

Wilfrid Laurier University  
**Scholars Commons @ Laurier**

---

Partnerships for Children and Families Project

Reports and Papers

---

6-2002

## 'When One Door Shuts, Another Opens': Turning Disadvantages into Opportunities

A.W.M. Veldkamp  
*Partnership for Families and Children Project*

Follow this and additional works at: <https://scholars.wlu.ca/pcf>



Part of the [Family, Life Course, and Society Commons](#), and the [Social Work Commons](#)

---

### Recommended Citation

Veldkamp, A.W.M. (2002). 'When One Door Shuts, Another Opens': Turning Disadvantages into Opportunities (Rep., pp. 1-45). Waterloo, ON: Wilfrid Laurier University, Partnerships for Children and Families Project.

This Positive Systems of Child and Family Welfare International Conference (2002) is brought to you for free and open access by the Reports and Papers at Scholars Commons @ Laurier. It has been accepted for inclusion in Partnerships for Children and Families Project by an authorized administrator of Scholars Commons @ Laurier. For more information, please contact [scholarscommons@wlu.ca](mailto:scholarscommons@wlu.ca).

# Partnerships for Children and Families Project

**'When One Door Shuts, Another Opens':  
Turning Disadvantages into  
Opportunities**

A.W.M. Vandkamp

SOCIAL WORK



June 2002

# **‘When One Door Shuts, Another Opens’: Turning Disadvantages into Opportunities**

A.W.M. Veldkamp

## **Introduction**

For many years, the child and family welfare and child protection systems in the Netherlands have been under heavy criticism. Numerous experts in these fields have been advocating a more intensive co-operation and a better coherence between both systems (Bisschops, 1998; Doek, 1991; Van der Linden, 1992; Van Nijnatten & Van Montfoort, 1992; Veldkamp, 1997b). The relation between the two fields seems to be a never ending issue for political and public discussion that has filled many bookshelves during recent decades (Doek, 1991). In spite of this, until now, the much-criticized relation between the two has not fundamentally changed.

In the first part of this paper, the characteristics of the child and family welfare and the child protection systems will be described and compared. Subsequently, these characteristics will be explained in the light of the historical argument on which the dichotomy in the welfare and protection systems is based. Attention will then be paid to the harmful effects of the existing structure, in particular for multi-problem families; effects that make it clear that changes are necessary. Lastly, ideas for changes to the child and family welfare and child protection systems will be discussed.

## **Description and Comparison of the Child and Family Welfare and Child Protection Systems**

### The Child and Family Welfare System

Child and family welfare is founded on the fairly recent Youth Services Act (Wet op de Jeugdhulpverlening, 1989). Child and family welfare services consist mainly of private institutions which, although funded by the government, can act with a certain degree of autonomy. Administrative responsibility for the (private) sector youth services rests with the

Minister of Health, Welfare and Sport, the provincial executives and the municipal executives of the four largest urban regions, Amsterdam, Rotterdam, The Hague and Utrecht.

In the Act, child and family welfare is described as "The activities aimed at preventing, reducing or solving problems or disorders of young persons of a physical, social or pedagogic nature that could have an adverse effect on their development towards maturity" (Youth Services Act, Sec. 1). It is a very broad definition which, in principle, can encompass all conceivable preventive and curative activities aimed at promoting a favourable development from childhood to adulthood. Child and family welfare is thus geared to the individual child and his or her personal context and circumstances. It proceeds from an attitude of assistance. In other words, assistance is not imposed, but provided at the request of the young person and/or his or her parents. This must be voluntary, and the person requesting assistance must also be motivated to accept it. The person's own description of the complaint or problem should be the starting point for treatment. In this way, the right of self-determination is acknowledged and respected; the client is, in principle, held responsible for his or her own situation and also determines if and when he or she has had enough assistance. The client is considered capable of making choices and to have some (potential) problem-solving ability. Assistance focuses on enhancing the development and self-sufficiency of people requesting assistance and improving the quality of their life. In the Netherlands, parents and children do not have any legal right to assistance, and therefore the child and family welfare services have no obligation to provide assistance (Veldkamp, 2001).

If we look at the resources used within child and family welfare, we find a richly varied range of non-residential and semi-residential facilities, often with a multi-disciplinary staff of behavioural experts. Instead of being oriented toward the demands of children and families, these facilities are predominantly focussed on the services they supply and do not appear to be

well co-ordinated or cohesive. The sector has advanced diagnostics and diverse treatment methods at its disposal and utilizes the results of behavioural research to refine them ever more.

### The Child Protection System

Child protection originated in and was legitimized by the now rather ancient Child Labour Acts of 1901, which were not enacted until 1905. The sector falls under the administrative and political responsibility of the Minister of Justice, and is a mixture of government and private initiatives. A government organization, the Child Care and Protection Board, is authorized to investigate the circumstances under which children are brought up, if they suspect that these could pose a threat to their development. If the upbringing situation gives reason for intervention, the Board can enlist the services of the court. If the court finds that intervention is justified, that intervention is then delegated to a family supervision institution. Once again, this is a private institution.

