Lessons from Norway: The Children's Ombudsman as a Voice for Children

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Gary B. Melton*

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Research for this Article was completed while the author was a Fulbright Scholar at the Norwegian Center for Child Research in Trondheim. Acknowledgment is due the United States Educational Foundation in Norway, the Norwegian Center, and the University of Nebraska faculty development program for their support.

The past and present ombudsman for children in Norway, Målfrid Grude Flekkøy and Trond Viggo Torgersen, and their deputy, Marianne Borgen, provided invaluable assistance during the data collection phase of this study. Their comments on an earlier draft of this Article were also very useful. Ms. Flekkøy, in particular, provided hours of her time for interviews, sharing prepublication drafts of her forthcoming book. Acknowledgment is also due scores of Norwegian public officials and researchers who consented to interviews, and candidly discussed political matters.

My colleagues in the Norwegian Center, in particular Per Egil Mjaavatn, were of great help in identifying key actors in Norwegian child policy and providing a sounding board as my ideas about the ombudsman for children developed. Axel Wolff, who translated archives that were examined for the research, also translated the interview protocol used for the survey, described in § VI(B)(1) infra of Trondheim schoolchildren. Heidi Steine conducted most of the interviews for that study and assisted with translation and scoring of protocols. Ove Haugelkken and Per Olav Tiller assisted in the development and translation of instruments. Alfred Oftedal Telhaug provided helpful comments of an earlier version of this Article.

Insightful input was also received from John Berman and Virginia Murphy-Berman, colleagues at the University of Nebraska. Susan Limber supervised the scoring and analysis of survey data and assisted with library research.
I. STRUCTURES FOR CHILD ADVOCACY

Recognizing the powerlessness of children themselves, advocates for children commonly have lamented the lack of political structures designed to ensure that children’s interests are given due consideration in policymaking. In the United States, the continuing call for structures to support child advocacy emanated from the Joint Commission on the Mental Health of Children, although the roots of such an idea were found in the child-saving movement of the nineteenth century and its push for the establishment of the juvenile court. The Joint Commission fostered the focus on creation of structures for child advocacy by its pro-


2 See generally J. Kett, Rites of Passage 222 (1977); A. Platt, The Child Savers: The Invention of Delinquency 10 (2d ed. 1977); Takanishi, Childhood as a Social Issue: Historical Roots of Contemporary Child Advocacy Movements, 34 J. Soc. Issues 8 (spring 1978). For a discus-
posal for a network of councils and centers to ensure the "promotion of national, state, and community responsibility and initiative in developing comprehensive and systematic programs of prevention and treatment, in increasing the accountability of those who minister relevant programs, and in coordinating and organizing resources for supportive, effective, and coordinated programs for our children and youth." Beyond the need for a channel through which to unify political activity by adult advocates for children, critics often have articulated a need for a strong centralized agency to develop and coordinate child policy, a need met by neither the federal government nor most of the states.

These arguments generally have been based on three consequences presumed to result from the lack of a political structure for representation of children: (a) children's interests are outside the arena in which interests clash and policy results; (b) without mechanisms to ensure careful collection and analysis of relevant data, policy remains fragmented, uncoordinated, and simply irrational, even when some effort is made to take children's interests into account; (c) data that are apt to be absent from the foundation for policy include information about children's own concerns.

At least some advocates (popularly known as "kiddie libbers") believe that regarding data about children's worries and wishes is inherently important because respect for the personhood of children demands protection of autonomy in many circumstances. Others (commonly known as "child savers") acknowledge the significance of children's own concerns primarily as social indicators of the state of child welfare and, therefore, as bases for planning programs and policies sensitive to children's needs. This is true even where the child savers do not believe that children's...

3 JOINT COMMISSION, supra note 1, at 9.
ideas should be taken at face value as representations of what they really want or need. Whichever rationale is predominant, advocates generally agree that child policy typically has been based more on bureaucratic considerations and professional guild interests than on children's own concerns. There has been a general consensus among commentators that the lack of formal structures for the solicitation and analysis of such concerns, and for mustering political clout, has sustained such systematic bias in policymaking.

The response to the perceived need has varied. Private child advocacy organizations have developed nationally and in many of the states, and public child advocacy agencies have also been established. Many states have reorganized their structures or procedures for child policy in order to increase coordination.

Several states have consolidated children's services into a single agency that is intended to provide a unified, more powerful voice for children in the governor's cabinet and to increase the accountability of children's services.

The principle of structural change has encountered little opposition beyond that based on undue expansion of government functions. Some child advocates have criticized many of the structural changes actually existing and those that are proposed as politically naive, insufficiently attentive to social science knowledge about factors in policymaking and political change, and even exploitive of children for political purposes.

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10 Many state child advocacy organizations are affiliates of the Association of Children Advocates, headquartered in Cleveland, Ohio. The Children's Defense Fund, now headed by Marian Wright Edelman, is probably the most influential national child advocacy organization. See e.g., Tomkins, Profiles: A Sense of Urgency, NEW YORKER 48, Mar. 27, 1989; Goodman, She Thinks We Can, Sante Fe New Mexican, Nov. 24, 1990, at A-11, col. 6.

11 Such agencies were created to deal more specifically with cases unresolved within the existing bureaucracy than to provide advocacy on substantial policy issues.

12 See generally Soler & Shauffer, supra note 5. See also G. Melton & D. Hargrove, Planning Mental Health Services for Children and Youth (forthcoming) (highly integrated services achieve maximum efficacy, but policy structures must be developed to provide such services in the various systems which serve children and families).


14 Conservative officials in the executive branch of state or federal government have rejected several pieces of legislation co-drafted by the author. The officials purportedly agreed with the substantive portions of the bills but refused to accept the entire legislative packages because the bills included a structural change such as establishment of a commission or a gadfly agency, or elevation of an existing agency concerned with children's issues. Such opposition is ostensibly based on principled objection to increases in governmental complexity.


16 See, e.g., G. MELTON, supra note 9; see generally REFORMING THE LAW: IMPACT OF
not necessarily related to children's interests. Reflective, though, of the general lack of thoughtfulness in child policy or policy formulation, research evaluating the impact of the various structural changes that have occurred in the process of making policy for children has been virtually nonexistent.

II. THE NATURE OF THE NORWEGIAN OMBUDSMAN FOR CHILDREN

In that context, the Norwegian ombudsman for children (barneombud) presents a particularly interesting model for study, because it incorporates a number of features that advocates in the United States have sought to include in potential structural changes. The office of the Barneombudet is a relatively recent invention (initiated in 1981) that thus far has been copied directly in only one other country: Costa Rica.
Rica.\textsuperscript{22} However, adoption of a Barneombudet has been considered in the other Nordic countries, and ombudsman-like institutions have been adopted in a number of jurisdictions around the world.\textsuperscript{23} The concept underlying the Barneombudet is simple: It provides a voice for children's interests and acts as a watchdog to ensure that those interests are protected. Thus, the barneombud serves as a representative for children in policymaking and a guardian in policy implementation. The barneombud is not directly involved in making policy decisions but instead aims to ensure that children are able to enter the political arena and that, when they do, they compete on a level playing field.

As such, the Barneombudet is well within the traditional institution of ombudsman in Norway and the other Scandinavian countries. The topic of considerable discussion by commentators,\textsuperscript{24} the ombudsman serves as an independent, nonpartisan agent of parliament ensuring that the ministries fulfill the legislative will. Responding to complaints from the public, the ombudsman "has the power to investigate, criticize and publicize, but not to reverse, administrative action."\textsuperscript{25}

Historically, the ombudsman has been a strong figure who has been able to secure the attention of the authorities by sheer force of personality. The model seems uniquely suited to jurisdictions of small population, because it assumes personal involvement by the ombudsman in the cases that come to his office. It also may depend on a parliamentary form of government, and it certainly requires democratic rule.\textsuperscript{26} Moreover, its effectiveness would appear to require both skill and fortuity in the appointment process, so that the ombudsman has sufficient charisma, skill and political stature and independence to carry out the office's mission. The ombudsman's office also must be sufficiently established as an institution so that angry cabinet ministers feel obliged, as a matter of honor, not to tinker with its budget in retaliation for criticism.

In Scandinavia in recent years, this model has carried over to partic-

\textsuperscript{22} The Costa Rican ombudsman for children, established recently (1988), may be a rather fragile office. Interview with M. G. Flekkøy (Apr. 24, 1990). Supported in part by UNICEF, the office is a product of executive order by the Costa Rican president. Also, the ombudsman was promoted to deputy minister of justice, although he retained the post of ombudsman—a combination of roles that, besides perhaps diminishing leadership in the ombudsman's office in its early development, also seemed inevitably to establish conflicts of interest.

\textsuperscript{23} M. Flekkøy, A VOICE FOR CHILDREN 197-205.

\textsuperscript{24} E.g., W. Gellhorn, OMBUDSMEN AND OTHERS: CITIZENS' PROTECTORS IN NINE COUNTRIES (1966); F. Stacey, OMBUDSMEN COMPARED (1978); K. Weeks, OMBUDSMEN AROUND THE WORLD: A COMPARATIVE CHART (2d ed. 1978); THE OMBUDSMAN: CITIZEN'S DEFENDER (D. Rowat 2d ed. 1965) [hereinafter THE OMBUDSMAN].

