

**This is an electronic reprint of the original article.
This reprint *may differ* from the original in pagination and typographic detail.**

Author(s): Hiitola, Johanna; Hautanen, Teija

Title: Assessing violence in the family : social work, courts, and discourses

Year: 2017

Version:

Please cite the original version:

Hiitola, J., & Hautanen, T. (2017). Assessing violence in the family : social work, courts, and discourses. *Nordic Social Work Research*, 7(1), 30-41.
<https://doi.org/10.1080/2156857X.2016.1195434>

All material supplied via JYX is protected by copyright and other intellectual property rights, and duplication or sale of all or part of any of the repository collections is not permitted, except that material may be duplicated by you for your research use or educational purposes in electronic or print form. You must obtain permission for any other use. Electronic or print copies may not be offered, whether for sale or otherwise to anyone who is not an authorised user.

Hiitola, J., & Hautanen, T. (2017). Assessing violence in the family: social work, courts, and discourses. *Nordic Social Work Research*, 7 (1), 30–41.

Assessing Violence in the Family – social work, courts, and discourses

Johanna Hiitola and Teija Hautanen

This article investigates social work, decision making, and gendered violence in the family in Finland. Discourses on gendered violence in the family are compared in custody disputes, handled in district courts, and out-of-home placements, dealt with in administrative courts. Both data sets altogether include 237 cases. Proceedings in both courts share a legislative emphasis on the “child’s best interest” principle, and both contexts also rely on documentation provided by social workers. The examination of the two studies is based on discourse analysis, through which we have identified hegemonic discourses that are active in both courts. The study found that violence was often disregarded or described only vaguely in the court documents. The results suggest that the victim’s perspective is often overlooked in court decisions, and that the abuser is rarely blamed for the abuse. The discourses enable violence to be overlooked or underplayed when deciding on children’s living arrangements, since these discourses centre on either the parents’ conflicts (in both courts) or the failure of the mother to protect the child (in out-of-home placements). Furthermore, it is also important to acknowledge the experiences of the victimized parents, who in these studies were most often the mothers.

Keywords: discourse analysis; out-of-home placement; custody dispute; gendered violence; child’s best interest

Introduction

This article aims to combine the results of two studies concerning social work, decision making, and gendered violence in the family in Finland. Despite a number of studies dealing with issues of child custody and violence (Ellis 2008; Eriksson 2008; Grant 2005; Hester 2005), there is a lack of comparative research on different court systems which deal with domestic violence. By combining the two studies, this article will fill that gap through comparing discourses on violence in the family in custody disputes, which are handled in district courts, and out-of-home placements, which are dealt with in administrative courts in Finland.

A recent Finnish study found that the overlap in the proceedings of custody and placement cases may cause several complications at the level of individual proceedings (Tolonen 2015). This paper is based on the observations of two authors, who found that whilst the district and administrative court cases analysed in this article are very different, the actual stories told about the families in question appear somewhat similar. This paper will discuss the similarities and differences between the two courts in connection with domestic violence. These proceedings share a legislative emphasis on the “child’s best interest” principle when deciding on children’s living arrangements. Both of these contexts also rely on documentation provided by social workers. Both data sets altogether include 237 cases.

However, a few studies have touched upon the intersection of issues of violence, custody proceedings, and child protection. One of these is a Canadian study (Hughes and Chau 2012) which suggested that there is a need for greater coordination between family law and child protection systems with regard to how the principle of “child’s best interest” should be defined in cases of domestic violence. Some studies have also

reflected on the dispute mediation processes in courts and found that conciliators often ignore allegations of violence in the processes, unless there is existing external evidence to support the claim. (Trinder et al. 2009).

Hester (2004, 2011) also discusses the problems that abuse victims encounter when accessing support services or coming into contact with different authorities. According to Hester, the divergent practices of custody, child protection, and domestic-violence shelters exist on different “planets”. Domestic abuse is understood and dealt with in various and different ways on these “planets”, especially from the standpoint of the victim. In custody disputes, the victim may be pressured to maintain contact with the abuser because of visiting rights, whereas in child protection services the tendency may be to blame the victim for endangering the child. In the following paragraphs, these dilemmas will be described briefly.

Both family professionals working in the field and researchers studying violence have paid attention to the problems that emerge when violence in families intersects with custody and visitation practices. One cause for criticism and concern is the ideal of joint custody. Joint custody is the ideal in the Nordic countries, where gender equality is strongly expressed in public discourse (Eriksson 2008; Magnusson, Rönnblom, and Silius 2008). However, critics argue that joint custody should not be the ideal in situations where domestic violence has been part of family life, since it requires both parents to be able to cooperate. It is this requirement of cooperation that is called into question if violence has occurred in the family. Joint custody can lead to continued harassment, control, and threats. Furthermore, unsupervised visits have been seen to jeopardize the physical and psychological safety of both children and the primary caretaker. For these reasons, sole custody and limiting visitation rights are recommendations to be considered in cases where violence has occurred. Aiming for

reconciliation has also been criticized, because the mediation process can increase the risk of violence, and the threat of violence may have an impact on the content of the settlement. (Eriksson 2003, 334–335; Eriksson 2008; Grant 2005; Hester 2005; Jaffe, Lemon and Poisson 2003, 16–34; Meier 2003).

Researchers studying child protection have also pinpointed problems related to professionals' attitudes. The mother's victimization and the responsibility of the father can be disregarded by the social workers dealing with violence in the family. Violence may also be described vaguely as "domestic violence" by the professionals. In these cases, the perpetrator and the victim may not even be identified as such, and the threat that violence poses to the children may also be disregarded. Ultimatums for leaving – or for staying with – the abuser can also be made in the name of the "child's best interest". (Douglas and Walsh 2010; Hautanen 2005; Hautanen 2010; Humphreys 2000, 2006; Hiitola 2015; Keskinen 2005; Terrance, Blomm and Little 2008.) Furthermore, victim-blaming is common in various different sites, such as in rape trials (Drew 1992; Jokila 2010) or dealing with human-trafficking victims (Lindholm, Börjesson, and Cederborg 2014; Matoesian 2000).