The original objective of child protection was (and actually still is) to safeguard the moral development of children, when that development is at risk through the incorrect or improper exercise of parental authority. This is founded on the view that the cause of deviant behaviour and crime is poor upbringing, and that it can thus be blamed, more or less, on the upbringers.

Legal means are provided in the Dutch Civil Code (*Burgerlijk Wetboek*) that make it possible to breach parental authority; the so-called child protection measures. Initially, the law only provided for withdrawal and removal measures (Sec. 266 and 269, Book I, Dutch Civil Code), which resulted in the complete withdrawal of parental custody. In 1922, the guardianship measure was added, which entailed a limitation of parental authority (Sec. 254, Book I, Dutch Civil Code). With the adoption and application of these measures, the legislator then intended to kill two birds with one stone; the child could be saved from moral ruin 'by removing it from the

pernicious influence of its degenerate parents', and society would be protected against children who would otherwise come to no good (Van Montfoort, 1993; 1994).

In order to apply a child protection measure, it is necessary for the Child Care and Protection Board to make it plausible to the court that the relevant grounds laid down by law have been met. These grounds consist of rather abstract descriptions of characteristics and forms of parental (mis)behaviour that are not considered compatible with the proper exercise of parental authority: 'powerlessness', 'unsuitability', 'a history of bad conduct', 'gross negligence of the obligation to provide care and upbringing', and 'ignoring the instructions of a family supervisor to a serious degree'. It must be demonstrated that the parents have forsaken their parental authority or that they are exercising it incorrectly or improperly. In other words, the court must be convinced that the parents are demonstrably and thoroughly failing their children. The child protection service must therefore make statements about the failure or inadequacy of the parents. In order to protect children, the law compels the child protection service, as it were, to disqualify the parents as upbringers. As a consequence of this view, the focus within the child protection sector is initially more on the failure by the parents than on meeting the needs of the children (Veldkamp, 1997b).

Contrary to what is assumed by many, according to the government's official interpretation, child protection is explicitly not assistance (Van Montfoort & Van Nijnatten, 1991). Child protection is protecting the interests of children by taking responsibility in the form of the exercise of legal authority (Van Nijnatten, 1995). It concerns the government's public responsibility to stand up for children whose development is seriously threatened by the faulty exercise of parental authority. In this approach, children only deserve protection when it has been established in court that they have been seriously harmed or have had to endure suffering through the acts or omissions of their parents.

Parental authority is the core concept and the main orientation point in child protection, on which virtually all activities are based. Problems with children and youth are attributed to the way in which parental authority functions. Social factors, such as social deprivation or poverty, are simply not considered. Expressed in simple terms, this is based on the following historic argument.

The law confers parental authority on the parents, on the assumption that this will adequately safeguard the child's interests. For the parents, parental authority encompasses both the right and the obligation to care for and bring up their children (Section 247, Dutch Civil Code). Originally, in the year 1900, the upbringing obligation primarily meant that parents had to teach their children socially accepted values, so that children could learn to behave themselves appropriately. Nowadays, this also means enhancement of children's personal development and responsibility for their physical and mental welfare (Sec. 247, Book I, Dutch Civil Code). The legislator assumes that parental authority functions adequately if the parents properly fulfil their obligation to care for and bring up the child. If parents fulfil their obligation, which is expressed, for example, in how they and their children behave in society, there is no reason at all for the government or the child protection service to interfere in the family. If, however, the living and upbringing conditions of the child are seriously wanting, this is construed as failure by the parents to comply with the obligation imposed by law. In that situation, the exercise of parental authority fails in a way that constitutes a direct threat to the moral development of the child and therefore an indirect threat to society. The presence of those threats gives the government a legitimate reason to intervene in the child's upbringing situation. If the failure in the exercise of parental authority can be made plausible, this authority may be withdrawn or curtailed and, after intervention by the court, fully or partially assumed and exercised by the child protection service. The underlying idea is that such intervention

remediates the established failure in the exercise of authority and adequately safeguards the interests of the child and society once again. During the term of the judicial measure, the parents are given the opportunity to bring their behaviour in line with the expectations of society. In doing so, they may receive instructions that must also be followed. If the parents succeed in adjusting sufficiently, they can again be considered 'worthy' enough to exercise parental authority independently and the measure can be lifted. If not, the responsibility will remain with the child protection service, according to the original argument (Veldkamp, 1993).