\textsuperscript{25} THE OMBUDSMAN, supra note 24, at xxiv.

\textsuperscript{26} See Nader, Ombudsmen for State Governments, in THE OMBUDSMAN, supra note 24, at 245.
ular areas of social concern in which specialized ombudsmen are appointed by the cabinet to protect the interests of particularly vulnerable groups. Thus there are particular ombudsmen in Norway whose job is to protect children,\textsuperscript{27} women (the ombudsman for equal status),\textsuperscript{28} and consumers.\textsuperscript{29} The latter two ombudsmen not only have moral authority, but, unlike the barneombud, also have specific legal authority to seek enforcement of particular statutes.\textsuperscript{30}

The law establishing the Barneombudet, provides the barneombud with broad discretion "to promote the interests of children vis-a-vis public and private authorities and to follow up the development of conditions under which children grow up."\textsuperscript{31} The barneombud is specifically empowered to participate in planning, to "ensure that legislation relating to the protection of children's interests is observed, propose measures which can strengthen children's safety under the law, put forward proposals for measures which can solve or prevent conflicts between children and society," and educate the public about children's rights.\textsuperscript{32} The barneombud may act \textit{sua sponte} or in response to a case brought to the Barneombudet\textsuperscript{33} and may issue opinions whenever he or she chooses.\textsuperscript{34} The barneombud has free access to all public and private institutions for children without regard to any confidentiality laws.\textsuperscript{35}

Instructions implementing the act authorizing the establishment of the Barneombudet\textsuperscript{36} provide that, as a general rule, a case involving a specific child will not proceed without the child's permission\textsuperscript{37} and that the barneombud will not accept cases dealing with specific intrafamilial

\textsuperscript{27} See e.g. supra note 21.

\textsuperscript{28} The history of the Barneombudet, which was an outgrowth of Norway's observance of the International Year of the Child, is similar to that of the Ombudsman for the Office Equal Status of Women, which began in 1978 as a response to the International Women's Year. M. FLEKKØY, WORKING FOR THE RIGHTS OF CHILDREN, UNICEF CHILD DEVELOPMENT CENTRE, INNOCENTI ESSAYS No. 1 at 5 (1990).

\textsuperscript{29} The office of the ombudsman for consumers (FORBRUKEROMBUDET) was established in the Act No. 47 (June 16, 1972) relating to Control of Marketing and Contract Terms and Conditions Act No. 47 (No. 1972) Act of Dec. 18, 1981, §§ 10,13-14. The ombudsman is charged with enforcement of the substantive provisions of the Act, which prohibit any business practice that "runs counter to good business practice in the relationship between entrepreneurs or which is unreasonable in relation to consumers." \textit{Id.} at § 1.

\textsuperscript{30} The ombudsmen for equal status and for consumers administer the statutes governing, respectively, gender discrimination and consumer protection. \textit{See supra} notes 28 and 29.

\textsuperscript{31} Act Relating to the Commissioner for Children, \textit{supra} note 21, § 3.

\textsuperscript{32} \textit{Id.} §§ 3(a)-3(e).

\textsuperscript{33} \textit{Id.} § 3.

\textsuperscript{34} \textit{Id.} § 5.

\textsuperscript{35} \textit{Id.} § 4.

\textsuperscript{36} The regulations governing the administration of the Barneombudet were proclaimed in the Royal Decree of 11 September 1981 (reprinted by Royal Norwegian Ministry of Foreign Affairs, Jan. 1982) [hereinafter Royal Decree].

\textsuperscript{37} \textit{Id.} § 2.
disputes. The instructions further limit the barneombud to two four-year terms and provide for a staff with "varied professional backgrounds."

Only two individuals have served as barneombud in Norway. By their own description, the two ombudsmen have differed substantially in background and style, a point that will be discussed in more detail later in this Article. Nonetheless, both have served under similar political conditions. Specifically, both were initially appointed by Labor governments just before those governments were replaced by center-to-right coalitions.

After being reappointed by a moderate-to-conservative coalition government, the first barneombud, Målfrid Grude Flekkøy, served the maximum two terms. A child psychologist with a background in early childhood education, Flekkøy had held local office but was largely unknown on a national scale. Her family has been quite prominent for generations in both politics and academics in Norway. After leaving office as barneombud, Flekkøy began work at UNICEF in Florence, Italy, where one of her duties has been to write a first-person evaluation of the Barneombudet, because of the potential utility of the model for children in countries outside Scandinavia.

The second barneombud, Trond Viggo Torgersen, took office in 1989. Torgersen had been a member of the advisory board for the barneombud during Flekkøy’s term. A teacher and physician (but not a pediatrician) by training, he was widely known in Norway as a broadcast personality, especially in children’s shows. Frequently profiled in the print media, Torgersen is also an author of children’s books. His notoriety is such that newspaper headlines referring simply to “Trond Viggo” have instant meaning to most Norwegians.

The apparent simplicity of the structure of the Barneombudet makes it an interesting candidate for study of the effects of giving children a voice in the government. Particularly in light of the neighboring countries’ failure adaptation of the model applied to other vulnerable groups, their failure to apply it to children merits closer study. The broad discretion accorded the barneombud, and the variations in style of the two individuals who have served in that capacity, provide further opportunity to assess the impact of various strategies by which such an agency might attempt to increase attention to children’s interests and concerns.

38 Id. § 3.
39 Id. § 9.
40 M. FLEKKØY, supra note 23; M. FLEKKØY, supra note 28.
41 See, e.g., Rein, Barnas vaktmester [Children’s Watchman], Arbeiderbladet (Nov. 28, 1989), at 22, col. 1.
III. THE SCOPE OF THE STUDY

A case-study method was used to assess the effectiveness of the Barneombudet. Major class issues (prinsippsaker) on which the barneombud had issued statements were grouped by outcome (i.e., positive from the perspective of the barneombud, negative, mixed, or unknown), and cases were selected from each group, with an effort to ensure diversity of topic. The nine cases chosen are listed in Table 1.

**Table 1**

**ISSUES CHOSEN FOR CASE STUDIES**

<table>
<thead>
<tr>
<th>Problem</th>
<th>Position of the Barneobudet</th>
<th>Outcome</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Care of children in hospitals</td>
<td>Favored regulations promoting psychosocial care, availability of parents, and access to education</td>
<td>Regulations adopted</td>
</tr>
<tr>
<td>2. Child asylum-seekers</td>
<td>Government should assume responsibility for services for child asylum-seekers and ensure that such children are accorded the protection available under the child welfare law and the UN Convention on the Rights of the Child</td>
<td>Ministries issued plan for allocation of responsibility, but advocates claim policy has not been implemented in municipalities; rate of approval of refugee status remains low, and Norway has declined to accept groups of unaccompanied minors seeking asylum; relative supremacy of child welfare law and immigration law remains uncertain</td>
</tr>
<tr>
<td>3. Protection of children in the physical environment</td>
<td>Favored law to require representation of children in planning decisions</td>
<td>Legislation adopted; implementation underway</td>
</tr>
<tr>
<td>4. Place of children in the government</td>
<td>Favored establishment of a ministry or directorate on children, youth, and families</td>
<td>Most children’s programs outside education have been consolidated within a new Ministry on Family and Consumer Affairs</td>
</tr>
<tr>
<td>5. Lack of parental guidance about TV programs</td>
<td>Favored announcement of age-guidelines before movies aired on the national broadcasting network</td>
<td>Proposal rejected</td>
</tr>
<tr>
<td>6. Lack of access by some children to unwed fathers</td>
<td>Favored amendment of the law to permit access</td>
<td>Amendment adopted</td>
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<tr>
<td>7. Advertising and sale of war toys, including “fantasy” toys for violent play (e.g., space toys)</td>
<td>Favored prohibition of sale or advertising, or a Storting resolution calling on toy sellers to refrain voluntarily from sales of toys for violent play</td>
<td>Issue dropped by ministry after resignation of minister of consumer affairs who had been supportive of increased regulation</td>
</tr>
<tr>
<td>8. Decentralization of authority for day care</td>
<td>Favored continuing central regulation with adoption of professional standards</td>
<td>Local control remains</td>
</tr>
<tr>
<td>9. Adolescents in jail</td>
<td>Favored raising minimum age of imprisonment</td>
<td>Legislation adopted to raise minimum age of imprisonment to 15</td>
</tr>
</tbody>
</table>

The Table 1 cases were studied journalistically. The key actors in each case were identified through consultation with the staff of the Barneombudet, review of records, and questioning of the informants initially identified. These individuals, most of whom were senior government officials or researchers, were then interviewed in English about their impressions of the decisions made in the particular cases, the reasons for the decisions, and the role that the Barneombudet and other advocates and officials played in the decision. The interviews averaged about an hour. Relevant documents in the case files (e.g., hearing-statements, correspondence, ministry reports) as well as the Barneombudet’s annual reports and other publications were reviewed by the author.