However, previous empirical research does not clearly show how violence is constructed as a threat or as a non-significant issue in custody and placements cases. One exception is a Canadian study of custody cases (Hart and Bagshaw 2008), where 20 case files were analysed using discourse analysis. The study found that the grounds for custody were based on conservative values that emphasized the father's presence in the family, even though he had been abusive in the past. The mothers were also blamed for failing to support the visits of the fathers after separation.

Both contexts analysed in this article are, above all, closely related to the ways in which violence is understood and dealt with within the practices of social work

agencies. In custody cases, the agencies provide a report of the child's living conditions to the court, and in involuntary placement cases the social services prepare an application for placement to the administrative court. A social worker will also testify, and provide other documents such as service plans¹ for the court in out-of-home placement cases. Although the role of social work agencies is slightly smaller in custody disputes, the expertise they provide is crucial to both custody disputes and placement cases. Thus, the ways in which violence is understood by social work agencies is of great significance to the court.

Our approach is strongly motivated by a research field that studies violence in connection with questions of parenthood and children's victimization. Studies on the impact of children's exposure to inter-parental violence reveal numerous negative consequences and risks to the well-being of children. Additionally, the quality of parenting is compromised; on the one hand, abuse may be a serious restraint on women's embracing of motherhood, whilst, on the other, research shows that fathers who abuse their partners are also likely to demonstrate negative child-rearing practices, and are more controlling and authoritarian than non-abusive fathers. Inter-parental violence is also an important indicator of the risk of physical and sexual abuse of children. (Holden 2003; Humphreys 2006; Hester et al. 2006; Holt, Buckley, and Whelan 2008; Kantor and Little 2003.)

Finally, our analysis views violence as a gendered phenomenon, through our understanding that gender affects the ways of experiencing, explaining, and receiving support or protection for the victims, as well as how it affects the perpetrators of violence (Eriksson and Pringle 2005; Keskinen 2010; Ronkainen and Näre 2008). However, this does not mean that gender is understood as determining who is likely to perpetrate violence, or what the reasons behind violent acts are.

So far, we have described the violence occurring in families as gendered violence in the family and, in connection with other studies, as domestic violence or inter-parental violence. However, in our following analysis, violence will be understood as gendered violence in the family, since this term describes, in our view, the gendered aspects of interpretations, as well as consequences, of violence. As Hearn (2012) states, different namings, framings, and definitions of violence feed into and suggest different explanations that are gendered and intersectional. Following Keskinen (2011) our intention is to question the self-evident nature of such categorizations as “domestic violence”, rather than to map violence onto a fixed category. As will be shown in our analysis, the term “domestic violence” often operates as a category which seems to do away with the need to further explain the situation or the consequences of violence.

Comparison of two separate legal systems - context, data, and methods

The proceedings of custody disputes and out-of-home placements take place in two different courts in the Finnish system. Custody disputes are handled in district courts, which also deal with various other civil law and criminal law cases. It is important to note that there is no separate family court system in Finland. Placements are handled in administrative courts, which concentrate on reviewing the decisions of authorities and officials.

The court proceedings analysed in this article differ significantly from the criminal courts, even though the custody cases are handled by the same courts². In contrast to criminal cases, the necessary evaluation of families in both of these instances is guided by institutional knowledge of the perceived “child’s best interest”. This principle is essential in legislation, guiding both custody disputes and out-of-home placements, and thus it serves as a common ground for both of the data sets. However, it

has been noted that the principle of “child’s best interest” is ambiguous in isolation. It can be used in several ways when arguing how the child’s care should be arranged, but it does not provide clear guidance for assessing the child’s or the family’s situation (Freeman 2010; Koulu 2014, 246–248; Skivenes 2010). This is especially apparent in cases where domestic violence is evaluated. The “child’s best interest” can be used in arguing both for and against violent parents being suitable as guardians (e.g. Hautanen 2010; Hiitola 2015; Nordborg 2005).

The data of the first study was gathered from custody disputes. The data concerning custody disputes consists of the case files on 149 child custody dispute cases, which have been collected from three district courts and four courts of appeal in various places across Finland in the period 2001–2003 (see Hautanen 2010). Cases were selected on the basis on the allegations of physical violence inflicted by one parent or both parents, or if the threat of violence had been mentioned in the case files.

Out-of-home placements of children are passed on to administrative courts if the mother, the father, or the child (over 11 years) has resisted the social worker’s decision for placement. The data on out-of-home placements consists of 88 court documents of forced out-of-home placements, where violence was mentioned either in the social worker’s report or in the court’s final summary of the case. The cases were selected from a larger data set on placement cases (N=214) determined in 2008 (see Hiitola 2015).

Interestingly, the word violence is not mentioned in either the Child Welfare Act (CWA 417/2007) or the Act on Child Custody and Right of Access (CCRA 361/1983), both of which guide procedures that include the assessment of domestic violence. The acts do have sections that relate to the threat of violence, such as the direct statement

about “corporal punishment” in CCRA or the notion of “seriously endangered” in CWA, which are wide enough to include domestic violence in the interpretation.

The evaluative process which Finnish social work uses – common for both custody and placement contexts – is not guided by specific or standardized risk assessment tools or checklists, as in many other Anglo-Saxon countries (e.g. Douglas and Walsh 2010; Reich 2005). Following the Nordic social work model, the Finnish model pays more attention to the general well-being of the child, rather than focusing on counting specific signs of maltreatment as risks (e.g. Skivenes and Stenberg 2013). In fact, there are no specific national instructions for assessing violence in the family, besides the very broad definitions in the law. It is thus up to each individual social worker to assess whether or not violence perpetrated by one parent towards the other is considered to be endangering the child. One comparative study indicated that Finnish social workers were more reluctant than their Norwegian, Danish, and Swedish colleagues to intervene in a case where a child had been physically abused (Blomberg, Kroll, and Meeuwisse 2013). The explanation was given that this is due to the lack of mandatory reporting of suspicions of abuse to the Finnish police. Since the study was made, the legislation on this matter has changed (see CWA 25 d §). However, there are still no guidelines for evaluating and/or reporting violence in the family in cases where the child has not been a victim of abuse. The model differs from the Swedish model discussed earlier, where children exposed to inter-parental violence are defined as victims.