In most cases, the child protection service is not called in by the parents or young person, but by others. These can be (youth) care workers, teachers and doctors, but also family members, neighbours and family acquaintances. Therefore, child protection service usually intervenes with the child and family without being asked by them. Although currently an attempt is always made initially to obtain the cooperation of the parents and child, child protection measures can be imposed against their explicit wishes. Because of the far-reaching consequences this can have, the use of force and coercion by the child protection service has repeatedly been a reason for angry protests in the past (Van Montfoort & Van Nijnatten, 1991). On the one hand, these protests resulted in an improved legal status for parents who have dealings with the child protection service, for example in the form of a right to inspect the reports drawn up and a right to complain about the actions of the child protection service. On the other hand, in some cases, this strengthened legal status of the parents can make the actual protection of children considerably more difficult. The way in which the child protection service used power and coercion in the past has given it an unfavourable image, which will be difficult to shake. That image has undoubtedly limited co-operation from the voluntary child and family welfare services, which tend to go to extremes to avoid the child protection service, and only to call upon it if attempts to assist have got completely bogged down (Van Burik & De Savornin



Lohman, 1994). As a result, children and their parents often have to remain unnecessarily long in extremely difficult circumstances and are deprived of help.

The resources available to the child protection service are limited, certainly when viewed in relation to the very complex problems confronting the sector (Doek, 1991). First of all, they have to work with a very outdated law, based on views about family, parenthood, and upbringing problems as they applied at the beginning of the last century (Soetenhorst-de Savornin Lohman, 1998). This law assumes that upbringing problems can be resolved by intervening with parental authority or assuming parental responsibility. The law has only legal instruments with which to do this; the measures that withdraw or restrict parental authority. The concrete obligations of the child protection service to make efforts with respect to the child and his or her family after the court has pronounced a child protection measure cannot be ascertained from the law (Doek, 1991; Veldkamp, 1997b, 1997c). Therefore, in themselves, these legal instruments do not guarantee in any way that the circumstances of children will actually improve. Moreover, the child protection service is predominantly mono-disciplinary. Although the number of behavioural experts has been increasing slowly but steadily for several years, the social work discipline is by far the most strongly represented in child protection service. There is a chronic lack of time and a serious shortage of possibilities for placing children outside the home when their living circumstances make this necessary. There are as yet no clear, unambiguous criteria for intervention (Scholte, 1997). The development of diagnostics and methodologies for the practice of child protection is still in its infancy (Doreleijers, 1995; Faas, 1991; Kalverboer, 1996; Mertens, 1996; Ten Berge, 1998). All in all, child protection is a less endowed sector, that is expected to tackle the most complex problems with totally inadequate means (Doek, 1991) and does not succeed well in doing so (Slot, Theunissen, Esmeijer, & Duivenvoorden, 2001).

## Comparison of the Two Systems

Child and family welfare and child protection are two separate circuits, each with its own legitimacy, responsibilities, views, concepts, organizations, administrative relationships, and financing. Child and family welfare centres on the individual and his or her emergency situation. Assistance activities are developed only on request and are aimed at reducing or relieving the reported problem. This is based on the requester's own responsibility and ability to change. In child protection, the emphasis is not on providing assistance, but on applying the law. The interests of society receive just as much consideration as those of the individual. In order to serve both interests simultaneously, legal means are used which may also be applied under coercion and are linked with an encroachment on the parents' own responsibility and autonomy in raising their children.

### **Assistance Versus Law: The Historical Basis of the Separation of Child and Family Welfare and Child Protection Systems**

The separation of child and family welfare and child protection originated and still exists as a consequence of the central government's view, which it has held and practised strictly since the beginning of this century, that assistance and law are separate powers that should not be combined (Committee on Child Protection Law, 1971). Stubbornly holding to this view has been responsible for the failure up to now of every attempt at the further integration of child and family welfare and child protection (Doek, 1991; Van Montfoort & Van Nijnatten, 1991). Throughout this century, the strict separation of assistance and law has strongly dominated the relationship between child and family welfare and child protection. It has also survived the various movements at the end of the last century in relation to views on the upbringing and protection of children.

Soetenhorst-de Savornin Lohman (1993) distinguishes four fixed patterns in the

relationship of assistance and law which, because of their lucidity, I use here to clarify the differences created between child and family welfare and child protection. The first pattern relates to the difference between behavioural scientists and jurists in the approach to deviant behaviour, including upbringing problems. This pattern actually concerns which strategy can be expected to produce the most results in dealing with deviant behaviour. Is this by treatment and influencing the behaviour of the individual and family (assistance) or by punishing the deviant behaviour and compelling the adjustment of behaviour through the use of legal means (law)? A balanced answer to this question, with room for both elements, has never been formulated, but simply circumvented by constructing a separation: behavioural scientists tackle deviant behaviour by providing assistance and jurists do this by applying the law; everyone for themselves, within his or her own framework, by their own means and from their own professional views and definition of the problem. This way, each discipline remains within its own limits, and a competence battle, if it should have to be fought at all, is avoided.

The second pattern consists of the varying political attention for maladjusted young people, in this case for deviant behaviour and crime. As long as deviant behaviour and crime occur on a limited scale and do not constitute a large threat to society, not much interest is shown. The care of maladjusted young people can then, as far as the government is concerned, be left in good conscience to the parents and welfare services. In that case, the role of the State and the law can remain limited. However, as the need of society becomes greater as a result of increased deviant behaviour and crime, and society is faced with more problems, political interest increases. Likewise, politicians are more willing to confer more legal powers on the State to intervene in the upbringing of children and in people's private lives. Then the call for government measures becomes louder and the role of the State and meaning of the law suddenly become greater and more important (Junger-Tas, 1997). After all, the interests of society are at

stake, to which individual interests must give way if necessary and, in consequence, intervention in personal and family life must be tolerated sooner and more frequently.