In addition, some individuals were interviewed about their general knowledge of the Barneombudet apart from the particular cases under study, although most of these informants also provided observations as key actors on particular cases. Wide-ranging interviews were conducted

42 Cf. Levine, Investigative Reporting as a Research Method: An Analysis of Bernstein and Woodward’s All the President’s Men, 35 Am. Psychologist 626 (1980) (discussing the utility of journalistic methods for exploratory research in the social sciences).

43 Although nearly all of the informants were fluent in English, I am aware of the possibility that “something was lost in the translation,” whether in interviews conducted in a second language or in translations of documents from Norwegian. Also, the case-study method clearly leaves considerable room for subjectivity, although it was appropriate for the exploratory, cross-cultural research that I was undertaking. Consequently, I took care to offer impressions back to informants for their confirmation, cross-check information across interviews, and obtain reactions from colleagues knowledgeable about child policy. Obviously, I take full responsibility for any errors of interpretation that may remain.

44 Hearing-statements are important elements in policymaking in Scandinavian countries, but they do not have a direct analogue in American politics. When issues come before the ministries or the parliament (for example, when legislation is proposed), they frequently systematically solicit written statements by the relevant government agencies, professional and labor organizations, and private interest groups. Although the product is similar to public comment in response to proposed regulations in the United States, the process is much more systematic with active solicitation of statements, and it appears to play a substantially greater role in policy formulation.
with the individuals who have been barneombud, their deputies, various advisory board members, and various scholars and advocates who were widely acknowledged to be central to policy debates concerning children in Norway. For comparative purposes, officials in several Swedish child-advocacy organizations,45 some of which have been discussed as possible homes for a barneombud, were interviewed about the process of child policymaking in Sweden and their views about the potential utility of a barneombud and the role that office should play if it is established there.

Altogether, more than fifty informants were interviewed. The impressions reported in this article obviously are a distillation of those discussions and the archives that the author examined in translation. Sources are not mentioned by name when the information involved is potentially politically sensitive or embarrassing.

IV. CRITICAL FEATURES OF THE BARNEOMBUDET

A. The Choice of Barneombud

By its nature, the ombudsman model presumes a "great person" theory of social change—that one person sufficiently talented and motivated really can make a difference. The institution of barneombud as it has been established in Norway may create an even greater demand for such a special person. Without a clear, statutorily defined jurisdiction, and without an organized constituency driving his work, the barneombud may not need merely to be charismatic, but may also need to be activist and unconventional. The barneombud must define the job and then find a means of fulfilling it.

The vagueness of the statutory authority for the Barneombudet will invite challenges to its legitimacy from the outset. Virtually any activity undertaken by the barneombud in his early years will not be expressly prohibited, and therefore will be technically within his jurisdiction. The response of the Barneombudet will define the evolution of the office for future functioning.46 After all, the Barneombudet expressly lacks decision making authority,47 and a barneombud who is timid or who lacks a personal power base is apt to be undermined quickly by authorities who believe that he or she has exceeded the bounds of the role.

Given that in each instance the barneombud has been appointed by a government sympathetic to the concept of an ombudsman for children,45 these organizations include Allmna Barnhuset, Barnmiljorådet (Child Environment Council), Barnens Råt i Samhlet (BRIS; Children's Rights in Society), and Rda Barnen (Swedish Save the Children).

46 An analogous situation in the American experience is the ambiguity of role that occurs when courts become involved in regulating the behavior of government agencies. See, e.g., Burt, Penhurst: A Hard Case, IN THE INTEREST OF CHILDREN supra, note 19.

47 Act Relating to the Commissioner for Children, supra note 21 § 1.
it perhaps should be no surprise that the individuals who have fulfilled that role have been strong personalities. Interestingly, though, their power bases had been remarkably different in kind, so much so that the appointments have provided a natural experiment in "what works" for a barneombud, in Norway.

Torgersen's and Flekkøy's acknowledged differences provide perhaps the best contrasting illustration of their styles and methods. Flekkøy has described her successor as "totally different" from herself emphasizing Torgersen's flashiness in the mass media. She has drawn attention to the fact that all of the applicants to succeed her were passed over in favor of Torgersen, who had not applied and who was offered numerous accommodations, including the opportunity to maintain his home in Bergen with compensation for the necessary second home in Bergen, at a significant increase in the budget of the Barneombudet.

By contrast, Flekkøy has described herself as having been unknown to the general public and in national political circles prior to her appointment. She views herself as having made advances for children by the careful application of her and her colleagues' expertise about child welfare and mental health. For her, the barneombud's authority rests in the power of ideas. Noting that the barneombud, unlike the other ombudsmen in Norway, lacks responsibility for a particular law or even set of laws, she concluded, 

\[\text{"[T]he Ombudsman for Children has no decisive power, but must use information and knowledge to effect attitudinal change."}\]

Therefore, Flekkøy's strategy was to rely on research (often gathered by members of her advisory board or staff of the various research institutes in Norway) as the foundation for her opinions about reforms that she believed were needed. Painstaking follow-up was then needed to ensure that the implementation of the reforms was similarly careful. The barneombud acts, in her view, to synthesize knowledge about children's concerns that might not otherwise come to the attention of public officials.

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48 With sponsorship by the then-ruling Labor Party, the Act Relating to the Commissioner for Children passed by only five votes. M. Flekkøy, supra note 23, at 49. The left-wing coalition government that supported the establishment of the Barneombudet was voted out of office just two weeks after the Act went into effect. M. Flekkøy, supra note 28, at 5. Ironically, Torgersen, who also was appointed by a Labor cabinet, assumed office just before a Conservative prime minister was installed in fall 1989. About one year later, the moderate-to-conservative coalition fractured, and a minority Labor government was installed.

49 Torgersen now is maintaining a branch office of the Barneombudet in Bergen, which will serve as his own principal office. Interview with T. Torgersen and E. Almhjell (Aug. 30, 1990). The current budget is $490,000. Address by T. Torgersen to the 9th International Congress on Child Abuse & Neglect, Hamburg, FRG (Sept. 6, 1990).

50 M. Flekkøy, supra note 23, at 162.

However, Torgersen believes that the authority of the barneombud lies in the power of his own personality. The utility of that force, he argues, is that he can act as a mobilizer of political power. In my initial interview, he made clear that he lacks specialized knowledge about children, especially those with special needs (in contrast to Flekkøy), but he believes that sort of expertise is extraneous to the position. Rather, Torgersen perceives his job to be to "heighten [the] authority" of the office by capitalizing on his own notoriety. For example, he said that he chooses the conferences that he attends, and the place that he takes within them carefully: "I don't go to conferences; I open them." Similarly, he phones ministers directly and declines to speak with lower-level officials.

Torgersen's style emanates no doubt in part from his extensive experience as a media celebrity and producer. It is also based, though, in ideology. He regards mass public opinion as the only vehicle for change, and he seeks, therefore, to use mass media to develop grassroots political movements aimed at destroying or at least reforming established bureaucracies and political hierarchies. He wants bureaucrats and politicians to "take the consequences of their nodding."

Indeed, Torgersen sees his role in part to be that of mobilizing adolescent rebellion to illuminate what is wrong with society as a whole. He believes that youth "are very engaged in political life" and act as a "natural" counterbalance to stodgy bureaucrats who obtained their jobs as rewards for partisan political work.

In short, Flekkøy and Torgersen provide striking evidence that the great-person theory of political change requires elaboration to take into account leaders' style in order to determine whether and how bright, committed, assertive people in positions of influence will make a difference in the course of history. In any event, it seems likely that the vari-

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52 Interview with Torgersen, November 23, 1989.
53 Id.
54 Id. Torgersen has explained that the strength of his personality is such that he can reasonably be assured of drawing the media to his conference speeches. He typically shares the podium with a member of the cabinet—a juxtaposition that he believes enables him to confront ministers publicly and to mobilize public opinion. Interview with T. Torgersen & E. Almhjell (Aug. 30, 1990).
55 Id.
56 Id.
57 Id.
58 Id. Torgersen views his work as being largely that of a gadfly. For example, in a speech at the International Congress on Child Abuse and Neglect, supra note 49, he reported that he had received a phone call at his hotel that morning from a member of the cabinet who was concerned about a television interview shown on the national news program the previous evening in which Torgersen had criticized the government's child protection policy. Torgersen reported that he perceived the call as an indicator of good work: "It seems that this [interview] is a big problem for the government, and that pleases us." Id.
ant styles reflecting Flekkøy's values on rationality and Torgersen's values on mass appeal, result in different effects and that the overall efficacy will vary with the broader sociopolitical context, even if their ultimate goals regarding child welfare are similar.

A simple hypothesis is that Flekkøy's style would work best when decision makers in "the system" are motivated to consider, children's concerns but that one or both of two obstacles has interfered with action supportive of children's interests. The first obstacle is that information may have been unavailable because no interest group sought or was able to penetrate the political structure to present it. Because children themselves are not an organized interest group, the existence of such a knowledge gap would be unsurprising. The second possible obstacle is that the information may have reached policymakers in an unpersuasive or unusable form. Those who presented such knowledge may have lacked the legal or political expertise to frame the information so that it easily fit into the decision making process—again a quite plausible situation.