The studies compared in this article both used a discourse analytical approach (Fairclough 1995, 1–9; Gee 2005; Potter 1996; Potter and Wetherell 1987) to identify discourses in the documents. It was understood that social practices are discursively shaped and that they also have discursive effects. The analysis concentrated on different

types of discourses which explained violence, as well as discourses that enabled the disregarding or highlighting of the threat of violence. The identification of the main discourses was a result of the interaction between reading the data and the previous research literature on the topic (Keskinen 2011). However, the court data does create some limitations for analysis, since the texts in question are written for (and, in many cases, by) the court. Events are presented as “reports of actual events” rather than as discussions of an event (see Ingrid and Aronsson 2014; Juhila 2004). The parties involved also have very different positions. For example, in placement cases the social workers’ testimonies are treated as expert knowledge, whilst the parents’ accounts – even when they are victims or eyewitnesses themselves – are seen as biased and therefore not afforded the status of objective knowledge (see de Godzinsky 2012, 19, 81; Hiitola 2015, 42).

Constructions of violence in the family

Both studies found that violence was often disregarded or described only vaguely in the court documents (Hautanen 2010; Hiitola 2015). Furthermore, both studies also looked at a variety of expert opinions in the families’ cases. Violence was often brought up by, for example, social workers or the families themselves, but not the courts. In the courts’ final decisions, violence was omitted in 51 percent of the justifications of cases in custody disputes and in 42 percent of cases in out-of-home placements. It is clear, according to both studies, that violence rarely figures in the focus of the assessment. It is clear, according to both studies that violence rarely figures in the focus of the assessment. Evidence of the severity of the violence did not systematically affect the outcomes. Violence was ignored, whether or not there were injuries. Similar findings have also been discussed by Karin Röbbäck and Ingrid Höjer (2012, 669) who have

commonly found that violence is not clearly articulated in the written court decisions in enforcement of contact orders, despite many statements about violence in those cases.

The comparative analysis found that the father was most often identified as the only perpetrator of violence in both studies (custody disputes 59%, placements 39%). Mothers were described as the only abusers in approximately 15 percent of cases in both court systems. The main difference between the courts was that in out-of-home placements it was far more common to describe violence but without identifying the perpetrator (e.g. “*domestic violence*”, 17%). The perpetrator was not identified in only one percent of cases in custody disputes. Another difference between the courts was that in custody disputes, both the mother and father were quite often described as being violent towards each other. This was not the case in the placement files. Only one percent of the placement cases contained a description of (only) the mother and the father being violent towards each other. However, the specific trait in the placement cases was that multiple abusers such as grandparents or teenaged children were often also said to be the perpetrators of violence. Although violence in those cases was very often gendered in the ways it occurred (e.g. the father abusing the mother, and the mother abusing the child), it was more complex in placements than in custody cases.

Different findings in these studies can be explained to some extent by the different contexts of the courts. Questions such as “who is the perpetrator of violence” can become more relevant when the court is deciding on which one of the parents is suitable to take custody of the child. The parents themselves may also have more of an interest in bringing up the dynamics related to the abuse. In placement cases, however, proving what actually happened or did not happen in the home can become irrelevant. This may occur if the parents are proven overall to be harmful to the child’s development. Nevertheless, this disregarding of violence in the process of placement

can be detrimental to the child if it leads to practices where the threat of violence is not taken into consideration at all.

“Conflicts between the parents” as the hegemonic discourse

Both studies conclude that violence is described as relationship problems. In the following section, we will refer to this conception of violence as the conflict discourse. This discourse is the hegemonic, most common, discourse in both studies.

The conflict discourse was formed around an understanding of violence as a result of a problem in interaction, or relationship problems, between the parents. Violence itself was not often evaluated or discussed broadly within this discourse, because it was interpreted as being the result of an unsuccessful and difficult intimate relationship. This discourse had an indisputably visible position in both data sets. It was used to weigh the validity of allegations of violence, as well as the significance of the violence used. By using the conflict discourse, the impact of violence on decisions was both admitted and denied. According to the custody dispute study, 60 percent of cases where the importance of violence was evaluated in justifications relied on this discourse, and the placement study found that 38 percent of cases included this discourse.

The conflict discourse was closely related to an understanding of violence as inherently “mutual”, no matter the consequences. The following example from an out-of-home placement case illustrates this point clearly. The case is very typical of the placement data at large. Social workers tended to describe violence in more detail than the courts. The father is described as the abuser in the first document by the social worker, however, the court decides to leave this description out of the final justification.

The relationship between the parents is also violent and the beating of the mother by the father has resulted in the mother's being bruised several times. The children have also described how their father has hit them and they have had to escape the violent behaviour of the father several times.

-Social work, out-of-home placement

The situation at the children's home has been unstable due to the parents' use of alcohol, their mental problems, and relationship problems that have resulted in violent situations. The parents do not have the adequate strength to take care of the welfare of their three small children due to their problems.

-Justification of the administrative court, out-of-home placement

The reporting in this case starts with the social worker's account of the events. To convince the reader, the social worker utilizes what Ingrid and Aronsson (2014) introduce call "reported speech". This is in contrast to the court justification, where the court's account follows an expert statement strategy (Juhila 2004). These strategies are used in almost all cases in some way. The ways in which violence was talked about were not, however, systematically connected to these rhetorical strategies applied by different actors.

