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Interventions Against Child Abuse and Violence Against Women

Ethics and culture in practice and policy

Cultural Encounters in
Intervention Against Violence, Vol I

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Chapter 12

Intervention cultures: gender, family, and the state in responses to violence

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1 Introduction

This chapter reflects on the commonalities and differences in the four countries of our in-depth CEINAV study, asking if each country can be said to have an overall “intervention culture” that shapes their responses to different forms of gender- or generationally based violence. Of the three forms of violence examined in our study, this chapter focuses on intervention patterns in the fields of domestic or intimate partner violence against women and of physical abuse and neglect of children, reflecting on ways that intervention patterns overlap or diverge. Based on previous research, we then embed some of the differences in a wider European context, drawing on data from the 47 member states of the Council of Europe since 2004, provided by governments and/or by the work of transnational research networks and organisations that maintain online databases, as well as from a mapping of laws and institutions in the, at that time, 27 member states of the European Union in 2010, based on extensive reports from independent experts in each country. These data provided the background for the qualitative study of intervention frameworks and practice in England/Wales, Germany, Portugal, and Slovenia in CEINAV, enabling us to describe not only how the frameworks differ, but also the patterns and procedures of intervention and how they connect to, or are independent of the prevailing conceptual policy framings.

We begin by sketching how the concept of intervention in what had been considered the private sphere emerged, anchored in obligations of the state to provide for the welfare of citizens. Differing welfare state patterns and historical periods shape the context of intervention policies and institutions. The various existing welfare state typologies offer little insight in this area. With the more modest aim of understanding how interventions to stop domestic violence against women and those aimed to protect children from harm interrelate in different and country-specific ways, we then draw on our in-depth study in four countries. To contextualise these patterns more widely, we then give an overview of the diversity of laws, policies and institution across Europe with regard to domestic violence against women and/or violence in the family (see chapters 5 and 6), and ask how laws and policies frame the context and the rationale of state-led or state funded intervention. Our comparative study focuses on intervention against violence since the 1990s, when a series of increasingly detailed consensus decisions committed the Council of Europe to combatting violence against women, and the UN Convention on the Rights of the Child (1989) was ratified by all governments in Europe (by 1995). With the two levels of data collec-

tion – in-depth study of four countries and overall mapping across Europe – the following section discusses some key issues of intervention and seeks to understand why efforts to harmonise policies and practices encounter such persistent obstacles.

2 Legal and institutional frameworks of intervention across Europe

The privacy of the patriarchal family and the power vested both socially and legally in husbands and fathers over women and children began to be questioned in the late 18th and during the 19th century across Europe. Legal prohibitions of abuse sanctioned only extreme cruelty, and provided little or no protection, so that concepts of *intervention* as both legitimate and necessary emerged. While first initiated by voluntary organisations, often as charities under the aegis of churches, intervention to protect against maltreatment and harm has been increasingly understood to be an obligation of the state. However, the extent and the occasions that justify or require intervention have remained controversial up to the present, despite the codification of rights and duties in international and national law.

Our discussion in this section limits itself to the evolution of legal frameworks and agency responses in the context of European welfare states as they emerged after World War II, setting these against the background of evolving international law on fundamental rights in that period. The four countries in our research exemplify different traditions and cultures of how the institutions and regulatory power of the state is understood to ensure the welfare of citizens with regard to the potential harm that can result from violence, abuse or neglect.

While there is a body of literature describing and classifying different welfare states in Europe, the predominant approach is to measure few indicators in a great number of states, in order to build a typology that might explain different practices and policies. Mary Daly (2000) has argued cogently with regard to gender relations in different welfare states, and Hämäläinen et al. (2012) have argued in a similar vein concerning child protection and child welfare policies, that the “preoccupation with typologies” may not be fruitful, and they give preference to in-depth analysis of selected systems. Daly questions the assumption “that the complexity of individual welfare systems can be meaningfully categorised on the basis of a small number of general criteria” (p. 54), and Hämäläinen et al. underline that “in order to understand the particular nature of any individual tradition of child protection, attention must be paid to the characteristics of the country-specific social order in general” (p. 8).

Many of the differences to be found within Europe appear as a matter of degree, but they also arise out of differences in the role of social actors and in the temporal sequences of recognising and addressing issues of violence in the family. Policy in all European states follows the principle codified in various international human rights instruments that the family is to be protected. For a deeper understanding of how this plays out, Daly distinguishes between the family as an institution and the family as a set of relations, both of which are highly influenced by gender and marital norms. Family, in distinction to genealogical relationships, represents actual caring relationships (Jurczyk et al. 2010) and the so lived unit becomes an institution to be protected. As a set of relations “family” can be (and is) socially and politically constructed in different ways, shaped by norms for the private sphere as a location of solidarity and power, and these also change over time. Non-interference is more salient than protection in this perspective. Thus, the reference point of family policies can be, for example, marriage, mothers, parents, all household members,

or families at risk, and can frame provision of care as a private or a public obligation, or refer to norms of moral behavior with religious underpinnings. The deployment of “preserving the family” has been interconnected in various ways with political regimes and ideologies as well as with the role of organised religions in their coalitions with or oppositions to political power structures. The abstract ideal of preserving the family stands in tension not only with the concepts of liberty and self-determination of the individual, but also with the responsibility of the state to ensure the welfare and fundamental rights of the child. Approaches to intervention when there are grounds to suspect violence within the family can be seen as strategies to handle these tensions as will be discussed below.

2.1 Our comparative research – how we have explored intervention cultures

Sparked by the picture of diversity in practice underlying ostensibly agreed standards, our in-depth comparative research (in three projects from 2009 to 2016) has explored how the understandings of domestic violence against women and of child abuse and neglect shape not only policy and legal frameworks, but also the practices of intervention and the rationales that are given to make sense of what is or is not, should or should not be done. This research threw some light on how culture, history, and institutional traditions enter into the resulting patterns of intervention.

