatrici e dei curatori professionali (ASCP), un'associazione di funzionari la cui influenza sulle politiche nazionali in materia di protezione dell'infanzia non va sottovalutata. Come abbiamo già avuto modo di dire al capitolo 2.4.2, recentemente è stata portata a termine una revisione parziale del Codice civile svizzero, che ha comportato cambiamenti profondi nell'organizzazione delle autorità a protezione dell'infanzia, visto il carattere vincolante di determinati standard professionali. Sulla base di questi standard, la COPMA ha elaborato e pubblicato delle raccomandazioni molto dettagliate, in base ai quali tali autorità dovranno, tra l'altro, soddisfare i seguenti requisiti (CAT, 2008a).

- Curriculum professionale dei membri: nell'organo decisionale devono figurare persone con una formazione in legge, lavoro sociale e pedagogia; se necessario, dovranno essere disponibili anche ulteriori competenze professionali. Inoltre, l'organo decisionale dovrà essere affiancato da personale altamente qualificato in campo amministrativo.
- L'organo decisionale è formato da (almeno) un comitato di tre persone occupate a tempo pieno.
- L'ufficio deve essere aperto 24 ore su 24, in modo da favorire il processo decisionale.
- In linea di massima, le decisioni vanno prese collettivamente.
- Il bacino di utenza di un'autorità deve essere composto da almeno 50'000-100'000 abitanti, che, in base alle stime, corrispondono a circa 1'000 misure in atto.

Siccome i comuni piccoli non hanno risorse sufficienti per soddisfare questi requisiti, saranno costretti a unire le forze e a organizzare congiuntamente le loro autorità di tutela. Di conseguenza, se, com'è probabile che sia, le raccomandazioni della COPMA verranno adottate, il processo di professionalizzazione nel campo della protezione dell'infanzia subirà un'accelerazione, contribuendo a far diminuire l'arbitrarietà dei processi decisionali, che in effetti caratterizza le autorità di piccole dimensioni composte da non professionisti.

2.5.2 Ruolo delle istituzioni federali

La Confederazione, ossia il Consiglio federale quale organo esecutivo, i dipartimenti assegnati a ognuno dei sette Consiglieri federali, ma anche gli uffici federali collegati ai singoli dipartimenti, sono legittimati dalla Costituzione ad assumere unicamente funzioni ausiliarie, di supporto e di coordinamento in materia di politica dell'infanzia e della gioventù. Tuttavia, la Confederazione è anche tenuta a monitorare la conformità con gli accordi internazionali.[68] Non da ultimo, il Consiglio federale è tenuto a rispondere alle mozioni e ai postulati dei parlamentari; di conseguenza, la Confederazione, rispettivamente i vari uffici federali, vengono regolarmente sollecitati ad analizzare problemi sociali di portata nazionale e a valutarli soprattutto in base agli strumenti legali a disposizione per far fronte a tali problemi.[69] In risposta a tre postulati,[70] nel 2008 il Consiglio federale ha pubblicato un rapporto intitolato "Strategia per una politica svizzera dell'infanzia e della gioventù" (Consiglio federale, 2008). Come generalmente avviene in questi casi, la strategia proposta si basa su diversi rapporti scientifici[71] e comprende le perizie di varie istituzioni, associazioni professionali e gruppi di interesse. Questi rapporti presentano alcune riflessioni sul ruolo della Confederazione rispetto alle leggi internazionali e alla Costituzione svizzera. A tale proposito, nel rapporto dell'UFAS si sottolinea che è appropriato che la responsabilità della politica a favore dell'infanzia e della gioventù sia attribuita ai Cantoni, perché così facendo le autorità cantonali possono adottare misure adeguate alle circostanze, ai bisogni locali e alle risorse disponibili, e sono bene informate sulla situazione grazie al contatto diretto con gli attori locali. Tuttavia, si rilevano anche alcune lacune relative all'applicazione dei diritti dei bambini nei Cantoni, il che giustifica gli sforzi per migliorare questo sistema eterogeneo e complesso, coordinando meglio le attività e definendo più chiaramente i compiti che spettano alle varie autorità federali, in collaborazione con le autorità cantonali (ibid., 19).

Basandosi sulla Costituzione svizzera[72] e sulla Convenzione ONU sui diritti del fanciullo,[73] il rapporto definisce tre principi fondamentali sui quali deve fondarsi la politica svizzera dell'infanzia e della gioventù (ibid., p. 10 e segg.), ossia:

- protezione
- promozione dello sviluppo e dell'autonomia
- partecipazione

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[68] La Confederazione, per esempio, viene periodicamente sollecitata a fornire rapporti alle organizzazioni internazionali per documentare la conformità agli accordi ratificati. Un rapporto recente (pubblicato il 9 dicembre 2011) riferisce sullo stato dell'applicazione del protocollo ONU del 25 maggio 2000 sulla vendita dei bambini, sulla prostituzione e la pornografia minorile, ratificato dalla Svizzera nel 2006.

[69] L'Ufficio federale delle assicurazioni sociali, per esempio, nel 2005 ha risposto ad un postulato della Commissione degli affari giuridici del Parlamento (*Postulato CN 96.3178*) con un rapporto scientifico in materia intitolato "Violenza contro i bambini: concetto di prevenzione globale" (UFAS, 2005).

[70] Nella fattispecie, si tratta dei postulati dei Consiglieri nazionali Janiak (00.3469) del 27 settembre 2000, Wyss (00.3400) del 23 giugno 2000 e ancora Wyss (01.3350) del 21 giugno 2001.

[71] Per esempio dell'UFAS (2008).

[72] Più concretamente, ci si riferisce all'art. 11 cpv. 1 Cost. che stabilisce che "i fanciulli e gli adolescenti hanno diritto a particolare protezione della loro incolumità e del loro sviluppo" e agli obiettivi sociali di cui all'art. 41 cpv. 1 Cost., in particolare alle lett. f e g, che specificano gli obiettivi educativi dei fanciulli (Consiglio federale, 2008).

[73] V. gli artt. 2, 12 e 23 della Convenzione ONU sui diritti del fanciullo.

Da questi tre principi si deducono due accezioni della politica svizzera a favore dell'infanzia e della gioventù: da un lato una definizione in senso stretto, che si basa su una politica che prevede interventi mirati per proteggere i bambini e i giovani, per favorirne lo sviluppo e per promuoverne la partecipazione. Ciò trova un esempio lampante nei pericoli causati dagli effetti invadenti di determinati prodotti commerciali e mediatici. Nel rapporto si suggerisce di prevenire questi effetti dannosi coinvolgendo maggiormente i genitori e gli adulti di riferimento e rafforzando le competenze di vita dei bambini e dei giovani.

D'altro canto, la politica dell'infanzia e della gioventù in senso lato si fonda sul presupposto che le condizioni di vita dei bambini e dei giovani sono influenzate da diversi fattori che ricadono nella sfera di competenza di ambiti politici diversi, a vari livelli, e interessano tutte le fasce di età. Di conseguenza, la responsabilità in materia di politica dell'infanzia e della gioventù in senso lato non può venir centralizzata, ma va intesa come un compito trasversale, che tocca molti ambiti legislativi, per esempio l'istruzione scolastica, la formazione professionale, il diritto del lavoro, la politica del mercato del lavoro e la prevenzione dei reati (in particolare della delinquenza minorile).

La divisione del lavoro nel contesto organizzativo federale riflette, anche se non in toto, le due prospettive sulla politica dell'infanzia e della gioventù di cui abbiamo parlato sopra. La responsabilità per questa politica in senso stretto viene attribuita soprattutto all'Ufficio federale delle assicurazioni sociali (UFAS), che fa parte del Dipartimento federale dell'interno. In seno all'UFAS, l'Ambito famiglia, generazioni e società si occupa di questioni inerenti ai diritti dell'infanzia, la protezione dell'infanzia, la promozione dell'infanzia e della gioventù nel quadro delle attività giovanili extrascolastiche, ma anche di argomenti di carattere generale nel campo della politica dell'infanzia e della gioventù, tra cui diversi tipi di sussidi pubblici versati dalle assicurazioni sociali prevalentemente alle famiglie (le cosiddette prestazioni complementari).

Altre questioni, che in senso stretto rientrerebbero nella politica dell'infanzia e della gioventù, sono invece di competenza di altri uffici federali, che in alcuni casi rientrano addirittura in altri dipartimenti federali, quali:

- l'Ufficio federale della sanità pubblica (UFSP), con le sue divisioni incaricate di promuovere la salute e prevenire le dipendenze (v. capitolo 2.4.3);
- l'Ufficio federale dello sport, che fa parte del Dipartimento della difesa, della protezione della popolazione e dello sport, gestisce (in collaborazione con i Cantoni e le associazioni sportive) un programma tuttora molto popolare, chiamato Gioventù e Sport (G+S), inizialmente creato come programma per assicurare la forma fisica dei giovani svizzeri in vista del servizio militare (v. Gärtner e Vollmer, 2008);[74]
- l'Ufficio federale di giustizia e l'Ufficio federale della migrazione, che rientrano entrambi nel Dipartimento federale di giustizia e polizia. Il primo è responsabile di proteggere i minorenni

[74] Gärtner e Vollmer (2008) sottlineano che le origini del programma di Gioventù e Sport (v. www.gioventuesport.ch) sono fortemente legate al fatto che l'esercito svizzero è un esercito di milizia, una caratteristica che va considerata una specificità culturale in quanto corrisponde al "principio di fondo che tutti i cittadini sono responsabili della comunità nel suo insieme" (Gärtner e Vollmer, 2008:4).

nell'ambito del diritto penale, del diritto penale minorile e del diritto civile internazionale, mentre il secondo si occupa di tutte le questioni relative alle leggi sugli stranieri e sul diritto di asilo, e quindi si interessa soprattutto ai giovani che vivono in Svizzera e che fanno parte di minoranze etniche;

- il Servizio di coordinazione per la lotta contro la criminalità su Internet (SCOCI), che sostiene i Cantoni nelle loro indagini sui reati legati a internet. Inoltre, mette a disposizione del pubblico un modulo online che permette di segnalare i siti web dai contenuti sospetti. Sebbene questa unità faccia parte dell'Ufficio federale di polizia (fedpol),[75] la conduzione strategica è affidata a un comitato composto da membri di diverse istituzioni cantonali.[76]

Accanto a queste autorità federali, ci sono altri organi, sempre a livello federale, che influenzano la politica svizzera a favore dell'infanzia e della gioventù. Si tratta della Commissione federale per l'infanzia e la gioventù (CFIG) e della Commissione federale di coordinamento per le questioni familiari (COFF). Sebbene entrambe le commissioni siano legate amministrativamente all'Ambito famiglia, generazioni e società dell'UFAS, ognuna di esse rappresenta un organo indipendente di esperti nel loro specifico campo di attività. A parte le differenze tra gli obiettivi delle due commissioni, i loro mandati sono molto simili: la CFIG osserva e interpreta le tendenze del rapporto tra i bambini e i giovani e la società; il suo compito è quindi di identificare e prevedere le preoccupazioni delle giovani generazioni, elaborando le rispettive raccomandazioni. La COFF, dal canto suo, ha lo stesso compito ma nei confronti delle condizioni di vita delle famiglie in Svizzera; inoltre, da quando è stata istituita nel 1995, funge da organo consultivo del Dipartimento federale dell'interno. Siccome sia la CFIG che la COFF sono commissioni extraparlamentari, entrambe valutano i progetti della Confederazione nelle loro fasi iniziali e pubblicano raccomandazioni all'attenzione delle autorità federali. Un'altra importante funzione di queste commissioni è quella di piattaforma per lo scambio di informazioni tra l'amministrazione federale, le organizzazioni non governative (ONG), le istituzioni private e altri tipi di organi che si occupano di questi argomenti.

2.5.3 Ruolo del terzo settore e del settore privato

Come in altre società civili (v. Sihls, 1991; Walzer, 1992), anche in Svizzera le organizzazioni non governative (ONG), spesso chiamate anche "terzo settore", svolgono un ruolo importante a livello locale, regionale e nazionale. Si può affermare che, nel settore della politica dell'infanzia e della gioventù, l'importanza delle ONG è ancora più marcata che in altri settori della politica sociale, visto che i problemi legati ai minori acquistano sempre maggiore importanza, essendo legati intrinsecamente al benessere futuro della società. Nel suo profilo del 1996, l'Istituto Marie Meierhofer per il bambino di Zurigo affermava che "nella nostra società i bambini non hanno una lobby". Questo

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[75] L'Ufficio federale di polizia svolge anche indagini riguardanti i reati di pedocriminalità commessi all'estero. Per esempio, mette a disposizione un modulo online che invita chi, durante un soggiorno all'estero, è stato testimone "di un evento in cui dei turisti compromettevano l'integrità sessuale di minori" a segnalarlo (www.fedpol.admin.ch).

[76] Ossia la Conferenza dei direttori cantonali di giustizia e polizia, la Conferenza delle autorità inquirenti svizzere e la Conferenza dei comandanti delle polizie cantonali della Svizzera.

probabilmente non era del tutto vero neanche allora, ma oggigiorno le cose non stanno sicuramente così, visto che c'è stata una vera e propria proliferazione di iniziative private sotto forma di associazioni, fondazioni ecc., che si impegnano per il benessere dell'infanzia. Il fatto che ci siano molte ONG attive a favore della protezione dell'infanzia non significa, tuttavia, che i loro sforzi abbiano condizionato in maniera decisiva l'agenda politica.

Le ONG attive nel campo della politica dell'infanzia e della gioventù possono essere suddivise in base ai loro obiettivi, al tipo e alla portata delle loro attività, ma anche per quanto riguarda le loro origini e la loro struttura. Un altro punto interessante riguarda l'autonomia finanziaria delle ONG. In questa sede non è possibile, oltre a non avere alcun senso, dare un quadro completo del panorama delle ONG attive nel campo della protezione dell'infanzia in Svizzera. Ciononostante, è utile accennare alle varie problematiche affrontate dalle ONG, cercando di definire brevemente alcune delle principali organizzazioni che si occupano in parte o esclusivamente di protezione dell'infanzia.

Per quanto riguarda le origini di queste ONG, si può distinguere tra quelle che vantano una lunga tradizione che risale all'inizio del secolo scorso, quelle scaturite invece da associazioni politiche o professionali, e quelle che si rifanno a ideali, spesso costituite da persone con una visione o che avevano a cuore determinati aspetti.

Le ONG con una tradizione storica affondano per lo più le loro radici in movimenti filantropici o confessionali. Generalmente i loro obiettivi sono cambiati di pari passo con lo sviluppo dei problemi sociali e lo spirito dei tempi. Un esempio interessante di questo tipo di ONG è rappresentato da Pro Juventute, che ha la forma giuridica della fondazione ed è stata creata nel 1912 dalla Società svizzera di utilità pubblica, costituita a sua volta oltre cent'anni prima (nel 1810).[77] In un primo tempo, Pro Juventute si era posta l'obiettivo di combattere la tubercolosi. Più tardi, nel 1927, assunse la gestione della Federazione svizzera degli ostelli della gioventù, che era stata fondata tre anni prima. Nel 1926, invece, si aprì uno dei capitoli più bui della recente storia svizzera (v. Meier, 2008): Pro Juventute istituì l'opera assistenziale "Bambini della strada" (*Hilfswerk für die Kinder der Landstrasse*). Dal 1927 al 1973 questa opera perseguì l'obiettivo di educare i figli delle famiglie zingare alla sedentarietà e ad adeguarsi agli standard dei "bravi cittadini svizzeri". Così, d'accordo e con il sostegno delle autorità, Pro Juventute sottrasse sistematicamente i bambini jenisch ai loro genitori per sistemarli in famiglie affidatarie o in orfanotrofi. Questa pratica, che coinvolse in totale 586 bambini, venne interrotta unicamente dalle proteste suscitate da una forte pressione mediatica. In seguito, la Confederazione incaricò un gruppo di storici di fare luce sui dettagli di questa pratica (v. Leimgruber, Meier e Sablonier, 1998). Oggi Pro Juventute è presente in tutte le regioni della Svizzera e offre servizi ai bambini, ai giovani, alle famiglie e agli insegnanti. Nel campo della protezione dell'infanzia, Pro Juventute gestisce una linea telefonica di consulenza anonima e attiva 24 ore su 24 per i bambini e i giovani che vivono in Svizzera. La consulenza e il sostegno sono offerti anche via sms e internet.

In Svizzera ci sono diverse ONG che si occupano principalmente di lobbismo politico a favore della protezione dell'infanzia. La più potente è probabilmente la Fondazione svizzera per la protezione

[77] La Società svizzera di utilità pubblica va considerata la principale organizzazione attiva nel campo della politica sociale durante il periodo in cui si è creata la Confederazione moderna. Il suo contributo all'introduzione delle scuole pubbliche è stato decisivo (Schumacher, 2010).

dell'infanzia[78], il cui scopo è cambiare, a livello nazionale, l'assetto istituzionale e la percezione della società, in modo da proteggere i bambini dalla povertà, dalla violenza sessuale, psichica o fisica e dalla trascuratezza. La Fondazione persegue questi obiettivi attraverso il lobbismo politico, ma anche con progetti di prevenzione e campagne nazionali per sensibilizzare gli adulti su tutte le questioni che riguardano l'infanzia.[79]

Altre organizzazioni che si occupano di protezione dell'infanzia hanno obiettivi più specifici, per esempio l'Associazione svizzera delle famiglie affidatarie, costituita nel 1950 e che da allora si prodiga per migliorare le condizioni di vita dei bambini in affidamento, cercando di attirare l'attenzione dell'opinione pubblica sulla loro situazione; o l'associazione Marche Blanche,[80] fondata nel 2001 da genitori scioccati dalle notizie sui crimini commessi dai pedofili, che concentra i suoi sforzi sull'aiuto ai bambini e ai giovani vittimizzati o minacciati dai pedofili, propugnando una politica della tolleranza zero. Ci sono ancora altre associazioni, come la Rete svizzera diritti del bambino,[81] o la Lobby svizzera dei bambini[82], che si occupano soprattutto di garantire i diritti dei bambini conformemente alla Convenzione ONU.

Vi sono poi altre associazioni caratterizzate dal fatto che i loro membri hanno un interesse professionale comune, come l'associazione Integras, che riunisce i professionisti della pedagogia sociale e speciale, o la Società svizzera di diritto penale minorile, che rappresenta i professionisti che si occupano di diritto penale minorile, per esempio i giudici e i magistrati dei minorenni, i responsabili di istituzioni sociopedagogiche, gli assistenti sociali ecc.

Tutte le ONG summenzionate hanno una cosa in comune: sono tutte attive a livello più o meno nazionale. Tra le loro attività ci sono il lobbismo, l'elaborazione di perizie e, a volte, l'organizzazione di corsi di formazione. Di conseguenza, i loro rappresentanti generalmente sono ben inseriti nelle reti delle commissioni federali e delle associazioni intercantonali. Tuttavia, a livello regionale e cantonale esistono molte altre organizzazioni non pubbliche che, in parte a scopo di lucro e in parte no, forniscono servizi che coprono i fabbisogni di un sistema globale di protezione dell'infanzia. Spesso queste organizzazioni private sono attive, a titolo oneroso, nell'ambito della mediazione in vista dell'affidamento o della prestazione di servizi pedagogici basati sull'esperienza. A volte queste organizzazioni sono legate ad associazioni di lobbying più grandi, ma generalmente non godono di molta autonomia finanziaria perché sono vincolate a un obiettivo e a mandati di prestazioni siglati con le autorità locali o cantonali.

Da ultimo, ci sono organizzazioni private che si occupano di protezione dell'infanzia e le cui attività si limitano per lo più al sostegno finanziario di progetti di utilità pubblica o di organizzazioni locali senza

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[78] Questa ONG è stata costituita come associazione nel 1983, ma nel 1988 è stata trasformata in una fondazione.

[79] Nella Fondazione svizzera per la protezione dell'infanzia rientra anche la rappresentanza svizzera della ONG internazionale ECPAT (End Child Prostitution in Asian Tourism), v. www.kinderschutz.ch.

[80] V. http://www.marche-blanche.ch.

[81] V. http://www.netzwerk-kinderrechte.ch.

[82] V. http://www.kinderlobby.ch.

scopo di lucro. Generalmente, queste organizzazioni hanno la forma giuridica della fondazione e a volte sono attive a livello globale, come l'OAK Foundation o l'UBS Optimus Foundation.

Considerando i vari settori di attività in cui le organizzazioni del terzo settore e di quello privato operano per e con i bambini e le loro famiglie, risulta evidente la necessità di coordinare le loro attività e i loro servizi, in modo da evitare doppioni, ma anche per evidenziare eventuali lacune nella fornitura di tali servizi. Ciò vale sia a livello cantonale sia nei casi in cui tali forniture debbano tenere conto delle economie di scala in modo da essere il più efficienti possibile, come nel caso della gestione di istituti di cura specializzati (v. Raccomandazione 2 al capitolo 3).

2.5.4 Formazione professionale degli assistenti sociali nel campo della protezione dell'infanzia

Gli studi di caso presentati in questo rapporto mostrano chiaramente che gli assistenti sociali hanno un ruolo di primaria importanza quando le famiglie e i bambini si rivolgono agli specialisti e qualora si debba intervenire al più presto per proteggere i bambini più vulnerabili (v. capitolo 3.6.2). Di conseguenza, per completare il quadro istituzionale di cui la Svizzera si è dotata per gestire la questione della protezione dell'infanzia, occorre anche analizzare la situazione della formazione professionale degli assistenti sociali che potrebbero poi lavorare nel settore della protezione dell'infanzia.

In Svizzera, fino alla fine degli anni Novanta, la formazione di assistente sociale non rientrava tra i percorsi accademici classici. Esistevano, però, tutta una serie di piccole scuole, generalmente finanziate dai Cantoni o dai comuni, fondate per rispondere alla richiesta di personale formato da impiegare nei servizi sociali delle amministrazioni locali. In seguito, queste scuole sono confluite nelle sei Scuole universitarie professionali (SUP). Queste scuole hanno criteri di ammissione in gran parte diversi da quelli applicati dalle università tradizionali, nonché curricoli di studio fortemente orientati alla pratica e quindi trasmettono soprattutto conoscenze professionali. Sebbene per essere ammessi a una SUP occorra soddisfare diversi criteri formali, sta comunque alla singola scuola decidere caso per caso se ammettere uno studente, indipendentemente dal fatto che soddisfi o meno questi criteri. I candidati con una formazione formale non conforme agli standard seguono una speciale procedura di ammissione detta *sur-dossier*. La Conferenza svizzera delle scuole universitarie professionali di lavoro sociale (SASSA) propone un seminario per prepararsi all'iscrizione, nonché un processo di selezione che, tuttavia, non garantisce l'ammissione a una SUP. Di conseguenza, non esiste uno standard univoco per essere ammessi alla formazione di assistente sociale (v. Raccomandazione 6 al capitolo 3).

Da quando sono state istituite le SUP, gli studenti in lavoro sociale possono ottenere un Bachelor riconosciuto internazionalmente.[83] Solo dal 2008, gli studenti delle SUP possono ottenere anche un Master of Arts (MA) o un Master of Sciences (MSc) in lavoro sociale. Siccome anche in futuro i

[83] Secondo il Sistema europeo per l'accumulazione e il trasferimento dei crediti ECTS, il Bachelor vale 180 ECTS.

Bachelor continueranno a essere i certificati standard per gli assistenti sociali, per motivi di natura finanziaria la Confederazione ha deciso di limitare i curricoli di MA o di MSc in lavoro sociale. Di conseguenza, in Svizzera sono disponibili solo due certificati in lavoro sociale: da un lato il Master of Sciences, rilasciato al termine di un curriculum offerto da una rete di quattro SUP (quella di Berna, di Lucerna, della Svizzera orientale e di Zurigo) e, dall'altro, un Master of Arts proposto dalla SUP della Svizzera nord-occidentale.[84] Tuttavia, nessuno dei programmi di Master offerti dalle SUP permette di accedere a un programma di dottorato. In Svizzera è possibile ottenere un dottorato in Politica sociale e lavoro sociale unicamente presso l'università di Friborgo. Trattandosi di un corso di studi presso un'università tradizionale, la formazione impartita è meno orientata alla prassi concreta e quindi prepara meno alla pratica professionale.

Per quanto riguarda le competenze necessarie per operare nel settore della protezione dell'infanzia, i vari curricoli di BA in lavoro sociale prevedono solo le nozioni di base. La situazione non cambia, se non minimamente, qualora gli studenti scelgano come materia principale o secondaria dei corsi che dovrebbero essere di particolare rilievo per il lavoro sociale con i bambini e le famiglie. In termini assoluti, il quadro può sembrare esagerato, nel senso che forse in qualche modo è possibile strutturare il proprio curriculum in modo tale da acquisire solide capacità per lavorare nell'ambito della protezione dell'infanzia. Tuttavia, dalle guide agli studi disponibili online sembra emergere che i temi relativi alla protezione dell'infanzia non sono considerati parte integrante del programma di Bachelor in lavoro sociale. Inoltre, analizzando meglio i curricoli offerti dai due programmi di Master summenzionati, risulta che la protezione dell'infanzia non rientra tra le possibili materie principali. Ne consegue che solo ricorrendo alle varie proposte di perfezionamento si acquisiscono le competenze e le capacità approfondite per operare in questo settore. Indagando in tal senso, abbiamo scoperto che esistono alcuni corsi proposti dalle SUP che trattano aspetti particolari del lavoro con i bambini a rischio e le loro famiglie. Per lo più sembra però trattarsi di corsi intensivi di breve durata, anche se ci sono corsi certificati come il DAS (Diploma of Advanced Studies) o il CAS (Certificate of Advanced Studies), che assicurano il raggiungimento di alcuni standard minimi. Al momento, in Svizzera esiste un unico MAS (Master of Advanced Studies)[85] che abilita al lavoro con i bambini e i giovani (si tratta del MAS in Kinder- und Jugendhilfe, in inglese MAS in Youth Care).

A causa della scarsa importanza accordata alla protezione dell'infanzia nell'ambito degli studi in lavoro sociale, le autorità che si occupano in maniera professionale di protezione dei minori non possono venir scelte in base alle loro qualifiche formali in questo ambito. Anzi, sembra piuttosto che ci si aspetti che le competenze professionali vengano acquisite sul campo e frequentando occasionalmente dei corsi di perfezionamento professionale (v. Raccomandazione 5 al capitolo 3).

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[84] Entrambi i curricoli di Master valgono 90 ECTS.

[85] Contrariamente al DAS e al CAS, il MAS è riconosciuto da un ufficio federale.

2.6 Sviluppi recenti nell'ambito della politica di protezione dell'infanzia

Quest'ultima parte del capitolo si concentra dapprima su alcuni disegni di legge e su alcune modifiche di legge entrate in vigore recentemente in Svizzera. In seguito si sofferma sull'attuale agenda politica nell'ambito della protezione dell'infanzia in Svizzera. Il capitolo si conclude con una breve analisi della percezione che l'opinione pubblica ha di questo argomento, sulla base di quanto appare nei media.

2.6.1 Modifiche di legge e iniziative recenti a livello nazionale

Nel giugno del 2010, il Consiglio federale ha emanato un'ordinanza, che da un lato prevede delle misure a protezione dell'infanzia e dall'altro consolida i diritti dei bambini ai sensi degli artt. 13 e 19 della Convenzione ONU sui diritti del fanciullo.[86] Tale ordinanza si prefigge inoltre di prevenire i comportamenti violenti da parte dei giovani.[87]

L'ordinanza in questione costituisce la base legale che permette alla Confederazione di adottare misure a sostegno dell'infanzia e di stanziare i relativi aiuti finanziari. Oltre a proteggere i bambini e i giovani da tutte le forme di maltrattamento, l'ordinanza cita espressamente diverse forme di rischi connessi all'uso dei media elettronici e interattivi, come le rappresentazioni violente o pornografiche, lo *stalking* cibernetico o il ciberbullismo, le molestie (incluso il cosiddetto *grooming*, ossia l'adescamento di minori su internet). Da ultimo, l'ordinanza sottolinea che i provvedimenti attuati dalla Confederazione devono promuovere l'instaurazione di contatti tra gli attori pubblici e privati attivi negli ambiti menzionati dall'ordinanza stessa.

Questa ordinanza si è resa necessaria perché costituisce la base legale di due programmi nazionali[88] quinquennali lanciati il giorno stesso della pubblicazione dell'atto normativo. Il primo, il programma nazionale di prevenzione "I giovani e la violenza" intende fornire una panoramica delle misure esistenti, identificare quelle più efficaci per sviluppare un codice di buone pratiche e approcci di prevenzione innovativi. I due programmi sono stati concepiti per sostenere i Cantoni e i Comuni nelle loro strategie di prevenzione, fornendo loro consulenza, creando reti di contatti, offrendo opportunità di formazione continua, favorendo la condivisione delle conoscenze e, da ultimo, migliorando l'interazione tra prevenzione, intervento e repressione. Il secondo programma nazionale, chiamato "Protezione dell'infanzia e della gioventù dai rischi dei media e promozione delle competenze mediali" si concentra sui problemi legati all'uso che i bambini e i giovani fanno dei nuovi media, di cui parla anche l'ordinanza. Questo programma si prefigge di promuovere le competenze dei bambini e dei giovani necessarie per usare in modo "creativo e responsabile" i media proteggendosi dai rischi; inoltre il programma vuole rendere maggiormente attenti i genitori, i docenti e gli altri educatori sui

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[86] Ordinanza dell'11 giugno 2010 sui provvedimenti per la protezione dei fanciulli e dei giovani e il rafforzamento dei diritti del fanciullo (entrata in vigore il 1° agosto 2010).

[87] La relativa lettera dell'art. 2 dell'Ordinanza si rifà all'art. 386 del Codice penale svizzero, dove si afferma che la Confederazione può prendere misure di informazione, di educazione o altre misure intese a evitare i reati e a prevenire la criminalità.

[88] Questi due programmi sono la conseguenza diretta di un rapporto del Consiglio federale elaborato in seguito alla presentazione di tre postulati parlamentari (Consiglio federale, 2009).

problemi che possono risultare dall'uso dei media da parte dei più giovani, sostenendoli nell'acquisizione di competenze mediali che consentano loro di svolgere questo compito. Il programma promuove anche l'identificazione di buone pratiche e lo sviluppo di standard unitari per i programmi formativi mirati a promuovere le competenze mediali. Da ultimo, nel corso del programma, si valuterà se saranno necessarie misure di regolamentazione di carattere legislativo.

La "Strategia per una politica svizzera dell'infanzia e della gioventù", di cui al capitolo 2.5.2, ha messo in atto un cambiamento a livello legislativo e avviato un processo che è risultato in uno sforzo per rivedere totalmente la Legge federale per la promozione delle attività giovanili extrascolastiche. Secondo il messaggio del Consiglio federale al Parlamento, basato come sempre su una procedura di consultazione, la nuova legge si prefigge di:

- accrescere il potenziale di integrazione e prevenzione della promozione dell'infanzia e della gioventù attuata dalla Confederazione, sancendo per legge e promovendo in misura maggiore forme aperte e innovative di attività extrascolastiche (proposte a livello nazionale o di regione linguistica);
- subordinare maggiormente la concessione di aiuti finanziari della Confederazione al contenuto dei progetti e alla considerazione data alle esigenze dei bambini e dei giovani con un bisogno particolare di promozione dello sviluppo;
- contrariamente alla legge attualmente in vigore, includere anche i bambini della scuola dell'infanzia tra i gruppi destinatari dei progetti;
- promuovere la partecipazione dei giovani di ogni estrazione sociale alla politica federale, in particolare la preparazione e lo svolgimento della Sessione federale dei giovani;
- prevedere un finanziamento iniziale limitato nel tempo a favore dei Cantoni per la realizzazione di programmi cantonali finalizzati all'impostazione e allo sviluppo della politica dell'infanzia e della gioventù. Tuttavia, il sostegno è concesso nel quadro di un accordo contrattuale tra la Confederazione e i Cantoni, in cui le parti definiranno e concorderanno gli obiettivi;
- d'accordo con il rapporto sulla strategia, favorire lo scambio di informazioni e di esperienze, la collaborazione con i Cantoni e i contatti tra gli specialisti che operano nel settore delle questioni legate all'infanzia e alla gioventù;
- da ultimo, rafforzare il coordinamento orizzontale degli organi federali preposti alle questioni di politica dell'infanzia e della gioventù, allo scopo di aumentare la coerenza e l'efficacia dei provvedimenti di politica dell'infanzia e della gioventù a livello federale. L'UFAS sarà incaricato di coordinare gli interventi dei diversi organi federali e di provvedere allo scambio di informazioni e di esperienze.

Queste proposte sono state presentate al Parlamento nel corso del 2011 e sono state incluse nella nuova Legge federale sulla promozione delle attività extrascolastiche di fanciulli e giovani (LPAG), approvata il 30 settembre 2011. La legge, che fa riferimento esplicitamente sia ai bambini che ai

giovani, entrerà in vigore il 1° gennaio 2013. Un altro argomento al centro dei dibattiti parlamentari riguarda la volontà di fissare degli standard minimi nel settore dell'accudimento dei minori (Zatti, 2005). Il dibattito pubblico sui due avamprogetti di Ordinanza mostra che ci sono ancora dei conflitti di fondo da risolvere: da un lato la questione sulla possibilità dei genitori di influenzare la decisione su chi si occuperà dei loro figli in caso di accudimento extrafamiliare e, dall'altro, quella concernente le norme necessarie per garantire determinati standard professionali per l'accudimento dei minori. Inoltre, è necessario stabilire quali devono essere le competenze educative delle persone "vicine ai genitori" (parenti o vicini) cui questi ultimi affidano la cura dei figli. Per quanto riguarda il processo decisionale, è probabile che non verrà elaborata un'ordinanza[89], come inizialmente previsto, bensì una modifica delle disposizioni del Codice civile sull'accudimento dei minori.[90]

A livello legislativo, vi sono ulteriori sviluppi di particolare interesse per la protezione dell'infanzia.

- Un'iniziativa parlamentare presentata nel 2007[91] chiede di introdurre una modifica costituzionale che serva come base per una legge federale sulla promozione e sulla protezione dei bambini e dei giovani. Tale modifica costituzionale darebbe alla Confederazione una competenza che le consentirebbe di svolgere un'attività trasversale nell'ambito della politica in materia di giovani. Al momento una sottocommissione parlamentare si sta occupando di questa iniziativa.
- Una mozione presentata in Parlamento nel 2008[92] chiede l'introduzione generalizzata dell'obbligo di segnalazione alle autorità di protezione dei minori di sospetti maltrattamenti o abusi sessuali su bambini. Il Consiglio degli Stati, una delle due Camere del Parlamento svizzero, ha accettato questa modifica di legge con riserva di alcune eccezioni.
- Recentemente, il Parlamento svizzero ha approvato una nuova disposizione del Codice penale svizzero (art. 124 CP) sulle mutilazioni degli organi genitali femminili: questi atti sono ora perseguibili penalmente in Svizzera, indipendentemente da dove abbiano avuto luogo (tenuto conto dei termini di prescrizione).[93] Le mutilazioni genitali femminili vengono praticate in alcune parti dell'Africa nord-orientale e stanno preoccupando l'opinione pubblica svizzera, a causa del numero crescente di immigranti provenienti da questa regione (v. Dupont, 2008; Niggli e Berkemeier, 2006).[94]
- Nel febbraio 2011, il Consiglio federale ha pubblicato un messaggio all'indirizzo del Parlamento (Consiglio federale, 2011) con cui presenta un pacchetto di misure legislative per

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[89] Originariamente era prevista solo un'Ordinanza federale sull'accudimento di minori.

[90] V. comunicato stampa del Dipartimento federale di giustizia e polizia del 29 giugno 2011 (Accudimento di minori: prima le basi legali, poi l'ordinanza).

[91] Iniziativa parlamentare di Viola Amherd (07.402) del 12 marzo 2007: "Base costituzionale per una legge federale sul promovimento dell'infanzia e dei giovani, nonché sulla loro protezione" Fonte: Curia Vista: www.parlament.ch.

[92] Mozione di Josiane Aubert (08.3790) del 9 dicembre 2008: "Proteggere i minori dai maltrattamenti e dagli abusi sessuali ". Fonte: Curia Vista: www.parlament.ch.

[93] Questa legge è stata approvata il 30 settembre 2011, ma non è ancora entrata in vigore. Il termine di referendum è scaduto il 19 gennaio 2012 (v. http://www.admin.ch/ch/i/ff/2011/6583.pdf).

[94] V. www.humanrights.ch.

contrastare il fenomeno dei matrimoni forzati e che prevede, in un secondo tempo, una strategia per migliorare la prevenzione e la protezione da questo tipo di pratica. Anche i matrimoni forzati rientrano nella problematica della protezione dell'infanzia visto che, come nel caso delle mutilazioni genitali femminili, generalmente riguardano i minori di certe popolazioni di migranti. Le modifiche di legge proposte riguardano il Codice civile (procedura e validità dei matrimoni), il diritto internazionale privato (riconoscimento dei matrimoni contratti all'estero), nonché il Codice penale, visto che si vuole introdurre una norma specifica che punisca esplicitamente i matrimoni forzati e ai quali si applichi una pena maggiore che nei casi di coazione previsti dall'art.181 CP.[95] Inoltre, saranno punibili anche le persone che vivono in Svizzera e che commettono tale reato all'estero (nuovo art. 181*a*, cpv. 2 CP).

- Un'altra revisione riguarda il Codice penale (CP) e il Diritto penale minorile (DPMin), nonché le disposizioni nei relativi Codici procedurali (CPP e PPMin).[96] Le modifiche di legge proposte, che si rifanno a una mozione parlamentare[97] e sono state sostenute dall'iniziativa popolare dell'associazione Marche Blanche (v. capitolo 2.5.3), vogliono estendere e inasprire l'interdizione già esistente per le persone condannate per reati sessuali di esercitare alcune professioni e introdurre un divieto anche per le attività extraprofessionali svolte in seno a un'associazione o ad altre organizzazioni. L'interdizione di esercitare un'attività può, in base all'avamprogetto, anche essere pronunciata se la vittima è un minore o una persona particolarmente vulnerabile e se l'autore ha commesso un reato senza alcun nesso con l'attività in questione. Inoltre, alcuni reati sessuali commessi su minori comporteranno obbligatoriamente l'interdizione di esercitare un'attività. Da ultimo, l'avamprogetto propone due nuove interdizioni per le persone che sono state condannate per questi reati: una riduzione della loro mobilità geografica e la possibilità di mettersi in contatto con determinate persone o gruppi di persone.

Come risulta evidente dalla panoramica delle varie procedure legislative e delle iniziative politiche in corso, il benessere dei bambini e dei giovani e, in particolare, la protezione dell'infanzia sono parte integrante, anche se non fondamentale, dell'attuale agenda politica svizzera. È infatti importante sottolineare che il governo svizzero avrebbe dovuto consegnare al Comitato ONU dei diritti del fanciullo un secondo Rapporto sui provvedimenti adottati per adempiere agli obblighi previsti dalla Convenzione ONU sui diritti del fanciullo già nel 2007 (Rete svizzera diritti del bambino, 2009). Nel suo secondo rapporto ONG inviato al Comitato ONU dei diritti del fanciullo, Rete svizzera diritti del bambino sostiene che il ritardo sia dovuto a una mancanza di volontà politica da parte della Svizzera di mettere a disposizione le strutture necessarie per applicare in maniera armonizzata la Convenzione

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[95] Ai sensi del disegno di legge sulle misure contro i matrimoni forzati, infatti, "chiunque, usando violenza o minaccia di grave danno contro una persona, o intralciando in altro modo la libertà d'agire di lei, la costringe a contrarre un matrimonio […], è punito con una pena detentiva sino a cinque anni o con una pena pecuniaria (nuovo art. 181*a* cpv. 1 CP), contro i tre anni inflitti per coazione (art. 181 CP)."

[96] Queste modifiche di legge comportano l'adozione di una nuova disposizione nella Costituzione federale, che autorizzi la Confederazione a emanare disposizioni a protezione dei minori o di altre persone particolarmente vulnerabili.

[97] Mozione di Carlo Sommaruga (08.3373) del 12 giugno 2008: "Rafforzare il diritto penale per prevenire la pedocriminalità e altri reati". Fonte: Curia Vista: www.parlament.ch.

ONU a livello cantonale e federale (ibid.). Ciononostante, va sottolineato che la Confederazione ha dato il suo contributo a una politica coerente e globale di protezione dell'infanzia a livello nazionale; nel giugno del 2008, l'Ufficio federale delle assicurazioni sociali (UFAS) ha costituito, insieme all'UBS Optimus Foundation e all'OAK Foundation[98], un'associazione basata su un partenariato tra pubblico e privato allo scopo di migliorare il coordinamento, la promozione e l'attuazione dei progetti di prevenzione a livello nazionale. A lungo termine (da qui al 2020), l'associazione PPP-Programme national pour la protection de l'enfant intende elaborare una strategia nazionale congiunta per la protezione dell'infanzia, includendo nel processo i Cantoni e tutti i principali gruppi di interesse. Nel 2009 è stata presentata una proposta di programma nazionale per la protezione dell'infanzia, con relativo piano di attuazione (Hanhart et al., 2009a; Hanhart, Hauri e Fondazione svizzera per la protezione dell'infanzia, 2009b). L'iniziativa, però, si è bloccata, dopo che una consultazione pubblica ha rivelato che serpeggiava parecchio scetticismo riguardo alla struttura organizzativa dell'ente finanziatore: siccome la protezione dell'infanzia è un compito che compete ai Cantoni, ai Comuni e, in misura minore, alla Confederazione, non si è ritenuto appropriato affidare la gestione e lo sviluppo strategico dell'iniziativa a un partenariato tra pubblico e privato. Sono inoltre state sollevate obiezioni sui contenuti del piano proposto (PPP PN, 2010)[99]. L'Ufficio federale delle assicurazioni sociali, che costituisce la componente pubblica del partenariato, ha quindi deciso di perseguire l'obiettivo di coordinare a livello nazionale le politiche di protezione dell'infanzia dei Cantoni nell'ambito di un altro progetto politico: attualmente, è pendente un postulato parlamentare che chiede al Consiglio federale di presentare un piano d'azione che proponga misure concrete per proteggere meglio i bambini e i giovani dalla violenza domestica[100]. Il postulato chiede inoltre che il piano d'azione definisca come coordinare i compiti dei Comuni, dei Cantoni e della Confederazione in modo da utilizzare al meglio le risorse a disposizione per proteggere i bambini dalla violenza domestica.

2.6.2 Percezione della protezione dell'infanzia da parte dell'opinione pubblica

Nella breve descrizione del sistema politico nella prima parte di questo capitolo si è sottolineato che la democrazia diretta è una delle caratteristiche principali del sistema politico svizzero. Ciò si riflette in diverse specificità del quadro istituzionale ben radicate nella relativamente lunga storia della democrazia svizzera. Si può inoltre affermare che l'esercizio dei diritti civici è profondamente insito nella mentalità svizzera. Anche se fino a non molto tempo fa questo diritto era appannaggio dei soli uomini, considerato che in Svizzera le donne hanno ottenuto i pieni diritti politici a livello federale solo nel 1971, oramai è diventato uno degli elementi di fondo di qualsiasi partecipazione o decisione nelle questioni di interesse pubblico. Di conseguenza, i membri dei legislativi, i membri dell'esercito, i membri degli esecutivi, i giudici e le autorità di protezione dei minori a livello locale, soprattutto nei piccoli comuni, non sono professionisti, ma devono guadagnarsi da vivere svolgendo un'attività

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[98] Si tratta di due potenti fondazioni attive a livello internazionale, che sostengono finanziariamente i progetti di prevenzione soprattutto nel campo della protezione dell'infanzia.

[99] Per maggiori informazioni: www.ppp-protection-enfance.ch.

[100] V. il postulato di Jacqueline Fehr (07.3725) del 5 ottobre 2007: "Protezione dei bambini e degli adolescenti dalla violenza in famiglia". Fonte: Curia Vista: www.parlament.ch.

professionale. Questo sistema di milizia, oltre a essere la dimostrazione di quanto siano radicati gli strumenti della democrazia diretta, riflette una forte riluttanza ad abdicare i propri diritti alle élite politiche e alle categorie professionali. Ciò spiega anche la diffusa mancanza di volontà della popolazione svizzera a cedere i diritti politici civili ai tribunali, sia a livello costituzionale che internazionale, anche se ciò a volte può entrare in conflitto con i diritti umani. Un'ulteriore conseguenza dell'importanza data al senso civico quale fautore della coesione sociale si riflette nel fatto che la sfera privata viene difesa come principio che si oppone a qualsiasi tentativo di interferenza da parte dello Stato. Di conseguenza, il modo in cui la protezione dell'infanzia rientra nel quadro istituzionale svizzero, nonché la sua posizione nell'agenda nazionale (che risulta dal presente capitolo), vanno considerati nel contesto culturale specifico. Ciò ovviamente vale anche per la percezione della protezione dell'infanzia da parte dell'opinione pubblica, così come traspare dai media della Svizzera tedesca. Da un esame superficiale dei servizi e delle notizie pubblicati negli ultimi mesi risulta che i temi che fanno riferimento in maniera implicita o esplicita alla protezione dell'infanzia hanno riguardato due argomenti, di cui tratteremo qui di seguito, nella parte finale del presente capitolo.

Il primo argomento è di natura storica e si occupa della situazione dei cosiddetti *Verdingskinder* (bambini appaltati) del secolo scorso. L'appalto di manodopera infantile era una realtà piuttosto diffusa nelle aree rurali svizzere tra il XVIII e la metà del XX secolo: a volte i figli delle famiglie più povere venivano affidati dai loro genitori a un'altra famiglia, presso la quale erano chiamati a lavorare. Negli scorsi anni, sono stati pubblicati parecchi dettagli autobiografici di persone che hanno subito questa sorte (per es. Leuenberger e Seglias, 2008; Ramsauer, 2000). Nel 2011 è inoltre uscito un film che raccontava in maniera romanzata le esperienze durissime vissute da questi bambini.[101] In seguito è stata organizzata un'esposizione itinerante sull'argomento, che fornisce ulteriori informazioni sulle sofferenze dei bambini ceduti dalle loro famiglie come manodopera nel corso del secolo scorso.[102] Recentemente, però, questo quadro prevalentemente negativo sugli aspetti di questo fenomeno sociale è stato criticato da due articoli pubblicati su un settimanale (Gut, 2011a, 2011b): nel primo si sottolineava che le autobiografie e le dichiarazioni personali di chi ha vissuto questa esperienza danno un'immagine distorta della situazione in quanto ci sono ovviamente pochi incentivi a parlare anche delle esperienze positive (v. Hafner, 2011). Nel secondo articolo, basato su studi precedentemente citati, si attirava l'attenzione dei lettori sulla realtà storica della prima metà del secolo scorso, quando non esistevano le moderne istituzioni assistenziali e la povertà più nera era ancora endemica, soprattutto nelle zone rurali. Di conseguenza, per le famiglie più disagiate affidare i figli a terzi rappresentava spesso il male minore, perché in questo modo i figli avevano da mangiare e, a volte, anche la possibilità di imparare un mestiere. Inoltre, nei secoli XVIII e XIX questa pratica veniva promossa da filantropi e nel XX secolo anche dai fautori della democrazia sociale come un modo per offrire un futuro migliore ai figli delle famiglie più povere.

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[101] Il film, diretto da Markus Imboden, si intitola "Der Verdingbub".

[102] L'esposizione itinerante "Verdingkinder reden" (Infanzie rubate – parlano i Verdingkinder) è stata organizzata dall'associazione "Geraubte Kindheit" (Infanzia rubata).

Il secondo argomento affrontato sovente nel dibattito pubblico in corso sulla protezione dell'infanzia, e ripreso dai media, riguarda un tema di fondo che ruota intorno alla seguente questione: fino a che punto è lecito appellarsi alla libertà di religione e di coscienza garantita dalla Costituzione (art. 15 Cost.), soprattutto qualora questo diritto entri in conflitto con la protezione dei bambini e dei giovani che, come risulta dal capitolo 2.4.1, è altresì sancita dall'art. 11 della Costituzione federale? Nella fattispecie si fa riferimento alle disposizioni del Codice civile, in base alle quali i genitori sono da un lato liberi di disporre dell'educazione religiosa dei figli (art. 303 cpv. 1 CC) e dall'altra sono tenuti, in considerazione del loro bene del figlio, a dirigerne le cure e l'educazione (art. 301 cpv. 1 CC), nonché a promuovere e a proteggere lo sviluppo fisico, intellettuale e morale del figlio (art. 302 cpv. 1 CC). Il potenziale di conflitto tra queste disposizioni viene spesso a galla nel dibattito pubblico. Per esempio, recentemente si è assistito ad un'alzata di scudi pubblica sul tentativo in atto a livello federale di introdurre l'educazione sessuale nella scuola dell'infanzia ed elementare nell'ambito di un programma di prevenzione precoce. Anche se l'opposizione a questi tentativi non viene solo dalle cerchie sociali che rappresentano idee religiose di tipo fondamentalista, risulta evidente che sono proprio questi toni a dominare il dibattito. Un'altra area di conflitto riguarda invece i valori culturali di determinati gruppi di immigranti, che in parte contrastano con le attitudini della maggioranza della popolazione indigena. L'attenzione politica data alle mutilazioni genitali femminili e ai matrimoni forzati sono appunto due manifestazioni di questi conflitti potenziali. Tra gli altri argomenti al centro dei dibattiti ricordiamo, per esempio, la diversa percezione che hanno le famiglie indigene e quelle di migranti nei confronti dei maltrattamenti infantili o il fatto che le bambine musulmane vengano dispensate dalle lezioni di nuoto.

Da ultimo, solo recentemente i media hanno dato risalto a un nuovo problema (v. per es. Rau, 2011), che probabilmente dovrà essere affrontato sempre più spesso dalle autorità che si occupano di protezione dell'infanzia. Facciamo riferimento allo scetticismo dilagante nei confronti della medicina tradizionale, che oggi sembra spingere un numero sempre maggiore di genitori a trascurare i bisogni vitali dei loro figli. Per esempio, i genitori che seguono le regole del veganismo rischiano di pregiudicare la salute dei loro figli se non permettono che venga loro somministrata la vitamina B 12, assolutamente necessaria per lo sviluppo del sistema nervoso. Chi, invece, segue i dettami delle medicine alternative, a volte impedisce che ai propri figli di essere curati per un tumore, mentre i testimoni di Geova sono contrari alle trasfusioni di sangue. Si potrebbero citare altri casi in cui le ideologie religiose o di altra natura si rivelano sfavorevoli, se non dannose, per lo sviluppo di un bambino. In questi casi, le autorità di protezione dell'infanzia devono mediare tra il diritto che i genitori hanno di crescere i figli in base alle loro convinzioni e visioni del mondo e gli interessi dei bambini, in particolare a livello di salute fisica e mentale.

Fonti legali

CC: Codice civile svizzero, in vigore dal 1º gennaio 1912

Cost.: Costituzione federale della Confederazione Svizzera, in vigore dal 18 aprile 1999

CP: Codice penale svizzero, in vigore dal 1º gennaio 1942

CPP: Codice di diritto processuale penale svizzero (Codice di procedura penale), in vigore dal 1° gennaio 2011

DPMin: Legge federale sul diritto penale minorile (Diritto penale minorile), in vigore dal 1º gennaio 2007

LAV: Legge federale concernente l'aiuto alle vittime di reati, in vigore dal 1º gennaio 2009

LDIP: Legge federale sul diritto internazionale privato, in vigore dal 1° gennaio 1989

LF-RMA: Legge federale sul rapimento internazionale dei minori e sulle Convenzioni dell'Aia sulla protezione dei minori e degli adulti, in vigore dal 1° luglio 2009

LPAG: Legge federale sulla promozione delle attività extrascolastiche di fanciulli e giovani (Legge sulla promozione delle attività giovanili extrascolastiche), approvata il 30 settembre 2011

PPMin: Legge federale di diritto processuale penale minorile (Procedura penale minorile), in vigore dal 1º gennaio 2011

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3 Analisi comparata delle buone pratiche a livello internazionale e relative raccomandazioni

di Trevor Spratt

Con la collaborazione di Jachen C. Nett, Leah Bromfield, Johanna Hietamäki, Heinz Kindler e Lina Ponnert

3.1 Introduzione

Nella formulazione originaria del progetto, abbiamo identificato due obiettivi chiave: analizzare i dati concreti disponibili, relativi all'offerta di servizi per la protezione dell'infanzia in Paesi con uno sviluppo sociale ed economico simile a quello della Svizzera, e confrontare le buone pratiche a livello internazionale per valutarne la possibile applicazione in Svizzera. Per realizzare questi obiettivi, abbiamo messo a confronto i sistemi di protezione dell'infanzia di cinque Paesi e abbiamo quindi formulato analisi e raccomandazioni. Le analisi e le raccomandazioni contenute nel presente capitolo sono state in parte tratte da quelle dei cinque Paesi presi in considerazione dallo studio, e in parte da quelle elaborare dagli autori del presente rapporto, nel corso di un workshop tenutosi a Berna. I risultati sono stati ulteriormente esaminati e valutati da un gruppo di esperti in ambito giuridico, accademico e professionale, per vagliarne l'applicazione nel contesto svizzero. Il nostro ringraziamento va quindi ad Andrea Hauri, Marco Zingaro, Christian Nanchen, Stefan Blülle, Peter Voll, Stefan Schnurr e Judith Wyttenbach per il lavoro svolto. I consigli ricevuti dal gruppo di esperti hanno comportato una serie di modifiche al presente rapporto inerenti alla possibilità di implementare le raccomandazioni nel contesto svizzero. Il nostro intento è fornire una descrizione puntuale e pragmatica degli elementi utili per creare un sistema di protezione dell'infanzia moderno ed efficace e formulare raccomandazioni per una sua applicazione in Svizzera. Ad ogni modo, non intendiamo spiegare nel dettaglio come mettere in pratica le nostre raccomandazioni, questo compito spetterà a chi si occupa degli aspetti giuridici, politici e professionali della protezione dell'infanzia in Svizzera.

Pur non essendo del tutto analoga a quella dei capitoli dedicati ai rapporti sui singoli Paesi presi in considerazione dallo studio, la struttura di questo capitolo introduttivo si basa sulle informazioni in essi contenute e presenta alcune analisi e raccomandazioni che si ispirano ai criteri indicati nella proposta originaria. Alcuni Paesi danno maggior risalto a certi aspetti a scapito di altri. Ciò non deve sorprendere, dato che lo sviluppo dei sistemi di ciascun Paese comporta differenze che servono a mettere in luce punti di particolare interesse. Ci preme però precisare che nel selezionare gli elementi utili per creare un efficace sistema di protezione dell'infanzia, il nostro gruppo ha tenuto conto di ciò che non funziona, nonché delle pratiche più promettenti e della conoscenza concettuale e teorica alla base degli odierni sistemi di protezione dell'infanzia. È però importante sottolineare che i dati concreti tratti dalla ricerca, che ci dicono "ciò che funziona" nel settore della protezione dell'infanzia, non sono

ancora sufficienti per fornire un modello definitivo e applicabile a qualunque contesto. Per questo motivo, al fine di elaborare dei modelli operativi, ci siamo ispirati ai principi alla base dei sistemi di protezione dell'infanzia efficaci.

3.2 Elementi chiave per lo sviluppo dei sistemi di protezione dell'infanzia

Se si vuole capire il perché dell'interesse dei Paesi industrializzati per il riorientamento e lo sviluppo dei loro sistemi di protezione dell'infanzia, occorre individuare i fattori esterni che hanno determinato il contesto e prodotto tali sviluppi. Ciò consentirà sia di inquadrare meglio l'iniziativa lanciata dalla Svizzera, sia di avere un quadro più ampio per capire come arrivare a un consenso internazionale sui possibili principi cardine di un sistema di protezione dell'infanzia efficace. Uno dei temi fondamentali di questo rapporto è proprio il consenso.

Gli elementi chiave identificati sono i seguenti: l'evidenza epidemiologica della prevalenza e degli effetti dei maltrattamenti infantili, il riconoscimento della necessità di investire sui bambini, l'importanza dei diritti dell'infanzia e un confronto fra i vari Paesi, che metta in luce le risposte date dai governi alla questione dei diritti e dei bisogni del bambino nell'ambito della protezione dell'infanzia. Questi elementi generano tutta una serie di imperativi che nel complesso fungono da catalizzatore e da stimolo continuo per cambiare i sistemi di protezione dell'infanzia.

3.2.1 Prevalenza ed effetti dei maltrattamenti infantili: l'imperativo scientifico

I maltrattamenti infantili comprendono sia gli abusi che la trascuratezza. Le conseguenze degli abusi non si fanno sentire solo durante l'infanzia, ma nel corso di tutta la vita: in seguito agli abusi subiti da piccola, può capitare che una persona versi in cattive condizioni di salute fisica e mentale, sviluppi dipendenze o abbia problemi nello svolgere il ruolo di genitore. Nei Paesi economicamente avanzati, queste esperienze negative e le relative conseguenze sono diventate una questione di salute pubblica. Per quanto riguarda la prevalenza del problema, si stima che dal "4 al 16% dei bambini sia vittima di abusi sessuali e che uno su dieci venga abbandonato o sia vittima di violenze psicologiche. Durante l'infanzia, dal 5 al 10% delle femmine e il 5% circa dei maschi è vittima di abusi sessuali con penetrazione, anche se dai dati ufficiali [i bambini affidati ai servizi per la protezione dell'infanzia] la percentuale è inferiore a un decimo di quelle qui riportate." (Gilbert et al., 2008, pag. 70). Queste statistiche acquistano però maggiore rilevanza se si considera che viene utilizzata una definizione molto limitata delle esperienze che danneggiano i bambini. Un più ampio spettro delle esperienze negative dalle quali proteggere i minori (ed è questo l'approccio che abbiamo adottato nel redigere il rapporto) fa aumentare significativamente il numero di bambini ai quali la società dovrebbe prestare maggiore aiuto. Dal lavoro svolto dagli epidemiologi sulla prevalenza e sugli studi retrospettivi, che descrivono dettagliatamente la correlazione fra avversità vissute da piccoli e problemi avuti da grandi, risulta l'imperativo scientifico di fare qualcosa per affrontare il problema.

3.2.2 Investire nei bambini: l'imperativo economico

Il concetto di *social investment state*, che considera i bambini un bene nel quale investire, esercita un forte influsso sulle economie avanzate, che ritengono prioritario investire nei cittadini, per metterli in condizione di beneficiare delle opportunità offerte dall'economia di mercato globalizzata e di contribuire alla sua crescita attraverso la partecipazione. Di solito, questo tipo di investimento si propone di creare migliori possibilità di istruzione e di investire maggiormente nei bambini che non possono approfittare di tali opportunità. Dai risultati delle ricerche risulta che fin da piccoli questi bambini subiscono spesso una serie di avversità, che non solo impediscono loro di beneficiare dell'istruzione, ma che in futuro potrebbero anche comportare ingenti costi per la società, a causa del numero di interventi di sostegno da erogare nel corso della vita, della loro scarsa produttività e quindi delle dichiarazioni delle imposte esigue, frutto di una limitata, se non addirittura mancata, partecipazione al mercato del lavoro (Spratt, 2009). Da qui l'imperativo economico di individuare quanto prima questi bambini e mettere in atto opportune iniziative per proteggerli dal rischio di un futuro difficile.

3.2.3 Diritti del fanciullo: l'imperativo giuridico

Tutti i Paesi presi in considerazione dallo studio sono firmatari della Convenzione ONU sui diritti del fanciullo. Il punto di forza della Convenzione non sta tanto nel fatto di basarsi su un codice morale, quanto nel fatto di essere uno strumento legale, che contiene principi chiari sul diritto dei fanciulli di essere protetti e di beneficiare dei servizi di assistenza all'infanzia. L'art. 19 della Convenzione riveste particolare importanza e stabilisce esplicitamente che il fanciullo deve essere tutelato "contro ogni forma di violenza, di oltraggio o di brutalità fisiche o mentali, di abbandono o di negligenza, di maltrattamenti o di sfruttamento, compresa la violenza sessuale". I resoconti sui progressi compiuti per conformare la legge e le politiche a tali principi fanno sì che le risposte dei governi siano visibili sia ai cittadini, sia alla comunità internazionale. In tal modo, la protezione dell'infanzia diventa un imperativo giuridico, contemplato nei trattati internazionali e soggetto a un continuo monitoraggio.

3.2.4 Confronto fra Paesi: l'imperativo morale

Gli organismi internazionali tendono sempre di più a descrivere i progressi compiuti nei vari Paesi, utilizzando dati comparabili rispetto a una serie di criteri. Nell'ambito della protezione dell'infanzia, la Convenzione ONU sui diritti del fanciullo non è l'unico esempio. L'Organizzazione mondiale della sanità (OMS) ha realizzato parecchie pubblicazioni sull'analisi comparata dell'incidenza dei maltrattamenti subiti dai bambini e sui relativi provvedimenti adottati (Butchart et al., 2006). L'UNICEF ha pubblicato rapporti sulla mortalità infantile per maltrattamenti (2003), nonché sulla salute e sulla sicurezza dei bambini nei Paesi ricchi (2007). Inoltre, nel mondo accademico c'è un interesse sempre maggiore ad analizzare l'efficacia dei sistemi di protezione dell'infanzia (Gilbert et al., 2011). Tale interesse ha contribuito a sensibilizzare i governi sugli effetti del confronto tra i vari sistemi, che può contribuire a mettere in buona o in cattiva luce le politiche e pratiche adottate nei singoli Paesi, e promuovere un atteggiamento di responsabilità nei confronti della comunità internazionale. Questi

confronti generano anche un imperativo morale, che spinge i governi a migliorare le politiche e le pratiche a favore dell'infanzia, il che a sua volta produce risultati positivi nelle classifiche internazionali.

Il peso di tutti questi fattori ha vieppiù spinto i governi ad analizzare i sistemi di protezione dell'infanzia dei Paesi in cui vigono condizioni paragonabili ai loro, allo scopo di creare delle buone pratiche per ripensare e implementare i propri sistemi di protezione dell'infanzia. Occorre naturalmente creare un giusto equilibrio tra fattori esterni e interni, dato che i governi tendono a reagire alle pressioni interne, compreso un eventuale fallimento dei sistemi.

3.3 Obiettivi dei moderni sistemi di protezione dell'infanzia

Sebbene le differenze dovute sostanzialmente a ragioni storiche, possiamo osservare che i cinque Paesi presi in considerazione dallo studio seguono percorsi analoghi per quanto riguarda la comprensione dei bisogni dei bambini nel contesto odierno. Questi percorsi si articolano sull'applicazione di leggi e politiche necessarie a individuare e proteggere i bambini più vulnerabili all'interno della società, sulla creazione di servizi per soddisfare i loro bisogni e sullo sviluppo di metodi pratici che garantiscano i risultati migliori per i bambini. Nell'insieme, tali sviluppi evidenziano la crescente importanza attribuita dalla società a un approccio scientificamente fondato al problema della protezione dell'infanzia.

Un esempio tratto dalla medicina potrebbe aiutarci a illustrare com'è cambiato il nostro modo di considerare le questioni sociali e sanitarie comparabili tra un Paese e l'altro. Il primo defibrillatore portatile fu inventato negli anni Sessanta a Belfast, nell'Irlanda del Nord, da Frank Pantridge, un medico irlandese che ebbe l'idea di installare i defibrillatori sulle ambulanze e di intervenire sui pazienti infartuati direttamente sul posto, invece di aspettare il ricovero in ospedale. Nei primi quindici mesi successivi l'introduzione della sua idea, il dottor Pantridge riuscì a rianimare con successo dieci pazienti. Non senza una punta di ironia, nel suo necrologio si scrisse poi che "soltanto dopo i canonici 10-15 anni di scetticismo" il defibrillatore portatile venne installato su tutte le ambulanze del Regno Unito e Pantridge fu riconosciuto come il "padre della medicina d'urgenza". L'epoca in cui Pantridge introdusse la sua idea è oggi considerata l'inizio di una serie di successi per gli interventi medici, con un tasso di mortalità per infarto nel Regno Unito diminuito del 40% dall'inizio degli anni Settanta. Tuttavia, per capire quali furono i fattori all'origine di una così drastica diminuzione dei decessi, occorre procedere a una lettura più attenta degli eventi. In uno studio che raggruppa e analizza i dati riguardanti la somministrazione e l'efficacia dei trattamenti cardiaci e i diversi fattori di rischio, gli autori hanno cercato di stabilire in che misura la riduzione della mortalità per coronaropatia in Inghilterra e nel Galles fra il 1981 e il 2000 possa essere attribuita a trattamenti medici e chirurgici (per esempio l'utilizzo di defibrillatori portatili) e in che misura, invece, a una più adeguata conoscenza dei fattori di rischio cardiovascolare. Gli studiosi sono così giunti alla conclusione che il calo del tasso di mortalità era dovuto, nella misura del 58%, alla riduzione di alcuni importanti fattori di rischio, primo fra tutti il fumo (Unal et al., 2004).

Analogamente, si può dire che i sistemi di protezione dell'infanzia si prefiggono due obiettivi: intervenire in situazioni di crisi conclamata con un sistema in grado di rispondere prontamente all'emergenza e individuare le fasce di popolazione più a rischio, per intervenire a livello preventivo, evitando così le situazioni di emergenza. Entrambi gli obiettivi sono imprescindibili e contribuiscono alla protezione dell'infanzia. Il nostro studio evidenzia però che, storicamente, Australia e Regno Unito considerano prioritario disporre di sistemi di emergenza dotati delle risorse necessarie e che li considerano fondamentali per la protezione dell'infanzia (nella letteratura spesso si parla di "modello centrato sul bambino"). Seppur con sfumature diverse, Finlandia, Svezia e Germania danno invece la priorità al lavoro con le famiglie, per ridurre i fattori di rischio che potrebbero determinare un futuro difficile per il bambino (nella letteratura a volte si parla di "modello centrato sulla famiglia"). La nostra analisi indica che, malgrado alcune differenze storiche di orientamento, oggi i cinque Paesi concordano sulla necessità di integrare i servizi di prevenzione nei sistemi di protezione dell'infanzia, approccio talvolta definito "modello di sanità pubblica".

Anche se non esiste un modello ideale per gli odierni sistemi di protezione dell'infanzia, il nostro rapporto dimostra che, esattamente come nelle campagne per ridurre l'incidenza delle malattie cardiache, oltre a insistere sulla presenza di defibrillatori (oggi disponibili nella maggior parte degli edifici pubblici) e sulla promozione di stili di vita sani, anche nel nostro caso è necessario insistere sull'importanza di avere risposte e interventi efficaci e immediati, per identificare e contenere i fattori di rischio e garantire così la totale protezione del bambino. Questi criteri rappresentano quanto di più vicino ci sia a una prima verità universale sulla protezione dell'infanzia. Nelle successive parti di questo capitolo, cercheremo di ispirarci a questa verità, per creare il giusto equilibrio fra l'obbligo di istituire un solido sistema di intervento per i bambini bisognosi di protezione immediata e l'obbligo di avere un sistema efficace per individuare i bambini bisognosi di interventi precoci, in modo da risparmiare loro un futuro difficile.