The case also shows that the power of the conflict model is so strong that it can result in disregarding the violence experienced by the children altogether. Children's victimization is mentioned in the social worker's application (the court relies on this text as its main source when making decisions), but the court only relies on the parents' relationship problems as an explanation of violence. The children's experiences of abuse, as well as their having to escape from their home due to their father's violent behaviour, are left out of the court's final justification.

Another way of using the conflict discourse was that it was drawn upon to explain (especially in custody dispute cases) why domestic violence did not affect the final verdict of the court. This is illustrated in the next example.

Case 2

Both of the parents have told [the court] that the other parent has been violent towards them. However, this fact is not significant when deciding upon the child's custody, because it is about quarrels and a conflicted³ relationship between the adults. The parents have not directed this reprehensible behaviour towards their children, and thus these events cannot be grounds for dismissing the mother's or the father's suitability as a parent.

-Justification of the district court, custody dispute

This "expert statement" (Juhila 2004) here does not construct the relationship problems ("conflicted relationship") as influencing the case, because the target of the violent act was not the children. Many previous studies have shown that just witnessing domestic violence is detrimental to a child (see Holt, Buckley, and Whelan 2008; Humphreys 2006). Thus, the court's verdict that the violence is irrelevant in considering the parenting capabilities of the father and the mother is puzzling. It shows how violence perpetrated by one parent on the other carries no real significance when it comes to the reasoning of the court.

Within the conflict discourse, violence is understood as resulting from the arguing between the parents. Violence can thus be normalized as mere arguing. This also means that the parents' violence towards one another "makes sense" if it happens as a part of an argument in a conflicted relationship. However, this formulation can also be used to support the view that the parents are not good enough guardians, as it illustrates that the relationship between them is reckless. In the following example, the social worker mentions violence in the placement application document, but the court describes the situation in more detail.

Case 3

The conflicts between the parents have at times escalated to physical violence.

-Social work, out-of-home placement

There have been fierce confrontations between the father and the mother. These [confrontations] have at worst led to the mother getting injured in a way that has resulted in her hospitalization.

-Justification of the administrative court, out-of-home placement

This case shows that conflicts are understood as the causes of violence in the social worker's application. The events are reported in a way that blur the actual power dynamics of the violence. According to the social worker, the conflicts have "escalated" into physical violence. Violence is thus not something that a parent actively does, but rather something that happens as a consequence of mutual conflict. In this case, the court actually describes the violence more concretely than the social worker, stating that the mother has been injured as well as hospitalized several times. Nonetheless, the court also mentions "fierce confrontations", which suggests that violence is understood as a type of conflict. The word "violence" is not mentioned in the court's justification either, although by describing the mother's injuries this does imply that some understanding of different consequences for the parents will be taken into account. The case makes it clear that the conflict discourse is used also in cases where there clearly is an abuser as well as the abused. Thus, this discourse hides the power dynamics in the situation by suggesting that violence is, by definition, the fault of both parties equally.

Differences between the courts: "risk" in custody disputes and "mother's failure to protect" in placements

From the previous discussion, it can be seen that the conflict discourse was used in both court systems, but the findings in the two studies did differ as well. The first difference between the courts was the use of the risk discourse when evaluating violence in custody disputes. The risk discourse contained an understanding of violence both as a

physical and psychological risk factor, and as an endangerment to children's safety. It was used in 24 percent of final justifications of courts in custody disputes, when effects of violence were evaluated. However, it was not used in connection to violence in the placement cases.

The accuracy of the content and criteria of the risk discourse varied in the custody dispute data, as the next citations demonstrate. In case 4, there is evidence of the father being violent towards the mother and one of the children. In case 5, the mother has testified that the father has been violent towards her and their baby.

Case 4

On the one hand, a two hour supervised visit per month gives children the possibility to become closer to and maintain a good relationship with the father. On the other hand, it does not jeopardize children's balanced emotional development or constitute a risk to children's well-being.

-Justification of the district court, custody dispute

Case 5

The mother has (...) said that she is afraid of the father, because of his erratic behavior and his problems coping with a crying small child. However, the mother has not told [the court] details that would signal that the father is directly dangerous towards the child and it is possible that the details [which the mother has] told are only connected to the child's age and that [the details] would disappear when the father gets to know the child.

-Justification of the district court, custody dispute

These cases represent common ways of describing violence in custody disputes in how they stress the importance of the violent father's involvement in the children's lives. Violence is constructed as a risk, but not automatically seen as something that would actually make the father dangerous to the children's well-being.

The risk discourse was used when children were victims of parental abuse or exposed to intimate partner violence. However, potential risks of violence for adults

were contemplated remarkably less often and less directly. Other scholars have also found that the risk of violence is not necessarily evaluated systematically in custody disputes. Risk assessment of violence is compulsory in Swedish custody disputes, but in practice it can still be performed in various ways and much depends upon how the professionals compare the risk of violence to the risk of losing the relationship with the other parent (Eriksson and Dahlkild-Öhman 2008). The risk discourse was not used in any of the cases of out-of-home placements in connection with violence.

Case 4 also represents the ideal of joint custody, where being raised by two parents is understood to be the ideal even if one of the parents is dangerous to the child (see Eriksson 2003; 2008; Hautanen 2010; Hester 2005). The court states that “a two-hour supervised visit per month gives children the possibility of becoming closer to and maintaining a good relationship with the father”. This echoes the strong cultural discourses of good parenting, where protecting and encouraging fathers in fatherhood has been central to family policies (Hiitola 2015; Vuori 2001). However, violence and fatherhood do seem to fit within the same discussions (Hautanen 2005). This creates a discrepancy where violent fathers can at the same time be talked about as being essential to the child’s wellbeing.