The Daphne project “Realising Rights?” (2009–2011) undertook in-depth mapping of legal and institutional frameworks for intervention on violence against women and violence against children in 38 European countries, developing and implementing a detailed questionnaire for regional experts in 2009. Analysis of the questionnaire data was suspended as the research team took on the task of a “Feasibility Study” completed for the European Commission in 2010, the purpose being to assess whether and in what respects legislation in the EU member states could be harmonised. The extensive data from 2009 were rechecked and augmented by (in most cases other) independent national experts in the 27 EU states (Croatia was not a member yet), resulting in a matrix describing the laws and institutions across the EU as well as a descriptive analysis for each form of violence (European Commission 2010).

After completion of the analysis and recommendations for the Commission, work on the Daphne project could be resumed. The overview of legislation and policy from the “Feasibility Study” was extended to cover the remaining states close to, but outside the EU, providing a matrix for mapping all 38 states. Aiming for better understanding of how intervention is framed, three multi-country case studies focused on the wider policy context and the social and institutional processes that define the practices covering national action plans on violence against women, child protection processes, and emergency protection for women confronted with domestic violence. The studies yielded initial insights on how and why the same principles and concepts lead in diverse directions or why diverse legal frameworks seem to achieve similar results in terms of implementation and understandings of women and children’s human rights (Kelly et al. 2011)¹.

The following three-year CEINAV study (2013–2016) was designed to explore the implicit cultural premises of intervention in four countries, both with respect to its institutional regulation and to the practices of implementation generally and with minorities or disempowered groups. A further goal was to discover what ethical issues and dilemmas practitioners experience, and what grounds they adduce for dealing with such challenges. A context-sensitive, three-fold comparative approach (four countries, three forms of vio-

¹ For these three case studies and the 38-country mapping of legislation see Kelly et al. 2011.

lence, majority and minority positions), listening to the voices of victims as well as the voices of intervention professionals and integrating creative art into the research process, revealed aspects of intervention culture while suggesting challenges for further research (see chapter 2).

2.2 Institutional context of intervention and history

Frameworks for intervention in the family to protect children from harm had already existed in many European states since the late 19th or early 20th century, while calls for intervention to stop domestic violence against women came later and may have triggered responses that harked back to pre-existing intervention concepts from child protection. Comparative studies of postwar welfare states in Europe illuminate how they have differently regulated the interfaces between the state and the family through social policies and services. As Mary Daly (2000, p. 2) has written, the 1980s represent a crucial point of change both for the established West European welfare states and for states in transition from state socialism after 1989.

For the four countries in the CEINAV project, the “baseline” for these changes differed. In both the United Kingdom and Germany the voluntary sector of civil society organisations (NGO) had an established and key role in service provision for protection and support. But while in the UK with its extensive sector of charities supporting children, the Local Authority Social Services Act in 1970 introduced the requirement to follow government-issued statutory guidance, in Germany the NGOs are constitutionally ensured freedom from regulation by state law, and by the principle of subsidiarity, NGO service provision has priority. While first established in the field of child and youth welfare, these diverging principles later influenced intervention responses to violence against women. Portugal had struggled with defining family policy through inconsistent and partial regulations since the end of the dictatorship in 1973, while Slovenia shared with the “newly independent states” of Central and Eastern Europe the need to fundamentally restructure the state-citizen as well as state-family interface. Both Portugal and Slovenia had to define the role of non-state and not-for-profit actors as a new component of welfare provision. In Portugal, child protection had been the responsibility of local authorities and semi-state institutions of social welfare, with patriarchal power in the family being reinforced by law as late as 1966, while in former Yugoslavia all civil society organisations were abolished in 1947, and Centers for Social Welfare were established in 1959 to deal with social problems such as child abuse and neglect. In all four countries, recognition of domestic violence against women was driven by feminist initiatives beginning in the 1970s, although local feminist organising against violence in Portugal and Slovenia did not emerge until the end of the 1980s.

While the British welfare state was shaped by a long tradition of poverty-oriented provision (historically prefigured by the Poor Laws), and the introduction of social insurance was primarily based on flat-rate contributions and minimal benefits, the German welfare system implemented an income- and status-based maintenance model of social security through social insurance, which was further shaped by the principle of subsidiarity (Daly 2000, pp.74–78). In the postwar period, UK provision was broadened to offer state-provided security “from the cradle to the grave” to a population that had stood together against the Nazi bombing; it was in this context that T. S. Marshall put forth his influential concept of “social citizenship”. In postwar Germany, the concern was to preclude any recurrence of radical mass movements by ensuring basic security of social status, while reverting to a long tradition of privileging local authorities through a constitutionally framed federal model of the state. This resulted in differential processes and outcomes; for exam-

ple, child-related cash payments in Britain have long been paid to the mother or caretaker of the child, while in Germany they go to the main earner in the household, primarily to fathers. While the British welfare system supports low-income families with children by cash transfers, in Germany progressive tax allowances and publicly subsidised or provided child care play a much greater role, benefiting middle- and higher income families more than those with lower incomes and thus maintaining societal hierarchy (ibid, pp. 78–82).

Both Portugal and Slovenia² have traversed deep (but very different) transformations following disruption of the state and its agencies and institutions in the decades from 1970 to 1990, impacting on both the role of statutory agencies of social control and on the relations between the state, the family, and the prevailing gender order (with strong regional differences within Portugal, as noted by González López & Solsona Pairó 2000). Although both countries each had a social welfare system under the previous political system, it is not easy to trace what elements of (non-)intervention against violence within the family or in personal relationships, and what aspects of organising service provision were carried over into the new democratic structures.

