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Children in Legal Research

Eva-Maria Svensson

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# **International Family Law, Policy and Practice**

## **Child Law in an International Context**

**A Commemorative Collection of Articles Based on Themes from  
the University of Tromsø's International Conference  
21-25 January 2013**



**Volume 1, Number 1 • Winter 2013**

# **International Family Law, Policy and Practice Volume 1, Number 1 • Winter 2013**

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## Editor's Message

Welcome to this first issue of our new journal *International Family Law, Policy and Practice*, which begins in truly international fashion with a commemorative collection of articles based on themes from the International Child Law Conference at the University of Tromsø, Norway, in January 2013.

Editing this collection has been of the greatest interest to me because of the distinct flavour of the Northern European approach to Family Law which is not as often encountered in academic or practitioner literature as those of either our common law colleagues in America, Australia, New Zealand and other English speaking jurisdictions, or of our more southerly European colleagues in the enlarged EU.

However not all writers in this issue are Scandinavian, and our comparative approach to specialist Family Law in the complementary fields of academics' and practitioners' perspectives has been maintained by contributions from England, Wales, Ireland and New Zealand as well as from Norway, Sweden and Finland. Nevertheless the opportunity to obtain a corpus of uniquely Scandinavian perspectives on Family and Child Law has been enlightening, in particular when we consider the Scandinavian approach to research which is spelt out in the initial Research section.

But it must also be remembered that this collection was not of my own selection but that of Professor Trude Haugli, the Convenor of the Conference, for whose inspiration in the concept and realisation of the conference, and for asking us to prepare a commemorative volume of the resulting articles, we are grateful. For this reason it is her Message which draws out the essence of the themes which this issue covers, and which have given us the opportunity to discover some uniquely Scandinavian points of view.

Our next issue, our first of 2014, will be the first of a global approach to two of the key topical concepts of 2013, that of equality and gender, particularly apt following the enactment of the equality statute, the Marriage (Same-Sex Couples) Act 2013, and the consideration of the other major piece of legislation of the year, the Children and Families Bill, which continues the same theme in encouraging the concept of genuinely shared parental responsibility for children regardless of the gender of the child's parents.

Meanwhile, I can do no better than to hand over introduction of this issue to Professor Haugli.

*Frances Burton*

Frances Burton, Editor

December 2013

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# Children in Legal Research

## Eva-Maria Svensson\*

### 1. Introduction

In this article I will reflect on three contemporary discourses prevalent in the Nordic context with importance for the question of defining and understanding children in legal research. The first is the discourse on children's rights based on *children as competent agents* and the second is the discourse on *individual freedom of choice*. The third discourse is about the role of the state and its relation to individuals in society. The three discourses are strengthened and consolidated over time in the Nordic context and have had impacts on contemporary family policy. My explicit example will be the Swedish context.

My argument is that the three discourses taken together go hand in hand with and, what is more, facilitates a process *which increases the differences in economic situation and well-being between children*. Save the Children and other organisations have highlighted and criticised the negative development in Sweden. With help from a theoretical framework borrowed from feminist legal studies and relational theory I will highlight the problems explicitly notable in the Swedish economic family policy. Moreover, I will try to point out an alternative way to avoid the negative consequences with focusing *individuality in a neo-liberal frame*. With the help of feminist legal theory and relational theory I reflect on replacing the norm of the autonomous capable legal subject to a norm of a *relational legal subject*.<sup>1</sup>

### 2. The theoretical and methodological framework

The analytical tool is a theoretical and methodological framework in which three levels are seen as related to each other, the individual, the structural or societal and the epistemological / ontological. The understanding of the human being as primarily an autonomous individual on the epistemological and ontological level is consolidated in

law and in legal scholarship on the structural or societal level, and has effects for the self-understanding of the individual and his or her understanding of others on the individual level. Joan Wallach Scott introduced this methodological framework in 1986<sup>2</sup> for tracing, describing and understanding gender formations and the processes which constitute and maintain them. The organizing principle of the formations of gender is based on sex differences and it is used to mark relations of power. Yvonne Hirdman has developed the framework in a Swedish context. She has identified two organizing principles for the gender system, the segregation between the sexes and the male norm.<sup>3</sup> The methodological framework can be transferred to the relation between adults and children, with adults as superior and children as the subordinated. Children are in a greater extent subordinated adults than women are to men, but the principles are similar. Children are segregated from adults in legislation, even formally, and the norm for regulation is the adult. The theoretical and methodological framework with the three levels and the organizing principles are useful also when thinking of how "children" is defined and understood in law and legal scholarship.