On the other hand, Torgersen's approach might be more likely to have significant impact when authorities are unmotivated to consider children's interests. Then the only way that a fair hearing will be given to the sort of information that Flekkøy would present is to "throw the bastards out," to use a time-worn phrase in American politics.

These hypotheses have intuitive appeal and may even reflect the actual assumptions held by Flekkøy and Torgersen about the motivations of Norwegian public officials with responsibility for various children's issues. However, these hypotheses are overly simple, for they fail to take into account the realities of political life. For example, if policy is determined largely by the relative clout of interest groups, as some observe to be largely the situation in American politics,59 then policymakers' motivations (other than their desire to bow to those with the most political power, in order to maximize their stay in office) are irrelevant. Broad-based grassroots strategies also will be destined to fail in such a circumstance, unless advocates establish political structures through which public sentiment can be channeled.

The grassroots approach also ultimately makes assumptions similar to those underlying the rational (power-of-ideas) paradigm. Simply the target of persuasion is different. Just as Flekkøy appears to assume that the major impediment to child-centered government action is the ignorance of policymakers, Torgersen appears to assume that the primary obstacle is the ignorance of the public. That is, he assumes that if the public knows about children's concerns and the insensitivity of government officials, then the public will be motivated to redress the wrongs

and that they will have the resources to succeed. Of course, an either-or decision is not necessary. Grassroots action may help to force attention to an issue in a way that policymakers begin searching for data that may facilitate the resolution of the problem.

Although Flekkøy’s and Torgersen’s styles and their beliefs about the process of change do differ strikingly, the differences are not as pronounced as the discussion thus far may imply. Both have used mixed strategies, some issues raised under Flekkøy’s leadership have been continuing foci for Torgersen, and the general views of both are to the left of center in Norwegian politics. For example, Flekkøy made systematic attempts to use the media, albeit with mixed success, to publicize the office and focus public concern about children’s issues. Under Torgersen, the Barneombudet continues to seek expert advice. For example, preparatory to another step in a campaign (begun by Flekkøy) to protect children of asylum-seekers, Torgersen called a press conference to publicize an opinion by Lucy Smith, a law professor at the University of Oslo and a member of the Barneombudet’s advisory board during Flekkøy’s terms, about the interaction between child welfare law and immigration law. The Barneombudet continues to consult various research institutes frequently.

Nonetheless, the differences in the Norwegian ombudsmen’s approach to their work raise questions, as I have already suggested, about the utility not only of the model as a whole, but of the means of fulfilling it in various political cultures and various political situations within a given culture.

B. Autonomy and Discretion

That questions about strategies for use of an ombudsman for children may be raised on the basis of experience is a testament to the degree that Norwegian officials fully accept the ombudsman model. In effect, the issue in Norway is the determination of the best way for a strong, independent barneombud to operate, not whether the barneombud should be strong and independent.

By contrast, a perennial question in regard to structures for child advocacy in other countries has been whether the agency, whatever its specific form, should be located inside or outside government.\footnote{Asylum-seekers are those who are seeking, but have not yet obtained, the status of refugee. In either instance, evolving international law demands that children be offered the same protection available to children with citizenship in the country where they reside. United Nations Convention on the Rights of the Child, art. 22 (1989).}

\footnote{Interview with L. Smith (Oct. 20, 1989). Professor Smith’s paper, commissioned by Flekkøy, was completed after Flekkøy left office.}
\footnote{The Norwegian Center for Child Research has noted an increase in information requests.}
\footnote{Although Norwegian officials’ experience with the ombudsman model in other contexts may
tal examination of the various child advocacy agencies in the United States suggests that substantial differences in style can be expected as a function of agency auspices. Public child advocacy agencies have relative stability (not being dependent on the vagaries of grants and private contributions), credibility with government officials, and insiders' views of policy formation and implementation. They also may be able to use the government's own data systems to identify problematic cases and issues in a timely manner.

On the other hand, there is a suspicion that advocates located inside government will be compromised by their accountability to the same officials whose behavior they are scrutinizing. Experience suggests that these assumptions are valid. Unlike some private child advocacy organizations, public programs tend to focus on "stuck" individual cases rather than broad policy issues; adopt a conciliatory rather than confrontational style, and work quietly behind the scenes rather than through the media or other public fora, such as the courts.

In all of my interviews, whether with the ombudsmen themselves, observers inside or outside government, or participants in important cases, no one raised a question about the Barneombudet's independence. Although created by the Storting, representing it in ensuring responsiveness of the ministries, and dependent on it for funding, the Barneombudet has maintained a degree of autonomy and credibility that is unsurpassed in any other child advocacy agency of which I am aware.

The picture provided by Flekkøy is consonant with the image that seems to be shared by all those who are involved in some way with the work of the Barneombudet, whether as employees, users, collaborators, or targets:

In spite of the fact that Parliament established the Office and provides its annual budget, Parliament cannot instruct the Ombudsman. . . The Ombudsman has, by legislative consent, an obligation to criticize any administrative level, any group, organization or person (except parents in their role as parents) disregarding or minimizing the interests of children, regardless of any other considerations. This means that the Ombudsman can raise issues impossible to raise for others bound to loyalty to an organization or to political leadership, in the face of political opposition . . . Being free to handle any case or problem in any way

64 G. MELTON, CHILD ADVOCACY, supra note 9, at 92; Knitzer, Advocacy, supra note 15, 802-03 (1976).

65 G. MELTON, CHILD ADVOCACY supra note 9, at 93-94.
considered most effective, the Ombudsman can alert a Cabinet member, Parliament members or top-level officials, letting an issue... reach the uppermost possible level of consideration. Opinions and statements may also be distributed widely to the mass media, irrespective of political consent, informing the public and creating difficulties for politicians and decision-makers wishing to disregard the interests of children.66

The history of the Barneombudet corroborates this description. Middle-level officials have perceived the Barneombudet as an avenue for presenting ideas that may be important in protection or promotion of children's interests but that lack support of the officials with ultimate authority. For example, the proposal for an umbrella ministry for child and family issues arose from informal conversations that the barneombud had with staff members of the Ministry of Consumer Affairs and Government Administration. (This is the ministry that then had responsibility for some "family" issues, such as day care). The barneombud responded to the ministry staff's complaints that the idea for a special ministry had failed to advance within the government.67

An even more striking example came with the Barneombudet's concern about the high rate of unintentional injuries among children and adolescents in Norway, a concern that led ultimately to adoption of a law requiring representation of children's interests in community planning.68 The barneombud contacted the ministers directly to seek action on the problem. The heads of the units responsible for injury prevention in the Ministries of Environment and Social Affairs were constrained from such action themselves, because they were several layers deep in the bureaucracy. The barneombud also was able to act as a catalyst and leader to assist in synthesizing and coordinating the work across several ministries and directorates of researchers and planners alarmed about the child injury problem.69

67 Interview with M. Flekkøy (Nov. 28, 1989).
The barneombud was responsible for a demonstration by schoolchildren at the Storting, and she arranged for members of parliament to pose questions to the ministers about child injury prevention. These were strategies that were unavailable to the officials most concerned about the problem. The barneombud acted as those officials' mouthpiece, and they in turn fed information to the barneombud. As one such official mentioned, the country "needs a spokesman [for children] with a free budget—not controlled. . . [Otherwise,] in the bureaucratic world, child accident [prevention] will drown. . . Child accident prevention is [a political] question of interests."

Concluding that the Barneombudet is "very, very positive and necessary," another official noted that the barneombud was able to be more activist in dealing with the problem of child injury prevention than her peer, the consumer ombudsman, because the latter has a specific law to enforce.\(^7\) The barneombud can take a broader perspective and plan a strategy for reducing child accidents that focuses on the accountability of diverse agencies for community planning, traffic safety, and product safety.

Just as the barneombud's freedom to confront high-level officials appears to be used and accepted, use of public fora for confrontation of authorities also is routine. The Barneombudet distributes its opinions to the media,\(^7\) others who might have a role in disseminating them (e.g., academicians), relevant officials, and interested parties. This distribution has been a conscious strategy for dealing with the large ratio of cases to staff. By responding in writing to a complaint and ensuring a copy finds its way to the local media, the Barneombudet can increase the likelihood of some follow-up, even though the office itself does not have the resources to do thorough work on cases of purely local concern.

The degree of contact with the press is reflected in statistics relating to the work of the Barneombudet. Flekkøy reported spending about one-half hour per day on interaction with the press.\(^7\) The number of print-media references to the Barneombudet rose from about 1,000 in 1984 to 1,800 in 1987 to 3,700 in 1989 (when the transition in administration of the Barneombudet occurred).\(^7\) Those contacts have increased signifi-


\(^70\) See supra note 29.

\(^71\) M. FLEKKØY, supra note 23, at 64.