2.3 How history and culture shape intervention

The effects of these models on provision of support and protection can be illustrated by the differing approaches to support for women facing violence. In both Germany and England and Wales, social movement-based projects played a key role in generating new approaches, but the role of the state differed. UK advocates succeeded as early as 1977 in having women who leave their home due to violence recognised in the Housing Act as “homeless”, entitling them to minimum welfare benefits that include rental support, including a stay in a refuge. The German shelter movement emphasised autonomy and did not seek legislative measures until the late 1990s; funding was on a grant basis from the local authorities (and later, by reimbursement of costs per resident and day; see Schweigler 2018 on the current situation). The role of national government towards services for women was restricted to funding model projects for each type of service (beginning with the first shelter in Berlin that opened in 1976), always in cooperation with one of the 16 *Länder* and accompanied by evaluation research (see Hagemann-White 2017). In both countries, however, specialised services, in particular refuges and counselling centres, developed from the feminist initiatives and these organisations were a significant force in bringing about legislation for civil law remedies and models of multi-agency cooperation.

State and voluntary sectors: Germany and England and Wales

In Germany as well as in England and Wales reforms of the child and youth welfare system go back to the late 1960s, although they took somewhat different pathways, due in part to the decentralised structure of child welfare in Germany, which gave more scope to local initiatives. In Germany the students’ revolt of 1968 formed a coalition with juveniles in residential care and successfully brought about significant changes (Struck et al. 2003). In 1976 the first “Kinderschutz Zentrum” (child protection centre) was founded in Berlin, starting a movement towards prioritising a service orientation and the involvement of parents and children as co-producers of protection and help services (Wolff 2010). A long overdue reform of the child and youth welfare law was postponed several times due to ten-

² In the comparative research on welfare states Portugal receives only marginal attention, if at all mentioned, and the still rather scarce study of post-socialist welfare states rarely deals with the former Yugoslavia.

sions between the practice of social work and a conservative government which wanted to “keep child and youth welfare professionals out of the families’ living rooms” (Wiesner 2006). The paradigm shift came into force in 1990 (East Germany) / 1991 (West Germany), manifesting an evolution from a system of paternalistic care to a system which provides families with access and legal claims to state funded services (Wiesner 2011). A legal duty of independent NGO-based services to share the protection duty of the state and cooperate with statutory youth welfare agencies and family courts was only instituted, after prolonged controversy, in 2005.

In England and Wales, consecutive and constant reforms have aimed to improve the child protection system, often driven by high-profile reviews into children’s deaths (e. g. Laming 2003) and efforts to compensate for failures in practice (Munro 2010). A key recommendation from a report on the lessons to be learned from research (Department of Health 1995) was to refocus and prioritise the support for “children in need” rather than concentrating on forensic investigation of abuse as outlined in previous “Working Together” policy documents (Home Office et al. 1991; Department of Health et al. 1999). The approach was manifested by the Every Child Matters initiative, launched in 2003 (HM Government 2008; Parton & Berridge 2011). The Munro Review (Munro 2011), again initiated in course of the review of a very high-profile case, led to implementation of rather halfhearted measures to overcome an over-bureaucratized and compliance-focused system towards a system that values and develops professional expertise while balancing the safety and welfare of children. The orientation to guidelines and rules has not shifted significantly (Parton 2017). More recently, the principle that NGOs should follow government policy guidance has carried over to safeguarding adults (HM Government 2015); with the leverage of increasingly scarce funding, this influences services for domestic violence, as referral mechanisms and MARAC foster a guideline-dominated approach similar to that in child protection.

Portugal

In Portugal under the Salazar regime, child protection was limited and primarily a task for courts, with a gradual recognition of a role for social work assistants. Until 1974 a husband had full marital power over the wife and paternal power over the children, so that intervention could not respond to abuse within the family. Semi-state private Institutions of Social Solidarity implemented residential care or other interventions for children. After reform of the Civil Code in 1977, which established rights of children and of women within the family, local authorities became responsible for establishing child protection commissions to deal with children in danger of harm. “Historically, the tradition of social intervention follows a supportive paradigm. The Catholic Church and secondly the State have the responsibility of caring for the most vulnerable, replacing the families and the community” (Carvalho et al. 2018, p. 5). Overwhelmingly, out-of-family placement in Portugal even today takes the form of residential care, and the preference for institutionalisation seems even to be increasing (ibid). In a period of internal stresses to the welfare system during social transformation, a number of changes in legal frameworks and procedures have occurred (Ferreira 2012).

In 1992, the Association of Women Against violence was founded and opened the first specialised refuge for women and children in situations of violence. Nonetheless, among the old EU member states, Portugal was the last to establish state-supported refuges, only after the law on domestic violence in 2009. Legal frameworks to address violence against a spouse or violence in the family more generally were introduced from 1982 on and revised repeatedly until 2009 (the status of domestic violence as a public interest or as a private crime has shifted back and forth), leading to considerable uncertainty among profes-

sionals. After 1974, the principle was established that police may only intervene after the authorisation of – at least – a magistrate (Public Prosecutor), unless it can be proven, in court, that there was an imminent danger for life or State security; this can be seen as a reaction to the role of the secret police in the Salazar regime. Thus, Portugal has no emergency intervention measures for police, and no protection orders that can keep a violent husband at a distance. Even seeking safety in a refuge requires a referral by a competent agency.