The theoretical perspective which I use, borrowed from feminist legal studies<sup>4</sup>, has some basic presumptions.

1. Knowledge is perceived as something social and contextual, which means that the abstract rationalism and objectivism in the mainstream Nordic perspective in legal scholarship, legal dogmatics, is questioned.
2. Law is seen in and out of its context. For instance (state) *policies* are considered as much important to study for a legal scholar, as the law is.
3. The legal subject is perceived as concrete and not abstract and has characteristics like sex,

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<sup>1</sup> Svensson, Eva-Maria (1997). *Genus och rätt. En problematisering av föreställningen om rätten*. Uppsala: Iustus förlag, p. 106. Nedelsky, Jennifer (2011). *Law's relations: A Relational Theory of Self, Autonomy, and Law*. Oxford University Press, p. 86.

<sup>2</sup> Scott, Joan Wallach (1986). Gender: A Useful Category of Historical Analysis. In: *The American Historical Review*, Vol. 91, No. 5 (Dec., 1986), pp. 1053-1075.

<sup>3</sup> For a presentation in English, see Hirdman, Yvonne (2002). State Policy and Gender Contracts. The Swedish Experience. In: *Women, Work and the Family in Europe*. Drew, Emerek & Mahon (eds.). Routledge.

<sup>4</sup> Gunnarsson, Åsa & Svensson, Eva-Maria (2009). *Genusrättsvetenskap*. Lund: Studentlitteratur.

gender, ethnicity, age and so on. The subject as an abstract and autonomous individual is criticised because the notion hides that it is actually permeated by some norm, the male norm or, as what is in focus here, the adult norm. The alternative is to think of the legal subject as something having different characteristics.

4. A concept which captures law's partiality and reproduction of power patterns is the 'male norm'. When we want to highlight the child perspective we can instead talk about the 'norm of the autonomous and competent subject'.

With help of this theoretical framework, I will reflect on the broader context of family policy. Family policy has, at least in the Swedish context, undergone ideological changes during recent years, ideological changes that are in accordance with a shift in legislation towards more emphasis on individual rights, on freedom of choice and on equality in possibilities rather than equality in results.<sup>5</sup>

### 3. What is a child – needing or competent?

Every known society has perceptions of children and what it means to be a child. Also, every grown up person has his or her own experiences of being a child. However, the perceptions and the experiences vary. "Childhood" is a social institution and this institution is not universal, in contrast to the factual period of biological immaturity.<sup>6</sup>

Through legal instruments such as the UN Convention on the Rights of the Child (UNCRC) and other international and national legislation, a boundary is construed between childhood and adulthood. The definition of a child is a person under the age of 18 years. This distinction has become almost universal, but what it means to be a person under 18 years old varies depending on where in the world and where in the social, cultural and religious context a person actually lives.

The distinction between the adult and the child is made out of a norm, the norm of the autonomous and competent subject, possible only for the adult to fit in to. The adult person is a person with full capacity and a bearer of rights, protected in legislation. The child is not fully a person of that kind; it is understood as a restricted subject, as someone lacking something.<sup>7</sup>

This means two things. First, the child cannot fully claim his or her rights because the western world's notion of what rights are and who can be the competent subject of a right is based on the *theory of the free will*. The child cannot fully exercise its rights, IF ownership of rights presupposes a competent subject with a free will. With the *theory of interests* the problem can be solved, however as an exception, children's rights have to be provided by someone else.

Secondly, the child *needs* protection because it cannot protect itself, at least not fully. The legal responsibility is shared between the parents and the society, with a subsidiary role for the society.

This perspective is called the *need-oriented* perspective and it is more present in law and in Nordic legal scholarship on children, than the contradictory competence-oriented perspective, according to Anna Hollander and to Anna Singer.<sup>8</sup>

Both perspectives are prevalent in the UNCRC, and the balance between children's needs and their capability are to be considered and captured in the concept of the best interest of the child. The child is understood as a lacking subject which increasingly conquers capacity and finally ends up as an autonomous subject, with an individual free will.

My impression is, that the competence-oriented perspective seems to be more prevalent in public rhetoric and in other scholarship than legal, but that it is gaining space also in legal scholarship. The child's ability to have a free will, or free opinion, is more focused today than earlier. The need-oriented perspective, framed as a 'paternalistic view on children', is understood as contradictory towards a view on children as competent (*the competent child*) and as agents with power.<sup>9</sup> The need for the theory on rights based

<sup>5</sup> See e.g. Trägårdh, Lars (ed.) (2007). *State and Civil Society in Northern Europe. The Swedish Model Reconsidered*. Berghahn Books.