The third pattern is the interweaving of private enterprise with the government. In the Netherlands, welfare, the care for the individual person in need, has been the longstanding domain of private institutions (assistance), and in this area the government's task is only to set out preconditions for and to supplement private initiatives (law). In this pattern, the principal responsibility for the care of young people is borne primarily by private enterprise. The role and responsibility of the government and the law only come into play when assistance has failed, or does not provide an adequate solution (Doek, 1991), or when a higher interest is at stake, such as the safety of society or the protection of social morals (Van Montfoort, 1993; 1994).

The fourth pattern consists of the tension between the interests of adults and the interests of children. This concerns the question whether the interest of the child justifies a violation of the rights and freedoms of adults, in particular the adults who have primary responsibility for the upbringing: the parents. This is a legal balancing of interests, which is the province of the courts. The weight attributed to those interests can vary, according to the views that prevail in a certain period, and are reflected in the law. In balancing the interests, the child's interest is not determined on the basis of the ideas of behavioural science, nor described in terms of assistance. The courts only use legal concepts and criteria, which must be derived from and tested against the law. Interests are expressed in law. The court must examine whether enough violence has been done to the child's right to care and upbringing to justify encroachment on the parent's right to bring up his or her child freely and according to his or her own views. In this balancing process, the court can assign an informative or advisory function to behavioural scientists to give more concrete substance to abstract legal terms, such as 'the interest of the child' or 'gross negligence'. However, this is done only with a view to substantiating the court's decision.

Taking the decision remains the exclusive competence of the court, so that the court ultimately has the last word and is thus dominant.

The distinction made between assistance and law can be explained well from a historic perspective and is also understandable theoretically. It actually concerns a delineation of the working areas of the legal and behavioural science disciplines; the division of tasks between the government and private enterprise; protection of the interest of one individual (the child) as opposed to the interest of the other individual (the parent) and weighing the individual interest against the interest of society.

### **The Harmful Effects of the Separation of the Systems**

In the relation between child and family welfare and child protection, the patterns discussed above can be clearly recognized in the distinction between assistance and law. The government does not interfere in the decisions of adults whether to have children or not nor, therefore, in the consequences that this decision can have. Upbringing problems are thus seen primarily as a private matter and not as a matter for government intervention. People are deemed to be responsible for the solution of their own personal problems, including problems with upbringing. The government does not consider direct involvement in this as one of its tasks, and there is almost full consensus on this in the Netherlands. Parents have a large measure of freedom to bring up their children according to their own views. That in itself is a good starting point. As long as things go well, there is no need for the law or child protection, and they therefore remain in the background, keeping a watchful eye. The government's role is initially limited to creating and maintaining private facilities for child and family welfare, which people can rely on if they are unable to solve their own problems. In the Netherlands, voluntary assistance by behavioural science disciplines is preferable to use of the coercive legal measures at the disposal of the child protection service. These only come into play if parents use their

freedom of upbringing to the detriment of the child, assistance fails and harm has already been done to the child and society, or such harm threatens to be done.

The distinction between assistance and law has had a definite effect on the relation between child and family welfare and child protection in practice. We see that both sectors address similar problems (Deboutte, 1989; Doek, 1991; Soetenhorst-de Savornin Lohman, 1993) and, amazingly enough, it is more or less a matter of coincidence whether a client ends up at child and family welfare or child protection with his or her problems (Van der Linden & Hendrickx, 1991). Thus both sectors operate in the same territory, but each does so in its own way, by seeking solutions that usually do not extend further than the limits of its own frame of reference.

In pursuing the same purpose, the best interest of the child, child and family welfare and child protection operate from a totally different point of view and attitude, and use different means of intervention. Furthermore, in the course of time, the separate sectors have undergone a totally different development. Generally speaking, child and family welfare is keeping reasonable pace with social changes and attempts to anticipate new problems and to find contemporary solutions for traditional problems. In contrast, from its inception, child protection has remained virtually unchanged and still avails itself of the same instruments (and their underlying ideas) with which it was equipped almost a century ago (Soetenhorst-de Savornin Lohman, 1998; Veldkamp, 1993, 1997a). This has only widened the differences, and child and family welfare and child protection have grown farther apart rather than closer together (Doek, 1991). Because of all this, it really makes a difference for the child and family in an upbringing crisis whether they have to deal with one sector or the other, with assistance or law.