La seconda verità universale alla quale siamo approdati è che le GRANDI IDEE (spesso frutto di un'ideologia e non di dati concreti), realizzate in tempi brevi e senza essere state sottoposte a scrupolosa sperimentazione, di solito si rivelano inutili, se non addirittura pericolose. È vero che in molti aspetti della vita l'innovazione può essere vista positivamente, ma le idee sulla protezione dell'infanzia che promettono grandi cose vanno vagliate attentamente prima di essere attuate. Come dimostra l'analisi dei sistemi di protezione dell'infanzia dei cinque Paesi, si oscilla fra il tentativo di garantire la protezione del bambino sottraendolo alla famiglia per affidarlo alle cure dello Stato e il tentativo di promuovere la famiglia naturale come luogo privilegiato per far crescere un bambino, con la conseguente riluttanza ad affidarlo alle cure dello Stato. Talvolta queste idee sono presentate come principi universali, che ottengono un consenso pressoché unanime nei Paesi presi in considerazione dallo studio, ma che possono avere conseguenze disfunzionali. In Paesi come la Svezia, fermamente convinti che i servizi migliori per i bambini siano quelli erogati nel contesto familiare, soltanto un numero esiguo di bambini piccoli viene affidato alle cure dello Stato. Il numero tuttavia aumenta durante l'adolescenza, quando le famiglie si sfaldano. Ciononostante, è risaputo che i più esposti alle conseguenze degli abusi da parte dei genitori, o di una cattiva genitorialità, sono i bambini piccoli e che il tentativo di erogare servizi all'interno della famiglia potrebbe rivelarsi dannoso per i bambini i cui

bisogni evolutivi risulterebbero meglio soddisfatti se potessero crescere in un ambiente più stabile, come quello offerto dallo Stato. L'approccio di tipo residuale (in particolare in Australia, dove lo Stato è restio a erogare servizi di sostegno lasciando i bambini nel contesto familiare, mentre è solerte ad affidare i bambini piccoli alle cure dello Stato se i genitori non sono in grado di soddisfare i bisogni dei figli o li maltrattano) può produrre effetti opposti. In questo caso, la mancanza di interventi preventivi rischia di far aumentare il numero di bambini affidati alle cure dello Stato, fenomeno che potrebbe essere evitato, intervenendo per tempo presso le loro famiglie.

La lezione che possiamo trarre da questa analisi è la seguente: se da un lato i sistemi di protezione dell'infanzia devono fondarsi su determinati principi, dall'altro occorre evitare di arrivare a una reificazione di tali principi, perché in tal caso si rischia di generare distorsioni nel sistema e di influire negativamente sulla vita di alcuni bambini. In alternativa, si potrebbero formulare principi più diversificati, che rispecchino la diversità delle famiglie e i bisogni del bambino. Questi principi dovrebbero basarsi sulla ricerca di ciò che è meglio per il bambino e creare il giusto equilibrio fra i diritti dei genitori e quelli del bambino. Tale equilibrio sarà inevitabilmente l'espressione delle differenze fra i vari Paesi, evidenziate sia dalla nostra analisi, sia dalla letteratura; al di là di queste differenze, però, si sta facendo strada un crescente consenso su quelli che potremmo considerare buoni risultati per i bambini e su come raggiungere tali risultati attraverso i sistemi di protezione dell'infanzia. Entrambi gli aspetti sono stati tenuti in debita considerazione nelle nostre analisi e raccomandazioni.

3.4 Caratteristiche dello sviluppo dei sistemi per la protezione dell'infanzia

Per procedere a un'analisi coerente dei diversi sistemi di protezione dell'infanzia nei cinque Paesi presi in considerazione dallo studio, occorre dapprima descrivere come sono nati questi sistemi. La descrizione può essere suddivisa in tre periodi distinti, che riguardano i primi sviluppi, quelli successivi e quelli più recenti. Va precisato che tali periodi non corrispondono agli stessi periodi storici nei Paesi presi in considerazione dallo studio. Questo perché i cinque Paesi presentano alcune differenze storiche, quali il momento in cui si sono industrializzati o l'influenza, passata e recente, degli sviluppi internazionali sui sistemi di protezione dell'infanzia. Tuttavia, invece di imprimere una nuova direzione al processo, queste differenze temporali sembrano ritardare il percorso verso il raggiungimento di un consenso generale sulla struttura da dare ai sistemi di protezione dell'infanzia per renderli efficaci.

3.4.1 Primi sviluppi: le risposte della società ai bisogni del bambino

I primi resoconti sulla nascita dei sistemi di protezione dell'infanzia nei cinque Paesi presi in considerazione dallo studio riflettono gli sconvolgimenti sociali ed economici provocati dall'industrializzazione e dall'urbanizzazione, due eventi che resero i bambini più vulnerabili, perché le famiglie si erano lasciate alle spalle il senso di sicurezza e di continuità offerto dall'economia rurale per stabilirsi in contesti urbani e industrializzati meno protettivi. L'arrivo delle nuove comunità servì

però a rendere i bambini più visibili e ad alimentare nella società una crescente preoccupazione per il loro benessere fisico e morale. Le prime leggi sulla protezione dell'infanzia incarnavano quindi lo spirito dell'epoca, che spingeva la società a tutelarsi dai bambini ritenuti delinquenti e a proteggere quelli ritenuti vulnerabili. Ancora oggi, la tendenza a sviluppare servizi distinti e separati per ciascuno dei due gruppi, che si basa sull'idea di considerare il problema contingente (atto criminale o evidente bisogno) o sull'integrazione dei servizi (concentrandosi sulle cause all'origine dei succitati problemi), continua a influenzare lo sviluppo dei servizi per l'infanzia.

Studio di caso: Svezia. "Sia il dibattito in corso all'epoca nella società sia la prima Legge sull'infanzia si prefiggevano di proteggere la collettività dal male morale; in questo quadro i bambini maltrattati erano visti come una potenziale minaccia al benessere della società (Lundström, 1993). La Legge sull'infanzia del 1902 riguardava i bambini fino a quindici anni. Questa prospettiva si basava sulla convinzione che una sana educazione avrebbe potuto prevenire comportamenti criminali nei giovani. Per questo motivo, in Svezia e in Norvegia ai servizi sociali e all'amministrazione penitenziaria fu attribuita una responsabilità condivisa nei confronti dei giovani che avevano un comportamento criminale; questa duplice responsabilità è tuttora in vigore in Svezia (Dahl, 1978; Kumlien, 1994)."

In effetti, i due gruppi erano simili, perché solitamente si trattava di bambini senza dimora o abbandonati, provenienti da famiglie che non potevano o non volevano prendersi cura di loro. Questi bambini, che rappresentavano un problema sociale visibile e nuovo, furono le prime vittime del capitalismo industriale. Nei paesi analizzati emerge chiaramente che le prime leggi e i primi servizi per la protezione dell'infanzia tendevano a concentrarsi sui bambini visibili e senza tetto, tendenza suffragata dall'opinione diffusa all'epoca, secondo la quale i motivi che autorizzavano lo Stato a interferire nella vita delle famiglie dovevano essere chiaramente definiti. La soluzione adottata nella maggioranza dei casi fu quella di aprire foyer residenziali, spesso gestiti da congregazioni religiose o da organizzazioni benevole, nei quali si impartiva un'istruzione morale e si insegnava un mestiere ai giovani. È interessante notare che prima che venissero varate leggi in tal senso e che venissero istituiti dei servizi di assistenza statali, le principali misure in materia di protezione dell'infanzia furono elaborate da associazioni di volontariato. Sulla base di questi precedenti storici, il settore del volontariato ha svolto un ruolo importante nello sviluppo dei sistemi di protezione dell'infanzia.

3.4.2 Ulteriori sviluppi: le risposte dei governi ai bisogni del bambino

I successivi sviluppi in materia di sistemi per la protezione dell'infanzia vertono su due aspetti fondamentali: proteggere i bambini all'interno della famiglia e creare servizi a favore dell'infanzia. Tali aspetti trovano riscontro sia nell'adozione di leggi per la protezione dei bambini dai maltrattamenti e dalla trascuratezza da parte della famiglia, sia nel diffondersi di associazioni di volontariato, che si occupano di indagare su possibili maltrattamenti sui bambini da parte dei familiari o di erogare servizi alle famiglie disagiate. Sono anche state emanate leggi per limitare il lavoro dei minorenni. Le seguenti considerazioni stanno alla base dei moderni sistemi di protezione dell'infanzia: in primo luogo riconoscere che alcune famiglie fanno del male ai figli, intenzionalmente o per negligenza, che sia il

diritto civile (per la protezione del bambino) che quello penale (con funzione deterrente o punitiva) sono egualmente indispensabili, e che i servizi possono essere uno strumento efficace per evitare che venga fatto del male ai bambini; in secondo luogo, le condizioni sociali e la reazione delle famiglie ai fattori di stress possono creare condizioni avverse per i bambini, qualora i genitori che non sappiano o non siano in grado di proteggere i propri figli dalle conseguenze di tali situazioni. Il problema può essere attenuato mediante interventi efficaci, volti a migliorare le condizioni sociali o a ridurne le conseguenze negative.

Nella maggior parte dei Paesi, tali sviluppi hanno preceduto la nascita dello stato sociale e dei relativi servizi di protezione sociale, fra cui sanità, istruzione e pensioni. Si può inoltre dire che l'ideologia ispiratrice dello stato sociale abbia influenzato anche lo sviluppo dei sistemi di protezione dell'infanzia. Prima della nascita dello stato sociale, le disposizioni per la protezione dei bambini potevano essere considerate come una serie di leggi, idee e servizi interdipendenti, ma non come un "sistema". Con lo stato sociale si è voluto rivedere il ruolo dello Stato nel suo rapporto con la famiglia, partendo dal concetto che il primo aveva la responsabilità di tutelare il benessere dei propri cittadini, e poteva farlo ridistribuendo le risorse per consentire l'accesso a tutta una serie di vantaggi, tra cui le agevolazioni fiscali e le prestazioni a favore dei bambini e delle loro famiglie, concepiti per lo più per aiutarle a crescere la prole, oltre ad aiuti ai bambini più vulnerabili, la cui particolare situazione richiedeva interventi supplementari. È proprio negli interventi supplementari che sono state riscontrate le differenze più significative fra i cinque Paesi presi in considerazione dallo studio. In quasi tutti, la maggior parte dei servizi viene fornita dallo Stato, coadiuvato dalle associazioni di volontariato, ad eccezione della Germania, dove il settore del volontariato rappresenta il principale fornitore di servizi.

Studio di caso: Germania. "Le ONG (*Freie Träger*) rivestono un ruolo chiave nei sistemi tedeschi per la protezione dell'infanzia e della gioventù. In virtù del principio della sussidiarietà, l'autorità competente per l'infanzia e la gioventù non è tenuta a fornire determinate prestazioni se ci sono ONG disposte a e in grado di farlo."

È però importante sottolineare che in tutti i Paesi presi in considerazione dallo studio spetta al governo avviare le indagini in caso di sospetto di maltrattamenti infantili. Ciò non significa che si tratti di una regola ferrea e universale (tant'è vero che in Canada le indagini sui maltrattamenti infantili vengono condotte da organizzazioni non governative) o che sia una soluzione più efficace di altre per proteggere l'infanzia, ma soltanto che è la norma nei Paesi analizzati dallo studio.

Nei Paesi in cui vige un sistema federale (Australia e Germania) e in quelli con un sistema diverso, come il Regno Unito, c'è stata una significativa evoluzione dei poteri e delle responsabilità dello Stato nell'ambito della protezione dell'infanzia. Abbiamo però riscontrato che sono stati compiuti notevoli sforzi per adeguare le disposizioni locali sulla protezione dell'infanzia ai principi e alle norme in vigore a livello nazionale. Ciò non deve sorprendere, dato che uno dei compiti chiave dei governi è tutelare i propri cittadini. Per assolverlo, i governi devono essere investiti del potere e dell'autorità necessari, senza i quali non potrebbero firmare accordi internazionali, come la Convenzione ONU sui diritti del

fanciullo. Tale evoluzione è avvenuta anche in Svizzera, come dimostra il fatto che nell'agosto del 2008 il Consiglio federale ha adottato il rapporto intitolato "Strategia per una politica svizzera dell'infanzia e della gioventù" che contempla tre principi chiave: *protezione*, *promozione* e *partecipazione*. In Svizzera potrebbero crearsi tensioni su come giungere a un accordo per l'attuazione di queste politiche, che permetta di ottenere il consenso di tutti i Cantoni.

3.4.3 Sviluppi recenti: i sistemi di protezione dell'infanzia

I recenti sviluppi nei sistemi di protezione dell'infanzia si sono concentrati sulle risposte da dare al problema degli abusi sui bambini. Da quando Henry Kempe e colleghi hanno pubblicato il loro autorevolissimo lavoro sulla "sindrome del bambino maltrattato" (*The Battered Child Syndrom*) (Kempe et al., 1962), in tutti i Paesi economicamente avanzati gli abusi sui bambini si sono imposti come una questione di pubblico interesse. L'interesse si è diffuso più rapidamente nei Paesi anglosassoni, fra cui nel Regno Unito e in Australia, ma dai nostri studi di caso risulta che la consapevolezza del fenomeno degli abusi sui bambini ha avuto un impatto (anche se più graduale) sullo sviluppo di tutti sistemi di protezione dell'infanzia. L'idea che alcuni genitori maltrattino i figli e trascurino il loro benessere non è nuova. Per certi versi, però, i cambiamenti avvenuti nel modo in cui si cerca di dare una spiegazione al fenomeno degli abusi sui bambini non sono soltanto frutto delle moderne teorie della causalità, ma anche tentativi di confrontarsi con le dimensioni del fenomeno. È emerso che, contrariamente a quanto si credeva negli anni Sessanta, il fenomeno degli abusi fisici sui bambini non si limita a un gruppo ristretto di genitori con caratteristiche patologiche, ma riguarda anche le cosiddette "famiglie normali". La stessa tendenza si riscontra nel modo in cui i Paesi hanno preso coscienza dell'abuso sessuale e, più recentemente, dell'abuso emotivo e della trascuratezza (quest'ultima è stata particolarmente influenzata dalle recenti definizioni di "buona genitorialità", che risultano dalle moderne teorie sullo sviluppo del bambino).

La consapevolezza emergente che gli abusi sui bambini non sono soltanto un problema sociale molto diffuso, ma anche un fenomeno dalle molte sfaccettature, ha portato all'elaborazione di modelli teorici esplicativi, che sono alla base dello sviluppo dei sistemi di protezione dell'infanzia. Tali modelli sono descritti nei nostri studi di caso e la loro evoluzione può essere suddivisa in sei fasi.

Fase 1 – I bambini vanno protetti dalla corruzione morale, dall'abbandono e dal proprio comportamento antisociale. Queste idee erano particolarmente diffuse all'epoca dei primi sistemi di protezione dell'infanzia, ma trovano espressione ancor oggi, per esempio nell'istinto di salvare le piccole vittime del traffico di esseri umani. Anche nei Paesi in via di sviluppo, dove si stanno muovendo i primi passi, i sistemi di protezione dell'infanzia hanno come obiettivo quello di aiutare i bambini di strada, la cui situazione e i cui evidenti bisogni impongono delle risposte. La società può per esempio mettere a disposizione strutture di accoglienza per strappare i bambini dalla strada, dare loro assistenza morale e conoscenze pratiche, grazie alle quali in futuro potranno partecipare e contribuire alla società, soprattutto attraverso il lavoro.

Fase 2 – I bambini vanno protetti dai genitori e da altre persone con disturbi psicopatologici. Queste idee tendono a prevalere quando la società riconosce che i bambini corrono dei pericoli sia all'interno, sia all'esterno del contesto familiare. Ciononostante, il numero di bambini considerati a rischio è esiguo, perché si presume che nella popolazione generale i casi di genitori con psicopatologie siano rari. Questa teoria è confermata dalla spiegazione dei casi di abusi sessuali, secondo la quale la causa va ricercata nella psicopatologia dell'abusante. Gli interventi si basano sulla valutazione dei rischi e vertono su tre aspetti: il trattamento da riservare agli autori dei reati, i servizi terapeutici per i bambini e il monitoraggio delle famiglie, se i bambini restano affidati alle cure dei genitori.

Fase 3 – Bambini e famiglie vanno protetti dagli effetti provocati dalle disuguaglianze strutturali nella società. L'abuso fisico e la trascuratezza dei bambini sono legati alla situazione di povertà delle famiglie, spesso frutto delle disuguaglianze strutturali all'interno della società. Nella famiglia, la povertà può causare ulteriori fattori esterni di stress che, se associati a problemi già esistenti, creano un terreno fertile per l'abuso fisico o la trascuratezza dei figli. Queste teorie rientrano nelle politiche, più o meno evidenti, dei moderni stati sociali, dove la tutela della collettività si basa sul principio della ridistribuzione delle risorse. Il nesso fra povertà e maltrattamenti infantili impone l'istituzione di sistemi di protezione dell'infanzia più complessi, che prevedano interventi non soltanto da parte dei professionisti del settore per aiutare le famiglie ad affrontare le pesanti conseguenze della povertà, ma anche da parte dei governi, affinché varino politiche per fronteggiare il problema delle diseguaglianze strutturali, evitando così inutili sofferenze ai bambini.

Fase 4 – La protezione dell'infanzia nell'ottica del modello ecologico. Sotto molto aspetti, la visione ecologica di ciò che fa male ai bambini si propone di raggruppare le spiegazioni delle cause scatenanti per attribuirle a una serie di fattori, fra cui la società nel suo insieme, la comunità locale, la famiglia e le caratteristiche degli individui. Questa teoria si basa sul principio della causalità sistemica, secondo il quale la spiegazione dei maltrattamenti infantili va ricercata nella complessa interrelazione fra le varie cause. Ciò consente di individuare i fattori di rischio, per decidere a che livello intervenire. Oggi questa teoria riscuote molti consensi, perché offre un modello meno rigido e meno ideologico, che mette in luce la necessità di intervenire efficacemente su tutti i fronti per garantire che i bambini siano protetti.

Fase 5 – La protezione dell'infanzia nell'ottica dei diritti del bambino. Da quando è stata adottata la Convenzione ONU sui diritti del fanciullo, ha preso sempre più piede la tendenza a considerare l'interesse del bambino come un fattore a sé, e a volte distinto dai diritti dei suoi genitori. Di conseguenza, il modo in cui i genitori trattano i figli può violare i diritti del bambino, diritti che, nella formulazione di strategie per la protezione dell'infanzia, dovrebbero essere considerati separatamente da quelli dei genitori. L'attuazione di queste strategie da parte dei governi ha però generato tensioni sul fronte politico. Se, formalmente, le strategie per la protezione dell'infanzia erano state previste per

la famiglia, oggi occorre considerare separatamente l'interesse del bambino, che potrebbe divergere da quello dei genitori. Lo stesso dilemma si pone anche nel rapporto fra famiglie e operatori del settore, perché quando si tratta di prendere decisioni che lo riguardano, l'opinione del bambino conta sempre di più.

Fase 6 – La protezione dell'infanzia nell'ottica della prevenzione e degli interventi precoci. È importante notare che soltanto uno dei modelli esplicativi (fase 2) si occupa principalmente del maltrattamento infantile. La conoscenza dell'eziologia di questo fenomeno è aumentata rapidamente e ha messo in luce che la percentuale di bambini destinati ad avere una vita difficile a causa delle avversità subite durante l'infanzia è notevolmente cresciuta. Alla luce di questa costatazione, l'idea di prevenzione include i bambini a rischio di maltrattamento, ma non solo. La ricerca ha dimostrato che l'esposizione a determinati fattori di rischio non accresce soltanto le probabilità di essere maltrattati, ma può avere conseguenze negative sul piano sociale e della salute, indipendentemente dal tipo di maltrattamento subito (Anda et al., 2010). Gli interventi precoci sono quindi indirizzati a una fascia molto più ampia di popolazione, mentre gli interventi specialistici sono destinati ai bambini considerati a rischio immediato di maltrattamento, o che sono già stati maltrattati.

Queste fasi sono state descritte in ordine temporale, ma sarebbe improprio dire che ogni nuovo modello sostituisce quello che l'ha preceduto. Quando subentra una nuova fase, le precedenti non devono essere necessariamente considerate superate. È infatti possibile integrare idee nuove in teorie preesistenti, proprio com'è avvenuto con i due concetti, fra loro complementari, di diritto e di prevenzione. Nei Paesi presi in considerazione dallo studio si riscontrano però discontinuità e differenze, soprattutto per quanto riguarda la fase 2, nella quale l'influenza e gli effetti dei modelli patologici anglo-americani sullo sviluppo dei sistemi di protezione dell'infanzia, focalizzati sull'individuazione del maltrattamento e sull'intervento all'interno della famiglia, sono meno pronunciati in Germania, Svezia e Finlandia che in Australia e nel Regno Unito. Il fenomeno degli abusi sessuali sui bambini è comunque servito come base di paragone fra i diversi Paesi.

Studio di caso: Finlandia. "Gli assistenti sociali non definiscono i problemi legati al benessere del bambino attraverso la lente dei maltrattamenti infantili. Se il maltrattamento infantile rientra in un contesto di violenza domestica generale o se i genitori abusano di sostanze o soffrono di disturbi psichici, si tende a parlare di 'conflitti familiari' o di 'problemi di dipendenza da alcol dei genitori' piuttosto che di maltrattamenti infantili. Ecco perché 'difficilmente il bambino viene considerato il motivo degli interventi volti a garantirne il benessere.' (Pösö, 1997, pag. 151). L'abuso sessuale, tuttavia, rappresenta l'eccezione alla regola ed è considerato separatamente dalle altre forme di maltrattamento e dai problemi di carattere sociale."

Tutti i Paesi presi in considerazione dallo studio, però, presentano caratteristiche chiave dello stato sociale, che prevede la tutela dei cittadini da parte dei governi nazionali (fase 3). Nonostante le differenze tra i modelli di welfare adottati, si registra un crescente consenso sulle fasi 4, 5 e 6, che

vedono nei modelli ecologici di causalità la base da cui partire per sviluppare strategie di intervento precoce e di prevenzione a favore dei bambini che necessitano di aiuto e protezione da una serie di avversità; per aiuto si intende un sacrosanto diritto dei bambini, non un atto di generosità da parte della società. Dopo aver descritto l'evoluzione storica dei sistemi di protezione dell'infanzia nei cinque Paesi presi in considerazione dallo studio e la teoria esplicativa nelle sue varie fasi, esamineremo ora le caratteristiche della governance e dei servizi erogati dagli odierni sistemi di protezione dell'infanzia.

3.5 Caratteristiche della governance degli odierni sistemi di protezione dell'infanzia: confronto e raccomandazioni

Nel loro recente lavoro intitolato *Child Protection Systems: International Trends and Orientations*, Gilbert et al. (2011) hanno analizzato gli odierni sistemi di protezione dell'infanzia in vari Paesi europei e del Nord America e hanno riscontrato la tendenza a un orientamento centrato sul bambino. Secondo gli autori, questo modello "non si preoccupa soltanto dei maltrattamenti e dei danni subiti dal bambino, ma ha come obiettivo il suo sviluppo e il suo benessere generale" (pag. 252). Nella fase 2 dello sviluppo dei sistemi di protezione dell'infanzia avevamo notato che in alcuni Paesi, segnatamente in Australia e nel Regno Unito, prevaleva l'opinione che bisognasse proteggere unicamente i bambini a rischio di maltrattamento, ma le cose sono cambiate: uno dei principi chiave dei moderni sistemi di protezione dei minori è che alla base delle leggi, delle politiche e delle pratiche ci deve essere un concetto molto più ampio di protezione.

Studio di caso: Finlandia. "La seconda Legge sulla protezione dell'infanzia (*Child Welfare Act 1983*) è entrata in vigore nel 1984. Come osserva Pösö, 'negli anni fra il 1970 e il 1994, la protezione dell'infanzia ha attraversato grandi cambiamenti, culminati nella Legge del 1983, che non ha soltanto riclassificato i casi in cui è necessario intervenire per il benessere del bambino, ma ha portato a un approccio molto più ampio alla questione del benessere dell'infanzia. Il bambino ha diritto a un ambiente sicuro e stimolante, nel quale crescere e svilupparsi in maniera armoniosa ed equilibrata. Al bambino va riconosciuto uno speciale diritto alla protezione' (Pösö, 1997, pag. 154). La seconda Legge sulla protezione dell'infanzia ha dato la priorità a misure preventive, ampliando la concezione di benessere del bambino invece di limitarsi alla sua protezione, come invece si era fatto in passato. Il dibattito sul benessere del bambino si è evoluto, ponendo l'accento non tanto sull'allontanamento dei minori dalla famiglia, quanto sulla prevenzione dei problemi e sul sostegno alle famiglie."

3.5.1 Cosa si intende per "protezione dell'infanzia"?

Proteggere l'infanzia significa tutelare i minori (il che nella maggior parte dei Paesi significa tutti i giovani fino a 18 anni) da una serie di eventi traumatici che si ritiene abbiano effetti devastanti sulle loro vite: maltrattamenti fisici ed emotivi, abusi sessuali e trascuratezza. A questi casi si potrebbero

aggiungere quelli dei bambini che vivono in condizioni di indigenza in quartieri estremamente poveri, e dei bambini la cui situazione familiare li espone a pericoli per la salute e a un alto rischio di disagio sociale. Pur avendo adottato definizioni diverse, i cinque Paesi concordano sulle categorie di bambini da proteggere. Che ruolo svolgono i governi nel varare leggi e implementare politiche che si basano su definizioni così ampie?

3.5.2 Ruolo dei governi centrali/federali/nazionali: leggi e politiche

Come abbiamo già avuto modo di dire, uno degli aspetti fondamentali degli odierni sistemi di protezione dell'infanzia è il fatto che Stato garantisca la tutela sociale ai cittadini più vulnerabili. Nella maggior parte dei Paesi, lo Stato considera il proprio ruolo in un'ottica duplice: da un lato, ritiene che le famiglie abbiano diritto a servizi di sostegno che, a seconda dei casi, possono essere di base, mirati o specialistici; dall'altro, è del parere che i servizi specialistici debbano contemplare anche interventi coercitivi (a volte chiamati obbligatori). Questo perché, in caso di pericolo immediato, il diritto del bambino a essere protetto deve avere la precedenza sul diritto alla privacy della famiglia. In Australia, Germania e nel Regno Unito, il governo federale e i governi regionali hanno una certa autonomia nell'emanare leggi e attuare politiche di protezione dell'infanzia, autonomia che invece non esiste nei Paesi con un numero esiguo di abitanti, come la Finlandia e la Svezia. Tuttavia, una Legge quadro nazionale per la protezione dell'infanzia e della gioventù è un elemento imprescindibile per creare una chiara gerarchia a livello di assunzione delle responsabilità e per fare in modo che gli sviluppi all'interno dei diversi Stati rispettino gli accordi nazionali, non fosse altro che per gli obblighi internazionali assunti in materia di diritti del fanciullo (v. Raccomandazione 1).

Come dimostrano gli studi di caso (v. allegati), non è facile mettere a confronto le varie normative, perché i sistemi di governo e legislativi di ciascun Paese sono il risultato di percorsi storici e retaggi culturali differenti. La più importante richiesta nei confronti del legislatore è che fissi delle soglie per l'intervento obbligatorio dello Stato nella vita delle famiglie, definendo chiaramente i confini tra i diritti della famiglia e quelli del bambino, descrivendo a grandi linee le responsabilità dello Stato (che di solito assumono la forma di prestazioni di servizi) nei confronti della famiglia e spiegando come fare per tenervi fede. È difficile dire se esista un livello ideale, raggiunto il quale si crea il perfetto equilibrio fra questi elementi. Per quanto riguarda le soglie, la legge offre orientamenti ai tribunali e ai professionisti del settore, ma spetta poi a questi ultimi interpretare le disposizioni legali per stabilire quali casi portare in tribunale, e ai tribunali emettere le sentenze che fanno giurisprudenza e servono a interpretare la legge. Dal punto di vista dell'imparzialità e della giustizia naturale, il presupposto fondamentale è che sia garantita la coerenza e che si eviti una frammentazione. In altre parole, tutti i bambini che vivono in uno stesso Stato dovrebbero poter usufruire dello stesso livello di servizi e di decisioni riguardanti il loro benessere. L'unico modo per raggiungere questo obiettivo è creare un sistema, o quantomeno adottare un approccio nazionale, per la protezione dell'infanzia, basato su principi concordati e standard minimi, e in grado di garantire la conformità delle leggi locali con quelle nazionali e una prestazione di servizi analoga in tutto il Paese.

Sappiamo che la Commissione federale per l'infanzia e la gioventù (CFIG) e la Conferenza dei delegati cantonali alla gioventù (CDCG) hanno messo in risalto l'assenza di coordinamento e collaborazione fra la Confederazione e i Cantoni nella prestazione di servizi, dovuta alla mancanza di una strategia comune e di una struttura di governance. Gärtner e Vollmer osservano che "stando a uno studio del 2003, […] soltanto la metà circa dei Cantoni ritiene che nella protezione dell'infanzia e della gioventù rientrino sia la tutela che il sostegno dei giovani. Alcuni Cantoni hanno varato politiche distinte e separate per la protezione e il sostegno dell'infanzia e della gioventù e tendono a concentrarsi soltanto su uno di questi due aspetti" (2008, pag. 4). Queste differenze rispecchiano un fenomeno più diffuso, osservato nei nostri studi di caso: la tendenza delle politiche di protezione dell'infanzia a occuparsi o dei casi più gravi, che richiedono l'intervento obbligatorio e specialistico dello Stato per garantire protezione immediata al bambino (orientamento sul bambino), oppure a prestare servizi di base e mirati (orientamento sulla famiglia). Secondo noi, la presenza di orientamenti contrapposti è in realtà controproducente. La maggior parte dei bambini e delle famiglie beneficerà dei servizi di base e specialistici, destinati a migliorare il benessere del bambino e a proteggerlo dalle ripercussioni di avvenimenti dolorosi. È tuttavia necessario mettere in campo anche un servizio specialistico solido ed efficace di protezione dell'infanzia per riuscire a dare una protezione immediata ai bambini più vulnerabili. Uno dei principali compiti del Consiglio federale è l'adozione di un insieme equilibrato di leggi e strategie che, pur soggette a modifiche a livello locale, stabiliscano principi e standard solidi e condivisi, e prevedano una chiara gerarchia a livello di governance e di autorità. È da qui che traggono spunto le nostre raccomandazioni.

Studio di caso: Australia. "Il Programma quadro 2009-2020 per la protezione dei bambini australiani (*The National Framework for Protecting Australia's Children 2009-2020*, Consiglio dei Governi Australiani, 2009a) è frutto delle campagne di sensibilizzazione delle ONG e degli esponenti del mondo accademico. Tuttavia, per la sua attuazione, il modello di governance apre un nuovo capitolo nei rapporti fra enti governativi e non governativi in Australia.

Il *National Framework*, che copre un arco temporale di dodici anni, detta l'agenda condivisa per il cambiamento, con l'obiettivo di migliorare la sicurezza e il benessere dei bambini australiani. Esso sottostà a una leadership nazionale e si rifà a obiettivi fissati di comune accordo. Il programma quadro australiano è il risultato dell'opera di sensibilizzazione condotta dagli enti non governativi e senza scopo di lucro, in collaborazione con i principali esponenti del mondo accademico impegnati a favore del benessere dell'infanzia, che da anni sostenevano che i maltrattamenti e la trascuratezza infantili fossero un problema nazionale grave e frequente, che tale problema fosse di competenza del governo e richiedesse una leadership nazionale e una risposta coordinata per fissare degli standard nazionali minimi e per risolvere problemi apparentemente insormontabili. […] A capo del programma c'è il *National Framework Implementation Working Group*, composto da un rappresentante del Governo del Commonwealth, dai rappresentanti dei governi di ciascuno degli otto Stati e Territori australiani e da otto rappresentanti della Coalizione delle organizzazioni a favore della sicurezza e del benessere dei bambini australiani (*Coalition of Organisations Committed to the Safety and Wellbeing of Australia's Children*)."

Uno dei punti chiave dei moderni sistemi di protezione dell'infanzia è la necessità di una chiara gerarchia a livello di governance e di assunzione delle responsabilità. Come dimostrano le indagini sui casi più terribili di morte di bambini, la mancanza di questa gerarchia a livello interprofessionale replica quella esistente a livello governativo. Lo studio di caso relativo alla Germania illustra il rapporto fra governo federale e Länder. Il governo federale ha il dovere di garantire condizioni di vita equiparabili in tutte le regioni della Germania, il che spiega la necessità di leggi nazionali sulla protezione dell'infanzia. I Länder, dal canto loro, possono integrare la legge federale con leggi supplementari in difesa dei bambini. La Costituzione federale svizzera sancisce i seguenti principi: la Confederazione si assume unicamente i compiti "che superano la capacità dei Cantoni o che esigono un disciplinamento uniforme da parte sua" (art. 43*a* cpv. 1); per quanto concerne l'assegnazione e l'esecuzione dei compiti statali, "le prestazioni di base devono essere accessibili a ognuno in maniera comparabile" (art. 43*a* cpv. 4); "La Confederazione salvaguarda l'autonomia dei Cantoni" (art. 47 cpv. 1) e "lascia ai Cantoni sufficienti compiti propri e rispetta la loro autonomia organizzativa" (art. 47 cpv. 2). Tali principi non sono incompatibili con la pratica della buona governance per le questioni che riguardano la protezione dell'infanzia, ma occorre unire le forze per giungere a un accordo e far sì che, al momento della messa in atto, tale accordo sia rispettato.

3.5.3 Raccomandazione 1: Commissione nazionale permanente

Raccomandiamo l'istituzione di una Commissione nazionale permanente, che rappresenti tutti i Governi cantonali e si occupi di prendere in esame le leggi e le politiche federali e cantonali, per elaborare una Legge quadro per la protezione dell'infanzia e della gioventù (sulla falsa riga del *National Framework for Protecting Australia's Children*, che prevede disposizioni statali e federali analoghe). Ciò consentirebbe di formulare principi universalmente concordati, su cui fondare le leggi e i servizi cantonali. Per fornire un punto di partenza al lavoro della Commissione permanente, i governi dei Cantoni dovrebbero passare in rassegna tutti i servizi da loro attualmente prestati, da quelli di base a quelli mirati (v. Raccomandazione 9), allo scopo di pianificare e garantire una continuità dei servizi stessi.

3.5.4 Ruolo e responsabilità dei governi locali, delle organizzazioni non governative e delle istituzioni private

Come risulta dagli studi di caso, non esiste un modo "giusto" per gestire il rapporto fra governi locali, organizzazioni non governative e istituzioni private. In tutti i Paesi presi in considerazione dallo studio, però, la protezione dei bambini a rischio di maltrattamento è una responsabilità primaria dello Stato e questo a prescindere dal loro sistema politico e legale. La cosa non deve sorprendere, visto che generalmente la tutela dei cittadini rientra tra i compiti dello stato sociale. Ad eccezione della Germania, nei casi di maltrattamento infantile è lo Stato ad intervenire, attraverso i servizi specialistici di protezione dell'infanzia. Abbiamo riscontrato che con il passare del tempo, nella maggioranza dei Paesi la situazione è mutata rispetto alle fasi iniziali dello sviluppo dei sistemi di protezione dell'infanzia, quando erano le organizzazioni non governative e private a farsi carico di quasi tutte le

prestazioni a favore dei bambini e delle famiglie. A livello di interventi, ci sono diversi modelli che potrebbero essere adottati dalla Svizzera (torneremo più avanti su questo punto), mentre in termini di governance occorre stabilire una chiara gerarchia a livello di autorità e di assunzione delle responsabilità.

Conformemente ai principi che presumibilmente saranno sanciti dalla Legge quadro per una politica svizzera dell'infanzia e della gioventù e in linea con quanto stabilito nell'art. 5*a* della Costituzione federale secondo il quale "nell'assegnazione e nell'adempimento dei compiti statali va osservato il principio della sussidiarietà", i governi cantonali dovrebbero essere i principali responsabili dei servizi di protezione per i bambini a rischio di maltrattamenti delegando, se opportuno, la prestazione di servizi a organizzazioni non governative e private. Questi concetti potrebbero essere concretizzati dai Comitati per il benessere dell'infanzia di ciascun Cantone, in rappresentanza di tutte le succitate organizzazioni. I governi cantonali continuerebbero così a essere legalmente responsabili delle prestazioni di servizi a protezione dell'infanzia, mentre i servizi esternalizzati verrebbero forniti da organizzazioni non governative e private. Con ciò non si intende venir meno all'idea di partenariato, ma si vuole piuttosto assegnare funzioni e ruoli precisi all'interno di gerarchie di autorità e responsabilità. Un esempio di come attuare quanto qui descritto è dato dai *Safeguarding Board* del Regno Unito, che riuniscono organizzazioni statali, non governative e private allo scopo di individuare le prestazioni necessarie a livello territoriale e concordare una strategia che consenta di soddisfare i bisogni della popolazione locale.

Studio di caso: Regno Unito. "Le leggi e le politiche dovrebbero garantire che i fornitori di servizi e i professionisti del settore collaborino a tutti i livelli. In base al nostro studio, nel Regno Unito i livelli sono tre. Innanzi tutto, è necessario che ogni organizzazione (statale, di volontariato e privata) impegnata nella prestazione di servizi per l'infanzia collabori con le altre e che insieme coordinino i servizi. I *Safeguarding Board* presenti sul territorio offrono la loro assistenza per tracciare una mappa delle necessità locali e sfruttare tutte le possibilità di fornire servizi efficienti ed efficaci."

3.5.5 Raccomandazione 2: Comitati per il benessere dell'infanzia

Raccomandiamo l'istituzione in tutti i cantoni di un Comitato per il benessere dell'infanzia, del quale dovrebbero far parte tutte le organizzazioni, le ONG e le istituzioni private presenti sul territorio cantonale. Oltre a occuparsi dell'attuazione di politiche per la realizzazione degli obiettivi dell'auspicata Legge quadro per una politica svizzera dell'infanzia e della gioventù, questi Comitati avrebbero anche il compito di elaborare protocolli per la comunicazione fra i vari enti e verificare le prestazioni di base, mirate e specialistiche all'interno dei Cantoni, per individuare e colmare le lacune riscontrate nell'erogazione dei servizi. Secondo noi ci sarà bisogno anche di servizi altamente specializzati, che richiederanno l'appoggio di tutti i Cantoni e l'esternalizzazione di alcune prestazioni, per esempio l'erogazione di servizi terapeutici ad hoc per i bambini che hanno subito abusi sessuali. In questi casi, saranno necessarie speciali misure per creare una chiara gerarchia a livello di governance

e di assunzione delle responsabilità, che induca i Comitati per il benessere dell'infanzia e i governi cantonali a stipulare accordi di collaborazione.

3.6 Caratteristiche correlate degli odierni sistemi di protezione dell'infanzia: confronto e raccomandazioni

Come risulta dai nostri studi di caso e dalla letteratura, uno degli elementi chiave degli odierni sistemi di protezione dell'infanzia è la necessità di avere una chiara gerarchia verticale di governance e di assunzione delle responsabilità, nonché di attribuire uguale importanza anche alla gerarchia orizzontale, ossia all'insieme dei rapporti che servono a garantire la pianificazione, la prestazione e la valutazione dei servizi. Va detto, però, che non basta sottoscrivere accordi formali fra i partner che operano a tutti i livelli della protezione dell'infanzia. Gli accordi scritti sono strumenti formidabili, ma possono rivelarsi inefficaci se non addirittura controproducenti, se mancano i contatti tra i partner, basati su obiettivi comuni e sul rispetto reciproco. L'analisi delle indagini sui decessi di bambini nei Paesi presi in considerazione dallo studio dimostra che i cattivi rapporti interdisciplinari rischiano di compromettere persino i sistemi di protezione dell'infanzia più avanzati e di produrre risultati disastrosi.

Studio di caso: Germania. "...i bambini maltrattati non possono essere né individuati né protetti dalle sole autorità preposte al benessere dell'infanzia e della gioventù. È quindi necessario stabilire rapporti di collaborazione con altri professionisti del settore (per es. i pediatri) e con le famiglie. L'esame di alcuni casi gravi verificatisi in Germania e altrove ha evidenziato che la mancanza di rapporti collaborativi può avere ripercussioni negative sui bambini a rischio (Fegert et al., 2010). Alcuni progetti concreti hanno inoltre dimostrato che i professionisti che lavorano in rete si sentono utili per il lavoro che svolgono con le famiglie (per es. Kindler 2011)."

3.6.1 Rapporti fra governo federale e governi cantonali

Abbiamo già sottolineato la necessità di un rapporto formale tra la Confederazione e i governi cantonali per l'istituzione di una Commissione permanente per la protezione dell'infanzia, incaricata di formulare una Legge quadro per una politica svizzera dell'infanzia e della gioventù. Purtroppo, però, sono ancora troppi gli accordi e i rapporti che giacciono dimenticati sugli scaffali. Secondo noi, gli imperativi scientifici, economici, giuridici e morali citati nei precedenti capitoli potrebbero esercitare un'enorme pressione a favore dello studio e dell'attuazione di un nuovo sistema di protezione dell'infanzia. Sappiamo che quando si redigono rapporti come il nostro, sarebbe auspicabile non ricorrere ad argomentazioni emotive; ciononostante, vorremmo avanzarne una. I bambini rappresentano la futura ricchezza delle nazioni e a noi spetta l'enorme responsabilità di proteggere i più deboli e i più vulnerabili tra loro. Questa responsabilità deve diventare una priorità e, perché ciò

avvenga, si dovranno eliminare gli ostacoli che si frappongono alla realizzazione di un'efficace collaborazione a tutti i livelli. Solo così si potrà garantire a quei bambini la necessaria protezione.

3.6.2 Rapporti fra governo federale e governi cantonali, e fra organizzazioni di volontariato e istituzioni private

Siamo consapevoli delle responsabilità insite nella realizzazione, da parte della Confederazione, di un programma nazionale di protezione dell'infanzia, il cui lavoro preparatorio è stato affidato all'associazione PPP-Programme national pour la protection de l'enfant**,** un partenariato pubblico-privato. Trattandosi di un'iniziativa unica nel suo genere, messa in campo soltanto in Svizzera, è difficile fare un confronto con i Paesi presi in considerazione dal nostro studio. La principale differenza sta nel fatto che in questi cinque Paesi i rapporti fra Stato, organizzazioni di volontariato e istituzioni private sono disciplinati da leggi e politiche generali, emanate da un governo eletto. Anche se cercano di influenzare i contenuti delle leggi e delle politiche attraverso l'intervento dei loro rappresentanti eletti, queste organizzazioni, una volta istituite, sono tenute a operare nel rispetto di tali leggi. La situazione svizzera, che vede i membri dell'associazione PPP-Programme national pour la protection de l'enfant incaricati di elaborare un programma nazionale per la protezione dell'infanzia, ma nel contempo potenziali fornitori dei servizi previsti da tale programma, potrebbe creare un conflitto di interessi.

Essendo un gruppo di ricerca internazionale, non abbiamo alcun interesse legittimo all'interno del sistema svizzero. Di conseguenza, le raccomandazioni nei confronti della Svizzera sono state formulate sulla base della nostra esperienza e della conoscenza dei sistemi di protezione dell'infanzia negli altri Paesi. Come già osservato, non esiste un sistema ideale che possa essere adottato universalmente, ma le nostre raccomandazioni potrebbero essere il punto di partenza per lo sviluppo di rapporti fra governo federale, governi cantonali, organizzazioni di volontariato e istituzioni private. Nei Paesi presi in considerazione dallo studio, i rapporti fra autorità, organizzazioni di volontariato e istituzioni private a livello nazionale, statale o locale sono disciplinati da accordi contrattuali che stabiliscono le retribuzioni in base alla quantità, alla qualità e al risultato dei servizi richiesti.

In quasi tutti i Paesi, è lo Stato a erogare la maggior parte dei servizi specialistici per la protezione dell'infanzia, mentre le organizzazioni di volontariato e le istituzioni private forniscono servizi terapeutici e di sostegno ai vari livelli (di base, mirati e specialistici). Soltanto in Germania la maggioranza dei servizi viene esternalizzata a ONG e a istituzioni private. Entrambi i modelli sono efficaci, a condizione che siano pianificati e realizzati sulla base di una chiara gerarchia a livello di governance e di assunzione delle responsabilità. Si potrebbe comunque fare un'eccezione, incaricando gli assistenti sociali impiegati dallo Stato che operano a livello specialistico di fare una valutazione delle famiglie nelle quali sono stati rilevati episodi di maltrattamento e/o per le quali si richiedono servizi urgenti, fra cui l'accudimento extrafamiliare. Dai nostri studi di caso e da esempi riscontrati in altre parti del mondo, è evidente che gli assistenti sociali sono diventati le principali figure professionali di riferimento per il lavoro specialistico svolto con le famiglie e i bambini, laddove occorre intervenire tempestivamente per proteggere i bambini più vulnerabili. Quindi, sebbene non sia ineluttabile che le principali figure di riferimento in questo ambito siano gli assistenti sociali, ormai

questa è diventata la norma. Il punto è che ci vorrebbe una figura professionale chiaramente incaricata di coordinare il lavoro, non fosse altro che per stabilire una chiara gerarchia a livello di assunzione delle responsabilità e per ottenere la fiducia dell'opinione pubblica. Nelle circostanze più gravi, gli assistenti sociali rappresentano i poteri formali dello Stato ed è quindi giusto che rispondano all'autorità pubblica. Non è certo nostra intenzione dettare prescrizioni su come mettere in pratica questi suggerimenti a livello cantonale, tuttavia riteniamo che qualsiasi soluzione che preveda l'intervento di operatori di istituzioni esterne, incaricati di indagare sui casi di maltrattamento infantile, debba contemplare una chiara gerarchia a livello di responsabilità di governance.

3.6.3 Raccomandazione 3: team di assistenti sociali

È consigliabile avere un team di assistenti sociali qualificati in ogni cantone, incaricato di erogare servizi specialistici nel campo della protezione dell'infanzia, ai sensi di quanto previsto dagli artt. 307-317 del Codice civile svizzero. Il loro principale compito dovrebbe essere quello di eseguire una valutazione delle famiglie nelle quali si manifestano segnali di maltrattamento e/o che hanno bisogno di interventi terapeutici o preventivi, nonché di organizzare incontri multidisciplinari con i professionisti del settore, per mettere a punto piani di intervento e di servizio (v. Raccomandazione 4).

3.6.4 Rapporti tra i professionisti del settore

I rapporti dei vari Paesi mettono in risalto quanto sia importante che tra i professionisti del settore vi siano buoni rapporti di lavoro, in modo da poter pianificare ed erogare dei servizi, e valutarne l'efficacia. Un elemento chiave emerso dalle inchieste sui decessi di bambini, di cui sono a conoscenza coloro che si occupano di protezione dell'infanzia, è che i diversi attori spesso dispongono di frammenti di informazioni che possono sembrare irrilevanti se presi singolarmente ma che, se considerati insieme alle informazioni raccolte da altri professionisti, possono fornire una visione olistica dei rischi a cui è esposto un bambino e della conseguente necessità di proteggerlo. Tuttavia, alcuni professionisti preferiscono non condividere le informazioni in loro possesso con colleghi che non conoscono.

Per instaurare dei buoni rapporti interprofessionali occorrono due cose: da un lato strutture formali entro le quali i diversi attori possono incontrarsi per scambiare informazioni su casi specifici e decidere insieme su come procedere, e dall'altro una competenza professionale da parte di tutti, per alimentare il rispetto e la fiducia reciproci. Organizzare incontri multidisciplinari per pianificare i casi consentirebbe ai professionisti del settore di instaurare rapporti di lavoro efficaci e spontanei, nell'interesse dei bambini e delle loro famiglie.

Studio di caso: Regno Unito. “Le inchieste condotte dal governo sui decessi di bambini hanno puntualmente evidenziato l’enorme importanza dello scambio di informazioni fra i professionisti del settore che conoscono i singoli bambini, per avere un ‘quadro reale’ della situazione contingente. Gli incontri dei gruppi multidisciplinari per la pianificazione dei casi (*case conference*) consentono questo scambio di informazioni e permettono di prendere decisioni, sulla base delle migliori informazioni disponibili. È auspicabile che anche i genitori partecipino a questi incontri, che ascoltino le preoccupazioni espresse dalle diverse figure professionali e reagiscano di conseguenza. Spetta alla *case conference* decidere se il bambino in questione è esposto al rischio continuo di subire gravi danni e quindi elaborare un piano di protezione che garantisca un futuro sicuro alla piccola vittima e che riduca i rischi a cui è esposta. Di solito, ciò presuppone una serie di interventi a favore del bambino e della famiglia. Una volta inserito in un piano di protezione per l’infanzia, il caso viene riesaminato a intervalli regolari, fino a quando si ritiene che il bambino non corra più rischi.”

3.6.5 Raccomandazione 4: incontri per la pianificazione dei casi

Sarebbe auspicabile organizzare in tutti i cantoni incontri multidisciplinari per pianificare i casi. Prendendo spunto dai punti forti di iniziative analoghe condotte nel Regno Unito, questi incontri dovrebbero riunire tutte le figure professionali che operano a fianco delle famiglie in cui si ritiene esistano problemi legati alla protezione del bambino. In linea con le migliori pratiche internazionali, tali problemi dovrebbero essere considerati in senso lato e includere sia situazioni che comportano un rischio immediato per il bambino, sia traversie che potrebbero preludere a un futuro difficile. In entrambi i casi, si dovrebbe approntare un piano di servizi multidisciplinari, la cui efficacia per la protezione e il miglioramento del benessere del bambino potrà essere valutata nel corso di successivi incontri. È importante che il principio di condivisione delle informazioni nell’interesse del bambino non sia ostacolato da considerazioni riguardanti l’obbligo di riservatezza nei confronti del cliente.

3.6.6 Obbligo di segnalazione

Una delle questioni al centro del dibattito internazionale è se i sistemi di protezione per l’infanzia debbano contemplare o meno l’obbligo di segnalazione (vale a dire, norme che impongono ai professionisti di segnalare agli assistenti sociali i casi di sospetto maltrattamento dei minori). Nei Paesi presi in considerazione dallo studio, esistono diverse disposizioni in merito, ma ci preme precisare che non c’è un sistema che prevale sugli altri. Nel Regno Unito non è prevista alcuna segnalazione obbligatoria. In Australia, ogni Stato ha le sue norme. Poiché la macchina degli interventi a tutela del bambino si mette in moto dopo una denuncia di presunti maltrattamenti, gli Stati che prevedono un obbligo di vasta portata si trovano sommersi di casi segnalati da professionisti di altri settori. Questo perché nessuno vuole correre rischi: i professionisti non vogliono tenere per sé informazioni utili per segnalare casi di potenziale maltrattamento, perché potrebbero andare incontro a seri problemi se in seguito si riscontrassero effettivamente episodi di maltrattamento e si scoprisse che non hanno trasmesso informazioni cruciali. In Svezia e in Finlandia, la segnalazione è invece obbligatoria. In

entrambi i Paesi, però, alcuni professionisti sono alquanto restii a rivolgersi agli assistenti sociali, vuoi per non violare il segreto professionale, vuoi per un certo scetticismo riguardo alla validità dell'operato degli assistenti sociali impegnati nella cura dell'infanzia. La Finlandia, tuttavia, incoraggia la segnalazione, a patto che ci sia il consenso della persona coinvolta e che il servizio continui a essere garantito dal professionista che ha segnalato il caso. Una soluzione potrebbe essere l'applicazione di leggi simili a quelle in vigore in Germania, che danno ai professionisti la facoltà di decidere se segnalare o meno i casi agli assistenti sociali, senza obbligarli a farlo.

Forse, a monte del problema ci sono altre questioni che, se affrontate, eliminerebbero l'obbligo della segnalazione. I professionisti del settore dovrebbero infatti imparare a cogliere i segnali e i sintomi di maltrattamento sui bambini e capire che il diritto alla privacy della famiglia passa in secondo piano rispetto al diritto del bambino a essere protetto. Essi fanno anche parte di una rete che, oltre a essere un punto di riferimento per chi ha il compito di identificare e segnalare i casi legati alla protezione dell'infanzia, è la base da cui partire per sviluppare rapporti interprofessionali costruttivi, garantire la protezione dei minori attraverso la collaborazione e limitare la necessità di leggi sulla segnalazione obbligatoria.

3.6.7 Raccomandazione 5: formazione professionale nel campo della protezione dell'infanzia

In Svizzera è possibile costruire un efficace sistema interprofessionale per la protezione dell'infanzia. Anche se per realizzare questo obiettivo a volte servono disposizioni cogenti, noi preferiamo proporre la creazione di un sistema di formazione professionale a livello universitario, che preveda sia corsi di formazione monodisciplinari sulla protezione dell'infanzia nel programma di studi per la laurea di primo livello (BA) sia corsi multidisciplinari post laurea, con frequenza obbligatoria per tutte le figure professionali che lavorano con i bambini e le famiglie. Ciò consentirebbe ai professionisti del settore di acquisire una conoscenza di base delle questioni che riguardano la protezione dell'infanzia e di rendersi conto che proteggere efficacemente l'infanzia è una responsabilità collettiva. Spetta però alle università predisporre il materiale didattico per i corsi di laurea di primo livello e post laurea.

3.6.8 La professione di assistente sociale

Per riuscire a creare una rete di servizi di assistenza sociale su tutto il territorio nazionale (come indicato nella Raccomandazione 3) e far sì che gli assistenti sociali godano della credibilità necessaria a conquistare la fiducia delle altre figure professionali, fondamentale per promuovere la collaborazione multidisciplinare a cui si è accennato nella Raccomandazione 4, occorre considerare con maggiore attenzione la professione dell'assistente sociale. Il tema della formazione e dello statuto degli assistenti sociali è molto sentito a livello internazionale. È evidente che il lavoro sociale è una professione che richiede, forse più di altre, un elevato quoziente intellettivo (QI) ed emotivo (QE)[103], in

[103] V. Golenman, 1995.

modo da poter fare valutazioni complesse e decidere su alcune delle questioni sociali più controverse, fra cui l'intervento dello Stato per togliere un figlio ai genitori.

Occorre garantire che i corsi universitari di lavoro sociale siano frequentati dagli studenti più dotati e che sia data loro la miglior formazione possibile in base agli standard internazionali. Inoltre, è necessario stabilire una struttura chiara della carriera di assistente sociale, non soltanto attraverso percorsi di management, ma anche mediante il riconoscimento dello sviluppo di specifiche competenze professionali (come avviene per i medici) e retribuzioni adeguate. Ciò dovrebbe contribuire a rendere appetibili i corsi di lavoro sociale ai migliori candidati. In alcuni Paesi, per lavorare gli assistenti sociali devono essere iscritti all'albo professionale, dal quale possono essere radiati se una commissione di pari li giudica "inadatti a esercitare la professione". Anche se, a questo punto, ciò non rientra tra le nostre raccomandazioni, il naturale sviluppo di una professione generalmente richiede la presenza di un organismo di controllo, la cui istituzione dovrà forse essere presa in considerazione anche in Svizzera. Laddove non esistono tali organismi, si è riscontrato che il processo decisionale su questioni che coinvolgono i bambini è frammentato e disarmonico, che gli assistenti sociali non godono del rispetto delle altre figure professionali, che in caso di scarsa professionalità i cittadini non sono tutelati e che gli assistenti sociali non svolgono la loro professione a lungo, il che causa un'instabilità della forza lavoro. La raccomandazione che segue riguarda quindi lo sviluppo di quelle capacità che consentono all'assistente sociale di occuparsi di infanzia a livello specialistico e di creare solidi rapporti con le altre figure professionali, rispettivamente con i bambini e con le famiglie.

3.6.9 Raccomandazione 6: promuovere il lavoro sociale

Le università dovrebbero fissare criteri di selezione severi per gli studenti di lavoro sociale, che prevedano una determinata media per essere ammessi, nonché colloqui d'ammissione che consentano di scegliere i candidati migliori. Nella Legge quadro per una politica svizzera dell'infanzia e della gioventù (v. Raccomandazione 2) dovrebbe rientrare anche una strategia per promuovere il lavoro sociale come un'attività professionale impegnativa, stimolante e gratificante. I governi cantonali dovrebbero garantire un'adeguata retribuzione agli assistenti sociali e offrire loro delle carriere in linea con gli aspetti complessi e socialmente rilevanti della loro professione.

3.6.10 Rapporti fra professionisti e famiglie

Come risulta dal nostro studio, il rapporto fra professionisti e famiglie si è modificato col passare del tempo e varia da un Paese all'altro. I cambiamenti nel rapporto fra Stato e famiglia trovano espressione nelle leggi e nella cultura. Per esempio, anche se i sistemi di welfare di tutti i Paesi presi in esame si rifanno a tradizioni analoghe, in Svezia, in Finlandia e in Germania prevale il modello di servizi centrati sulla famiglia. Nel Regno Unito e in Australia, convivono invece modelli orientati alla protezione dell'infanzia e modelli centrati sui servizi alla famiglia, ma il principio di protezione dell'infanzia è talmente radicato nell'opinione pubblica da ostacolare qualsiasi spostamento verso l'altro modello. In base al modello centrato sulla famiglia, i problemi vissuti all'interno del nucleo

familiare sono il risultato delle difficoltà psicologiche e sociali prodotte dalla mancanza di aiuto e sostegno. Di conseguenza, vengono adottate politiche volte a promuovere i servizi a favore delle famiglie e si compiono grandi sforzi per tenere uniti i nuclei familiari. Viceversa, il modello orientato al bambino, che pone maggiormente l'accento sulle colpe dei genitori o sulla loro inadeguatezza ad allevare i figli, in caso di sospetto maltrattamento, ha meno probabilità di poter contare su un servizio preventivo e più probabilità di dare avvio a indagini.

Non deve quindi sorprendere che l'intervento dello Stato, che dipende dal modello adottato, generi diversi tipi di rapporti. Le famiglie australiane e britanniche, per esempio, sono spesso a disagio nel rapporto con gli assistenti sociali, mentre le famiglie degli altri Paesi meno. Negli Stati in cui prevale il modello centrato sulla famiglia, ci sono famiglie che hanno un atteggiamento ambivalente nei confronti degli assistenti sociali. In Finlandia, dove l'orientamento alla famiglia è forse più pronunciato che negli altri Paesi, esistono ancora "contraddizioni e tensioni fra controllo e sostegno". Quanto osservato in Australia e nel Regno Unito, d'altro canto, sembra suggerire che, anche in caso di indagini su episodi di maltrattamento, trattare le famiglie con sincerità e rispetto serve a creare rapporti che saranno decisivi per la futura protezione del bambino. Dalla ricerca giunge però un monito: talvolta gli assistenti sociali confondono il rapporto collaborativo con le famiglie con un rapporto che potrà servire per la protezione del bambino e applicano la cosiddetta *rule of optimism*, facendosi cioè un'idea troppo positiva della situazione, non sempre confortata dalla realtà. Nei Paesi in cui prevale il modello centrato sulla famiglia, la sfida per gli assistenti sociali sta nell'evitare un incauto ottimismo nei confronti delle famiglie sospettate di maltrattare i figli e nel capire che i diritti della famiglia non devono prevalere su quelli del bambino. Certo è che il lavoro con le famiglie e la negoziazione del confine fra cura e controllo richiedono grandi capacità, una solida formazione professionale e decisioni maturate attraverso la comunicazione multidisciplinare. Inoltre, quando si tratta di prendere delle decisioni, è fondamentale che gli assistenti sociali possano contare sul sostegno dei colleghi più anziani.

Alle famiglie va data la possibilità di esprimersi sul parere dei professionisti in merito ai rischi e ai bisogni. Indubbiamente i bambini hanno diritto a essere protetti, ma anche le famiglie hanno diritto a essere sostenute, quando le circostanze indicano la necessità di maggiore aiuto da parte dello Stato per consentire loro di far fronte ai bisogni dei figli. Occorre dar voce a questi diritti e creare meccanismi che consentano alle famiglie di far sentire le loro ragioni.

3.6.11 Rapporto fra professionisti e bambini

Come risulta dai rapporti sui cinque Paesi, un tema sempre più ricorrente nell'attuale dibattito sulla protezione dell'infanzia è l'opportunità di fare una netta distinzione, laddove necessario, fra diritti dei bambini e diritti dei genitori. Servono misure volte a garantire che, in sede di valutazione o di decisioni importanti, i bambini siano ascoltati separatamente dai genitori, soprattutto qualora sia presa in considerazione l'eventualità di custodia extrafamiliare o si ponga la questione della sistemazione del minore in caso di affidamento allo Stato. Questo approccio mette in dubbio sia l'opinione comune sulla competenza dei professionisti, sia l'idea che i genitori sappiano sempre cosa è meglio per i propri figli. Nel rapporto con i bambini, la difesa dei loro diritti richiede non soltanto l'attivazione di protocolli per la

valutazione e, talvolta, la presa di decisioni, ma anche un cambiamento culturale, per evitare di limitarsi a operazioni di pura facciata.

Studio di caso: Germania. "La partecipazione ha solide basi giuridiche nel sistema tedesco di protezione dell'infanzia e dell'adolescenza, che prevede procedure per la valutazione dei rischi per il bambino. L'importanza attribuita alla partecipazione si basa sull'idea che si possono evitare pericoli all'interno della famiglia soltanto se i genitori accettano di essere aiutati e sono incoraggiati a collaborare. Anche in caso di custodia complementare alla famiglia, il bambino accetta più facilmente la situazione se non si sente trascurato o se i suoi genitori non si oppongono con forza a questa soluzione (Strijker et al., 2009). Studi correlazionali (ma nessuno con un modello per la protezione dell'infanzia) dimostrano che la partecipazione prelude a un esito più positivo dei casi."

3.6.12 Raccomandazione 7: partecipazione della famiglia

La nostra raccomandazione è che la Svizzera prenda esempio dalle migliori pratiche internazionali e consenta alle famiglie di partecipare al processo decisionale nel corso degli incontri multidisciplinari per la pianificazione dei casi (v. Raccomandazione 4). Sarebbe opportuno coinvolgere sistematicamente genitori e figli (che possono avere punti di vista diversi da quelli dei genitori) nei processi di valutazione e decisione. Questo principio dovrebbe essere previsto in tutti gli strumenti di orientamento e valutazione, destinati ad assistenti sociali e altri professionisti (v. Raccomandazioni 9 e 10). Qualora si contempli l'eventualità di custodia del minore, speciali diritti di rappresentanza e procedure di appello dovrebbero diventare criteri standard della citata Legge quadro per una politica svizzera dell'infanzia e della gioventù.

3.7 Caratteristiche dei servizi erogati dagli odierni sistemi di protezione dell'infanzia: confronto e raccomandazioni

Leggi e politiche sono la base su cui edificare le complesse interrelazioni che caratterizzano gli odierni sistemi di protezione dell'infanzia, ma per completare questi sistemi occorre sviluppare l'erogazione dei servizi. Le possibilità spaziano dalla formulazione di pratiche per garantire una continuità dei servizi che tenga conto dei diversi bisogni delle famiglie, a strumenti di lavoro che, come richiesto dagli assistenti sociali, includano metodi di valutazione e intervento, la cui efficacia potrà essere valutata in base agli effetti delle misure adottate sui bambini.

3.7.1 Continuità nell'erogazione dei servizi

Conformemente al duplice obiettivo degli odierni sistemi di protezione dell'infanzia, che si propongono di soddisfare i bisogni sia di un ristretto gruppo di bambini maltrattati, sia di un vasto gruppo di bambini

che rischiano di avere un futuro difficile a causa delle avversità a cui sono esposti, è necessario elaborare un sistema che rifletta i vari livelli di erogazione dei servizi volti a soddisfare bisogni diversi. Per spiegare meglio questi sistemi ricorreremo a un'illustrazione. L'Ill. 24 riporta due dei "triangoli" relativi alla continuità nell'erogazione dei servizi, tratti dai rapporti sull'Australia e sul Regno Unito, che mettono in risalto sia la necessità crescente di interventi da parte dello Stato nei casi in cui le famiglie non riescono a usufruire dei servizi, sia il tipo di intervento prestato (di base, mirato e specialistico).

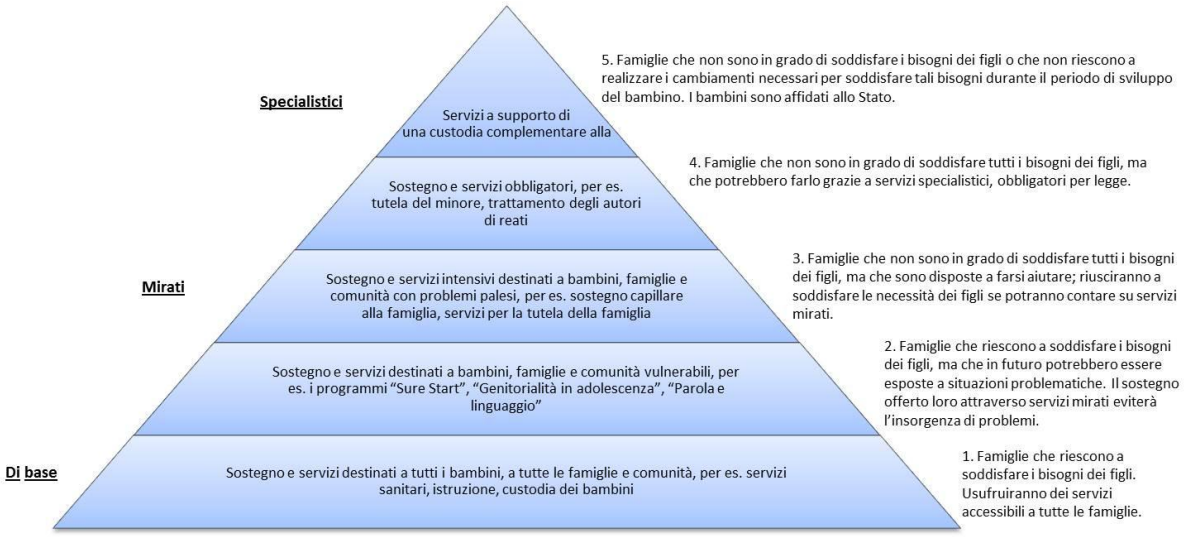


Figura 24 Dai servizi di base ai servizi specialistici: requisiti per l'intervento dello Stato (Bromfield, 2011)

Questo modello si basa sull'idea che l'intervento dello Stato nella vita della famiglia dovrebbe essere obbligatorio soltanto in caso di elevato rischio di maltrattamento e che, grazie a una serie di servizi di base, mirati e specialistici, erogati sia dallo Stato che dalle organizzazioni di volontariato, è possibile evitare che la situazione degeneri fino al punto da richiedere l'intervento delle autorità. Il modello in questione, a volte chiamato "approccio di sanità pubblica", è operativo nei Paesi presi in considerazione dallo studio, anche se in alcuni in misura minore rispetto agli altri. Fondamentalmente si basa su due serie di concetti legati tra loro espressi nelle fasi 5 e 6 relativi allo sviluppo di sistemi moderni di protezione dell'infanzia, vale a dire l'importanza di interventi precoci per soddisfare i bisogni delle famiglie e il fatto di considerare tali interventi non un regalo da parte della società, ma un diritto dei bambini. Oggi tutti i Paesi hanno approntato, o stanno cercando di approntare, un insieme di servizi e di sostegni adeguati alle diverse necessità. Per sviluppare questi servizi è fondamentale partire dalla valutazione dei bisogni per poi pianificare l'attuazione degli interventi.