<sup>6</sup> Schiratzki, Johanna (2005). *Barnets bästa i ett mångkulturellt Sverige: en rättsvetenskaplig undersökning*. Uppsala: Iustus förlag, p. 35; Norman, Karin (1996). *Kulturella föreställningar om barn, Ett socialantropologiskt perspektiv*. Rädda Barnen, p. 24.

<sup>7</sup> See Eva Nilsson (2007). *Barn i rättens gränsland*. Uppsala: Iustus förlag, p. 22 with references to Bridgeman and Monk, 2000, 5.

<sup>8</sup> See Eva Nilsson (2007). *Barn i rättens gränsland*. Uppsala: Iustus förlag, p. 22 with references to Hollander 1998, 194 and *Barn i kläm – hur uppmärksammas barn i mål om verkställighet av umgänge*, Stiftelsen Allmänna Barnhuset, skriftserier 2007:1 with references to Singer 2001 (2000?).

<sup>9</sup> Olsen, Lena (ed.) (2004). *Barns makt. Barn som aktörer*. Uppsala: Iustus förlag.

on interest instead of *free will*<sup>10</sup>, as a means for recognizing children's (full) capacity as legal subjects, is perhaps not as important as earlier.<sup>11</sup>

Promotion of children's rights is a hallmark in contemporary modern democratic states. Children's rights are increasingly focused in the Nordic context as well as in a European and international context. Ratified in 1989 in Sweden it took some years before the Convention became well known. Even if the principle of the best interest of the child has been a recognized principle since the beginning of the 20th century, the UNCRC became used as a legal source for arguments quite late. UNCRC has perhaps been more of a pedagogical and political than legal tool. The principle the best interest of the child has gradually been consolidated in different acts. The same situation is visible also in Norway, the references to UNCRC in a legal context have increased gradually since 1995.<sup>12</sup>

The UNCRC is ratified by most states in the world. The obligations for States Parties are far-reaching; the rights set forth in the convention shall be respected and ensured to each child without discrimination of any kind. States Parties shall also take all appropriate measures to ensure that the child is protected against all forms of discrimination. The best interests of the child shall be a primary consideration in all actions concerning children undertaken by public or private institutions, and each child shall be ensured such protection as is necessary for his or her well-being.

The Council of Europe has recently adopted a Strategy for the Rights of the Child 2012-2015. The objective for the programme is to promote children's rights and to protect children from violence.<sup>13</sup>

#### 4. Law in context

Of course the promotion of children's rights must be understood as something positive for children. However it must at the same time be reflected in a broader context. It is not self-evident that the

promotion of children's rights in any form or framing in practice will promote the situation of children. The goal should not be mixed up with the means. The promotion of children's rights in the contemporary Nordic context, most obvious in Sweden, is framed within an ideological context in which rights are understood as individual rights, freedom of choice overshadows different social and economic living conditions and the role of the state has changed from one of an ally to one of an antagonist.

The discourse on rights can in this broader context be problematic because the ideology presupposes strong individuals able to act for themselves. Children are not always able to do so, but often in the hands of the parents. The discourse on rights is anchored in a liberal tradition which emphasises the autonomous individual and the principle of state non-interference. Individuals are seen as subjects who should be protected against state intervention. The liberal tradition focuses on the individual level and perceives inequalities as results of people's choices. The tradition is contradictory to the tradition of the Nordic welfare state model which during many years has focused on structural inequalities, sometimes called communal.<sup>14</sup>

In the international context of human rights a notion of individual autonomy and freedom of choice has been constructed as a way to obtain equal opportunities. Even though the Nordic welfare state also recognises individual autonomy as important for achieving equal opportunities, the Nordic tradition of egalitarian social citizenship has focused more on social institutions and structures than on individual rights. The Nordic welfare state model has for a long time demanded equality of *outcome* or *real* opportunities rather than equality of formal opportunities.

However, it is also true that the Convention on Rights for Children promotes some substantive equality, (as CEDAW does for women) which opens the way for proactive positive measures, sanctions and for monitoring.<sup>15</sup>

<sup>10</sup> See e.g. Eva Nilsson (2007). *Barn i rättens gränsland*. Uppsala: Iustus förlag.