The other notable difference between the two courts was the use of the discourse of the mother’s failure to protect her child. Interestingly, reference to the mother’s failure to provide protection from violence was not prevalent in describing the children’s situation in custody disputes. However, it was one of the main discourses used in justifications of out-of-home placements. In previous studies the mother’s failure, or “mother-blaming”, has also been found to be a common way of describing families’ situations by child protection services (Buchanan, Wendt, and Moulding 2014; Douglas and Walsh 2010; Hautanen 2005; Hester 2004; Humphreys 2008; Kantor and

Little 2003; Landsman and Hartley 2007). It was central to this discourse that the mother's responsibility was not only to control the children, but also to constrain the father. Mothers that were victims of abuse were often those that had failed in these attempts. In the following example, the father was described as violent in other documents, but in the social worker's application for placement, the central issue was alcohol abuse.

Case 6

The mother could not prevent the father's alcohol abuse at home and has thus jeopardized her own as well as her child's safety.

- Social work, out-of-home placement

The case raises several issues which make this discourse particularly problematic. Firstly, violence is talked about only in vague terms, and its consequences for the children and the mother are disregarded. Secondly, the father is not deemed responsible for his actions. Instead, the mother is blamed for not preventing the violence. Nonetheless, when this discourse was used, violence was in fact brought up as one of the factors endangering the child. Whether explicitly or implicitly, these cases tended to take violence into consideration. However, because this discourse constructs the mothers' motherhood as weak or even dangerous to the child, it may have serious consequences for mothers wanting to end their children's placement in the future, or even for mothers who have separated from the violent fathers. Referring to the mother's failure to protect the child attributes responsibility for the child's victimization to the mother (Pomerantz 1978). Landsman and Hartley (2007) also point out similarly that referring to "battering" tends to work against the domestic violence victim in terms of the attribution of responsibility.

Case 7 represents a very typical way of describing violence in placement cases. Even the cases which described the violence in some detail included reports of how the

mother was unable to protect the children.

Case 7

The child has dodged the father's fists, but the child's sister has been hit. The father has been released from prison on [date] and he has immediately started drinking heavily.

The mother is unable to protect the children from the father's behaviour.

-Justification of the district court, custody dispute

In addition to child protection (e.g. Buchanan, Wendt, and Moulding 2014; Douglas and Walsh 2010; Humphreys 2008; Landsman and Hartley 2007) similar blaming of the alleged victim also occurs in other institutional contexts, such as in, for example, rape trials (Drew 1992; Jokila 2010), police interviews of human trafficking victims (Lindholm, Börjesson, and Cederborg 2014; Matoesian 2000), or maternity healthcare (Keskinen 2005), among many more sites.

Finally, it should also be noted that two fathers were described as having failed to protect their children from the mother's violence in placement cases as well.

Although these cases are "deviant" (Potter 1996) in connection to the gender of the abuser, there was one significant difference between the "failed" fathers and "failed" mothers: the fathers who were described as having "failed" in the protection their children were not described as victims of abuse.

Discussion

The purpose of this study was to highlight the issue of violence in situations where children's living conditions are determined in court. It was surprising that both of these courts, district and administrative, shared what can be only called a lack of systematic evaluation of violence in children's cases.

This article identified three main discourses which district and administrative courts used when describing domestic violence: conflict, risk, and the mother's failure to protect the children. These discourses were used in connection with different rhetorical strategies of "reported speech" and "expert statements". Out of these discourses, the conflict discourse was shared in both court systems, the risk discourse was used by district courts in custody disputes, and the argument of the mother's failure to protect was made in administrative courts when they decided on the children's placement.

When violence is understood as parental "conflicts" or the father's violence is interpreted as the mother's failure to protect the child, it is the victim's perspective in particular that is overlooked. This victim-blaming is very common in many different sites, where responsibility for violence is defined (Drew 1992; Hart and Bagshaw 2008; Jokila 2010; Keskinen 2005; Lindholm, Börjesson, and Cederborg 2014; Matoesian 2000). The conflict discourse was gendered in the ways in which it disregarded gender in cases of fathers perpetrating violence towards mothers and children. This can also be explained within the context of the conflict discourse. When violence is seen as a mutual conflict either between the parents, or within the whole family, questions such as who is the victim and who is the perpetrator can become irrelevant to decision making. This understanding has been traced specifically to the Nordic context. In Finland, as in other Nordic countries, the demand for gender neutrality and the ideal of gender equality play a key role in domestic violence discourse (Forsberg and Kröger 2010, 5; Magnusson, Rönblom, and Silius 2008; Ronkainen 2008). Gendered violence does not seem to fit into an understanding of men and women, fathers and mothers, as being equal partners in both a relationship and parenting. The conflict discourse centres on

relationships between individuals, and leaves out the societal and political dimensions of violence.

The risk discourse centred around the children. The risk for the victim-parent was not assessed. Similar findings have been reported in previous studies (Eriksson and Dahlkild-Öhman 2008). The risk discourse was not used in any of the cases of out-of-home placements in connection with violence. This may be related to the different contexts of the proceedings. In custody disputes both parents “fight” for the child’s custody, and thus it becomes important to distinguish whether or not the other parent is violent. Most of the placement cases did not touch upon the issue of whether either parent was a suitable guardian or not. The family was seen as a whole in placement cases, and thus “risk” was established by taking account of the situation as a whole. However, based on the severity of violence in many of the placement cases, we argue that risk assessment would be especially needed when deciding whether or not the child should live at home.

The prevalent discourse in placement cases, the mother’s failure to protect the children, has been reported in many studies (Buchanan, Wendt, and Moulding 2014; Landsman and Hartley 2007; Douglas and Walsh 2010; Hester 2004; Humphreys 2008). This victim-blaming has been found to be part of many institutional encounters (Drew 1992; Jokila 2010; Keskinen 2005; Lindholm, Börjesson, and Cederborg 2014; Matoesian 2000). This study found that it was especially a discourse used by child protection, and that it was used to blame mothers for their children’s – and their own – victimization by fathers. This finding can also be explained by the different contexts of the courts. Whilst the custody cases concentrate on the different versions of events provided by the mother and the father (e.g. Hautanen 2010; Ingrid and Aronsson 2014), placement proceedings concentrate on whether or not the family as a whole

creates a suitable living environment for the child (e.g. de Godzinsky 2012; Hiitola 2015). This, of course, has been an ongoing subject of feminist research (e.g. Hautanen 2005; Hays 1996; Hiitola 2015; Kuronen 2001; Vuori 2001). The finding is not surprising as such. However, the differences in custody and placement cases are intriguing: mother-blaming seems to occur in the cases where the situation is most severe.