#### The Multi-Problem Family

The dogmatic and organizational separation of child and family welfare and child protection leads to considerable problems in practice and to a dichotomy in the care of young people. Those seeking and in need of help are the main victims of this division, and in this context those are parents and children in the middle of a serious upbringing crisis. These problems are felt most strongly on the cutting edge where assistance and law are in line with each other and should come together; on the cutting edge where they actually need each other the most. We are then talking about situations where there is a serious upbringing problem in the family, often in combination with violence, abuse and neglect, and conflicts surrounding parents and children; situations in which the limits of what is permissible in the family and the limits of what the interventions can achieve come in sight or are overstepped.

Such situations usually involve prolonged, multiple problems, whereby the possibilities of the clients to change are limited, as are the possibilities of the child and family welfare service to make changes (Ghesquière, 1993). In those situations, the clients are not usually able to meet the conditions of voluntary assistance and motivation set by the child and family welfare service for treatment. Multi-problem families are steeped in misery and often in a serious state of social incapacitation. They have little confidence in social workers and society and are therefore barely motivated to seek help. This often concerns parents who have had a troubled upbringing history themselves which, through the lack of alternatives, they in turn perpetuate in the lives of their children. In these situations, the starting points used by child and family welfare, which are all based on the client's freedom, aim too high. The client does not really have any freedom. Freedom does, after all, presume a choice, and there is no question of this. It is evident from the distressful family and upbringing circumstances that the clients are unable to use their freedom to their own advantage, with all the concomitant harmful consequences. The clients do not choose their miserable circumstances, but simply lack the knowledge, insight and

skills to get out of them on their own or to express a request for help. If child and family welfare nevertheless continues to stick to the conditions that the client must request help and must also be motivated to accept help, the consequence will be that families who need help the most are precisely the ones who are deprived of it. In this way, the means available to child and family welfare to relieve family and upbringing problems remain out of reach of these families and the hopeless situation could, if it were possible, become more hopeless.

The risks to the health and development of the child, and the educational incapacity of the parents that gives rise to these risks, can make it necessary for child protection to intervene in the upbringing situation without being requested. For this purpose, it is necessary first of all for someone outside the family to take the responsibility to call the attention of the child protection service to the multi-problem family. This is anything but a matter of course in the Netherlands. There is no obligation to report a suspicion of child abuse, sexual abuse, or serious neglect of children. Reporting alarming upbringing circumstances of children to the child protection service is left to the individual social worker's own responsibility. There is not much willingness to report. Furthermore, in the present system, if a report is indeed made, unrequested interference with the family must be justified on the basis of the seriousness of the threat to the child. If this threat is not yet serious enough, or if the parents show a minimum willingness to co-operate, meaning that the legal grounds for protective measures are not met, this can mean that the child protection service will refrain from further action, refer the matter or wait until things gets worse, until intervention is indeed possible. In these situations as well, the parents and child are deprived of any help. In the case where the child protection service does proceed to take protective measures, help for the child and family is not guaranteed. A child protection measure is only a legal framework to impose help on the family and explicitly not assistance. In other words, the institution charged with implementing the child protection measure must in



turn rely on child and family welfare facilities in order to organize and start the assistance. However, the child and family welfare service has the tendency not to view the child protection service as an applicant for assistance or a promoter of the interests of the child and family, but as a judicial organization with which it would rather not have dealings. To be eligible at all for assistance, the clients for whom assistance is being requested are required to be motivated, and things have thus come full circle and, in the worst case, the child and family are left to pick up the pieces.

### **The Need and Suggestions for Change**

Making a theoretical distinction between assistance and law is not wrong in itself. Nor is it wrong to translate that distinction into a child and family welfare system, at least as long as such a system actually continues to fulfil its purpose, still fits in with the character of the modern age and provides for a need felt by society. It is only wrong if the elements of assistance and law are not connected with each other in a balanced manner within the system, if the distinction is strictly maintained only for the sake of the distinction, or if it continues to determine the organization and design of child and family welfare. A system is then maintained in which forces, which should not be conceived of separately, precisely because they could reinforce each other, are nevertheless frenetically kept apart. Then we continue deceiving ourselves into thinking that assistance and law, or child and family welfare and child protection, do not have anything to do with each other, while in reality they cannot do without each other. The distinction is theoretical and artificial. It leads to great confusion and ever more bureaucracy, while those who are dependent on child and family welfare do not benefit from it in any way (Veldkamp, 1995b). The distinction particularly emphasises the differences between child and family welfare and child protection, instead of paying attention to the common ground and similarities. Those differences may perhaps constitute the original justification for the

existence of the separate sectors, thus also for the institutions that are part of it, but is not sufficient reason to stop calling this arrangement into question. It is much more important to try to increase the accessibility, range, and effects of the youth services by discouraging the hindersome compartmentalization and facilitating the connection, so that children and families with problems will no longer be shifted around fruitlessly or fall between two stools.