Studio di caso: Australia. “L’approccio di sanità pubblica, che trae origine dalle malattie prevenibili, insiste sull’importanza della prevenzione e della promozione della salute attraverso interventi sempre più ampi, volti a mitigare i rischi identificati (Baum, 1998; Garrison, 2005). Si ricorre a un approccio di questo tipo quanto un problema, che poteva essere evitato, diventa serio, si diffonde e comporta gravi ripercussioni a lungo termine sugli individui e sulle popolazioni. Gli approcci di sanità pubblica, che tipicamente si articolano su tre livelli di intervento (primario, secondario e terziario), prevedono una serie di strategie formulate in base al target di intervento. Se applicato al problema dei maltrattamenti e della trascuratezza infantili, tale approccio può contemplare:

interventi e sostegno di carattere generale, accessibili a tutti i bambini e a tutte le famiglie, allo scopo di migliorare il benessere del bambino; interventi e sostegno mirati per bambini e famiglie vulnerabili (per es. genitori adolescenti) allo scopo di prevenire l’insorgenza di problemi;

interventi e sostegno alle famiglie con problemi specifici (per es. dipendenza da sostanze), in cui i genitori non riescono a far fronte ai bisogni dei figli, ma accettano volontariamente i servizi e il sostegno necessari;

interventi obbligatori per le famiglie nelle quali il bambino è vittima di maltrattamenti e trascuratezza gravi (abuso sessuale, grave maltrattamento fisico, negligenza criminale) o i cui bisogni non possono essere soddisfatti, e i genitori non intendono usufruire degli interventi e del sostegno disponibili; custodia complementare alla famiglia per i bambini che non sono più al sicuro con i loro genitori (Arney e Bromfield, in fase di revisione).”

3.7.2 Raccomandazione 8: verifica dei servizi

Per sviluppare e garantire una continuità dei servizi a favore dell’infanzia serve una verifica che produca un elenco dei servizi di base, mirati e specialistici, nonché delle località svizzere in cui tali servizi sono già disponibili. Questo elenco potrebbe essere il punto di partenza per un’analisi dei bisogni a livello cantonale, che consenta di individuare eventuali lacune e di prendere misure per sviluppare interventi in linea con le priorità emerse dal lavoro dei Comitati cantonali per il benessere dell’infanzia (v. Raccomandazione 2). Le verifiche potrebbero quindi essere raggruppate su scala nazionale e utilizzate per la creazione di una Legge quadro per una politica svizzera dell’infanzia e della gioventù (v. Raccomandazione 1).

3.7.3 Sviluppo di orientamenti

Le leggi e le politiche formulate a livello federale e/o cantonale offrono agli assistenti sociali e agli altri professionisti un contesto nel quale operare, ma è comunque importante dare loro anche degli orientamenti pratici, che li aiutino a svolgere il loro lavoro. Ecco alcuni esempi tratti dal nostro studio. Dall’esperienza fatta nel Regno Unito risulta che quando gli orientamenti sono troppo prescrittivi o complessi hanno un effetto disfunzionale sugli assistenti sociali, perché li costringono a dedicare più tempo alle pratiche burocratiche necessarie per ottemperare agli orientamenti e alle procedure. Altri Paesi europei prevedono orientamenti meno prescrittivi, per esempio il Manuale tedesco sulla

protezione del bambino (Kindler et al., 2011), che potrebbe essere uno strumento di facile consultazione per gli assistenti sociali. Gli orientamenti dovrebbero ispirarsi ai seguenti principi chiave: essere facili da applicare, rispecchiare gli obiettivi della protezione dell'infanzia fissati dalle leggi e dalle politiche nazionali e basarsi sui risultati delle ricerche che mettono in luce quali sono i fattori che favoriscono il benessere del bambino, e infine non essere eccessivamente lunghi, per evitare che sia troppo difficile tenerli a mente. Dal Regno Unito giunge un ulteriore avvertimento: in caso di inchieste pubbliche o mediatiche su episodi di maltrattamento di bambini, non emersi o affrontati in modo inadeguato dagli assistenti sociali nel corso delle loro valutazioni o dei loro interventi, la mancata osservanza di tali orientamenti potrebbe essere utilizzata per criticare il lavoro degli assistenti sociali e quello di altri professionisti del settore. Malgrado queste considerazioni, gli orientamenti sono comunque uno strumento importante, perché aiutano gli assistenti sociali e gli altri professionisti ad adempiere al loro mandato sociale, che consiste nel proteggere i bambini.

3.7.4 Raccomandazione 9: orientamenti per la protezione dell'infanzia

Raccomandiamo che, su incarico della Commissione permanente (v. Raccomandazione 1), siano elaborati orientamenti che consentano agli assistenti sociali e agli altri professionisti del settore di operare nel rispetto delle leggi e delle politiche federali e cantonali, e sulla base delle migliori pratiche emerse dalle ricerche a livello internazionale per il lavoro con i bambini e le famiglie, così come sono emerse dalla ricerca. Gli orientamenti dovrebbero essere facili da applicare e non eccessivamente prescrittivi.

3.7.5 Sviluppo di metodi di valutazione

Una buona valutazione della qualità è fondamentale per intervenire efficacemente all'interno della famiglia. Sul piano pratico, la valutazione è il punto da cui partire per sviluppare i successivi interventi. La nostra analisi dei diversi Paesi rileva che, al posto delle valutazioni che si limitavano a individuare i fattori di rischio (ad eccezione dell'abuso sessuale infantile, la cui valutazione è tuttora focalizzata sul rischio), esistono ora strumenti più sofisticati, che consentono di individuare le difficoltà delle famiglie su tutta una serie di fronti, partendo dal modello ecologico. L'impiego di questi strumenti tende a non porre più l'accento sulle accuse e sulle colpe, ma sul comportamento dei genitori e sulle ripercussioni sui figli. Si vuole arrivare a una maggiore comprensione delle cause e degli effetti, per prestare servizi di sostegno alle famiglie e intervenire in modo efficace per interrompere la spirale di causa-effetto.

Il Quadro di valutazione per i bambini in difficoltà e le loro famiglie (*Assessment Framework for Children in Need and their Families*), messo a punto nel Regno Unito e impiegato con successo dagli assistenti sociali di altri Paesi, fra cui la Svezia, si ispira a un modello ecologico basato sui risultati della ricerca, ed esamina i punti di forza e di debolezza in tre specifici ambiti: le necessità di sviluppo del bambino, la capacità genitoriale e i fattori familiari e ambientali in senso lato. Occorre però stabilire un nesso fra le valutazioni degli assistenti sociali e quelle degli altri professionisti del settore, che potrà essere di aiuto quando si tratterà di decidere se un professionista deve segnalare il caso a un assistente sociale e quali programmi e interventi attuare in seguito. A tale scopo, è necessario definire

modelli comuni di valutazione, come il Quadro di valutazione comune (*Common Assessment Framework*) attualmente utilizzato nel Regno Unito dai professionisti che lavorano con le famiglie. Va però segnalato che questi strumenti aiutano nello svolgimento del lavoro e nel prendere decisioni, ma non garantiscono una risposta a tutte le domande.

Studio di caso: Regno Unito. "A sostegno della tesi secondo cui la protezione dell'infanzia non dovrebbe essere compito soltanto degli assistenti sociali, ma di tutti coloro che lavorano con i bambini, il governo ha introdotto un Quadro di valutazione comune (*Common Assessment Framework*, Ministero per l'infanzia, le scuole e le famiglie, 2006). Questo strumento è stato concepito soprattutto per aiutare una serie di figure professionali (insegnanti, assistenti di cure a domicilio o puericultrici) a individuare i bambini vulnerabili, che presentano bisogni supplementari sin dai primi anni di vita. Una vota individuati, si procede a una valutazione per decidere se per far fronte ai succitati bisogni basti un solo professionista o ce ne vogliano anche altri, uno dei quali viene designato a dirigere il gruppo. Se dalla valutazione risultano esserci bisogni più complessi, che richiedono servizi più specialistici, il caso può venir segnalato agli assistenti sociali locali, che a loro volta faranno una valutazione più approfondita, sulla base di quanto indicato nel Quadro di valutazione per i bambini in difficoltà e le loro famiglie (*Assessment Framework for Children in Need and their Families*)."

Per quanto ben concepite e applicate, le procedure di valutazione non producono automaticamente decisioni identiche per i bambini che devono affrontare le stesse circostanze. Il processo decisionale è condizionato da diversi fattori, non da ultime le idee riguardo al rapporto fra Stato e famiglia nei diversi Paesi. Le grandi idee o le ideologie a cui abbiamo accennato in precedenza possono condizionare il risultato delle valutazioni, il che risulta ancora più evidente se si pensa a quanto sono vulnerabili i bambini piccoli. I Paesi che hanno un solido modello centrato sulla famiglia sono alquanto restii ad affidare i bambini alle cure dello Stato, con una soglia di ammissione alle cure bassa per i piccoli e alta per gli adolescenti, proporzione che risulta invertita nei Paesi in cui prevale il modello orientato al bambino. Entrambi i modelli presentano ovviamente dei rischi: il bambino si può trovare in una situazione in cui i suoi bisogni evolutivi non possono essere soddisfatti ed è quindi a rischio di maltrattamento, o viceversa, in assenza di una custodia complementare alla famiglia, viene affidato alle cure dello Stato a un'età in cui è particolarmente vulnerabile e quindi potrebbe soffrire ancora di più. Occorre quindi sottolineare che i sistemi di valutazione non sono la soluzione a tutto, ma servono a fornire soluzioni per lo sviluppo di un valido sistema di protezione dell'infanzia.

3.7.6 Raccomandazione 10: valutazione generale e valutazione specialistica

Proponiamo che la Commissione nazionale permanente (v. Raccomandazione 1) richieda due diverse valutazioni, una generale e l'altra specialistica, che saranno effettuate dai Comitati cantonali per il benessere dell'infanzia (v. Raccomandazione 2); la prima sarà destinata a tutti i professionisti che operano nel settore dell'infanzia, la seconda agli assistenti sociali. Tali valutazioni dovrebbero rispecchiare le migliori pratiche internazionali, ossia basarsi sul modello ecologico e sull'evidenza.

3.7.7 Sviluppo di metodi di intervento

Negli ultimi cinquant'anni, i sistemi di intervento hanno conosciuto uno sviluppo rapidissimo, ma altrettanto non si può dire dell'evidenza scientifica che ne è alla base. Alcuni dei metodi impiegati oggigiorno sono diventati la norma nei sistemi di protezione dell'infanzia. I sistemi utilizzati dagli assistenti sociali sono per lo più indirizzati alle singole persone e alle famiglie, ma alcuni vengono usati anche con i gruppi. Ecco alcuni esempi.

Negli ultimi anni, abbiamo assistito al boom dell'educazione alla genitorialità, che si ispira all'idea secondo la quale l'istinto materno e quello paterno non sono innati, ma sono frutto di capacità che vanno apprese. I corsi alla genitorialità, basati sull'evidenza, possono essere tenuti da assistenti sociali a singoli genitori o gruppi che, in base alle valutazioni, ne hanno particolarmente bisogno. Tuttavia, la maggior parte dell'attività degli assistenti sociali non consiste nell'erogazione diretta di servizi, bensì nella gestione dei casi, dei successivi interventi e nella valutazione della loro efficacia nell'alleviare le difficoltà delle famiglie. Basti pensare al contributo degli asili nido nel ridurre lo stress all'interno delle famiglie. A volte, però, i problemi sono più complessi e richiedono interventi specialistici. Il nostro studio rileva che i problemi più ricorrenti sono la violenza domestica, l'abuso di droghe e alcol e la malattia mentale di uno dei genitori. È più probabile che per la gestione di questi casi ci si affidi a servizi specialistici (spesso forniti da associazioni di volontariato e private). Le terapie familiari multisistemiche e cognitive-comportamentali si basano sull'evidenza. Di solito, gli assistenti sociali che le utilizzano hanno seguito una formazione postdiploma.

Altri tipi di consulenze, fornite sia ai genitori che ai figli, sono improntate più ai valori (per esempio l'accettazione positiva incondizionata) che alla ricerca, il che induce a pensare che un buon rapporto di collaborazione con le famiglie conduca a risultati positivi. Questo tipo di consulenza meno mirato non è particolarmente efficace nei casi di maltrattamento infantile, soprattutto se i genitori si oppongono all'intervento degli assistenti sociali. Sono inoltre in aumento i metodi che coinvolgono direttamente i bambini e sono spesso basati sulla creatività. Uno di questi è l'arteterapia, che si è rivelata utile nell'aiutare i bambini più piccoli a fornire informazioni e a esprimere i loro desideri e i loro sentimenti.

La lezione principale tratta dai sistemi di protezione dell'infanzia è che i metodi impiegati dagli assistenti sociali devono tener conto delle necessità della popolazione e possibilmente essere basati sull'evidenza. Nei paesi dove prevale un modello centrato sul bambino, c'è il rischio che i genitori siano visti come personalmente responsabili del modo in cui reagiscono di fronte alle avversità e che il ruolo degli assistenti sociali si limiti a una sorta di controllo sociale, che impone ai genitori di cambiare senza però offrire loro gli strumenti per farlo.

3.7.8 Raccomandazione 11: verifica dei metodi

Nei sistemi di protezione dell'infanzia, l'utilizzo di una serie di metodi da parte degli assistenti sociali è diventato ormai la norma. L'importante è che tali sistemi, basati sull'evidenza, tengano conto delle necessità del destinatario dell'intervento e prevedano sia servizi di sostegno che terapeutici. I sistemi oggi impiegati in Svizzera dovrebbero essere valutati alla luce delle esigenze riscontrate nei diversi

Cantoni (v. Raccomandazione 8), il che dovrebbe consentire di individuare eventuali lacune. Se riscontrate, tali lacune dovrebbero essere il punto da cui partire per elaborare le strategie di formazione e di prestazione di servizi che saranno messe in campo dai Comitati per il benessere dell'infanzia (v. Raccomandazione 2).

3.7.9 Bambini affidati alle cure dello Stato

Nell'ambito della protezione dell'infanzia, la decisione più difficile da prendere è se affidare o meno un bambino alle cure dello Stato. I Paesi coinvolti nel nostro studio hanno adottato criteri diversi: nel Regno Unito e in Australia, per esempio, in caso di scarse capacità genitoriali o di maltrattamento, di norma il bambino viene affidato fin da piccolo a strutture di accoglienza. Se sono stati commessi degli errori, lo si è sempre fatto per eccesso di prudenza. L'idea è di restituire il bambino alla famiglia non appena i fattori di rischio diminuiscono. La ricerca ha però evidenziato che i bisogni evolutivi del bambino non possono essere soddisfatti qualora si verifichi un ritardo nella decisione di farlo rientrare in famiglia, oppure se i periodi trascorsi in famiglia si alternano a periodi di permanenza in strutture di accoglienza. Si tende quindi a cercare soluzioni più a lungo termine, fra cui l'adozione, la sistemazione presso parenti o l'affidamento di lunga durata, per meglio soddisfare i bisogni del bambino. Si potrebbe dire che queste ultime soluzioni privilegiano i diritti del bambino rispetto a quelli dei genitori, mentre in Germania, Svezia e Finlandia si tende per lo più a lasciare il bambino con i genitori. Generalmente, in questi Paesi si interviene presso le famiglie per evitare che si sfaldino, di conseguenza il numero di bambini piccoli affidati alle cure dello Stato è esiguo. Si potrebbe però obiettare che queste soluzioni ritardano, ma non impediscono, l'ammissione alle cure, come dimostra il numero molto più importante di adolescenti presi a carico dallo Stato. L'interpretazione di questo dato è resa più difficile dal fatto che in quegli stessi Paesi, la magistratura dei minorenni e i settori del welfare tendono a sovrapporsi, tant'è vero che alcuni giovani vengono affidati alle cure dello Stato sia per comportamenti antisociali, sia per ragioni assistenziali.

I Paesi presi in considerazione dallo studio evidenziano due tendenze significative: la prima è l'aumento del numero di bambini affidati alle cure dello Stato, la seconda è la preferenza data alla sistemazione presso parenti o all'affidamento invece che ai foyer (a volte anche chiamati strutture di accoglienza). Le spiegazioni sono molteplici: se nei Paesi con un modello centrato sulla famiglia ci sono delle ragioni che giustificano l'incremento del numero di adolescenti affidati alle cure dello Stato, in quelli ove prevale l'orientamento al bambino, anche l'ondata di indignazione provocata dalle inchieste sui casi di decesso di minori ha contribuito a far crescere il numero di bambini piccoli presi a carico dallo Stato. Un'altra spiegazione potrebbe essere la crescente consapevolezza, da parte dell'opinione pubblica, della necessità di intervenire per proteggere i bambini, come dimostra il sempre maggior numero di casi segnalati agli assistenti sociali. La tendenza a preferire l'affidamento familiare è stata in gran parte influenzata (in negativo) dallo scandalo degli abusi compiuti dal personale delle strutture di accoglienza nella maggioranza dei paesi presi in considerazione e (in positivo) dai risultati delle ricerche, che hanno evidenziato migliori prospettive per i bambini affidati alle famiglie invece che ai foyer. Il seguente esempio, riferito alla Svezia, spiega l'importanza sia di rivedere l'assistenza

statale per garantirne la costante sicurezza, sia di fissare obiettivi politici sulla base delle informazioni raccolte.

Studio di caso: Svezia. "…Infanzia rubata, un'organizzazione privata che ha iniziato la sua attività nel 2005 in seguito alla trasmissione alla televisione svedese di un documentario su uomini di mezza età, che hanno raccontato di essere stati vittime di maltrattamenti e di trascuratezza mentre erano affidati alle cure dello Stato da bambini. Il documentario ha portato nel 2006 alla nascita di un'associazione di volontariato, costituita da persone che avevano subito abusi durante il periodo di affidamento allo Stato e che chiedevano giustizia, oltre che il risarcimento dei danni. In quello stesso anno, il governo svedese ha aperto un'indagine sui casi di grave trascuratezza e maltrattamento avvenuti fra il 1920 e il 1995 all'interno di istituzioni o foyer residenziali (*The Inquiry in Child Abuse and Neglect in Institutions and Foster Homes*, S 2006:05). L'avvio delle indagini è stato rimandato più volte, a causa del numero di persone che si sono rivolte alla commissione per raccontare la loro esperienza. Quando il rapporto sarà ultimato (fine 2011), saranno state intervistate circa 1'000 persone, che erano state affidate alle cure dello Stato tra il 1920 e il 1999.
Dalla ricerca risulta che di solito in Svezia i bambini affidati alle cure dello Stato sono collocati in varie istituzioni o foyer durante l'infanzia (Vinnerljung et al., 2001; Sundell et al., 2004). Ciò potrebbe essere visto come un fattore che contrappone l'attività degli assistenti sociali, che si sforzano di riunire il bambino alla sua famiglia di origine e il bisogno del bambino di trovare un affidamento extrafamiliare stabile (Sinclair et al., 2005 a, 2005b; Thoburn et al., 2000)."

Nei Paesi con un modello centrato sulla famiglia, il numero maggiore di minorenni ospitati presso i foyer è la dimostrazione di quanto sia difficile collocare bambini più grandi presso parenti o presso famiglie affidatarie. La lezione da trarre è che l'assistenza statale deve essere ideologicamente equilibrata e contemplare diverse alternative che possano soddisfare i bisogni del bambino. Equilibrio ideologico significa rispettare sia i diritti del bambino, sia quelli dei genitori e capire che per realizzare tale equilibrio bisogna tener conto del percorso evolutivo del bambino. Nei casi di sospetto maltrattamento, è pericoloso lasciare un bambino ai genitori, soprattutto se è molto piccolo. Analogamente, separare il bambino dai genitori può creare problemi, soprattutto se viene affidato alle cure dello Stato senza un programma di recupero calibrato sulle sue necessità evolutive. Per soddisfare i bisogni di questi bambini servono soluzioni permanenti.

Si tende a preferire la sistemazione presso parenti o famiglie affidatarie rispetto ai foyer perché, come dimostra la ricerca, le prime due soluzioni danno risultati migliori per quasi tutti i bambini, anche se non per tutti. Viceversa, la scelta continua a ricadere sui foyer quando si ha a che fare con degli adolescenti, che spesso preferiscono questa soluzione, oppure con bambini che hanno subito maltrattamenti gravi dai genitori e che hanno bisogno di uno speciale ambiente terapeutico in cui vivere.

Gli elementi chiave di un'assistenza statale efficace sono i seguenti: soglia di ingresso precisa e rigorosa per l'affido alle cure dello Stato, interventi rapidi, sotto forma di assistenza obbligatoria, per

tutti i bambini che ne hanno bisogno, scelta del collocamento del bambino basata sui suoi bisogni e, infine, procedure che assicurino al bambino il diritto di essere ascoltato in tutte le fasi della procedura.

3.7.10 Raccomandazione 12: riesame dell'assistenza statale

Nell'ambito dell'elaborazione di una Legge quadro per una politica svizzera dell'infanzia e della gioventù (v. Raccomandazione 1) proponiamo che la Commissione nazionale permanente richieda un riesame del sistema di assistenza statale, che sarà effettuato dai Comitati per il benessere dell'infanzia nei rispettivi Cantoni (v. Raccomandazione 2).

Per i bambini ospitati nei foyer, oltre alla verifica sistematica delle credenziali del personale, all'incrocio dei dati con quelli presenti negli archivi della polizia e all'esclusione automatica di chiunque abbia commesso reati contro i minori, sono necessarie anche altre misure di salvaguardia, fra cui delle procedure per le denunce da parte dei bambini (elemento chiave per la prevenzione dei maltrattamenti all'interno delle istituzioni) oppure l'introduzione di una sorta di Telefono amico, che consenta ai bambini di fare denunce in modo confidenziale.

3.7.11 Raccomandazione 13: sistemi di verifica e di esclusione

In linea con le migliori pratiche in vigore nei diversi Paesi, sarebbe opportuno avere buoni sistemi di verifica e di esclusione, per accertarsi che chi lavora a diretto contatto con i bambini, sia nei foyer residenziali, sia all'interno della comunità, non abbia precedenti per reati contro i minori. Suggeriamo di raccogliere tali informazioni a livello federale e di metterle a disposizione dei Cantoni, cosicché chiunque intenda lavorare con i bambini in Svizzera sia sottoposto alle stesse norme.

3.7.12 Efficienza dei sistemi e misurazione dei risultati

È molto difficile confrontare i sistemi di protezione dell'infanzia adottati dai vari Paesi. Le variabili misurate sono molteplici, i criteri di misurazione utilizzati sono diversi e la loro interpretazione è oggetto di dibattito. Nei Paesi presi in considerazione dallo studio abbiamo però osservato alcune tendenze comuni. La prima è l'aumento dei casi di bambini e famiglie segnalati agli assistenti sociali nel corso degli anni, tendenza che trova riscontro anche in Svizzera, dove le misure di protezione dell'infanzia, adottate ai sensi del Codice civile svizzero, sono passate da 23'290 nel 1996 a 43'613 nel 2010[104]. Alcuni Paesi suddividono le segnalazioni in base al tipo di maltrattamento. Nel Regno Unito e in Australia, si è avuto un percettibile calo dei maltrattamenti fisici e degli abusi sessuali, ma un incremento dei casi di maltrattamento psicologico e di trascuratezza, fenomeni confermati anche dalle tendenze in atto a livello internazionale. In altri paesi, il divieto di infliggere punizioni corporali ai bambini ha trasformato qualsiasi tipo di disciplina fisica in un potenziale maltrattamento e ha quindi fatto aumentare il numero rilevato di maltrattamenti fisici. In linea con la definizione molto ampia di

[104] Fonte: www.copma.ch, dati scaricati il 23 ottobre 2011 (v. Schnurr, 2011).

protezione dell'infanzia data dai vari Paesi, nel Regno Unito e in Finlandia si osserva che i servizi di sostegno registrano bisogni più ampi da parte dei bambini e delle famiglie; anche in questo caso, i numeri sono in aumento.

Studio di caso: Australia. "Il limite di questi dati è che non si riferiscono ai singoli casi ma sono aggregati, il che significa che possono essere utilizzati a scopo illustrativo e non possono venir manipolati; essi sono un buon indicatore dell'attività svolta dai servizi di protezione dell'infanzia, ma non forniscono informazioni adeguate sull'incidenza dei maltrattamenti nella comunità (Holzer e Bromfield, 2008). Inoltre, è difficile fare un confronto fra i dati raccolti nei diversi Stati e Territori (Holzer e Bromfield, 2008). Da ultimo, dal tipo di dati raccolti e dalla presenza di dati aggregati, possiamo solo dedurre che esistono tantissime informazioni sui risultati dell'attività svolta dai servizi di protezione dell'infanzia, ma non ce ne sono né sulle modalità di accesso dei bambini al sistema di servizi, né sui risultati ottenuti sui bambini (in termini di salute, istruzione, nuovi maltrattamenti ecc.). Nel 2010 è stato pubblicato il primo rapporto annuale sui dati preliminari, riguardante una serie di indicatori utili per misurare l'impatto del Programma quadro per la protezione dei bambini australiani (*National Framework for Protecting Australia's Children*), che conteneva anche dati sulle attività dei servizi di protezione dell'infanzia e altri indicatori estrapolati da dati amministrativi, oltre a studi di casi, informazioni sui programmi di riforma dei governi degli Stati e dei Territori e sui progressi dei progetti nazionali messi in campo nell'ambito del *National Framework* (Consiglio dei Governi Australiani, 2011). Anche i dipartimenti dei governi degli Stati e dei Territori pubblicano rapporti annuali, ma i loro dati non sono confrontabili. Lo stesso fanno i singoli enti non governativi (e ce ne sono centinaia) ma i loro dati, oltre a non essere confrontabili, non vengono né compilati né aggregati a livello statale, territoriale o nazionale."

Se considerati nell'insieme, i dati evidenziano un incremento del numero di segnalazioni di bambini per quali si ritiene necessario l'intervento dei servizi sociali (a causa di maltrattamenti o per ragioni legate al benessere del minore in generale) e di bambini affidati alle cure dello Stato. Ciononostante, la ricerca retrospettiva ci dice che i numeri riportati nei dati relativi al sistema danno soltanto una minima idea della diffusione del fenomeno all'interno della società. Potrebbe anche darsi che l'incremento dei casi segnalati ai servizi di protezione dell'infanzia dall'opinione pubblica e da professionisti del settore sia dovuto alla maggiore consapevolezza di ciò che significa benessere del bambino, visto che oggi si sa molto di più sugli effetti che le avversità possono avere sulla vita di un bambino.

Gli odierni sistemi di protezione dell'infanzia non sono in grado di stabilire con precisione quale potrebbe essere il loro impatto sui bambini, perché non misurano regolarmente gli effetti sui singoli bambini. Va detto che di solito questi sistemi non sono stati concepiti per farlo, quindi hanno bisogno di specifici metodi di misurazione dei risultati, che potrebbero essere creati sulla base di quelli già esistenti. Il nostro studio di caso australiano evidenzia due lacune: l'influenza degli indicatori introdotti come parte del *National Framework* e il problema, tuttora irrisolto, della confrontabilità dei dati.

3.7.13 Raccomandazione 14: misure per la valutazione dei risultati e dell'efficacia

Nell'ambito della Legge quadro per una politica svizzera dell'infanzia e della gioventù (v. Raccomandazione 1), sarebbe importante concordare una serie di misure che servano a valutare i risultati e l'efficacia del sistema di protezione. Quest'ultimo non dovrebbe limitarsi a fornire dati quantitativi, ma anche qualitativi (per esempio, registrando le esperienze soggettive vissute dai bambini e facendo valutare loro i servizi). Per la realizzazione di una banca dati nazionale è necessario che, al momento dell'erogazione del servizio, a ogni bambino venga assegnato un codice personale, attraverso il quale si potrà poi risalire ai dati inseriti nel sistema per aggregarli e individuare traiettorie e schemi che serviranno da base per programmare e sviluppare i servizi a livello cantonale (v. Raccomandazione 2), e per attivare interventi interdisciplinari, destinati ai singoli casi.

3.8 Conclusioni

I sistemi per la protezione dell'infanzia sono diventati indispensabili, soprattutto perché oggi sappiamo quali e quanti danni possono provocare sul bambino esperienze negative come quella del maltrattamento. Per lo sviluppo e il rinnovamento del proprio sistema di protezione dell'infanzia, la Svizzera ha un'opportunità unica: potersi avvalere dell'analisi degli attuali sistemi di protezione di cinque Paesi diversi. Dal nostro lavoro emergono insegnamenti (positivi e negativi) molto espliciti e coerenti. Quando siamo partiti con il progetto, temevamo che sarebbe stato molto arduo trarre una lezione chiara, vista la difficoltà di creare un insieme di dati confrontabili. In alcuni casi (come per l'output dei dati) i nostri timori si sono rivelati fondati, ma in linea di massima abbiamo riscontrato un ampio consenso su quelle che sono considerate le migliori pratiche degli attuali sistemi di protezione dell'infanzia. Le nostre quattordici raccomandazioni rispecchiano ciò che ciascun team di ricerca desidererebbe per il proprio Paese, anche se nessuno dei cinque Paesi presenta tutte le caratteristiche desiderate.

Nell'elaborare le nostre raccomandazioni, che si ispirano alle migliori pratiche nei Paesi coinvolti nello studio, ci siamo resi conto che la maggior parte dei nostri suggerimenti trova già riscontro negli sviluppi in corso in Svizzera. Le nostre conclusioni rispecchiano alcuni di questi sviluppi, illustrati nel capitolo riguardante il contesto svizzero.

Probabilmente le proposte su cui focalizzare l'attenzione sono quelle indicate nelle Raccomandazioni 1, 2 e 3, che riguardano l'istituzione di una Commissione nazionale permanente, di Comitati cantonali per il benessere dell'infanzia e di team di assistenti sociali che si occupino del benessere dell'infanzia. Questo alla luce della necessità di rivedere l'attuale situazione in Svizzera, dove le differenze culturali tra le varie regioni, dovute alle diverse dimensioni e tradizioni cantonali, nonché alle differenze tra le possibilità a livello comunale sfociano in decisioni diverse su come intervenire per proteggere l'infanzia. Le differenze locali vanno tenute in considerazione e rispettate, a condizione però che l'uso che se ne fa non violi il diritto del bambino e dei genitori ad avere risposte giuste ed eque, in

conformità con quanto previsto dalla legge. In altre parole, la soluzione di un problema legato alla protezione dell'infanzia non dovrebbe dipendere dall'area geografica, ma dovrebbe essere frutto di una strategia coerente, che rispecchi la legge, le politiche e le migliori pratiche professionali. Siamo quindi a favore della revisione del Codice civile svizzero e delle relative raccomandazioni emanate dalla Conferenza dei cantoni per la protezione dei minori e degli adulti (COPMA), relativamente alla professionalizzazione e all'organizzazione dei servizi. È molto importante che il lavoro delle ONG sia tenuto in considerazione sia a livello nazionale (nella Legge quadro per una politica svizzera dell'infanzia e della gioventù) che locale, attraverso una rappresentanza all'interno dei Comitati cantonali per il benessere dell'infanzia, a titolo di riconoscimento del ruolo cruciale svolto dalle ONG nel sistema di protezione dell'infanzia.

Come abbiamo osservato negli altri Paesi presi in considerazione dal nostro studio, anche le autorità svizzere sono interessate ad affrontare il problema di quelle condizioni economiche e sociali che possono avere un impatto sulla salute e sul benessere dei bambini e dei giovani. Inoltre intendono individuare le fasce di popolazione più esposte al rischio di condizioni di salute e di benessere precarie, per farne oggetto di speciali interventi preventivi e, se necessario, per fornire loro immediata protezione. Verificare, a livello cantonale, che sia garantita la continuità dei servizi (Raccomandazione 8) rappresenta l'evoluzione naturale delle strategie nazionali a livello locale.

Quanto alla necessità di garantire i migliori interventi professionali possibili, le raccomandazioni sui corsi specialistici destinati ai professionisti, sulla necessità di rivedere i requisiti di ammissione ai corsi di formazione professionale (Raccomandazioni 5 e 6), sulla verifica dei metodi (Raccomandazione 11), sugli orientamenti (Raccomandazione 9) e su un duplice sistema di valutazione (Raccomandazione 10) esprimono il crescente fabbisogno di competenze specialistiche. Va comunque detto che la professionalizzazione potrebbe creare qualche tensione fra i Cantoni che svolgono in modo diverso le funzioni dello stato sociale.

Per quanto riguarda i sistemi di verifica e di esclusione (Raccomandazione 13), buone notizie giungono dai recenti sviluppi sul fronte del diritto penale: sono state infatti presentate proposte per limitare i contatti tra i bambini e gli operatori o i volontari che hanno infranto la legge.

Quanto alla Raccomandazione 14, abbiamo riscontrato un crescente interesse per la raccolta di dati, in particolare quelli sull'incidenza del maltrattamento infantile, soprattutto vista le diversità, in termini percentuali, fra i gruppi di immigrati. Anche il COPMA ha raccolto informazioni preziose sulla protezione dell'infanzia (come previsto dal Codice civile svizzero), in base alle quali risulta che negli ultimi anni si è fatto maggior ricorso a tutte le misure summenzionate. Ciò conferma la tendenza a voler trovare delle risposte ai problemi legati alla protezione dell'infanzia, il che potrebbe essere il punto di partenza per sviluppare indicatori di risultato più sofisticati.

Ci siamo proposti di formulare una serie di raccomandazioni partendo da un livello base (questioni riguardanti la governance) per passare a un livello intermedio (caratteristiche correlate) e arrivare a un livello specialistico (caratteristiche dei servizi erogati). Abbiamo riassunto le nostre raccomandazioni nella tabella e nel diagramma riportati qui di seguito. Dal nostro studio emergono due considerazioni:

la prima è che le raccomandazioni si completano a vicenda e sono interdipendenti, così come lo sono gli odierni sistemi di protezione dell'infanzia, quindi se ne viene meno una, tutto il sistema rischia di crollare. La seconda è che, collettivamente, queste raccomandazioni sono già indirizzate alla fase due: l'applicazione a tutto un insieme di attività. Sarà questa la prossima sfida.

3.8.1 Livello di base: caratteristiche della **governance degli odierni sistemi di protezione dell'infanzia**
Raccomandazione 1: istituzione di una Commissione nazionale permanente, incaricata di elaborare una Legge quadro per una politica svizzera dell'infanzia e della gioventù, che sarà alla base dello sviluppo delle leggi cantonali e della pianificazione dei servizi. Raccomandazione 2: i Cantoni restano legalmente responsabili dei servizi di protezione dell'infanzia, che vengono tuttavia pianificati e forniti da istituzioni non governative e private nell'ambito dei Comitati per il benessere dell'infanzia.
3.8.2 Livello intermedio: caratteristiche **interdipendenti degli odierni sistemi di protezione dell'infanzia**
Raccomandazione 3: i team di assistenti sociali impiegati in ogni Cantone dovrebbero farsi carico delle responsabilità legali connesse all'erogazione di servizi specialistici di protezione dell'infanzia. Raccomandazione 4: organizzazione di incontri multidisciplinari per pianificare i casi in ogni Cantone, così da garantire una pianificazione efficace che soddisfi i bisogni e assicuri protezione nei singoli casi. Raccomandazione 5: creazione, da parte delle università, di corsi di laurea di primo livello e post laurea sulla protezione dell'infanzia, destinati ai professionisti. Raccomandazione 6: revisione, da parte delle università, dei criteri di ammissione ai programmi di laurea per assistenti sociali. Raccomandazione 7: promozione della partecipazione delle famiglie agli incontri per la pianificazione dei casi; i diritti dei bambini a essere rappresentati e la possibilità di ricorrere in appello contro sentenze che li coinvolgono devono diventare la norma.
3.8.3 Livello avanzato: caratteristiche dei servizi erogati dagli odierni sistemi di protezione dell'infanzia
Raccomandazione 8: sviluppo di una continuità dei servizi per l'infanzia basati sul modello di sanità pubblica, come punto di partenza per la formulazione della Legge quadro per una politica svizzera dell'infanzia e della gioventù. Raccomandazione 9: sviluppo di orientamenti pratici per gli assistenti sociali, che comprendano le migliori pratiche basate sulle leggi e sui risultati delle ricerche.

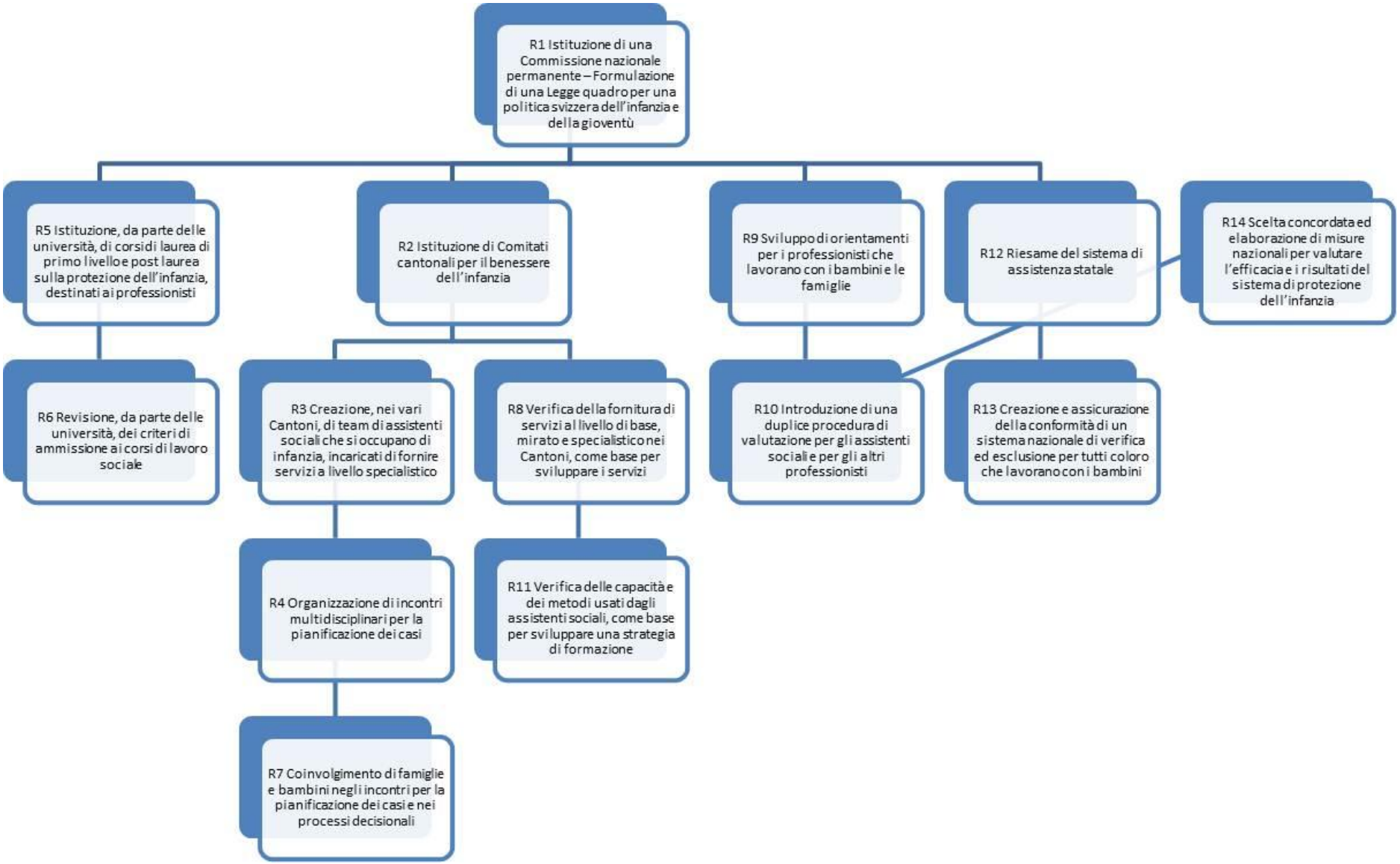
Raccomandazione 10: introduzione di una duplice procedura di valutazione: specialistica per gli assistenti sociali e generale per gli altri professionisti.

Raccomandazione 11: verifica degli attuali metodi di intervento utilizzati dagli assistenti sociali, che servirà allo sviluppo di strategie di formazione e prestazione di servizi, messe in campo dai Comitati per il benessere dell'infanzia.

Raccomandazione 12: riesame del sistema di assistenza statale, che sarà il punto di partenza per elaborare la Legge quadro per una politica svizzera dell'infanzia e della gioventù e per il lavoro dei Comitati per il benessere dell'infanzia.

Raccomandazione 13: creazione di un sistema di verifica e di esclusione, che sarà applicato a tutti coloro che lavorano con i bambini.

Raccomandazione 14: creazione di una banca dati nazionale per tracciare i risultati generati dai sistemi e ottenuti sui bambini nell'ambito della Legge quadro per una politica svizzera dell'infanzia e della gioventù, che fornirà informazioni per il lavoro dei Comitati per il benessere dell'infanzia.


R1 Istituzione di una Commissione nazionale permanente – Formulazione di una Legge quadro per una politica svizzera dell'infanzia e della gioventù
R5 Istituzione, da parte delle università, di corsi di laurea di primo livello e post laurea sulla protezione dell'infanzia, destinati ai professionisti
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R3 Creazione, nei vari Cantoni, di team di assistenti sociali che si occupano di infanzia, incaricati di fornire servizi a livello specialistico
R8 Verifica della fornitura di servizi al livello di base, mirato e specialistico nei Cantoni, come base per sviluppare i servizi
R10 Introduzione di una duplice procedura di valutazione per gli assistenti sociali e per gli altri professionisti
R13 Creazione e assicurazione della conformità di un sistema nazionale di verifica ed esclusione per tutti coloro che lavorano con i bambini
R4 Organizzazione di incontri multidisciplinari per la pianificazione dei casi
R11 Verifica delle capacità e dei metodi usati dagli assistenti sociali, come base per sviluppare una strategia di formazione
R7 Coinvolgimento di famiglie e bambini negli incontri per la pianificazione dei casi e nei processi decisionali

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Appendix: Country Studies

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1 Child protection in the United Kingdom by Trevor Spratt

1.1 Historical background

1.1.1 Child protection prior to WWII

The starting points for organised societal responses to children in need of protection in the UK may be traced back to the nineteenth century. During the period 1801 to 1861 there was a doubling of the population in the UK from 10 to 20 million, associated with an industrial revolution which resulted in a migration of large numbers of people from the countryside to the cities to work in the new industries (Corby, 2000). Prior to this time children requiring support because of parental incapacity received help from local communities or the church. However, the advent of industrialisation led to new social problems which required new solutions. Such solutions were initially directed towards children living outside their own homes; street children who had no parental care. This period consequently saw the rise of charitable voluntary organisations, such as Dr Barnardo's, who provided residential homes to meet the needs of such children. Eventually concerns to address problems visible outside the home were complimented by a public concern to reach children experiencing problems in their own home environments. This led to the formation of the National Society for the Prevention of Cruelty to Children (NSPCC); their concern was to seek the passing of civil legislation (concerned with protecting the victim) to complement the criminal law (concerned with convicting the perpetrator) in relation to child protection. The result was the 1889 Prevention of Cruelty to Children Act which specified what actions on the part of parents were harmful to children and provided powers to move such children to a 'place of safety' ; effectively into the care of the state, although much of the provision of such care was by the Church or newly formed charitable organisations. The NSPCC were given the lead role in the implementation of the legislation and it is instructive to note that 'their workers faced the dilemma that social agencies still face: how, following liberal traditions, to influence the family without undermining its independence' (Corby, 2000, p 27). From this period through to WWII rising living standards and better welfare provision served to limit the worst effects of industrialisation and reduce the visibility of problems evident outside the family home. There was a belief amongst the public that the issue of child abuse was being managed well by NSPCC officers, with some evidence for this being provided by a drop in convictions for child abuse. Some commentators, however, question the resulting public and political complacency seen as characteristic of this era, arguing for example, that in fact this represented a shift in thinking that had occurred with regard to how best to intervene in family life, with direct interventions favouring child removal into state care being replaced with more supportive approaches designed to prevent family break up (Dingwall *et al.,* 1984).

1.1.2 Child protection post WWII

Most commentators locate the commencement of the modern system for the protection of children as the period immediately following World War II. At that time the Welfare State was introduced in the United Kingdom; this involved the setting up of the National Health Service with services free at point of delivery, universal pension and social security benefits and free education for all children. Alongside these changes, legislation was passed to enable local authorities to provide a range of public services, including a 'welfare committee' to take responsibility for children's services. Such services had three aspects; family support services to prevent the need for children to enter state care, services to protect children from ill treatment and neglect and state care facilities to provide homes for children who could not be looked after by their own families. The apparatus for delivering protective services to children and families was now firmly in state control and whilst voluntary providers such as Barnardos and the NSPCC continued to provide a significant level of services, the state system of statutory bodies (now known as local authorities) employed social workers to deliver the majority of services to children and families. This was a time of considerable optimism in society as the economic austerity characteristic of the period immediately following WWII was replaced by economic growth in the 1950s and 1960s. This optimism extended to the philosophy underpinning social work with children and families, wherein families, given the right support, were seen as capable of change.

Such optimism, however, was to prove short-lived. In the United States, the publication by Henry Kempe and his colleagues of their seminal paper on *The Battered-Child Syndrome* (Kempe *et al.,* 1962) led down the foundations for the development of a much different way of thinking about the purposes of social work with families and children. Building on analyses of cases of children referred to hospital and utilising the new diagnostic possibilities provided by radiology, Kempe argued that some injuries to children were non accidental, caused indeed by their parents. Importantly he located the causes of child abuse within the psychopathology of some parents. During the following decade this work was to have great influence in the UK. The resulting shift in philosophy to a position where parents might be viewed as potentially dangerous to their children was accelerated as a result of public inquiries into the deaths of children at the hands of their parents or care givers. Such inquires are conducted when there has been a death of a child in these circumstances and there are matters of public interest involved; usually when there have been interventions by the state prior to the death. Of particular influence was the inquiry into the death of Maria Colwell aged 7, a child who had been in state care for five years prior to a return to her family home (against her wishes), and who was subsequently killed by her stepfather, 13 months later. The inquiry led to the establishment of the current child protection system within the United Kingdom (Parton, 1991). At that time much of the professional identity of child care social work became consolidated around child protection functions and it became difficult for social workers to develop supportive partnerships with families, given the atmosphere which encouraged them to view such families with suspicion.

1.1.3 The development of the child protection system

Whilst, following the work of Kempe, much of the focus in the 1970s was concentrated upon the physical abuse of children and how to prevent injury or death occurring, during the 1980s the focus was to shift to the issue of child sexual abuse. There are a number of reasons for this; Corby (2000) identifies the accounts of adult female survivors of sexual abuse and the work of pioneer family therapists such as Giaretto *et al*. (1978) as being of particular importance. As with physical abuse the pattern in development of understanding the phenomenon of child sexual abuse was that it came to be regarded as more prevalent than previously thought, with most perpetrators being known to the child (Macfarlane and Waterman, 1986). Unlike physical abuse however, where theories of psychological causation were challenged by structural understandings wherein deprivation and poverty came to be considered as influential factors in creating the conditions within which physical abuse might occur, explanations for sexual abuse were located in theories of psychopathology and family dysfunction.

Since the 1970s the issue of how best to protect children has become a major public issue in the UK as the public have become more aware of the nature of child abuse, including its prevalence (much greater than thought possible prior to this time) and impact upon children (both profound and long lasting). This period saw the growth of social work in the UK, both numerically and in terms of prestige, as it became the lead profession in tackling the issue of child abuse. However, this exposed social workers to criticisms with regard to their ability to recognise child abuse and intervene effectively to protect children. For example the judge at the trial of Morris Beckford into death of Jasmine Beckford (another child who had been in state care for six months and who was returned home and subsequently killed by her stepfather) described the attitude of the social worker in the case as being 'naive beyond belief' (Brent, 1985). As a response to such criticisms social workers began to prioritise in their practice the identification of those parents who had potential to abuse their children. 'It is unsurprising then, that the numbers of involuntary clients, as measured by families having their children taken into the care of the state, increased greatly through the 1970s and early 1980s, peaking at over 100,000 children in state care in 1982, with the use of statutory orders increasingly preferred over voluntary arrangements (Parton, 1985)' (Spratt, 2007, p 14).

Whilst the provision of state care was seen as a way of providing safety for children experiencing abuse in their own homes, doubts began to be raised in relation to the ability of the state to secure good outcomes for children; in effect the ability for the state to act as a 'good parent'. In what may be regarded as symbolic of how such issues are dealt with in the UK, such doubts were created by a number of media scandals and subsequent public inquiries which revealed that residential care itself could pose considerable dangers for children. The first such scandal concerned the Kincora Boys home in Belfast, Northern Ireland, where it was found that residents of the home had been systematically sexually abused by staff over a considerable number of years. The resulting public inquiry was to be followed by others which detailed the physical, sexual and emotional abuse of children whilst in state care in England, Scotland and Wales (Utting, 1991). As a result, social workers developed a tendency to view state care as 'last resort' and delayed the admission into care of some children whose circumstances required it. The state also moved to

ensure that children in state care might be made safe by introducing a comprehensive system of vetting and barring (checking that staff had not committed any offences and preventing those who had from working with children). Such rules now apply to anyone working with children in the UK. There was also a shift in state care placement provision away from residential care to foster family care and a move to balance the immediate issue of keeping a child safe with the more complex task of securing good outcomes for the child. Some of these changes reflected (the then) new concern, that changes in the systems for protection and care of children should be research informed as a counterbalance to the more familiar drivers for change, what Ayre has described as the unholy trinity of public, media and political pressures to 'do something to stop child abuse' (2001).

The great majority of families, however, experiencing state social work, did not have their children taken into the care of the state. During the 1980s the child protection system, introduced in the wake of the death of Maria Colwell, continued to be refined. The current system is described in detail in the section dealing with 'Legal and Policy Frameworks'. Suffice to say here that the system was comprised of Local Authority based Area Child Protection Committees who implemented child protection procedures (local versions based on national guidelines) which involved investigation of allegations of child abuse which, if validated, resulted in multi disciplinary case conferences to consider the risks to the child. One of the options for the case conference was to place the child's name on a database (accessible by other professionals) known as the 'Child Protection Register'. This is not to say that those families experiencing problems raising their children and who required support -from the state to do so were not offered services by the state, in fact such families did (and still do) make up the large majority of those referred to social workers. It was rather that during this period social work directed at meeting the supportive needs of children and families diminished in scope. As Corby observes 'the form and style of this intervention was, from the parents' viewpoint, punitive and severe. Parents suspected of abusing their children were at first treated with great suspicion' (2000, p 39). Even those families receiving supportive interventions remained suspicious that state social workers would perceive their circumstances or actions as potentially indicative of child abuse and remove their children into state care as a result (Spratt and Callan, 2004). A corrective to these punitive tendencies in practice was provided by the publication of the *Cleveland Inquiry Report* (Butler-Sloss, 1988) which, it has been argued, marked the zenith of compulsory state interference in family life (Myers, 1994). This report resulted in widespread public disquiet with regard to the actions of police, social workers and doctors who were involved in removing 121 children, for reasons of suspected sexual abuse, from their families over a six month period in the County of Cleveland. Social workers were now criticised for being overzealous in their attempts to diagnose abuse and 'rescue' children from their families. As a result social workers felt they were in an impossible situation, criticised for not intervening in families where abuse was later found to have occurred, often with tragic results, and criticised for responding too punitively in families where abuse was suspected but later found not to have occurred. Their dilemma is illustrated below.

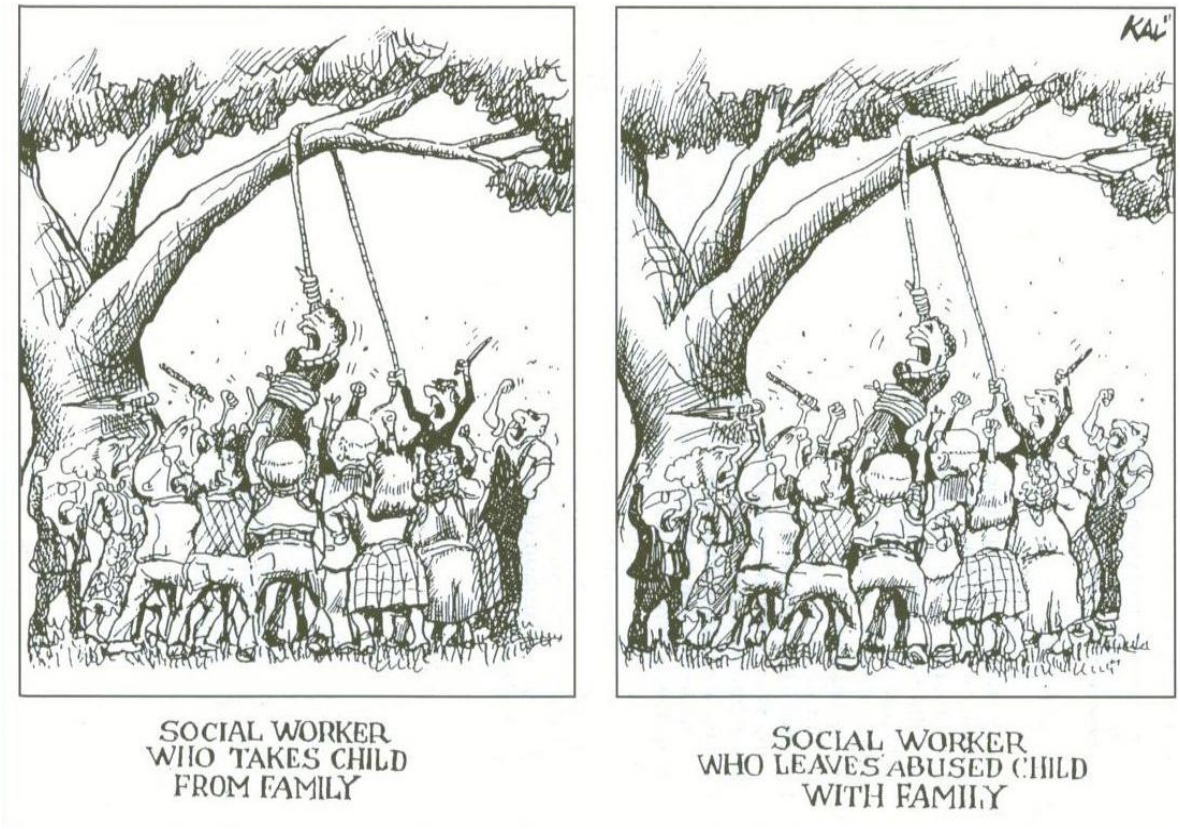


Figure 25: Damned if you do and damned if you don't! (source unknown)

1.2 An emerging consensus on child protection

As a result of such dilemmas a public, political and professional consensus emerged that while some children should be protected from abusive parents the state should also provide non stigmatising support for those families who required help. Coming 100 years after the 1889 Prevention of Cruelty to Children Act, the 1989 Children Act sought to strike new balances in the relationship between the state and the family (Parton, 1991). The parts of the Act dealing with both child protection and family support are described in the 'Legislation for Child Protection' section in greater detail, but it is important to note here that the central principle of the legislation is that there should be a new contract or 'partnership' between the state and the family. To achieve the new balance the threshold for state intervention in family life was raised to that of 'suspected or actual significant harm' (from the previous 'in need of care, protection or control'), alongside new duties directing provision of support to families by local authorities. It was anticipated that most responses to family situations by social workers would be of the later type. 'In fact this did not occur; at least to the degree it had been anticipated. The overview of government commissioned research, *Child Protection: Messages from Research* (Department of Health, 1995) portrayed a reactive social work system still preoccupied with the investigation of possible child abuse, with consequently little attention paid to the wider needs of children and families and restricted development of family support services' (Spratt, 2008, p 14). In a bid to stimulate the further development of family support services to children and families in

line with the legislative intent, the government, through its Social Services Inspectorate, stimulated a 'refocusing debate'. 'Such refocusing or rebalancing requires local authorities and their social workers to shift attention from procedurally narrow investigations under the child protection system to broader perspectives that embrace the priorities and sense of enquiry associated with family support' (Hearn *et al*., 2004, p 35).

The way to achieve such changes was initially seen as the introduction of modern management techniques alongside the adoption of new work tools for social workers. An example of the former was the introduction of 'performance measures designed to track the response of local authorities against prescribed targets. For example, the reduction of numbers of children on the 'at risk' register; the use of the Social Services Inspectorate to reinforce good practice, often through public dissemination of exemplars of good practice such as local authorities who met or exceeded performance targets; and the award of stars to denote local authority performance standards' (Spratt, 2008, p 16). An example of the later was the *New Assessment Framework* (Department of Health, Department for Education and Employment, Home Office, 2000), introduced to help social workers balance their previous concentration on child protection risks with a new emphasis on the assessment of family needs and how these might be addressed. Much of the underpinning philosophy of the Framework was sited within ecological theories which located the risks posed to children across a range of systems (from family to society), challenging the ideas of pathological parenting promoted by Kempe as an explanation for child abuse, which had so influenced the development of the child protection system. As Léveillé and Chamberland observe, the 'careful and systematic assessment of the needs levels of children and their families referred to social services is at the heart of this initiative for refocusing children's services' (2010, p 931). The government's response to these findings was to 'ensure that referral and assessment processes discriminate effectively between different types and levels of need and produce a timely service response' (Department of Health, 1999, p 20). The Framework for the Assessment for Children in Need and their Families was created in response to this demand. It consists of a framework that aims to understand the complex situations in which children in need of services evolve within their own families' (Léveillé and Chamberland, 2010, p 931). Whilst assessments conducted under past guidance had been concerned to locate risks to children primarily in their caregivers, the philosophy underpinning the Framework were located in ecological approaches 'based on the premise that the development and behaviour of individuals can be fully understood only in the context of environments in which they live' (Horwath, 2001, p 54). These included the child's developmental needs, parenting capacity and family and environmental factors, with sub categories indicating areas for particular attention.

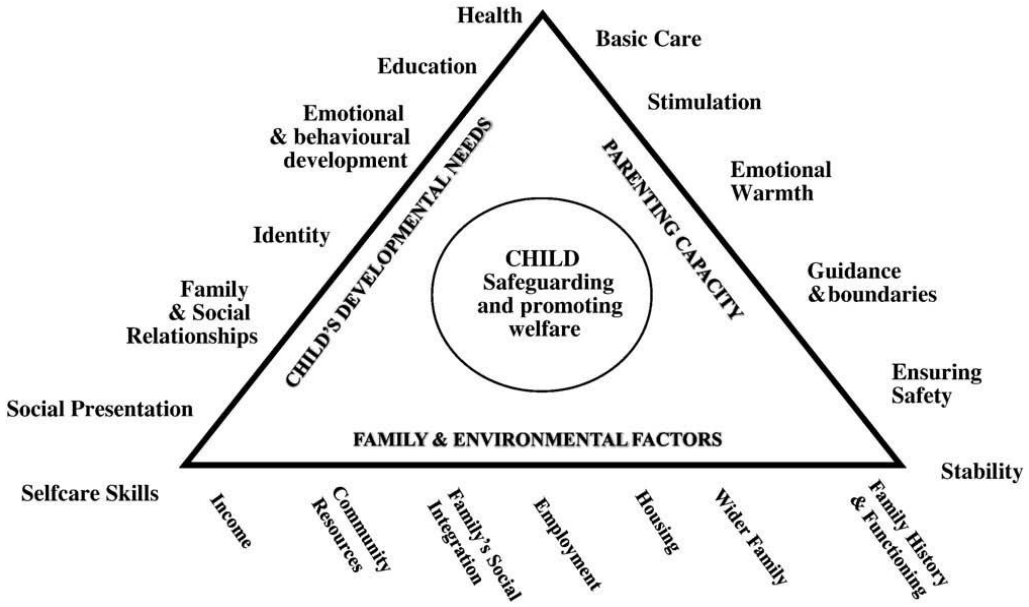


Figure 16: Framework for the Assessment of Children in Need and their Families (Department of Health, Department for Education and Employment, Home Office, 2000)

1.3 Difficulties in changing the child protection system: the influence of public inquiries

Did introduction of modern management techniques alongside the adoption of new work tools for social workers achieve the goals of the refocusing debate? Research by the author and colleague into the effects of the refocusing initiative have demonstrated that whilst overall rates of investigative child protection responses by social workers diminished, with an associated increase in family support responses, this did not necessarily lead to the development of a greater partnership with parents wherein service provision to meet needs became the normative response (Spratt, 2001; Spratt and Callan, 2004). Whilst the intention to move away from a narrow focus on child protection towards a broader response, recognising family problems and their needs for support, was generally welcomed by local authorities and social workers, it nevertheless remained difficult to move away from 'risk averse' practices. As the author and colleague have observed, 'it is politically and ethically unacceptable to route cases that appear to indicate lower risk through child protection processes; such lower risk cases are routed through child welfare processes; social workers must continue to manage risks inherent in child welfare cases; social workers achieve this by developing risk filtration practices; risk filtration practices inhibit the development of wider services to child welfare cases' (Hayes and Spratt, 2009, p 1593). Essentially such practices involve engaging with the family, establishing that there are indeed very low or no child protection risks, but then failing to more fully assess any needs the family might have as a basis for delivering services to them. In fact, very few families in this study received services.

To understand why social workers are reluctant to change their practices, even when mandated to do so by legislation and government policy, we need to reflect on the culture of blame that exists in the UK in relation to child protection issues. Social workers are very wary of being criticised in public if a child they are working with is abused or killed and this may cause them to focus on child protection issues rather than broader family support needs in their practice. Much of this fear has been created by public inquiries, where social workers have been blamed for not acting to protect children. Perhaps unlike other nations, the role of public inquiries into child deaths has also been pivotal in the continuing development of child protection policy and practice in the UK. Whilst the deaths of Maria Colwell and Jasmine Beckford were respectively, to provide stimulus for the creation of the child protection system in the UK, and then cause that system to become risk averse and interventionist in nature; the deaths of two children in recent years, Victoria Climbié and Peter Connolly, have resulted in public inquiries leading to wide ranging reviews of the child protection system.

Victoria Climbié

Victoria Climbié, a West African child, was murdered in 2000 in London by her great aunt and her partner with whom she was living at the time. Victoria had come into contact with a range of professionals, including social workers, who failed to interpret a number of signs, which indicated she required immediate protective intervention. At her post mortem, the pathologist noted 128 separate injuries on her body as a result of having been beaten. The political response was to commission Lord Lamming to examine the system for protecting children. Laming concluded that the system, underpinned by the legislative framework, was basically sound but that there needed be better structures to permit good communication between agencies and that these needed a basis in law; echoing a theme of previous inquires into child deaths which emphasised that professionals needed to work together to have a full understanding of what was happening in a child's life (Laming, 2003).

1.4 From protection to safeguarding: 'Every child matters'

We have witnessed changes in the language used to describe the difficulties children face in life, the early notion of 'child abuse' (in common with the more familiar term internationally – 'child maltreatment') focused on what is done to the child and the term 'child protection' focused on what can be done to protect children from abuse. The new term, emphasised in the government's response to the Laming Report, was 'safeguarding' The concept of safeguarding was derived from the 1989 Children Act which stated that local authorities had a duty 'to safeguard and promote the welfare of children in their area who are in need' (Section 17(1)). Whilst the 'refocusing debate' of the 1990s (referred to above) had concentrated on encouraging social workers to develop more supportive interventions for children in need in preference to investigative child protection responses, the shift to safeguarding envisaged state and voluntary services (including social workers, but also applying to all professionals involved in work with children) being of-

fered to a much broader range of children whose circumstances indicated that if services were not provided they would go on to suffer a range of poor outcomes. Such ideas were underpinned by the importance of prevention and early intervention.

The Green Paper, *Every Child Matters*, was published by the Government in 2003 (Chief Secretary to the Treasury). Whilst in part it was a response to the recommendations set out in Lord Laming's Report into the circumstances surrounding the death of Victoria Climbié, it also represented an attempt to connect an understanding of individual tragedies with the experiences of a much broader group of children, making it clear that child protection could not be separated from policies to improve children's lives as a whole. Parton has observed; 'the priority is not only that children are protected from significant harm but that the welfare of as many children as possible is safeguarded and promoted' (Parton, 2006, p 169). The concern was that there should be improved, measurable outcomes across a range of indicators, children's health, safety, enjoyment and achievement, ability to contribute to society and social and economic well-being. Parton has observed of the policy context, '[an] emphasis in early intervention, family support and a focus on vulnerable children was being developed. Concerns about children not fulfilling their potential and becoming social problems in the future were the driving force for change as much as children being at risk of parental abuse' (2006, p 166).

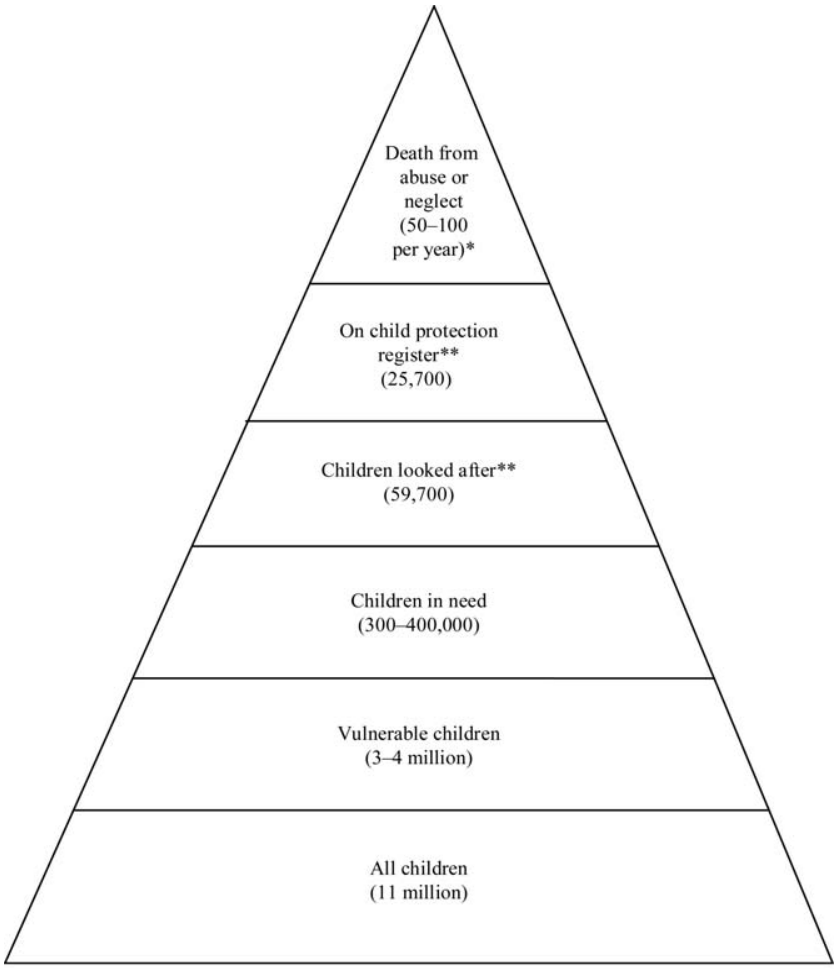
Whilst the *Every Child Matters* policies were closely aligned to the then Labour Governments intentions to tackle social exclusion in the UK, we may also identify three key underlying influences on policy development at that time which helped guard against a reactive policy response to the death of Victoria Climbié which might have resulted in a turning away from helping a broader group of children and concentrated resources on those who might be most likely to suffer abuse or death at the hands of their caregivers. First; a concern by government to invest in children as human capital has increasingly replaced investment in traditional industries, as western economies locate their future economic security in the knowledge economy requiring highly trained and mobile workers. Second; the influence of economists such as James Heckman who has calculated that universal provision of pre-school learning-enhancement programmes in the USA would generate cumulative benefits to society of over $400 billion (Heckman and Masterov, 2004). For those families in the UK presenting risk factors indicative of poor future outcomes, there is a strong economic case for early and high-cost investment to prevent the occurrence of predictable poor social and economic outcomes in the future. Third; the scientific claims that we can identify those families with multiple problems who are most likely to become high cost in the future, through reduced tax contribution due to unemployment and increased costs in terms of health and social support. For example, using findings from the UK Birth Cohort Study, Feinstein and Sabates found that: 'For higher levels of adult deprivation ...the probabilities of experiencing 10 or more of the 32 [negative] outcomes are 1% for the low risk group, 12% on average and 51% of the high risk group [the 5% most at risk]. This highlights the very strong relationship between high childhood risk and multiple adult deprivation' (2006, p ii). Such findings have caused policy makers in the UK to make it a priority to identify high risk groups and target these for

early interventions designed to prevent predicted poor outcomes, the motivations being to prevent human misery and reduce economic costs.