Although the data in the studies compared in this article is from a few years ago, the legislation concerning violence in custody or placement cases has not changed as it has, for example, in the neighbouring country of Sweden, where an act came to force in 2006 giving children exposed to intimate-partner violence a right to crime-victim compensation from the state (Eriksson 2012; Ljungwald 2011). Awareness about violence in Finnish families has, however, increased and there is for example more training for professionals with regard to children, parenthood, and violence. This also could have affected the legal praxis recently. However, domestic violence is still not automatically part of the evaluation processes. This may be explained by the history of understanding domestic violence in Finland. Unlike in many other countries, the feminist movement has not been strongly involved in developing services for abuse victims, such as domestic violence shelters in Finland. The Finnish service providers have long drawn on the psychodynamic and family centred model of dealing with violence (Keskinen 2005). This understanding seems still to be permeating the practices of district and administrative courts in child custody and placement trials.

Note

- 1 In Finnish, ”asiakassuunnitelma” which translates literally as “client plan”.
- 2 Sometimes there are parallel criminal cases concerning the parent(s) pending at the same time as custody or placement cases are processed. These proceedings are, however, totally separate from each other.
- 3 In Finnish ”tulehtunut”, literary meaning ”inflamed”.

References

- Act on Child Custody and Right of Access 361/1983. 2015. Unofficial translation. Ministry of Social Affairs and Health. Accessed 18 April 2015.
<http://www.finlex.fi/fi/laki/kaannokset/1983/en19830361.pdf>
- Blomberg, Helena, Christian Kroll, and Anna Meeuwisse. 2013. Nordic Social Workers' Assessments of Child Welfare Problems and Interventions: a Common Model in Child Welfare? *European Journal of Social Work* 16(3): 311–326.
- Buchanan, Fiona, Sarah Wendt, and Nicole Moulding. 2014. Growing up in Domestic Violence: What Does Maternal Protectiveness Mean? *Qualitative Social Work* 14(3): 399–415. DOI: 10.1177/1473325014547251.
- Child Welfare Act. 417/2007. 2015. Unofficial translation. Ministry of Social Affairs and Health. Accessed 18 April 2015.
<http://www.finlex.fi/fi/laki/kaannokset/2007/en20070417.pdf>
- de Godzinsky, Virve-Maria. 2012. *Huostaanottoasiat hallinto-oikeuksissa. Tutkimus tahdonvastaisten huostaanottojen päätöksentekomenettelystä* [Taking a Child Into Care. Research of Decision Making in Administrative Courts]. Helsinki: Oikeuspoliittisen tutkimuslaitoksen julkaisuja 260.
- Douglas, Heather, and Tamara Walsh. 2010. Mothers, Domestic Violence, and Child Protection. *Violence Against Women* 16(5): 489–508.
- Drew, Paul. 1992. Contested Evidence in Courtroom Cross-examination: The Case of a Trial for Rape. In *Talk at work: Interaction in institutional settings*, edited by Paul Drew, and John Heritage. Cambridge, England: Cambridge University, 353–400.
- Ellis, Desmond. 2008. Divorce and the Family Court: What Can be Done About Domestic Violence? *Family Court Review* 46(3), 531–536.

- Eriksson, Maria. 2003. *I skuggan av Pappa. Familjerätten och hanteringen av faders våld* [In the Shadow of Daddy. Family Law and the Handling of Father's Violence]. Stehag: Förlags ab Gondolin.
- Eriksson, Maria. 2008. Revolutionary Mothers? Interacting Power Relations, Agency and Social Change. *NORA: Nordic Journal of Feminist and Gender Research*, 16(2): 96–113.
- Eriksson, Maria. 2012. Tackling Violence in Intimacy: Interacting Power Relations and Policy Change. *Current Sociology* 61(2): 171–189. DOI: 10.1177/0011392112456504.
- Eriksson, Maria, and Keith Pringle. 2005. Introduction: Nordic Issues and Dilemmas. In *Tackling Men's Violence in Families: Nordic Issues and Dilemmas*, edited by Marianne Hester, Suvi Keskinen, and Keith Pringle, 1–12. Bristol: Policy Press.
- Eriksson, Maria. 2002. Men's Violence, Men's Parenting and Gender Politics in Sweden. *NORA: Nordic Journal of Women's Studies* 10(1): 6–15.
- Eriksson, Maria and Gunilla Dahlkild-Öhman. 2008. Motsridiga förståelser av risk och riskbedömningar i familjerättssammanhang. [Contradictory Notions of Risk and Risk Assessment in the Context of Family Law] In *Barns röster om våld. Att tolka och förstå* [Children's voices about Violence – Interpreting and Understanding], edited by Maria Eriksson, Åsa Källström Cater, Gunilla Dahlkil-Öhman, and Elisabet Näsman, 139–157 Malmö: Gleerups.
- Fairclough, Norman. 1995. *Critical discourse analysis: The critical study of language*. London: Longman.
- Forsberg, Hannele, and Teppo Kröger. 2010. Introduction. In *Social Work and Child Politics. Through Nordic lenses*, edited by Hannele Forsberg and Teppo Kröger, 1–10. Bristol: Policy Press.