Formally, the distinction between assistance and law still determines the relation between child and family welfare and child protection. Nevertheless, at present, shifts in ideas are taking place in both sectors that are shaking the foundations of the traditional relation. The main causes of the rapprochement between child and family welfare and child protection are the changing status of the child and altered ideas on important aspects of upbringing. For example, there is more restraint in issuing care orders for children, partly as a result of diminished confidence in the effects of residential care. At the same time, child and youth psychology and education are paying more attention to the importance of the bond between parent and child and to the significance of mutual loyalty within that relationship. More emphasis is being placed on the relational aspect of upbringing, thus also on the value for children of a good relationship with their parents. This demands an approach to upbringing problems in which assistance to the child also involves an investment in maintaining and improving the relationship with his or her parents and preventing a separation of child and parents. This approach requires a common vision and a different attitude on the part of the child and family welfare service, as well as from the child protection service, when it comes to families with serious upbringing problems.

An important reference in developing a common vision and a different attitude is the (International) Convention on the Rights of the Child (CRC). The Convention entered into effect in the Netherlands in 1995 and should be considered as non-voluntary guidelines for the world of adults (parents, other adults, *and* the government) to promote the health and

development of the child and protect him or her against any form of violence, abuse and neglect.

In the Convention, the child is not seen as the property or an extension of his or her parents, but as an independent bearer of rights. It centres on the child and his or her right to safety, upbringing and development. The starting point is that "the child, for the full and harmonious development of his or her personality, should grow up in a family environment, in an atmosphere of happiness, love and understanding" (Preamble to the CRC). For that reason alone, according to the Convention, "the family should be afforded the necessary protection and assistance so that it can fully assume its responsibilities within the community" (Preamble to the CRC).

The granting of rights to the child creates obligations for adults, without whom the child would not evolve. Parents are deemed to have primary responsibility for complying with the obligations toward the child. In addition, social facilities, such as child and family welfare and child protection, are partly responsible for implementing the rights of the child, in the event that the parents do not succeed at all or completely in bearing their child-rearing responsibilities. In this connection, the Convention refers to an obligation to "render appropriate assistance to parents ... in the performance of their child-rearing responsibilities" (Art. 18 CRC).

For the child and family welfare service, the introduction of the Convention means that primarily the child must be seen as the client and requester of help, not the parents. This means, for example, that the child should not have to depend solely on the co-operation or motivation of his or her parents. Volunteer engagement can still apply as the starting point for treatment; however, the responsibility of the child and family welfare service does not end if the child is obviously in need of help, but the parents are not willing and able to express the need for help for the child. The limits to the parents' freedom in raising their child come in sight when the child is denied necessary help. We are then talking about situations in which the parents' right to

bring up their child at their discretion conflicts with the rights of the child to a healthy development, and this conflict of interests threatens to turn out to the child's disadvantage. The child's right to safety, upbringing and development requires that steps be taken to enable that child to be helped, if necessary by disregarding certain rights of the parents. With that goal in mind, one of the responsibilities of the child and family welfare service can be to call in the child protection service.

The letter and spirit of the Convention also have consequences for the child protection service. As early as 1991, the Child Care and Protection Board formulated a contemporary vision of child protection on the basis of the Convention. This strongly emphasises the connection between child and family welfare and child protection in the event of upbringing problems (Beaufort-Caspers & Veldkamp, 1991; Koens, 1992). The vision has meanwhile been carried through in guidelines for the Board's actions in the area of serious upbringing problems (Veldkamp, 1995a). The vision and the guidelines express the idea that starting up the process of directed assistance to the child and his or her family is the primary purpose of the child protection service. In this context, protection should not be viewed as putting up a screen between parents and child, which would only further weaken the already weak functioning of the family (Colapinto, 1995). Here, protection primarily means strengthening the functioning of the family and/or the functioning of the child, for the purpose of solving the problems found or making them bearable. That is why, initially, attempts should be made to motivate the parents to accept help on a voluntary basis, out of recognition that they have primary responsibility for rearing their child. The court will only be enlisted when it is evident that a conflict of interests exists between parent and child: help is necessary for the child, but the attitude or incapacity of the parents makes this unattainable. The assistance of the law is then called upon. Not because a lack of exercise of parental authority has been ascertained, but because the child will suffer

harm if he or she is deprived of help. From this point of view, the child protection measure is only the key to unlock the door to child and family welfare (Van der Linden, 1992).

This vision of child protection argues for tailor-made child protection measures, to enable directed and specified assistance to the child and family when the parents do not succeed in providing adequately for the developmental needs of the child. I myself am an advocate of the replacement of the present measures for withdrawing and curtailing parental authority by a varied system of legal provisions that must actually bring the specific forms of assistance within the reach of the child and family. These are provisions that set out duties, creating obligations to the child. After intervention by the courts, other adults, either together with, or in addition to, the parents, must perform such obligations. These provisions should be tailor-made. In other words, they should be geared to the individual situation of the child in question and his or her parents. They should be aimed at compensating the deficiency in meeting the child's developmental needs. To determine the nature and extent of that deficiency, a thorough diagnosis and assessment are required of the child's development, the entire family circumstances and the capacity of the parents to bring up the child. In addition, a thorough forecast needs to be made to create realistic, feasible prospects for the child. The diagnosis, assessment and forecast should be based on insights from education, developmental psychology, psychopathology, family pathology, and so forth. To the extent this is possible in the current state of the art, it should also be determined how and with the deployment of which resources, persons, disciplines and services, the educational deficiencies the child encounters in his or her present upbringing circumstances can still be remedied, and how long this might take.