1.5 The 2004 Children Act

The question for local authorities and social workers posed by *Every Child Matters* was, could the core business of investigation of families where there had been accusations of child abuse be complemented by actions to help a broader range of children who could be identified as living with the type of risk factors (referred to above and mentioned in more detail in the Section dealing with Policies for Child Protection) which indicated they might either (a minority) suffer child abuse later in childhood or (a majority) experience a range of poor outcomes in later childhood and in adult life? To help create a positive answer to this question the initial focus on achieving the aims of the *Every Child Matters* policies was to create a statutory framework to better facilitate interagency working in meeting the twin objectives of improving the range of services to promote the welfare of as many children as possible, whilst ensuring a proper focus on safeguarding the most vulnerable of children; the result was the 2004 Children Act.

Key to achieving such objectives was the establishment of Local Safeguarding Boards in each Local Authority area, to provide an institutional structure to ensure the welfare of children. The core objectives, set out in *Working Together to Safeguard Children* (the interagency guidance issued by the government for professionals working to protect children), are as follows: 'to co-ordinate what is done by each person or body represented on the Board for the purposes of safeguarding and promoting the welfare of children in the area of the authority; and to ensure the effectiveness of what is done by each such person or body for that purpose. Safeguarding and promoting the welfare of children is defined ...as: protecting children from maltreatment; preventing impairment of children's health or development; ensuring that children are growing up in circumstances consistent with the provision of safe and effective care; and undertaking that role so as to enable those children to have optimum life chances and enter adulthood successfully' (Department for Children, Schools and Families, 2010, p 87). The Board members include representatives from the local authority, national health service, and a range of national voluntary sector providers (e.g. the NSPCC), together with local providers of services who should include 'faith groups, children's centres, GPs, independent healthcare organisations, and voluntary and community sector organisations including bodies providing specialist care to children with severe disabilities and complex health needs' (2010, p 105). The objectives, as illustrated below, were to reach a much wider number of children, ranging from those children considered vulnerable in some way, to children in need and to those children requiring state care or at extreme risk.



* These children may or may not be on the child protection register, nor looked after, nor vulnerable.

** These children are included in the children in need figure, and not all children on the child protection register are children looked after.

Figure 27: Every Child Matters (Department for Education and Skills, 2004)

1.5.1 The service delivery continuum

As will be evident from the illustration above, this shift in policy direction had the potential to greatly increase the number of children requiring help from local authorities. So whilst local authorities were (2004 statistics) responsible for some 25,700 children whose names were on the child protection register, looked after some 59, 700 children in the care of the state and provided services to between 300,000 - 400,000 children in need, it was estimated that there were 4 million vulnerable children (requiring extra help) in the total population of 11 million children in England. It is obvious that local authority social workers alone could not meet the needs of such numbers of children. Rather, it was envisaged that services to children should be delivered along a continuum from universal services to specialist services by a range of professionals, with services targeted at the specified level of need. And, reflecting the composition of local safeguarding boards, it was envisaged that all should be involved (including the voluntary sector) in delivering such services to children. The following figure illustrates these concepts.

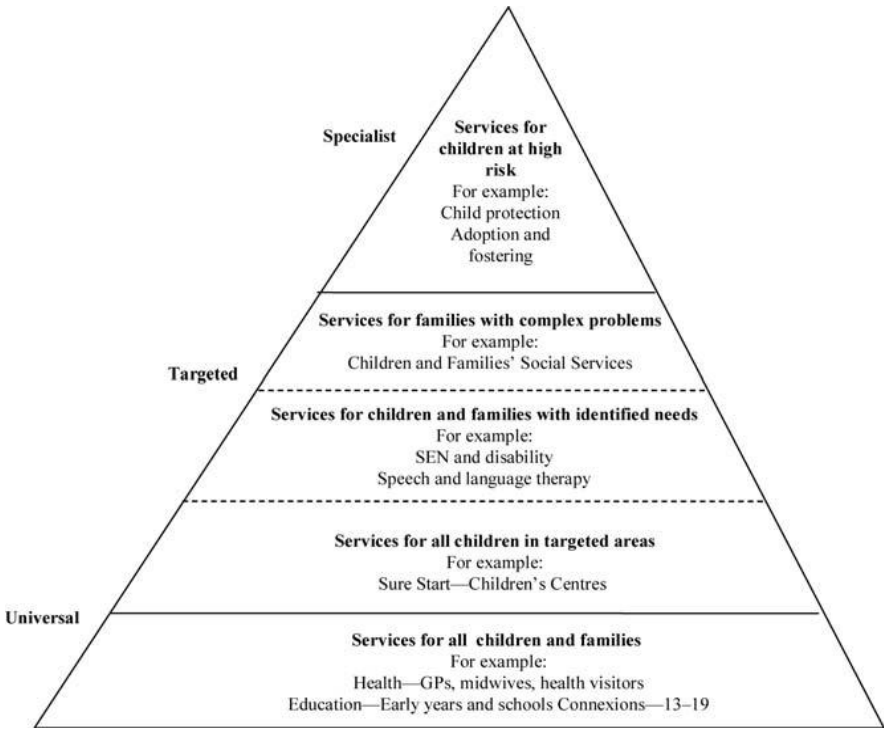


Figure 28: From Universal to Specialist Services (Department for Education and Skills, 2004)

1.5.2 The Common Assessment Framework

To help in the process of encouraging the view that the protection of children should not be confined to social workers but be a concern of all professionals working with children, the government introduced a *Common Assessment Framework* (Department for Children, Schools and Families, 2006). This was primarily designed to help a wide range of professionals identify vulnerable children who had additional needs at an early stage. This might be, for example, a teacher or a health visitor or a nursery worker. At this point of recognition an assessment would take place which might indicate that the needs could be addressed by a single professional or require more integrated support involving a number of professionals, one of whom would be appointed the *lead professional*. If the assessment indicated the presence of more complex needs requiring more specialist services then a referral could be made to local authority social workers who would implement a more in depth assessment along the lines indicated by the Framework for the Assessment for Children in Need and their Families referred to above. These processes, often referred to as the 'windscreen model', are illustrated below.

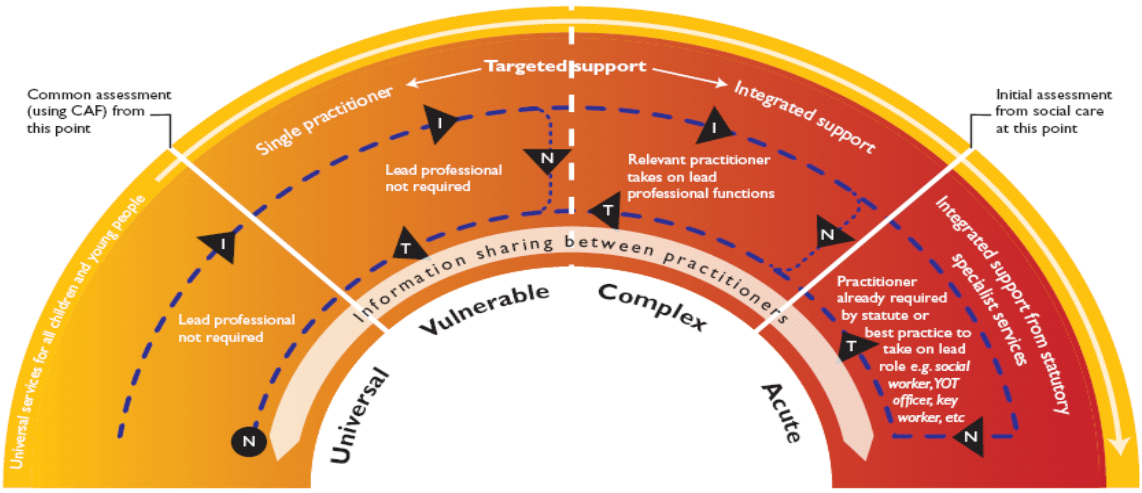


Figure 29: The Common Assessment Framework 'Windscreen Model' (DfCSF. 2006)

1.6 Recent developments in protecting children in the United Kingdom

We may trace two significant trends in child protection in the United Kingdom since the introduction of the 2004 Children Act. These are the further strengthening of the services delivered by state social workers to children at most risk of immediate harm, whilst taking forward policies based on the concepts of prevention and early intervention as informed by assessments identifying risk factors. The strengthening of services for those children most at risk was, as we have now come to expect, as a consequence of the death of a child.

Peter Connolly

Peter Connolly, a seventeen month old boy, died at the hands of his mother, step father and another man in London in 2007. 'During the trial, the court heard that Baby Peter was used as a 'punch bag' and that his mother had deceived and manipulated professionals with lies and on one occasion had smeared him with chocolate to hide his bruises. There had been over sixty contacts with the family from a variety of health and social care professionals' (Parton, 2010, p 12). Social workers were heavily criticised by a media who once again questioned their abilities to protect children when confronted with manipulative parents. As had been the case, following the death of Victoria Climbié in 2000, Lord Laming was once again commissioned by the government to report on the child protection system. His report was entitled *The Protection of Children in England* (Laming, 2009). Following this report, and also taking into account the report of the government commissioned Social Work Task Force (2009), a Social Work Reform Board was set up to overview the strengthening of social work as a profession, including the setting of new profes-

sional standards for social work education with a drive to recruit the most able students. Since the election of the new Coalition Government in the UK in 2010, Professor Eileen Munro has been commissioned to review frontline child protection services. This recently published review contains recommendations for both how services are organised and how social work is practiced (Munro, 2011). The effect of the death of Peter Connolly, therefore, was to once again put children at immediate risk at centre stage and reinforce the role or social workers as the lead professionals in ensuring their protection.

1.6.1 Prevention and early intervention

In some ways the repositioning of social work in the wake of the death of Peter Connolly was to confirm the apprehensions of some commentators. 'The changing identity of social work in policy towards a primary association with intervention focused on social and public protection brings material consequences. Child and family social work runs the risk of becoming a residual service, synonymous with child protection, where there is a need for investigation and compulsion... There is a risk that prevention, so far as child and family social work is concerned, may come to be associated with a narrow interpretation, namely prevention of significant harm or admission to public care' (McGhee and Waterhouse, 2010, p 12). Such comments may, however, be reflective of a fear of a profession being over identified with children at most risk in our society, where wider policies aspire to meet the needs of families at earlier points, before problems escalate. It could be argued that state social workers are better positioned at the apex of the continuums of needs and of services noted above with other professionals and service providers concentrating their attentions on earlier parts of the continuums. The data presented in relation to those children designated as children in need, children on child protection registers and children in state care (later in this report) certainly point to a concentration on the part of state social workers on those children at greatest risk and with most complex needs. And, counterbalancing the public perception that social workers do not properly protect children, (based largely on the findings of Public Inquiries), the evidence suggests that social workers have been effective in protecting those children most at risk. Part of the difficulty for social workers in becoming more involved in the delivery of preventative services directed towards a wider range of children in need has been a tendency for other professionals to refer families to social workers at increasingly lower thresholds of concern. This has greatly inflated the numbers of children social workers have had to respond to, whilst there has not been a proportionate increase in resources. It may be that burdening state social workers with the more supportive responsibilities, (as outlined in the 1989 Children Act and reinforced by the 2004 Children Act), is not the best way to proceed and that these responsibilities would be better undertaken by others. Any such changes, however, would require a massive and costly expansion of the voluntary service sector in the UK.

1.6.2 Bureaucratisation and professionalization

There are two final developments in child protection social work in the UK which are worthy of note. The legislation, policies and procedures governing the present child protection system (described below) has greatly increased the bureaucracy involved in social work practice. As previously referred to, one of the first actions of the new Coalition Government in the UK on coming to power in 2010 was to commission a review of child protection in England. The report has recently been published, (Munro, 2011), with the author observing in an Interim Report that; 'The main criticism [of procedures] is that they have become too extensive and are so dominating practice that space to exercise professional expertise is being severely reduced' (Munro, 2010, p 61). Munro further points out that, 'it seems that rules and guidance have been issued because of a lack of confidence in workforce competence. This is potentially damaging for two reasons. First, too great a reliance on rules creates the illusion of certainty in a sector where uncertainty prevails. Secondly, it leads to an overdependence on process which diminishes professional judgement and creates a mindset which seeks pre-formulated solutions to complex and uncertain situations' (2010, p 63). Whilst part of the solution may be to make such rules and procedures less prescriptive and decrease the amount of bureaucracy there has also been an ongoing drive within the UK to strengthen the social work profession. Prior to the new millennium it had been possible to qualify as a social worker at diploma level; qualification is now at degree level with indication that 'improvement in child protection practice [is] crucially dependent on the rejuvenation of a well trained, respected social work profession' (Parton, 2010, p 14). It will be interesting to see if the profession remains wedded to the more high risk end of the child protection with its complex bureaucracy or adapts to meet the needs of a wider range of children whose present circumstances indicate future risks and so require early prevention services.

1.6.3 The role of the third sector

In reflecting upon the history of child protection in the UK it is evident that the part played by voluntary providers of services has changed considerably. Whilst the early history of child protection featured lead roles for charitable and church based providers of services, since the advent of the welfare state their roles have changed, still being providers of services but in ways that are usually locality based and supportive of state services. In the UK this has become known as the 'third sector'. 'The Government defines the third sector as non-governmental organisations that are value-driven and which principally reinvest their surpluses to further social, environmental or cultural objectives....It includes voluntary and community organisations, charities, social enterprises, co-operatives and mutual's' (Department for Children Schools and Families, 2007, p 4). It is recognised that state services cannot meet all needs, so the resources provided by the third sector are regarded as important in a number of ways:

1. They are often in a position to develop services to respond more quickly in response to local needs than is the case with the larger and more complex state services.

2. The services provided may be regarded as less stigmatising than state services by those who use them (because they are generally considered less directly associated with the statutory child protection services).

3. They may involve local communities in the running of services, being less remote and more accountable than are the more bureaucratic state led services.

The major funding for the third sector is derived from government, but some organisations within this sector, particularly the larger ones, such as the NSPCC and Barnardos, raise considerable revenues from individual donors as well as from large foundations and businesses. In the UK in 2010 the government provided funding of some £240 million to third sector organisations to support the *Every Child Matters* policy goals referred to above. Such support is delivered through a process of service commissioning. This may happen in a variety of ways; for example, a Local Safeguarding Board may identify the need for particular service in an area. For example, it may have been observed that there are a large number of cases of domestic violence in the area but there are no services to help men overcome their tendency to violence against women. The local authority, as members of the Board, could decide to commission a national organisation who operated in the area (for example, Barnardo's), or a smaller locally based organisation, to provide a service for such men. This arrangement is usually referred to as 'a service level agreement', wherein a contract is created stipulating that an agreed programme is delieverd to an agreed number of men over a certain timescale at a particular cost. Such arrangements are then evaluated by the commissioning local authority to ensure that they are both effective in meeting the aims and represent value for money. By way of illustration, Barnardo's in Northern Ireland currently provide a range of services (at the targeted and specialised levels identified in Figure) commissioned by local authorities under contract arrangements; these include, a Child Bereavement Service, a Domestic Violence Outreach Scheme, Family Group Conferencing (facilitating families to provide solutions to their own problems), a residential unit called Parents and Children Together, where high risk single parents and their children can be assessed and a scheme to help young people leaving state care (barnardos.org.uk). It is important, however, to note that whilst the state relies heavily on such organisations to provide these types of services, the services are located in particular localities and therefore are not accessible by all citizens within Northern Ireland. Essentially the state remains responsible for the provision of services to all citizens, in the majority of cases this is achieved by a comprehensive network of social workers employed by local authorities, with the third sector used to fill gaps in service provision and respond to new needs where they become apparent in communities.

1.7 The Relationships between the United Kingdom government and national governments in Wales, Scotland and Northern Ireland

We now turn to the political and legislative structures in the UK. The United Kingdom comprises four nations, England, Wales, Scotland and Northern Ireland. Traditionally power has been centralised in the UK parliament at Westminster in London. Whilst all countries continue to have elected representatives at Westminster, following referendums in Wales and Scotland in 1997 and in Northern Ireland in 1998, national parliaments (referred to as assemblies in Wales and Northern Ireland) were created and a range of powers were transferred to them. This has become known as the 'devolution of power'. Whilst central government in Westminster remains responsible for national security, social security, foreign policy, economic policy (including taxation) and trade, the range of powers devolved to national governments is extensive. These include, health, education, housing, home affairs (including some aspects of criminal and civil law), the environment and social work. Responsibilities for discharging these powers are further devolved to a range of local authorities who organise and deliver services to the public.

Child protection, whilst being a devolved responsibility at national government level in terms of laws, policy and control of local authorities, also remains an issue at the heart of central government in Westminster, where concern for children in England, reflects public concern that the welfare of children remains an important priority. As we have seen, the issue of child protection has, in modern times, been a central concern of government, leading to public debate on the issues. Consequently the system for protecting children in the United Kingdom has come under intense public, media and political scrutiny in ways perhaps not familiar to other European nations. In effect this has meant that nations within the UK are wary of developing policies out of line with mainstream thinking. So whilst policies are not identical, they nevertheless reflect 'cross-cutting concerns across the jurisdictions' (McGhee and Waterhouse, 2010, p 3). This is reflected in legislation, policies and procedures.

1.7.1 Legislation for child protection

At the level of legislation, the Children (Northern Ireland) Order 1995 is a close copy of the 1989 Children Act in England and Wales. Scotland has a different legal system, in existence since 1885, with the Children (Scotland) Act 1995 being the most up to date child protection legislation. Unlike the rest of the United Kingdom, where there are strict legal divisions between legislation concerned with dealing with children who commit offences and those who are in need of care and protection, these issues are dealt with within the same legal system in Scotland. As a result, however, of growing concern with regard to child protection issues, the Children's Hearing System (courts), whilst 'originally dominated by referrals on offence grounds is now primarily concerned with referrals on care and protection grounds' (McGhee and Waterhouse, 2010, p 6).

The central purposes of the 1989 Children Act were to provide a basis for partnership between the state and the family by providing a number of checks and balances within the legislation to promote the rights of

parents to bring up their children and the rights of children to be brought up in their own home, whilst ensuring those children requiring protection were safeguarded. Intentions to support families are reflected in statutes directing local authorities to provide a range of services to such families and are balanced by statutes giving powers to local authorities to intervene in family life in order to protect the children when situations become so severe or chronic as to pose considerable risks to children should they remain in the family home. Other parts of the legislation deal with Looked after Children (children in state care) emphasising, in so far as it is possible to do so, that such children are brought up in a partnership between the state and their natural parents, with the responsibilities shared, not replaced. It is important to note that these three parts of the legislation overlap in practice, for example, children who are abused meet the criteria for being children in need and such children may become looked after children. The articles of the legislation dealing with these three areas are described below.

1.8 Family support

The first two articles of the 1989 Children Act are of particular importance for clarifying the legislative intent in relation to family support. Article 18 sets out 'the general duty of every authority': (a) To safeguard and promote the welfare of children within its area who are in need; and (b) So far as is consistent with that duty to promote the upbringing of such children by their families; by providing a range and level of personal social services appropriate to those children's needs.

In Article 17 three criteria are established for determining which children are deemed to be 'in need'. A child is defined as "in need" if-

'(a) He is unlikely to achieve or maintain, or to have the opportunity of achieving or maintaining, a reasonable standard of health or development without the provision for him of services;

(b) His health or development is likely to be significantly impaired, or further impaired, without the provision for him of such services; or

(c) He is disabled.'

1.9 Child protection

Section 47(1) of the 1989 Children Act gives Local Authorities the responsibility for investigating suspected child abuse on the basis of 'significant harm': 'Where a local authority – have reasonable cause to suspect that a child who lives, or is found in their area is suffering, or is likely to suffer, significant harm, the authority shall make, or cause to be made, such enquiries as they consider necessary to enable them to decide whether they should take any action to safeguard or promote the child's welfare'. If such enquiries confirm that a child is suffering or likely to suffer significant harm, then if is deemed necessary to protect

the child, the social worker may apply to the court for an Emergency Protection Order which permits the removal of the child into the care of the state for a period of up to eight days. After this time a further application must be made to the court for an interim Care Order if it is thought unsafe to return the child home and/or further time is required for assessment. If interim Orders are granted the Local Authority must decide, when all assessments are complete, whether or not to apply for a full Care Order. If the Care Order is granted by the court, the state shares parental responsibility with the natural parents until the child is 18 or the Order is revoked. In effect this usually means that they continue to reside in state care until such times.

1.9.1 Looked after children

The Children Act 1989 provides two routes through which children may become looked after. The first is through the granting of a Care Order (Section 31) which brings the child into state care on a compulsory basis. The court may only make a Care Order if satisfied that the child is suffering, or is likely to suffer, significant harm attributable to the care given, or to the child being beyond parental control. The second is via the provision of voluntary accommodation, which comes into effect with respect to any situation (with the exception of the child being at risk of suffering significant harm at the hands of their parents) where a parent is unable to provide care for a child. The parent may remove their child from this voluntary arrangement at any time.

1.9.2 Children's rights

In common with other countries, the UK is a signatory (in 1991) of the United Nations Convention on the Rights of the Child (UNCRC), and reports to the UN Committee on the Rights of the Child on progress made on implementing the rights of children. Children's' Commissioners have been appointed in each UK nation to ensure compliance with the Convention. A number of the Conventions Articles direct governments to protect children from exploitation or abuse and to promote their development and welfare. Whilst the 1989 Children Act was introduced before the signing of the Convention it does in many ways reflect an intention to both hear the concerns of children and act to protect their rights. For example, children in court proceedings have the right to independent legal representation and social workers must consult with them and consider their views on any matters which might affect their lives across a wide range of circumstances. A Guardian Ad Litem service has also been introduced in UK nations to ensure that independent social workers scrutinise all applications made to Courts under the Children Act by local authorities to ensure that child's best interests are protected, making representation directly to the court with regard to these matters. At a broader level, however, the idea of children having rights has entered the public consciousness and it has become a priority for all organisations working with children to ensure that their policies and procedures are compliant with the principles of the Convention. In child protection work, this is most

often expressed by a concern that the wishes and feelings of children should be heard and influence decisions at all levels in the child protection process.

1.10 Policies for child protection

Common approaches across the four nations to the protection of children at the level of legislation are also evident at policy level. In Northern Ireland *Our Children and Young People—Our Pledge, 2006–2016* (Office of the First Minister and Deputy First Minister, 2009), in Scotland, *Getting it Right for Every Child* (Scottish Executive, 2005) and in Wales, *Children and Young People: Rights to Action in Wales* (Welsh Assembly Government, 2004) all, with some variation, reflect the broad themes contained in the English policy paper (reviewed in detail previously) *Every Child Matters* (Chief Secretary to the Treasury, 2003), of improved measurable outcomes across a range of indicators, children's health, safety, enjoyment and achievement, ability to contribute to society and social and economic well-being. Much of the development of policy in England has been described in detail in an earlier section of this report. It is important to note here that the policy documents across the four nations all reflect a growing preoccupation with preventative services and early intervention in line with the concern to reduce the social and economic costs referred to above; targeting children and families where risk factors indicate the likelihood that problems will develop to require interventionist specialist services in the future if preventative services are not offered in the present. They advocate a whole of government approach; all government departments concerned with children should work cooperatively to achieve the policy outcomes for children. They also promote inter-agency working between the state and third sector in pursuit of the same goals (Social Exclusion Task Force, 2008).

1.10.1 The role of the third sector in the development of legislation and policy

It is important to note that the work of the third sector has not been restricted to the direct provision of services; it has also had significant roles to play in relation to the development of legislation and policy. In line with an international growth in concern for children's rights, organisations such as the NSPCC have developed significant interests in promoting such rights through campaigning strategies. They list a number of significant achievements in this regard over the last ten years, including an increase in the penalties delivered by courts to those convicted of sexually abusing children, the introduction of more 'child friendly' arrangements for those children giving evidence in child abuse trials, lobbying the government to pledge £13 million to help support victims of child abuse and launching national campaigns to heighten public awareness of the signs and symptoms of child abuse to enable improved early reporting and effective interventions (nspcc.org.uk). Much of this work is achieved by the astute use of the media to highlight issues and the direct lobbying of political representatives to ensure that the policy and law makers take into account the views and wishes of third sector organizations, who often have considerable support from

the public, in making new laws and policies. They also have an important role in calling such law and policy makers to account, ensuring that policies are implemented and measuring their effects in practice. In this way they have a vital role in influencing policy formation and implementation and critiquing its effectiveness. State social workers and local authorities are less free to critique such policies as they are employed directly by the state.

1.11 Guidance and procedures for child protection

The guidance and procedures for child protection in the England is, *Working Together to Safeguard Children: A guide to inter-agency working to safeguard and promote the welfare of children* (Department for Children Schools and Families, 2010). The guides available in Wales (*Safeguarding Children: Working Together under the Children Act 2004,* Welsh Assembly Government, 2006) and Northern Ireland (*Co-operating to Safeguard Children,* Department of Health, Social Services and Public Safety, 2003) are very similar, with some variation in the Scottish guidance (*Protecting Children – a Shared Responsibility: Guidance on Inter-agency Co-operation,* Scottish Office, 1998) reflecting the differences in their legislation. The English guidance runs to a remarkable 393 pages in length and contains complex instructions for the procedures and protocols to be followed, including, roles and responsibilities of various professionals; arrangements for local safeguarding boards; training, development and supervision for interagency working; managing individual cases where there are concerns about a child's safety and welfare; child death review processes; serious case reviews; safeguarding and promoting the welfare of children who may be particularly vulnerable, and managing individuals who pose a risk of harm to children. It also provides the definitions of various forms of abuse which are of particular importance in deciding which children should receive an immediate response in line with the child protection requirements of the legislation. These are detailed in full below as they represent the official definitions upon which practice is based.

1.11.1 Neglect

The definition of neglect is the persistent failure to meet a child's basic physical and/or psychological needs, likely to result in the serious impairment of the child's health or development. Neglect may occur during pregnancy as a result of maternal substance abuse. Once a child is born, neglect may involve a parent or carer failing to: provide adequate food, clothing and shelter (including exclusion from home or abandonment); protect a child from physical and emotional harm or danger; ensure adequate supervision (including the use of inadequate care-givers); or ensure access to appropriate medical care or treatment. It may also include neglect of, or unresponsiveness to, a child's basic emotional needs' (2010, p 39).

1.11.2 Physical abuse

The definition of ‘physical abuse may involve hitting, shaking, throwing, poisoning, burning or scalding, drowning, suffocating, or otherwise causing physical harm to a child. Physical harm may also be caused when a parent or carer fabricates the symptoms of, or deliberately induces, illness in a child’ (2010, p 38).

1.11.3 Sexual abuse

Defining ‘sexual abuse involves forcing or enticing a child or young person to take part in sexual activities, not necessarily involving a high level of violence, whether or not the child is aware of what is happening. The activities may involve physical contact, including assault by penetration (for example, rape or oral sex) or non-penetrative acts such as masturbation, kissing, rubbing and touching outside of clothing. They may also include non-contact activities, such as involving children in looking at, or in the production of, sexual images, watching sexual activities, encouraging children to behave in sexually inappropriate ways, or grooming a child in preparation for abuse (including via the internet). Sexual abuse is not solely perpetrated by adult males. Women can also commit acts of sexual abuse, as can other children’ (2010, p 38).

1.11.4 Emotional abuse

‘Emotional abuse is the persistent emotional maltreatment of a child such as to cause severe and persistent adverse effects on the child’s emotional development. It may involve conveying to children that they are worthless or unloved, inadequate, or valued only insofar as they meet the needs of another person. It may include not giving the child opportunities to express their views, deliberately silencing them or ‘making fun’ of what they say or how they communicate. It may feature age or developmentally inappropriate expectations being imposed on children. These may include interactions that are beyond the child’s developmental capability, as well as overprotection and limitation of exploration and learning, or preventing the child participating in normal social interaction. It may involve seeing or hearing the ill-treatment of another. It may involve serious bullying (including cyberbullying), causing children frequently to feel frightened or in danger, or the exploitation or corruption of children. Some level of emotional abuse is involved in all types of maltreatment of a child, though it may occur alone’ (2010, p 38).

1.12 Risk factors

Whilst these definitions of abuse point to those situations where the various forms of abuse may be already seen to be occurring, the greater numbers of referrals to local authority social workers are more likely to involve vulnerable children where there may be concerns in relation to the risk factors evident within the family environment. Knowing which families are most in need of early intervention has been

informed by epidemiological studies which have demonstrated that the 'risk factors' for future poor outcomes may be identified and inform the targeted delivery of services to reduce the likelihood of poor outcomes occurring. Whilst such risk factors include the familiar indicators of child abuse upon which the traditional child protection system has been built, other factors such as adult offending behaviour, large family size, child rearing models which include poor supervision, poor discipline and emotional coldness on the part of parents (sometime termed 'low warmth and high criticism' families) experience of family disruption (such as divorce) are predictive of poor outcomes in adulthood (Farrington and Welsh, 2007). While there is no definitive list of such risk factors the World Health Organisation note that findings of international studies 'strongly suggest the universality of adverse childhood experiences effects and consequences' (World Health Organisation, 2009, p. 4).

The term Adverse Childhood Experiences (ACE) represents an empirically based attempt to link adverse experiences in childhood and health and social outcomes in later life and defines adversity in two ways; firstly the experience of childhood maltreatment, for example, physical abuse, and secondly, untoward familial circumstances such as the experience of having a parent who abuses drugs or alcohol, are imprisoned or have a mental illness. It also includes situations of family breakdown. An individual's ACE score is a simple count of such experiences with higher scores 'repeatedly showing a positive graded relationship to a wide variety of health and social problems' (Anda *et al*., 2010, p 95). Such studies have demonstrated that those children facing multiple adversities (or risk factors) are more likely to suffer poor outcomes in adulthood than those experiencing singular adversities. Furthermore, it is the multiple effects of equally weighted adversities which influence poor outcomes rather than the particular influence of one type of adversity. This perhaps challenges our intuitive sense that the experience of a type of maltreatment would be likely to outweigh other factors. This type of research has now begun to inform the guidance offered to social workers and other professionals whose task it is to safeguard children. However, the five factors highlighted below in *Working Together to Safeguard Children: A guide to inter-agency working to safeguard and promote the welfare of children* (Department for Children Schools and Families, 2010), also reflects the influence of social workers over the years who have repeatedly recognised such factors to be present in cases where children have been abused.

1.12.1 Domestic violence

The guidance defines 'Domestic violence is defined as any incident of threatening behaviour, violence or abuse (psychological, physical, sexual, financial or emotional) between adults who are or have been intimate partners or family members, regardless of gender or sexuality.' In terms of incidence nearly 25% of adults (the great majority being women) are victims of domestic violence. The guidance further observes: 'domestic violence affects both adults and children within the family'. Some 200,000 children are estimated as being effected by prolonged or regular exposure to domestic violence which can have a serious consequences for their safety and welfare, either because they are directly caught up in the violence or because they witness it and suffer emotional trauma as a result (2010, pp. 262-3).

1.12.2 Mental illness of a parent

In relation to the mental health of a parent or carer the guidance notes that 'a wide range of mental ill health can affect parents and their families. This includes depression and anxiety, and psychotic illnesses such as schizophrenia or bipolar disorder....Mental illness may also be associated with alcohol or drug use, personality disorder and significant physical illness. Approximately 30% of adults with mental ill health have dependent children'. Poor mental health, especially in mothers, may pose risks for children, particularly in relation to their development if they are very young. For example the guidance observes that 'children with mothers who have mental ill health are five times more likely to have mental health problems themselves.... in rare cases a child may sustain severe injury, profound neglect, or even die' (2010, p 266). Such observations must, however, be tempered by the fact that most parents suffering mental illness do not pose a risk to their children.

1.12.3 Parental problem drug use

In relation to parental drug use the guidance observes: 'Although as many as one in three adults have used illicit drugs at least once, problem drug users are less than one percent of the population in England.... In England and Wales it is estimated that one per cent of babies are born each year to women with problem drug use, and that two to three per cent of children under the age of 16 years have parents with problem drug use....Parental problem drug misuse is generally associated with some degree of child neglect and emotional abuse. It can result in parents or carers experiencing difficulty in organising their own and their children's lives, being unable to meet children's needs for safety and basic care, being emotionally unavailable and having difficulty in controlling and disciplining their children' (2010, p 270).

1.12.4 Parental problem alcohol use

Whilst alcohol use differs from other drug use in that is a legalised drug, nevertheless its use by parents may potentially be harmful to their children. The guidance defines harmful drinking as: 'Drinking at levels that lead to significant harm to physical and mental health and at levels that may be causing substantial harm to others... Women who regularly drink over 6 units a day (or over 35 units a week) and men who regularly drink over 8 units a day (or 50 units a week) are at highest risk of such alcohol-related harm. Findings from the *General Lifestyle Survey 2008* suggest that 7% of men and 4% of women regularly drink at higher-risk levels'. The estimated figure for children affected by parental use of alcohol at harmful levels is 1.3 million in England. As the guidance further points out, 'Parental problem drinking can be associated with violence within the family and the physical abuse of children, ...Children are most at risk of suffering significant harm when alcohol misuse is associated with violence' (2010, p 274).

1.12.5 Parents with a learning disability

The definition of learning disability encompasses people with a broad range of disabilities: 'Learning disability includes the presence of: a significantly reduced ability to understand new or complex information, to learn new skills (impaired intelligence); with a reduced ability to cope independently (impaired social functioning); which started before adulthood, with a lasting effect on development'. Whilst the research provides an estimate of some '985,000 people in England with a learning disability; equivalent to an overall prevalence rate of 2% of the adult population....It is important not to generalise or make assumptions about the parenting capacity of parents with learning disabilities' (2010, p 279). The risks to children are seldom as a result of deliberate wilful acts against them but rather the result of neglect through parental omission in relation to necessary caring tasks.

As the guidance further points out, however, these risk factors of course rarely exist in isolation as 'many parents also misuse drugs or alcohol, experience poor physical and mental ill health and have a history of poor childhood experiences themselves. The co-morbidity of issues compounds the difficulties parents experience in meeting the needs of their children, and increases the likelihood that the child will experience abuse and/or neglect' (2010, p 164). This confirms the observations made above in relation to the ACE research, it the multiplicity of risk factors which may act together to produce a toxic cocktail of childhood adversity,

As is evident from this description of risk factors contained in the guidance available to social workers, only relatively small proportions of families featuring such risk factors may go on to abuse or neglect their children. However, looked at another way, children living in such families, especially where there are a number of risk factors present, have significantly greater chances of going on to experience poor outcomes in terms of health and development in later childhood and poor outcomes in terms of health and social circumstances in adulthood (Spratt, 2009). As we have seen, there is a tendency for social workers to prioritise the immediate child protection issues (those cases where the risk factors have resulted in abuse) over those cases where abuse has not occurred but where, nevertheless, the presence of multiple risk factors indicate poor long term outcomes for the child. Whilst the influence of possible criticism of social workers leading to risk averse practices has been cited as one explanation for these phenomena, there is another influence we need to bear in mind. Over the years the numbers of families referred to social workers has risen as the pubic and professionals alike have become more aware of the need both to protect children and offer families support. For example Munro notes that in 2009-10, '603,700 referrals were made to children's social care services, an increase of 56,700 (10%) from the 2008-9 figures' (2011, p. 25). As will be apparent in the later section dealing with National Data Bases local authorities do not have the capacity to meet the needs of this large referred population, in part explaining why there has been little national interest in implementing a mandatory reporting policy.

1.12.6 Mandatory reporting

Mandatory reporting is a legislative duty for professionals working with children to report cases of suspected child abuse to social workers. In a report on the issue of mandatory reporting laws. Wallace and Bunting note that: 'internationally, few countries appear to have mandatory reporting laws covering child abuse. The USA, Australia and Canada are the main countries that pursue this as an approach.... Full mandatory reporting may result in an increase in reporting rates but the international experience highlights the potential for overburdening already stretched child protection services and raises questions as to the quality of increased reports, many of which have been found to be unsubstantiated....A voluntary reporting system strengthened by interagency protocols emphasising the duty of care professionals have in relation to children can provide a similar but more flexible framework for reporting child abuse concerns' (2007, pp. 4-5.).

Essentially mandatory reporting creates a situation where professionals are reluctant not to report a case which *might* have features indicating that the child needs protection, and so refer cases to social workers because they are uncomfortable with dealing with even very low levels of risk as this may create risk to them if someone later accuses them of not referring a case where the child has been subsequently abused. The vast increase in referrals such a system creates, paradoxically, may increase risk for children as all the responsibility for the case is given to social workers who are only able to respond to the most serious cases because of the great increase in numbers of referrals. There has consequently been no great public or professional pressure for mandatory reporting in the UK.

How are these laws, policies and procedures implemented? We have examined the reasons why the child protection system was established and described how it developed; we will now detail its current form before examining how its activities are captured in national data measures.

1.13 The child protection system

Families are referred by other professionals or, on occasions, refer themselves to local authorities for a wide number of reasons. The first task for social workers is to screen referrals to ascertain if they meet the criteria for social work intervention; such criteria may vary between local authorities who operate thresholds in relation to what is deemed an appropriate referral but will usually reflect the targeted and specialist service levels illustrated in Figure . If help is not offered by the local authority advice may be given in relation to a more appropriate source of support, for example the telephone number of a local voluntary provider operating a service relevant to the need. This process is sometimes referred to as 'screening out'; it is evident from

Figure that approximately one third of referrals do not make it to the next stage, the initial assessment. An initial assessment is a brief assessment in accordance with statutory guidance, the Framework for the Assessment of Children in Need and their Families (Department of Health *et al*, 2000) of any child who

meets the threshold criteria and should be completed within a maximum of seven working days and may lead to three types of outcome: 1. no further action; 2. the immediate provision of services; or 3. a more detailed type of assessment known as a 'core assessment'. This is a more in-depth assessment which, as with the initial assessment, seeks to ascertain and analyse information along the three domains of the Assessment Framework i.e. the child's developmental needs, the parents' or caregivers' capacity to respond appropriately to those needs; and the wider family and environmental factors. It should be completed within 35 days. Approximately one third of those receiving an initial assessment have a core assessment. It is evident from

Figure that the majority of those receiving core assessments are also subject to child protection inquiries with half of this number becoming subject to 'child protection plans' (this term in England replacing the previous practice of recording the child's name on the 'at risk' register). This further emphasises the tendency for social workers to prioritise children in need of immediate protection within the 'children in need' definition outlined in the 1989 Children Act. This tendency is further illustrated in the National Data section.

The figure below illustrates the numbers of children entering the system in England in 2010 and what proportion ended up in receipt of a child protection plan. Approximately one in fourteen referred children becoming subject to a child protection plan. It is important to note that part of the referral and assessment process outlined above involves special procedures for those cases requiring actions to protect a child, either because they are judged to be at immediate risk of significant harm at initial referral or this becomes apparent during the assessment process. These procedures are described below.

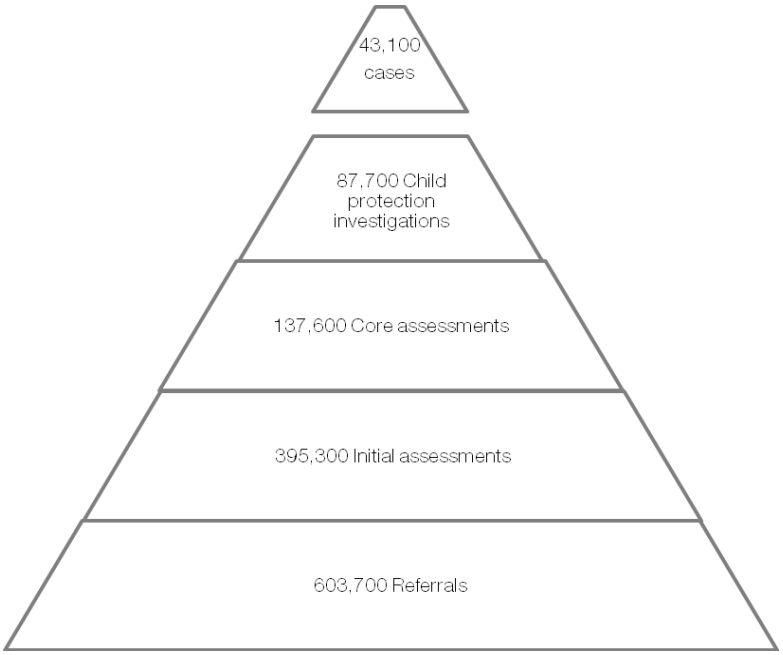


Figure 30: Children referred to local authorities in England in 2010, the final figure of 43,100 represents those subject to a child protection plan

1.13.1 Child protection processes

If a referral is received that indicates that the child is suffering or likely to suffer significant harm, then an immediate child protection response may be initiated in compliance with Section 47 of the Children Act. In a minority of cases, application may be made directly to the courts for an Emergency Protection Order if is considered unsafe to leave a child in the care of their parents. The investigation will involve the social worker liaising with a designated police officer to agree a strategy under 'joint protocol' arrangements. These arrangements were first introduced following the Cleveland Inquiry, referred to previously, to ensure that children did not receive multiple interviews to cover both civil and criminal legal aspects, the new protocol allowing a joint interview to cover both evidential and welfare concerns. The process is illustrated in Figure 31.

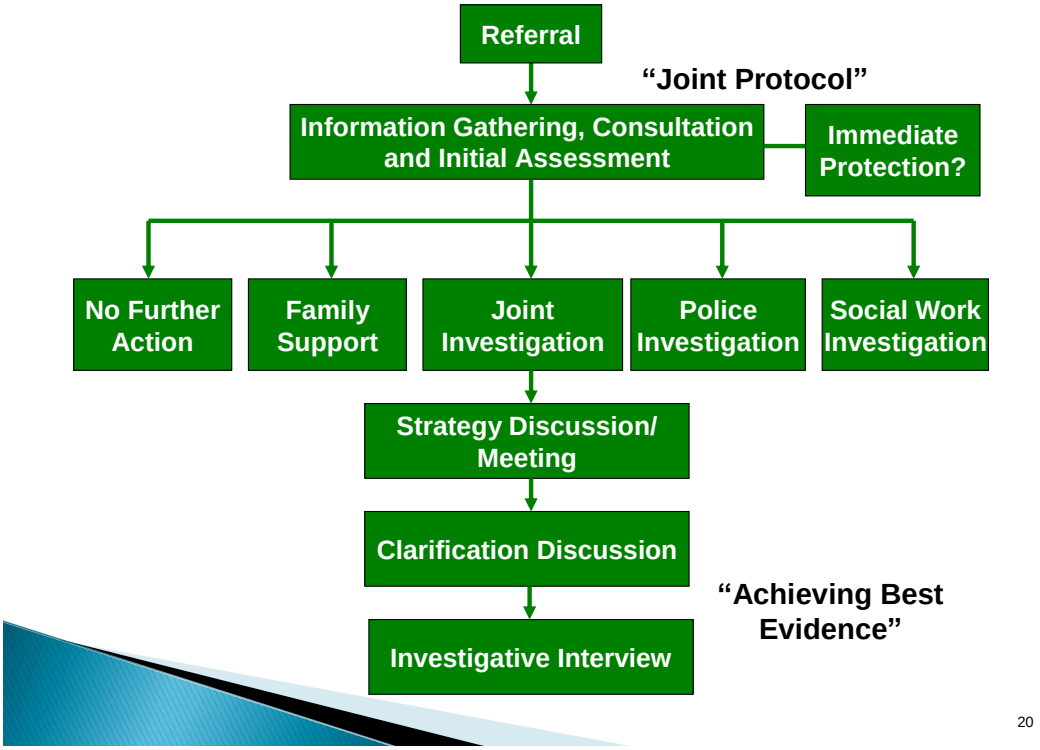


Figure 31: The child protection referral process

1.13.2 The case conference

If, after the joint protocol process is complete and an assessment has been made, any evidence supporting a criminal investigation is the responsibility of the police, if there remain concerns with regard to the child's welfare then this is dealt with at a case conference. This should be held within 15 days from an investigation taking place. Government inquiries into the deaths of children have continually highlighted the need for professionals who know the child to share information with regard to a child to enable a 'true

picture' of the child's situation to be developed. The case conference allows the sharing of this information between professionals and permits decisions to be made on the best possible information. It is good practice for parents to also attend case conferences and hear the concerns of professionals and make response to these. The case conference must decide if the child in question is at continuing risk of significant harm, if so they must develop a child protection plan to ensure the child's future safety and reduce the risks. This normally involves the provision of a range of services to the child and their family. Once subject to a child protection plan the case is reviewed by the case conference at regular intervals until it is judged that the child is no longer at risk of significant harm.

1.14 National data on child protection

All the nations in the UK collect data on those children referred to local authorities. The data covers a range of indicators covering numbers and categories of children in need; numbers of children in the child protection system and numbers of looked after children. It is important to note that these data reflect the various legal and procedural categories available. Essentially how the system defines and responds to the problems faced by children. They are therefore system output measures, a record of incidence, categorisation and journey through the system. They do not measure outcomes for children. In the majority of cases we will use data from England as the data sets are derived from a bigger population than the other countries, who collect similar data with comparable patterns evident.

1.15 Children in need

As detailed above, children in need are those children who, following assessment, meet the legal criteria, that is, their health and development are likely to be significantly impaired without the provision to them of services. As the figure 8 illustrates, in practice, the most frequent sub category of children are defined as having been abused or neglected. This demonstrates the historic tendency we noted above, that is that social workers prioritise child protection cases. There were 375,900 children in need in England in 2010, which was a rate of 341.3 per 10,000 children. The types of services Local Authorities are directed to deliver to children are set out in Schedule Two of the Children (N.I.) Order 1995, they include: the provision of day care, supervised activities after school and during holidays, advice, guidance and counselling, occupational, social, cultural or recreational activities, assistance to enable a child and family to have a holiday and the provision of a family centre (a centre to provide therapeutic facilities for children and their parents). Local Authorities provide such services directly or may commission these from voluntary providers of services.

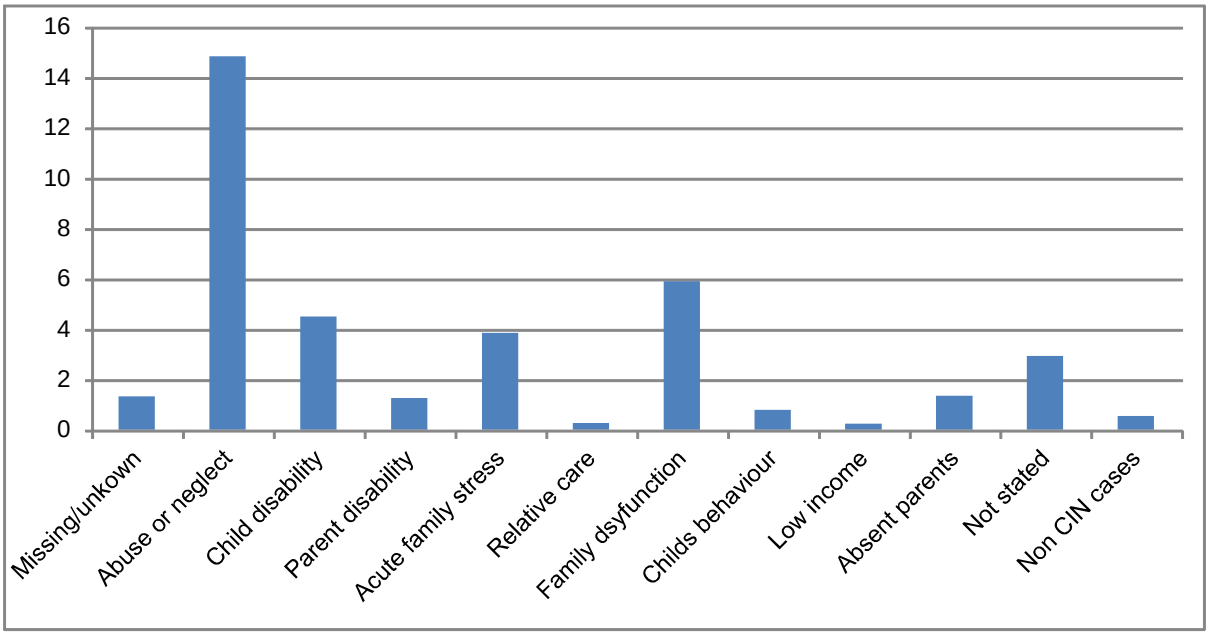


Figure 32: Children in Need: Open Case Status. Each number represents 10,000 children (DfE, 2010).

1.15.1 Child protection

The Table below illustrates trends in child protection registrations in England over the period 1994 to 2010 (alternate years). It represents the numbers of cases judged to meet the definitional criteria for child abuse and neglect set out above, by professionals meeting in case conferences, following an investigation into the circumstances of the case by social workers. It is important to note that these statistics capture the *incidence* of child abuse as reported to local authorities, not the *prevalence.*

Abuse Category	**1994**	**1996**	**1998**	**2000**	**2002**	**2004**	**2006**	**2008**	**2010**
Neglect	7,800	9,400	11,600	14,000	10,800	12,600	13,700	15,300	17,200
	(25%)	(31%)	(35%)	(41%)	(39%)	(41%)	(44%)	(44%)	(44%)
Physical Abuse	11,400	10,700	9,900	8,700	5,300	5,700	5,100	5,000	4,700
	(37%)	(35%)	(30%)	(26%)	(19%)	(18%)	(16%)	(15%)	(14%)
Sexual Abuse	7,500	6,200	6,100	5,600	2,800	2,800	2,600	2,300	2,200
	(24%)	(20%)	(18%)	(16%)	(10%)	(9%)	(8%)	(7%)	(5%)
Emotional Abuse	3,500	4,000	4,800	5,500	4,700	5,600	6,700	8,600	11,400
	(11%)	(13%)	(15%)	(16%)	(17%)	(18%)	(21%)	(25%)	(28%)
Multiple categories	500	400	700	310	4,100	4,300	3,300	2,900	3,400
	(2%)	(1%)	(2%)	(1%)	(15%)	(14%)	(11%)	(8%)	(9%)
Total	**30,700**	**30,700**	**33,100**	**34,110**	**27,700**	**31,000**	**31,400**	**34,100**	**39,100**

Table 1: Numbers and percentages of children with 'child protection plans' registered 1994 to 2010 by category of abuse in England (adapted from Stafford et al., 2010, p. 25)

It will be apparent that there have been considerable changes both with regard to overall numbers of children registered and in growth and decline within categories of abuse over the period. There are a number of explanations for this. The first is that official guidance has changed over the period to steer professionals away from registering children on the grounds of 'potential' abuse in favour of 'actual' (or confirmed) abuse. This has resulted in a decline in numbers of children registered in physical and sexual abuse categories and a growth in numbers of children registered in the neglect and emotional abuse categories. With regard to these later two categories, it could be argued that the standard of proof for meeting the definitional criteria is more subjective than the more objective criteria of the first two categories. However, we do need also to take into account a growing concern in the UK context that the emotional requirements of children, being now better understood, has cast a spotlight on standards of parenting to the extent that many more parents in this generation are judged not to meet their children's needs in this regard than would have been the case in the past.

1.15.2 Children in state care

In 2010 there were 64,400 children looked after by local authorities in England, with some 52% of the current care population being admitted to care because of abuse or neglect. Most of these children were placed with foster families. The number of children in care has fallen from a high-point of nearly 100,000 children in care in the 1980s; it reached a low-point in the mid 1990s and has levelled off at around 60,000 in recent years. This reflects the new balances struck in the 1989 Children Act since when there has been more concentration on trying to provide families with support to enable children to remain at home in the care of their parents. In recent years, however, there has been an increase in the use of compulsory court orders with less use of voluntary arrangements. This may be reflective of an increase in the numbers of the young people being subject to significant harm or may mirror an increase in risk averse practices by social workers. Such a hypothesis receives some support in statistics detailing applications to the courts for children to be taken into state care, which, following the death of Peter Connolly, increased by 33.7% in the year after his death.

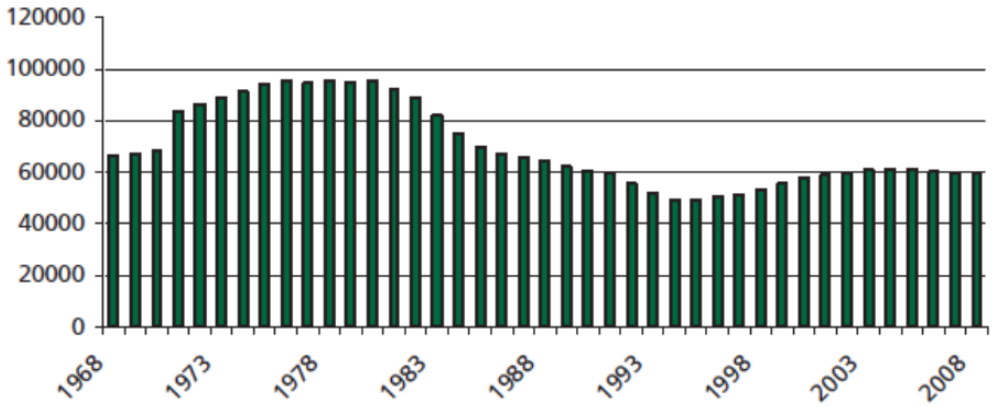


Figure 34: Numbers of children in state care from 1968 to 2008 (House of Commons Report)

With regard to where children in state care are placed, there has been a move over the past number of years to favour placements with either foster family (a family recruited by the local authority to provide a home for a child in state care) or with the child's relatives (often the child's grandparents, but may include other family members) over residential placements (institutions where a group of children are placed). In part this reflects a philosophy that regards children as being best raised in family environments, but it also reflects a reaction to the abuse of children which took place in residential homes in the 1980s. The following table illustrates placement patterns across the four nations. Not included in this table are those children who are adopted. Adoption of children who have been in state care and for whom a return home is unlikely has been encouraged in policy and practice in recent years. At present there are approximately 3.5 thousand children per year adopted from state care in the UK, representing some 6% of the population of children in state care.

Category	**N. Ireland**	**England**	**Scotland**	**Wales**
	%	%	%	%
Residential home	13	11	10	5
Foster family	57	75	30	75
With relatives	26	8	59	12
Other	5	3	1	9
Total	**100**	**100**	**100**	**100**

Table 2: Looked after Children by Placement Type across the four nations

1.15.3 Securing good outcomes for children

If we are to measure the effectiveness of the child protection system we cannot rely on the statistics which illustrate the outputs of the system. We must instead turn to research using other measures to judge the efficacy of the system in securing good outcomes for children. As we have observed previously, the child protection system does not reach all those children who experience abuse or indeed those who require help to ensure that their health and development is not significantly impaired. In a recent report on *Child Cruelty in the UK 2011* the NSPCC has reported on trends in child abuse and neglect in the UK over the past 30 years (nspcc.org.uk). There are some encouraging signs, they report that 'One in four of the young adults reported experiences of severe physical violence, sexual abuse or neglect in childhood. However, despite the high levels of maltreatment, the comparison with the earlier study [in 1998] reveals that many childhoods have changed for the better over the last 30 years. Overall, the young adults in 2009 reported less physical, sexual and verbal abuse during their childhoods than those interviewed previously' (2011, p. 4). A more sobering comment, however, concerns the ability of social services to reach such young people. 'The incidence of severe maltreatment in our study indicates that almost 1 million secondary school children have been seriously physically or sexually abused or neglected at some point during childhood. With around 46,000 children of all ages currently on a child protection plan or register, the re-

search raises concern that the vast majority of abused and neglected children are not getting the vital help and support they need' (2011, p.4). In practice it is difficult to attribute an accurate proportion to the effectiveness of the child protection system in bringing about the decline in young adult reports of abuse over the decades. As the NSPCC report observes, 'it is difficult to weigh the state's contribution to reducing child abuse and neglect against the actions taken by individuals and communities through long-term social change' (2011, p.5). As we have already observed, there is now much greater awareness amongst the public of what may constitute harm to children with a parallel concern to both protect them from such harm and support their rights.

We may, however, point to two indicators of worth in relation to the child protection system. Devaney's work on children suffering chronic child abuse illustrates the effectiveness of the child protection system in keeping those children who become known to social workers safe from the experience of repeated significant harm (2009). And, examining those most serious cases where there are concerns for a child's life, Pritchard observes that, 'looking at the overall results, most CPS [Child Protection Services] in the MDC [Major Developed Countries] have some cause for cautious satisfaction about the progress being made. Whilst, in every MDC, the medical and protection services for children overlap, in England and Wales and three other MDC, their CARD [Child Abuse-Related Deaths] mortality rate, the primary responsibility of CPS, fell significantly more than the ACD [All Causes of Death], the primary responsibility of medicine, whereas the reverse was true in Germany, Italy and the USA. Therefore, as the media readily blame social work for the high-profile tragedies, with all the cautions rehearsed above, they may begin to acknowledge something of social work's probable contribution to the achievements over the past thirty years' (2010, p. 1715). Some reasons, perhaps, for cautious optimism.

1.15.4 Analysis and recommendations

The child protection system in the UK has historically been heavily influenced and, arguably, heavily distorted, by inquiries into the deaths of children and the associated public disquiet, causing social workers to focus on the need to prevent such deaths in their practice. Such preoccupations have rendered social work practice vulnerable to a concentration on high risk cases with the consequent neglect of other families whose needs may be regarded as less immediately concerning: 'a classic instance of a low probability/high consequence risk that leads to risk-averse cultures and practices in all walks of life' (Cooper *et al*., 2003, pp. 10–11). In one sense the system can only achieve what the public wish for it. In the UK the dominant debate in relation to child protection is fuelled by a media influenced public who see the primary responsibility of social work as preventing child deaths. The system, however, was never designed with this as the central goal. Whilst the legislators and policy makers encourage a consideration of a much wider range of preventative interventions with children in keeping with research informed analysis of risk factors, it is difficult to move in this direction wholeheartedly as regular inquiries into child deaths act as a restraining counterbalance. There is a general lesson here for all societies in now they handle public de-

bates around sensitive issues, with a responsibility on all to ensure that rationality prevails when emotive topics are being discussed.

Someone arriving from another country and looking at the legislation, policies and guidance concerning child protection in the UK might reasonably conclude that this was a great country for children to live in. In many ways it is, with childhood valued as never before. Nevertheless we know that there are many families whose children require help but do not receive it. A number of conditions are necessary for an effective child protection system; the successes and failures of the child protection system in the UK are instructive for those seeking to design effective systems in their own context. The following recommendations reflect an ecological understanding of child protection, situating recommendations from the societal through to the practice levels.

1.15.5 Societal level

1. It is important to ensure that a **consensus is reached** both in relation to which children need protected and how best they might be protected. This consensus on **which children need protected** took many years to achieve in the UK. The emerging belief is that the concept of child protection should not be restricted to those children who have suffered or who are at immediate risk of suffering child abuse. Systems concentrating on this group alone are sometimes referred to as *residualist systems*, where child abuse is treated as one would treat other crimes, only intervening at the very last stages. By contrast the science of child protection has created a general acceptance that children subject to certain risk factors are at increased risk of suffering poor developmental outcomes, including, for some, experience of child abuse. Interventions therefore need to be targeted at such children at earlier stages to prevent such outcomes occurring. A consensus, however, on **on how best such children might be protected** has been much more difficult to achieve because of public pressure to prevent child deaths as a priority for the system. It is therefore important to manage unrealistic expectations on the part of the public and avoid the development of a culture of blame. Creating information led debate which educates the public on both the purposes and limits of state intervention in relation to child protection is therefore vital. This should involve political representatives, the media and professionals presenting a consensual view.

2. As we have seen, restricting the responsibility for child protection to social workers makes them vulnerable to accusations of poor practice and limits the protection of children because other professionals and the community may see the issue as not belonging to them. The idea that **child protection is *everyone's business*** should be promoted. The public health model of educating people as to the signs and symptoms of child abuse creates a shared sense of responsibility for the issue and may have the general effect of decreasing the prevalence of abuse. The media has been used effectively in this regard in the UK and child protection concerns are now more likely to be reported to professionals by the public as society has become better educated with regard to the issues. There is also evidence that rates of physical and sexual abuse of children have diminished as there is a marked change in the level of public tolerance

for violence against children and people are better educated as to the phenomenon of child sexual abuse, making perpetration of this crime more difficult.

1.15.6 Legislation and policy levels

1. As we have seen from the legislation and policy contexts in the UK, a **balance must be struck between the state and the family.** The legislation and policy framework over the past 20 years in the UK has seen the development of the idea that this balance must be struck by forming a *partnership* between the state and the family. This partnership is based on the idea that children are best brought up in their family home, but that the state has a responsibility to help those families experiencing most difficulties, and for whom the outcomes for their children are predictably poor, by providing services to them. The state only has a right to take more affirmative action when there are clear and immediate risks to the child, signifying child abuse. Whilst every society may strike such balances differently, all societies must recognise that a range of supportive services is required for some families whilst a more interventionist approach is required for others.

2. Legislation and policies should ensure that **service providers and professionals work together at all levels**. From our review of the UK this is apparent at three levels. Firstly the necessity to join up and coordinate service at local levels between all those agencies (state, voluntary and private) involved in providing services to children. Local Safeguarding Boards help map the needs in the local area and maximise the potential to deliver service efficiently and effectively. Secondly, one of the big lessons from the UK is that children are best protected when professionals all take responsibility for child protection and do not leave this to social workers. Inter professional communication is vital to ensure that a full picture of the child's circumstances are available to aid decision making. Such arrangements should be codified in policies and procedures, for example, in *Working Together to Safeguard Children: A guide to inter-agency working to safeguard and promote the welfare of children* (Department for Children Schools and Families, 2010). Thirdly, at case level, professionals are encouraged to *think family* in their approach, for example, a professional working with a mother suffering from depression would be encouraged to consider the effects of this on the children in the family. Such working together arrangements do, of course, require service providers and professionals alike to think beyond the narrow boundaries of organisational or personal interests and consider the greater good of the children and families as being their chief priority.

3. Over elaborate procedures for the assessment of child abuse are counterproductive. Simple but effective policies and procedures should be built on a set of core principles with clear steps for implementation, not being over bureaucratic but universally accepted and applied.

1.15.7 Practice level

1. There is need to provide **a range of good practice tools** for professionals. An integrated family support and child protection system which is non-stigmatising to families requires good assessment instruments. The assessment framework for social workers and the 'windscreen' model for all professionals working with children provide illustrations of such tools.

2. There is a need **to provide a range of services to meet the needs of children and families at universal, targeted and specialist levels**. Societies need to build universal services which act to prevent future problems by lessening stress on parents and building capacity in children, the provision of day care for example. At targeted level, for those families where risk factors have been identified, there needs to be the growth of services to address both the risks (therapy for a parent with an alcohol problem for example), and their impact (therapy for the child who is affected by parental alcohol abuse). Such services developed at universal and targeted levels will protect some, but not all, children. For those children requiring help at specialist levels interventions may need to address abuse that has already occurred. As we have seen the UK system has a sophisticated system for monitoring such children with the objective that therapeutic help and services should reduce impact of trauma, with admission of the child into state care only called for in the most serious of cases where family cooperation cannot be secured.

3. Finally, to operate effective services at specialist level requires a highly educated work force. The evidence from the UK is that social work should become a high status profession as it demands high levels of intellectual and emotional capabilities to work in the field of child protection.

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2 Child protection in Australia by Leah Bromfield

2.1 Prolog

Australia is a federation of eight states and territories. The population of Australia is 22,617,927 (Australian Bureau of Statistics, 2011). The country comprises a geographic area of 7,617,930 km2 and is the world's sixth largest country in terms of land area. The majority of Australians living in cities along the East Coast of Australia (Australian Bureau of Statistics, 2007) (see Figure).