<sup>11</sup> See for a discussion e.g. Sandberg, Kirsten (2008). Barns rett til omsorg. In: *Socialretlige udviklinger og utfordringer*. Jørgensen, Stine & Kristiansen, Jens (eds.). København.

<sup>12</sup> The information about the increasing references to UNCRC comes from the presentations of Johanna Schiratzki and Karl Harald Søvig at the conference in Tromsø 21-25 of January 2013.<sup>13</sup>

<sup>13</sup> <http://www.coe.int/t/dg3/children/>

<sup>14</sup> Pylkkänen, Anu (2009). *Trapped in Equality. Women as Legal Persons in the Modernisation of Finnish Law*. Suomalaisen Kirjallisuuden Seura/Finnish Literature Society. Helsinki. See also Svensson, Eva-Maria (2006). *Contemporary challenges in Nordic gender equality policy and law*, Equality and Diversity in Europe, International Interdisciplinary Conference, Helsinki 12 – 13 January 2006, <http://www.helsinki.fi/oik/tdk/rpol/naisoikeus/tulevat%20tapahtumat/Programme.htm>

<sup>15</sup> Pylkkänen, Anu (2009). *Trapped in Equality. Women as Legal Persons in the Modernisation of Finnish Law*. Suomalaisen Kirjallisuuden Seura/Finnish Literature Society. Helsinki, pp. 201-212.



Even if the tensions between the two ideologies, the liberal and the communal, are more obvious in the international and the EU law framework, designed for welfare economies influenced by neo-liberalism, changes on the Nordic arena are prevalent. The understanding of the state is also changing, from a notion of a *friendly* state to an *intervening* state. The close connection between the civil society and the state is in increasing degree replaced with a boundary between them.

And how is the situation for children in the Nordic countries today? Has the increased focus on the best interest of the child made the situation better?

Every five years Sweden has to report to the UN Monitoring Body The Committee on the Convention on the Rights of the Child. The fifth report was sent in August 2012. The Committee has not responded to that report yet.<sup>16</sup> However, in the comment to the fourth report (CRC/C/SWE/4) in June 2009 about the standard of living, the Committee “expresses its concern at the large disparities in the level of child poverty within and between municipalities, and urban boroughs. It also notes with concern the very high proportion of immigrant children living in households with a persistently low income and the continuing deterioration in the economic situation of children from non-Swedish backgrounds and children living in single-parent households” (CRC/C/SWE/CO/4, section 52).

According to the Child Development Index launched in 2008 by Save the Children<sup>17</sup> and the UNDP’s Human Development Index, Sweden, together with the other Nordic countries, occupy the position ‘very high’ in the index ranking. However, the organization Save the Children has criticised Sweden for its family policy during the last twelve years, and especially the economic family policy. The relative poverty (i.e. 60 % of median income in the country) has increased from the years 2003/2004 to 2009, from 10 to just over 15 percentages. The economic family policy has diminished its equalizing and its poverty reduction effect, according to Save the Children. The differences between the poorest and the richest children have increased, so have also the differences between children living in municipalities and districts respectively. What is more, the discrimination has increased especially for

three groups of children, children with foreign background, children in the suburbs of the big cities, and children with single parents. The latter is somewhat similar to views the Committee of CRC has expressed.

I think, one explanation is the ideological shift in family policy which tends towards increasing inequality among children in Sweden today. I will now turn to the family policy.

## 5. Family policy

In 2008, the main objective for the economic family policy in Sweden was replaced with a new one.<sup>18</sup> The former objective focused on reduction of differences in economic standard between households with and without children. And moreover, for a long period the general policy was to reduce inequality in society.

The new objective became “The economic family policy shall contribute to improved prerequisites for a good economic living standard for all families with children”. Instead of comparing and focussing on the relation between the two groups - households with children and households without children - as before, the focus from 2008 is the substantial economic situation for families with children. According to the policy, the most important income source is paid work, and unemployment is seen as the main reason for low income. Hence, differences in income between different groups seem not to be considered a problem.

What is more, a modern family policy, it is stated, must take as a starting-point that families are different, have different wishes and needs and have the same value. Therefore, it is said, it is important to have freedom of choice and flexibility. The family policy must be respectful in relation to each family’s choices and be *supportive*, not *governing*. This rejection or lack of governing ambitions must be seen in the perspective of the last statement, which is that the *result* of the policy is not important to manage even if it brings with it differences between different groups.