\(^72\) Id. at 65.

cantly as a result of Torgersen's notoriety, personal experience in the media, and commitment to use of a grassroots strategy for change. There certainly has been an increase in attention by broadcast media, with Torgersen being given a ten-minute spot every two weeks on the national television network.\footnote{See Haugstad, Trond Viggo smaler barna [Trond Viggo Gathers the Children], VG, Oct. 27, 1989, at 40, col. 1.}

In truth, of course, the Barneombudet is not fully independent of the government officials that it may criticize or seek to influence. At any time, the Storting could repeal the authorizing legislation for the Barneombudet, or it could muzzle the barneombud perhaps even more effectively by cutting funds for support staff and operations. Indeed, skeptics might argue that such control \emph{has} been exercised, albeit subtly, through maintenance of a budget so small that it prevents the barneombud from being an effective critic. To cover a country of more than 4 million people, the Barneombudet has one full-time office with a budget of about $500,000 (U.S.) and a staff never larger than five people.\footnote{T. Torgersen, \textit{supra} note 49.} Whatever the appearance, one could reasonably argue that the Storting has chosen to support a weak barneombud.

Nonetheless, the fact remains that the apparent independence of the barneombud has been maintained. The Barneombudet is able to bite the hand that feeds it without fear of reprisal. An American analogue is to the judiciary, which has assumed broad powers of review of the legitimacy of legislative and executive action, but exercises those powers without apparent cuts in its budget, failure to maintain courthouses, or other reprisals that are potentially available to legislators and executive officials. Although there sometimes is an apparent short-term cost to the legislative and executive branches for failing to use such power, deeply held political norms about the separation of powers sustain such "irrational" behavior. Similarly, the Storting and the cabinet constrain themselves from punishing the Barneombudet, because there is a shared norm of independence for ombudsmen.

Flekkøy and Torgersen have fostered such perceptions in two ways. First, as already noted, they have sought, via the mass media, to implant the perception of independence. In that respect, they have the advantage of the prestige that has been available to other ombudsmen in Norway, especially the ombudsman for public affairs (the unspecialized ombudsman). Second, Flekkøy and Torgersen and their deputies have contributed to the perception of their independence by avoiding any appearance of a conflict of interest, to the extent that, in the interviews I conducted, I never heard even the hint of an accusation of a lack of personal integrity and autonomy of action. For example, Flekkøy recused
herself from providing a hearing-statement on the idea of proposed (now adopted) regulations for care of children in hospitals, because her office had been instrumental in drafting them.\textsuperscript{76}

More personally, she filed an ethics complaint against herself with the psychological association (and was subsequently cleared) after a group of psychologists accused her of distorting research relevant to legislation that required that preschools teach the state Lutheran religion.\textsuperscript{77} This accusation was part of the political background for the early years of the Barneombudet. The establishment of the office had been opposed by the center-to-right parties, with party discipline invoked in some parties in the Storting. When the conservative parties came to power shortly thereafter, some politicians presumed Flekkøy to be a stalkinghorse for the Labor Party.\textsuperscript{78} Such was the context for the issue of preschool religious education:

Accepting and respecting the fact that Lutheran morals, traditions, and values are prevalent in the Norwegian society, the Ombudsman concluded that religious education of preschool children should be the responsibility of the parents [because of the loyalty conflicts that might be engendered in young children from families with minority religious backgrounds].

The opinion was questioned in the Storting. A member of the Christian Democratic Party asked if the Ombudsman was not supposed to be loyal to the State Council [the ruling cabinet]. The Minister replied that the Ombudsman was not so obliged, and that the purpose of the Ombudsman Office was to have an autonomous office. . . [that might criticize] any part of the Administration. However, she hoped that “the Ombudsmanin [the] future would base her opinions on factual knowledge.”\textsuperscript{79}

Flekkøy understood the political context to relate, in part, to her own history of advocacy on the issue:

The implication that the reasons for opposing the proposal might not be professional [but instead political] can be [easily] understood. The State Secretary [Deputy Minister] had been Acting Mayor of the municipal council where I was a member of the opposition when—2 years earlier—the question of religious education in the municipal preschools was discussed. I had then also opposed the proposal, on professional grounds, but as a politician. The fact that the same argu-

\textsuperscript{76} See Barneombudet, Hearing-statement on Regulations for Children in Hospitals (Oct. 7, 1987) (Commenting on Specific Drafting Issues).
\textsuperscript{77} See M. FLEKKØY, supra note 23, at 94.
\textsuperscript{78} Id. at 58. In my interviews, one Conservative Party politician indicated his great respect for Flekkøy as a “very clever and experienced person,” but criticized her for being too political in her job, especially in the first few years, with an “irritating scrutiny” of local policy makers’ decisions.
\textsuperscript{79} Id. at 94.
ments were used in 1982 might have been misunderstood as political arguments, while the truth was that the reasons were professional on both occasions.\textsuperscript{80}

C. Primacy of Children’s Interests

The religious-education issue is an illustration of a general pattern in the work of the Barneombudet. It has avoided some of the traps that have diminished the credibility and effectiveness of many child advocacy organizations.\textsuperscript{81} As Flekkøy put it, the Barneombudet has avoided “making children an excuse,”\textsuperscript{82} by which to espouse some more general political or social cause in which children happen to be involved.\textsuperscript{83}

As a particular response to the allegation of a lack of “factual knowledge” in her opinion on preschool religious education, Flekkøy developed a style of extensive citation of research in her opinions. This style had two benefits. First, the use of social science minimized the likelihood of using children as an excuse, because it focuses attention on the child’s interest through objective discussion of actual or potential policy effects. Second, this strategy is also consonant with the Scandinavian

\textsuperscript{80} Id. at 48 n.3.

\textsuperscript{81} See supra note 8. See also G. MELTON, CHILD ADVOCACY, supra note 9, at 17-23, 173-56; Melton, supra note 8.

\textsuperscript{82} Interview with M. Flekkøy (Sept. 5, 1989).

\textsuperscript{83} Cf. Hearing-statement of Norsk Laererlag (Apr. 10, 1989) (the largest teachers union in Norway), on the question of the location of regulatory control over day care. Norsk Laererlag characterized the issue as being one of the professional status of teachers. Similarly, Norsk Laererlag has supported consolidation of children’s issues in the Ministry of Education partially due to the continuing resentment towards the bureaucratic structure. Responsibility for day care and preschool education historically has been vested in the Ministry of Family and Consumer Affairs, thus giving credence to the idea that day care is not predominantly a matter of professional education. The combination of local control and responsibility for day care in a social welfare ministry has been identified as central to the “Scandinavian model” of care for young children. See A. LEIRA, DAY CARE FOR CHILDREN IN DENMARK, NORWAY AND SWEDEN 3-5 (1987) [hereinafter A. LEIRA DAY CARE].

The author does not mean to imply that Norsk Laererlag ‘s leaders do not genuinely believe that the development and preservation of the professional status of preschool teachers is directly related to the quality of the care and education that young children receive. In fact, professionalization of preschool education is another element in the Scandinavian model of day care. Rather, the fact that self-interest is also involved obscures its motivation.

Note that Norsk Laererlag ‘s position in favor of religious education in preschools was contrary to the view of the majority of its members involved with preschool education. Just as criticisms were directed at Flekkøy because of her lack of clarity about where her personal political and religious views ended and where her professional views began, the same critique is germane to the organizational position of Norsk Laererlag.

The focus on Norsk Laererlag is not meant to imply that it is particularly subject to conflicts of interest in its advocacy on children’s issues. Instead it is worthy of a special focus because it is the only interest group both involved in such issues and consensually recognized as politically powerful.
tradition of planning.\textsuperscript{84} Policy making in Norway tends to be pragmatic, with the ministries relying heavily on research institutes for the collection and analysis of data relevant to policy decisions. Therefore, not only did the reliance on social science turn policymakers’ attention to the critical issues affecting children, but it also heightened the credibility of the barneombud, because her analytic style was consistent with the dominant approach of administrative officials in Norway.

The focus on children’s interests also has minimized entrapment of the Barneombudet in highly emotional, symbolic disputes about “family” issues.\textsuperscript{85} Analyses of the impact of policies on children avoids the ideological battles that arise when there is an attempt to determine the effects of the same policies on families. The latter questions inevitably require assumptions about the kinds of relationships that legitimately can be labeled “familial,” the level of authority that parents should have over their children, the degree of congruence between the interests of individuals in the family and those of the family as a whole, and the sorts of relationships in regard, for example, to gender roles that are indicative of strong families.\textsuperscript{86} The lack of need to resolve such issues has been so critical to the political neutrality of the Barneombudet—and to its not losing its policy mission to a flood of cases involving individual families seeking the assistance of a super-expert psychologist or child welfare board—that Flekkøy has termed the regulatory prohibition of the Barneombudet’s arbitration of intrafamilial disputes to be “imperative” for successful operation of an ombudsman’s office.\textsuperscript{87}

\textbf{D. Accessibility}

Whatever its precise scope of jurisdiction, an ombudsman’s office can be effective as a spokesperson for a vulnerable or underrepresented group only if that group and other advocates for the group can achieve access to the office. Within the constraints imposed by a small budget, and a single national office, the Barneombudet has done an excellent job

\textsuperscript{84} See infra nn. 104-08 and accompanying text.