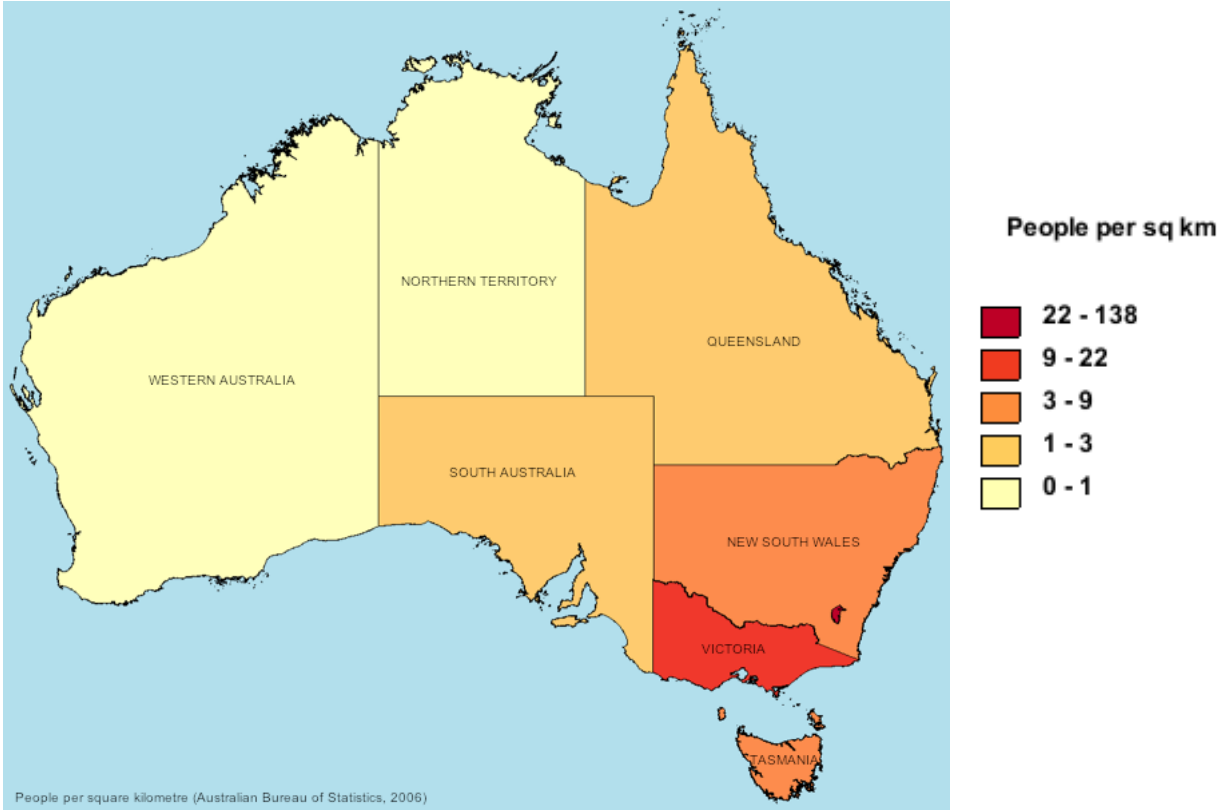

Figure 35: Australian population density

As a federation of eight states and territories or jurisdictions, which are each accountable for their own health and welfare services there is not one unified child protection system within Australia. However, there is a high degree of similarity in the broad approach to child protection across jurisdictions within Australia (Bromfield & Higgins, 2005). The approach to child protection in Australia is largely modeled upon the systems and approaches to child welfare in the United Kingdom (UK) and the United States (US). Child protection data collected by the eight states and territories has been collated and published annually

from 1990 (Australian Institute of Health and Welfare, 2010). The specific elements that comprise child protection services and systems across Australia's eight jurisdictions are relatively well documented since the mid-2000s through the National Child Protection Clearinghouse's "National Comparisons" research publications (National Child Protection Clearinghouse, 2011). There is also an extensive evidence-base about failure in the form of public inquiries investigating negative case examples such as child deaths or abuse in care (Bromfield, 2010). However, there is not an evidence-base on "what works" in child protection and rigorous outcome evaluations comparing different elements of child protection system designs are very rare. This is a significant international evidence-gap. It means that conclusions about best practice in child protection are necessarily developed through analysis of evidence of failure, combined with sound theory and inductive reasoning.

2.2 Historical background

2.2.1 Child protection 19th century to 1960s

Australia's history since European settlement in 1788 is a relatively brief one compared to other nations. However, there have been some (albeit limited) provisions for the protection of children from the early days of colonisation. In the 19th Century, protections for children primarily took the form of orphanages and boarding out to approved families of children who were abandoned or whose parents were seen as morally or socially inadequate (e.g. such as sole mothers) (Lamont & Bromfield, 2010). However, there were no legal protections for children from cruelty perpetrated by their caregivers. In New York in 1874, the carer of Mary Ellen McCormack was successfully prosecuted for a charge of animal cruelty on the basis that Mary Ellen was a "human animal" and the New York Society for the Prevention of Cruelty to Children was founded (NSPCC, 2000; NYSPCC, 2000). Subsequently the British National Society for the Prevention of Cruelty to Children (NSPCC) was founded. In England there was considerable resistance to the introduction of laws to protect children from their parents. This was seen as an interfering into the private sphere of the family, in which women and children were the property of their husbands and fathers who could treat them in any way they saw fit, barring murder (Lamont & Bromfield, 2010). Despite such opposition, in 1889 the Prevention of Cruelty to Children Act was passed in England giving the NSPCC a legal mandate to intervene to protect children from cruelty or neglect by parents. These events paved the way for Australia, which established its own Societies for the Prevention of Cruelty to Children between 1890 and 1906 (Lamont & Bromfield, 2010). Throughout the 19th Century provisions for the protection of children in Australia were largely modelled upon and developed apace with those in the United Kingdom (see Historical Timeline in Table 3).

1875	New York Society for the Prevention of Cruelty to Children (NYSPCC) founded
1884	British National Society for the Prevention of Cruelty to Children founded
1889	England passed the Prevention of Cruelty to Children Act giving the NSPCC a legal mandate to intervene to protect children from cruelty or neglect by parents
1890-1906	Societies for the Prevention of Cruelty to Children founded in Australian colonies. These societies were responsible for investigating child abuse and neglect
1940s	Social Work degrees introduced into Australian Universities
	This marked the beginning of professionalism in child welfare. It also marked the start of the debate as to whether parents who maltreated their children were "mad" (i.e. a result of parental psychopathology) or "bad" (i.e. perpetrated by morally corrupt individuals).
1962	Kempe and colleagues (1962) discovered the "Battered Child Syndrome"
	The discovery of the battered child syndrome pushed child abuse into the realm of professionals and resulted in a medical model being applied to the problem of child maltreatment with a focus on the psychopathology of perpetrators and lead to massive growth in government run child protections services.
1960s	Establishment of government-run statutory child protection services and introduction of mandatory reporting laws in the US
1960s	Australian states and territories (with the exception of Victoria) replicated the US approach and introduced government-run statutory child protection services*
1970s	Mandatory reporting laws were introduced in Tasmania (1974), South Australia (1975), NSW (1977) and Queensland (1980)**
1972	Federal Labor Government reformed health, welfare and education in Australia
1980s	Managerialism applied to child welfare
1989	United Nations Convention on the Rights of the Child first ratified
1990	Australia ratified the Convention on the Rights of the Child

* In 1985, mandate to respond to investigate and respond to child abuse allegations in Victoria was transferred from the non-government Children's Protection Society (established 1884 as the Victorian Society for the Prevention of Cruelty to Children) to a government-run child welfare service

** Following high profile failures of care, and public inquiries accompanied by substantial media coverage, mandatory reporting was reluctantly introduced by governments in Victoria in 1994 and in Western Australia in 2009.

Table 3: Historical timeline of key events in the development of child protection in Australia

2.2.2 Historical background: Child protection 1960s - 21st century

The 1960s and 1970s were a period of rapid social change within Australia; the progressive Whitlam government introduced a raft of provisions to reduce social inequity, including for example free tertiary education, welfare payments for single mothers, and a national healthcare scheme. Changes such as the women's liberation movement and the introduction of no fault divorces, saw changes to family structures with increased numbers of sole mothers and blended families. Against this backdrop, and heavily influenced by events within the US, the 1960s and 70s were also a significant period of change in the approach to child protection within Australia. In 1962, Kempe, Silverman, Steele, Droegemueller, and Silver (Kempe, et al., 1962) published their seminal paper in which they coined the term „Battered Child Syndrome" to describe

children who had experienced multiple non-accidental bone fractures as a result of physical mistreatment by a caregiver. The discovery of the battered child syndrome and the subsequent media coverage of the issue was a catalyst for change in the provision of child welfare starting in the US, and replicated across Australia. Child abuse was pushed into the realm of professionals and a medical model adopted which focused on the psychopathology of perpetrators. Laws mandating professionals to report suspected child abuse were introduced. The responsibility for responding to cruelty to children shifted from the philanthropic and non-government sector to government-run statutory child protection services[105] responsible for receiving and investigating reports of alleged child maltreatment (Lamont & Bromfield, 2010). The approach implemented in Australia, as in the US, in the wake of Kempe and colleagues' discovery of the battered child syndrome is a „residual" approach to protecting children. In a residual approach, social welfare is provided only after family and community systems have failed. Thus welfare is required only by the (presumably small) proportion of the community who are in crisis. In comparison, an institutional approach to social welfare presumes universal social services are available to everyone, not just those in crisis (Wileauxsky & Lebeaux (1958) in Ife & Fiske, 2003). Applied to child abuse and neglect, an institutional approach prioritises services and supports to prevent abuse and neglect rather than responding after abuse and neglect has occurred.

During the 1980's, managerialism was highly influential across many spheres of work in the United States and the United Kingdom – an approach also adopted within Australia. This period saw business models applied to the provision of social welfare – experts in management rather than child welfare were appointed to lead child welfare agencies, competitive tendering increasingly pitted non-government providers of services to vulnerable families against each other, in child protection practice teams were created for individual functions (e.g., intake, investigation, response) and case workers became case managers. Managerialism and the discourse of the risk society in tandem changed the nature of practice within child protection services during the 1980s and 1990s. While the influence of managerialism has declined, some of the the impacts of this period on the nature of child protection practice remain (eg practitioners continue to be referred to as case managers, data collected relates to service outputs rather than client outcomes, business models are applied to funding decisions).

2.2.2.1 Factors contributing to a long-term pattern of increasing demand

Since the establishment of statutory child protection services in Australia in the 1970s, demand on these services has increased substantially. Bromfield and Holzer (2008a, 2008b) argued that increases in demand could be largely attributed to three broad issues impacting Anglophone child protection services internationally: (a) an increase in the nature and scope of what constitutes child abuse and neglect; (b) unintended consequences of the professionalisation of child welfare; and (c) the impact of risk assessment and risk aversion on thresholds for child protection activity.

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[105] Note: the „child protection" and "statutory child protection" are used interchangeable to describe those services mandated by legislation to receive and investigate reports about suspected abuse and neglect.

Broadening of what constitutes abuse and neglect. Since the 1960s, the recognised types of child maltreatment expanded from child physical abuse to also include sexual abuse, neglect, emotional maltreatment and exposure to domestic violence (see Table 4). Over the same period, social values changed and evidence about the impact of maltreatment on children's development and emotional wellbeing increased. As a consequence, the threshold for what constituted maltreatment decreased substantially from bone fractures and abandonment in the 1960s to bruising, developmental delay and psychological harm (Bromfield & Holzer, 2008b; Holzer & Bromfield, 2008). The changes that expanded the nature and scope of what constitutes child maltreatment were based on sound evidence. However, these changes had the consequence that child maltreatment is now highly prevalent (Price-Robertson, Bromfield, & Vassallo, 2010) and demand on statutory child protection services has increased significantly as a result.

19th Century	Abandonment, moral corruption
1962	Physical abuse
1980s-1990s	Physical, supervisory, medical, educational and emotional neglect
Mid-1980s	Sexual abuse
Early 1990s	Emotional maltreatment
Early 21st Century	Exposure to domestic violence

Table 4: Historical timeline for the formal recognition of different types of child maltreatment

Professionalisation of child welfare. Since the shift in the 1960s from child welfare as a charitable to a professional endeavour, the provision of child protection services has become increasingly specialised. The minimum entry-level requirement for a child protection practitioner within Australia is a relevant undergraduate degree (e.g. Bachelor of Social Work or Psychology) followed by additional vocational training upon appointment. Vocational training includes training in the use of technologies such as risk assessment instruments (Bromfield & Ryan, 2007). Bromfield and Holzer (2008b) argue that an unintended consequence of the increasing specialisation of child protection practitioners has been a privileging of expert knowledge and action over other types of knowledge and action in responding to family needs (for example, the work of other health and welfare professionals and the role of community members). They argue further that the privileging of expert knowledge and action can lead other professionals and community members to feel disempowered or reluctant to intervene to assist a family (as this is thought to be the role of specialists), and to feel that they have discharged their responsibility for a child and family's welfare by notifying child protection authorities of their concerns. A perception that has been reinforced by the mandatory reporting laws requiring suspicions of abuse and neglect to be reported to child protection services for assessment. They conclude that an unintended consequence of professionalising child welfare, in conjunction with mandatory reporting requirements, has been a perception that protecting children is the responsibility of "the child protection department" rather than a broader community responsibility.

Risk assessment and risk aversion. As the nature and scope of what constitutes maltreatment has changed, the threshold at which the state is expected to intervene to protect the child has also changed. There are two types of thresholds, which have changed over time: Changes to the threshold at which members of the public choose to contact child protection services; and Changes to thresholds at critical decision-making points within child protection services (i.e., decisions to investigate, substantiate or forcibly remove children) (Bromfield, 2009). Changing social values regarding acceptable child rearing practices, children's rights, child maltreatment and the role of child protection services have decreased the threshold at which members of the public choose to contact child protection services (Bromfield, 2004; Holzer, 2008}. Changes to thresholds at critical decision-making points within child protection services reflect a combination of changing social values and factors internal to the service system (such as, capacity to respond, and the introduction of technical aids such as computer assisted case files and risk assessment tools) (Bromfield, 2009).

Researchers in the UK have argued that risk assessment, as a practice tool in child protection, has its roots in what Beck termed the "risk society" (Dingwall, 1999; Joffe, 1999; Kemshall, 2002; Lupton, 1999). In the "risk society", "the term "risk", rather than being a neutral term to describe statistical probability, is value-laden and implies heightened risk (for example., groups are referred to as "at risk" when what we mean is that they are at high-risk)" (Bromfield & Holzer, 2008b). Within this discourse, risk to children is considered to be measurable and manageable. The implication of this is that harm to children both can and should be prevented—and if it is not, that someone is to blame (Gillingham & Bromfield, 2008). This perception is evident in community reactions to adverse events in child protection in countries with a child protection orientation (e.g. Australia, the UK, US, Canada and New Zealand). For example, media reports of child death typically present retrospective analyses of events, which imply that outcomes were predictable and only occurred because "someone got it wrong". The application of technologies in social work practice such as "risk assessment tools" have contributed to the perception that social work decision-making is based on rigorous scientific models and have contributed to expectations of infallible decision-making by child protection practitioners (Gillingham, 2006). Child protection practitioners, aware of the expectations that their decisions are infallible, have become more pre-occupied with minimising risk to themselves to the extent that Spratt (2001) argued that risk assessment in child protection, which is purportedly about risk to the child, comprised the unstated dimension of risk to the individual or organisation of making the "wrong" decision. This is referred to as „risk-averse" or „procedural" practice. Risk-averse practitioners are pre-occupied with procedures and complying with the prescriptive requirements rather than the intent of their role. For example, it might comprise contacting other professionals involved with a family so that a file note can be recorded stating that consultation has occurred without really listening to what other professionals have to say about the family. Risk-averse practice also means that practitioners are inclined to err on the side of caution, which results in a high number of "false positives" (see Figure) and therefore has contributed to increased demand on child protection services (Bromfield & Holzer, 2008b).

		Observed	
		-	+
Predicted	-	True Negative	False Negative (e.g. child death)
	+	False Positive (e.g. false substantiation)	True Positive

Figure 36: Assessment outcomes

These issues in conjunction with other local issues impacting capacity and throughput have seen a national rise in the number of reports to child protection services in Australia of 250% over the last 10-years. The increased demand on child protection services has impacted practice, and in some instances (e.g. Report of the Board of Inquiry into the Child Protection System in the Northern Territory, 2010; Wood, 2009) overwhelmed statutory child protection services in Australia.

2.2.3 The repositioning of child protection in the 21st century

In contemporary child protection services, the most common factors associated with involvement with child protection services are domestic violence, parental substance misuse, and parental mental illness. These problems are often inter-related and occur within a wider context of exclusion and disadvantage (e.g. poverty, social isolation, homelessness) (Bromfield, Lamont, Parker, & Horsfall, 2010). Aboriginal and Torres Strait Islander children continue to be significantly over-represented in child protection services, a circumstance complicated by a historical legacy of colonisation, marginalisation, dispossession, and racism, including the continuing effects of the 'Stolen Generation', in which Aboriginal children were forcibly removed from their parents between 1869 and 1969 for no cause other than that they were of mixed race (Berlyn, Bromfield, & Lamont, 2011; Human Rights and Equal Opportunity Commission, 2010). Members of the Stolen Generation were placed in Institutional care or with families. An Inquiry into the forced removal of Aboriginal children in which many adult survivors of the Stolent generation provided accounts of their experienced found that many membes of the Stolen Generation were exploited as child labour, experienced harsh discipline, rigid routines, and a lack of warmth, and they were not permitted to express their culture, Many also experienced physical abuse, sexual abuse, neglect and psychological abuse while in care (Human Rights and Equal Opportunity Commission, 2010).

The number of children in care is on a constant upward trajectory and there are insufficient placements to meet demand and provide children with stable and nurturing care environments matched to their needs (Bromfield & Osborn, 2007). A series of adverse events, including preventable child deaths and abuse in care, have resulted in child protection services and the practitioners within them being subjected to severe

criticism, such that morale of practitioners is low and it is difficult to attract new staff to the profession (e.g. Report of the Board of Inquiry into the Child Protection System in the Northern Territory, 2010; Wood, 2009). By the middle of the 20th century Government departments responsible for statutory child protection services across Australia were willing to acknowledge that they were beset by multiple inter-connected and mutually reinforcing problems that had proved intractable, the most critical of which included:

- Demand pressures at the entry to child protection services
- A lack of services for families in which children were at high risk of abuse and neglect, which if in place, could serve to decrease demand on child protection services.
- The quality of practice in statutory child protection services
- Insufficient qualified skilled staff to fill vacancies
- The over-representation of Aboriginal and Torres Strait Islander children in child protection services, and the need for culturally appropriate responses
- The growing population of children in out-of-home care, and the difficulty in finding them appropriate placements and providing them a safe and nurturing environment in which to heal and to thrive.
- The growing number of families with multiple and complex needs, particularly the co-occurrence of domestic violence, alcohol and other drug misuse and mental illness; and the need to determine an effective response for families with these problems.
- The difficulties of government departments, service agencies and practitioners within services responding only to a narrow presenting problem, and not working collaboratively or holistically to the multiple needs of clients.
- Determining what were the tools that staff needed to effectively perform their roles and implementing these (e.g. information systems, risk assessment tools) amid a growing concern that some of the tools that had been implemented had unintended negative consequences on practice.
- Challenging the perception within the community and wider service system that child protection services, which were designed to respond only to the most serious cases of abuse and neglect after it had already occurred, held the primary responsibility for the prevention of harm to children.
- Various strategies and solutions had been or were being trialled to address these challenges, which itself created the additional challenge of determining an effective means to implement and sustain changes in practice (Bromfield & Holzer, 2008a).

At this time, statutory child protection services became advocates for earlier intervention as a means of reducing the overwhelming demand on child protection services. Directors of child protection services believed that, if demand on child protection services were reduced, their resources could be re-directed from intake and assessment towards managing other challenges.

The reform agenda in the state of Victoria, which for a period was perceived as a leader in child welfare reform in Australia, provides an illustration of the approach towards child protection service reform in the early 2000s (see Box 1).

Box 1: Reforming child protection in Victoria

In 1989, toddler Daniel Valerio was murdered by his step-father Paul Aitken. Photographs of Daniel with bruising to his face and eyes were taken by a Police Surgeon only days prior to Daniel's death. The heart-wrenching photographs presenting evidence that Daniel was a victim of serious physical abuse prior to his death angered the community who were outraged by the failure of the system to protect Daniel. In 1993, during the trial of Paul Aitken, an intense media campaign was mounted advocating for the introduction of mandatory reporting in Victoria (Goddard & Liddel, 1995). It is ironic that the campaign for mandatory reporting used the death of Daniel Valerio as Daniel's case was known to both police and child protection services prior to his death. In fact, a parliamentary inquiry into his death found his death was preventable and was a result of a failure to respond rather than any failures in detection (Fogarty & Sargeant, 1989). Nevertheless, Daniel's death was used to mobilise the community. Eventually the Victorian government succumbed to media and community pressure, and mandatory reporting was introduced in 1994. The government attempted to mitigate the impact of increased demand caused by mandatory reporting by only prescribing a small group of professionals (e.g. teachers, doctors, police) who were legally required to make reports and only applying mandatory reporting to child physical and sexual abuse (Goddard & Liddel, 1995). However, the substantial press coverage surrounding the introduction of mandatory reporting raised community awareness and resulted in misperceptions that all people were mandated to report any suspicion that a child might be experiencing any form of maltreatment. Undoubtedly this led to the discovery of previously undetected cases of maltreatment. However, it also resulted in many reports of incidents that did not constitute a statutory child protection concern. In the year following the introduction of mandatory reporting, notifications to Victorian child protection services increased 75% from 15,000 in 1992-93 to 26,000 in 1993-93 (The Allen Consulting Group, 2003). In 1999-2000, Victoria had the highest number of reports to child protection services of any Australian jurisdiction and were struggling to meet demand (Bromfield, 2009).

In 2002 the Victorian government undertook extensive data mining of their internal data systems and developed projections based on current trajectories (Victorian Government Community Care Division, 2002). These data trajectories predicted that, if nothing were done to reduce demand on Victorian child protection services, within 5-years one in five Victorian children would be reported to child protection services at some stage in their childhood. This statistic was incredibly powerful, and was communicated to Treasury, the Premier and cabinet and other government departments to successfully argue that the approach to child protection at that time was unsustainable (Humphreys et al., 2010). An alternative approach was endorsed, the key tenets of which were to intervene early – in the life of the child and in the life of the problem (Bromfield & Holzer, 2008b; Humphreys, et al., 2010). The reform agenda adopted a prevention approach to abuse and neglect (see Box X.2), which posited that there be services and supports available to all families (primary or universal services), more intensive targeted services and supports for vulnerable children and families (secondary services), and statutory child protection services (tertiary) for the relatively few families in which involuntary intervention was required to keep children safe. It was recognized that prior to the reform there was a dearth of secondary services for vulnerable children and families. A critical component of the reform was substantive investment in intensive family support services (secondary services) and the establishment of an alternative non-statutory entry-point into services for vulnerable families – ChildFIRST. The rationale for the alternative entry point was that people concerned about a child should contact ChildFIRST who could refer the family to voluntary services and support. If the family could not make the necessary changes or would not accept the support of voluntary services it was expected that

these voluntary services would refer the family to statutory child protection services (Bromfield & Holzer, 2008b). Following the implementation of this reform agenda, the upward trajectory of reports to child protection services in Victoria was halted for several years compared with a significant increases in the number of reports in other Australian jurisdictions (Holzer & Bromfield, 2008). The reforms to child protection in Victoria embodied a shift from seeing child protection services as having the primary responsibility for the safety of children from abuse and neglect to a whole of government responsibility for the protection of children. This approach has since strongly influenced the reform agendas in other Australian states and territories; and the approach adopted within the National Framework for Protecting Australia's Children (Council of Australian Governments, 2009a).

The reforms to child protection in Victoria halted the increase of reports to child protection services. However, the reforms did not result in sufficient changes to the quality of practice within child protection services. Problems in the quality of child protection practice within child protection services were highlighted in a report released by the Victorian Ombudsmen in late 2009 (Ombudsman Victoria, 2009). Challenges such an inability to attract and retain skilled child protection practitioners, a continuing over-representation of Indigenous children in child protection services, rising numbers of children remaining in out-of-home care and problems in the quality of care provided to those children who were living in state care. Inquiries into failures in child protection services in other states and territories show that these problems are common to child protection services across Australia (Report of the Board of Inquiry into the Child Protection System in the Northern Territory, 2010; Wood, 2009). At the time of writing a parliamentary inquiry was in process investigating failures in practice in Victorian child protection services (Victorian Government, 2011). In a keynote address to the leadership of the Victorian child welfare sector at their annual strategic planning retreat in late 2009, the current author argued that the problems with the quality of practice did not signal a failure of the preventive approach to child protection trialled in Victoria. This author argued that instead it showed preventive services alone were not enough. Although the restructuring of the service system and investment in additional services and supports to prevent families from being referred to child protection had been successful in halting an increase in demand, the necessary changes to increase quality of practice within child protection services had not been achieved (Bromfield, 2009). The parliamentary inquiry and practice issues within statutory child protection services in Victoria do not, at the time of writing, appear to have flowed through to a rejection of prevention-based reform agendas being implemented across Australia. However, Australians are now looking internationally once more for possible solutions to effectively change the nature of child protection practice and enhance outcomes for clients. These new avenues for reform are focused more on the quality of services provided to families rather than the broad structure of the service system. For example, Alexander (2010) reports the findings of an international study tour identifying and profiling innovative approaches to the provision of child protection services, including the "Reclaim Social Work" trial in Hackney in the United Kingdom and Olmsted Country Child Protection Services approach in Minnesota in the United States; and Ryan (2010) profiles the ChildStat approach to case review in New York. Common to these innovative approaches is a concerted attempt to overcome the risk-averse and proceduralised practice that have characterized child protection services in Australia, the United Kingdom, the US and New Zealand since the 1980s.

At a national level, the concern with overwhelmed child protection services, and the need to invest in effective prevention and early intervention is described in *Protecting Children is Everyone's Responsibility: The National Framework for Protecting Australia's Children 2009-2020*. The National Framework was endorsed by the Council of Australian Governments in April of 2009 and explicitly adopts a "public health" approach to child protection (see

Box 2). A “public-health” approach is a theory to inform service system design, which originates from the area of health promotion but which can be applied to any preventable social problem. The approach has a high degree of support among Australian governments, non-government agencies and academics within the Australian child welfare sector (Council of Australian Governments, 2009a).

Box 2: A public health approach

Public health approaches, originating from the field of preventable illness, strongly emphasize health promotion and prevention with increasingly intensive interventions targeting identified risks (Baum, 1998; Garrison, 2005). A public health approach is used when a preventable problem is prevalent and serious, and is associated with severe long-term effects on individuals and populations. Typically characterised as having three levels of intervention (primary, secondary and tertiary), public health approaches incorporate a range of strategies determined by the target of intervention efforts. Applied to the issue of child abuse and neglect, a public health approach might comprise:

- Universal services and supports available to all children and families to enhance child wellbeing;
- Targeted services and supports for vulnerable children and families (e.g. teenage parents), provided to prevent problems occurring;
- Services and supports for families with indicated problems (e.g. parental substance addiction), in which children’s needs are not being met, but parents voluntarily engage with needed services and supports;
- Statutory child protection services for families in which children are experiencing serious abuse and neglect (e.g. sexual abuse, severe physical abuse, criminal neglect) or in which children’s need are not being and parents are unwilling to engage with available services and supports; and
- Out-of-home care services for children who cannot safely remain in the care of their parents (Arney & Bromfield, under review).

2.2.4 Legal and policy frameworks

2.2.4.1 What does the term “child protection” describe

In a national study investigating approaches to child protection services in Australia, Bromfield and Holzer (2008a) asked representatives of government departments what the term child protection was used to describe in their jurisdiction. “Child Protection” was universally used to describe those services mandated by a legal statute outlined within a state or territory Act of parliament that prescribes the legal functions for responding to allegations that a child is at risk of serious harm, typically as a result of abuse or neglect. These are government-run services, typically described as “statutory child protection services”. However, there was a concern that this definition was too narrow, and had resulted in a community perception that the primary responsibility for the protection of children, and the prevention of child abuse and neglect rested with statutory child protection services. The National Approach for Child Protection Project reported that government departments believed that the protection of children needed to include:

(1) the wider community (such that child protection is not seen as simply the responsibility of government); (2) wider areas and departments of government (that is, not just strictly the department traditionally responsible for child protection); and (3) non-government and community organisations that specialise in the provision of social and family welfare services (Bromfield & Holzer, 2008a, p. 19).

The phrase "protecting children" is typically used to refer broad concepts of child welfare, while "child protection" continues to be used to describe the statutory child protection services, which respond to allegations of abuse and neglect.

2.2.4.2 The legal basis for child protection

Australia is a federation of eight states and territories and has three levels of government: the Commonwealth or federal Government; state and territory governments; and local governments. The Commonwealth government collects taxes, administration of income support programs, and is a significant funder of non-government services designed to enhance the wellbeing of the population (e.g., parenting supports). Goods and service tax (GST) revenue collected by the Commonwealth is distributed to state and territory governments who have primary responsibility for health (e.g hospitals), safety (e.g. police), community welfare (e.g. child protection and disability services) and education services (e.g. state schools). State governments are both significant service funders and service providers. Local governments collect rates from home owners and have responsibility for municipal services such as rubbish collection, establishing and monitoring council by-laws such as parking restrictions, approving building planning applications and the provision of facilities such as public lending libraries.

Jurisdiction	Principal Legislation	Government Department
Australian Capital Territory	**Children and Young People Act 2008** (ACT)	Office for Children, Youth and Family Support, Department of Disability, Housing and Community Services
Northern Territory	**Care and Protection of Children Act 2007** (NT)	Children, Youth and Families, Department of Health and Families
New South Wales	**Children and Young Persons (Care and Protection) Act 1998** (NSW)	Community Services, Department of Human Services
Queensland	**Care and Protection of Children Act 2007** (NT)	Child Safety, Department of Communities
South Australia	**Children's Protection Act 1993** (SA)	Families SA; Department for Families and Communities
Tasmania	**Children, Young Persons and their Families Act 1997** (Tas)	Child Protection Services, Department of Health and Human Services
Victoria	**Children, Youth and Families Act 2005** (Vic)	Children Protection and Juvenile Justice Branch; Department of Human Services
Western Australia	**Children and Community Services Act 2004** (WA)	Department for Child Protection

Table 5: Child protection services: Principal Acts and departments responsible (Holzer & Lamont, 2009)

Child protection is a state-run service provided by public servants employed by the Government Department charged with responsibility for providing child protection services. Child protection practitioners within Australia are predominantly (but not exclusively) social workers (Bromfield & Ryan, 2007). The core elements of what comprises statutory child protection functions are set out in a legislative Act passed by the Parliament (see Table 5), and includes the core functions of: intake, investigation and case management.

A common feature of all eight of the principal Acts prescribing the role and functions of statutory child protection services are the inclusion of principles that can be directly linked to the United Nations Convention on the Rights of the Child. Ratification in 1989 of the United Nations Convention on the Rights of the Child to which Australia became a signatory in 1990 was highly influential on practice in Australian child welfare services. Since the 1990s, as the Acts of Parliament prescribing the role and functions of statutory child protection services were revised, the principles outlined in the Convention underpinned many of the new legislative provisions, such as:

- A prioritisation of children's rights over parent's rights in matters of safety with the best interests of the child stipulated as the primary consideration in decision-making;
- Requirement that parents be provided the widest possible assistance to care for their children or make changes to have their children returned to their care, reflecting children's rights to grow up in their families of origin;
- Specific provisions for children from Aboriginal and other culturally and linguistically diverse backgrounds to support culturally-informed decision-making and maintain children's connection to their culture; and
- Provisions, particularly in relation to children in out-of-home care, for children and young people to have an opportunity to participate in decisions that affect them (Bromfield & Holzer, 2008a).

A child is need of protection. Each of the principal Acts prescribing the operation and functions of child protection services contains a definition of "a child in need of protection". Within these Acts "a child" is defined as a person 0-17 years of age. This is the legal definition of the circumstances in which the state (through statutory child protection services) has a legal mandate to intervene to protect children from harm caused by abuse and neglect. The definitions seek to define the threshold at which sub-optimal caregiving becomes abuse and neglect under law. Definitions of a child in need of protection vary across states and territories, however the threshold for statutory intervention is broadly consistent and the definitions typically: restrict potential perpetrators to parents or persons acting in the place of parents; restricts the definition to children who do not have a parent "able or willing" to protect them; defines physical abuse, sexual abuse, emotional abuse and neglect; and prescribes a threshold at which harm caused by abuse and neglect warrants statutory intervention - typically where abuse or neglect has or is likely to cause a child 'significant' or 'serious' harm. Some jurisdictions also nominate a child who has no caregiver as (e.g. a result of abandonment, parental death, incarceration or admission to a health facility) as being in need of

protection. There is a trend towards the inclusion of a child being exposed to domestic violence as sufficient cause to warrant statutory intervention (Holzer & Bromfield, 2010).

For example, in the Australian Capital Territory, according to section 156 of the Children and Young People Act 1999 (ACT) a child aged 0-17 years is in need of care and protection if:

(1) *(a) the child or young person:*

- *i. has been abused or neglected; or*
- *ii. is being abused or neglected; or*
- *iii. is at risk of abuse or neglect; and*

(b) no-one with parental responsibility for the child or young person is willing and able to protect the child or young person from suffering the abuse or neglect.

Abuse in the Australian Capital Territory, according to section 151 of the Act, is defined as:

(a) physical abuse; or

(b) sexual abuse; or

(c) emotional abuse (including psychological abuse) if the child or young person has suffered or is suffering in a way that has caused or is causing significant harm to his or her wellbeing or development; or

(d) emotional abuse (including psychological abuse) if

- *i. the child or young person has been or is being exposed to conduct that is domestic violence under the Domestic Violence and Protection Orders Act 2001 (ACT); and*
- *ii. the exposure has caused or is causing significant harm to the wellbeing or development of the child or young person.*

Neglect in the Australian Capital Territory, according to section 151A of the Act, is defined as:

> *A failure to provide the child or young person with a necessity of life that has caused or is causing significant harm to the wellbeing or development of the child or young person. Examples of necessities of life:*
>
> *1) food*
> *2) shelter*
> *3) clothing*
> *4) medical care*

For the definition of what constitutes a child in need of protection in each state and territory see (Holzer & Bromfield, 2010).

Other relevant legislation. Table 5 outlines the principal Acts, which prescribe the provision of child protection services. However, child protection laws and services were established to protect children from maltreatment perpetrated by a caregiver, or from maltreatment perpetrated by a non-caregiver in circumstances in which the caregiver is unable or unwilling to protect the child. There are a range of other rele-

vant Commonwealth and state or territory Acts that are relevant to the safety and wellbeing of children (see Holzer & Lamont, 2009). Particularly pertinent to abuse outside the family are the laws contained within the criminal codes of each state and territory which pertains to any person who has reached the age of criminal responsibility (i.e. 10-years of age). The crimes Acts of each state and territory include a variety of crimes which constitute 'serious' child maltreatment, such, physical assault (unless it is deemed lawful correction, i.e. corporal punishment), sexual abuse or exploitation and criminally neglectful acts such as abandonment, starvation, and deprivation of liberty. Investigation of alleged crimes under the criminal act is the responsibility of police. In the case of criminal maltreatment perpetrated by a parent, child protection practitioners and police often work in partnership. In other cases, such as sexual abuse by an extra-familial perpetrator, abuse of children within institutions such as schools, detention centres, or health care facilities, police are solely responsible. In most states and territories legal provisions also exist to prevent known perpetrators of child abuse and neglect from being employed in a capacity in which they would have routine contact with children through pre-employment screening, these are commonly referred to as "Working with Children Check and Police Checks". For a complete description of the working with children check provisions within each state and territory see (Berlyn, Holzer, & Higgins, 2011). In Australia, the age of legal majority when an individual becomes an adult is 18-years of age. Individuals aged between 10-years and 17-years of age who commit a crime as defined in law by a Crimes Act are referred to as "juvenile offenders". Crimes committed by juvenile offenders are heard before the Children's Court instead of the adult courts. Children who are found guilty and sentenced to incarceration are send to juvenile remand centres. Juvenile Justice services have responsibility for this group of children. Juvenile Justice services are operated independently from child protection services.

Core components of statutory child protection services in Australia:

Reports may be made by anyone within the community (e.g., neighbour, family member, police officer, teacher, doctor) who knows or suspects that a child is being maltreated. In all circumstances, the identity of the reporter or "notifier" is protected. Some members of the community are required by law to report their suspicions of abuse and neglect, this is referred to as "mandatory reporting". There are substantial differences in the mandatory reporting requirements in each state and territory of Australia (see Higgins, Bromfield, Richardson, Holzer, & Berlyn, 2010 for the specific provisions within each Australian jurisdiction). The provisions range from very broad requirements, such as the Northern Territory where all adults have a legal duty to report suspicions of abuse or neglect, to very narrow requirements, for example in Western Australia where a small number of specified professionals are only required to make a report if they know that a child is being sexually abused (Higgins, et al., 2010).

Intake is an office-based response in which reports are received, typically by telephone, and a practitioner must make an assessment based on the information provided as to whether the allegation is consistent with the definition of "a child in need of protection" as defined by the state or territory legislation. On the basis of the information provided by the notifier and information recorded about the child in any existing client files the practitioner makes an initial assessment of whether the case warrants further investigation.

Cases assessed as warranting further investigation are assigned a priority rating based on the severity of the allegation (e.g. Priority 1 requires an investigation to commence within 24-hours). The practitioner uses an assessment instrument, commonly described as a risk assessment tool or an initial screening tool, to guide their decision-making. Cases assessed as requiring further investigation are transferred to another team to conduct that investigation. Cases assessed as not requiring further investigation by statutory child protection services may be closed without any further action, or families may be assessed to be in need of support and provided with a referral to another service, such as a family support service. These services are typically provided by non-government agencies, and are described as "voluntary" services as families have the freedom to choose whether they will or will not access the offered service. In comparison, statutory child protection services are an "involuntary" service and parents have no choice but to comply with statutory requirements or risk the forced removal of their child(ren) (Bromfield & Higgins, 2005).

Investigation describes the process in which practitioners make direct contact with the child, their parents, and typically make a visit to the child's home to determine the veracity of the allegations received in the report and gather the information necessary to make an assessment of the continuing risk to the child, and the needs of the child and their family. Those cases in which child protection practitioners find , on the balance of probability, that the allegations are true and/or the child is at continuing risk of being abused or neglected are "substantiated". Substantiated cases remain open for ongoing statutory intervention or "case management". Those cases that are not substantiated may either be closed without any further action, or families may be provided with a referral to other voluntary services and supports (Bromfield & Higgins, 2005).

Case- management is provided for those cases in which ongoing statutory involvement is required to secure the safety of the child. For a case to be in receipt of ongoing statutory intervention, there may or may not be a court order in place. A court order is a legal direction made by the Court and may require parents to either behave or stop behaving in a certain way, which was assessed as harmful/abusive to the child (e.g. that parents send children to school or prevent their children from having contact with a known sex offender), or that parents comply with a specific form of monitoring (e.g. undergoing weekly drug screens). A court order may also direct that a child be removed from the care of their parents either for a fixed period or permanently and placed in state approved care. If there is no court order, families are aware that if they fail to comply with child protection practitioners, an order can be sought. Typically children in out-of-home care are placed in home-based care with another relative, in home-based care with a pre-registered foster parent who is unknown to the child, or placed in a group home with other children removed from their families and which are staffed around the clock by paid carers. Out-of-home care services may be provided by the state, or by non-government not-for-profit agencies or private for-profit organisations. In the majority of cases, the initial goal of the intervention with parents of children placed in out-of-home care is to support parents to change the conditions within the family (e.g. addiction, domestic violence) that made the home an unsafe place for the child and "reunify" the child with their families. Underpinned by a recognition of the importance of stability for children, in some states and territories there

are time limits applied to length of time parents are provided to make the necessary changes for their child to be returned to their care. These time limits may vary depending on the age of the child. For example, in the Child Youth and Family Act 2005 (Victoria) S.170(3) stipulates that a stability plan is required: for children under 2-years of age, once that child has been in out-of-home care for one or more periods totalling 12 months; for 2-6 year olds, once the child has been in out-of-home care for one or more periods totalling 18-months; and for children over 7-years, once the child has been in out-of-home care for one or more periods totalling 2-years. Long-term and stable placements are sought (but frequently not achieved) for children unable to be safely returned to the care of their parents (Bromfield & Higgins, 2005; Bromfield & Holzer, 2008a).

2.2.5 The role of the third sector

The non-government, not-for-profit sector (i.e. faith-based and charitable organisations) are known, in relation to the public and private sectors, as the 'third sector'. The degree to which the third sector have been involved in child protection has expanded and contracted over time, but the non-government, not-for-profit sector have always had a role in relation to child protection in Australia. For example, long-standing established non-government, not-for-profit organisations such as The Benevolent Society (est. 1813) in New South Wales, and Berry Street (est. 1877) and the Children's Protection Society (est. 1896) in Victoria have since their inception provided support and care for children in need and their families. In comparison, the public sector involvement in child welfare service provision is more recent commencing in the 1970s. Traditionally, the role of the private sector was restricted to making charitable contributions rather than providing services. In contemporary Australia, a small number of private for-profit organisations provide out-of-home services (e.g. Life Without Barriers). However, this is a relatively recent phenomena.

The initial inception of child protection in Australia in the early 19th Century was solely a charitable endeavour, primarily carried out by ladies' societies and charitable groups (Scott & Swain, 2002). Government involvement in the provision of child protection services is relatively recent, with the first government operated child protection services established in the 1970s. At that time the third sector became an essential partner in the provision of child protection services, providing out-of-home placements to children removed from the care of their parents. The third sector have also had a continuing role in the provision of services and supports to individuals, parents and families suffering hardship, and thus have had an ongoing preventative role in addressing the social determinants and risk factors associated with child maltreatment. The investment in preventative services and supports for families relative to statutory child protection and out-of-home care service investments has historically been quite low (e.g. Bromfield, Holzer, & Lamont, 2010). However in the decade 2000-2010, prevention has become a government priority. There were significant new investments by state and territory and Commonwealth governments in services and supports for families, with the third sector contracted by government to provide the majority of these services and supports.

The nature of the funded child and family services and the profile of clients attending family support services also changed over this period. With increasing demands on government-provided statutory child protection services, differential response models were implemented enabling child protection services to refer families that did not meet the threshold for statutory intervention to non-government services and supports. Intensive family support services were funded by governments and provided by third sector organisations to respond to clients with multiple and complex needs, children who had been repeatedly referred to child protection services, and families in which children were at high risk of abuse and neglect. These services were purpose-designed to provide a direct pathway from child protection services into appropriate voluntary services and supports. As a result the distinction between child protection and non-government intensive family support services is eroding.

Throughout history, the third sector has always defined itself as both service provider and advocate for those in the community experiencing hardship and disadvantage. The role of the non-government sector as independent advocates can at times put the third sector and the government of the day on opposing sides of a political issue (e.g., government proposed conditions imposed on recipients of income support). Although the third sector originated as charitable endeavours, and continue to operate as charities, the majority of revenue for most agencies now comes from government contracts. This adds an additional dimension to the relationship between non-government organisations and governments on whom they depend for survival. A further issue that adds pressure to government-non-government provider relationships is the application of economic rationalism to government contracts. Non-government agencies are frequently required to take part in competitive tenders to secure government funding. Competitive tendering creates competition between non-government providers and forces non-government agencies to continually reduce costs. At the same time governments are requiring increasing service output data demonstrating that contractual obligations have been met straining the capacity of non-government providers. Non-government agencies must continually balance their roles as partners in service provision, as advocates and as government contractors.

2.2.6 The National Framework for Protecting Australia's Children 2009-2020: A partnership between government and non-government agencies

The National Framework for Protecting Australia's Children 2009-2020 (Council of Australian Governments, 2009a) originated as a consequence of the advocacy efforts of non-government, not-for-profit agencies and academics. However, the governance model for its implementation marks a new chapter in the relationship between government and non-government agencies in Australia.

The 12-year National Framework sets out a shared agenda for change to enhance the safety and wellbeing of Australia's children under national leadership and with agreed common objectives. The National Framework came about, primarily due to the advocacy efforts of the non-government, not-for-profit sector in partnership with leading child welfare academics who argued over several years that child abuse and neglect was prevalent and a serious national problem, which was the responsibility of government and

required national leadership and a coordinated response to achieve minimum national standards and overcome seemingly intractable problems. An election promise was secured in the lead-up to the 2007 Commonwealth election from then Opposition Leader The Honourable Kevin Rudd, MP who committed, if elected, to developing and leading a national approach to respond to the problem of child abuse and neglect. In November 2007, the Labour Party led by Kevin Rudd won the federal election. The Coalition of Organisations Committed to the Safety and Wellbeing of Australia's Children – a representative group comprising non-government agencies and academics – and sought to work in partnership with Commonwealth, state and territory governments to develop the national framework.

The Framework was endorsed in April 2009 by the Council of Australia Governments. The Council of Australian Governments comprises the leaders of Commonwealth, state and territory governments (i.e. Prime Minister and Premiers) and is the highest form of national government agreement in Australia. The framework states that its long-term objective is for "Australia's children and young people to be safe and well", and sets a target for "a substantial and sustained reduction in child abuse and neglect in Australia over time". The framework is underpinned by six supporting outcomes:

- Children live in safe and supportive families and communities;
- Children and families access adequate support to provide safety and intervene early;
- Risk factors for child abuse and neglect are addressed;
- Children who have been abused and neglected receive the support and care they need for their safety and wellbeing;
- Indigenous children are supported and safe in their families and communities; and
- Child sexual abuse and exploitation is prevented and survivors receive adequate support.

The first 3-year implementation plan was released in mid-2009, which included a governance structure in which the non-government and academic Coalition group were explicitly named – not as advocates or advisors – but as partners with Governments in the ongoing monitoring, implementation and priority setting under the National Framework (Council of Australian Governments, 2009b). The National Framework is directed by the National Framework Implementation Working Group, which comprises a representative from the Commonwealth Government, representatives from each of the eight state and territory governments, and eight representatives from the Coalition of Organisations Committed to the Safety and Wellbeing of Australia's Children. The Implementation Working Group is informed by a National Advisory Council, and several sub-groups comprising technical specialists and experts in key areas of activity (e.g. performance and data). The Implementation Working Group reports to the Community and Disability Ministers' Advisory Council, and through this to the Community and Disability Ministers' Conference who are ultimately accountable to the Council of Australian Governments (Council of Australian Governments, 2009b).

The National Framework sets out an ambitious long-term shared vision to which all parties (Commonwealth, state and territory and the non-government and academic Coalition) have committed. In addition,

its initial implementation plan sets out several national projects to be undertaken as part of the framework in the first 3-years under the direction of the National Framework Implementation Working Group. The priorities in the first three-year implementation plan are:

- “Joining up service delivery” by implementing programs and strategies designed to increase integration and cooperation between services, particularly those for vulnerable and at-risk children and their families.
- “Closing the gap” between Indigenous and non-Indigenous Australians by reducing the over-representation of Indigenous children and their families who are involved with child protection services.
- “Seeing early warning signs, taking early action” is the development and trial of a common assessment tool designed to assist all health and human service professionals who come into contact with children and their families to identify children in need of additional services and supports and provide them with an appropriate referral.
- “Improving support for carers” by identifying their financial and non-financial needs and working across agencies to implement services and supports to address support gaps.
- “National standards for children in care” was the first of the national priorities to be concluded. There are now a framework of minimum standards in the provision of services to and conditions for children in out-of-home care.
- “Building capacity and expertise” is the priority area focused on the development, attraction and retention of a skilled workforce equipped to provide high quality services.
- “Enhancing the evidence-base” is the priority area relating to the program of work to strengthen the quality and expand the scope of national child protection data.
- “Filling the research gaps” refers to the development of a national research agenda articulating the priority areas in which research is needed to inform critical policy and practice decisions.
- “Transitioning to independence” is the priority area relating to improving the supports for young people who are make the transition from state care to independent living.
- “Responding to sexual abuse” was identified as a priority area as the other priorities were primarily related to the prevention of neglect, emotional abuse and physical abuse occurring within families and a recognition that a different response was required for child sexual abuse.
- “Advocating nationally for children and young people” is about exploring the potential to establish an Australian Commissioner for Children and Young People who could advocate nationally for children’s rights.
- “Sharing information” refers to the changes being made to privacy and confidentiality laws in legislation that have been identified as a barrier to cooperative practice across agencies.

  (Council of Australian Governments, 2009b)

2.2.7 National databases

2.2.7.1 Administrative data and data monitoring the provision of services protecting children

Australia has data on the activities and key decision-making points or child protection services aggregated at state, territory and national levels, which are compiled and published annually by the Australian Institute of Health and Welfare. National data on child protection and out-of-home care is published annually in a report titled *Child Protection Australia*, which was published for the first time in 1998 with data relating to the 12-month period July 1996 to June 1997. *Child Protection Australia* publication superseded an earlier annual publication, which was first published with data for the period July 1990 to June 1991 and described only out-of-home care data (Australian Institute of Health and Welfare, 2010). *Child Protection Australia* includes:

- Total number of reports (notifications) to child protection services per annum
- Total number of children in reports to child protection services per annum (a child may be subject to multiple reports in a 12-month period)
- Total number of investigations commenced, in process, unable to be finalised and finalised
- Total number of substantiations by child protection services per annum
- Total number of children in substantiations by child protection services per annum
- Total number of substantiated maltreatment types (emotional abuse, neglect, physical abuse and sexual abuse)
- Source of notifications
- Family type
- Total number of children subject of a court order at a specified data (the court order could be removing the child into care, or it could direct parents to behave in a particular way).
- Number of court orders issued, and number of children admitted on and discharged from a court order per annum
- Lengths and types of court orders
- Total number of children in out-of-home care at a specified data
- Number of children admitted and discharged from out-of-home care per annum
- The living arrangements of children in out-of-home care (e.g. Kinship, foster or residential care) and length of placements
- The proportion of Aboriginal children placed with an Aboriginal carer

The data collected is also published by age group, gender and Aboriginal or Torres Strait Islander status of the child. There are some data on a very narrowly defined group of intensive family preservation services which aim to prevent children from entering out-of-home care where there is a high risk of this occurring or to reunify children in care (e.g. Australian Institute of Health and Welfare, 2011). The limitations of these data is that they are aggregate rather than unit record data, and thus can be used for descriptive

purposes, but cannot be manipulated. The data provides a good indication of activity within child protection services, but is a poor indicator for the incidence of maltreatment in the community (Holzer & Bromfield, 2008). There are also problems with the comparability of the data across states and territories (Holzer & Bromfield, 2008). Finally, the types of data items collected and the availability of aggregate data only means that we have a wealth of output data on child protection service activity, but that we do not have information about children's pathways through the service system or data on children's outcomes (e.g. health, education, re-abuse).

In 2010, the first annual report was released reporting baseline data for a variety of indicators intended to be used to monitor the impact of the National Framework for Protection Australia's Children. This included the child protection activity data above, and additional indicators from administrative data. The report also includes qualitative case studies, information on state and territory government reform agendas, and progress reports on National Projects being undertaken as part of the National Framework for Protecting Australia's Children (Council of Australian Governments, 2011). State and territory government departments also release annual reports, however, information in these annual reports are not comparable. Individual non-government agencies (of which there are 100s) release annual reports, however none of the data from non-government agencies are in a comparable format and are not compiled and aggregated at the state or territory or national level. States and territories also have independent monitoring bodies such as Ombudsmen, Children's Commission or Guardians of Children in Care and Child Death Review Teams. These bodies release annual reports, including data on child deaths, however this data is also not in a comparable form (Lamont, 2010; Lamont & Holzer, 2011). There are no data reported on abuse in organisational or institutional contexts (e.g. faith-based organisations, schools, detention centres, out-of-home care). As part of the National Framework for Protecting Australia's Children priority to "enhance the evidence-base" there is a significant program of work underway to improve the breadth and quality of data on protecting children. This includes replacing the aggregate data with unit record data, linking child protection with education and health data and developing new national data items. However the timelines for these projects means that new data are not scheduled to be available for several years (Council of Australian Governments, 2009b, 2011).

2.2.7.2 Trends in child protection activity 1998-2011

Figure - Figure demonstrate the trends in child protection activity in Australia since the commencement of national data reporting. Note in Figure the quadrupling of reports to child protection services, which have so overwhelmed child protection services in Australia. A similar upward trajectory can be observed for both substantiations (verified cases of maltreatment) and the total number of children in state care on the annual census date (see Figure).

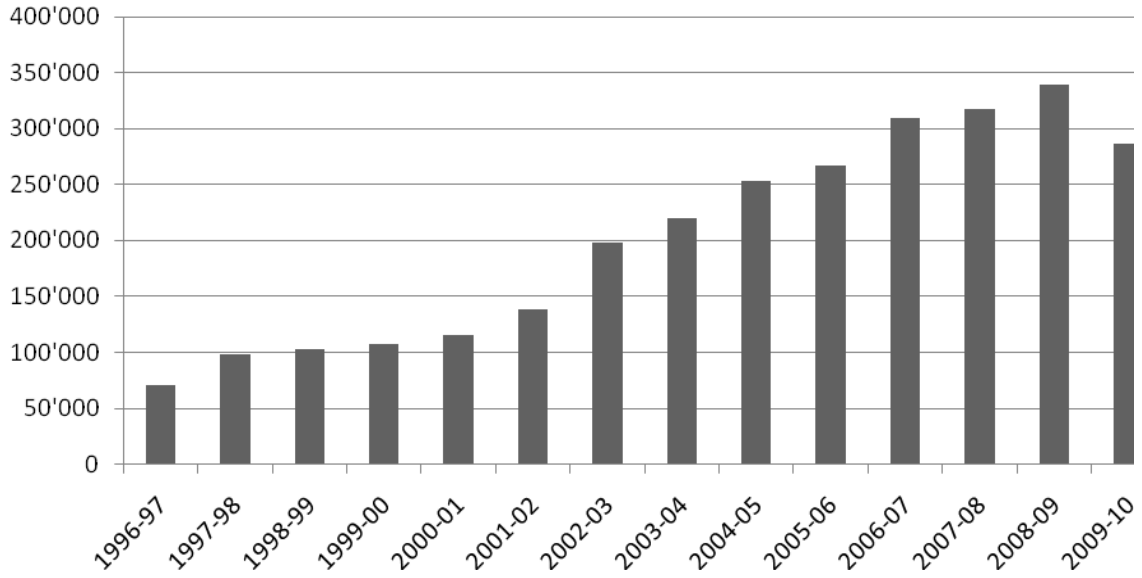

Figure 37: Trends in number of reports to child protection services per annum

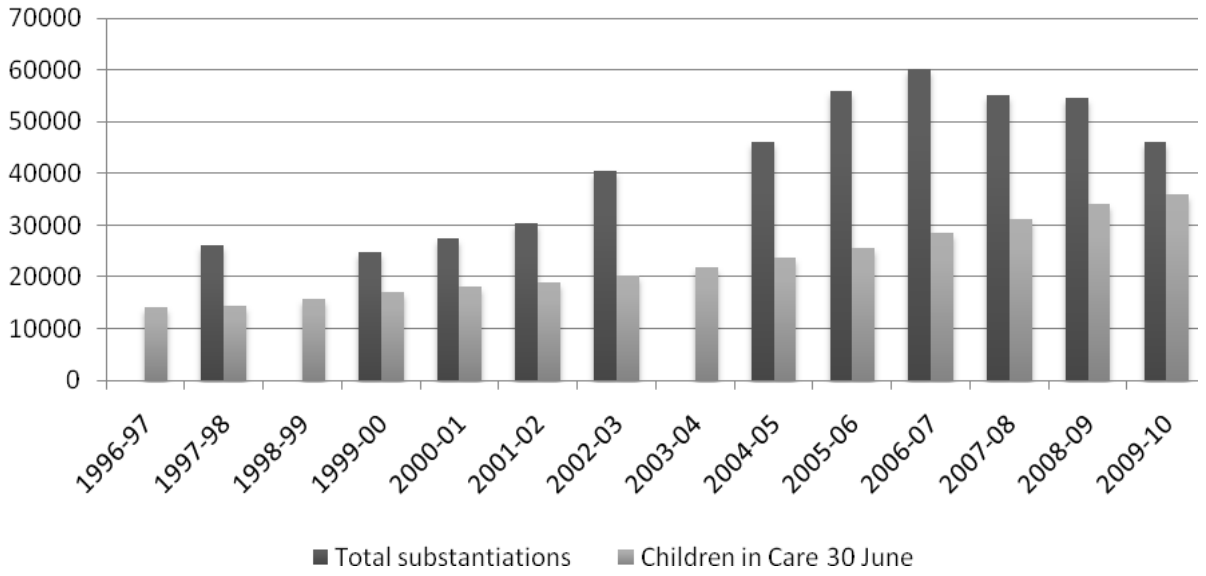

Figure 38: Trends in number of verified cases of maltreatment and children in care

The most recent data released for the period July 2009 to June 2010 show that the most common type of maltreatment verified by child protection services is emotional abuse, which includes exposure to domestic violence (see Figure). It is worth noting that sexual abuse, while always the maltreatment type most sensationalised by the media, was the least common matlratment type substantiated. The rank order for maltreatment types does vary in different countries.

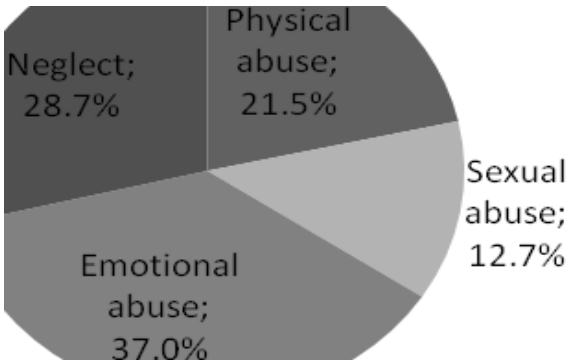

Figure 39: Verified maltreatment types by per cent

While the number of children in care has risen substantially over the past decade, this has been caused by children remaining in care for longer not because more children were removed each year. This is evident in the data presented in Figure , which shows that there has been minimal change year on year in total number of admissions and discharges. However, the number of children admitted into care consistently exceeds that number of children discharged from care each year resulting in the increased cumulative total number of children in care at the annual census date shown in Figure (above).

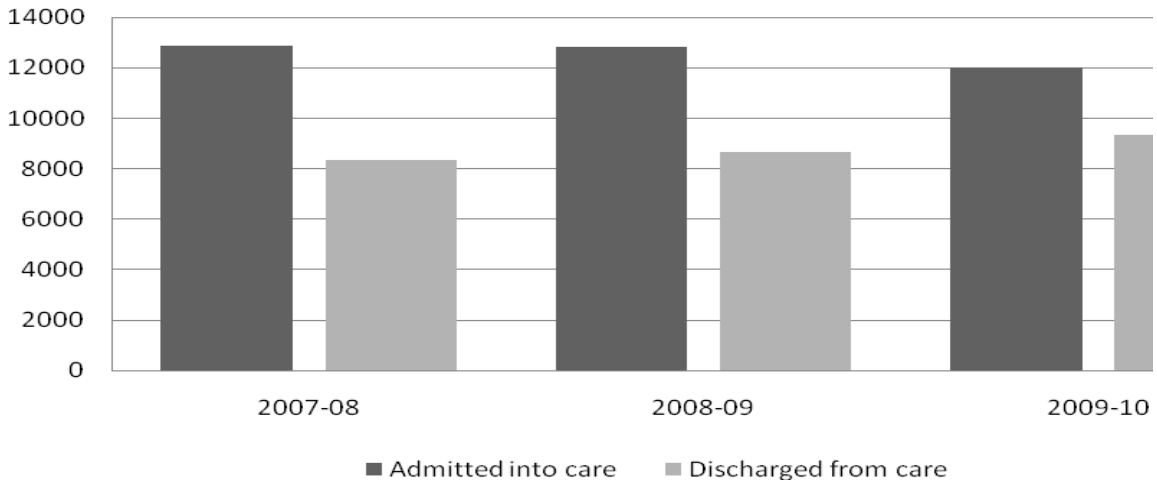

Figure 40: Number of children admitted into and discharged from care, 2007-09 to 2009-10

Within Australia, infants and younger children are more likely to be removed into care than older children and adolescents (see Figure) as young children are seen as the group at greatest risk of harm, including fatal abuse. Jordan and Sketchley (2009) write “the particular vulnerability of infants arises from their almost complete dependence on others for survival, their physical fragility, under-developed verbal communication, and their social invisibility” (p. 4).

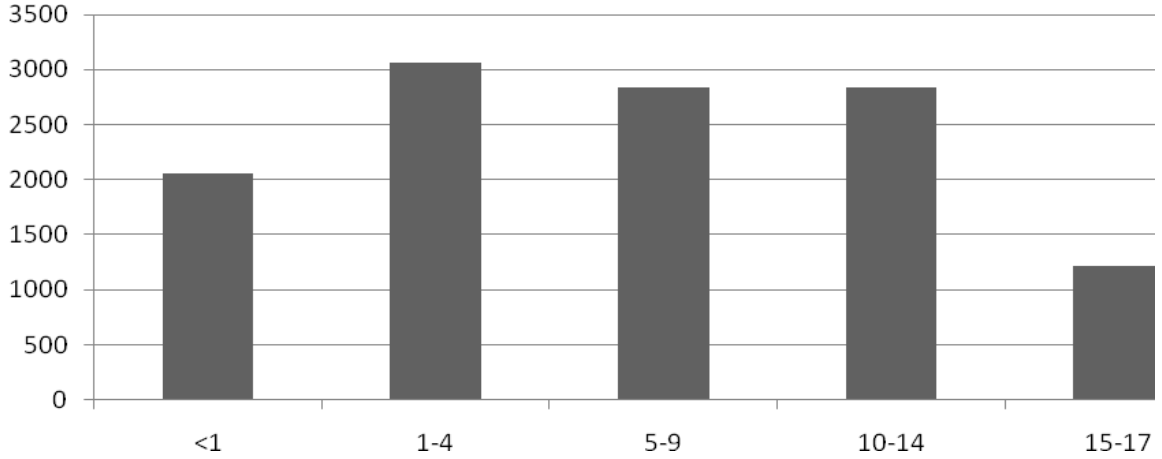

Figure 41: Children admitted into care by age group (2009-10)

2.2.7.3 Prevalence and incidence data

The best available indicator of child maltreatment incidence is child protection activity data (described above). However, child protection activity data has been found to be a poor indicator of the number of children who experience abuse and neglect in the community as:

- child protection data reflects only those cases identified and reported to the child protection services, reports from adult survivors of maltreatment suggest only a fraction of children who are maltreated come to the attention of authorities;
- child protection data only includes abuse and neglect cases in which a parent either perpetrated the abuse or failed to protect their child from abuse;
- child protection data include some children who were not abused or neglected, for example if a parent is incarcerated and there is no one to care for the child;
- finally, child protection data fluctuates considerably based on changing community attitudes and values – for example, the four-fold increase in reports to child protection services over the last 15-years is a reflecting of changing perceptions regarding the role of child protection not an indication of a four-fold increase in child maltreatment (Bromfield & Horsfall, 2011; Holzer & Bromfield, 2008).

Other countries, such as the UK, US and Canada have undertaken national prevalence or incidence studies to provide estimates of the number of children who experience abuse and neglect in the community (Bromfield & Horsfall, 2011). Australia has no national study of the incidence or prevalence of child maltreatment in the community, however, a review conducted by Price-Robertson, Bromfield and Vassallo (2010) of community-sample prevalence studies of child maltreatment with large samples, concluded that the best available estimates suggest:

- 5-10% of Australian children experience physical abuse
- 11% of Australian children experience emotional abuse
- 12-23% of children are exposed to domestic violence
- 7-12% of females and 4-8% of males experience penetrative child sexual abuse; and 23-36% of females and 12-16% of males experience non-penetrative child sexual abuse.

The authors concluded that there was insufficient evidence to provide an estimate for the number of children in the community who experienced neglect (Price-Robertson, et al., 2010).

2.2.7.4 Research evidence on effective child protection service provision

Child protection services in Australia, their current challenges and reform agendas are well documented. Areas of child protection and out-of-home care service provision which have received the most attention in academic research, writing and debate, include:

- Differential response and models of intake
- Problems in a residual approach to child protection and benefits of the investment in prevention
- Debate over risk assessment
- Addressing the determinants of abuse and neglect – geographic, cultural, and parental problems
- Mandatory reporting
- Issues preventing children in care from having equality of opportunity in terms of life opportunities and outcomes.

However, this evidence-base is drawn largely from analysis of failures within child welfare and not effectiveness studies. This means that conclusions about best practice in child protection are drawn from a critical analysis of the known and theoretical strengths and limitations of proposed reforms rather than robust and generalizable evaluation data.

In 2009, a national workshop of over 100 leaders within the Australian child welfare sector from a range of government and non-government organisations and research institutions reflecting the views of service providers, policy makers and researchers met for a national forum. The purpose of this forum was to undertake a broad consultation about the priorities for future child protection research within Australia (Department of Families Housing Community Services and Indigenous Affairs, 2009). At this forum it was concluded that there was a priority for Australian evidence into “what works” in service provision, and for large-scale robust quantitative research with findings that could be generalised. These priorities were reflected in the recently published *National Research Agenda for Protecting Children 2011-2014* (Department of Families Housing Community Services and Indigenous Affairs together with the National Framework Implementation Working Group, 2011). The National Research Agenda outlines a broad range of priority research areas to inform policy and practice, such as:

- What are effective ways to influence attitudes, behaviours and cognitions around the safety and wellbeing of children in communities?
- What prevention strategies are effective, and for what risk factors?
- What are the elements of cost-effective service models for families with multiple and complex needs?
- What models are effective in working with Aboriginal and Torres Strait Islander families – statutory and non-statutory, in Australia and internationally?
- What are vulnerable families' perceptions, experiences and preferences for services?
- What factors should guide decision-making about the frequency and nature of family contact for children and young people in out-of-home care?
- For which children is reunification appropriate, under which circumstances?
- What aspects of organisational environments and culture support effective practice?
- What is the incidence and prevalence of child abuse and neglect?
- What strategies are effective in addressing neglect?

2.3 Conclusion

The systems, services and supports designed to protection children in Australia are expanding and changing. The focus of reform within Australia over recent years has been to invest in more preventative services and reduce some of the unnecessarily adversarial aspects of service provision that are characteristic of the child protection orientation. European child welfare systems, which reflect a family support orientation, have been informed these reform approaches within Australia. It is important to acknowledge the differences in orientation to child welfare between Australia and Europe in considering how Australian child welfare successes and failures might inform the Swiss context.

An optimal system for protecting children comprises services and supports that increase in intensity in line with family needs, and which only impose mandated services upon families who are unable or unwilling to meet the needs of their children without statutory intervention (see Figure 2).

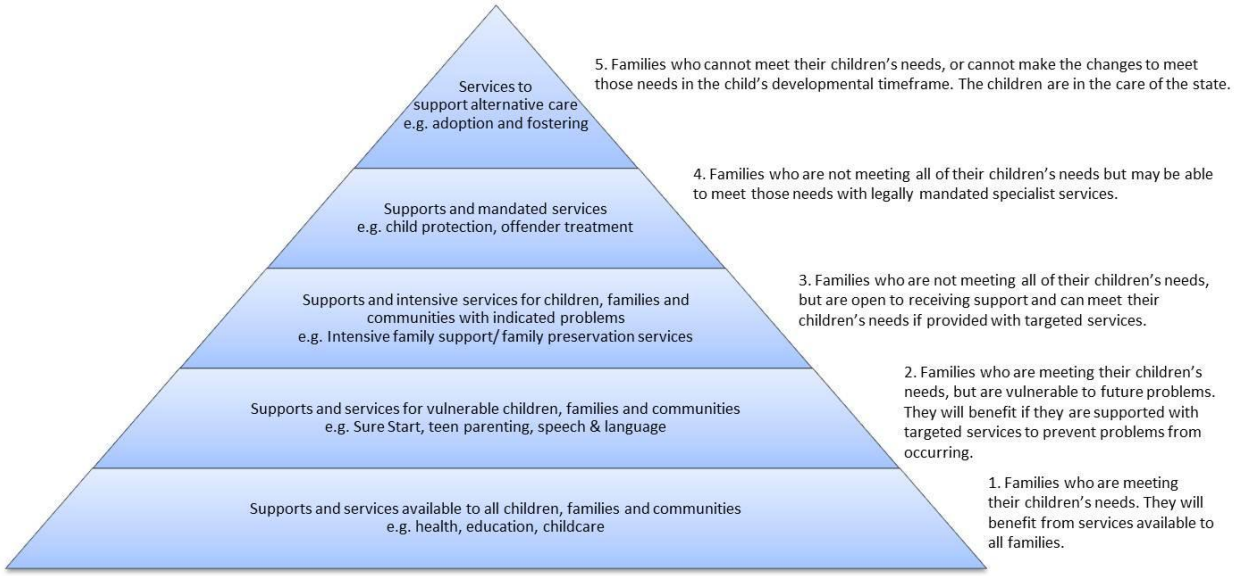

Figure 2: A public health approach augmented by the theory of responsive regulation (Arney & Bromfield, 2010)[106]

The failure of the residual approach to child protection, which was initially implemented within Australia, provides support for the social welfare orientation common across Europe. Child welfare predicated on a social welfare orientation provides high levels of universal supports for children and families. Such an approach is likely to better meet the majority of the population of parents who are able to meet their children's needs, but whom would still benefit from services and supports to reduce the burden of parenting obligations. However, from an Australian perspective, there are potential limitations of European family support orientations to child welfare. These relate to the minority of families in which children are victims of serious abuse and neglect. For example, a view of abuse and neglect as a symptom of family dysfunction may result in victims of abuse and family violence being held accountable for their perpetrators' actions. A family support orientation may result in serious abuse going undetected for longer than would be the case in a child protection orientation. Finally, the desire to work in cooperation with families may result in a decisions to remove children into state care being made much later in the course of a child's development. In terms of governance, the partnership between state, territory and Commonwealth governments, and the third sector through a coalition of non-government and academic institutions offers a potential model for Switzerland to consider in implementing national standards within local models.