The objective for the economic family policy is based on a view that focuses on “the preconditions rather than the outcome, which means *an acceptance of different outcomes for different families. Different outcomes can be the result of different preconditions, but it can also be the result of varying priorities and choices made by the families with economic*

<sup>16</sup> The Committee will consider the report in their 68th session in the beginning of 2015. <http://www2.ohchr.org/english/bodies/crc/crcs68.htm>

<sup>17</sup> [http://www.savethechildren.org.uk/sites/default/files/docs/Child\\_Development\\_Index\\_2012\\_UK\\_low\\_res.pdf](http://www.savethechildren.org.uk/sites/default/files/docs/Child_Development_Index_2012_UK_low_res.pdf)

<sup>18</sup> Budgetpropositionen (Budget bill) Prop. 2011/12:1.

consequences” (p. 12, my translation). The former ambition, a hallmark for the Nordic welfare state, i.e. to strive for economic equality through a distribution policy, seems to be abolished.

This shift can be described as a paradigmatic shift in (Swedish) welfare state policy. The quotation shows that one of the main aspects of the welfare state in its Nordic shape, (namely *equality in result*, through redistribution, the tax system and a general public welfare sector) is thrown out and replaced by an ideology of equality in prerequisites (a formal equality), of freedom of choice and an acceptance of differences. But what is more, one other aspect of the Swedish (welfare) state, the ambition to ‘put-life-in-order’<sup>19</sup> through politics and legislation, is abandoned. Politics should not, according to this policy, interfere with people’s choices.

This is perhaps acceptable when it comes to individuals with full capacity to choose, but what about the consequences for children? What if parents ‘choose’ to be unemployed, to be low-paid, to be uneducated, to be uninterested in the school for their children and so on?<sup>20</sup> Different priorities and choices among parents with economic consequences must be accepted, according to the economic family policy. But could not this policy lead to discriminatory consequences for children, children who are not in the position to choose, but must accept the choices and priorities of their parents?

## 6. The ideological base

The ideological base for this Swedish contemporary economic family policy is in accordance with libertarian, neo-liberal or ultra-liberal philosophy. The quotation is almost exactly the same as a statement the American Republican Paul Ryan made when he presented the republican budget resolution *The Path to Prosperity: A Blueprint for American Renewal*.<sup>21</sup> Ryan is in his turn influenced by the American philosopher Ayn Rand.<sup>22</sup> Rand had an extreme preference for *laissez-faire* politics and a minimal state. Rights for Rand are basically rights

to action, not to things or outcomes, and can be violated only through the initiation of force or fraud. All natural rights are negative, that is, claim on others’ non-interference, and not claim on them to provide one with certain goods or outcomes.<sup>23</sup> This view on rights corresponds to the view expressed by Nozick and other libertarian philosophers. Rand is a popular inspiration for neoliberal politicians in Sweden today and the publishing house Timbro, a think-tank and an opinion-former in Sweden publish her. Timbro has a special webpage on Ayn Rand.

This shift in ideology for family policy, seen in combination with changes in society such as the ones I mentioned above, puts the focus on children as competent and individual agents in a paradoxical situation. How does this shift in direction relate to the increasing focus on children’s rights? How can it be explained? And how can the acceptance of the shift be understood as it so obvious opens for discriminatory practices and processes of not well being for children, well-being based on economic exposedness and increasing relative poverty.

*Save the Children* highlights the correlation between economic exposure and ill being in a report in 2004.<sup>24</sup> It is also shown that children in households exposed to economic vulnerability are also to a greater extent exposed to violence in the home, to harassment in school, and have a lower degree of access to sports and other activities outside school.<sup>25</sup>

## 7. Freedom of choice

The increasing focus on the promotion of children’s rights and children as individual agents goes well together with a general paradigmatic shift in policy and legislation from a structural way of dealing with problems to an individual way. Structural problems are transformed into *people’s choices, preferences and individual actions*. The presumption of the child as a competent and active autonomous individual, in a context of a general ideological change towards individualisation and acceptance of differences and the tribute to freedom of

<sup>19</sup> Hirdman, Yvonne (1989). *Att lägga livet till rätta; studier i svensk folkhemspolitik*. Stockholm: Carlsson.

<sup>20</sup> Cf. Schiratzki, Johanna (2012). *Barnets bästa, utsatthet och ekonomi*. In: *Alexius, Katarina & Ryberg-Welander, Lotti (eds.). Festskrift till Anna Hollander*. Stockholm: Norstedts Juridik.