\textsuperscript{85} Such obsession with symbolism has been an obstacle to development of effective child and family policy. See Melton, \textit{The Clashing of Symbols: Prelude to Child and Family Policy}, 42 Am. Psychologist 345 (1987).

\textsuperscript{86} See, e.g., G. Steiner, \textit{The Futility of Family Policy} (1981); D. Fox, The Reagan Administration’s Policy on Using the Family to Advance Capitalism (June 1981) (paper presented at meeting of the Law and Society Association, Vail, Colo.) (discussing values embedded in President Reagan’s executive order for preparation of family impact statements). Recognizing that a focus on family interests is apt to draw attention to children’s issues which is more politicized and symbolic does not negate, of course, that promotion of family integrity may itself be a policy to pursue on children’s behalf. See, e.g., NEB. REV. STAT. §§ 43-532 to 43-534 (Reissue 1988 & Cum. Supp. 1990).

\textsuperscript{87} M. Flekkøy, supra note 66, at 5-6.
of making itself known and accessible. Indeed, given the quite limited resources, it may even have been too good in establishing its accessibility, because the size of the caseload has been staggering for the size of the staff, with an additional substantial increase in cases having occurred as a result of Torgersen’s media visibility and call-in show.

In addition to use of the mass media, the Barneombudet has made its work known through periodic publications, often with versions especially for children. Publications have included annual reports about the work of the office and occasional publications on substantive areas. An especially useful and popular booklet presented an overview of statistical information about the quality of life of children in Norway; a mimeographed English version is being made available by the Ministry of Foreign Affairs.

A major step toward increasing children’s access to the office occurred in 1985, when the Barneombudet’s phone number was placed in the front of all phone directories in Norway. A free line (the equivalent of an “800” number) was established in 1990.

With Oslo located far from much of the country, it would have been easy for the Barneombudet to focus on, and thereby become, an office serving only southeastern Norway. To guard against that possibility, Flekkøy gave an average of a lecture per week, visiting all of the counties and 150 of the 450 municipalities at least once. Oslo has accounted for a disproportionate share of cases (about one-third of the cases, compared with one-tenth of the population), but the regional distribution of cases has not been strikingly different from the comparable distribution of population. In fact, the northernmost counties—those most distant from Oslo—have been the source of 10.9-12.4% of the cases, and they comprise 11.2% of the population.

Not only do children need access to the barneombud, but the barneombud needs access to children in order to discover problems affecting

88 These efforts are described in more detail in M. Flekkøy, supra note 23, at 64-69.
89 In 1988, the Barneombudet handled 951 cases, id. at 75, n.3, and 2,641 inquiries, id. at 72, n.30.
92 Id. at 69.
93 Id. at 69.
94 Id. at 69.
95 Id. at 69, n.2.
96 Id. at 69, n.2.

Indicating that children in the most rural parts of the country know about the barneombud, a member of the Barneombudet’s advisory board from was quite complimentary about the office’s attentiveness to issues in the northern counties. Telephone interview with J. Mely (Dec. 18, 1989).
particularly vulnerable children and to investigate some cases properly. Therefore, the authorizing legislation for the Barneombudet provides for unlimited access to facilities caring for children, and prevents use of client confidentiality as a basis for failure to provide access to information. However, the authority for nonconsensual inspections has almost never been used, in part because of the time and expense (compared with small staff time and a limited budget) involved in scrutinizing the care of children across a geographically large country, much of it with difficult travel conditions.

V. THE ECOLOGICAL FIT BETWEEN THE BARNEOMBUDET AND NORWEGIAN SOCIETY

A. Size

The discussion thus far shows a number of ways in which either the Storting or the barneombud has acted to structure the Barneombudet to maximize its effectiveness. Also worth noting is the starting point: the degree of fit between the concept of barneombud and Norwegian culture.

In that respect, probably the most obvious match is simply size. As noted earlier, for the model to work, a small population is assumed, so that the barneombud can become personally involved in the office's cases. Norway has just 4.2 million residents, about one-fourth of whom are under age 18.

Norway's population also is sufficiently dispersed so that, as a practical matter, at least some centralization of response may be required. Urbanization came late to Norway, and the majority of the population still live in rural areas. Only one city (Oslo) has a population greater than 300,000 (actually about 450,000), and just two others have populations exceeding 100,000 (Bergen and Trondheim). The country is sufficiently vast in its geography and the terrain sufficiently difficult to traverse that the population per km² is just 12.9.

B. Reliance on Experts

Another way in which the Barneombudet "fits" as a Norwegian institution is more subtle. The idea of an authoritative spokesperson informing official decision makers about children's interests and wishes is

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97 One of the two known instances of such use is described in M. Flekkøy, supra note 23, at 117.

98 BARNEOMBUDET, supra note 91.


100 Norway's interior is primarily mountainous, and the jagged coastline is further complicated by about 50,000 islands. Id.

consonant with the well-established tradition in Norway of reliance on experts, especially in matters involving children. Cases in juvenile justice and child welfare have been resolved by administrative tribunals since those areas of law were initiated in Norway in the 19th century. Even fundamental policy issues in family law often have been regarded as administrative matters to be decided primarily by the experts with little need for public discussion.

As in the other Scandinavian countries, social planning in Norway has long been viewed as a pragmatic exercise that should be informed by social-scientific inquiry. Although most of the research programs and institutes focused on children's issues have arisen relatively recently, such a viewpoint appears to permeate recent discussions of Norwegian child policy, too.

Therefore, the Barneombudet fits the Norwegian social ecology not just because that office itself is illustrative of the expert model, but also because the key decision makers are receptive to the systematic infusion of knowledge about children's interests, as Flekkøy attempted. In my interviews of senior officials in the ministries, I was struck by the fact, no matter what the issue, that the key decision maker could easily be identified. This is contrary to the conventional wisdom of American political scientists. Moreover, the civil servants involved generally seemed to


103 The chief of the Law Department in the Ministry of Justice, suggested that such an approach may account for Norway's seeming to be slow or absent in the waves of legislative reform that have characterized family law in the developed countries in the past twenty-five years. Interview with K. Coward (Oct. 20, 1989); but cf. Melton, The Significance of Law in the Everyday Lives of Children and Families, 22 GA. L. REV. 851, 865-67 (1988) (noting that major family law reforms have been remarkably consistent across jurisdictions). A good example is the failure of proposed legislation on grandparent rights. See infra, note 114.


105 In that sense, the Barneombudet can be viewed as part of a substantially larger infrastructure that has developed in the decade since the International Year of the Child (1979) for collection and analysis of data for use in child policy formulation. Among such institutes and research programs, all of which have served as resources for the Barneombudet, are the Norwegian Center for Child Research, the Center for Child Welfare Research, programs on children’s environment in the Norwegian Institute for Urban and Regional Planning, and programs on child injury prevention and health promotion in the National Institute of Public Health, the State Pollution Control Authority (the product safety agency), the Institute of Transport Economics, and the Department of Preventive Health Measures.

106 That policy is constructed through the clash of interest groups in a complex bureaucracy, not through the rational decision making by a key individual, and is axiomatic among both critics
be impervious to displays of political power. Rather, whether the barneombud’s view prevailed in a given case typically seemed to depend on whether the responsible decision maker found the arguments persuasive on their merits alone, not which people or how many people shared the viewpoint.\textsuperscript{107}

Although it has been much criticized by American sociologists and political scientists, the classical model of bureaucratic decision making\textsuperscript{108} appears to have substantial validity in Norway. Decision making is “scientific:” a process of exercise of “rational legal authority.” Policymaking in the ministries follows a rule-based structure with clear, specialized division of labor, appointment of officials on the basis of their technical expertise, and an expectation that policy will be developed with an informed view of its costs and benefits and the relative utility of alternative policies. It follows that effective advocacy in Norway usually will be based on the degree that the message presented fits a logical decision tree and that the advocate is providing information (or in some circumstances, a new decision tree, itself logically defended) not previously available to the policymaker.

C. The Particular Needs of Norwegian Children

1. The Lack of Alternative Spokespersons

Not only do the policymakers on children's issues in Norway seem largely impervious to traditional grassroots political strategies, but groups that would carry on such activity on a sustained basis are weak or absent in Norway. This point initially struck me when I was pursuing the history of a reform in the Parents and Children's Act of 1981.\textsuperscript{109} In an attempt to have children's best interests (rather than the parent's legal status) determine visitation policies, the barneombud sought to amend the \textit{Barneloven} (Children's Act)\textsuperscript{110} by repealing the provision that deprived any father who had not lived with the mother after the child's birth from even the possibility of visitation with the child.\textsuperscript{111} Fathers'
groups had been advocating such a reform for some time without success. In fact, the question had been considered at the time that the Parents and Children Act had been enacted.