[106] (Arney & Bromfield, 2010, under review; Department of Families Housing Community Services and Indigenous Affairs together with the National Framework Implementation Working Group, 2011)

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3 Child protection in Finland by Johanna Hietamäki

3.1 Historical background

3.1.1 Child protection prior to WWII

Finland was a part of Sweden from about 1200 till 1809 (Mäntysaari, 2000). Although Finland became an autonomous area of the Russian Empire in 1809 the Swedish social order and Law continued (Hearn et al 2004, 31). Finland declared independence 1917 and a civil war ensued in 1918, followed by wars with the Soviet Union in 1939 and 1941-1944 (WWII) (Mäntysaari, 2000).

In early times the extended families took care of children if their parents could not take care of them. Up untill 1868 the church was responsible for care of persons who could not support themselves. The essential social problems were poverty, infant mortality (Pulma 1987, p 15), begging and children born out of wedlock. Poverty remained the major social problem related to the children in the 1800s. In 1866-1868 there was a big famine in Finland. Other problems were orphanhood, the use of the alcoholand an increase in poverty in the countryside and towns. The growing industry was able to employ only small part of the people (Lindgren, 2000, pp 77, 84).

The development of the medical service, the establishment of children's homes and supporting children's own homes were seen as solutions to infant mortality problems. The children were transferred from the children's homes to the farmers and the craftsmen as soon as the children were able to work (Pulma, 1987, pp 14-18). The other central forms to arrange care for vulnerable children were to leave the child to be taken care of by the lowest-bidding parish-member or house group. The latter refers to houses formed into a group and in each group there were some poor who shifted from house to house. These practices continued till 1910s, and then were replaced by foster care (Lindgren, 2000 pp 80-81).

In the 1850s there were a shift in thinking and children in need were no longer seen as just labour solutions. They were divided into two goups: the vulnerable children and the bad-mannered children. Furthermore, the state and the municipalities started to take care of children in need. The state (and later the big cities and private associations too) founded reform schools for bad-mannered children (Lindgren, 2000 p 84). The municipalities were responsible for the care of vulnerable children based on poor relief (Pulma, 1987 p 25). Actual child welfare policy began to emerge in the 1850s (Hämäläinen, 2007, p 30).

The Civil War in 1918 was significantfor the welfare of children. There was a division between the Whites and Reds (the names of the two groups involved in the conflict) and this was reflected in social policy

(Satka, 2003, pp 76-79). The children of the Reds and Whites were treated differently. The Reds' orphans were given only poor relief while the Whites' orphans received state pension. All children received preventive child welfare but the Red families were subject to moral surveillance by the child inspector (Satka, 2003, pp 76-79; Pulma 1987, p 128). More than 14,000 children lost one or two parents and furthermore around 6,000 children's carers were in prisons. About 90 % of these children were Reds' children (Satka, 2003, p 76; Lindgren 2000, p 79.) After the Civil War lots of children were begging and therefore municipalities had to found a number of children's homes (Lindgren, 2000, p 83). Economic and social problems came to a head during and after the civil war (Pulma 1987, pp 123-124).

The ideological bloom of the child welfare began in the 1920s (Pulma, 1987, pp 123-124) and child protection began to to be understood in terms of preventive social policy. The public school appeared as an integral part of preventive child welfare and aim was to give all children a uniform upbringing (Pulma 1987, pp 144-145; Satka 2003, p 79). The assumption was that childhood is "the best possibility to prevent the growth and development of future criminals". The public school became compulsory 1921. The other preventive measures in child welfare were mainly in provision of leisure-time activities and day-care for children in need (Satka, 2003, pp 74, 79).

The first Finnish Child Welfare Act was developed over a 20-year period. A significant factor influencing Finland's first Child Weldare Act was the world's first Child Welfare Act enacted in Norway in 1896, which prompted intensive debate and later reform efforts in Finnish child welfare (Satka, 2003, p 74). The first Finnish Child Welfare Act came into force in 1936 between the civil war and the Second World War. During this time employed workers, elected officials and volunteers worked with vulnerable people in the municipalities. At the end of 1800s and at the beginning of 1900s the first education courses for social workers and staff who worked in the children' home were instigated. Formalization of social work began when the laws were introduced to regulate their actions (Matthies, 1993 and Satka, 1994 in Vuorikoski, 1999; Opetusministeriö, 2007).

Charity work

The gentry began to undertake charity work from the 1700s, but in the 1840s charity work increased and became common among both the gentry and the middle class. They established children's homes, schools, work houses, child-care centres, shelters, summer settlements for poor children and gave financial support to poor families. Well-to-do people gave advice and counselling to women and children. The objective was to eliminate threats caused by poverty, like crime and moral degeneracy (Hämäläinen, 2007, p 58; Pulma 1987, pp 37-93; Lindgren, 2000, p 86). In addition to private charities, many ideological and religious associations also arranged services to help children (Lindgren, 2000 p 86). Towns provided economic support to private charities, an alternative on occasions to founding children' homes and providing day care themselves (Pulma, 1987, p 89). Private and public child welfare services developed side by side. During that time the municipalities arranged the child welfare as a part of the poor relief (Hämäläinen

2007, pp 66-67). In the beginning of 1900s child welfare started to develop slowly towards a rational expert activity and charitable work was regarded as traditional, idealistic and religious-minded work lacking a model for effective and individualized treatment for children (Satka, 2003, pp 74-75).

3.1.2 Child protection post WWII

"After the Second World War a new, discursively much more internationally informed understanding of children and youth began to emerge" (Satka, 2003, p 79). The division of children into vulnerable and bad-mannered groups began do disappear in the 1950s when pedagogical, psychological and sociological orientations strengthened (Lindgren, 2000, p 84). People started to emphasise that all children are equally important to the state. The idea was that investment in children is an investment in the citizens of the future. After the war people felt insecurity and it opened space for expert advice. Related to the child, the leading discourse and method was professional casework for families with children. In the 1940s the state began to provide normalising state benefits to families with children, like child allowance, free school meals and maternity benefits. Furthermore, social benefits and services for needy families, like subsidies for families with numerous children (1943), state subsidies for single-mother homes (1949), and municipal home aids for overburdened mothers caring for many small children (1950) (Satka, 2003, pp 80-80, 84). The first degree in social work commenced in the University of Tampere in 1942 and the level of education required for social work practice was raised to master's level in 1980's (Vuorikoski, 1999).

In the 1950s the majority of the new services were geared towards families with children, like day care to children in need, social case work and family counselling clinics. "Individually tailored social services provided by highly skilled, university trained professionals or multi-professional teams, expanded rapidly" (Satka, 2003, pp 84-85.) Some services founded by private associations transferred to the ownership of municipalities, such as family counseling clinics (Lindgren, 2000, pp 84-85). These clinics had spread throughout the whole country by the end of 1950s (Satka, 2003, p 85), signifying an important change in child welfare. Previously young who behaved problematically were taken out of the family and now children and young people were helped within their families. This represented a transition from the provision of substitute care to support in community care and began in the 1950s (Lindgren, 2000, pp 84-85).

A major structural change took place in Finnish society in the 1960s (Tuori, 2004, p 75) Finland had a very rapid transformation from an agricultural to a modern service society (Hearn et al 2004, p 31; Satka, 2003, p 73). Economic growth quickened structural change and a crisis in values created preconditions for expansion of social policy (Pulma, 1987, p 237). Finland's agrarian society transformed quickly into an industry and service society. A lot of people moved to the towns and to Sweden. In the 1960s women started to work the outside home (mostly full-time jobs) and this considerable changed the lives of women and children. At the same time municipalities organised day care for children and services for older people (Tuomisto & Vuori-Karvia, 1997, p 84). Individual freedom strengthened radically and traditional values started to weaken. The mothers who gave birth to children out of wedlock were not regarded as deviant

any more (Pulma, 1987, p 229). There were transitions from poor relief to social services offered to all who need them (Alila, 2008).

Child welfare orientation began to emphasise service orientation and familism (family-centred practice). Child welfare work concentrated on working with families, with this philosophy extending to work in family clinics, child health clinics, school social worker action, and improving the possibilities of families to attend holiday and recreation services, and provision of accommodation and day care. Foster care was regarded as rehabilitation. These orientations gave bases for the developing of the second Child Welfare Act, which came into force in 1984 (Pulma, 1987, pp 240-242).

The welfare state was born in the 1950s but only developed to its full extent in the 1980s. In 1992 Finland met a hard economic recession; “unemployment grew suddenly from 5-7 % to near 20 % of the labour force” (Tuomisto & VUori-Karvia, 1997, p 77). Basic social services for families with children were diminished in all areas of social welfare, from maternity clinics to home-help services and youth work (Sinko, 2008; Pösö, 1997, p 160). These services and benefits have not been restored. Related to the deep economic recession in Finland in the early 1990s, there has been growing concern regarding an increase in the number of families experiencing problems and the complexity of problems within families. The most common concerns are connected to neglect in the care and upbringing children; an increasing number of children being taken into care; high and long-term unemployment and its consequences for children; increasing rates of poverty among children and families with young children; and violence, alcohol and mental health problems in families. Furthermore, it has been noted that the demanding conditions of contemporary society in Finland have life more difficult for parents raising children, for example, for example, problems in the reconciliation of work and family life, loosening social networks, and cutbacks in financial support and services for families (Kuronen & Lahtinen, 2010, p 65).

Child welfare changed in scope in the 2000s. Child welfare social work has encountered criticisms that it concentrates on working with mothers and pays little attention to children and that its working methods are too vague from the viewpoint of service users. Furthermore, social workers have not taken relatives and their potential to provide care for children into consideration. This criticism has influenced the development of new working methods. One of the most significant changes is the development of comprehensive assessment in child welfare. This method has also influenced the newest Child Welfare Act 13.4.2007. However, at least as big a change is in the work orientation towards more child-centered practice. Social workers meet children individually more often than before. This change has been made possible by the development of relevant working methods, the social workers have regarded the adoption of such methods as good practice. The other essential change is that more attention is paid to family networks. The network should be assessed as a part of any decision to take a child into state care, as regulated in the newest Child Welfare Act.

3.1.3 History of the Child Welfare Act up to today

The Hospital and Children's Home statute/Act 1763 was the first law regulating the care of vulnerable children in Sweden and in Finland. The first *Finnish Child Welfare Act* came into force in 1936. This act established regulations with regard to taking children into state care. The spirit of the Act was concerned with discovering poor conditions and 'bad' parents. Furthermore, the intention was to divide children into those who need support and care, and those who need discipline and punishment (Tuomisto & Vuori-Karvia, 1997, p 85). The Act supported children's upbringing in their own homes and it regarded day care as a form of child protection to compensate for poor domestic conditions (Satka, 2003, p 84). "The state assumed the right to intervene in the family and to suspend parental rights if children were neglected or their asocial behaviour caused harm to society or themselves" (Pösö, 1997, p 145). The Act listed the grounds for taking a child into custody. One of the categories was child abuse. The Act, however, "did not define the rights and duties of child welfare intervention with great precision" (Rauhala 1978, in Pösö, 1997, p 145). Interventions included four stages: caution/complaint, counselling, surveillance and institutional care (Tuori, 2004, p 84).

The second *Child Welfare Act1983* came into force in 1984. As Pösö observes; "The period from 1970 to 1994 was a time of great changes in child protection, the landmark being the Child Welfare Act of 1983. This act not only redefined the categorization of the needs for child welfare interventions (…), but opened the whole approach to child welfare. A child is entitled to a secure and stimulating environment in which to grow and to a harmonious and well-balanced development. A child has a special right for protection" (Pösö, 1997, p 154). The second Child Welfare Act gave priority to preventive measures and adopted a broader understanding of child welfare instead of the earlier more limited focus on child protection. Orientation and discursion in child welfare started to change from removing children from their home towards preventing problems and supporting families. This aroused a need to find new forms of support for families and children at home instead of placing children into institutional care. Residential institutions 'opened their doors' and instead of institutional care began to direct their work more towards helping children and their parents in their own homes. Whilst the orientation was supportive of families, in practice this often meant working with adults (usually mothers) rather than children. As a consequence of this critique comprehensive assessment of the whole family has been developed within the newest Child Welfare Act (see Kuronen & Lahtinen, 2010, pp 72-73).

Two essential viewpoints of the Act are that child need protection from society and an emphasis on the child's best interests being paramount in any decision made with regard to the child, with a priority that their voice is heard. "For the first time children's rights to care and protection were to be principle for interventions" (Pösö, 1997, p 146). The Child Welfare Act is consequently divided into two main areas: preventive measures related to the children's living conditions and general welfare services to all families, and family-oriented and individual child welfare interventions. "The former deals broadly with children's interests and the latter deals with assistance to individual children in their natural living surroundings (…), taking the child into care and substitute care (…), and after care (…)." The act emphasised community

care services. “Supportive measures have been emphasized, with prevention and open care highly valued. At the same time, care orders and out-of-home placements are avoided as far as possible and, if necessary, made on a short term basis” (Pösö, 1997, p 154). Preventive and support for community care as a part of child welfare intervention ideas came into operation in the Child Welfare Act; these ideas have been developed further within the latest Child Welfare Act.

Criticism of the second Child Welfare Act led to the introduction of the newest (third) *Child Welfare Act.* It came into force in 2008. According to Sinko, the second Child Welfare Act was more or less a skeleton law. It gave no precise instructions when or how to intervene. There was a strong and publicly expressed wish to have a law that would tell how to engineer child welfare services, how to carry out child protection and tell the clients and the officials more precisely what their respective rights and duties are on child protection issues. The new Act is much more exact and detailed than its predecessor. The third act includes several new obligations for the authorities, new statutory duties, measures and practices for child protection work (Sinko, 2008; HE, 2006). The other changes include an emphasises on more and earlier children’s participation, child-centred working, child welfare social worker qualifications, preventive measures, cooperation within all services for children and families and mandatory reporting (HE, 2006).

One big change in the Child Welfare Act 2008 relates to decision-making. The previous Act did not guarantee the legal protection of a child and parent. The new law changed this at two levels. First, involuntary admission to care decision-making shifted from elected officials on the social welfare board to the administrative court. The reason for this was that the social welfare boards (consisting of elected officials) in municipalities were not generally considered expert enough to make balanced decisions. In Finland, there were big differences in such decision-making if the social welfare boards had a child welfare expert or not. Second, voluntary admissions to care decisions were shifted from the social worker to the head social worker. The courts do not make voluntary care decisions (STM, 2006, pp 57-59).

Other changes in the new Child Welfare Act are that it regulates assessment in detail, services for adults have to assess if a child in the family also needs assistance from child welfare services, regulation of multiprofessional teams for child welfare, guardianship to the child in certain situations. Furthermore, a new issue is that a child’s social network has to be exploreed when a social worker is preparing an admission to care decision, all children have a named responsible social worker, and if parents refuse assessment a social worker can apply for permission to undertake an assessment from the administrative court. There is also more regulation related to the institutional care, for example, the numbers of staff required. c (HE, 2006). The co-operation of all the municipal authorities in child welfare and protection issues is consequently, strongly emphasised with responsibilities clarified. Furthermore, improving the rights of the child as well as the parents, particularly in the decision-making processes, is an important principle.

3.2 Legal and policy frameworks

3.2.1 Definitions of child welfare and child abuse

Child and family welfare system in Finland can be best described with the terms 'child welfare' or 'family service system' rather than 'child protection' (Cameron & Freymond, 2006; Gilbert, 1997; Hetherington, 2002, pp 28-29[107]). The problems of the family and the services and supports to the family are seen from a wide point of view. There has been strong criticism against taking too narrow a view of social problems. Social problems are seen from wide a multi-problem perspective. "Physical violence or child abuse in the family is seen as too narrow a category that emphasizes the symptoms of the problem more than the basic causes and stigmatizes or blames the perpetrator too easily. These problems, it is argued, should be seen in the context of 'family conflicts' instead. "As a consequence child welfare is "focused on the child's healthy development rather than the risks of mistreatment". The main focus of the family service system is providing support for parent-child relationships and the care of children (Pösö, 1997, pp 153, 146).

The social problems in the background of child welfare are various e.g. criminality, crises, violence, mental health and substance abuse problems. The problems are seen holistically and there can be a big variation between the seriousness of the problems. In some cases the problems can be quite mild. For example the parents can be exhausted and need practical help in home. In this kind of a situation the family can receive light support from child welfare or from other professionals. The more serious the problem the more strongly family need help from child welfare. The problems often accumulate and it is not always easy to know what problems are the causes and what problems are the consequences. For example if a young person does not obey their parents, uses alcohol and is away from home without the permission are these the actual problems or are they symptoms of problems in the background such as domestic violence?

The basic definition of child abuse in Finland is similar to that in the UK (see UK case study). Child abuse is not defined in the Child Welfare Act but it is defined inthe literature. All forms of child abuse can be defined also from the viewpoint of active and passive abuse (see Pösö, 1997, pp 147-148) and can take different forms: physical, chemical, psychological, economical and sexual abuse. Active physical abuse means for, example, physical violence and passive abuse can take the form of neglect. Active chemical abuse refers to the misuse of the medicines and intoxicants and passive refers to neglect of medical treatment. Psychological abuse is neglect, humbling, threatening and mocking in active form, and passive forms are invalidation and ignoring. Sexual abuse can too have active forms like touching and intercourse,

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[107] Hetherington (2002, 26-29). *Dualistic system with 'child protection' orientation*: "Child welfare systems characterised by a focus on child protection, distrust of state intervention, and a legalistic approach. These systems were crisis orientated, with an emphasis on rights and individual responsibility. Their systems treated family support and child protection as discrete processes." *Holistic system with 'family service' orientation*: "Holistic child welfare systems that treated prevention, support and the protective responses to child abuse as parts of a whole". Inside the holistic system there is difference between deliveries of the services. In some countries is the principle of subsidiarity (like Germany) and the other countries state delivery services (Sweden, Finland).

and passive abuse can include exposing a child to a sexual atmosphere (Taskinen 2003, in Ellonen et al 2007, p 15).

Social workers do not define child welfare problems through the lens of child abuse. If child abuse take place as a part of general violence in family or parents have problems such as substance abuse or mental health problems, these are more likely to be defined 'family conflicts' or 'parental drinking problems' than child abuse. Because of this the "child is rarely defined as the reason for child welfare interventions" (Pösö, 1997, p 151). Sexual abuse is, however, an exception; it is seen separately from the other forms of abuse and social problems.. Aside form sexual abuse there is no strict definition and categorisation of the problems for child welfare interventions. The Child Welfare Act is essentially a skeleton law, only defining the general framework for child welfare (Pösö, 2011 forthcoming).

Pösö argues that; "In Finland, and in the other Nordic countries, extensive support for families and children is prioritised against more controlling measures, and state intervention is seen more as service and support than control and surveillance." "The strong critique of many British researchers towards the state control differs from most Finnish discussions on family support or child welfare. A reason for this might be different ideologies and models of child welfare/ child protection (Hearn et al 2004 and Pösö 2007, in Kuronen & Lahtinen, 2010), different family policy and welfare systems (Eydal & Kröger, 2010), and different situations of families with young children". In countries which have family service systems, like Finland, "demonstrating risks of harming children is not a necessary precursor for families or children to receive assistance". Child and family welfare services are the same services to the general population. If child abuse or neglect is suspected, the social worker makes an investigation request to the police. However, despite such clear lines of responsibility there are: "Still, contradictions and tensions between control and support is one of the basic questions is social work and child welfare also in Finland (Pösö 2007, in Kuronen & Lahtinen, 2010)" (Kuronen & Lahtinen, 2010, p 69).

3.2.2 Legal framework to protect children

The central law is the Child Welfare Act (CWA) 2007/417. Furthermore, there is an Act to safeguard children in institutions, concerning checking the criminal background of persons working with children. The Child Welfare Act also contains regulation concerning child welfare institutions. Juvenile justice is based on both criminal law system and child welfare system. The basic principle is that the child welfare system is primary. The age of criminal responsibility is 15. The majority of the juvenile offenders are in child welfare placement and there are about ten young people in the prison (Marttunen, 2008).

3.2.2.1 Child Welfare Act – General principles and other professionals

The most important guide to child welfare social work is the Child Welfare Act. There are many guidelines accompanying the Act especially concerning the assessment of abused children. The present Child Welfare Act came into force 2008. The act emphasizes preventive child welfare in the normal services to the

families. As indicated above, all public professionals who work with children and families are responsible to support parents and custodians in their child's upbringing and provide necessary assistance at a sufficiently early stage. Professionals are responsible to support the parents and give services that parents can take care of children, parents retain the primarily responsibility for the child's upbringing and well-being (Räty, 2007). Such repsonsiblities are guided by the cental principle of the *smallest sufficient measure*. The objective is to intervene as little as possible in the family's and the child's autonomy. Assistance offered should be such which best corresponds to the individual needs of a child and family. The economic resources of the municipality should not affect the determination of measures (Räty, 2007, p 19).

The Child Welfare Act consists of two parts: child and family specific child welfare and preventive child welfare. Child and family specific child welfare consists of five sections: assessment and service user plans, support in community care, emergency placement, taking the child into care and after-care. The objectives of the child and family specific child welfare are to promote child's favourable wellbeing and development, prevent problems, promote early intervention and take into account the child's best interest. When institutional care is needed it has to be arranged without delay. The child's best interest is the most important issue when authors are assessing the family situation and what measures are needed (Räty, 2007, 20-22; CWA, 2007, section 4). A child is defined as less than 18 years of age and a young person as 18–20 years of age (CWA, 2007, section 6). Preventive child welfare is used to promote and safeguard the growth, development and wellbeing of children and to support parenting. Preventive child welfare is assistance and special assistance when a child is not a child welfare service user. For example schools, youth work, day care, maternity and child health clinic and other social and health care offer preventive child welfare services (Räty, 2007, pp 19-20; CWA, 2007, section 3; Act for changing Child Welfare Act, 2010).

The Child Welfare Act also comprises obligations to other social and health care authorities, stipulating that when adults are being provided with social and health-care services (substance abuse, mental health or some other social and health care services or parent is imprisoned) and a parent's capacity to take care of their children is deteriorated, children's need for care and support must be assessed (Räty, 2007, 39-41; CWA, 2007, section 10). Furthermore, the social and health-care authorities must arrange essential services for the special protection of pregnant women and unborn children where necessary (CWA, 2007, section 10). Health-care has special obligations to children who are child welfare service users with provision of expert assistance and provision of health care and theraputic services for the child. Services needed by children in connection with the investigation of suspected sexual abuse or abuse must be arranged without delay (CWA, 2007, section 15; Räty, 2007, pp 73-74).

3.2.2.2 Child Welfare Act – Children's rights

In provision of child welfare, the child's wishes and views must be taken into account in a way that is appropriate for the child's age and level of development. This includes small children having an opportunity

to express their views related to the child welfare issues concerning them. In all child welfare measures the child's opinions and wishes should be ascertained. Workers have to be sensitive that a court hearing does not cause unnecessary harm to the relationship between child and carers. The more important the child welfare measure the more weighting should be given to the child's opinion. Furthermore, children of twelve years or more have an opportunity to express their views before decisions about taking a child into care, ending care placements and placements outside home (HE, 2006; Räty, 2007, 117-118; CWA, 2007, section 20, 43). Children of twelve years or more can independently apply for amendment to decisions or deny authorities the right to give information to the parents for special reasons (CWA, 2007, section 21; Räty, 2007, 126-127; Status and Rights of Social Welfare Clients, section 11). All children in child welfare have a named qualified social worker who is responsible for the child's affairs Professional qualification for social work can be achieved by completing the degree of Master of Social Sciences (majoring in social work).

All children in child welfare have a named qualified social worker who is responsible for the child's affairs Professional qualification for social work can be achieved by completing the degree of Master of Social Sciences (majoring in social work). The responsible child welfare social worker has to oversee the child's best interest, provide assistance for children or young people in exercising their right to be heard and, where necessary, must direct the child or young person to seek legal aid or ensure that an application is made for a child's guardian (CWA, 2007, section 24; Räty, 2007, pp 132-133). The child can have a guardian[108] to deputise for their custodian if there is good cause to assume that the custodian is unable to represent the child's best interests in the case without prejudice; and a guardian is necessary in order to investigate a case or otherwise to safeguard the best interests of the child. A Guardian can be needed if a parent has abused the child[109] (CWA, 2007, section 22; Räty, 2007, pp 129-130). Furthermore, Finland has established the post of Ombudsman for Children to support the rights of the child and the Ministry for Foreign Affairs reports on progress made in relation to children's rights regularly to the UN (Ministry for Foreign Affairs, 2008).

3.2.2.3 Child Welfare Act – Mandatory reporting

Mandatory reporting became compulsory in 1984 but this did not mean that all authorities began to make child welfare notifications in all cases. This requirements were apparently neither well known nor widely complied with by the authorities. As Pösö explains; "The lack of compliance is sometimes excused by referring to legal norms. The concern about breaching confidentiality in professional relations with clients is often noted as a reason for the reluctance of authorities to report incidents of abuse to child welfare services". Besides, the standards of evidence for reporting are often misunderstood. "Although many workers think that there ought to be definite proof of child abuse before the municipal child welfare organi-

[108] A guardian in Finland means different thing than quardian in Switzerland.

[109] More information from Guardianship in Child Protection website in English: http://www.sosiaaliportti.fi/en-GB/guardianship_in_child_protection/

zation is informed, the law requires that a report be filed when the worker suspects the likelihood of child abuse, even if there is no firm proof at the moment" (Pösö, 1997, pp 149-150). Mandatory reporting practice has been extended to the new professional groups and the threshold for report/notification has reduced by the Child Welfare Act 2008.

There are various designated groups who are responsible for child welfare notification (mandatory reporting) for child welfare social services: 1) social- and health care, 2) education, 3) youth services, 4) police service, 5) criminal sanctions agency, 6) fire- and rescue services, 7) social service or health service provider; 8) organizer of teaching or education, 9) parish or other religious community, 10) asylum seekers reception unit or other residential unit, 11) emergency response centre, 12) unit arranging morning and afternoon activities for school children[110]. These authorities and elected officials (person elected to a position of trust), self-employed persons and all who are working in health care have a duty to notify the municipal body responsible for social services without delay and notwithstanding confidentiality regulations if, in the course of their work, they discover that there is a child for whom it is necessary to assess the need for child welfare on account of the child's need for care, circumstances endangering the child's development, or the child's behaviour (CWA, 2007, section 25; Räty, 2007, pp 143–144).

There are provisions for persons responsible for child welfare notifications (referred to as the "author") to make these notifications cooperatively with the service user. Instead of a mandatory report, the author can make ´a request to assess the need for child welfare´. The provision is designed for situations in which one of the family members is a client of the author of the child welfare notification (STM, 2010).This requiremnent came into force in 2010 as a supplementary part of the Child Welfare Act. Child welfare notification can be proactive if there is reasonable ground to suspect that a child needs help immediately after birth. Other people can notificatify anonymously, like neighbours, grandparents and a child (CWA, 2007, section 25; Räty, 2007, pp 143–144).

Child welfare normally receive the notification and the social worker has in turn a responsibility to give information to the police, notwithstanding confidentiality regulations, if there are reasonable grounds to suspect that the environment within which a child is being brought up is harmful, the child has been the subject of sexual abuse or abuse that has caused injuries to the child (CWA, 2007, section 25d; STM, 2003). Social worker can use discretion when informing the police. It is possible to inform less serious situations, when child is young (Räty, 2007, p 164).

3.2.2.4 Child Welfare Act - Interventions

Child welfare social workers must assess immediately a child's possible urgent need for child welfare services. Social workers have to decide during seven days after receipt of the notification or after other contact whether a worker will begin an assessment or the situation is clearly of a kind that does not require

[110] The list has been specified more later in CWA 12.2.2010/88.

measures to be taken (CWA, 2007, section 26). An assessment must be made whether there was a child welfare notification or the service user themselves sought help. The assessment should be completed within three months and include a comprehensive assessment of the circumstances in which the child is being brought up and of the prospects of the carer to care for the child, and any need for child welfare measures. The extent of the assessment will be as required by the circumstances of the case in question. After completion of the assessment, the career/ custodian and the child must be informed of the continuation of the child welfare service user relationship (CWA, 2007, section 27; HE, 2006, 143-144; Räty, 2007, pp 169-170), this gives social workers opportunity to decide to extend the assessment individually if necessary. If the parents forbid the assessment the social worker can apply for the permission from the administrative court to the assessment if there is a heavy reason for it (CWA, 2007, section 28; Räty, 2007, pp 171-172). After the assessment, the social worker undertakes a service user plan (e.g. objectives, services to the child and careers, and time schedule) with the child and family both in community care and taking into care cases. The service user plan must be reviewed where necessary, and at least once a year (CWA, 2007, section 29).

The core of the child and family specific child welfare is a division between the community-based child welfare interventions and taking into care decisions. The municipal body responsible for social services (in practice the child welfare social work office) must provide community care measures if one condition is realised: 1) the circumstances in which the children are being brought up are endangering or failing to safeguard their health or development; or 2) the children's behaviour is endangering their health or development. The objectives of community care are to promote and support the child's development and to support and enhance the parenting skills and opportunities of the carers. This assistance is voluntary and of a preventative nature and is provided in cooperation with the child and carers (CWA, 2007, section 34).

The community-based child welfare interventions comprise the biggest part of the child welfare services. The Child Welfare Act list these services: 1) support for assessing a problem situation involving the child and family; 2) financial and other support for the child's schooling and in acquiring an occupational qualification, obtaining accommodation, finding work, in free-time pursuits, maintaining close human relationships and satisfying other personal needs; 3) support person or support family; 4) care and therapy services supporting the child's rehabilitation; 5) family work; 6) placement of the whole family in family or institutional care; 7) peer group activities; 8) holiday and recreational activities; and 9) other services and supportive measures to support the child and family (CWA, 2007, section 36). Furthermore a child can be in placement as support in community care. This is the voluntary placement and there are regulations in connection with the child's age, duration of the placement and in what kind of situations can it be used (CWA, 2007, section 37).

State care must be provided if three conditions are realized. 1a) a child's health or development is seriously endangered by lack of care or other circumstances in which they are being brought up; or 1b) a child seriously endangers their own health or development by abuse of intoxicants, by committing an illegal act

other than a minor offence or by any other comparable behaviour. 2) Community care support measures would not be suitable or possible for providing care in the interests of the child concerned or if the measures have proved to be insufficient. 3) Taking into care is estimated to be in the child's best interests. Before a child is placed outside the home social worker has to assess what opportunities there are for the child to live with the parent with whom the child does not primarily reside, with the relatives or with other persons close to the child, or for these parties otherwise participating in supporting the child. This process may be omitted if it is not required on account of the urgency of the case or for some other justified reason (CWA, 2007, section 32). At this stage is possible to use family group conference (Heino, 2009).

Decisions concerning taking a child into care, placement outside home and terminating care are made by a head social worker with specified qualifications (an appointed officeholder with specified qualifications and skills) or the administrative court. The head of the social worker makes the decisions if a child 12-years or older and the child's carer accept the decision. When the child is 12 or older or their carer resists the decision the municipal officeholder makes the application to the administrative court, which makes the decision (CWA, 2007, sections 14, 43, 44; Räty, 2007, pp 276-277). Taking into care is valid indefinitely but it has to be terminated if the need for care and placement outside home no longer exists and is against the best interests of a child or when the child reaches the age of 18 (CWA, 2007, section 47). A young person is entitled to have after-care after placement outside home and after-care terminates when young person is 21 years of age. After-care is voluntaryand the objective is to support a young person to independent life (CWA, 2007, sections 75-77).

3.2.2.5 Violence in the family

Violence in family is punishable and has been regulated in the many laws. The Constitution of Finland states that everyone has the right to life, personal liberty, integrity and security. The Constitution emphasizes especially children's equality and their need for special protection (The Constitution of Finland, 1999, sections 6, 7; Paunio, 2006, p 9). Corporal punishment has been prohibited in the Child Custody and Right of Access Act 1984. Assault and sexual abuse have been defined separately and they are punishable actions according to the Criminal Code. Domestic violence and severe harassment inside family can be preventing by Act on the Restraining Order in 1998.

Corporal punishment of children has been forbidden explicitly by the Child Custody and Right of Access Act (1984). Finland was the second country in the world to forbid all kinds of bodily disciplining of the children (Ulkoasiainministeriö, 2003, p 15). The Child Custody and Right of Access Act prohibited corporal punishment and any treatment that would hurt or oppress children. "The act did not however specify the criteria for the definition of maltreatment of a child, and neither did the Child Welfare Act". Corporal punishment has diminished in Finland but it is still appears. Because of this the Ministry of Social Affairs and Health have set up a program called "Don't hit the child - National action programme to reduce corporal punishment of children 2010-2015" (Ministry of Social Affairs and Health, 2010).

Assault and sexual abuse are criminal actions. Assault has been divided into three groups in the Criminal Code: petty assault, assault, aggravated assault (Criminal Code, chapter 21, sections 5-7). Sexual assault includes for example sexual act, rape, sexual abuse and sexual abuse of a child (Criminal Code, chapter 20, sections 1-7). With regard to domestic violence a significant change was made to the Criminal Code at the beginning of 2011. Now *the public prosecutor* bring charges for petty assault, if the victim is less than 18 years old, spouse, co-habiting partner, sibling, relative in direct descent or ascend, or someone comparable person (The Criminal Code, chapter 21, section 16). In these cases the police are responsible to do a preliminary investigation and the public prosecutor brings charges even if the victim would not want it. Objectives of the Act are that it facilitate a break in the spiral of the assault and improves the position of the victimIt is especially harmful to the child to experience assault in near human relationships. Even a slight assault may cause a child difficult conflicts and possibly long time damage. The situation is made worse by the fact that the child cannot apply for the support from the person whom the child should be able to trust (HE, 78/2010).

3.2.3 Child welfare methods and other services

There are many organisations that organise services to the children and their families. Child welfare social workers are the essential professionals in child welfare cases. They should assess the situation and co-operate and organise needed measures with normal services like school, day care and health nurse and with specialised services like substance abuse and mental health treatment professionals, family counselling offices and many organisations.

Child welfare interventions are based usually on the expert knowledge. Furthermore research based information has been utilised when intervention methods have been developed such as the comprehensive assessment. Family group conference and PRIDE foster parent training are probably methods which have been studied most internationally. However, service user's opportunities to participate, worker's genuineness and openness working with service users are essential factors in all social work, especially with the involuntary service users (Hiitola & Heinonen, 2009, p 30). In the following section we will introduce some of the most important practices and measures which are used in social work the comprehensive assessment, family work, and community care measures. We will then examining developments in child welfare organisations before reflecting on the role of the social welfare ombudsman, and highlighting centres of excellence in social work and information technology innovations.

3.2.3.1 Comprehensive assessment

Comprehensive assessment in child welfare forms the starting point for the working process. The social worker has to assess all new families, even if the urgent services would also already have been begun. The objective of the Finnish 'comprehensive assessment' is to undertake a holistic assessment of a child's situation and whether the parents are able to take care of the child and assess if she needs support. Even though the Child Welfare Act gives flexibility to undertake an assessment it nevertheless comprehensive assessment model forms an essential part of the child welfare program of the Ministry of Social Affairs and Health (Oranen, 2006). Furthermore, the Ministry has funded extensive national training program for trainers who induct employees in using the model.

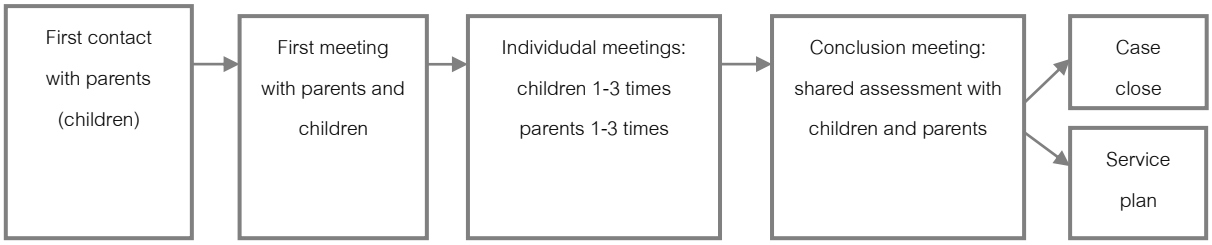

Figure 3: Comprehensive Assessment Process in Finland

To provide an overview, the assessment model consists firstly of contact with the family by phone, letter or preparing meeting (Figure 3). Sometimes the working process finishes at this phase, if it is apparent that there is no need to continue working with the family. In ideal case comprehensive assessment begins at the opening meeting with the parents and children. The objective is to discuss a notification or application of the family, introduce assessment process and goals, motivate family members to participate into the assessment, and do a schedule for the rest of the assessment process. After that, it is direct work with the child and the parents, and individual meetings deals with themes: home and important relationships, child and everyday life of the family, needs of the child, and parent's resources to support child and parent's readiness to do cooperation. Social workers use various functional working methods during the individual meetings. Functional methods can be a network map, timeline, role maps, time circle/ my day, variety cards (e.g. strength cards, reflexion cards, bear cards, feeling cards, the most important issues in my life[111]) and games. These methods are found to be useful and facilitate working with children and parents. Functional methods are used also working with children in placements and with children whose parents are divorced and social worker is hearing child's opinion concerning living and meeting with parents. The assessment ends in the conclusion meeting with the family. In that phase strengths and needs for chance

[111] Many of these cards are from Australia and translated into Finnish http://www.innovativeresources.org/.

of the child's life are discussed. Social worker also informs service user concerning will the case close or will continue they and do a service plan.

3.2.3.2 Family work

Family work is concrete professional help to families in their own home given by family worker. It is provided to the families and children who are assessed to be in need of corrective and more intensive intervention in their everyday life. (Kuronen & Lahtinen, 2010, pp 66-67). Family work can be preventive and corrective intervention. One of the objectives can be to prevent taking a child into care (Heino, 2008, p 24). Family work can consists of discussion help and support in everyday life. Family worker can support parents as educator, assess parenthood and provide support for children. (HE, 2006, p 155.) In practice, family work can be for example counselling of the parents in the doing of housework, using of money or parents can need help and counselling to find day-rhythm to a child and child's upbringing (Heino, 2008). Above presented family work applies so-called common child welfare family work. There also are the other variations of family work, like intensive family work, family work of the child health clinic, baby family work and family peer-groups for different target groups (Lastensuojelun käsikirja).

3.2.3.3 Family group conference

"The Family Group Conference (FGC) model of practice has emerged as a significant innovation, a process that brings together the family, including the extended family, and the professional network systems in a family-led decision-making forum." (Connolly, 2007, p 3). In Finland, an own application was created from the family group conference (FGC) created in the New Zealand. Related to the newest Child Welfare Act it has been discussed should the family group conference be compulsory in some cases. Use of the family group conference is optional and social workers can use when they regard it relevant. Finland and other Nordic countries have developed FGC more towards child centred and diverge from other countries in this way. One essential point is that the worker creates a personal and genuine relationship with the child and knows child's concerns, opinions and wishes. Child-centred orientation is essential also on concern to questions to the adults. Dialogical, service user's resources and all views observing orientation promote relationship between workers, service users and their networks. (Reinikainen, 2007; Heino, 2009.) The use of the FGC-method is not too widespread and there is variation between social work offices how much FGC is used (Vuorio et al 2008). FGC is suggested to be one possible way to charting out the child's family network before the child is placed outside the home (HE, 2006, p 150).

3.2.3.4 Family counselling office

Family counselling office (FCO) gives both preventive child welfare services and child welfare community care services. Services users can ask for help directly from the FCO or for example a child welfare social worker can refer service users to FCO. The majority of the workers of the FCO are social workers and psychologies. Furthermore, doctors, speech therapists are working in some of the FCO (Stakes, 2008). The FCO helps children and families if they need special help concerning the child's development and

upbringing, problematic family situations and child or family crises. Furthermore, FCO gives the couple and family therapy and arrange various groups, such as: post-divorce group coaching program[112] to parents, post-divorce groups for children, parenthood and child rearing groups, fathers group for fathers of infants, family program for overactive children and their parents, grief group for parents who have lost their child, music therapy group for children, rehabilitation group for children who have learning difficulties, group for women who have suffered domestic violence and a corresponding group for children[113], relationship group for parents, ´käsikynkkä´ –g roup to support interaction between a parent and a child.

In child welfare, therecan be special situations when child welfare social workers cooperate with FCO. For example, if a social worker is assessing the appropriateness of reunification when a child is in care, the social worker may ask the FCO to assess the interaction between the child and the parents and the child and foster parents.

3.2.3.5 Foster parent training

Foster parents are educated using PRIDE (Parent Resources for Information, Development, and Education) foster parent training program. This program has imported from the USA (Männikkö, 2010). PRIDE is a program for recruiting, preparing, assessing, and selecting prospective foster and adoptive parents. It consists of 14-step process and contain five competency categories for foster parents and adoptive parents: “1) protecting and nurturing children; 2) meeting children's developmental needs, and addressing developmental delays; 3) supporting relationships between children and their families; 4) connecting children to safe, nurturing relationships intended to last a lifetime; and 5) working as a member of a professional team.” (CWLA, www-page) Pesäpuu ry have developed multicultural additional package to the PRIDE –program.

3.2.3.6 Child welfare organisations

In Finland, there are around 25 child welfare organisations. I will introduce two central child welfare organisations which develop child welfare practices. The other organisations arrange for example camps for children, weekend activities for families, to have effect in the decision-making concerning children, foster homes, reforms schools, after-care services, peer-groups, help-line, support in internet. In addition to the previous organisations there is *Save the Children Finland* organisation which is developing a model to work *with abused children their foster families, biological parents and close relatives.*

Centre of Expertise in Child Welfare (Pesäpuu ry) is a national centre for expertise in child welfare and protection with the aim of maintaining and developing the quality of child protection and its family care (Kittilä 2005). Pesäpuu is an essential trainer to social workers to use the comprehensive assessment method. Pesäpuu develops and imports methods from other countries for working with children, and edu-

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[112] designed by Dr. Bruce Fisher, in the USA.

[113] Furthermore The Mobile Crisis Centre arrange groups for violent adults, and for adults who have suffered domestic violence.

cate social workers and other professionals in child welfare in these methods. They have a variety of different kind of cards like strength cards, reflexion cards, bear cards, feeling cards, the most important issues in my life[114]. The other functional methods are feeling circle and TEJPING. The last mentioned method[115] has been imported from Norway. Besides, Pesäpuu have developed many guides, peer-group and training programs for foster parents', children and young in foster care, multicultural foster care and kinship foster care.

The Federation of Mother and Child Homes and Shelters is a central organisation for the member associations assisting families by means of institutional and community services and projects. The Federation is an expert in the work with families of infants and in domestic violence (Kittilä 2005). They have mother and children homes and shelters, and they arrange peer-groups, family work at homes, controlled or supported meetings between a child and a parent. Furthermore, the federation has the mother and children homes which give substance abuse treatment for pregnant women and families with babies (Hyytinen et al 2008, 11). They have created a new model to the child centred substance abuse treatment at families own homes (Veijalainen & Paasikannas, 2008). They have established the first crisis centre for men in 2003, and that followed 'Jussi-work' which is directed to the men and the objective is to prevent or stop domestic violence and do crisis work (Törmä & Tuokkola, 2010, pp 5, 9-11).

3.2.3.7 Organisations and internet support concerning to the child abuse and domestic violence

Tukinainen - rape crisis centre[116] provides support and guidance for people (especially for women) who have been sexually assaulted/ or abused, as well as providing guidance for their families. They have various peer-groups, free legal consultation, help-line and they educate professionals and give consultation, and give support via e-mail/internet to the victims.

Lyömätön Linja[117] services is aimed and offered to men who have used or are frightened they will use violence within the family. They have developed a cut-off violence program for men. The objective is that men can develop readiness and tools to live without violence. The program consists of individual work, group work and follow-up meetings. They do also multicultural work and they have a telephone-service. *Women's line*[118] offer free helpline and net aid for women. *Maria-Akatemia Demeter*[119] offer help to violent women by help-line, individual meetings and peer-group.

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[114] http://www.innovativeresources.org/, http://www.pesapuu.org/

[115] http://www.bof-tejping.com/English/index-uk.htm

[116] http://174.132.188.98/~tnainen/in_english/

[117] http://www.lyomatonlinja.fi/Sivusto%209/Welcome.html

[118] https://www.naistenlinja.fi/en/public/how+can+we+help+you/

[119] http://www.maria-akatemia.fi/html/tehtavamme/demeter/demeter-toiminta.html

Net aid is given by: *Family counselling office* (FCO) gives counselling concerning children's upbringing and human relationships by e-mail. *Finnish Online Family Shelter*[120] help in family abuse - security in intimate relationships. Furthermore, there is exploring/searching young work in Facebook and IRC-gallery[121]. A new work model is net-group for mothers who have substance abuse problems, organised by The Federation of Mother and Child Homes and Shelters[122].

3.2.3.8 Social welfare ombudsman

The social ombudsman action is based on the Act on the Status and Rights of Social Welfare Clients, which came into force in 2001. Social welfare ombudsmans are appointed professionals. The aim of the Act is to foster a client-oriented approach, support the client's right to good social welfare, and further client and welfare personnel commitment to jointly agreed matters. All municipalities have to arrange the social ombudsman action. The ombudsman act as an arbitrator, give advice and help to file complaints, if client is dissatisfied with the treatment or service. Ombudsmans monitors aspects of client rights and reports annually to the municipal executive board (Ministry of Social Affairs and Health, www-page). Social welfare ombudsmen consider the best way arrange social welfare ombudsman is that municipalities themselves do not produce social welfare ombudsman action but burchase it from non-municipal organisation. Child welfare service users have contacted to the the social welfare ombudsman when service users have experienced insufficient attention being paid to their views and social workers writing negative matters and one-sided accounts of situations in the documents. Furthermore, service users wanted to get information concerning child welfare in generally (Hiekka & Metsäranta, 2011).

3.2.3.9 Ombudsman for children

Finland has established one post of Ombudsman for Children by the UN Convention on the Rights of the Child. The law concerning the Ombudsman for Children came into force in 2005. (Ombudsman for children in Finland, www-page). The Ombudsman for Children have the following duties: "1) Monitor the welfare of children and youth and the implementation of their rights; 2) Influence decision-makers from the viewpoint of children; 3) Maintain contacts with children and youth and convey information received from them to decision-makers; 4) Convey information concerning children to professionals working with children, decision makers and the public; 4) Develop cooperation between actors concerned with child policy; 5) Promote the UN Convention on the Rights of the Child." The Ombudsman for Children reports annually to the government on the welfare of children and youth and the implementation of children rights. The Ombudsman carry out lobbying work assessesing pending government projects from the perspective of the UN Convention. An important task to convey the opinions of young people to decision-makers." (Ombudsman for children in Finland, www-page).

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[120] http://www.turvakoti.net/en/home

[121] http://www.etsivanettityo.fi/index.php?pageName=etusivu&pid=3&cols=1&cont=true

3.2.3.10 Centres of excellence on social welfare

Centres of excellence on social welfare are essential for the developing of social work and they can also produce child welfare services. These centres were established all over Finland in 2002. Their tasks include safeguarding access to expertise on social welfare, basic and special services, and training as well as maintaining a link between the work in practice and the research, testing, and development activities. The nine centres of excellence on social welfare is based on the collaboration between municipalities and universities, polytechnics and other educational institutions, provincial associations, and non-governmental organisations in the field of social welfare (Heikkilä et al, 2009). "The centres of excellence are network organisations whose actions are based on the development needs and resources of each area". In practice the centres have succeeded in networking the regional social actors in their area (STM, 2003b). These centres have done many professional development projects with child welfare social workers who are working in municipalities (e.g. child welfare practical training, child welfare methods and interventions). Furthermore some of these centres have organised social welfare ombudsman services, multi-professional child welfare groups and specialised child welfare social worker services to the small municipalities.

3.2.3.11 Information technology for social workers

"The eHandbook for Child Welfare is a public, national-level and free-of-charge online service that is updated on a regular basis". It is a quick access practical tool for professionals in child welfare to topical, user-friendly and reliable information on a wide variety of topics in the area of child welfare. The aim is make child welfare practices more uniform at the national level. "The eHandbook for Child Welfare describes the different stages of the child welfare process, from preventive child welfare through to aftercare". It helps individual child welfare professionals in applying the new legislation and provides tools for high-quality child welfare. The eHandbook for Child Welfare include a variety of work methods, forms and checklists (e-Handbook, www-page).

Information technology project 'Tikesos' is a national development project the objective of which is to standardise the service user data of the social welfare. They are going to develop electronic service user documents and they will be used nationally in the future. Therefore, child welfare documents will be standardised form hereafter. The project is governed by the Ministry of Social Affairs and Health (Sosiaaliportti, www-page).

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[122] http://www.ensijaturvakotienliitto.fi/tyomuodot/pidakiinni/paihteita_kayttavien_aitien_nett/

3.3 State, local authority and nongovernmental provider relationships

“One of the duties of the public sector is to take care of the health and wellbeing of the population. This is done in part by arranging social and health services. The responsibility for organising such services lies with local government (commonly described as the municipalities). The Ministry of Social Affairs and Health is in charge of the overall functioning of social and health services.” It determines the development of these services, drafts legislation and steers reform processes and monitors the implementation and quality of services (Ministry of Social Affairs and Health). Under the Finnish Ministry of Social Affairs and Health is a research and development institute ‘The National Institute for Health and Welfare (THL)’. The aim of the THL is to promote health and welfare in Finland. It seeks to serve the broader society in addition to the scientific community, actors in the field and decision-makers in central government and municipalities. The functions are: 1) promote the welfare and health of the population, 2) prevent diseases and social problems and 3) develop social and health services. (THL, www-page)

The municipalities must ensure that preventive child welfare, and child and family specific child welfare are arranged in such a way that the content, extent and quality of such services accord with the prevailing need within the municipality (CWA, 2008, section 11; Räty, 2007, p 41). The State Provincial Office steers and monitors municipal and private social services to ensure they comply with legal requirements for the provision of child welfare and grants licences to the private sector. The State Provincial Office has for example imposed a conditional fine on some municipalities when child welfare assessments had not been completed within the prescribed lime limit (e.g. HE 2006, p 36).

The municipalities are the primary provider of child welfare social work, either alone or in collaboration with other municipalities: a) an organisation model based on so-called host municipalities, where partner municipalities transfer the responsibility to a chosen host, which then runs the actual services; or b) joint municipal boards, a traditional administrative format for co-operation and democratic control between municipalities (Kokko et al, 2009). Community care interventions are also primarily provided by municipalities (Vetteenranta et al, 2008, p 8). Whereas organisations and enterprises are important child welfare service producers in residential care, professional family home, shelter, and mother and children’s home services from organizations and enterprises. In addition, municipalities buy some home help services and aftercare from organizations and enterprises. Support family and support person are in most case based on voluntary work.

Municipalities buy quite a lot placement services from enterprises and organisations. In the 2000’s municipalities have began require enterprises and organizations to tender to provide residential care and professional family home services in child welfare (Heino et al 2006). Vettenranta, Holma and Rousu (2008) asked enterprises and organisations their experiences concerning tendering in child welfare. Many respondents considered the tendering process to be too laborious in proportion to the advantages. The definite quality is difficult to bring forth to the documents. Participants had mixed views about the effect of

tendering on prices, some of the respondents said that tendering had decreased prices and others that it had increased prices.

There is debate about the right number of municipalities. Many hold that the number of municipalities must decrease and/or that municipalities must arrange services together. The number of municipalities is now 336 and the population in Finland is around 5 380 000 people. In 2001, there were 448 municipalities and population was 5 195 000 inhabitants and in 1991 460 municipalities. A fourth of the municipalities have interconnected during last ten years. There are only a few big municipalities. Eight municipalities have more than 100,000 inhabitants and the biggest city Helsinki had 589 000 inhabitants in 2010. The median size of the municipalities was 5 850 citizens in 2010 (Kunnat.net).

The Ministry of Social Affairs and Health have recently published a report in which they claim that the social and health services should be produced in bigger areas. They describe three possible models. A) A two-level municipality and region model in which big municipalities alone and small municipalities together will constitute 20 to 50 regions, which have responsibility to arrange basic and special social and health care services. Furthermore, there is need for 5 regions which produce special services. B) A two-level municipality model in which all together 30-50 municipalities are responsible to arrange basic services and some special services. Five regions would be responsible to arrange other special services. C) A one-level municipality model in which there are all together less than 20 municipalities and they arrange all basic and special social services (STM, 2011).

The organisation of social services will evidently change in future. Some changes have already happened, especially in health care and this has had consequences for social work in some areas. These changes are based on the Finnish Act on Restructuring Local Government and Services (169/2007), which came into force in 2007 and will be in the force until 2012. The act aims at increasing efficiency in municipal services and structures. In the field of health care services and closely related social services the minimum population base is set at 20 000 residents. To achieve this minimum, those municipalities with less than 20 000 residents must either merge with neighbouring municipalities or form collaborative areas that will organise services. In addition, the Act also aims to create and strengthen regional co-operation over services and to promote co-operation between social and health services (Kokko et al 2009).

3.4 National data

The National Institute for Health and Welfare (THL) annually receives statistical data from municipalities on children and young people in support interventions in community care and children and young people placed outside the home. Furthermore, the data include personal identifiers concerning the children and young people placed outside the home (THL) In addition to the national data the results of child welfare

studies are presented to create a more comprehensive view. National data gathering in child welfare is being developed currently by a national information technology project entitled 'Tikesos'.

3.4.1 Child welfare notification

In the 1980's, reports to child welfare services were made in equal numbers by parents and professionals. Reports initiated by parents usually expressed their concerns about family conflicts, problems in bringing up children, and their own psychiatric problems. The reports made by social welfare, health care, education, and police professionals tended to involve cases of child neglect, cases in which the parents had psychiatric and family problems, and cases in which children had difficulties at school or crimes were being committed by young people. Child abuse was rarely mentioned as a motive for a contact (Pösö, 1997, pp 149).

There were 79 651 child welfare notifications in 2009. These notifications concerned 53,318 children (average 1.5 notifications per a child). Child welfare notifications predominantly concerned children aged between 13 and 17 years (7.1% of the population 13 years) than children 0-12 years (3.1-4.1% of the population 0-12 years) (Kuoppala & Säkkinen, 2010). The number of child welfare notifications increased after the newest Child Welfare Act. For example, in the six biggest municipalities where more exact information is available the number of notifications increased on average 28% between the years 2007 and 2008 (Kuusikko, 2008; Kuusikko, 2009). The possible reasons for the increase in the number of child welfare notifications are: extension in the Child Welfare Act to the groups who have an obligation to make a child welfare notification to include emergency social services, increased awareness, cooperation with the other agencies, and many police stations having their own social workers.

Person who made a notification	Number of notifications	%
Private total	**7638**	**26 %**
Family member	3648	12 %
Relative, friend, neighbour, another private person	3990	14 %
Professionals total	**20596**	**71 %**
Social professionals	3017	10 %
Health care	3705	13 %
Police	8360	29 %
School	2628	9 %
Other authority	2886	10 %
Unknown person	**890**	**3 %**
Total	**29124**	**100%**

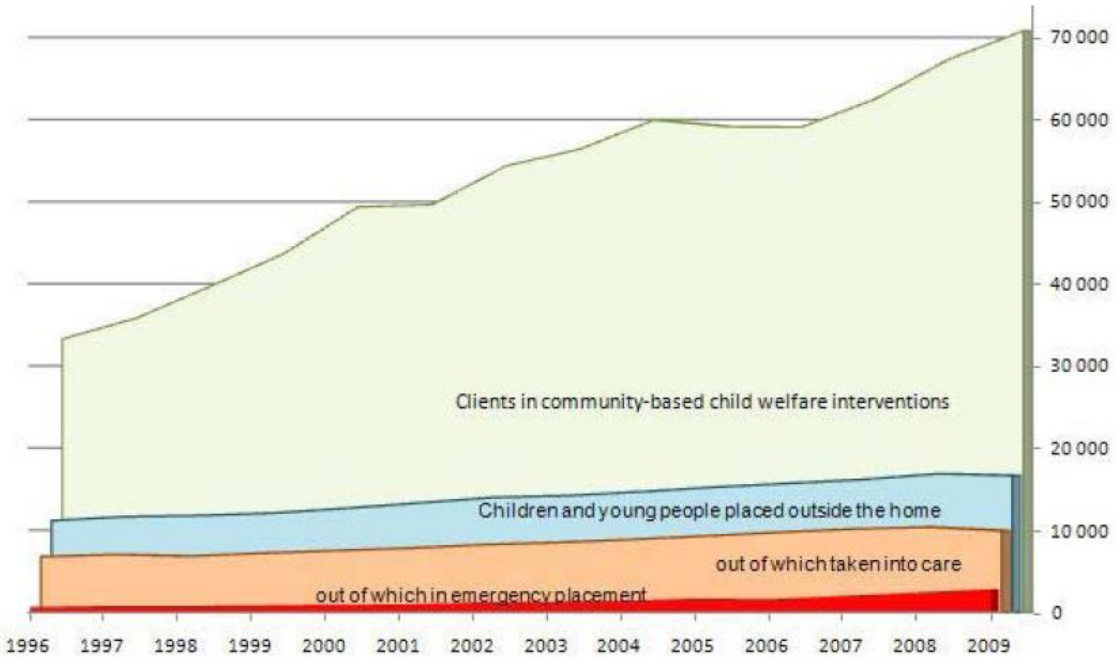
* These results apply to Finland's six biggest municipalities in 2009 (population between 139.000 and 583.000 in 2009).

Table 6: Child welfare notifications according to the notifier* (Kuusikko, 2009)

Professionals made nearly three-quarters and private persons a quarter of the child welfare notifications in Finland's six biggest municipalities (Table 6). The biggest reason for the notifications was conditions which endangered the child's development (49 %). The other reasons were the child's own behaviour (35 %) and the child needed care (12 %) (Kuusikko, 2009). Katajamäki (2010) have studied child welfare notifications in one of the biggest cities (Vantaa) in Finland in the years 2008 and 2009. She found that two of the biggest reasons for notifications were a child's criminal behaviour (17%) and parental substance abuse (16 %). The other essential reasons were a child's violent behaviour, domestic violence, child's substance abuse, parent's mental health problems, parent's exhaustion and crisis in the family. Around 8 % of the notifications were related to a child's neglect, abuse and sexual abuse (Katajamäki 2010). There is no exact information on how many of these children became a service user in child welfare. In South-Finland, children became service users in around 62 % of the notifications (Kuoppa et al 2009).

3.4.2 Child welfare

In Finland, the total number of children who had been the subject of community-based child welfare interventions was 62 886 in 2009 (5.8% of the population 0-17 years). The number of the children in community care is substantially bigger than number of children who had been taken into out-of-home care (9,357 in 2009, equating to 1% of the population of 0-17 year olds) (Kuoppala & Säkkinen, 2010).



*In addition to register data on children and young people placed outside the home, including personal identity codes, statistics are also kept of clients in community-based child welfare interventions. Some of the children and young people recorded as clients in community-based child welfare interventions are also included in those placed outside the home.

Figure 4: Clients in community-based child welfare interventions and children and young people placed outside the home in 1996–2009* (Kuoppala & Säkkinen, 2010, p 43)

“The number of children and young people who had been the subject of child welfare interventions in community care continued to grow in 2009” (Kuoppala & Säkkinen, 2010, p 29). The total number of children and young people subject to community based-child welfare interventions was 70,753 (Figure 4). This figure consists of 62,886 (82 %) children under 18 and 7,867 (11 %) young people aged 18-20. Furthermore, these numbers include 3,315 children and young people who are placed outside the home as community-based child welfare intervention. The total number of service users continued to rise, and was up 5.1% on 2008 figures. The increase in the number of service users has been bigger in cities and rural areas than in semi-urban areas. “The growth in the number of clients in community-based child welfare interventions is partly explained by the 2008 Child Welfare Act” (Kuoppala & Säkkinen, 2010).

The total number of the children and young people placed outside the home had been 16 643 in 2009. Of these children, 82 % (n=13 680) were aged 0-17 years and 18 % (n=2 963) were aged 18-20 years and were in after-care placements (Figure 4). Of these 16,643 children and young people (aged 0-20): 9,357 had been taken into care; 1,627 were in emergency placement; 3,315 were subject to community-based intervention; and 2,344 were in after care. Of these children, 17 % (1,872 children) were taken into care involuntarily. The number of the children placed outside the home increased until 2008 and fell by 4% for the first time in 2009 (Figure 4). The number of children in emergency placement has increased the fastest. (Kuoppala & Säkkinen, 2010).

	Children and young people placed outside the home*				**Children taken into care****	
	2000		2009		31.12.2009	
Placement***	N	%	N	%	N	%
Foster care	5 595	44	5 462	33	4 042	49
Professional family home	1 535	12	2 971	18	1 730	21
Residential care	3 431	27	5 916	35	2 150	26
Other care	2 109	17	2 294	14	337	4
Total	**12 670**	**100**	**16 643**	**100**	**8 280**	**100**

* According to the latest reason for the placement. Ages 0-20. Include: children taken into care, emergency placement, community care intervention, after-care.
** Children in emergency not included. Ages 0-17.
*** Foster care: With relatives or other kin, or a foster family. Professional family home: A professional foster family home licensed as a family home or child welfare institution. Residential care: Child welfare institution, family rehabilitation unit, reform school, institution for substance abusers, institution for people with intellectual disabilities. Other care: Placements in the child’s or young person’s own home (with the parent/s), independently supported accommodation and other forms of care not classified above.

Table 7: Children and young people placed outside the home in 2000 and 2009, and children taken into care 31.12.2009 (Kuoppala & Säkkinen, 2010, p 38)

In 2009, around one third of children were in foster care and a further one third were in residential care. The number of children in foster care has decreased, with a corresponding increase in residential care and professional family home care between the years 2000 and 2009. When we look at children who have been taken into care on 31 December 2009 we can see that nearly half of the children are placed in fami-

lies. Out of these children, 244 (6%) were placed with relatives or other kin (Kuoppala & Säkkinen, 2010, pp 37-38.) One challenge in child welfare in Finland is to increase placements in foster care and kinship families.

Owner of the placement	**N**	**%**
Public (municipality, federation of municipalities, state)	113	19
Private (enterprise, association, organization)	490	81
Total	**603**	**100**

Table 8: Owner of the placement (Heino, 2008, 56)

The Public sector owns one fifth of the residential care placements in Finland (Table 8). The private sector of enterprises, associations and organizations, owns the largest part of residential care placements. Furthermore, they own professional family homes. Professional family homes are more home-like than residential care facilitities. They are homes in which at least two adults who are responsible to take care of the children live. One of these adults has to have bachelor degree of social services in the University of Applied Sciences. Furthermore, they can have another member of staff which does not live in the home (Länsi-Suomen lääninhallitus). The Public sector owns fewer placements but more children live in each placement (Table 8, Table 9). Private enterprises produce the majority of placement services.

Owner of the placement	**%**
Public (municipality, federation of municipalities, state)	32
Private association	23
Private enterprise	45
Total	**100**

Table 9: Number of the days/nights in the placements (Heino 2008, 56)

The children in child welfare are most typically 16-17 years old both in community-based child welfare (Figure 5) and those taken into care (Figure 6) when compared to the percentage of the population of the same age. The second biggest group is chilren aged between 13 and 15 years. More boys (53 %) than girls (47 %) (N=16 643) were placed outside of the home. As a proportion of the total population of 0-17 year olds, 1.3% of children aged 0-17 are placed outside the home (Kuoppala & Säkkinen, 2010).

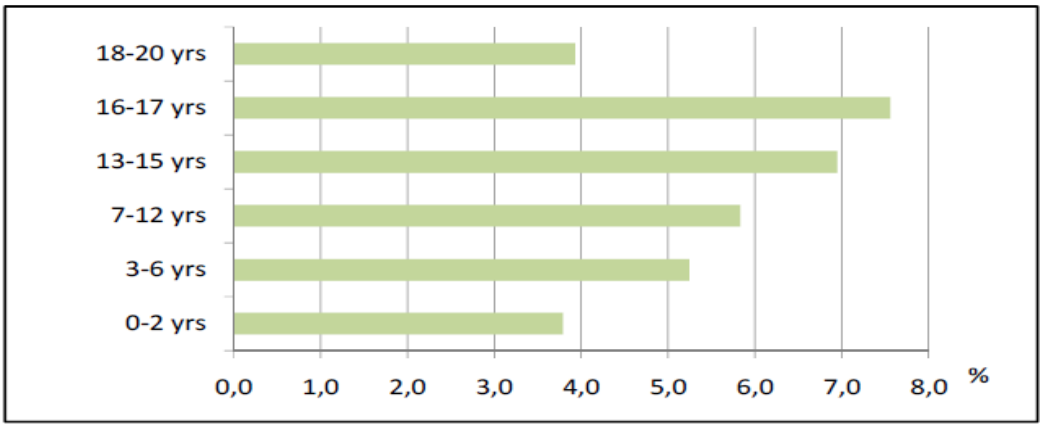
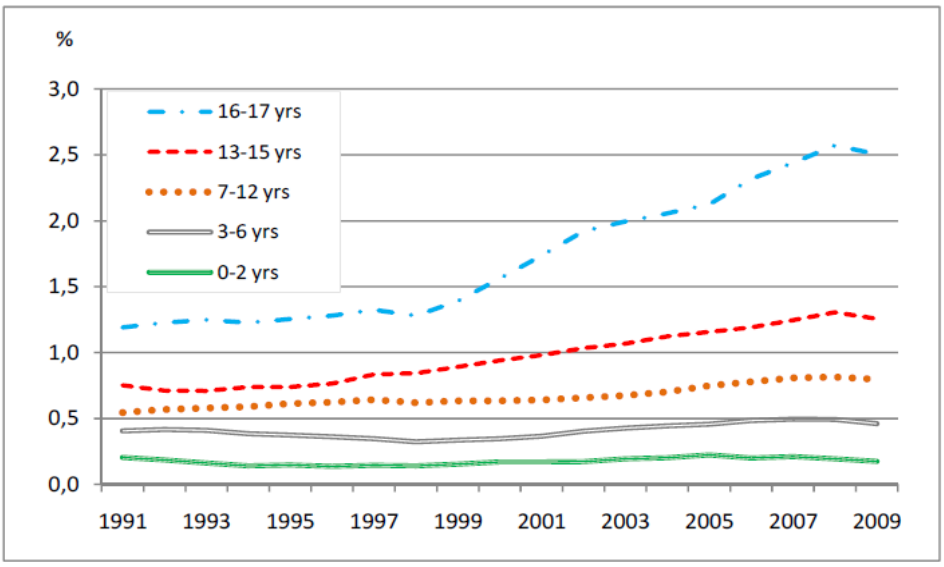


Figure 5: Children and young people in community-based child welfare interventions as a percentage of the total population of the same age in 2009, % (Kuoppala & Säkkinen 2010, 44)



* Children in emergency placement not included.