<sup>21</sup> <http://budget.house.gov/fy2013prosperity/>

<sup>22</sup> Gary Weiss, “Is Paul Ryan for or against Ayn Rand?” CNN August 14, 2012

<sup>23</sup> Rand, Ayn (1964/1967). *Man’s rights*, in *The Virtue of Selfishness*. New York: New American Library; and in *Capitalism: The Unknown Ideal*. New York: New American Library.

<sup>24</sup> Rädde Barnen (2004). *Barns hälsa i Sverige*.

<sup>25</sup> Svensson, Birgitta, Långberg, Bodil & Janson, Staffan (2007). *Väld mot barn 2006-2007. En nationell kartläggning*. Stiftelsen Allmänna Barnhuset och Karlstads universitet, skriftserie 2007:4.

choice, have certain impacts on children.<sup>26</sup>

Differences between *children* are more accepted in the Swedish context than before. Some of the differences are aspects of discriminatory patterns with the result of a growing gap between children, so that some children come out of childhood well fitted to act as an autonomous individual, while some children come out of the childhood badly fitted to do the same. Is this an issue for legal scholars? Is it not a political question? Well, the decision of what ideological way the society should take is a political question. But, the consequences of certain changes for children are absolutely an issue for legal scholarship. So what are the alternatives?

## 8. Alternatives

An old African proverb is; *it takes a whole village to raise a child*. The positive connotation of this common responsibility for children in a society has become outdated. Today how to raise a child is more of a private matter. The parent's responsibility seems to have been strengthened, but so also is power over their children. The responsibility of the state is perceived as intervention in the private sphere and it seems to me that it is only in very severe cases that the interest of the parents are challenged. Children's rights are, at least when they are small, in the hands of the parents. When more and more choices are made private and free to choose, and when inequalities are perceived as results of people's choices, the situation for children is increasingly dependent of their parent's ability.

The notion of the 'state' has changed; the 'state' shall not interfere in the family. In the economic family policy it's said; the family policy shall be respectful in relation to each family's choices and be *supportive*, not *governing*.

The African proverb also says something else and that is that human beings are relational. The conceptualisations of the relation between individuals and between the individual and the collective are perhaps something essential that can be a watershed and

help us to combine the positive ambition with the promotion of children's rights with a shared *responsibility* for both parents and the rest of the society to secure *all* children's well-being, and not only formally but towards equal opportunities in reality.

The relational theory offers a different notion of the individual than an autonomous and independent subject law and legal scholarship are used to recognise. The individual is not competent *or* incompetent, not autonomous or dependent, not capable or dependent. The individual is both, and this applies to children as well as adult persons. The human being is relational, which means that the human being is driven by an antagonism, i.e. the striving for relations and the striving for individuality.<sup>27</sup>

"Relationship must therefore be central rather than peripheral to legal and political thought and to the workings of the institutions that structure relations", as Jennifer Nedelsky puts it.<sup>28</sup>

Relations have formative effects on an individual, structural and epistemological / ontological level. Individual relations, as the relation between the child and the parent, will shape and be shaped by wider patterns of relationship, such as for instance gender norms, class expectations and ethnicity patterns. These relationships are affected by structures of economic relations, cultural heritage, organisation of society and so on.

All these relational patterns on different levels cannot be met with individual choices, often taken by the parents and not the child. The child has not chosen an unemployed or poor father or mother, a violent father or mother, a mother or father that do not prioritise to pay someone to help the child with the homework, nor a mother or father that are religious fundamentalists. Moreover, the child has not chosen which kind of society to be born into. A relational perception of human beings puts pressure on all of us to secure individual autonomy within the relations all of us are dependent on, both within the family and in society as a whole.

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<sup>26</sup> One example of individualisation of problems earlier perceived as violence and harassments in school, is the topic presented in the article by Anne-Lie Väinik in this issue. The increasing numbers of reports to the police of violence performed by children during the years 2002-2009 is probable not due to more violence, but to the fact that violent incidents in greater extent are considered important to report to the police. The child was not held responsible for the violence in the same extent earlier. A perception of children as competent can also have the effect that they are held responsible for their actions in greater extent.

<sup>27</sup> Svensson, Eva-Maria (1997). *Genus och rätt. En problematisering av föreställningen om rätten*. Uppsala: Iustus förlag, p. 106.

<sup>28</sup> Nedelsky, Jennifer (2011). *Law's relations: A Relational Theory of Self, Autonomy, and Law*. Oxford University Press, p. 86. See also Minow, Martha (1991). *Making All the Difference: Inclusion, Exclusion, and American Law*. Cornell University Press.