- Freeman, Michael. 2010. Upholding the Dignity and Best Interest of Children: International Law and the Corporal Punishment of Children. *73 Law and Contemporary Problems*, 211–251. Accessed 18 April 2015.
<http://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=1571&context=lcp>
- Gee, James Paul. 2005. *An Introduction of Discourse Analysis: Theory and Method*. New York: Routledge.
- Grant, Kathy Lynn. 2005. 'Deserving Further Attention: A Case Streaming Approach to Child Custody and Access in the Context of Spousal Violence'. *Canadian Journal of Family Law* 22(1): 57–100.
- Hart, Amanda Shea, and Dale Bagshaw. 2008. The Idealised Post-Separation Family in Australian Family Law: A Dangerous Paradigm in Cases of Domestic Violence. *Journal of Family Studies* 14(2-3): 291–309.
- Hautanen, Teija. 2010. *Väkivalta ja huoltoriidat* [Domestic Violence and Custody Disputes]. PhD diss. Tampere: Tampere University Press.
- Hautanen, Teija. 2005. Bypassing the Relationship Between Fatherhood and Violence in Finnish Policy and Research. In *Tackling Men's Violence in Families. Nordic Issues and Dilemmas*, edited by Maria Eriksson, Marianne Hester, Suvi Keskinen, and Keith Pringle, 67–82. Bristol: Policy Press.
- Hays, Sharon. 1996. *The Cultural Contradictions of Motherhood*. New Haven: Yale University Press.
- Hearn, Jeff. 2012. The Sociological Significance of Domestic Violence: Tensions, paradoxes and implications. *Current Sociology* 61(2), 152–170. DOI: 10.1177/0011392112456503
- Hester, Marianne. 2004. Future Trends and Developments. Violence Against Women in Europe and East Asia. *Violence Against Women* 10(12), 1431–1448.

- Hester, Marianne. 2005. Children, Abuse and Parental Contact in Denmark. In *Tackling Men's Violence in Families. Nordic Issues and Dilemmas*, edited by Maria Eriksson, Marianne Hester, Suvi Keskinen, and Keith Pringle, 13–30. Bristol: Policy Press.
- Hester, Marianne. 2011. The Three Planet Model: Towards an Understanding of Contradictions in Approaches to Women and Children's Safety in Contexts of Domestic Violence. *British Journal of Social Work* 41(5): 837–853.
- Hester, Marianne, Chris Pearson, Nicola Harvin, and Hilary Abrahams. 2006. *Making an Impact: Children and Domestic Violence*, 2nd ed. London: Jessica Kingsley Publishers.
- Hester, Marianne, and Lorraine Radford. 1996. *Domestic Violence and Child Contact Arrangements in England and Denmark*. Bristol: Policy Press.
- Hiitola, Johanna. 2015. *Hallittu vanhemmuus. Sukupuoli, luokka ja etnisyy*s *huostaanottoasiakirjoissa* [Governed parenthood. Out-of-home placements, gender, class and ethnicity]. PhD diss. Tampere: Tampere University Press.
- Holden, George. 2003. Children Exposed to Domestic Violence and Child Abuse: Terminology and Taxonomy. *Clinical Child and Family Psychological Review*, 6(3), 151–160.
- Holt, Stephanie, Helen Buckley, and Sadhbh Whelan. 2008. The Impact of Exposure to Domestic Violence on Children and Young People: A Review of the Literature. *Child Abuse and Neglect* 32(8), 797–810.
- Hughes, Judy, and Shirley Chau. 2012. Children's Best Interests and Intimate Partner Violence in the Canadian Family Law and Child Protection Systems. *Critical Social Policy* 32(4): 677–695. DOI: 10.1177/0261018311435025.

- Humphreys, Cathy. 2000. *Social Work, Domestic Violence and Child Protection. Challenging Practice*. Bristol: Policy Press.
- Humphreys, Cathy. 2006. Relevant Evidence for Practice. In *Domestic Violence and Child Protection: Directions for Good Practice*, edited by Cathy Humphreys and Nicky Stanley, 19–35. London: Jessica Kingsley Publishers.
- Humphreys, Cathy. 2008. Problems in the System of Mandatory Reporting of Children Living with Domestic Violence. *Journal of Family Studies* 14(2-3): 228–239.
- Ingrids, Henrik, and Karin Aronsson. 2014. *Reported Speech and Reported Affect in Child Custody Disputes. Research on Language and Social Interaction*, 47(1), 69–88. DOI:10.1080/08351813.2014.871806.
- Jaffe, Peter, Nancy Lemon, and Samantha Poisson. 2003. *Child Custody & Domestic Violence. A Call for Safety and Accountability*. Thousand Oaks: SAGE Publications.
- Jokila, Helena. 2010. *Tahdonvastainen suostumus ja liiallisen luottamuksen hinta: Raiskauksen ja muiden seksuaalirikosten oikeudellisen tiedon konstruktio* [Consent against One's Will and the Price of Undue Trust. The Legal Constructions of Knowledge in Finnish Sexual Crimes]. Helsinki: Suomalainen Lakimiesyhdistys.
- Juhila, Kirsi. 2004. Miten tarinasta tulee tosi. Faktuaalistamisstrategiat viranomaispuheessa. In *Diskurssianalyysin aakkoset* [Alphabets of Discourse Analysis, edited by Arja Jokinen, Kirsi Juhilan, and Eero Suoninen, 151–188. Tampere: Vastapaino.
- Kantor, Glenda Kaufman, and Liza Little. 2003. Defining the Boundaries of Child Neglect When Does Domestic Violence Equate With Parental Failure to Protect? *Journal of Interpersonal Violence* 18(4): 338–355.