Because imposed assistance is always coupled with an encroachment on people's rights and freedoms, this assistance should be tailor-made in such a way that the encroachment is kept to a minimum. This requires a variety of legal provisions under which assistance can be

imposed. These could be provisions for the protection of the child when his or her physical or psychological integrity is in danger. Others could relate to the care and upbringing of the child and the place where this is to be given shape. Yet others could create possibilities for treatment of the child and/or his or her parents or provide support to the parents and the child. Lastly, provisions could be adopted which, partly from the viewpoint of prevention, are directed at the education, training or coaching of the parents (Baartman, 1997). According to the circumstances, one or another provision or a combination of them can be used.

To impose one or more forms of assistance, the court must be asked to give a decision. A request for this purpose must be based on reports in which the assessment, diagnosis and forecast, as well as a plan of action, are described. The plan of action should preferably and as far as possible be drawn up in consultation with the parents and, if possible, the children. This plan should state the relief requested, which is considered necessary to remedy the deficiency in the child's needs. The court should review whether the right of the child to safety, upbringing and development requires the relief requested and also whether the circumstances justify an encroachment on the rights and freedoms of the parents for the purpose of enforcing the rights of the child.

If the court decides to allow the relief requested, this means that the parents will have to tolerate the required encroachment on their rights and freedoms. The decision, which should formulate the implementation of the plan of action in the most concrete terms possible, would create the power and obligation of the child protection service to involve certain child and family welfare facilities in the solution of problems; and the obligation for the child and family welfare service to provide the assistance (Veldkamp, 1997b). With such a varied system of powers, assistance and law could complement each other excellently, the interest of the child could be served in the best way possible and parental responsibility could remain intact as far as

possible. It is a combination of assistance and law which is completely in keeping with the definition of child and family welfare. With this, the need for an administrative and organizational separation of assistance and law would cease to exist.

### **Summary**

The separation of assistance and law has led to a dichotomy in youth services, which has entailed disadvantages especially for children and parents who are suffering from serious upbringing problems. Under the influence of changed views on the parent-child relationship, the status of the child, the role of parents and the approach to serious upbringing problems, it is becoming clear that assistance and law can help each other. Both assistance and law are gradually taking on a different meaning, through which they are no longer considered purely as opposites, but are able to develop into allies. I hope that the children and parents, who need both protection and assistance, will be able to reap the benefits of the developments in progress.

## References

- Baartman, H. E. M. (1997). Over legitimering en noodzaak van primaire preventie. Nederlands Tijdschrift voor Opvoeding, Vorming en Onderwijs, 13(5), 300-307.
- Beaufort-Caspers, J., & Veldkamp, A. W. M. (ed) (1991). Kinderbescherming Maak het Waar!!! Breda: VVS.
- Berge, I.J. ten (1998). Besluitvorming in de kinderscherming. Delft: Eburon.
- Bisschops, L. (1998). Kinderbescherming: Tussen bescherming en emancipatie! Tijdschrift voor de Rechten van het Kind, 8(2), 2-6.
- Burik, A. van, & de Savornin Lohman, P. (1994). Tussenevaluatie projecten verbetering samenwerking kindermishandeling. Amsterdam: Van Dijk, Van Soomeren & Partners B.V.
- Colapinto, J. A. (1995). Dilution of family process in social services: Implications for treatment of neglectful families. Family Process, 34, 59-74.
- Commissie voor de herziening van het Kinderbeschermingsrecht. (1971). Jeugdbeschermingsrecht. 's. Gravenhage: Staatsuitgeverij.
- Deboutte, D. (1989). Jeugd en hulp; een psychiatrisch-epidemiologische verkenning. Leuven/Amersfoort: Acco.
- Doek, J. E. (1991). De Wet jeugdhulpverlening en het isolement van de justitiële hulpverlening. Tijdschrift voor Familie- en Jeugdrecht, 13(7/8), 166-172.
- Doreleijers, Th. A. H. (1995). Diagnostiek tussen jeugdstrafrecht en hulpverlening. Arnhem: Gouda Quint.
- Faas, M. (1991). De Tweede Kamer en de kinderscherming. Tijdschrift voor Orthopedagogiek, 30(6), 294-304.
- Ghesquière, P. (1993). Multi-problem gezinnen met ernstige opvoedingsproblemen: een strijd om perspectief. Tijdschrift voor Orthopedagogiek, 32(12), 536-550.