The barneombud was able to persuade pertinent officials in the ministry of justice to adopt this position by reframing the issue as one of the child's rights, and not the father's rights. This seemed to be the turning point in the debate. Personally speaking with all members of the ruling party in the Justice Committee and several child-oriented members of minority parties, Flekkøy also lobbied heavily in the Storting. The debate in the Storting was heated, because the issue became a symbolic one about the status of men and women and the nature of the family. Despite the fact that a minuscule number of families were affected by the reform, the amendment ultimately was adopted.

Similarly, a parallel reform also favored by the barneombud, which would have recognized grandparents' rights in disputes over child custody and visitation, was supported by the drafting committee but died quietly. Ironically, such provisions have been passed into law in other Western countries, largely because of the participation of older citizens, a politically active group.

Thus, in the first instance, the advocacy of the small group of affected adults had been ignored until the barneombud presented a persuasive case on the rationale for the reform. In the second instance, where a potentially powerful interest group could have been expected to be active in the debate, interest-group politics also did not materialize. The pattern was consistent with the process of Norwegian public decision-making: reforms occur when the key decision makers are persuaded by the ideas, not by the relative power of affected interest groups.

Clearly, the virtual nonexistence of strong interest groups on children ikke har levd sammen etter at barnet ble født m. v. (Oct. 15, 1987) (hearing-statement submitted to the Ministry of Justice).

113 Id.
114 Interview with M. Flekkøy (Nov. 28, 1989).
115 M. Flekkøy, supra note 23, at 135-36.
116 See Thompson, et al., Grandparents' Visitation Rights: Legalizing the Ties that Bind, 44 AM. PSYCHOLOGIST 1217 (1989). The article illustrates that all fifty states have recently passed legislation granting grandparents visitation rights—even over parental objections. Id.
117 Another example of important legislation on which a clash of interest groups did not occur was the recently enacted requirement for representation of children in local planning decisions. As will be described later in the text, that legislation was enacted largely because of the involvement of individuals convinced of the wisdom of the idea in key positions in relevant ministries. Not only were interest groups concerned with children's issues not players in the development of the legislation, but groups that at least potentially had economic interests in the legislation (e.g., the construction industry) also were absent from the discussions. Interviews with M. Kolbenstvedt (Nov. 27, 1989) and A. Salterdal (Oct. 31, 1989).
dren's issues in Norway characterizes the difference between Norway and other Scandinavian countries. Redd Barna, the Norwegian affiliate of the Save the Children Federation, began a substantial domestic advocacy program in August, 1989—the last Save the Children affiliate to do so—after study by a task force that included the barneombud. Mental Barnhjelp has been effective in increasing attention to some problems, notably the special psychological needs of children in hospitals, but it is relatively narrowly focused on child mental health. Norges Husbeforbund (the Norwegian Housewives Association) has had a relatively broad agenda on children's issues, but its influence in the ministries is questionable, perhaps because it is identified with a traditional view of the family that is no longer dominant in Norway. The most powerful group on children's issues probably is Norsk Lrerlag (the Norwegian Teachers Association), but its role as a labor union for teachers also diminishes its value as a credible defender of children's interests.

118 According to the Danish Save the Children, there are 120 child advocacy organizations in Denmark. M. Flekkøy, supra note 23, at 222. Representatives of major Swedish child advocacy organizations, see supra note 45, have posited that Sweden's long delay in a decision to establish an ombudsman for children has resulted primarily from a lengthy debate over which organizations were best suited to house an ombudsman. Interview with H. Bugge (Nov. 1, 1989).

119 Mental Barnhjelp is a parent advocacy group. Elsa Boasson, the director, indicated her opposition to the Barneombudet's availability to children, because it "fools children" into thinking that they will have an impact on problems. Consequently, the Mental Barnhjelp does not have a help-line for children. Interview with E. Boasson (Oct. 31, 1989).

Although she indicated that organization of parents in Norway is very difficult, Mental Barnhjelp hopes to develop a chapter in every county. With the decentralization of services, especially day care, policymaking increasingly is at the local and county level, and advocacy must correspond. Id.

120 The Norwegian Housewives Association (NHA) worked with the Barneombudet on issues such as media for children (especially the suitability of programs broadcast by the national television network), and toys which influence for violent play. Additionally, land use planning issues, such as traffic safety for children were considered. Interview with I. Birkeland (Dec. 1, 1989). NHA is best known, though, for its advocacy of benefits for housewives (e.g., sick-leave and parental-leave allowances) comparable to those of mothers who work outside the home and for its opposition to proposed policies to focus public support on center-based day care. Working with a feminist law professor, Tove Stang Dahl of the University of Oslo, NHA has tried to illuminate the value of women's work in the home, and to foster public policies that consider that value in the design of social-welfare programs. See T. Dahl, Women's Law: An Introduction to Feminist Jurisprudence (R. Craig trans. 1987).

NHA has more than 30,000 members and thus is well-suited to grassroots lobbying campaigns. As a practical matter, though, my conversations suggested that NHA is not a major player in discussions of children's issues within the ministries and research institutes. Although it is a large group and one with relatively broad interests in children's issues, NHA's political clout in such domains may be limited.

122 See supra note 83 (discussing the significance of Norsk Lrerlag). The influence that Norsk Lrerlag has may be illustrative of hidden political decision making. Although decision making in the ministries appears bureaucratic in the classical Weberian sense, the ministries are highly professionalized and thus are representative of the professions that they regulate. See Weber, supra note 108.
2. The Lack of Informal Supports

Consistent with the lack of formal private advocacy for children is the lack of informal help. Norway has a long tradition of charitable giving and use of voluntary associations for the administration of programs, especially in child care institutions, health care, and foreign aid. However, this history does not include a parallel tradition of voluntarism, whether in formal volunteer programs or informal "natural" helping networks. In other words, Norwegians traditionally have been willing to give money beyond that which they contribute in taxes for the care of children in Norway, but they have not used their human resources in such services.

In both conception and implementation, the services are characterized by a pervasive professionalism. In addition to stringent regulation, the state either operates or funds virtually all services. Norway relies on a well established, highly organized civil service which is understandably concerned with maintaining its professional status. Consequently, use of human resources in the community—a particularly applicable strategy in a largely rural country like Norway—seems to Norwegian social planners and have escaped the citizenry themselves. Indeed, use of private resources, especially those that are private in their financing as well as their ownership, has been viewed as evidence of a willingness to accept inferior quality.

The reason for the weakness of social and political supports for children and families in Norway is not altogether clear. Perhaps it arises from a paradoxical belief that the state will take care of everyone, but that family matters are private. Consequently, although state intrusion in personal life is accepted to a greater degree than in most of the Western world, the fabled Norwegian tendency to turn inward has closed off discussion when the state has failed in its efforts in those zones of privacy. Social structures providing the connections between family and state—such as resources for services and advocacy that go beyond the family but that are incorporated into the state apparatus—are underdeveloped.

A report of BASUN, a project for large-scale comparative study of Childhood, Society, and Development in the Nordic Countries, recently gave credence to such an interpretation:

Even if social development has made families more transparent from one point of view, they are also becoming more private from another perspective. What's happening is that as the family becomes

123 Seip, supra note 102, at 116, 121.
124 Cf. G. Melton & L. Oberlander, The Health of Rural Adolescents (1989) (report to the Office of Technology Assessment, U.S. Congress, showing that informal and nonprofessional services are especially well suited to the rural ecology).
more and more translucent and ever more integrated into the machinery of the public (State) sector, so is it simultaneously becoming less and less involved in other forms of social (civil) intercourse. This process has resulted in the inner life of the family being privatized...[T]he family becomes an “intimacy sanctuary.”

In her anthropological studies of Norwegian life, Gullestad has reached similar conclusions. She has noted the tendency in Norwegian society to separate one's home (everyday life) from the state. Maintenance of individualism within an egalitarian framework is interpreted as requiring steadfast preservation of some measure of independence in everyday life, so that family life becomes a domain that is often isolated from the complex social and economic structures in the marketplace.

Urbanization and affluence have come sufficiently late to Norway, even compared with the other Scandinavian countries, that it may not yet have found ways of accommodating the profound cultural concern about family privacy with the changed conditions of everyday life. Thus the Barneombudet entered a near-vacuum in social and political structures for support for children and families.

3. Families in Crisis

Not only has the Barneombudet helped to fill a gap in supports for Norwegian children, it has done so at a point in time in which there is a growing sense of national crisis, reflected in a common belief that the state no longer can be relied upon to provide a social safety net with holes too small for children to fall through. This view was expressed to me with a considerable degree of passion by Christian Erlandsen, a former Conservative member of the Storting who had opposed establishment of the Barneombudet but who served as an initial member of its


127 Besides being the most rural of the Scandinavian countries, Norway's political and economic base has been the most fragile. Long ruled by its neighbors, Norway was one of the poorest countries in Europe until well into the twentieth century. Norway also suffered disproportionately from the German occupation during World War II, and thus had a lengthier period of postwar recovery than other Scandinavian countries. Affluence has been enjoyed by Norway only for the last 30-40 years, with the largest period of growth occurring during the oil boom of the 1970s and then subsiding with the fall in oil prices in the 1980s. Accordingly, one student of the differences in social welfare systems and family ideologies among Scandinavian countries has suggested that such variations may derive in large part from a time lag in the point at which changing social conditions became salient in Norway, compared with Sweden and Denmark. A. LEIRA, MODELS OF MOTHERHOOD: WELFARE STATE POLICIES AND EVERYDAY PRACTICES: THE SCANDINAVIAN EXPERIENCE 72 (1989).
advisory council, a forum in which he sometimes was critical of Flekkøy for being too partisan. Erlandsen asserted that “things are getting worse in Norway,” with social problems arising among the youth. He concluded that more must be done for communities and counties; in particular, children “need a very much stronger apparatus,” including, in particular, a strong barneombud.