- Keskinen, Suvi. 2005. *Perheammattilaiset ja väkivaltatyön ristiriidat. Sukupuoli, valta ja kielelliset käytännöt* [Family Professionals and Discrepancies of Working with Violence: Gender, Power and Discursive Practices]. Tampere: Tampere University Press.
- Keskinen, Suvi. 2010. Sukupuolistunut väkivalta [Gendered Violence]. In *Käsikirja sukupuoleen* [A Handbook to Gender], edited by Tuija Saresma, Leena-Maija Rossi, and Tuula Juvonen, 287–300. Tampere: Vastapaino.
- Keskinen, Suvi. 2011. Troublesome Differences – Dealing with Gendered Violence, Ethnicity and Race in the Finnish Welfare State. *Journal of Scandinavian Studies on Criminology and Crime Prevention* 12(2), 153–172.
- Koulu, Sanna. 2014. *Lapsen huolto-ja tapaamissopimukset: Oikeuden rakenteet ja sopivat perheet* [Agreements on Child Custody and Contact: Legal foundations and proper families]. Phd diss. Helsinki: University of Helsinki.
- Kuronen, Marjo. 2001. Motherhood in Family Context – Comparing Professional Practice in Maternity and Child Health Care in Finland and Scotland. In *Yearbook of Population Research in Finland XXXVI 2000*, edited by Ismo Söderling, 5– 22. The Population Research Institute.
- Landsman, Miriam, and Carolyn Copps Hartley. 2007. Attributing Responsibility for Child Maltreatment When Domestic Violence Is Present. *Child Abuse & Neglect* 31(4): 445–461.
- Lindholm, Johanna, Mats Börjesson, and Ann-Christin Cederborg. 2014. “What Happened When you Came to Sweden? Attributing Responsibility in Police Interviews with Alleged Adolescent Human Trafficking Victims. *Narrative Inquiry* 24(2), 181–199.

- Ljungwald, Carina. 2011. *The Emergence of the Crime Victim in the Swedish Social Services Act*. Stockholm Studies in Social Work 28/2011. PhD diss. Stockholm University.
- Magnusson, Eva, Malin Rönnblom, and Harriet Silius, eds. 2008. *Critical Studies of Gender Equalities. Nordic Dislocations, Dilemmas and Contradictions*. Göteborg: Makadam Publishers.
- Matoesian, Greg. 2000. Intertextual Authority in Reported Speech: Production Media in the Kennedy Smith Rape Trial. *Journal of Pragmatics* 32(7), 879–914.
- Meier, Joan. 2003. Domestic Violence, Child Custody, and Child Protection: Understanding Judicial Resistance and Imagining the Solutions. *American University Journal of Gender, Social Policy & the Law* 11(2).
- Nordborg, Gudrun. 2005. Children's Peace? The Possibility of Protecting Children by Means of Criminal Law and Family Law. In *Tackling Men's Violence in Families. Nordic Issues and Dilemmas*, edited by Maria Eriksson, Marianne Hester, Suvi Keskinen, and Keith Pringle, 101–118. Bristol: Policy Press.
- Potter, Jonathan. 1996. *Representing Reality. Discourse, Rhetoric and Social Construction*. London: Sage.
- Potter, Jonathan, and Margaret Wetherell. 1987. *Discourse and Social Psychology: Beyond Attitudes and Behaviour*. London: Sage.
- Reich, Jennifer. 2005. *Fixing Families. Parents, Power, and the Child Welfare System*. New York: Routledge.
- Ronkainen, Suvi. 2008. Kenen ongelma väkivalta on? Suomalainen hyvinvointivaltio ja väkivallan toimijuus [Whose Problem Violence Is? The Finnish Welfare State and the Agency of Violence]. *Yhteiskuntapolitiikka* 73 (4): 388–401.

- Ronkainen, Suvi, and Sari Näre. 2008. Intiimin haavoittava valta [The Vulnerable Power of Intimacy]. In *Paljastettu intiimi. Sukupuolistuneen väkivallan dynamiikkaa* [Intimacy Revealed. Dynamics of Gendered Violence], edited by Sari Näre and Suvi Ronkainen, 7–42. Rovaniemi: Lapin yliopistokustannus.
- Röbäck, Karin, and Ingrid Höjer (2009). Constructing Children's Views in the Enforcement of Contact Orders. *International Journal of Children's Rights*, 17, 663–680.
- Sacks, Harvey. 1972. An Initial Investigation of the Usability of Conversational Data for Doing Sociology. In *Studies in Social Interaction*, edited by David Sudnow, 31–74. Glencoe: Free Press.
- Skivenes, Marit. 2010. Judging the Child's Best Interests. Rational Reasoning or Subjective Presumptions? *Acta Sociologica* 53(4), 339–353.
- Skivenes, Marit, and Hanne Stenberg. 2013. Risk Assessment and Domestic Violence – How Do Child Welfare Workers in Three Countries Assess and Substantiate the Risk Level of a 5-year-old Girl? *Child and Family Social Work*. Accessed 15 January 2013. <http://onlinelibrary.wiley.com/doi/10.1111/cfs.12092/abstract>
- Terrance, Cheryl, Karyn Plumm, and Betsi Little. 2008. Maternal Blame. Battered Women and Abused Children. *Violence Against Women* 14(8): 870–885.
- Trinder, Liz, Alan Firth, and Christopher Jenks. 2009. 'So Presumably Things Have Moved on Since Then?' The Management of Risk Allegations in Child Contact Dispute Resolution. *International Journal of Law, Policy and the Family*. DOI:10.1093/lawfam/ebp010.
- Tolonen, Hannele. 2015. *Lapsi, perhe ja tuomioistuin: Lapsen prosessuaalinen asema huolto- ja huostaanotto-oikeudenkäynneissä* [Child, Family and the Court. The Procedural Standing of Children in Custody Proceedings and Care Proceedings].

Helsingin yliopisto, oikeustieteellinen tiedekunta. Suomalainen

Lakimiesyhdistys. Helsinki: Helsingin yliopisto, oikeustieteellinen tiedekunta.

Suomalainen Lakimiesyhdistys.

Vuori, Jaana. 2001. Äidit, isät ja ammattilaiset. Sukupuoli, toisto ja muunnelmat asiantuntijoiden kirjoituksissa [Mothers, Fathers and Professionals Gender, Repetition and Variety in Expert Texts]. PhD diss. Tampere: Tampere University Press.