Figure 6: Children taken into care as a percentage of the population of the same age in 1991–2009, %* (Kuoppala & Säkkinen, 2010, 39)

There has been discussion about why the number of child welfare services users has increased. One proposition is that the families and children have more problems than before. The research results suggests that more and more young people are doing well but children' and young people' situations are polarised in relation to health, mental health, crime, welfare and family economics (Konsensuskokous 2010; Myllyniemi 2008; Elonheimo 2010). Therefore the situations of the children and families who are child welfare service users can be more difficult than earlier. This may be one reason that need for emergency placements have increased. On the other hand new professional activities have increased, like social workers in police offices and the whole country covering emergency social work. Child welfare social

workers are striving to increase their cooperation with other professionals. Furthermore, traditional low-threshold home help (which is not a child welfare intervention) is now not usually available to families because the number of elderly who need home help have increased. In many cases traditional home help has been replaced with child welfare family work and the threshold to receive family work has increased. Now if a family need family work they have to become a child welfare service user. There is also discussion as to whether there is too much of an orientation towards early intervention in Finland (Harrikari & Hoikkala 2008). There is no certainty about the reasons that led to the addition of customer numbers.

There is no data available for the number of social workers who are doing child welfare social work in the municipalities. Ristimäki and colleagues (2008) reviewed the number of child welfare service users in child welfare social work. They found that social workers have approximately 33 families and 53 children as service users. The national quality recommendations have been given to child protection. It defines that a suitable service user number is 20 children per child welfare social worker and 35 children per child welfare social worker if she/he has a social counsellor working as a working partner (Lastensuojelun kansallinen laatusuositus, 2011).

3.4.3 Social problems on background of child welfare

There is no congruent data concerning social problems in the background of child welfare interventions. It is distinct, that social problems are seen from a multi-problem perspective. This is visible in the studies which are examining reasons for child welfare services. There is no research that divides the reasons between different forms of child abuse and neglect like in England. The situation in Finland has both strengths and weaknesses. The strength is a broad understanding about family problems and the weakness is that too little attention is paid to child abuse.

Reasons for contacts to the child welfare social emergency were: substance abuse (24%), child's neglect stemming example from parents' substance abuse and mental health problems (24 %), domestic violence (15 %), mental health problems (14 %), child custody and right of access problems (12 %) and other (10 %). These results are related to the child welfare emergency service in eight municipalities in 2006 (N=242) (Soine-Rajanummi, Kuosmanen & Hornborg, 2006, p 16). It seems that social problems are quite similar between service users in child welfare social emergency service and in community care (Table 10). Social problems service users subjects to community-based child welfare interventions were studied in 2006 when social worker assessments of the social problems of new child welfare families (N= 330 children) (Heino, 2007).

Social problem	%*
Related to the parent	
Parent's exhaustion /tiredness	37
Family contradictions	29
Inadequate parenthood	28
Parent's helplessness	22
Parent's mental health problems	20
Parent's substance abuse	20
Domestic violence or threat	14
Child's neglect	13
Child's abuse or suspicion	8
Criminal	4
Child's sexual abuse or suspicion	3
Related to the child	
Contradictions between child and parent	22
Difficulties attend to school	20
Child's mental health problems	17
Child's ill health	10
Delayed development	10
Victim of the violence	8
Criminal	4
Substance abuse	4

* In this statistics one family can have problems and therefore per cents are more than 100%

Table 10: The essential social problems of the new child welfare service user families (N=330 children, 9 municipalities) (Heino, 2007)

The results in Table 10 show that there were more many social problems connected to parents than to children. It is alson worth noting that a single family can have multiple problems which are related to parents and children simultaneously. The most common parental problems were related to incapacity, contradictions between parents and their mental health and substance abuse problems. The most central problems related to the children are contradictions with parents; difficulties attending school and mental health problems. Violence in different forms did not come forth as a strong category (Heino, 2007). There is also comparative research in which are compared conditions for notifications in four Nordic countries: Finland, Sweden, Norway and Denmark (Blomberg et al 2010). Comparing Finland and Sweden, the research showed there were more reports in Sweden for child abuse and neglect, and young people's behaviour problems and criminal behaviour. Respectively in Finland, there were more reports for parental problems and deficiencies in children's care, and young people's harmful domestic conditions and other problems (e.g. deficiency in care and domestic violence) (Blomberg et al 2010, pp 38-39).

There is no extensive data on what are the social problems behind the decision to take children into care. The data concerning voluntary take into care decisions is missing. There are few studies which review involuntary decisions which have been made in Administrative justice. Hiitola and Heinonen (2009) have studied involuntary take into care decisions in Administrative court in 2008. There were altogether 500 decisions in 2008 and the researchers analysed 300 of them in more detail. In this data the three biggest social problems that were in the background of take into care decisions were violence, substance abuse and mental health problems (N=303 decisions). The children's criminal behaviour was one of the reasons for the take into care decision in 25 % of the cases for children aged between 10-18 years (Hiitola & Heinonen, 2009).

Violence is a central problem in the background of take into care decisions. It has been mentioned in the documents for 63% of decisions. The offender of the violence was more often the father (39%) or a boy (40%) than the mother (21%) or a girl (15%). The victim of the violence was more often the mother (23 %) or a girl (20 %) than a boy (10 %) or the father (3%). Furthermore, 40% of the documents included vague information concerning domestic violence. The general view of the violence was inaccurate in the documents. For example in some documents it had been written that a child was a victim of domestic violence but there was no information regarding who had treated the child violently (Hiitola & Heinonen, 2009). This is one weakness in child welfare in Finland that child welfare social workers do not examine domestic violence explicitly enough.

The substance abuse problem was mentioned in the 63% of the cases. It was more often related to mothers (27%) and children (24%) than to fathers (18%). Substance abuse was most frequently a problem for single mother families. One explanation for this is that single mothers were the most common family type in the data. The third common problem was mental health problems, which was mentioned in the 57% of the cases. Mental health problems were more often related to the children (37%) and mothers (24%) than to fathers (4%) (N=303). The mental health problems of children were often suicidality (Hiitola & Heinonen, 2009).

The comparison of social problems between families who receive community based child welfare interventions and those whose child is in care is difficult because there is no comparative data and research. Based on the results that have been presented above one can probably say that mild social problems are emphasized more in the cases who receive community based child welfare interventions than take a child into care cases. This is not a surprising conclusion.

Comparisons of the children and young people in care for example between Finland and England are complicated by the youth crime system (Kuula et al 2006). In Finland, the youth crime system is based on idea that child welfare measures are the first line of interventions. Kuula and Marttunen (2009) have studied children aged 10-17 (N=264) who have been taken into care involuntarily and decision concerning taken into care have been done in Administrative court. Results illustrate that crime was mentioned in documents concerning 44% of the girls and 68% of the boys (Kuula & Marttunen, 2009). There were three

boy aged between 15-17 years that went to the prison in 2009. Furthermore, 31 boys and one girl were remand prisoners waiting for court proceedings (Rikosseuraamusalan vuosikertomus, 2009).

3.4.4 Community care measures

There is not extensive data available concerning community care measures. However, Hiitola and Heinonen (2009) have studied involuntary take into care decisions which have been made in the Administrative Court and from this research we receive some illustrations. In this research they examined how much and what kind of community care measures these children received before the take into care decision.

Amount of community care measures	%
Not offered	4
A few measures	55
Plenty of measures	33
Offered plenty of measures but the family had refused from them	2
Total	**100**

Table 11: Amount of the community care measures before take into care decision (N=468, Missing N=32) (Hiitola & Heinonen, 2009, 26)

Table 11 shows the majority of families received ”a few measures”, this signifies that a family received individual community care measures like intoxicant laboratory testing of parents, day care for the child, one placement as a community care measure, referring a parent or child to the psychiatrist or substance abuse treatment, or a meeting time with a social worker (Table 12). A third of the families had been offered ”plenty” of community care measures. Usually these families had received family work, home help, children had visited support family for several years (around once per month), children had support person, children had received financial support for their interests and camps. Furthermore, many children had been in regular therapy or psychiatric care contact. Many children received support from the school welfare officer and peer-groups and many children had been in day care as a community care measure. Also many parents had several care contacts mostly for mental health treatment and substance abuse treatment. In addition to these, the family, of course, met the child welfare social worker. Families who had received a considerable number of community care measurements had been a service user for longer time (four years on average) than those who had received only a few measures (a little over a year) (Hiitola & Heinonen, 2009).

Violent fathers received help from ‘Jussi-työ’ which offer crisis help, individual therapy and group work for men who use violence. It was easy for men to get support for the control of violent behaviour. Men who had suffered violence had not received support. Women who had suffered violence or violated the others

did not receive help. Furthermore, children who had suffered violence had not received individual therapy. On the other hand children and mothers can receive support when they are in shelters (Hiitola & Heinonen, 2009). It is important to remember that there is variation in what kind of special services are available. Some areas have more support than others for women and children who suffer violence.

Huuskonen and Korpinen (2009, 39) have done a follow-up study of the new families who are service users of the community care measures. This study had a different finding than Hiitola & Heinonen (2009). The families had received more kinds of measures although they had been only a short time as service users (Table 12). It was reasoned that this finding reflected that social workers did not organize many measures if there was an obvious need for the take into care decision (Huuskonen & Korpinen, 2009).

Community care measure	**%*** **
Family work	48
Financial support to the child's interests	31
Financial support to the families housing	28
Support family	28
Day care to a child	20
Emergency placement to a child**	18
Family had met social worker max 5 times	30
Family had met social worker 6-10 times	31
Family had met social worker more than 10 times	39
Home visit	43

* They followed up 203 children. 110 of them continued service users in community care. 93 children no in community care: 15 children had been taken into care, 38 children did not need child welfare service any more. 33 children had moved. 7 children no named reason.
** Usually they were young between 13-17 years old.
*** In this statistics one family can have measures and therefore per cents are more than 100%

Table 12: Community care measures and meetings with social worker during two years (2006-2008) (N=110 child*) (Huuskonen & Korpinen, 2009)

Based on Hiitola and Heinonen's (2009) and Huuskonen and Korpinen's (2009) studies it can be said that child welfare family work is the most popular child welfare measure for families in community care. The other frequently used measures in community care are financical support and support to child's interests (see Heino, 2007). It is not evident whether child welfare service users receive all needed measures. Huuskonen and Korpinen (2009) write that social workers assessed that 31% of the service users had not received enough supportive measures. Reasons for this were resource shortages and long queues in half of the cases or that the service users had refused the measures.

3.4.5 Child abuse

The definition of child abuse is complicated because children are exposed to the abuse in many different ways. Often the violence experiences are connected to the violence experienced in the children's family and made by the adults. The children's experiences of the violence at home refer either to the seeing and hearing of the violence between parents or where child themself is subject to the violence. In addition to the fact that the children can experience abuse at home, the abuse can take place also in peer-groups and institutions like at school or institutional care. In practice the violence is present in the children's everyday life. For example, child can be exposed to bullying at school or on the street, or hear violent stories through their hobbies. Furthermore children hear and see extremely hard violence in the afternoon papers and in the news (Ellonen et al 2007).

The definition of child abuse is strict in Finland and all Nordic Countries. An attempt is made to secure the same rights to protection for children are there are for adults. According to the Criminal Code of Finland all violence (including physical punishment) and sexual abuse is criminal (Ellonen et al 2007, 13). Child abuse is seen in a different way in Finland than many other countries. In Finland, the interpretation of child abuse is strongly oriented toward social and psychological aspects of family relations. The consequence of that is that child abuse is most often reported and addressed as family conflicts (except for sexual abuse) (Gilbert, 1997, p 234).

It is not easy to know, how many children are the victims of abuse as not all instances of child abuses come to the knowledge of the social worker and the police. There is one extensive research study of with students in comprehensive school as respondents of the study, which opens the conception of the situation (reference, year)[123]. Psychological abuse was the most general, a little over 40% of young people had experienced psychological abuse sometimes or often before they were 14 years old (Figure 46). Pulling children's hair was also quite usual. Serious physical abuse was rare. Young people's experiences of the symbolic abuse and physical abuse had diminished considerably over the past twenty years (Figure 46). Mild /slight abuse had diminished the most, such as pulling hair, pushing, slapping and whipping. Symbolic abuse, such as sulked or refused to talk, berated, taunted, threw objects, threatened with abuse, has diminished too but not as much as mild abuse. Serious physical abuse had also diminished, although the earlier levels were already low.

Children reported that mothers used more symbolic abuse and mild abuse than fathers. Furthermore, children in nine-class had experienced more symbolic and mild abuse than children in six-class in primary school. Sexual abuse had diminished between the years 1988 and 2008. In 2008, eight percent of nine-class students responded that an adult person had abused them sexually (sexual suggestion, petting, adult have touched or showed genitalia, child have touched or showed genitalia, imitate sexual intercourse, sexual intercourse) (13% in 1988). The adult who perpetrated sexual abuse was usually a friend,

[123] Total 13 415 students: 7653 stidents in six-class (around 12-year-old) and 5762 students in nine-class (around 15-year-old).

acquaintance or unknown person. In only a few cases the adult was a father/stepfather (9 child) or sibling (2 child) (N=5762) (Ellonen et al 2008).

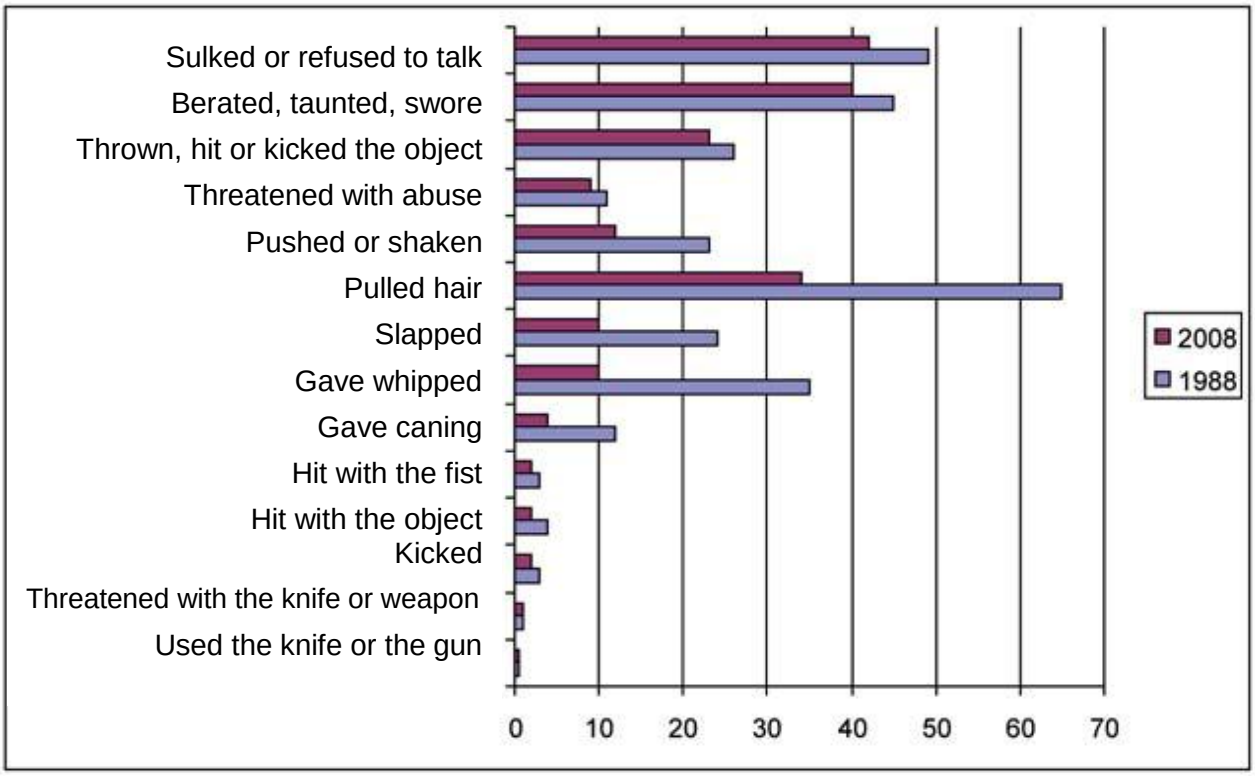


Figure 7: Experiences of nine-class students of the abuse used by a mother and/or father before they were 14 years old during years 1988 and 2008, % portion of the ones which had answered (N= 5 762) (Ellonen et al 2008)

Children experienced more often physical abuse from siblings and peers than from parents. The same reasearch shows that a few percent of children experienced physical abuse in foster family or residential care. Furthermore a few children had experienced physical abuse from teachers. Internet and mobile phones were also used for teasing (Ellonen et al, 2008). “In 2007, six children under the age of 14 died due to homicide or other violent criminal acts. The number of violent child deaths had been between four and eight during the period of 2003–2007, with more than half the deaths having been caused by mothers” (Lehti & Kivivuori 2008 in Pösö, 2011).

The number of cases of domestic violence recorded by police has increased. This is to be expected as the threshold to contact police in domestic violence situations has decreased and police now pay more attention to domestic violence issues. About 12% of the violence which come to the attention of the police is domestic violence. In particular, the reports of crimes which are directed toward children have increased. In 2007, 461 children had been the subject of petty assault/assault which has happened inside family and had come to the knowledge of police; 17 children had been the subject of aggravated assault; and 3 children had been the subject of homicide. However, violence between children is more common than violence directed towards children by adults (Salmi et al 2009).

“In 2007 police recorded 2 024 assaults against under 15-year-old children”. Aassault mostly concerned physical violence (75%). Sexual violence was 20% of cases and 5% was recognised as neglect. Boys were the majoirty of victims of physical violence (70%) and girls were the most common victims of sexual violence (87%). Almost half of physical violence occurs in peer-relationships and most often the victims of peer-violence were boys (80%). Physical violence among children happens most commonly on public places. “Family violence constitutes less than one third of all physical violence towards children”. Only young children are recorded as victims of indirect family violence. “A child’s father is more commonly suspected than a child’s mother”. Also indirect violence by seeing or hearing violence between parents in a family is seen as violence experienced by children (Humppi, 2008).

3.5 Analysis and recommendations

The child welfare legislation forms another foundation to protect children and families. It is the most important part of the foundation from the view point of social work in protecting children. However, other laws also are important to protect children and other members of the family. The child welfare legislation is based on the rights of the child, human rights and civil rights, service user’s participation and consideration of kinship. The fundamental part of the legislation is provide the basis for assessment, community care measurements to intervene at an early stage and care regulations governing state care. Procedures concerning decision making are also regulated. It is important that different actors are sufficiently informed of law and they want to observe the law. Clear instructions and methods that have been accepted at the workplace help it. This affects for example how well workers follow the Child Welfare Act concerning child welfare notifications. It is preferable for the person who is responsible for making a child welfare notifications to make a request to assess the need for the child welfare together with the service user instead of a mandatory report. If the service user does not agree to it, it is important to be as open as possible with the service user. Laws do not guarantee good realisation. The supervision of the achievement of the law also is important.

The orientation in child welfare creates the foundation for how issues are approached. It apparently has a role for confrontation between social worker and service user. Confrontation is a ´self-evident´ part of child welfare work due to the control in the child welfare social work. Comprehensive approach of the family situation, child-centred working, measures of low threshold and aspiring to support the family can probably reduce confrontation. Therefore, the orientation is a matter to which attention is worth paying. For example, child-centred working orientation can be achieved in child welfare social work when social workers are provided with good methods and education. It is also important that social workers and others who work with children have high education.

The assessment is the essential starting point for the whole process in child welfare. The first contact has a big significance for what kind of view the service user forms of child welfare social work. There is no research concerning the effectiveness of the comprehensive assessment method in Finland but social workers have good experiences of the method. The description of the whole assessment process to services users (children and parents) has progressed because the process is clear (what do they assess and how). It is easier to encourage also involuntary service users to participate. In the best case, a good assessment can prevent a child being taken into care. In addition to it is important that social workers have realistic chances to carrying out the assessment, and different and reasonable supportive measures are available. What kinds of individual, group and network work forms are needed? The functional methods and child-centred orientation make all the people's participation possible in many kinds of situations in child welfare (e.g. comprehensive assessment, and with children taken into care and their families).

Many kind of practical development have been made and imported from other countries in child welfare in Finland. The child welfare workers in Switzerland could be interested in functional working methods and their versatile use in the different situations. Furthermore, various peer-groups to children in care, abused children, mothers and fathers which suffer from domestic violence, and the mother and children homes which give substance abuse treatment for pregnant women and families with babies, could be interesting.

The municipalities are responsible for the arranging the child protection. They buy services from organisations and enterprises. The voluntary sector is part of the holistic service system. On the one hand, there could be a need to increase voluntary work and peer-group activity in Finland. The Finnish system operates well in Finland but it is difficult to form a position on whether this system would be appropriate for Switzerland. One challenge is to make child welfare practices more uniform at the national level, perhaps by the promotion of a Child Welfare Act, regulating qualifications of the social workers, supervision arrangements, etc and informed by practice guidance materials such as the eHandbook for Child Welfare in Finland.

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Centres of excellence on social welfare http://www.socca.fi/in_english/ , http://www.socca.fi/in_english/materials_in_english

Children's rights http://www.lastensivut.fi/index.php/oikeudet

CWLA, Child Welfare League of America. www.cwla.org

eHandbook for Child Welfare. http://www.sosiaaliportti.fi/en-GB/handbookforchildwelfare/

Exploring/searching young work in web. http://www.etsivanettityo.fi/index.php?pageName=etusivu&pid=3&cols=1&cont=true

The Federation of Mother and Child Homes and Shelters http://www.ensijaturvakotienliitto.fi/in_english/

The Federation of Mother and Child Homes and Shelter: a net-group for mothers

http://www.ensijaturvakotienliitto.fi/tyomuodot/pidakiinni/paihteita_kayttavien_aitien_nett/

Finnish Online Family Shelter http://www.turvakoti.net/en/home

Guardianship in Child Protection http://www.sosiaaliportti.fi/en-GB/guardianship_in_child_protection/

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Tukinainen – rape crisis centre http://174.132.188.98/~tnainen/in_english/

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4 Child protection in Sweden by Lina Ponnert

4.1 Historical background

4.1.1 Child protection prior to WWII

The twin objects of the child welfare system in Sweden have been interventions for maltreated children and for children displaying antisocial behaviour. Sweden, as many other European countries, has a long history of using institutions and foster homes as an intervention for children. For example the use of correctional institutions became a common intervention during the 19th century in Sweden (Bramstång, 1964). The legal framework regulating child welfare was however not developed in a structured way until the beginning of the 20th century.

In 1902 the first laws regulating the child welfare system and foster care were formed in Sweden. Municipalities were now obligated to more strictly control foster homes providing care for children up to seven years. However, the discourse in society as well as in the first Children Act was to protect society from moral evil, and maltreated children were seen as a potential threat to the wellbeing of society (Lundström, 1993). The Children Act of 1902 regulated state interventions in family life and compulsory care for children up to 15 years old. The ideological perspective was dominated by a belief that a proper upbringing could prevent youth from criminal behaviour, which from these times gave the social services and the correctional system mixed responsibility for youth with a criminal behaviour in Sweden as in Norway, a dual responsibility that remains in Sweden even today (Dahl, 1978; Kumlien 1994). The second Children Act of 1924 finally made it possible for society to intervene in families to protect children (16 years or younger) from child abuse and neglect, and a more modern form of child protection system emerged (Lundström, 1993). The possibility, however, to use compulsory care for young delinquents or children with what we today refer to as “antisocial behaviour” remained, now for children aged 17 years old or younger. The Children Act of 1924 also contributed to a more common organization of child welfare in Sweden since it became necessary for each municipality to have a specific Child Custody Board. The protestantic clerics in Swedish society had, prior to this time, a main role in the child welfare work, and the cleric in each municipality became an obligatory member of the Child Custody Board, but it was now also regarded as necessary to have a teacher, a doctor and at least one woman in the Child Custody Board (a.a.). A lot of other social issues were also discussed during this period in Sweden by socio-political associations and with a growing working-class movement demanding reforms and increased democracy in society. The central association for Social Work (CSA) in Sweden, established in 1903, also played an important role in the area concerning social policy during this period. A number of laws were revised during 1913-1918 concerning substance abusers, social allowance and pension insurance. Sweden also introduced a universal right to vote in 1921.

The Swedish welfare state has historically been highly influenced by the Social Democratic Party that was in power during the period of 1932-1976. The political concept “The People´s Home” was used by Per Albin Hansson to describe the visions and the democratic changes that would reduce class differences in society. Per Albin Hansson was the leader of the Social Democratic Party and an important person for social reforms during the 1930s. He was later followed by Tage Erlander (1940s-1960s) and by Olof Palme (1960s-1970s).The importance of good education and good living conditions were emphasized during this period, and led to reforms which came to affect the social conditions for children and their families in Sweden. For instance, child allowance became a right for all children in 1948 in Sweden, regardless of the parent’s income (Elmér et al., 2000, p 93). Sweden also became one of the first countries in the world to offer free education. Since 1943 the Swedish state has helped finance daycare centers for children with working parents, and Swedish parents today have a legal right to daycare centers within the municipality at a subsidized price. The Swedish welfare state is also characterized by a Universal Health Care system.

In the development of the Welfare State the concept “social engineering” played an important role during the 1930s. When describing this period it is often referred to Alva and Jan Myrdal, since they put forward many radical ideas, later to the subject of much criticism, with regard to how society should handle the decreasing population in Sweden and promote family life.

One strategy for preventing illness and disease in the population during this period was the use of compulsory sterilization, which came to affect over 60 000 people in Sweden (from 1935 to 1975) until it became forbidden in 1976 (SOU 2000:20, pp 15-16). This scandal later led to state damages being paid to people that had been subject to compulsory sterilization. However, the concept of social engineering also led to a modernization of Swedish houses during the 1940s and 1950s and a lot of working-class suburbs were constructed during the period of 1960s-1970s, a national investment for the growing population called the “Million Program” (Elmér et al., 2000).

4.1.2 The development of a family support system

The first Children Acts were specialized and dominated by coercive measures and social control. A new Children Act was introduced in 1960 which more actively emphasized preventive measures. During this period there had also developed a shift from moral and individual explanations concerning deviant behaviour towards a more medical-psychological practice (Lundström, 1993). The assessment of cases coming to the attention of child welfare agencies also became more bureaucratic and professional during this period (a.a.). The Children Act from 1960 had many similarities to the former Children Act concerning the target group for interventions, but it now became possible to intervene in families until the child was 18 years old in cases of neglect, and until 21 years old in cases of antisocial behaviour (a.a). The focus on coercive care and social control were however still dominant in the legislation and in practice and this became subject to professional criticism, especially since the democratic reforms in society were not manifested in the legislation concerning social work.

A national commission was from 1967 given the mission to look into the legal framework guiding the social services in Sweden, and a reorganization of the social services took place when the new Social Service Act (Swedish abbreviation: SoL) became operative in 1982 (SOU, 1977:40). The Social Service Act is a goal-oriented enabling Act which displaced the former Children Act and the laws regulating social support to adult substance abusers and social allowance. The massive reform work and ideological debates that had preceded this social reform marks an important shift in Sweden, from specialized, coercive legislation and a practice based on social control towards a practice that should mainly be based on preventive, voluntary and supportive measures. A motive for replacing the former laws with a general Social Service Act was to encourage a broader perspective on social problems and to emphasize voluntary support and the service aspect of social work (prop. 1979/80:1). The basic aims for the social services in Sweden has, since then, been founded on democracy and solidarity, with the aim of achieving equality and safety for people, with respect to their integrity and their freedom to decide for themselves (SoL, 1:1). The Social Service Act doesn't include any compulsory measures, but compulsive out- of-home care of children is still possible according to the supplemental Care of Young Persons Act (which became operative the same year as the Social Service Act). The Social Service Act remains the legal framework for the social services in Sweden today, although it was slightly modified in 2002.

It is important to mention that in the early 1980s Sweden was in the international media described as a country using unnecessarily hard measures for families with social problems and for having an extremely high percentage of children taken into custody by compulsory care (Hort, 1997 pp 105-106; Gould 1988, p 55). Such concerns came to affect policy makers and social workers and the new law became a way to reduce the number of children in Sweden taken into state care without the consent of their parents. In fact the number of children in compulsory care dropped considerably after the introduction of the Social Service Act, from less than 4 to 2 children per 1000 below age 18 years (Hort, 1997, pp 116-117). However, the death of a German immigrant boy in the late 1980s, killed by his mother and step-father in Sweden, led to criticism being directed towards the responsible local authority, and also raised the question if social workers in the municipalities had become too unwillingly to intervene in families (a.a.). This question of how to achieve a legitimate balance between a supportive service approach and a social control approach towards families has remained a challenge for the social services in Sweden.

Theoretically the Social Service Act is based on an integrated and holistic perspective on social problems, but the trend in how municipalities organize their social services has moved in an opposite direction during the last decade (Bergmark & Lundström, 2008). In practice social services organisations have a high level of specialization, and families with different kinds of social problems usually have contact with social workers from different organisations or divisions, representing such specializations (a.a.). This specialization can both be vertical with one division responsible for investigations and another for interventions and follow-ups ,and horizontal where different divisions handle different target groups and social problems (for example children/adults, maltreated children/teenagers with antisocial behaviour). This trend has been interpreted as being as a result of the increased professionalization and bureaucratization of social work.

Yet the assessment work undertaken by social workers is still guided by a holistic perspective, which requires time for cooperation between different divisions within the social services, and the consent of the family involved. There is as yet little research on how this increased specialization has affected social work from a client perspective in Sweden. It is argued that specialized social workers can offer better knowledge and provide better care for children and their families, but from a critical point of view specialized social services can be difficult to understand from a client perspective and social workers may develop a distanced and narrow approach to clients and social problems.

During the period from 1990, the social services and the child protection system in Sweden were heavily criticized for lacking systems and methods for investigation of children in need, and for using interventions with poor or lacking scientific evidence. The National Board of Health and Welfare was in 1999 given a mission by the Government to design programs and develop the knowledge base within the social services in Sweden. This has, for example, resulted in some changes in the legislation to clarify the rules during the investigation process and the obligations from the social services to give information to the family involved. But more important, it has resulted in the introduction of a Framework for the Assessment of Children in Need and their Families developed in United Kingdom (described in more detail in the Case study concerning United Kingdom). In Sweden this framework is called “Children’s Need in Focus” (Swedish abbreviation: BBIC) and started as a project in seven municipalities in 1999 on the initiative of the National Board of Health and Welfare, but has now been implemented in most municipalities in Sweden and is recommended by the National Board of Health and Service (Rasmusson, 2004; Socialstyrelsen, 2006c). This has resulted in a similar and more structured procedure for investigating children within the social services, even if assessment work remains a complicated task within child welfare (Rasmusson, 2009).

4.2 Legal and policy frameworks

4.2.1 What is meant by the term child protection

Early interventions and voluntary family support interventions are regarded as the best way to protect children in Sweden. Since the introduction of the Social Service Act in 1982 Sweden has a strong *family service orientation* that emphasizes preventive and voluntary support to children and families in collaboration with parents (Gilbert, 1997). But the Swedish system can also be characterized as a mixed system, since it is oriented towards family support but also has a mandatory reporting system (Cocozza, 2007, p 32). Child protection based on control is also possible according to the Care of Young Persons Act. Although the service aspect of child welfare is strongly emphasized in the legal system, the authority social workers have to suggest compulsive care to the administrative court makes people aware of the underlying control aspect in the system, which means that even supportive and voluntary interventions may be perceived as

control or coercion. Voluntary family support measures can also, therefore, involve elements of control (Wiklund, 2006).

This two-fold perspective in the Swedish system can be problematic, since there is no evident or clear distinction between child protection and family support (Lagerberg, 2009). Maltreated children can be placed in state care both as a voluntary family support service and as a compulsory measure, dependent on whether the parents *consent* to care or not. The question of *consent* is central in the Swedish legal system and is usually crucial when social workers assess whether care can be carried out as a family support intervention or if compulsive care is necessary. Regardless of whether the care outside home is voluntary or compulsive, the principle of *reunification of families* is central in the Swedish system. Even when children have been maltreated by parents there is no time limit for parent's rehabilitation, and termination of parental rights is very unusual. The Swedish legal system for protecting children is guided by a strong *relational perspective,* since the child's prior carers (usually its parents) are regarded as important for the child's future development (Mattsson, 2006, pp 110-111). When children are placed away from home, the institution or foster home should, if possible, be as near their parents as possible to *preserve and facilitate contact with their biological family* (prop. 1979/80:1 Del A, SOU 2009:68 pp 453-454). The social services are according to the law since 1999 obliged to consider if relatives are suitable as foster carers (SoL 6:5, prop. 1997/98:182). Swedish social workers in general have a positive attitude towards relatives as foster families, even if they are not always considered in practice (Linderot, 2006).

According to the law the social services shall, for example, strive for children to grow up under good and stable circumstances, and pay special attainment to children at risk of developing in an unfavorable manner (SoL 5:1). But there does not exist any generic term for children in need of support or protection in the Swedish law, since the social services are obligated to investigate every information that "might cause an intervention", which include reports as well as applications for services (SoL 11:1). This unclear definition widens the target group as well as the responsibility for initiating investigations for children in Sweden. Since the Social Service Act has a general service approach, the target group is not only children that are being maltreated or neglected, but also adults, children and families in need of social support or social allowance, and support to and protection of young persons under the age of 21 displaying antisocial behaviours.

Since Sweden has a family service orientation rather than a child protection orientation, I will in the following text primary use the term "family support system" when discussing Swedish child welfare. Child welfare is the term associated with child protection in some countries; it has been argued that the term "child and family welfare" is more appropriate for Swedish conditions (Andersson, 2006 p 172).

4.2.2 Legal framework for protecting children

The legal framework for protecting children is mainly regulated by the *Social Service Act* 2001:453 (Swedish abbreviation: *SoL*) and the *Care of Young Persons Act,* 1990:52 (Swedish abbreviation: *LVU*). Of

relevance is also the *Children and Parents Code*, 1949:391 (Swedish abbreviation: *FB)* which regulates the rights and responsibilities of parents. The Social Service Act contains regulations and recommendations for assessment work and voluntary support (social allowance as well as treatment support) to families, children and single adults. The Care of Young Persons Act consists of compulsory care measures when voluntary support is not possible or sufficient, and regulates compulsive care for abused or neglected children (until eighteen years old), as well as to young persons under the age of twenty-one with an antisocial behaviour. In a report made on the mission by the Government, it is however suggested that the Social Service Act and the Care of Young Persons Act should be united in a specific Children Act, which is now under consideration (SOU 2009:68). A motive for this suggestion is that a specific Children Act would emphasize the importance of child welfare and strengthen a children's rights perspective, it would also enable families to more clearly appreciate the obligations and interventions from social services concerning children (a.a.).

4.2.2.1 The Social Service Act

The Social Service Act is an outline law, which means that it regulates rules of competence and procedure, rather than rules of action (Hydén, 2001). This means that very few interventions are mentioned in the law, and it gives little guidance as to how social workers should act and what measures that should be taken in response to different kinds of social problems. Instead the Social Service Act focuses on the rules of the assessment and the decision making process, and offers guidance on how to support families. Investigation of children in need of protection or support is restricted to four months and it is also possible for social services to require information about the family from other authorities and persons without the consent of the family (SoL 11:2).The individual need of each person should determine what kind of supportive measures should be taken, which means that social workers in Sweden have a high degree of discretion to assess suitable interventions, according to available resources in the municipalities (SoL 4:1).

Sweden ratified the UN Convention on the Rights of Children in 1990, but has not incorporated the convention into Swedish law, instead the UN Convention has been transformed into Swedish law in different steps, where the need for changes in the legal system has systematically been evaluated, and changes in the Swedish legislation and in the Social Service Act is accordingly an ongoing process (for example SOU 1997: 116, prop. 1997/98:182, prop. 2006/07:129, prop. 2009/10:192, prop. 2009/10:232). Articles 3 and 12 of the Convention have been represented in the Social Service Act and the Care of Young Persons Act. The best interests of the child should be considered in the decision-making process according to the legislation, and in compulsory care cases the best interests of the child should be paramount (SoL 1:2, LVU 1 §, SOU 1997:116). The child also has a legal right to relevant information from social services during an investigation (SoL 3:5, LVU 1 §). Children who have reached the age of 15 years have the right to plead to court in social services cases and have the right to speak for themselves and to apply for help according to the law (SoL 11:10, LVU 1 and 36 §§§). The possibility for children (15-18 years) to actually receive voluntary services without their parents consent is although limited to the provision of a contact-person at the present time, limited by parents decision-rights according to the Children and Parents Code

(FB 6:11, SoL 3:6). It is now being considered whether children should get increased legal rights to voluntary support measures (in non-institutional care) without the parents consent (SOU 2009:68, p 342-352). Children under the age of 15 should be heard during an investigation if they are not assessed to be harmed by this procedure (SoL 11:10, LVU 36 §). However, it is only recently (August 2010) that social services have been granted the legal right to talk to children during an investigation without the consent and presence of their parents (SoL 11:10, prop. 2009/10:192).

4.2.2.2 Mandatory reporting

The Social Service Act includes rules of mandatory reporting regulation, which means that some public authorities and social service agencies have to report to the social services any suspicion that a child (under 18 years old) is in need of protection, whether this is due to maltreatment or antisocial behaviour (SoL 14:1). All personnel working in authorities concerning children (for example schools and daycare centers) are obliged to report, and so are personnel at medical services, forensic psychiatry, the social services and the correctional system. Private and professional work within these areas also applies under the rules of mandatory reporting (for example private schools, private health care, private institutions offering treatment to adults or children). The Social Service Act also encourages the public to report suspicion of children in need of protection, but the public have no legal responsibility to do so. Unfortunately there are no statistics in Sweden regarding mandatory reports on a national level, but research can give some guidance as to the function and reliability of the mandatory reporting process in Sweden. Research has shown that professionals with legal responsibility to report child maltreatment do not always report. One study of 341 child care institutions in three suburbs of Stockholm showed that the institutions only reported 37 % of suspected cases of child maltreatment, and that mandatory reporting was often delayed because professionals estimated the consequences of a report before deciding if a report should be made or not (Sundell, 2007). Negative experiences from earlier reports to the social services could also affect professional's decision to report or not (a.a.). A study of medical records shows that medical staff in a Children's University hospital in Sweden only reported 55 % of 137 children who had been diagnosed as victims of child abuse during a period of four years, and a report was made to the police in only 27 % of these cases (Tingberg, 2010; Tingberg et al. submitted). Another research study showed that nurses at children's clinics only reported 11 % of all children they suspected might be in need of social support (Lagerberg, 1998). To increase professionals' ability to report children in need of protection, it is suggested that the social services should be able to give information if whether the case is assessed to need further investigation or not (SOU 2009:68).

Teenagers between the ages of 13-17 are overrepresented in mandatory reporting in Sweden, and few young children are reported (Wiklund, 2006; Sundell et al., 2007). A national representative research study concerning municipalities of middle size, showed that approximately 30,5 children are reported out of 1000, but 63,5 out of 1000 children in the age 13-17 are reported compared to 17,7 out of 1000 children in the age 0- 12 (Wiklund, 2006). This can partly be explained by the fact that youth delinquency is also a responsibility for the social services in Sweden. According to research the most common problem to be

reported in Sweden is conflicts within families and youth delinquency, and most reports come from the police and the school (Cocozza, 2007; Wiklund, 2006; Sundell et al., 2004; Vinnerljung et al., 2001; Sundell & Karlsson, 1999; Östberg, 2010). However, many crime reports from police do not indicate child maltreatment and researchers have stressed that a national register of mandatory reports in Sweden might become deceptive due to automatically police reports (Cocozza et al., 2007).

As in other countries, many reports do not lead to further investigation in Sweden. Local studies indicate that approximately one third of reports are sorted out without investigation (Kaunitz et al., 2004, Sundell & Karlsson, 1999). Other studies show that if application for help is also included as much as 50-60 % of all reports and applications are sorted out without investigation (Cocozza, 2007; Östberg, 2010). Approximately 30-50 % of mandatory reports do not result in a decision to investigate the child's need for support or protection in Sweden (Sundell & Egelund, 2007). This can imply that some children in need do not get the help they require, even when maltreatment is reported, especially since some children are reported several times before an investigation is made (Cocozza et al., 2007). How municipalities handle reports and how many reports lead to investigation also differs between municipalities (Gegner, 2009). In average about 50 % of all children that are investigated by the social services also get some kind of intervention, but this can vary immensely between different municipalities (Sundell & Egelund, 2007; Sundell & Karlsson, 1999). Research has shown that these children usually get two or three different interventions and stay in interventions on average for five years (Sundell et al., 2004, p 8). Today there is a trend in Swedish municipalities to offer family support as a service without previous investigation, for example different parental training programs (Socialstyrelsen, 2006).

4.2.3 The Care of Young Persons Act

Compulsory care according to the Care of Young Persons Act (LVU) is only possible when social services assess that the child is in need of care outside home due to specific risk factors, and the parents with custody do not give their consent to such care. Children that have reached the age of 15 years also have to give their consent to voluntary care (SoL 11:10, LVU 1 and 36 §§§). In Sweden compulsory care according to the Care of Young Persons Act is decided by the administrative court, and is based on the written assessment made by the social services and an oral negotiation in court. The circumstances that may lead to placement without parental consent for children below 18 years due to home conditions in Sweden are:

1. Physical and mental abuse. This includes even minor physical abuse, terror, and systematically degrading behaviour.

2. Inadequate care/neglect. This includes lack of emotional or/and physical nurturing and inadequate supervision, and may be circumstances where parents due to substance abuse or mental disease neglect their children

3. Exploitation. This usually refers to sexual abuse, but also situations where children are forced to do heavy work or to take on a great responsibility at home.

4. Other condition at home. This primarily refers to situations when the child is maltreated or exposed to dangerous situations by someone else than the parent itself (for example a partner to one of the parents). It may also refer to situations when the child and parent have a disturbed relation (Socialstyrelsen 1997).

The home conditions presumed consequences must also be included in the assessment, since the law regulating compulsory care states that home conditions (or the child´s behaviour) must constitute "an apparent risk to the child`s development or health" (LVU, 2- 3 §§). The circumstances that may lead to placement without consent for children and youth's below 20 years displaying an antisocial behaviour in Sweden are:

1. Substance abuse

2. Crime

3. Other socially destructive behaviour. This refers to other situations when a child or youth is at risk, for example prostitution, or when children are seen in inappropriate environments (for example with adult substance abusers).This can also refer to situations when the child, from a holistic perspective, is at risk due to a combination of causes such as many minor offences (Socialstyrelsen 1997).

In this text all three circumstances concerning youth are referred to as "antisocial behaviour". When a young person under the age of 20 has been taken into compulsory state care due to antisocial behaviour, state care can last until the age of 21 (LVU 21 §). Whenever a child is placed outside home, the social services has to review care every six months, which usually involves visiting the child, and reporting the circumstances to the local social welfare board (LVU 13 §). This is also done when the care is a voluntary family support intervention (SoL 6:8). In a new Bill it is suggested that each child in care should have a legal right to visits from a particularly social welfare secretary of their own at least four times a year (SOU 2009:68, pp 483-486).

Compulsory care according to the Care of Young Persons Act always begins in either residential care or in foster care, but it is possible to have state care "at home" later on, which is often used when the compulsory care is assessed to be terminated soon. For young persons under the age of 21 displaying an antisocial behaviour it is possible for social services to decide that the young person should have a contact-person or participate in supportive (non-institutional) interventions, even without the consent of the child or their parents (22 § LVU). This possibility for compulsory measures in non-institutional care is however very seldom used in Sweden municipalities, and there is no equal legal opportunity for compulsory care measures in non-institutional care in cases of neglect.

National adoption is not possible without the consent of the child's parents (custodians) and is thus not an intervention in the family support system in Sweden**.** However, to promote continuity and safety in foster

care, the social services are since 2003 legally obligated to review if foster parents should achieve legal custody of the foster child, provided that a child has been in the same foster home for three years (prop. 2002/03:53; SoL 6:8, LVU 13 §). The final decision is made by the district court. Although this has led to an increase in the number of foster parents that receive custody of their foster children, this is still an unusual intervention that only concerned 125 children in 2005, and the children had at that time been in the same foster homes for an average of more than seven years (Socialstyrelsen, 2006b). However, if foster parents get full custody of the child they can apply for and consent to adoption, but the adoption must be assessed to be an advantage for the child (FB 4:5a). Approximately 16-18 children are adopted each year by their foster parents in Sweden, mainly children under six years old (Socialstyrelsen, 2008, 2009, 2010 p 69). Although international studies have shown that adoption can promote stability in care**,** a Swedish qualitative study has proven that foster children can experience a strong family connection to both their foster parents and their biological parents (Andersson, 1998). Andersson (2009, pp 216-220) points out that when adoption is discussed as a possible intervention within the social services, it is usually based on the assumption that most foster parents *want* to adopt their foster children and that foster children in general have a poor contact with their relatives, although this may not always be the case. Adoption as an intervention within the child welfare system can also decrease stability in care, since children are moved from their foster parents to new adoptive parents when they are freed for adoption (a.a.).

4.2.4 Youth delinquency

The age of criminal responsibility is fifteen in Sweden, which means that all police reports concerning even minor offences committed by children below fifteen years are reported to and handled by the social services. When a young person between fifteen and seventeen years old is charged with an offence, the social services has a duty to assist the prosecutor with a written report, wherein the social services assess the teenagers need for support, what measures have been taken, and what measures are planned (LuL 11 §). Children and young persons under the age of 21 can according to this also be sentenced to care within the social services, if social support is regarded as most suitable (BrB 32:1). Prison sentences are avoided for young person's between the ages of 18 and 21, and are only given when there are specific reasons for doing so in addition to committing a serious crime (BrB 30:5). When young person's between the age of 15 and 17 commit very serious crimes they should be sentenced to state institutional care instead of prison if possible, for no less that 14 days and no more than 4 years (BrB 30:5). This means that the state institutional care for young persons (usually referred to as "Homes for special supervision") are institutions which offer means-tested treatment to young person's according to the Care of Young Persons Act, as well as fixed-term punishments according to the Penal Code (Palm 2003). This dual responsibility between the state (Penal Code) and local social authorities providing social services in the municipalities (according to the Social Services Act and the Care of Young Persons Act) concerning children who commit crimes has an arbitrary affect, since a child can either be detained or be taken into immediate custody by the Social Services after a serious crime (Svensson, 2006). The question as to what extent

young delinquents should receive “punishment“ or “treatment”, and the relationship between these concepts, has been an ongoing debate the last century in Sweden (Svensson,1998). The role of the social services in Sweden towards delinquents today is in a way characterized by two opposite logics. The main role is to be caring and to assess the needs and the best interests of the child (offender), but the role in the court-process and the assessment of whether interventions is possible within the social service system, also involves assessment concerning the seriousness of the crime which may result in interventions based on more punitive principles (Tärnfalk, 2007).

4.2.5 National policies and strategies for protecting children

4.2.5.1 Prohibition of corporal punishment as a way to discipline children

At the beginning of the 20th century corporal punishment as a way to discipline children was used in homes and in schools in Sweden, but attitudes towards this practice changed in the middle of the century. In 1979 Sweden became the first country in the world to legally forbid parents to use corporal punishment towards their children (prop. 1978/79:67, FB 6:1). This prohibition means that even minor corporal punishments are defined as physical abuse of children in Sweden. This prohibition has reduced the use of corporal punishment as a discipline method significantly in Sweden, with the prohibition having strong support amongst Swedish parents (Jansson et al., 2007, SOU 2001:18). But Sweden, as with many other countries, also has examples of tragic death of children caused by maltreatment by their parents or close relatives, which usually result in heavy media debates concerning the social services, with criticism concerning the assessment work, the education of social workers or the legal framework for protecting children. In 2006 the media reported on the case of a ten-year old boy named Bobby who was killed by his mother and step-father, which resulted in massive media debate and fund raising for maltreated children. Since the case was not known to the social services it was also debated how society could have failed to recognize the serious abuse of Bobby**.** This tragic event has recently (in 2008) resulted in a new law in Sweden (“Lex Bobby”) that makes The National Board of Health and Welfare responsible for investigating cases where children have been victims of deadly violence, with the purpose to discover defects in the system and prevent similar events (prop. 2006/07:108, SFS 2007:606). A similar suggestion had only a few years earlier been suggested by the Government to the Parliament, which at that time rejected the Bill (SOU 2001:72; prop 2002/03:53).

4.2.5.2 Early and preventive support to families

In general the national policies and strategies for protecting children in Sweden are based on the assumption that early and preventive services and support to families is the best way to protect children in time. This approach is based on the ideological ideas described earlier and manifested by the Social Service Act, but has also been strengthened by research and criticism concerning the ability of the state to provide

good care and outcomes for children in foster homes and in institutional care (for example Vinnerljung, 1996; Levin, 1998; Vinnerljung et al., 2001).

The municipalities have during the last 15-20 years developed more locally available support, both as a result of the scepticism concerning state care, but also as a result of the economic crisis that occurred during the 1990s which led to an ambition to reduce the costs for out-of home placements in the municipalities and to create alternatives on a service delivery whilst the child remained at home- basis (Forkby, 2005; Socialstyrelsen, 2006). A study of 106 municipalities/districts (out of a total of 336) showed, that two third of the municipalities/districts stated that they have political restrictions on the use of local interventions on a home-basis prior to out-of-home care (Socialstyrelsen, 2006). On average the municipalities/districts claimed to offer eight available interventions in day-care for children (0-12 years old) and ten for teenagers (13-20 years old) (a.a.). The Government has recently presented a giant national strategy for introducing general parental support in Swedish municipalities and financial support to research and evaluate the effects of different parent training programs (SOU 2008:131; prop. 2007/08:110). Many municipalities in Sweden can today offer these kind of training programs as a service support to parents (without previous investigation), or as an intervention for families where a child (or teenager) is assessed to be at risk. The expansion of home-based alternatives to state care can also been explained by an increased professionalization of social work (Forby, 2005). In Sweden most professionals titled “social workers” have a tree and a half year professional education from University (Bachelor’s degree), and this education is usually demanded by local authorities for workers undertaking assessments concerning family support.

4.2.5.3 The rights of parents versus the rights of the child at risk, shifting perspectives in cases of domestic violence and in joint custody decisions

In1993 a Commission was given the mission to investigate the legal system regulating violence against women and to prevent men’s abuse of women (SOU 1995:60). This Commission was the first official commission given the mission to work from a women’s’ perspective, to regard domestic violence as a problem that mainly identifying men as committers of violence and women as victims; it subsequently influenced law reforms in Sweden. As a whole the report made by the commission solely focuses on women and men when discussing domestic violence and little is mentioned concerning the fact that many battered women are “mothers” as well, and many violent men are “fathers” (Eriksson, 2003, p 79). Even social workers working with family law have been guided by a logic that separates men guilty of women battering from their role as a father since they were not regarded as a potential threat to the children (Eriksson, 2003). In the report by the Commission it is, however, mentioned that if a father in the presence of his children physically abuses a mother, it should be interpreted as a sign of neglect (SOU 1995:60, p 364).

Family law in Sweden, and many other western societies, has been guided by a principle where joint custody has been interpreted as being in the best interests of the child in recent times (Kurki-Suonio, 2000).

In Sweden this resulted in a legal change in 1998 that made it possible for courts to judge parents as having joint custody without their consent (prop. 1997/98:7). An investigation made a few years later showed that district courts used the right to grant parents joint custody to a very high extent even when parents had serious difficulties cooperating (SOU 2005:43). A legal revision was made and it is today also legally emphasized in family law that children might have a need to be protected from one parent (prop. 2005/06:99). Since 2006 children are, according to the Social Service Act, also defined as victims of crime if they have witnessed physical abuse (SoL 5:11). These changes illustrate some difficulties in interpreting the meaning of a "child perspective" in a Swedish context where the maintenance of biological relations is regarded to be of great importance for children. A child's legal right to its natural parents has, for example, been criticized for being used for safeguarding the interest of parents in practice. The rights of parents are, however, suggested to be slightly diminished in cases where children in need of social support require help; in a new legal proposal it is suggested that children should be able to get non-institutional support within the social services even if only one parent with custody consents (DS 2011:5).

4.2.5.4 Child Poverty – how class differences in society affects children

Other issues that have recently come to be discussed by researchers, media and politicians concerning the family support system, are that many children live under unsecure accommodation conditions or in families with economic difficulties and at risk of poverty (on social allowance or with an discretionary income below 60 % of the median) (Andersson & Swärd, 2007, Ds 2004:41, SOU 2005:88). Even if people in Sweden in general have a high standard of living, it was at the beginning of the 1990s discussed how accommodation problems and economic difficulties in families affected children. It was estimated that 1500-2000 children were exposed to an eviction from their home together with their parents during 2001 in Sweden (SOU 2005:88, p 16). Save the Children Sweden (www.rb.se) is an international organisation working for the rights of children according to the UN Convention. Save the Children has eleven regional offices in Sweden and helps to produce reports concerning the living condition in Sweden, for example the organisation since 2002 has produced annual reports concerning poverty amongst children in Sweden. The latest report showed that the risk for children growing up under financial difficulties increases five times for children who have a foreign background in Sweden (Rädda Barnen, 2010a). One out of four children in Sweden has a foreign background. One third of all children with a foreign background live in families that receive financial welfare support from the social services, or have a low standard of income (a.a.). The largest and most segregated cities in Sweden are characterized by a high levels of children living under poor economic circumstances, specifically Malmoe in the south of Sweden, where as many as one third of all children live under financial difficulties (a.a.). The Social Democratic Party in Sweden has recently declared that one of the political goals should be to "extinguish" child poverty in Sweden.

4.2.6 What role do voluntary and private organisations play in the development of legal and policy frameworks

Voluntary and private organisations do not serve as an alternative to the social services in Sweden; the municipalities have by the government the primary legal responsibility to protect children (SoL 2:1). Yet there are examples of voluntary organisations and private organisations and initiatives having an important role in the debate concerning child welfare, and some voluntary organisations offer important resources for children and families.

One example of a private initiative that have come to affect the legal system is the so called “grandmother riot” in the mid of 1990s. This originated in the case of a grandmother who wanted to take care of her grandchild but was denied doing so by the social services due to her age. The grandmother collected no less than a thousand signatures from people who like her, demanded better rights for relatives wishing to take care of children when parents lacked the ability to do so, and handed these to the minister of Health and Social Affairs. This led to a legal obligation in 1999 for the social services to at least consider relatives as foster cares when state care is necessary (SoL 6:5).

Another example is the private organisation called “Stolen Childhood”, which started in 2005 when a documentary program on Swedish television, where middle-aged men reported that they had been subject of neglect and maltreatment within state care as children. This became the starting point for the establishing of a voluntary association of interest in 2006 by people who had been subject to maltreatment in state care, demanding justice and damages. In 2006, the Government in Sweden initiated an investigation of serious neglect and abuse within institutions and foster homes that had occurred in Sweden during the period of 1920-1995 (*The Inquiry in Child Abuse and Neglect in Institutions and Foster Homes* , S 2006:05). The investigation has been delayed several times due to the number of people contacting the commission who wanted to tell their story. When the final report is finished later this year (2011), about 1000 people who have been in state care between 1920- 1999 should have been interviewed. This massive response led to the starting of a parallel investigation concerning the question of how to handle the question of damages to these people (Upprättelseutredningen, S 2010:02). This investigation has recently come to the conclusion that people that had experienced serious maltreatment or neglect within state care between 1920-1980 in Sweden should be awarded compensatory damages worth 250 000sek each (SOU 2011:9). The Government should also acknowledge the maltreatment and give these people an official apology. It is also suggested that it needs to be further investigated if municipalities should be legally obliged to pay damages to children and young persons who have experienced serious maltreatment in state care (a.a.).

In July 2011 personnel within the social services will also have an increased legal obligation to report to their management any inconveniences (or risk of inconveniences) in state care (Prop. 2009/10:131, SoL 14:3). This can be interpreted as part of the previously mentioned debate on maltreatment in state care, but is suggested to mainly be viewed as a way to maintain quality in care and to make reports less dra-

matic for personnel, so that mistakes in care can be corrected before leading to maltreatment (Prop. 2009/10:131).

*The National Association for the Protection of Children's Right in Society (*Swedish abbreviation *BRIS*) is a voluntary organisation of adults in Sweden that was formed in 1971. BRIS acts as a representative for children and provides unofficial support to children in need through an anonymous call-in-service called the Children's Help Telephone and the BRIS-chat (www.bris.se). Approximately 600 people work as voluntary helpers in BRIS and today and today it also provides a call- in-service for adults (a.a.) For many years BRIS promoted the establishment of an Office of the Child Ombudsman , a national authority, which was established in Sweden in 1993 (Hort, 1997, p 107). The Child Ombudsman has a mission to preserve the rights and interests of children according to the UN Convention on the Rights of Children in Sweden, and can suggest changes in the legislation according to the Convention, and also writes annual reports to the government concerning the work (SOU 1991:70, www.barnombudsmannen.se).

4.3 State, local authority and nongovernmental provider relationships

4.3.1 The responsibility of family support

Sweden is divided into 290 municipalities, and it is the local social services in each municipality that have the "uttermost responsibility" that people in the municipality receive "the help and support that they need" (SoL 2:1). The municipalities in Sweden are legally and financially responsible for providing social services, but are free to decide how such social services should be organized and to plan what kind of local family support measures should be offered, according to the specific needs in the municipality. However, the social services in all municipalities are governed by the same laws regulating the family support system. According to the Social Service Act each municipality has a responsibility for offering children and adults in need of treatment outside home a place in foster care or in residential care (SoL 6:1). Children and young person's should, according to the law, also be able to receive a contact person or a contact family, but only if the social services assess that they are in need of this kind of support (SoL 3:6). A contact person/family consists of ordinary people (laypersons) with no special training, yet they must be officially approved and they are paid and supervised by the social services. Statistically a contact person or a contact family is regarded as the same kind of intervention, but in practice the interventions are quite different from one another. A contact family is a voluntary support which usually means that a child stays over night regularly in a family, for example one or two weekends each month. A contact family is mainly used to support parents with social difficulties and their young children (Andersson & Bangura Arvidsson, 2001, 2008). The contact-family may be a resource for a child during many years of childhood, and provides temporary accommodation on a regular basis and when the child's home environment is difficult. A contact person is primarily used as a support intervention for young persons with behavioural problems

and the contact person should connect with the child/teenager on a daily basis (a.a.). A contact-person can for example support the teenager with school-work, do leisure time activities together with the teenager, or support him/her in independent living. For many years a contact person or a contact family was the most used statutory support service for children and families, and this statutory service is still one of the most frequently used in-home supportive services in Sweden[124].

The local authorities in the municipalities are solely responsible for investigating children in need and providing services to include, if necessary, state care. But when compulsory care is assessed to be necessary, the final decision is made by the administrative court. The National Board of Health and Welfare is a government agency in Sweden under the Ministry of Health and Social Affairs. The National Board of Health and Welfare is responsible for supervising the social services in the municipalities, as well as institutional care (SoL 13:1). The agency also collects and analyzes information, provides statistical data and work to ensure good health and welfare for the population. Another state agency under the Ministry of Health and Social Affairs was founded in 1992 and is called The National Institute of Public Health (Swedish abbreviation: FHI). This agency has the Governments mission to investigate health issues in Sweden and to be a center of knowledge, methods and strategies within this area (www.fhi.se).

Since the municipalities have the primary responsibility for the inhabitants need for social support, the non-governmental influence in the Swedish family support system is limited but may, as mentioned earlier, be an important complement to state interventions. In many municipalities in Sweden there exist voluntary organisations for offering support to women and their children when there is a violent or abusive husband (women's shelters). These organisations started in 1978 and expanded nationally during the 1980s, and today there are approximately 115 local organisations in different cities in Sweden (www.kvinnojour.com). These women's shelters can usually offer a woman and her children temporary accommodation and protection, but the primary responsibility for their support is even so the social services in the municipality. The shelters usually cooperate with the social services and have become an important resource for the social services in domestic violence cases. Another important organisation is the Red Cross, which provides a wide range of activities and services in Sweden, such as different meeting places and support for unaccompanied children and youth that migrate to Sweden without relatives (www.redcross.se). The church in Sweden can also be a resource for supporting families with social or economic difficulties.

For understanding the different responsibilities between the state and the municipalities, it is necessary to describe the existing institutions providing out-of home care in Sweden. In a previous overview of Child Welfare in Sweden, the care for children and youth in Swedenwere divided in three main categories: *foster care*, *residential care* and *homes for special supervision* (Hessle & Vinnerljung, 1999, p 27). Since foster care is a well-known concept, we will focus here on describing the institutions within the Swedish child welfare system.

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[124] For more information about contact person/contact family, see Andersson, 2006 pp 176, 180-183).

4.3.1.1 Residential care

With the Social Service Act traditional concepts in the legislation for children´s homes were replaced with the word “HVB- home” (Homes for Care or Accommodation) which has blurred the dividing line between institutions and foster homes in Sweden (Sallnäs, 2000). In this text we will however refer to these homes as *residential care units*. Sweden has a large number of residential care units, which can be owned publically (by the municipality or the county council) or by private persons or companies. Most residential care units are run privately in on small-scale, which have been described as somewhere in between foster homes and institutions, and as a new kind of “hybrid-home” (a.a.).

Residential care units that are privately run need to apply for permission from The National Board of Health and Welfare. The National Board of Health and Welfare is responsible for supervising residential care units and the social services in the municipalities (SoL 13:1). A national survey of 363 residential care (50 publically run) units for children and youth in 2006-2008 showed that most of these homes (219) were deficient in some aspect; in 112 units the short-comings were assessed as serious (Länsstyrelserna & Socialstyrelsen, 2009). Publically run residential care units in particular have found it hard to reach the standard goals, which may be explained by the fact that these units do not need permission from The National Board of Health (a.a.). Research has resulted in criticism that many residential care units apply rules and routines that may not be beneficial to young people and have no actual legal support (Eneroth 2008). One example are the use of “contracts” were young persons are forced to give their consent to drug tests, and examination of their clothes or rooms. It is argued in the national report that the responsibility for children in voluntary out-of-home care in these homes need to be clarified concerning the parents, social services and residential care units (Länsstyrelserna & Socialstyrelsen, 2009).

4.3.1.2 Homes for special supervision

In Sweden it is possible for young people to receive state residential care in one of the approximately twenty five *homes for special supervision*[125]. The homes for special supervision are run by a state authority called “The National Board of Institutional Care” and the state finance one third of the costs. The homes for special supervision have special authority and legal support to, for example, have locked units and to isolate violent persons for a maximum of 24 hours (LVU 15- 20 §§). The homes for special supervision are mainly used as a compulsory care intervention for young persons (12-21 years) with serious psychological problems, often with elements of criminal behaviour and substance abuse. These institutions vary in size but offer a total of approximately 600 care places. Different treatment methods are used and many institutions can also offer an initial assessment of the young person. Some homes for special supervision offer treatment to young persons who have been sentenced to care by the Criminal Act at special closed

[125] These institutions are sometimes called ”Special approved homes” (www.stat-inst.se).

units. A study concerning the use of isolation in homes for special supervision has shown that this sanction was not always used as intended, but used as a punishment, which has led to criticism from the United Nations (BO 2010). The Child Ombudsman in Sweden has since argued that the use of isolation in state institutional care should be abolished, and demanded legal changes that emphasizes and secures the rights of children in out-of-home care (BO 2010, BO 2111).

The use of homes for special supervision in Sweden has received a lot of criticism over the last decade. Research has for example stressed the lack of effectual treatment and the poor or even impaired results of state institutional care (Levin, 1998; Andreassen, 2003; Hill, 2005). This has led to the development of new and more evaluated methods within the homes for special supervision during recent years. Long term care in these institutions is also avoided if possible. But still these state institutions remain a common intervention for young persons with serious behavioural problems, and approximately 1000 young people receives care in these institutions each year (www.stat-inst.se). In fact, even if the ambition has been to decrease the number of children in institutional care in Sweden and despite the fact that locally non-institutional services have increased over the last two decades, this has surprisingly not resulted in a decrease in the number of children in institutional care (Socialstyrelsen, 2006).

4.4 National data bases

The National Board of Health and Welfare publishes annual statistics concerning some of the *interventions* that social services offer to children and their families. Unfortunately there is as yet no statistics concerning the number or content of mandatory reports or concerning investigations on a national level, but local authorities register this information and research have given some information about this process, as presented earlier.

4.4.1 Interventions

The most common service for families in Sweden is personal support, which usually means supportive meetings/conversation with a social worker. Approximately 25,300 children had *personal support* at some point during 2009 (Socialstyrelsen, 2010, pp 29-30). Approximately 21,000 children received support by a *contact person/family d*uring 2009, and 9800 children received more structured support through a *treatment program* during 2009 (a.a.). There is a trend in Sweden to offer support to families as a service without previous investigation and registration (Socialstyrelsen, 2006). This is in many ways a good development since being registered and handled as a “social service case” may decrease the willingness to seek help. On the other hand this trend makes it difficult to survey the supportive interventions in day-care on a national level.

Approximately 17,900 children received out-of home care during 2009 as a voluntary support according to the Social Service Act, and a total of 8,300 children were placed outside their home by compulsory care the same year (Socialstyrelsen, 2010, p 22). The majority of children who enter state care in Sweden are teenagers between 13-21 years old.

On November 1st 2009, approximately 16,000 children/young people received out-of-home care, and only one third (5,055 children) were age 0-12 years (Socialstyrelsen, 2010, p 62). A majority of these placements were made according to the Social Service Act with the consent of clients, only one third of the placements were a result of a compulsory care decision (a.a.). A majority of the children were placed in foster homes (p. 63).

4.4.2 Abused children

The definitions concerning maltreated and abused children differ between countries. Since physical punishment is prohibited in Sweden, this means that even minor offences in this area can be reported as a case of child abuse.