Slovenia

In the state socialist regime of the former Yugoslavia, there was no officially recognised voluntary sector. The first Centre for Social Work was established in 1959, and then across the country numerous children's homes were established, and the standard response to endangerment here, as in Portugal, was institutionalisation. Slovenia was in 1991 the first of the former Yugoslav regions to declare itself an independent state and manage the transition to multiparty democracy and a market economy, and a corresponding social welfare system was instituted in 1992. Non-governmental activities to place violence on the public agenda began earlier in Slovenia than in any of the other 2004 EU accession countries, with activists organising the First Yugoslav Feminist Meeting in Ljubljana in 1987 that put forth demands concerning legislation against violence against women and children and services for victims (Gaber et al. 2009). While services run by NGOs are funded, the statutory Centres for Social Work, run by the regional government, are legally responsible for intervention in all forms of violence in the family – professionals are obligated to report knowledge of domestic violence or child abuse to them – and they are the main providers of services, both for children and for women facing violence.

3 European diversity: the case of domestic violence

Controversy over the concepts “violence against women” and “family violence” existed in sociology and in political debates since the issues of rape, battering and multiple other forms of men's violence against women were placed on the agenda by feminist activism in the 1970s. The transition to the concept of “gender based violence”, while allowing the inclusion of men and of children as victims and a broader perspective on violence seen through the lens of gender (see Fawcett et al. 1996) did not resolve the issue. The concepts partly include or exclude transgenerational violence. It is, however, not always clear why the one or the other concept is chosen for policy frameworks and what this means for intervention practice. The diversity of legal, historical and institutional frameworks that co-exist in Europe with putative agreement on overarching principles and standards for intervention, articulated in European and/or UN Conventions, offer a promising field for exploring the factors at play in the use of key concepts and their practical implications.

The year 1993, when both the UN (Vienna Declaration) and the Council of Europe (Ministerial Conference in Rome) declared it a human rights obligation to combat violence against women, can be seen as a watershed in Europe. There had been recommendations and seminars on social measures and good practice concerning violence within the family as well as sexual violence in the years before, but the Council of Europe, an inter-governmental organisation established in 1949 to promote democracy, human rights and the rule of law in post WW II Europe, was now placing violence exercised against women because they are women, or disproportionately affecting women, at the core of the com-

mitment of member states to its central goals. Member states have been asked to report on the relevant legislation, to implement “recommendations on the protection of women against violence” (2002), to participate in a “campaign to combat violence against women, including domestic violence”, and to negotiate and agree on a Convention that – since 2011 – is legally binding on each state after ratification.

The impact of translating a social issue into a human rights obligation of states can be seen by tracing how laws and policies have evolved since the development of recommendations began in 1998. At that time, only a few member states had legal frameworks addressing domestic violence against women. Today, all but three³ of the 47 member states in the Council of Europe have passed laws dealing with domestic violence, and many have passed two or more laws or amended and updated their laws during this 20-year period⁴. Their policy responses have been monitored and the data analysed (published in 5 analytical reports from 2006, see Hagemann-White 2014), and the Convention itself established an in-depth monitoring mechanism that proceeds country-by-country.

While legal systems and concepts vary, making direct comparison difficult, it can be said that slightly less than half of these laws have “violence in the family” as their primary focus or legal concept, while the remainder either use the term “domestic violence” with an implicit or explicit focus on women as victims, or frame their law and policy on intimate partner violence, on all forms of violence against women, or on gender-based violence. Use of concepts such as “violence in family relations”, domestic violence against a family member, or family violence sometimes but not always includes transgenerational violence. Generally, the framing calls for a definition of who can be considered family in the meaning of the law, while domestic violence provisions tend to focus on aggression by an intimate partner, giving less attention to the complexities of child abuse and neglect.

Interestingly, the “family violence” legal frameworks are predominant in countries that acceded to the EU after 2004 or are not in the EU⁵, while the laws explicitly referencing gender-based violence, violence against women or intimate partner violence are almost all to be found in Western Europe. Domestic violence is a framing that can go either way. There is also a range of approaches as to using criminal law, civil law, administrative law or an interdisciplinary legal mix to address the problem. Somewhat over half of the 44 states with such laws have anchored a provision criminalising domestic violence as a specific offence in their penal codes. Since acts of violence can also fall under other provisions, about half of the legal frameworks also define the domestic or close relationship context as an aggravating circumstance; some have only declared it an aggravating circumstance. However, many of the laws related to domestic violence only provide for civil or administrative measures: expulsion and restraining orders, protection measures, provision of support and services to victims, and obligations of various professionals and officials. It seems that in legal systems that adopt a gender-based understanding of domestic violence, mainly the Western European countries, there is often a reluctance to anchor this in criminal law, with the possible implication that criminal sanctions might differ according to gender (a consequence that was, indeed, drawn in Spain).

³ Exceptions are Armenia, Estonia and the Russian Federation.

⁴ Sources were national reports from our own research in 2010 and 2011 (European Commission 2011; Kelly et al. 2011), updated in June 2018 with databases <http://evaw-global-database.unwomen.org> and www.stopvaw.org/Stop_Violence_Against_Women (both 31 May 2019), as well as the first monitoring reports to the Istanbul Convention and direct online searches for missing information. For the emerging patterns in this section we do not give exact numbers due to a small but varying number of cases that could not be fully clarified.

⁵ With the exception of Belgium and Italy, the latter having an old criminal law provision on maltreatment of a family member.

The 2011 Council of Europe Convention “on preventing and combating violence against women and domestic violence” reflects the ambivalence between a focus on gender and a focus on protecting the family or household from violence. Prolonged controversy on which concept should be at the center of the projected Convention ended with a compromise: On the one hand, the Convention targets all forms of gender-based violence against women including girls; its scope explicitly names domestic violence, while specifically stating that it affects women disproportionately. On the other hand, the Convention recognises that men may also be victims of domestic violence, that children are also victims through witnessing violence in the family and are to be included in the protection of and services for their mothers. While a wide range of obligations concerning violence against women are spelled out in 81 articles, state parties are obliged to apply the convention to all forms of violence against women but, only “encouraged”, not obliged, to apply it to all victims of domestic violence in the broader understanding that includes transgenerational and other forms in addition to intimate partner violence (article 2).