- Junger-Tas, J. (1997). Jeugd en Gezin II. Naar een effectief preventiebeleid. Den Haag: Ministerie van Justitie, Directoraat-Generaal Preventie, Jeugd en Sancties.
- Kalverboer, M. E. (1996). Onderzoek naar de wijze van rapporteren over opvoedings- en verzorgingsproblematiek bij de Raad voor de Kinderbescherming Directie Noord. Groningen: Stichting Kinderstudies.
- Koens, M. J. C. (1992). Op de goede weg naar een nieuwe jeugdbescherming? Tijdschrift voor Familie- en Jeugdrecht, 14(11), 251-255.
- Linden, A. P. van der, & Hendrickx, J. J. P. (1991). Met of zonder maatregel. Justitiële jeugdbeschermingsmaatregelen en geestelijke jeugdgezondheidszorg. Tijdschrift voor Familie- en Jeugdrecht, 13(7/8), 161-165.
- Linden, A. P. van der (1992). Om wie het gaat in het jeugdbeschermingsrecht. Tijdschrift voor Familie- en Jeugdrecht, 14(8), 174-179.
- Mertens, N. M. (1996). Gezinsvoogden aan het werk. Arnhem: Gouda Quint.
- Montfoort, A. J. van, & van Nijnatten, C. H. C. J. (1991). Jeugd, zorg en dwang: de kinderbescherming ter discussie. Maandblad Geestelijke volksgezondheid, 26(11), 1179-1192.
- Montfoort, A. J. van (1993). In onmacht en teleurstelling: over het ontstaan van de justitiële kinderbescherming: 1870-1905. In A. Groen en A. J. van Montfoort (Eds.), Kinderen beschermen en jeugd hulpverlening. Arnhem: Gouda Quint.
- Montfoort, A. J. van (1994). Het topje van de ijsberg. Kinderbescherming en de bestrijding van kindermishandeling in sociaal juridisch perspectief. Utrecht: SWP.
- Nijnatten, C. H. C. J. van, & van Montfoort, A.J. (1992). Van kinderbescherming naar publieke jeugdzorg. Maandblad Geestelijke volksgezondheid, 47(3), 259-270.
- Nijnatten, C. H. C. J. (1995). Het gezicht van gezag. Amsterdam/Meppel: Boom.
- Scholte, E. M. (1997). Diagnostiek door de Raad voor de Kinderbescherming en de

Gezinsvoogdij. In J. D. v.d. Ploeg, J. M. A. M. Janssens, & E. E. J. De Bruyn (Eds.),

Diagnostiek in de jeugdzorg. Groningen: Wolters-Noordhoff.

Slot, N. W., Theunissen, A., Esmeijer, F. J., & Duivenvoorden, Y. (2001). Een onderzoek naar de doelmatigheid van de ondertoezichtstelling. Amsterdam: Vrije Universiteit.

Soetenhorst-de Savornin Lohman, J. (1993). De armslag van de uitvoerend werker op het raakvlak tussen hulp en recht. In A. Groen, & A. J. van Montfoort (Eds.), Kinderen beschermen en jeugd hulpverlening. Arnhem: Gouda Quint.

Soetenhorst-de Savornin Lohman, J. (1998) Kind in het geding. Kinderbescherming tussen traditie en vernieuwing. In Th. N. M. Schuyt, & M. Steketee (Eds.), Zorgethiek: ruimte binnen regels. Utrecht: SWP.

Veldkamp, A. W. M. (1993). De toekomst van de kindbescherming. In A. Groen, & A. J. van Montfoort (Eds.), Kinderen beschermen en jeugd hulp verlenen. Arnhem: Gouda Quint.

Veldkamp, A. W. M. (ed) (1995a). Werkwijze en Organisatie Primair Proces Beschermingszaken. Utrecht: Raad voor de Kinderbescherming.

Veldkamp, A. W. M. (1995b). Het gezicht van gezag besproken. Tijdschrift voor de Sociale Sector, 49(12), 42-43.

Veldkamp, A. W. M. (1997a). Het kind van de rekening. In A. Remy (Ed.), Tussen te kort komen en te kort doen. Horn: Jeugddorp Bethanië.

Veldkamp, A. W. M. (1997b). De Raad voor de Kinderbescherming en de toepassing van kindbeschermingsmaatregelen: beschermen tégen of opkomen vóór? In: OTS en ontheffing. Lelystad: Vermande Studiedagen.

Veldkamp, A. W. M. (1997c). Nog te vroeg voor een feestje! De doorwerking van het Internationaal Verdrag inzake de Rechten van het Kind in de jeugdbescherming. Tijdschrift voor de Rechten van het Kind, 7(4), 4-6.

Veldkamp, A. W. M. (2001). Over grenzen! Internationaal vergelijkende verkenning van de rol van de overheid bij de opvoeding en bescherming van kinderen. Den Haag: Ministerie van Justitie.

SOCIAL WORK



## Partnerships for Children and Families Project

Wilfrid Laurier University  
Waterloo, Ontario, Canada, N2L 3C5

Email: [partnerships@wlu.ca](mailto:partnerships@wlu.ca)

Local: (519) 884-0710 ext.3636

Toll Free: 1-866-239-1558

Fax: (519) 888-9732