The Swedish National Council for Crime Prevention (BRÅ) is an organisation that works on the commission of the government to produce data and knowledge concerning crimes and crime prevention (www.bra.se). The reports from BRÅ have shown that police reports concerning physical child abuse increased during the 1990s, especially concerning small children (0-6 years) (BRÅ 2000). Police reports concerning child abuse where the offender was familiar to the child increased from 330 reported crimes in 1990 to 709 reported crimes in 1998 (a.a.).As a result of this, an official commission “The Committee against Child Abuse” investigated the issue of child abuse and related issues. The commission presented a report concerning child abuse in 2001 and a legal Bill was presented in 2002 with the purpose to legally strengthen the protection of children (SOU 2001:72, prop 2002/03:53). This has resulted in some legal changes, for example more authorities have also become legally obliged to report suspicion of maltreatment to the social services, and the best interests of the child are regarded as the paramount consideration when assessing the need for compulsory care. The Social Welfare Board is now also obligated to review if foster parents should receive to receive legal custody of the child, if the child has lived in the same foster home for three years (a.a.). The National Board of Health and Welfare is (as mentioned earlier) since 2008 responsible for investigating cases where children in need of protection have been victims of deadly violence, and for producing a report every other year. The first report from the National Board of Health and Welfare regarding child deaths reviews report that ten cases of child death were reported between 2008 - 2010 in Sweden, and five of these were investigated (Socialstyrelsen, 2010b). Two cases of child deaths from 2006 and 2007 were also included in the report. The conclusions from this report mostly states well known facts, for example the importance of authorities to actually report any suspicious of maltreatment of children to the social services, and that these are investigated properly. But the report also stresses the importance of transferring information between municipalities when a family moves from one

municipality to another, when the child is assessed as being at risk of maltreatment (a.a.) The total number of children exposed to deadly violence in Sweden have however decreased since 1970s, in the beginning of the 1990s ten children between 0-15 years were killed each year due to violence, compared to five children each in the 2000s (Socialstyrelsen 2010b, BRÅ 2008, p 26, BRÅ 2011).

A report made by BRÅ shows that in 2010 a total of 11,530 cases of suspected physical child abuse were reported in Sweden concerning children 0-15 years (BRÅ 2010). Reports concerning the rape of children have also increased, but in Sweden a changed definition of "rape" was introduced in 2005, which can explain the increasing number of children being statistically reported as being victims of rape. All sexual acts with children below 15 years are categorized as rape in Sweden, even if there has been no element of threat of violence (BrB 6:4). Sexual acts with children 15-17 years are also defined as rape if the offender is the child's parent, or if the child is being brought up by this person (BrB 6:4).

	2000		**2002**		**2004**		**2006**		**2008**		**2010**	
	N	/100 000	N	/100 000	N	/100 000	N	/100 000	N	/100 000	N	/100 000
Abuse of Children 0-6 years	938	11	1 021	11	1 147	13	1 351	15	1 906	21	2 550	27
Rape of child below 15 years	300	3	387	4	479	5	1 134	12	1 421	15	1 826	19

Table 13: Reported Crimes concerning physical abuse of children (0-6 years) and rape of children below 15 years (BRÅ)

Between 2009-2010 police reports concerning physical abuse of children age 0-6 years increased by 17 % and concerned a total of 2,540 crime reports (BRÅ 2010 p. 7). Former analyses have interpreted this phenomenon as an increased tendency amongst the public to report child abuse, since the increase primarily concerns the less serious cases and parents who are reported are more often socially well established (SOU 2001:18, BRÅ 2000 p 46-47). It has been estimated that 1 % of children and adolescents are subjected to very severe and unusual forms of punishments (SOU 2001:72, p 48). Unfortunately the court processes have difficulty in managing reports concerning physical child abuse in decent time (Rädda Barnen 2010b, SOU 2000:42).

In 2005 six municipalities started "Children's Advocacy Centres "on the initiative of the Government. These centres provide a place where the police, prosecutor, attorney, social worker and medical staff can cooperate in one location in helping abused children. The purpose has been to reduce the number of meetings for children in a vulnerable situation, and to offer a place where it is possible to investigate the crime and the child's need for protection, increase the quality of investigations, and also offer treatment and support. An evaluation of the first cities that started these centers showed that whilst they may

strengthen a child's rights perspective, the court-process and the legal authorities remain the central focus; the centres were also primarily directed to children below 15 years old (Åström & Rejmer,2008). At least 22 Children´s Advocacy centres now exist in different cities in Sweden, and an evaluation of these centres have shown that collaboration between authorities is improved and that children had positive experiences of the treatment they received in the centres, although the crime investigations may not improve (Kaldal et al., 2010).

4.4.3 Securing good outcomes for children

Sweden, as a traditional example of a welfare state, in many aspects has a well-functioning and highly developed family support system, even if there are areas of the system that have been criticized by research. In this case study we have focused on describing the part of the family support system that is directly focused on children at risk and the authority of the social services, but it would have been possible to present and include other authorities more in detail as importing actors in securing good outcomes for children in Sweden, for example the Health Care System and the School system and the day-care centers for small children. In Sweden early parental support for all parents is promoted on a national level (SOU 2008: 131). Different parental training programs have also become a common service for parents with small children or teenagers as a way to prevent future social problems in families. These programs are based on a manual and are examples of early preventative interventions that have proven many good results in international studies. However, such programs have yet to be proven to be evidence-based in a Swedish context (SBU 2010), with researchers currently evaluating some of these programs and their outcomes in Sweden.

When discussing "good outcomes" it is necessary to discuss what this means and how it can be interpreted. If we, for example, look at the long-term effects of state care, research has shown that long-term foster care does not improve outcomes in adult age when compared to growing up in an insufficient family environment (Vinerljung, 1996). Their social positions and educational level in adult age, compared to the general population, are also below average (Vinnerljung, 1996, 2006; Vinnerljung et al.; 2005). Growing up in state care can according to such research be regarded as a risk factor, which is important to remember, since these children often need further support during their childhood by other authorities as the School and Health Care system. It is also a reminder of the importance of early and preventative support. As a result of this knowledge, and the awareness of the fact that poor school results are a major risk factor, a project called "Skolfam" started in 2005 in Helsingborg in Sweden in collaboration with researchers. "Skolfam" is an abbreviation for School and Family (Foster) Care and provides a model for testing and strengthening the school results of children in foster care, since they usually have missed important time in education. The model has shown very positive results and is hopefully going to be introduced in other municipalities in Sweden.

A longitudinal qualitative study of 26 children in foster care, however, also shows that state care can result in pretty good outcomes for children, taking into account their difficult experiences prior to coming into state care and their opportunities compared to the general population (Andersson, 2005, 2008). When defined in three categories, ten persons were described having a *good* social adjustment in adult age, nine persons had a *moderate* social adjustment and seven persons had a *bad* social adjustment (Andersson, 2005). Concerning the outcomes and quality while in foster care, research has shown that an inclusive attitude from foster families toward the child's parents promote a sense of security for children in foster care and helps them cope with their situation even in periods of re-placement or reunion (Andersson ,2009). Children in foster can also achieve a safe sense of belonging to the foster family, or to both the foster family and their biological family, even without any changes being made in custody (Andersson, 1998).

When discussing social support and state care it is also necessary to achieve safe and stable support and care for children and youth. Unfortunately this is not always the case, former research has shown that children in contact with social services usually have many different interventions and reoccur for investigation and interventions several times during childhood (Sundell et al., 2004). This can partly be explained by the fact that voluntary services are the core of the child support system in Sweden until compulsory care is regarded absolutely necessary and consent to state care is not possible. A large Swedish research study has also shown that approximately 30-37 % of teenage-placements in Sweden are prematurely terminated and antisocial behaviour and a mental health problems increase this risk (Vinnerljung et al., 2001, Sallnäs et al., 2004). However, kinship care reduces the risk of breakdown in care and indicates that the use of relatives as foster cares might improve stability in state care (a.a).

4.5 Analysis and recommendations

The family support system marks the dividing between the state and parents legal responsibility for children, it also makes people aware of the existence of maltreated children in society , and consequently the system will always be debated and revised. In this analysis and recommendations I will focus on areas that may be identified as examples of good practice in Sweden, as well as problem areas that have been debated and discussed by researchers.

4.5.1 Example of good practice in Sweden

***The preventive and non-stigmatizing service orientation model**

It is important to provide early support to children and parents in a broad sense, which may involve general and specific services from different authorities in society, such as Health Care and Schools. The possibility for parents to receive preventative support as a service without previous investigation may also increase help-seeking in time.

***Keeping children and youth out of prisons**

A child perspective is necessary even when children commit serious crimes in a society. Usually children who commit serious crimes have social or psychological difficulties, and should be perceived as children at risk. This means that treatment provided by the social services is usually more adequate than prison sentences.

***Focus on maintaining relative relationships in out-of-home care**

The discussion of how to achieve continuity in care has developed differently in different countries. In Sweden the relation orientation perspective is manifested, since it is argued that this helps the well-being of children in a long perspective.

However, if long-term foster care is considered a possibility, it is now a legal obligation for the social services to review if foster parents should receive custody of the child. This is a good development since it can promote stability in care when needed, and at the same time the child can keep in contact with their parents. The promotion of kinship foster homes (when possible and regarded as the best interest of the child) may also be a way to promote stability in care and maintain relative relationships.

4.5.2 Problem areas

These problem areas are not to be seen as “bad examples”, in fact theyare connected to the structure that also provides the good examples mentioned above, which means that these complex areas are recurrently discussed from different perspectives.

***The blurry dividing line between support and control**

This is perhaps mainly a problem in the most serious cases of child abuse and neglect. The focus on consent in the Swedish legal system means that many voluntary out-of-home placements can be as serious as compulsory care cases, but yet they are defined as voluntary since parents have given their consent to state care. In doing so, compulsory care can usually be avoided. This *can* be problematic, since the different interests of the child and their parents are visualized in compulsory care cases, since they are represented by different lawyers serving their interests in the court process that follows. Since children have no legal right to plead to court until 15 years old, all children below 15 children in voluntary out-of-home care

are represented by the voice and the will of their parents (Mattsson, 2006).). The ability and legal obligation for social workers to predict and assess the “apparent risk” in compulsory care cases concerning children have also been debated (Claezon, 1987). There is also a tendency amongst social workers in Sweden to avoid compulsory care since they have difficulties in discerning when voluntary support is not sufficient and since compulsory care is regarded as a “risk” process, partly since the administrative court makes the final decision (Ponnert, 2007). The focus on achieving parents “consent” to state care during the assessment work might decrease a child perspective (a.a) as well as the idea that all parents can be rehabilitated.

Earlier research has also shown that social workers tend to assess cases were parents cooperate with the social services as less serious (for example: Dingwall et al., 1983;Verner Fruin, 1986; Andersson, 1991; Egelund & Thomsen 2002; Grinde, 2004: De Roma et al., 2006). This has been described as a “rule of optimism” guiding the assessment work concerning children and their families (Dingwall et al.; 1983, pp 79-102).

***The focus on teenagers in the child welfare system.**

Since youth delinquency (0-18 years) is also a task for the social services in Sweden, investigations concerning teenagers are major tasks within the social services in Sweden, even in cases when there is no sign of maltreatment. Interventions for criminal teenagers due to the cooperation with the district court might give the social services (and the interventions provided for criminal teenagers) a punitive character.

***The use of homes for special supervision**

Sweden still provides many state institutions for youth with behavioural problems, even if the treatment effects and the methods have been debated and criticized. These institutions have special statutory powers and usually provide secure/locked divisions. Since criminal youth are a responsibility for the social services, these institutions remain as an intervention within the child welfare system in Sweden, for better and for worse.

***Continuity in care.**

Research has shown that children in state care in Sweden usually experience several placements in different institutions or foster-homes during childhood (for example, Vinnerljung et al., 2001; Sundell et al. 2004). This might be interpreted as a conflict between social workers strives towards reunifying the child with his/her birth parents, and the child´s need for a stable placement out-of home (Sinclair et al. 2005 a, 2005b, Thoburn et al., 2000).

4.6 Conclusion

When discussing and analyzing systems providing child welfare in different countries, two major questions are of central interest for understanding the differences that emerge. One question concerns the *intake aspect:* what children and what social problems should be the target group of social services? Should the social services focus on maltreated children only, or should teenagers displaying an antisocial behaviour also be considered to be children at risk? What should be the legal threshold for investigation and for voluntary and compulsory interventions? The second question concerns how to best promote *continuity in state care* for children in need of long-term foster care. In Sweden, being an example of a family support system, the social services emphasize on maintaining parental contact and reunion with birth parents (Fanshel & Shinn, 1978). In other countries, for example UK and USA being examples of child protection systems, foster parents are regarded as the psychological parents of children when children are in need of long-term foster care (Goldstein et al., 1983). These perspectives are based on different assumptions concerning children's needs for a healthy development, yet both perspectives aim at promoting stability in care for children.

How these questions are addressed and legally structured is based on the history of child welfare and the development and structure of social policy in each country, and different perspectives involves different advantages and different risks. By discussing some of the problem areas and good examples of the Swedish family support system, I hope to create some understanding and debate concerning the advantages as well as the challenges with a family support system.

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Legal framework

(Swedish abbreviation for the law within brackets)

Act with special provisions for young offenders (LUL 1964:167)

Care of Young Persons Act (LVU 1990:52)

Care of Young Offenders Act (LBU 1964:167)

Children and Parents Code (*FB* 1949:391)

Penal Code (BrB 1962:700)

Social Services Act (SoL 2001: 453)

Webpages

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www.rb.se

www.redcross.se

www.stat-inst.se

5 Child protection in Germany by Heinz Kindler

5.1 Prolog

After WWII Germany has created a democratic society and achieved considerable wealth. As a consequence international comparisons on child well-being indicators normally place Germany in the upper half or even the upper third of industrialized countries (e.g. Bradshaw & Richardson 2009). Data on subjective well-being are not so positive but still place Germany in the middle region of comparable countries (e.g. Bradshaw et al. 2011). Sociologists, political scientists and economists from Germany have also contributed to international comparisons regarding policy approaches to combat child poverty and enhance child well-being (e.g. Olk 2010; Bäckman & Ferrarini 2010, for an overview see Kamerman et al., 2010). Participation in international comparisons and discussions can be seen as common for political scientists and economists in Germany and is growing in German sociology of childhood (Zeiher 2010).

An orientation towards international debates however still is not very prevalent among social work researchers in Germany. Despite some contributions from medical scholars (Thyen 2010; Herrmann & Eydam 2010), developmental psychologists (Kindler 2009) and legal professionals (Meysen et al. 2009) to child protection debates, social work research is of central importance for this area of research in Germany. As a result there are few descriptions of the German protection system in non-German languages (for exceptions see Kindler 2008; Hagemann-White & Meysen 2010) and most of the comparative literature on child protection systems does not include Germany (e.g. Van Nijnatten 2000; Benbenishty et al. 2003; Khoo 2004; Tchengang 2006; McAuley et al. 2006; European Network on National Observatories on Childhood 2007; Brunnberg & Pećnik 2007; Healy & Oltedal 2010). If Germany is included, it is sometimes solely on the basis of programmatic statements with weak connections to child protection reality (e.g. Baistow & Wilford 2000; Freymond & Cameron 2006). Among data driven exceptions are European reports on legal structures in child protection (Hageman-White et al. 2010), maltreatment related child deaths (UNICEF 2003) and out-of home placements of children (Thoburn 2007).

There are probably several reasons for this lack of data and contributions from Germany to the international debate on child protection. First, and most important even within Germany, there is not much empirical research on child protection (Kindler 2008). Academics doing social work education are the most interested group regarding child protection research. They are however predominantly located at so called applied universities often with little scientific training and until recently with little access to research grants. Moreover empirical research aimed to improve the child protection system in Germany has become a federal policy priority only within the last years and only within prescribed areas, especially early intervention/prevention, institutional abuse and serious case reviews.

Second, the language barrier combined with the size of Germany, which is large enough to create its own national discourses on child protection, has prevented the majority of social work academics in Germany

from learning about progress made in international child protection research. In some areas however seminal international research has become influential (e.g. the “nurse – family partnership” evaluations: Olds 2006 in the field of early prevention or the Social Care Institute of Excellence (SCIE) approach: Fish et al. 2008 in developing a method for serious case reviews in Germany) and has stimulated research in Germany. In addition, the Federal Ministry of Family Affairs, Senior Citizens, Women and Youth (BMFSFJ) has financed the creation of two evidence oriented handbooks on child protection practice and foster care services (Kindler et al. 2006; Kindler et al. 2011) with the aim of making international research available to front-line workers.

Finally, there is a deep-rooted tradition of idealistic philosophical thought in Germany. The influence of this tradition has vanished in most university departments but it is definitely alive in some schools for social work located at applied universities. Idealistic philosophy in social work, ranging from Phenomenology (for an introduction see Anderson, 2003) to so called “Critical Theory” (for an introduction see Rush, 2004), exhibits a wide variety of positions, but generally the empowerment of professionals by helping them to understand and reflect upon important ideas, aims, experiences, societal developments and their clients position within these processes are considered as central. Idealistic philosophy has nourished a lot of mistrust against instrumental reason and methodologies that should help to approach objective knowledge because a critical reflection on the aims, uses and underlying basic categories is not automatically included in this research. But more important time consuming and cost intensive empirical study of narrow concrete problems (e.g. work with neglectful families) is not valued very much within this line of thought because in effect practitioners are seen as able to reflect upon their experience on their own even in the absence of reference points in empirical research.

Media attention to and creation of child protection scandals (e.g. the “Kevin” case in the city of Bremen or the “Jessica” case in the city of Hamburg), in addition to of a lot of negative effects, has also had the positive effect in Germany of eroding the belief that practice can create a strong knowledge base on its own. In addition, several empirical studies have shed light on more systematic problems within the German child protection system. These include:

- Low reliability in case worker and team decisions regarding maltreatment risk and an intervention strategy (e.g. Pothman & Wilk 2009);
- High numbers of overburdened case workers (Seckinger et al. 2008);
- High numbers of children in out-of home placements combined with quick case worker decisions regarding long-term placement and weak efforts to restore parents parenting capacity (Thoburn 2007; Kindler et al. 2011);
- High numbers of under-served children with mental health problems and of children with problematic educational trajectories in out of home placement (Kindler et al. 2011)
- High numbers of families with recurrent maltreatment even after a child protection intervention (Kindler et al. 2008a, b).

There is however not only evidence regarding problems within the German child protection system that has to be reported in this nation report but also some evidence regarding progress. This is especially true for the early intervention/prevention field (e.g. Sann 2010) and the legal rights of parents and children to receive preventive and supportive child welfare services (Hagemann-White et al. 2010). Moreover some progress has been made in the areas of risk assessment (Kindler et al. 2008a) and in the prevention of institutional abuse (Helming et al. 2011).

5.2 Historical background

Defined as organized activity to help children at risk of significant harm, child protection has many histories because it started at a local level. Especially in Germany with its weak or even non-existent central state for a long period of time, states (Länder) had an important role before 1900. The first national child protection law was created in 1900 in Wilhemine German. After WWII, and until reunification in 1989, two German states existed with very different approaches to child protection. As an authoritative history of child protection in Germany has yet to be written this description of the historical background is sketchy and incomplete.

5.2.1 History of the recognition of different forms of child maltreatment

As a form of child neglect the abandonment of children by their parents seem to have been the first child protection problem that led to organized responses in Germany (Meumann 1995; Niederberger 1997) as well as in other European countries. First in the realm of religious charity organisations: in the second half of the eighteenth century several orphanages and foster care agencies organized by city councils are documented. Death rates for children, especially very young children, in orphanages or foster families were high and there were several reform attempts that aimed to guarantee proper care for these children. There are also documented cases of children who were taken back by their birth parents after they regained the resources to care for them (Frie 2010) and of foster children who were adopted by their foster parents and became respected members of society.

From the end of the eighteenth century onwards there was a steady debate in Germany on the fate of children who were not abandoned by their poor parents but left uncared for in the family or who had to do hard and dangerous work. This discourse should not solely be seen as a sign of the progressive recognition of children's rights because in part it was a reaction to a decline in living conditions in Germany at that time shown by anthromometric data (Ewert 2006; Cinnirella 2008; Coppola 2010). The mainstream response in Germany shortly after 1900 was the introduction of social policy especially social security systems that should protect male breadwinners (and secondary their families including children) against life risks (Wehler 1995). This approach was accompanied by legislation regulating but not completely banning

child labour. As however some vulnerable families still had difficulties to care for their children an additional social work discourse emerged. This discourse was about supporting and controlling families especially mothers to combat physical child neglect. A reading of the writings of central proponents of this mostly private charity movement (e.g. Frieda Duensing: Duensing 1903) shows the balance between an emphasis on support and an emphasis on control was constantly shifting and mixed with moral discussions regarding whether these families, or which of them, deserved help.

Around 1870 new voices were to be heard in the German child protection discourse emphasising not so much physical neglect but a neglectful socialisation and inadequate monitoring of minors. A special German term “Verwahrlosung” with a heavy moral connotation was introduced as a label for under-socialised children and adolescents with especially rigid norms being applied to the sexual behaviour of girls and young women. It is not clear why this new focus emerged as criminal statistics do not show a significant rise in youth crime during that time (Oberwittler 1997; Wegs 1999). One opportunity seems to be that mainstream society more and more felt threatened by social movements in the working and under class and wanted to tighten control. During that time the number of out of home placements was on a sharp rise (Ross Dickinson 2002) and concepts for the education of children and adolescents seen as under-socialised emphasised obedience to authority as a core basis for character development. Therefore rigid and violent systems of authority and control were installed in residential care facilities.

On the road leading to the Third Reich parts of German society developed a set of values (e.g. obedience) nowadays discussed under the headings of “authoritarian personality” (Adorno et al. 1950) or “Nazi conscience” (Koonz 2003) that contributed to a further radicalisation of inhuman educational practices in institutional settings (Berger & Rieger 2007). In addition, a child psychiatry claiming genetic roots of “Verwahrlosung” gained influence (e.g. Gregor & Voigtländer 1918) and was used as a further argument to separate and exclude these children and adolescents from society. While the child protection discourse in a radical way turned against children seen as “verwahrlost” or antisocial (“asozial”) it is important to remember colleagues resisting that turn (e.g. Aichhorn 1925, Wilker 1925). Moreover for a complete history it is also necessary to note that racist and eugenic thoughts transformed child welfare services but the Nazi state kept investing large amounts of money to “rescue” children (e.g. through adoption services: Mouton 2005) seen as worth it.

After WWII, criteria for the placement of children and ways of treating them in residential care did not change very much at first. Again, the focus of the child protection discourse was on child neglect or children and adolescents behaving in a way seen as “verwahrlost” with some of the books written on this topic between WWI and WWII going into press again and again. Examining educational practices especially violence against children and adolescents in residential homes, Kuhlman (2010) concluded that there was only slow progress until the end of the sixties. At that time however things started to change in important ways.

First, child physical abuse and a little later child sexual abuse gained importance as forms of child maltreatment implicating not only criminal prosecution but child protection action. Before that time archive data suggest that criminal prosecution was the dominant response if a child was seriously injured by its parents (e.g. Richter 2011). Although less clear, the same may be true for intra-familial sexual abuse (Ross Dickinson 2007). After the 1970s and 80s, at least for child physical abuse, prosecution was seen as less helpful and a slogan “Hilfe statt Strafe” (help instead of punishment) was introduced into the child protection discourse.

Second, in the 1970s and 80s new ideas on how to respond to neglecting families and how to place and treat children started to emerge emphasising not authority and obedience but positive relationships, shared goals and practical support. There was a sharp increase in numbers of social workers and placement patterns changed to a pattern preferring foster care placements (Hansbauer 2002). However, despite a more cooperative approach to families, the total numbers of children in out of home care kept increasing from 83 per 10.000 under the age of 18 in 1970 to 93 per 10.000 in 1980 (with a slight decrease thereafter).

As a detailed and comprehensive historical analysis of German child protection discourses during that turning point is missing not all the contributing factors are clear. But a greater acceptance of democratic values as well as a rush towards social reform optimism in German society may have been important. Also studies from sociology and psychology, some of them (e.g. Wahl et al. 1980) from the German Youth Institute (current author’s institutional affiliation), were published describing positive attachments even between children and neglectful or violent parents, who due to their life circumstances and life histories were not able to take good care of their children. These studies worked to undermine perceptions of neglecting or violent parents as morally bad or insane. Regarding the recognition of physical child maltreatment as important for child protection, the first translations of the work of Kempe & Kempe (1980) was also influential.

In the German Democratic Republic, the socialist second German state from 1949 to 1989, not only a democratic turn, but any child protection discourse was missing because child maltreatment was seen as a problem confined to non-socialist societies. If child maltreatment was acknowledged as a social problem it tended to be explained as psychopathology of individual parents (Gries 2002). Focusing on re-education of children seen as problematic and without a legal obligation to respect parental autonomy, the placement of children and adolescents in residential care was a common form of intervention. In these institutions rigid, harsh and sometimes cruel forms of treating children and adolescents seem to have been common (e.g. Zimmermann 2004; Sachse 2010).

Even after the reunification, the child protection discourse in Germany until now has not paid much attention to psychological abuse and emotional neglect as forms of child maltreatment. Although both forms are listed in introductory publications, there are very few publications or training courses focusing on psychological maltreatment and/or emotional neglect (Kindler et al. 2006). This is astonishing because attach-

ment theory which can be seen as a guiding theory in understanding the detrimental effects of both forms of maltreatment in early childhood has become influential not only in developmental psychology in Germany, but also in the child and youth welfare services area. Currently, however most publications inspired by attachment research deal with the situation of foster children while suggestions regarding the assessment of emotional neglect and psychological abuse are missing.

5.2.2 History of child protection legislation in Germany

In 1896 a civil code (Bürgerliches Gesetzbuch - BGB) for the German Reich was passed including a section (§ 1666) regulating state interference with parental rights. Before that time there had been some laws in some German states (Länder) regulating state interference. For example, there was a law in the state of Hessen listing criminal behaviour of the child or the adolescent, physical neglect, repeated and heavy physical maltreatment and a present danger of moral corruption of the child serious enough that positive parental and school influence alone seem inadequate as reasons to place a child even without parental consent. Moreover in some states (Länder), there were also other relevant regulations regarding child labour, special ways of handling criminal charges against minors and the control of institutions or foster families where children were placed. The penal code books analyzed in the literature did not include special sections on the physical maltreatment of children. If prosecuted at all physical maltreatment of children probably was seen as bodily injury. There were however some special regulations regarding infanticide which, as a phenomena, captured the attention and imagination of contemporaries (e.g. Peters 2001). Within the state penal codes there were also some laws against immoral behaviour including sexual violence against children but sometimes in the way laws were formulated or applied there seemed to have been some confusion about who was to blame if sexual violence happened (Künzel 2003).

Section 1666 of the civil code of 1896 introduced the term “Kindeswohlgefährdung” (child endangerment) as a threshold for state interference with paternal rights. Section 1666 focused solely on fathers who were traditionally seen as family heads. If a situation was seen as child endangerment the court had to act and protect the child. Doing this the court could place the child outside the family. Child endangerment was defined as severe misuse of parental powers (e.g. severe physical maltreatment, inciting a child to steal or modeling other criminal behaviors), child neglect or parental behaviour without honour or morality (e.g. alcoholism, adultery). During the nazi dictatorship there were several quite bizarre published court decisions which expanded the term child endangerment even further to include situations where a non-jewish, german father wanted a child to live with a jewish family or where a father denied the child membership in the “Hitlerjugend” (Hitler youth). After WWII and the formulation of the German constitution, the so-called German basic or fundamental law (Grundgesetz – GG), courts developed a much more restricted understanding of the term child endangerment. In a famous definition formulated by the Bundesgerichtshof, the highest civil court in Germany, child endangerment was restricted to situations where it can be foreseen with a high degree of certainty that there will be considerable harm to the child or adolescent. Therefore the decision whether there is child endangerment or not still is a prognostic one, but the mere possibility of

future harm is not enough. Also immoral parental behaviour does not constitute child endangerment if it cannot be shown that there are important negative consequences for the child. In general considerable harm is defined as danger for the children's life or health or as a way of rearing the child that prevents him or her from developing the competencies necessary for an independent life within society. But there was not only a restriction in the definition of child endangerment there was an expansion as well. Based on a central section of the constitution on the protection of human dignity excessive physical punishment of children was seen much more critically and therefore more often classified as child endangerment (Parr 2005). Since WWII there have been several changes to section 1666 BGB. In 1958 mothers were included. In 1980 there were several changes in section 1666 BGB. First the reasons for state interference were reconceptualised. Misuse of parental power and child neglect remained unchanged but parental behaviour without honour or morality was omitted. Two other possible reasons for child endangerment were added: Parenting breakdown without fault of the parents (e.g. due to mental illness or addiction) and failure of the parents to protect the child from dangerous other persons. Moreover a second requirement for state interference was formulated. It had to be shown that the parents were unwilling or unable to take action (with or without parenting support) against present dangers for their child's best interest. This of course had the consequence that such help had to be offered and tried before - as a possible next step - there was an involuntary child protection intervention by the state. Third the law explicitly stated that dangers to the mental health and emotional well-being of the child should also be considered not only dangers to physical health or cognitive development. The most recent changes to section 1666 BGB were made in 2008 in response to the suggestions of a commission (including the author of this report). The list of possible reasons for child endangerment was dropped altogether from the law because the courts should focus on the situation of the child as a whole. Instead a list of possible court measures (e.g. court orders, removal of some or all parental rights) if state intervention is needed was included because courts wanted to get involved in child protection cases earlier to avoid complete removal of parental rights more often.

"Child protection in Germany is not only regulated through family law and – indirectly – through criminal law; many of its central statutes are to be found in social law". This statement of Thomas Meysen one of Germany's leading juridical experts on child protection is included in another country report on the German child protection system (Hageman-White et al. 2010, p. 45). A national youth welfare act passed in 1922 may be seen as a starting point for the development of this social law although there were some earlier regulations in several states (Länder) and even at a local level. The first national law formulated a obligation for all cities and counties to create a child and youth welfare authority (Jugendamt) responsible for interventions in families whose children might be in danger but also for the supervision of foster parents and the care for abandoned, orphaned and poor children (for a more detailed description see Uhlendorff 2003 p. 308ff). Collaborating with the police and the court, the main focus was on control and intervention but there was also the idea of prevention and support for families and children in need. Especially regarding prevention and support but also in the area of care for children in out of home placement the child and youth welfare authority had an obligation to collaborate with non-governmental organizations (NGO's) ("Freie Träger", e.g. a residential home run by a church) and to stand back if a service could be

delivered by one of them (principle of subsidiarity). The national youth welfare act was also important because it made some kind of training mandatory for the workforce in child and youth welfare authorities.

After WWII, a new law on child and youth welfare services was introduced in 1962. But it changed and modernised only some outdated terms and regulations. A big change did not happen until 1990 when the Act on Child and Youth Welfare Services (Kinder- und Jugendhilfegesetz – KJHG) was passed. Thereby the Social Code Book VIII (Sozialgesetzbuch VIII – SGB VIII) was created. In that law an additional and new threshold for child and youth welfare services was created and linked to a right of parents to receive child and youth welfare services. The threshold (parents cannot guarantee the child's best interest) was set below the child endangerment threshold to make sure that services can be received before problems escalate to a point where an involuntary child protection intervention will be inevitable. Moreover an array of different child and youth services became listed in the law and local child and youth welfare authorities were obliged to hold these services available (e.g. family counselling, social pedagogical family help, foster care, residential care). Finally an obligatory service planning procedure (Hilfeplan) incorporating parents and children was introduced. The Act on Child and Youth Welfare Services had a clear focus on prevention and collaboration with families. Therefore it created a break with older more authoritarian traditions.

Although in general the law received very positive feedback there was some critique that it had little to say about how to handle cases where child endangerment is suspected. The issue first was raised in scholarly debates but soon afterwards there were also some "child protection scandals" reported in the mass media. In reaction, a new law was made in 2005 (Law on the Further Development of the Child and Youth Welfare System: Kinder- und Jugendhilfeweiterentwicklungsgesetz – KICK). In this law it was emphasised that all child and youth welfare workers, whether their workplace is at a child and youth welfare authority or at a NGO active in that field, have a duty to protect children from endangerment. Moreover a section of the law formulated an obligation to perform an assessment if there were concrete hints for any form of endangerment (mandatory assessment). Children and parents should be given the opportunity to participate during the assessment. Co-workers or experts have to be consulted during the assessment. If as a result of the assessment it is concluded that there is child endangerment and if there is a need for child and youth welfare services these have to be offered. If due to lack of cooperation of the parents the assessment cannot be completed or if child endangerment cannot be eliminated the case has to be taken to court. With the Law on the Further Development of the Child and Youth Welfare System for the first time quality standards for the handling of child maltreatment cases were introduced in the German child and youth welfare system. This on the one hand created a big challenge for workers and organisations in the field. On the other hand it was accepted as a necessary step towards improving quality in the German child protection system.

Even more recently, there were additional laws at the federal as well as the state level aiming to improve the way other institutions (e.g. the family court, pediatric clinics and schools) handle cases in which child endangerment may be suspected. In a law reforming family court procedures (Gesetz über das Verfahren

in Familiensachen – FamFG), a section regulates that some cases including cases of possible child endangerment have to be handled with priority. More than half of the states in Germany have also passed laws to make clear under which preconditions medical and school personnel reporting the child and youth welfare authorities about a suspicion. Only in two states are there obligations to do so (mandatory reporting). A national law on this issue is in preparation. Most of the states also passed laws that made baby-well visits (regular pediatric examinations) mandatory including a notification to the local child and youth welfare authority if - despite reminders - parents did not bring their child to the baby-well visit. With respect to child protection however this turned out to be ineffective because only very few cases of child endangerment (probably at a rate not significantly above the base rate) were detected (Kindler 2010).

As a last element in the history of child protection legislation in Germany a law banning the corporal punishment of children by parents passed in 2000 should be mentioned. Because a violation of this law does not implicate any sanctions for parents the main purpose is to give parents guidance. In contrast to most other laws in the child protection field this law has been evaluated (although with a weak correlational design) showing an association between the new law and a further decrease in the acceptance and use of corporal
punishment by parents (Bussmann 2004).

5.3 Legal and policy Frameworks

Although policy analysis can be seen as a field of political science with well developed methods (e.g. Fischer et al. 2007; Weimar 2010) I am not aware of any study who has tried to do a methodological sound analysis of German child protection policies. Even in the more restricted field of legal framework analysis one has to say that there are hardly any publications that include family law, social law and criminal law. This may suggest that child protection in Germany is rarely perceived and analyzed under a systems perspective. There is however an unfolding debate on quality criteria on a systems level for the German child protection system (e.g. Amt für Soziale Dienste & Kronberger Kreis für Qualitätsentwicklung 2010; Kindler in prep.).

5.3.1 What is meant by the term child protection?

There is a narrow, a broad and an extended meaning of the term child protection in Germany. In the narrow view child protection is about organized activities to detect and handle cases of child endangerment, which as a legal term includes cases where maltreatment has already happened and there is a risk of recurrence as well as urgent cases where there is a danger that maltreatment will happen. The handling of the case has four aims:

- protect the child,

- rehabilitate parent's parenting capacity if possible,
- help the child to stabilize or regain a positive developmental path, and
- protect the rights of parents and children during any child protection procedure.

Organized activity may refer to the way a case worker is acting (including reflection and documentation) using the resources of his or her organisation and taking into consideration the regulations relevant for the case or it may refer to the activities of an organisation or several organisations together (e.g. family court and child and youth authority together). Most of the time the term "child protection" in a narrow sense is used with clear reference to real cases, but can sometimes include activities to plan the way in which services will be provided (e.g. a talk on cooperation between a pediatric clinic and a child and youth welfare activity on the handling of suspicious cases).

It is important to note that even in a narrow sense child protection both voluntary and involuntary interventions. For example, child protection interventions can include placement of the child against the will of the parents. However, if there is joint understanding between parents and the child and youth welfare authority on what is needed to prevent future maltreatment (e.g. social pedagogical family help) this can be done without any involuntary act or withdrawal of some or all parental rights.

There are some quality standards in law for the way in which narrowly defined child protection intervention provided by child and youth welfare services must be performed (e.g. section 8a of social code book VIII). For example, assessment of the situation of the child, participation of parents and child, and reflection with experienced co-workers. There are some additional regulations in other fields applying to professional activities in this narrow sense of child protection (e.g. permission to break confidentiality for medical personnel, priority that has to be given to child protection cases at the family court).

In a broad view all forms of psychosocial support for families with parenting difficulties or at risk for parenting difficulties are included in the term child protection. Although it is clear that most of these families would never maltreat a child even in the absence of any support it is equally evident that in some families psychosocial support may help to prevent child endangerment. In effect research outside Germany has shown exactly such effects (e.g. Reynolds et al. 2009; Prinz et al. 2009) but for most of the professionals within the German child and youth welfare system this is practice wisdom. It is important to note that in Germany families with parenting difficulties "who cannot ensure the child's best interest" (section 27 social code book VIII) have a right to receive child and youth welfare services. They also have some procedural rights, such as the right to participation, and the right to choose between different providers and/or different forms of support if they are equally adequate and not too different in costs. Regarding families at risk for parenting difficulties (e.g. poorly educated families with a newborn) early support services (e.g. home visiting) are available in an increasing number of areas within the country (Sann 2010), but families do not have a right to receive such services. The inclusion of preventive services in the concept of child protec-

tion is not uncontested. For example, Schone (2010) argues that a narrow focus on the prevention of child maltreatment is inappropriate for case workers and managers and may work to make such services less attractive for families who may fear they wil be seen as potential child abusers.

Sometimes but not regularly the term child protection is also used in an extended way covering the protection of children from pornography and extreme violence in the media, fighting child poverty or preventing child sexual abuse outside the family (e.g. through stricter control of convicted sexual offenders) and institutional abuse. For example in the moment the German Bundestag (our federal parliament) is debating a Federal Child Protection Law (Bundeskinderschutzgesetz) which will include an obligation of all institutions providing child care to check the penal clearance certificate for their workforce and prevent persons with a conviction for a sexual offense from working with children. An obligation for residential care facilities and comparable institutions to develop procedures to prevent and handle institutional abuse will also be included.

Differing from at least some European countries, cases which require interventions after criminal or rule breaking behaviour of adolescents often are not considered to be child protection cases although child protection laws are applicable until the age of 18. Instead, at least at a case worker level, these cases are often seen as ordinary child and youth service cases (without any possibility of involuntary actions) or as cases for a special service called juvenile court assistance (if there are any criminal proceedings). For example, last year the society for communal studies (Verein für Kommunalwissenschaften 2011), the scientific organisation of the cities and counties in Germany, organized a symposium under the heading “Child protection also for adolescents?” which makes clear that it cannot be taken for granted that adolescents whose antisocial behaviour puts their own future at risk, can be the focus of a child protection intervention.

The meaning of the term child protection is also a state of flux in relation to which cases should be included as the scientific understanding of factors that can cause significant harm is changing. This may be illustrated regarding cases of high conflict divorce and cases of partnership violence. Regarding both case groups it has been demonstrated that at least some children show long-term and substantial detrimental effects (e.g. Fichtner et al. 2010; Kindler 2006). As a result there have been several statements and court decisions about child protection interventions in contemporary cases of this nature.

It is clear that a narrow, a broad and a extended understanding of child protection are not mutually exclusive and can coexist, especially if used in different contexts. There may however also be tensions and conflicts. For example the recent emphasis on how to handle cases where child maltreatment has to be suspected (e.g. section 8a now included in the social code book VIII) has been understood as a critique and correction of a broad understanding of child protection that in practice lead to an attitude that was not attentive enough to cases where maltreatment was ongoing despite the provision of some kind of supportive service (Hensen & Schone 2010). On the other hand, there is also the critique that an over-emphasis on a narrow understanding of child protection may lead to shortage of resources for preventive interven-

tions, may change the public image of child and youth welfare services and may discourage parents to ask for support which in turn may lead to even more cases of child endangerment. Therefore in effect a balanced view of child protection is needed.

5.3.2 Legal framework to protect children

Based on social law (section 27 social law code book VIII – SGB VIII) all parents who cannot ensure their child's best interest have a right to receive child and youth welfare services. This is a lower threshold than the child endangerment threshold, which justifies involuntary child protection interventions if the parents are unable or unwilling to avert the danger. Therefore the right to receive services is important under both a broader and a more narrow understanding of the term child protection because in both case groups parents have the right to receive child and youth welfare services which may help to prevent or avert child endangerment. Whether the threshold of section 27 is exceeded has to be judged by the local child and youth welfare authority. In cases of conflict an administrative court has to make a decision. If the local child and youth welfare authority agrees that parents have the right to receive child and youth welfare services or if the authority does proactively offers services parents and children have some procedural rights regarding the selection and enactment of services. For example the parents have the right right to choose between different providers and/or different forms of support if equally adequate and not too different in costs. By law there is also an obligation for most services (excluding family counselling) to make a plan, which has to be evaluated periodically. This plan should encompass the views of all relevant family members including children and should contain information about family needs and services to be provided.

If a child and youth welfare professional has strong suspicions that any form of child endangerment is occurring in a family he or she works with (child and youth welfare provider) or in a family he or she is responsible for (child and youth welfare authority) an assessment has to be made regarding whether there is child endangerment. If the assessment finds there is child endangerment, then the assessment must also indicate what has to be done to avert the danger. Section 8a of the social law code book VIII outlines the rules for this kind of assessment:

First, the assessment has to be completed. If this is not possible due to parental non-cooperation a provider of child and youth welfare services has to inform the child and youth welfare authority. If a child and youth welfare authority cannot complete such an assessment the family court must be informed.

Second, a provider of child and youth welfare services doing such an assessment does not have an obligation to inform the child and youth welfare authority immediately. If there is no emergency but more support is needed the parents may first be encouraged to talk to the child and youth welfare authority on their own.

Third, children (if old enough) and parents have the right to participate during the assessment if this does not pose an additional significant risk. If professionals conclude that there is child endangerment parents however do not have to agree.

Fourth, co-workers or experts have to be consulted during each assessment.

Fifth, if as a result of the assessment it is concluded that there is child endangerment and that there is a need for child and youth welfare services, these have to be offered (child and youth welfare authority) or parents have to be encouraged to ask for additional services (child and youth welfare service provider).

If pediatricians, day care or school personnel have a strong suspicion of any form of child endangerment they have special rights or duties in some of the states (Länder). However, a duty to report (mandatory reporting) only exists in a small minority of states (e.g. Bavaria for medical personnel). In most state pediatricians, day care or school personnel have a right but no obligation to inform the child and youth welfare authority if there is no other way to make sure that the child is protected. Until now there is no comparative evaluation of different regulations regarding reporting. A draft-law that probably will be passed by the German Bundestag soon will make clear that professionals working with parents or children will have no obligation but the right to inform the child and youth welfare authority if they have a strong suspicion of any form of child endangerment ("a weighty ground to assume child endangerment") and there is no no other way to make sure that the child is protected. Professionals will have a right to receive anonymous counseling if they are insecure about what to do.

If a child protection case is taken to the family court or if the court initiates a proceeding on its own the court has to clarify two things (section 1666 civil code): whether or not there is child endangerment and whether or not the parents are unable or unwilling to avert present dangers. Child endangerment has been defined by the highest German civil court as a situation where it can be foreseen with a high degree of certainty that there will be considerable harm to the child or adolescent. It is easy to see that this definition is future oriented. If there has been maltreatment in the past it has to be considered whether there is a risk of recurrent maltreatment. Considerable harm has been defined as danger for the children's life or health or as such an inadequate way of rearing the child that he or she cannot develop the competencies necessary to be independent within society. If the court does find the presence of child endangerment and of parental inability or unwillingness to avert present dangers the court has to act to protect the child. Possible court actions include court orders (e.g. to use services offered by the child and youth welfare authority or by health care institutions or to ensure that the child attends school), restraining orders, or the removal of some or all parental rights and the appointment of a guardian who then for example can make a decision that the child has to live in a residential home. The court has an obligation to act in accordance with the principle of proportionality. There are of course some regulations regarding the court proceeding (e.g. that if the child is above the age of three, there must be a hearing with the child), that the parents and also the child and youth welfare authority have to be heard or that the court has to the possibility to appoint a court expert to answer some questions relating to evidence.

The family court is the only institution legally entitled to interfere with parental rights. There is however an exception for cases of emergency. In such cases the child and youth welfare authority has the right to take a child into care (section 42 social code book VIII). The parents have to be informed (e.g. if the child is at the school when taken into care) and if they oppose the child must be returned to their care or the case has to be taken to the court without delay.

Social and civil law on child protection in Germany do not differentiate between physical abuse, neglect and sexual abuse. Psychological abuse and emotional neglect, in principle, are also included in the definition of child endangerment. However, in reality psychological abuse and emotional neglect are unlikely to be responded to under child endangerment laws. Regarding criminal law there are some differentiations and restrictions between different forms of maltreatment. For example regarding sexual abuse any sexual activity with children (persons below the age of 14) is punishable. The same is true under the age of 18 for biological or adopted children. The corporal punishment of children is punishable only if it trespasses the threshold of bodily injury (section 223 of the penal code). As the child's best interest is not in the focus of criminal proceedings there is no criminal complaint in most child protection cases. This may be seen as an important aspect of the German child protection system. For example Thomas Meysen states: "The separation between child protection and prosecution is central to the German approach to child maltreatment" (Hagemann et al. 2010, p. 45) and goes on to say: "Child protection is based on the view that for effective protection and assistance, it is vital to win the trust and cooperation of the families whenever possible. Criminal prosecution may impair this relationship, especially if the abuse occurred within the family" (Hagemann et al. 2010, p. 45). Therefore neither the child and youth welfare authority nor the family court have an obligation to make a criminal complaint even if a punishable act of abuse or neglect is suspected. The child and youth welfare authority however has the right to make a criminal complaint if this seems to be necessary to protect the child and does not interfere with or reduce the chance of child and youth welfare services being provided (section 64 social code book VIII).

None of the laws cited in this section of the case study does make an explicit reference to the UN convention on the rights of children. The same is true for the definitions of all the legal terms with central importance to the German child protection system (e.g. child endangerment). There is however a fundamental concordance between the German legal framework and the values of the UN convention on the rights of children which of course does not preclude violations in some cases (e.g. AGJ 2010).

5.3.3 National policies and strategies for the protection of children

Because of the importance of local actors and the principle of subsidiarity in the German child protection system there is no organisation or authority with the power to formulate national policies or strategies for the protection of children. Moreover child protection and child and youth welfare services often are not very distinctive topics in professional debates. Principles seen as important for successful child and youth welfare services are in general also seen as important for successful child protection. An orientation to-

wards a broad understanding of the term child protection (see above) may be one of characteristics of a German approach to child protection (this general orientation is of course not without exceptions).

In an attempt to describe ideas for child protection capable of winning a majority of professionals in the field I have searched a German literature database on child and youth welfare services (Literaturdatenbank der Arbeitsgruppe "Fachtagungen Jugendhilfe" im Deutschen Institut für Urbanistik: www.fachtagungen-jugendhilfe.de/literaturdatenbank/ldb/index.phtm) using several combinations of work principles with the term "Kinderschutz" (child protection) and counting the number of hits. I have also discussed the question with several colleagues at the German Youth Institute.

By far the most prevalent combinations were "child protection and networking" and "child protection and participation". This was in accordance with colleagues views. Reading the literature the appreciation for "networking" as a principle in child protections seems to be based on the assumption that neither the detection nor the safeguarding of maltreated children can be achieved by child and youth welfare authorities alone. Therefore cooperative relationships with other professionals (e.g. pediatricians) and with members of the child's family have to be built. Serious case reviews in Germany as well as in other countries have shown that a lack of cooperative relationships may have adverse consequences for children at risk (Fegert et al. 2010). Moreover practice projects have shown that professionals engaged in round tables feel they are helpful for their work with families (e.g. Kindler 2011). However, to date in Germany there have been no quasi-experimental or experimental studies showing that networking projects do have any effect on case detection, case flow and case outcome.

Participation has a strong legal basis in the German child and youth welfare system including assessment procedures regarding child endangerment. The rational behind the importance attributed to participation lies with the idea that dangers within the family can only be averted if parents can accept interventions and feel encouraged to cooperate. Even if there is an out of home placement it may be easier for the child to cope with this if the parents do not strongly oppose the placement (e.g. Strijker et al. 2009) or if the child does not feel overlooked. There are some correlational studies (although no study with a child protection sample) showing that participation predicts better case outcomes. It is however unclear whether this reflects a selection effect or a causal effect. Therefore experimental studies in this area are needed (e.g. training case workers to encourage participation). Intervention studies would be possible because critical reviews of service as usual show that the theoretical importance attributed to participation often is not reflected in practice (e.g. Ackerman et al. 2010).

5.4 State, local authority and nongovernmental provider relationships

Germany is a federal state. The federal government has to ensure comparable living conditions in all parts of Germany. This in the past has been the justification for federal laws in the area of child protection. The leading ministry for laws addressing the child and youth welfare services system (e.g. the National Child Protection Law – Bundeskinderschutzgesetz) has been the Federal Ministry of Family Affairs, Senior Citizens, Women and Youth (Bundesministerium für Familie, Senioren, Frauen und Jugend – BMFSFJ) while the leading ministry for laws addressing the court system (e.g. Law on Family Court Interventions in Cases of Child Endangerment – Gesetz zur Erleichterung familiengerichtlicher Maßnahmen bei Gefährdung des Kindeswohls) has been the Federal Ministry of Justice (Bundesjustizministerium – BMJ). The Federal Ministry of Education and Research has been active during the last two years as one of the organizing ministries of a round table discussing measures of support for victims of institutional abuse in the past and measures against the institutional abuse of children now. Neither the Federal Ministry of Health nor the Federal Ministry of the Interior have been active in the area of child protection to date. The leading role is with the Chancellor who has had two talks with the governors of all German states on child protection.

Beside a role in initiating laws especially the Federal Ministry of Family Affairs, Senior Citizens, Women and Youth has influenced child protection policies in Germany through the funding of research or practice projects. Relevant projects in the last years include a project “child protection and high conflict divorce”, two randomized control trials on the effects of early prevention programs and a project on the effects of quality development workshops on local child protection networks. The Federal Ministry of Education and Research recently has joined funding activities and is funding two research programs: A basic research program on causes and effects of child maltreatment and a applied research program on the prevention of child sexual abuse, particularly in institutions.

The states (Länder) have competencies to regulate on their own some areas relevant to child protection (e.g. public health care) and they have the competence to supplement federal law. Nearly all of the states have passed some laws with relevance for child protection (for an overview see Nothhafft 2009). For example, in most states well-baby examinations (regular pediatric examinations) have been made mandatory including a notification to the local child and youth welfare authority if - despite reminders - parents do not bring their child to the well-baby visit. The local child and youth welfare authority then visits the child and its parents at least once to check whether the child and the family are in need of support. Moreover all of the states have an obligation to organize one or several providers (“überörtlicher Träger”) responsible for counselling local child and youth welfare authorities. These providers also have an oversight function for residential care facilities. The states are responsible for the court system, e.g. the number and training of family judges. However, because judges and courts are independent, state jurisdictions have limited power to influence the judges and courts understanding of child protection issues. Even judiciary participation in training is voluntary. Some states have been able to fund demonstration projects. One example is

an e-learning project on child protection for home visitors funded by the state of Baden-Württemberg. In Bavaria the state has co-funded professionals for networking in early prevention in every county and city.

Cities and counties in Germany are responsible for the translation of the regulations of the social code book VIII in practice. That means they have to organize a child and youth welfare authority with responsibility for ensuring that a range of services as listed in the social code book VIII are available (although the authority does not have to provide these services on its own if NGO's are willing to do this). Moreover on a single case basis the child and youth welfare authority case workers have to plan child and youth welfare services together with parents and children and have to decide whether a family has the right to receive certain child and youth welfare services. They have to do assessments regarding the presence of child endangerment if there are strong suspicions that any form of maltreatment is occurring and they have to take the case to court if they cannot work out a plan together with the parents on how to avert present dangers. Finally, in cases of emergency they have to take children or adolescents into care ("Inobhutnahme"). In some cities and counties there is also a public health department that is active in the area of child protection most often providing some kind of early prevention (Sann 2010). In some cities and counties there are child protection round tables discussing ways to collaborate between different authorities, departments and providers. Some states have even made such round tables and networks mandatory. Regardless whether they are mandatory or not, these networks are most often organized by the local child and youth welfare authority. Although the financial situation of most cities and counties is not good, some have invested in practice projects. For example the first validation of a German risk assessment tool for child and youth welfare services was financed by the cities Stuttgart and Düsseldorf (Reich et al. 2009).

NGO's ("Freie Träger") have a strong position within the German child and youth welfare system. Because of the principle of subsidiarity the child and youth welfare authority does not provide certain types of services on its own if there are NGO's willing and able to provide this type of service. Moreover parents should have a right to choose between different service providers (section 5 social code book VIII). However the activities of NGO's are not unregulated. They have to enter into contracts with the child and youth welfare authority on the quality of services provided and the money they receive. There also has to be a contract on the quality of assessment procedures in cases of possible child endangerment. Finally (excluding family counselling) on a single case basis aims and services provided are agreed upon in a case conference with the child and youth welfare authority, the provider, the parents and (if possible) the child participating.

In summary the states and the federal state have legislative powers and an enabling or guiding role (e.g. through demonstration projects). There is nothing like the UK inspectorate system. States and the federal state do not control (except for residential care facilities) the provision and quality of local child and youth welfare services. To date there has been little comparability between cities and counties regarding the quality of the local child protection and child and youth welfare system, although some cities and counties have organized discussion groups and some measurable quality criteria are in discussion. The most important actors for child protection are on a local level: The child and youth welfare authority, the family

court and the NGO providers of child and family welfare services. Although most often there is some kind of collaboration it is important to note that the health care system, the educational system and the police have no strong institutional position within the German child protection system. The child and youth welfare authority and the NGO providers of child and family welfare services have an obligation to cooperate (section 4 social code book VIII). In the end however the responsibility for the functioning of the child protection and the child and youth welfare system lies with the child and youth welfare authority. In single child protection cases with conflicting views the final decision regarding whether there must be an involuntary child protection intervention lies with the family court. The family court however has no right to advise the child and youth welfare authority to pay for certain services. Therefore the court and the child and youth welfare authority need to work together otherwise cases can become paralyzed (e.g. if the court does not want to place a child but thinks, ambulant family support is needed whereas the child and youth welfare authority does not want to pay for ambulant family support because from their point of view it is not enough to protect the child). One effect of the strong role of local actors are substantial differences in nearly all aspects of the child and youth welfare system ever measured (e.g. staffing, number of children in out-of home placement, number of children taken into care, number of children reunified with their parents after placement: Seckinger et al., 2008; Kindler et al. 2011). Studies have shown that these differences cannot be explained using indicators of the social situation of the population served (e.g. Van Santen et al. 2000). Therefore it is likely that teams or whole child and youth welfare authorities develop “traditions” regarding specific aspects of their work (e.g. their attitude towards out-of-home placement). This variation however has not been used as a kind of natural experiment for effects on children’s well-being.

5.5 National data bases

In the social code book VIII there are some regulations regarding statistical data that have to be collected in the same way in all child and youth welfare authorities. These data therefore can be aggregated at different levels (e.g. the federal level). Most of these data however focus on services provided (e.g. foster care placement).

For several reasons it is not possible to estimate the number of child maltreatment cases that become known to child and youth welfare authorities based on these service data. First, the same services may be provided for different reasons. Second, children and families may receive more than one service at a time and several services in sequence. As there are no identification numbers in these data sets we cannot reconstruct case trajectories. Third, the number of cases where a service is provided and the number of children per case may vary. Fourth, child maltreatment reports and substantiations are not counted. Fifth, the German child protection system mixes cases where maltreatment has happened with cases where maltreatment is likely to happen.

For all this reasons we do not know how many maltreated children or how many endangered children become known to child and youth service authorities every year. Recently a question was added to the data collection sheet asking whether the reason the current services were provided was due to child endangerment. Initial data show that in about 15% of all child and youth welfare services, child endangerment was named as a reason for granting this service (Fendrich & Pothman 2010). As this is a new statistic it may be especially error prone at the moment. If it is assumed that there is only one child per service and that there are no children with two or more services per year 64 per 10.000 children in Germany take part in a child and youth welfare service because of maltreatment or a recent danger of maltreatment. Compared to international data this figure lies in a middle range (e.g. around 30 for England, 75 for Australia, 120 for the US, 211 for Canada) (Fluke et al., 2008).

A perhaps more trustworthy statistical system counting maltreatment reports and the results of child endangerment assessments according to section 8a social code book VIII on a national level is being developed.

There are some official data from the child and youth welfare statistic on the number of children taken into care in an emergency situation and the number of children with a court intervention due to child endangerment. These figures, respectively, are 10.6 and 11.6 per 10.000 children in 2007 (Fendrich & Pothman 2010). Both figures have risen during recent years (an increase of 82% between 2005 and 2008 for children taken into care in an emergency situation and 48% for children with a court intervention due to child endangerment). It is clear however that both statistics only capture a small part of all cases of child endangerment because chronic forms of endangerment (e.g. neglect) or cases where parents and child and youth welfare authority agree on a plan regarding how to avert present dangers are not included.

There are also official data on the number of child in out-of home placement. The rate is about 74 per 10.000 children under 18 with about the half of these children living in foster families (Kindler et al., 2011). Compared to international data the rate of children in out of home placement is quite high in Germany (Thoburn 2007), which in part seems to be an effect of high numbers of long-term placements resulting from very low numbers of adoptions and low numbers of reunifications (Kindler et al. 2011) (See Figure 8).

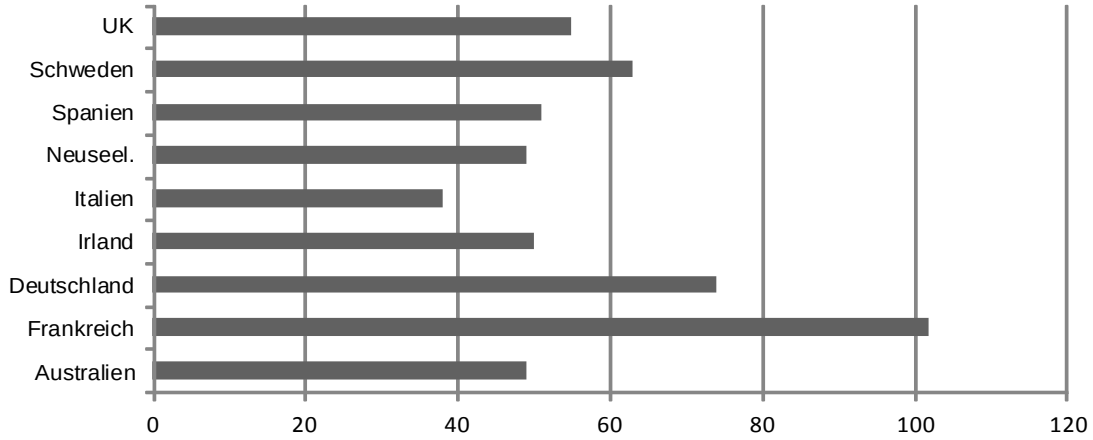

Figure 8: Rates of children (below 18) in out-of home placement during a year (Thoburn 2007)

The high rate of children in out-of home placement is astonishing because Germany has had high investments in ambulant services (e.g. social pedagogical family help). There are also official data on maltreatment related child deaths including international comparisons (Unicef 2003) placing Germany in the middle range of developed nations.

Regarding population rates of maltreatment there are two representative studies with adults (Häuser et al. 2011, Wetzels 1997) but no representative studies with children and/or adolescents, although such a study is in preparation. Representative published studies using standardised measures of child maltreatment risk are also missing, but unpublished data screening more than 90% of all births in county and more than 80% of all children attending kindergarten in another county found three to five percent of cases with multiple risks (Project risk epidemiology: Künster, Kindler, Thurn et al.). One representative study has looked at the number of sexual abuse cases that become known in schools and residential care facilities (Helming et al. 2011). According to that data more than half of all residential homes and about a third of all schools had to deal with at least one case of possible child sexual abuse during the last three years. Most cases were only detected because a child had disclosed the abuse to an adult person working in the school or the residential home. This was true regardless of type of sexual abuse (sexual abuse by a professional, by another child or adolescent inside the institution or outside the institution).

As already mentioned child maltreatment reports as well as endangerment assessments and their results have not been counted and therefore cannot be monitored on a state or federal level. Some counties and cities however have started to collect such data and have installed monitoring systems (Wohlgemuth 2009). Because the number of years and communities with available data is small, stable trends cannot be described and rising figures should not be over-interpreted. Together with rising figures of children taken into care in emergency situations and rising figures of court interventions due to child endangerment it may be speculated that the child and youth welfare system has to handle more and more child protection cases. It is however unclear whether population rates of maltreatment are rising in Germany for ex-

ample because adults with mental problems more often become parents. It is however quite clear that attention processes and fear of professionals also are important factors. For example the number of children going into out of home care had its highest growth rate in the state of Bremen after a child abuse scandal happened there.

Some studies have looked at the ratio of different forms of maltreatment (sexual abuse, physical abuse, neglect and psychological abuse) within German samples of cases taken to the family court (Münder et al. 2000) and within samples of children in out-of-home care due to child endangerment (e.g. Kindler et al. 2011). Consistent with the international literature, child neglect was much more common than physical abuse and sexual abuse with psychological maltreatment being a common co-factor but rarely the sole reason for a significant child protection intervention. In most child protection cases there was more than one form of child maltreatment. Given this data one might wonder why few professionals see themselves as specialists for child neglect or try to do research on this form of child maltreatment (Behl et al. 2003).

In Germany research on the effects of child and youth welfare interventions is still rare. Existing studies (e.g. Schmidt et al. 2002) do not differentiate between cases with or without one or more forms of child maltreatment and do not use child maltreatment recurrence as one of the outcome criteria. Focusing on behaviour problems these studies find weak to medium sized positive effects. This is in accordance with comparable other European studies on service as usual (e.g. see the meta-analyses of van Yperen et al. 2010). Focusing on child protection cases and service as usual Kindler et al (2008a, b) found child maltreatment recurrences within three years (average) in more than two thirds of the cases and out of home placements in more than half of the cases. Examining children who were placed in foster families after child maltreatment in the birth family more than a third of the children showed signs of psychopathology and more than half of the children showed educational problems (Kindler et al. 2011). More than half of the children with mental health problems turned out to be untreated.

Based on these data it is hard to avoid the impression that there is room for improvement in the German child protection system. Several strategies for improvement seem to be promising. One strategy to reduce maltreatment recurrence may be to introduce short but validated risk assessment tools combined with more emphasis on child safety in cases at higher risk. There are at lot of risk assessment tools in Germany but few of them are easy to handle and only one tool has been validated (Kindler et al. 2008a). A second strategy may be to invest more in case analysis and the fit between detectable risk mechanisms working in the family and intervention strategy. For example based on literature review more than seven mechanisms that may work towards physical abuse and or neglect have been proposed (e.g. inadequate internal working models based on parents life history guiding their perception of the child's signals and needs, conflict between caregiving and other developmental tasks of the parent, overlearned antisocial behaviour pattern of a parent, emotional dysregulation) requiring different forms of intervention (Kindler et al. 2008c). Third, intensified cooperation with mental health professionals may be necessary to provide better services to children. As one of the first controlled intervention studies within the field of child protec-

tion in Germany has shown (Goldbeck et al. 2007) the inclusion of mental health professionals is helpful for the development of supportive strategies for children. Finally, case workers need resources. Below a certain level high quality child protection work will be impossible or case workers will start to avoid working in the child protection field. Unfortunately there are no studies in Germany at present that have looked at the relationship building processes in child protection cases although this may turn out as another important factor for improving the child protection system.

5.6 Analysis and recommendations

The following recommendations for consideration in the Swiss context are drawn from the experience of child protection service provision in Germany. It is important to note that, due to a lack of rigorous scientific evidence on effective child protection service provision; these recommendations are based on the available scientific evidence and my experiences as researcher, trainer and court expert in the child protection field in Germany. The relevance of these recommendations for the Swiss context will need to be further assessed by the Swiss expert reference group. Not withstanding these limitations, I have made the following six recommendations.

1. **Start a discussion on quality criteria for child protection and try to use intra-country variability as a chance to detect and foster good practice**: Without quality criteria on a systems level there is a serious risk that secondary but available criteria (e.g. costs) or rare but impressive events (e.g. child maltreatment deaths) drive the discussion and lead to a system development path oscillating between more and less control or more and less investment in the system. Adequate quality criteria however might not be easy to find, because there are some tensions and complexities between possible criteria. Moreover some necessary criteria (e.g. the development of children after a child protection intervention) cannot be assessed in an easy and quick way. Instead time and cooperation with science are needed. On the other hand quality criteria on a system level are a very powerful tool for system development. Moreover Switzerland could learn from international experiences and could join Germany in the discussion we want to launch there.

2. **Emphasize the need for a multi-stage approach to child protection**: As there are continuums of need, risk and danger the flexibility of a child protection system to deal with different families may be a key to successful services. A preventive and cooperative approach to families is needed as a basic approach because prevention of child maltreatment is preferable under a child and family well being perspective. As prevention and cooperation may fail strategies to deal with more dangerous situations have to exist too. At a given point in time it may be necessary for quality development processes to focus on a broader or on a more narrow understanding of child protection. There should be however a deeper integrative understanding of child protection. In Germany for example we initially focused on procedures to handle strong suspi-

cions of child maltreatment (narrow understanding). Subsequently, we focused on the development of early prevention services (broad understanding of child protection).

3. **Advocate strong rights for children and parents to receive services and to participate during decisions regarding service delivery**: Within child protection conflicts of interest between parents and children and between parents and the state do emerge but not as a rule. In most cases a consensus regarding what needs to be done to prevent (recurrent) maltreatment can be reached. This however has not only the precondition that parents have to understand that they must change, it has also the precondition that the state has an obligation to adjust to the demand and to respect parents and children as clients.

4. **Invest in the development of easy to handle, valid tools and in the availability of case oriented training**: Working with child protection cases raises intensive emotions and includes dealing with a lot of situations with incomplete, concealed, conflicting or ambiguous information. Therefore cases workers need all the help and support they can get. Although not without risks (e.g. over-bureaucratization) the development of assessment tools can be a supportive strategy if there is an extensive testing of the tools using validity, reliability and user-friendliness as quality criteria. Tools may cover different areas e.g. the assessment of child and family needs, maltreatment recurrence risk and case progress. In Germany, front-line workers report positive experiences with at least some tools. Case oriented trainings with experienced and successful case workers may be another approach to support front-line workers.

5. **Look at case trajectories**: Number of referrals, the time families have to wait, cases lost between systems and the number of cases with adverse events or escalating problems tell you a lot about the strengths and the weaknesses of the child protection system in Switzerland. Therefore these kinds of analyses are very informative. In Germany, for example, a study on the trajectories of cases of possible sexual abuse (Fegert et al. 2001) has had this function. Do not invest to much time in debates on structures if this in not complemented with research on case trajectories because there is a high risk that such debates are just about cloud-castles.

6. **Emphasize the need for solid scientific evidence**: In a country like Germany with big intra-country differences in service delivery it is not uncommon that everybody appeals to his or her case experience. Even former authors describing inhumane practices with children and adolescents seen as “verwahrlost” justified their deeds with their clear case experience. Therefore controlled forms of experience = that is scientific evidence – is needed. There are several proposals for hierarchies of evidence appropriate for social work (e.g. Veerman & van Yperen 2007). Moreover from my point of view not only “what works” is important but also “what works for whom” because there are very different mechanisms underlying child maltreatment. It would also be helpful if Switzerland could join comparative international studies on the effects of child protection interventions because this form of research is not only cost intensive but needs varied replications to produce robust findings.

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