These variations already suggest that traditions, culture and history in the diverse countries of Europe influence how the explicit Council of Europe consensus recognising gender-based violence as a fundamental violation of women’s human rights is implemented in practical policy and legislation. In this chapter, we look more closely at how this diversity plays out.

4 How patterns and procedures of intervention differ

In much of Western Europe, for example in the UK and Germany, placing violence against women as an issue in the public eye began in the mid-1970s with feminist advocates organising practical support “by women for women”. Shelters, where women could find safety and be heard, were a crucial means of claiming the obligation of the welfare state to direct resources towards autonomy and empowerment of women. As women began speaking out about being refused help or redress by police, social welfare agencies and courts, an issue of equal importance emerged: ending the impunity routinely and even legally accorded men who had terrorised, beaten or raped women on the grounds that it was their right within the family or as the husband. With the establishment of women’s formal democratic rights in public life, the violence that took place unchecked in the private sphere became symbolic of women’s continued oppression. With the collapse of state socialism after 1989, the issue of domestic violence came to the fore in Central and Eastern Europe, and shelters and services were created there as well, albeit much less widely spread.

Within the (differing) contexts of Western European welfare states, activists working to end violence against women very soon undertook to educate and change the understanding of and responses to domestic violence within state institutions. In doing so, they both challenged and worked from the institutional and normative arrangements that constituted, in their country, the practices by which the state took responsibility for welfare more generally, and for families in particular.

Germany and United Kingdom

Germany shows the greatest continuity both in the framing of domestic violence and in the central role of non-governmental organisations, and also in the orientation to empowerment; confidentiality and respect for women’s decisions are paramount. In principle, the woman decides if and when she goes to a shelter – there is no referral or formal proof of

entitlement required, although many shelters try to meet with her in advance to assess her needs. Women and children are expected to manage their lives in a shelter. The reluctance of NGOs to cooperate with statutory agencies in the early years has today given way to local and regional cooperation bodies (round tables); sparked by a federally funded model project in Berlin, this approach was widely implemented but shaped in each case by local preferences and experiences (Hagemann-White 2017). Including services for children in women's shelters developed significantly (Helfferich et al. 2012). The links to child and youth welfare services are, more or less, established locally and developed at round tables which, conceptually, are not intended to discuss specific cases.

In England and Wales, Women's Aid maintains the principle of helping any woman who feels threatened or in need of a shelter to find a place on the same day, but entitlement to housing benefits plays an important part in how long she can stay. In 2003, Multi-Agency Risk Assessment Conferences (MARACs), first developed in South Wales, became part of the policy agenda, from 2006 on as part of the Co-ordinated Community Response (CCR) to domestic violence. With this approach, risk assessment was established as the key to allocation of resources by defining the degree of danger of lethal violence as the measure of entitlement to services. Along with the development and institutional anchoring of these procedures, rules for information sharing between agencies and professionals were established, and NGOs are expected to proceed according to regulations and guidelines formulated in national policy, although not all agree to participate. A prolonged austerity regime has been substantially reducing the funding available for specialised services of all kinds (Towers & Walby 2012). Doubts are raised that the dominance of a risk-adverse system with a defensive, blaming culture has altered (Parton 2017; Meysen & Kelly 2017).

Portugal

In Portugal, a cautious approach to police intervention was linked with the issue of *flagrant delictum*⁶, which as late as 2007 was introduced for all crimes, making domestic violence intervention difficult. This wavering approach to framing institutional response can be understood as part of the process of overcoming the experience of a dictatorship, which had reinforced ideologically and legally a traditional model of the family explicitly framed as a tenet of Catholic faith, granting husbands and father legal power over women and children within the family. This may explain in part the extremely slow progress of rights for women suffering violence. While the 2009 law lifted the restrictions to intervention, established the status of a victim, and guaranteed specific rights, including shelter services, housing, mobility in the workplace, legal aid, children facilities, psychological support and free access to the public health system, stereotypes blaming the woman have persisted, and breaking out of a marriage carries the stigma of women's sin. Portugal thus has quite a weak NGO sector in the area of violence intervention, due in part to a fragile women's movement (Magalhães et al. 2012; see also chapter 6). Domestic violence, until 2007 named "marital abuse", is defined in criminal law as violence against a partner or ex-partner or abuse of a vulnerable person, and is now considered a crime against the state, as is child abuse.⁷ Professionals have a legal duty to report to the police, who attest the "status of a victim".

⁶ Requiring that the police must witness the crime being committed, rarely the case with domestic violence.

⁷ Article 152 CC also states the penalty for committing domestic violence against a minor or in the presence of a minor in the residence of the victim. Child abuse was dealt with in the 1999 Child Protection Law, but the reform of the Criminal Code in 2007 also penalised corporal punishment as domestic violence.

Slovenia

Slovenia presents a picture of strong women's advocacy with a lesser role in provision of services. The association SOS Help Line (Društvo SOS telefon), one of the most well-known NGOs in this field, was established in 1989, and it cooperated with other help lines across former Yugoslavia; after independence other organisations followed. While this is comparable to a degree to the feminist initiatives in Western Europe two decades earlier, the feminists in the Central and Eastern European countries, while struggling to have domestic violence recognised as gender-based within the structural oppression of women, also had to "fight the fear of a return to excessive state regulations and interference in private lives and the new conservative ideology" (Gaber et al. 2009, p. 21). This resulted in prolonged and difficult negotiation of how violence against women could be named, and in the end "in the 2004 accession countries the majority of organisations in the field have gender-neutral names" (ibid). In this process of making gender-based domestic violence visible and naming it for policy, the efforts in the accession countries to prove themselves "good Europeans" (Krizan & Popa 2014) was a powerful motive that lost its purchase to some extent a decade later, so that even naming the violence as a gender issue has been challenged.

Unlike early feminist activists in England and Wales and Germany, however, in Slovenia organising support for women by women was accompanied almost immediately by a strong demand for the state to legislate against domestic violence against women and take responsibility for provision of specific services and shelters. Penalisation moved more quickly than provision of services. Slovenian criminal law has never had a provision that the relationship between perpetrator and victim could excuse violence, an amendment to the criminal code in 1999 doubled the penalty for minor forms of domestic violence from one to two years, and this was raised to 5 years in 2008, reflecting a policy conviction that heavy penalties are an effective deterrent (Filipčič 2009). Protection orders (called restraining orders) were first introduced by the 2003 Police Act, and protection orders available to the victim in civil court were added in 2008. The 2008 Family Violence Act set forth the first legal definition of domestic violence, comprising violence against any family member, but also explicitly stating that a child is also a victim when it lives in a family where there is violence against other family members. The act does not foresee specialised support services, but places responsibility with the existing centres of social work, including guidance and standards for services, and obligates all relevant statutory and voluntary agencies to cooperate; it also established mandatory reporting to social services or to the police by professionals in health and education. Thus, the role of voluntary organisations in the field of violence against women in Slovenia is predominantly that of considerable and sustained activity in awareness raising, while their part in provision of support services is limited.

5 Cultural differences in approaches to intervention

5.1 Approaches to violence

One main dimension that seems to characterise overall intervention cultures is the hope or expectation that penalisation of violent acts within the family or in close relationships, or arising from the use of gender-based power differentials, will act as a deterrent both generally and specifically. This belief in the potential of punishing wrongdoers to reduce violence is linked with strong feelings about bringing perpetrators to justice, and seldom

rests on a solid empirical basis. It is also by no means the only approach to overcoming gender-based violence and violence in close personal relationships. In the various countries of Europe, phases of primary belief in the power of criminal prosecution have alternated with beliefs in the relatively greater potential of social and pedagogical intervention to change behaviour that harms self and others in the sphere of personal life.

Well into the 20th century and to some extent even today, recourse to the law for abusive treatment was explicitly limited in cases of harmful or wrongful acts within the family. Explicit exemptions permitting husbands or parents to use force have been being lifted bit by bit, but the attitudes they shaped have not disappeared. In addition, family and other intimate relationships are rooted in emotional and material bonds and values that often stand in the way of recourse to the legal system, especially since penalties for wrongdoing may lay burdens on the victims as well. In all four countries, professionals described considerable obstacles to imposing sanctions on perpetrators of domestic violence. The goal of legal changes is symbolic (as declaring fundamental rights to be the same for all) as much as practical, so that some variation can be observed in the importance attached to actual criminal sanctions.

Among our four countries, Slovenia represents the strongest orientation to punishing wrongs done in the past, both to women and to children; and this orientation is to be found in the field of violence against women (but not for child abuse) in England and Wales as well. Germany is at the other end of the spectrum, having moved away from the preference for punitive and repressive responses, so much so, that feminist activism challenging gender-based violence has never demanded that it should be a specific criminal offence. While Portugal has legally framed domestic violence as a crime and instituted mandatory reporting both with regard to children and to women, professionals share much of the skepticism that prevails in Germany as to the usefulness of pursuing sanctions when the victim is unwilling. This could be attributed to the gradual social process of changing the repressive image and the masculinist internal culture of a police force after the ending of a dictatorship, and depends as well on the struggle within society to overcome authoritarian habits of thinking and reacting. In Western Germany it was not until the 1990s (four decades after the end of the Nazi regime) that police became valued partners in community intervention projects looking for better ways to respond to violence against women.

5.2 Complexity of intervention in the private sphere

A major achievement of fundamental rights is providing citizens with freedom from state interventions into the private sphere. The dependency of children already suggests a triangulation between children, parents, and a state responsibility to watch over the up-bringing of children. In the field of domestic violence the notion that it is not only a private matter wherever violence occurs, especially or even if in intimate partner relationships, is increasingly recognised and a legal consensus. Balancing the freedom from state surveillance and intervention in the private sphere of family life and the need to help and protect in case of violence faces complex challenges. When entering the life of families, professionals representing the state or service providers always know only parts of what is going on. They collect information. By doing so they learn more about the persons involved than is needed to assess the situation, and they have to select what is relevant to the need for protection and help (Ackermann 2017). Uncertainties about what happened in the past remain inherent in this process. The goal of preventing further violence adds to the complexity with a set of prognostic tasks and its ambiguities, especially in the context of child protection (Bode & Turba 2014). Therefore, to enter the arena of domestic violence and the private sphere of families is to encounter complex intersections of power relations with

respect to gender, generation, race/ethnicity, nationality and faith: a matrix of rights and responsibilities which professionals have to navigate (Kelly & Meysen 2016). “Information sharing” among the different agencies and professions that may have contact with the family seems to reduce the emotional burden of uncertainty, regardless of whether or not it actually contributes to better intervention (see also chapter 9).

In most countries, in the 1960s women who disclosed abuse were pressured to make every effort to preserve the family; abuse of children tended to be denied, but if recognised the tendency was punitive towards the parent/mother and removal of the child from an abusive family. Today, in a number of EU countries, women who disclose domestic violence are strongly advised to leave the abusive man, especially if there are children, while indications of child endangerment are met in many countries by a preference for working with the family to enable them to practice non-violent childrearing. This creates not only some tensions within intervention approaches, but can also pose a dilemma when professionals have to decide whether there is a situation of violence that calls for or justifies intervention at all, and in particular for actions against the wishes of the victims or their families.

In the multi-professional group discussions of possibilities and difficulties of intervention in the CEINAV project, initiated with the same phased stories for each form of violence used in all four countries, some very basic challenges and dilemmas were articulated both in the fields of domestic violence and child physical abuse and neglect. The consequences that they drew from their perception of difficult situations differed, though, both by professional background and by the country frameworks within which they dealt with the problems. Confronted with a situation in which the presence and nature of violence was unclear, professionals in Germany and Portugal, despite their differing legal frameworks, shared an aversion to intervening in the family without gathering further information and if possible building a relationship of trust. This is a dilemma in Portugal not only because of the legal duty to report, but also because no civil protection orders are available to women seeking safety from violence. The difficult balance between indications of possible domestic violence and acting with caution (“moving in slippers” in the Portuguese phrase) has been made easier for the police in Germany after adopting the Austrian model of an emergency barring order, obliging the “person posing a danger” to leave the household and not return or make contact for a set period of time (usually 10 days to two weeks); the victim of violence is put in touch with a specialised support service and can request an extended civil protection order to ensure that the abuser will not return. With this model, the police can act to avert a possible danger and leave it to the support services to assess the situation.

In England and Wales, there was less concern with non-interference in family life, but the pathway for intervention in cases of domestic violence against women is pre-structured by the obligation to carry out a risk assessment. In Slovenia, any suspicion of violence in the family calls for reporting at least to the Center for Social Work, and if the suspicion is confirmed, to the police, and intervening in the family was not seen as a problem in situations of domestic violence. In all four countries, however, the presence of children in a situation of domestic violence against a woman triggers reporting or, in Germany, at least a team reflection on reporting to the child welfare authorities, but in Slovenia and in England and Wales it seems more likely to lead to measures without consent of the parents ranging from supervision measures to the removal of children.

Over the past two decades, there has been a shift from formulating rights as principles to specifying the obligations of states, and increasingly, towards setting standards for good practice. During this process, (at least) two key dilemmas, both with a long history within social work, have become more and more salient.

1. The tension between cultivating and trusting the professional judgement of the intervention actors and laying down mandatory guidelines, checklists and procedures for responding to indications of violence, which may also narrow the space for self-determination and choices of the persons whose lives are involved; and
2. The tension between help/support and social control, in this case, between empowerment and respect for the needs, wishes and choices of the woman or the child (and the parent) and intervention without consent or against the expressed wishes of a victim facing violence.

In our comparative research, it could be seen that across Europe, the agencies and professionals that respond to domestic violence or to child abuse and neglect have been moving (or being pushed) towards more standard procedures which leave little or no room for the woman or the child to participate in decisions, much less consent to or reject proposed measures “for their own good”. Facilitating cooperation between professionals and institutions by sharing information among agencies has been framed as always “in the interest of women” or “preventing harm to children”; this can result in dispensing with transparency and consent in the name of safety. The feminist impetus to empower women has thus been gradually overlaid by a paternalist desire to end the violence, generating a tendency to guide or pressure women to make what professionals see as the “*right choices*” (see chapter 11). Rebuilding social connections and a life beyond violence takes more than ending the violent relationship, though, and when there are children or other social or emotional bonds, relationships and attachment persist apart from ongoing or suspended contact. They call for attention to and respect for needs and choices alongside protective measures for children and their mothers during continuing support.

While there is a long tradition of regarding children as lacking the competence to decide what is in their own best interests, and the widespread failure to implement the CRC provision that a child must be heard in all decisions that concern her or his life could be seen as a “cultural lag”, paternalistic intervention with women victims of domestic violence actually falls behind a stage of understanding and respect that is generally thought to have been established. Several discursive developments seem to contribute to this. Violence has time and again been internationally framed as an “epidemic” in policy or even research, and by this token it is not only framed as a disease, but also one which is down-right transmitted to or harms the next generation, instead of being understood as a potential risk in the sense of a burden that is not always easy to shake off (Kavemann 2018; Kindler 2018). This positions the state as under an obligation to protect the family regardless of what individuals may want or need, since stopping domestic violence becomes a public health issue. While actually prosecuting women for exposing children to the domestic violence of their abusers is an extreme that may only be typical of some parts of the US, the epidemic metaphor does seem to result in bracketing women victims of violence with children as being similarly unable to recognise what is good for them. Autonomy and participation, and thereby questions of consent and empowerment, may thus become irrelevant.

5.3 Perception of victims and of perpetrators and their choices, rights, and self-determination

During the 1980s, international organisations moved towards codifying both the rights of the child and the rights of women to protection from violence, and calling on states to exercise due diligence in securing these rights (see above 3). States now have a duty to prevent and protect both children and women from harmful treatment within the family. The rationale behind this duty is the recognition of a power differential that can be abused. At the

same time, children have a fundamental right to grow up in a family environment where they will be safe from harm, and women have the right to make autonomous decisions about their own lives and relationships. This inherent tension among fundamental rights has become more acute with a growing body of knowledge about the harm that children may suffer from witnessing violence.

Rising awareness of the impact of witnessing violence on children needs to be connected with the growing body of research on resiliency, offering evidence that difficult and painful childhood experiences may also be overcome or integrated into personality development, especially when children have a trusted adult who believes them, or experience their own agency in non-violent responses to aggression. There is substantial research evidence that most women subjected to domestic violence make great efforts to protect the children from exposure to the violence, and that, too, can be a significant factor in how children understand and come to terms with distressful experiences. But the harms of violence at the same time can have effects on the capacity for parenting. Hence, a focus on the role as mother in relation to intimate partner violence partly provides for access to help and protection and partly needs to be reflected to not reformulate intimate partner violence as child protection matter (Hester 2011). When intervention narrows the field of vision and sees the woman only as a mother responsible for the child's best interests, the intervention itself can become a form of coercive control, blocking out her own right to protection and self-determination. Among policy-makers and practitioners (in Europe) however, such tendencies to reshape domestic violence as a child protection issue in cases where children are involved can coexist with strong feminist convictions that gender-based violence can only be overcome by empowerment, supporting and restoring women's agency (see chapter 11). Approaches that include both the perspectives and cultures seem not to be coherently achieved.

In the countries we have studied, there are chronic conflicts of both aims and means between the intervention systems intended to ensure protection from domestic violence, providing services and support that should empower women, and the intervention systems designed to protect children from harm and to secure their right to grow up in a context that enables them to flourish. These institutional frameworks of intervention are systemically embedded in the transgenerational family context. Therefore, persisting tensions and varying triggers for them to resurface could be found in all countries studied. There have been long periods when the two systems did not share a common discourse or agreement on rules and procedures for handling cases in which both issues were at stake. This has meant, at times, that either for women or for children the danger of serious harm and the right to liberty and self-determination were simply not fully taken into account. Today, the interface between harm to women and harm to children can no longer be ignored, but the question is rather: What happens when the rules intended to provide safety and well-being for the one, contravene what is necessary to the safety and well-being of the other? Are the two systems able to communicate and seek a solution cooperatively, or are they seemingly united under a bureaucratic "roof" called "protecting the family"? The former may lead to compromises that can be ineffective or less than honest, the latter may prolong the pattern of coercion and subjection into the relationship of the victims of violence to the intervention professionals.

Although these tensions may not be explicitly addressed they still exist and even when they are latent they have effects. Policies can proclaim a norm of non-violence within the family (demonstrably the site where both women and children suffer the most violence) without addressing issues of (abuse of) power or hierarchy. We propose that a failure to bridge the gap between the discourse on violence against women and that on child protection has created space for intellectual confusion.

6 Reflections and Conclusions

From the 1970s, the feminist movement framed men's violence against women in general and domestic violence and rape in particular as patriarchal crimes, the family as the enabling location. The child protection movement from the 1970s onward questioned the repressive tradition of blaming incompetent parenting and foregrounding removal of the child; the new paradigm called for working constructively with the family to overcome elements of violence in their childrearing whenever possible. It is thus hardly surprising that dialogue between the two movements and their organisations was difficult for many years; we have found this to be true in a number of European countries despite considerable differences in their social care systems.

It is often suggested that there has been a substitution of "family violence" for "gender-based violence", and that this development "degenders" forms of violence that in reality are deeply gendered. In the overview of legal frameworks above we have seen that framing the issue as "family violence" has often been the choice of policy-makers in countries where non-governmental activism with experience in practical intervention was relatively weak or recent, and may thus be seen as opening the door to making privately exercised violence a public concern. The framing offers a compromise between the international demand on states to combat violence against women and conservative values centering on the family. More recently, however, policy framing is increasingly allied with fears that explicit emphasis on gender could endanger these values, and the concept of gender is itself under attack. Thus, a framing that often helped to enable practical cooperation between older and newer ways of thinking about a problem is now beginning to be a vehicle for denial of the very problem of gender-based violence that laws and policies were intended to address.

To some extent, the concept of domestic violence was a similar compromise between campaigns against the abuse of women by intimate partners and a broader understanding of violence against women in its multiple forms as well as holistic approach including child abuse and neglect within the family /household. A number of laws and policies speaking to "domestic violence" explicitly limit their scope to persons living in the same household, or alternatively, persons related by kinship, blood or marriage, thus leaving out all relationships of intimacy that are not formalised. Meanwhile, however, in most European countries, partners or ex-partners are included in the concept of "domestic violence". But this does not resolve the issue entirely. When laws define the relationship within which violence should not occur or is particularly reprehensible, these definitions almost always exclude some women facing gender-based violence. Thus, the Spanish law refers to a "relationship analogous to marriage", but if the relationship qualifies the violence as wrong or harmful, not only does this authorise the state to define what constitutes a legitimate and protected relationship, it also can imply that the same acts causing pain and distress, harm and threat are less wrong if done to a woman who is not in a recognised relationship. In addition to the pitfalls involved in defining the context, the attempts to encompass child abuse and neglect and all other family relationships along with gender-based violence in a single framework would seem to exacerbate the tensions between the tasks of intervention systems rather than resolving them.

While the concept of gender-based violence avoids the dilemmas of defining "relationship", it has proven quite difficult to establish a legal concept for redress or sanctions specifically focused on the gender of the wrongdoer or of the person suffering harm. Workable solutions seem to need loose and flexible understandings of the violence related to being or having been an intimate partner, as well as being sensitive to forms of abuse and/or coercive control that may not fall under the concept "partner" at all. It is a double task

and challenge: policies need to deliver measures that reduce the gender-based as well as the generational power differential while responding to abuse of that power.

This suggests that none of the prevailing conceptual categories integrates an adequate understanding of the impact of domestic violence on children, and that the recurring difficulties in reconciling the human rights of women and those of children are one key to persisting ambiguity in naming and framing issues.

Our cooperation across countries and across disciplines has convinced us that this dialogue is not only possible but very productive. For the issues discussed here, there is an urgent need to reflect on and redefine concepts such as autonomy and empowerment, taking into account that the limits to the capacity to make autonomous decisions are constituted differently for women entrapped in domestic violence and for children according to their development. This is a discussion that calls for deeper reflection in ethical theory.

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