More specifically, Hans Christian Bugge, secretary-general of Redd Barna, attributed Redd Barna’s new advocacy for Norwegian children to a loss of confidence in the national economy and the capacity of the welfare state to respond adequately to the needs of children. He noted a change in receptivity by the government itself, particularly the Labor Party (which historically has favored public responsibility for human services), to private action to promote social welfare. Moreover, the grassroots membership of Redd Barna, which has almost 100 local branches, has responded enthusiastically to the organization’s new agenda for domestic voluntary action—so much so that Bugge sees a risk of the organization’s turning completely from service in the Third World to child advocacy in Norway.

Still another example of the growing concern about child welfare in Norway is the establishment of several research institutes and programs to study the conditions of childhood. That such a research infrastructure has arisen only during the last decade indicates a new consciousness of the welfare of children in Norway.

Two broad social trends account for this change in the perception of children’s needs in Norway. First, the burgeoning growth of the Norwegian economy came to a halt in the past decade, with high inflation in the first half and high unemployment (by Norwegian standards) in the second half. Introducing an article discussing the uncertain outlook for the national economy, Nore succinctly stated the basis for Norwegians’ uneasiness about families’ economic status:

At the beginning of this century Norway was a poor agricultural society on the periphery of Europe with a standard of living comparable to that of Bulgaria. Three generations later it was the third richest country in the industrialized world. Will this economic success story last? The signs are not good as the nation today finds itself in the middle of an economic thunderstorm. Oil-prices have fallen, the balance of payments seems to have turned to permanent deficit, while the traditional non-oil related part of the economy is lagging behind the country’s international competitors.

128 Interview with C. Erlandsen (Nov. 1, 1989).
129 Interview with H. Bugge (Nov. 1, 1989).
130 See supra note 105.
Young families, especially single-parent families, have been squeezed hard economically—more than any other group in the society—with virtually certain negative consequences for many children. There are now more than 100,000 single-parent families in Norway. The majority of such families have no car, as opposed to 94% of families with children. In 1986, the average net family income of married couples with a minor child at least 7 years old was 75,000 Nkr, (about $12,500 U.S.). Married couples with a child of preschool age had an average family income of 61,000 Nkr ($10,200 U.S.). Single mothers with children had an average income of only 53,000 Nkr ($8,800 U.S.). By contrast, married couples whose children had grown had an average income of 92,000 Nkr ($15,300 U.S.), and single adults of at least 65 years old and living alone, typically had incomes of approximately (62,000 Nkr, or $10,300 U.S.). This is at least as high as most families with small children at home, which indicates a substantially higher per capita income.

Second, the virtually worldwide changes in family structure have hit Norway at least as dramatically as other developed countries, although the changes peaked relatively late. About 8,000 divorces, affecting approximately 9,000-10,000 children total occur every year in Norway. The divorce rate doubled between 1970 and 1980, and the trend shows no signs of abating.

The entry of women into the paid work force has had major effects on family life, but with less impact and more ambivalence than in the other Scandinavian countries. Policymakers in Denmark and Sweden have been much more open about the link between the demand for day care (and related economic policies surrounding payment for parental leave) and the status of women:

[e]conomic and family policies were synchronized in Denmark and Sweden to an extent not seen in Norway, where the welfare state did not actively develop policies to support the employment of mothers.

Leira’s comparative study showed a continuing conflict between

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133 BARNEOMBUDET, supra note 91, at 15. This figure and the data that follow include cohabiting, unmarried couples and their children.
134 Id.
135 Id. at 19.
136 Id.
137 Id.
138 Id. at 11.
139 Id. at 12.
140 A. LEIRA, supra note 127, at 71.
141 Id.
social and political interests regarding the evolution of the Norwegian family. Although there are overt signs of changes in the status of women (e.g., it is now routine that half of the slots in the cabinet go to women), traditional values have persisted. Leira cited a poll conducted in 1985 that showed eighty-percent agreement with the statement, "More women should stay at home when the children are young."

Groups espousing traditional values have remained politically strong, with the Christian Democratic Party controlling the Ministries of Family and Consumer Affairs and Church and Culture in the recently ended coalition government. The manifestations of the ambivalence towards social change were especially evident in the debate surrounding the enactment of the *Lov om barnehager* (Act Governing Day Care) in 1975. From the time that the act was drafted initially in 1969, the liberal and conservative parties split over the question of whether there should be a gender-neutral approach to family life (i.e., whether women should be encouraged to work outside the home).

Given such conflicts, it should come as no surprise that the dominance of the welfare state in childcare is not nearly as strong in Norway as it is the rest of Scandinavia. The percentage of Norwegian children under age 7, especially those under age 3, in day care is substantially lower than in the other Scandinavian countries. Fewer than one-third of Norwegian children, but more than half of Danish and Swedish children attend barnehager (day care centers and kindergartens). Moreover, most of the family day care in Norway is "black-market," whereas family day care is heavily regulated and state-subsidized elsewhere in Scandinavia. Although the level of paid leave that is available to parents of

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142 *Id.* at 170.

143 *Id.* at 92-100.

144 Only the conservative Progressive Party ultimately opposed the day care legislation. However, conflicts persist regarding the degree of state support that should be available for family day care and for home care of young children. *Id.* at 99. For a comprehensive discussion of the politics of day care in the Scandinavian countries, see A. LEIRA, *DAY CARE*, *supra* note 83.

145 Although the image both inside and outside Scandinavia is of a consistent "Nordic model" in child and family policy, striking cross-national differences are not limited to the care of young children. For example, examination of archival data shows marked differences in the Nordic countries' response to child welfare problems (e.g., number of children in compulsory care, age trends in placements outside the home, and the types of settings in which children are placed). Grinde, *Child Welfare in the Nordic Countries*, in 1 *GROWING INTO A MODERN WORLD* (K. Ekberg & P. Mjaavatn eds. 1987).

There is a basic philosophy of the proper care of children that is consistent across Scandinavia. A. LEIRA, *supra* note 127, at 55. However, the strength of the state has always been relatively weak in Norway, and there is a tradition of establishing local control in resolving the most difficult social problems. Interview with J. Miller and A. Seip (Nov. 29, 1989).


infants in Norway (24 weeks) is remarkable by American standards, it is the lowest among the Nordic countries (e.g., the parental leave available in Sweden is a full year).  

4. Gaps in the Welfare State

Norway has a comprehensive healthcare system which mandates healthcare for all Norwegian citizens. Therefore, under this system, Norway provides its children with services ensuring that those most critical to healthy child development are available without regard to parental income. For example, access to pediatric health services is universal. Nonetheless, significant gaps remain on the “cradle” side of “cradle-to-grave” social welfare. Agencies with the word “child” in the title are remarkably scarce in the Norwegian bureaucracy. America compared to Norway is a highly structured society. The planning, however, is largely short-term, and the significance of the future well-being of children seems not to be fully appreciated. The inadequacy of long-term planning to promote healthy development was noted sharply by a researcher in the National Institute of Public Health, Johan Lund, who has been a leader in work on child injury prevention. Describing the paltry and belated investment of the Ministry of Health and Social Welfare in preventive services (2% of the budget under the previous Labor government; less under the recently ended conservative government) and a financing structure that provides no incentives for such investment by municipalities, Lund suggested that the ministry might be better titled the “Department of Repair.”

The lack of investment in prevention is reflected in an accidental death rate for children that is highest among the Nordic countries (substantially higher than Sweden) and the highest in all of Europe for some kinds of accidental injuries.

Several informants described the Ministry of Health and Social Welfare, the ministry that until recently had jurisdiction over most large children’s programs other than the schools, as unduly defensive and insufficiently forward-looking. That ministry also was the only one that “was slow to answer letters [from the Barneombudet] and criticize procedure,” and it was strongest in opposition to the Barneombudet. Given

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148 BARNEOMBUDET, supra note 91, at 65.
149 H. SIEM, CHOICES FOR HEALTH: AN INTRODUCTION TO THE HEALTH SERVICES IN NORWAY 80 (1986).
150 The municipalities operate maternal and child health clinics (health stations) and school health services. Id. at 81. Norwegian health policy is “to provide a safety net for all patients.” Id. at 21.
151 Interview with J. Lund (Oct. 11, 1989).
152 J. Lund, ACCIDENTS MORTALITY TO CHILDREN IN THE NORDIC COUNTRIES, supra note 69 at 3.
153 M. FLEKKØY, supra note 23, at 170.
the ministry of health and social welfare's central role in children's services, a special need for child advocacy in Norway might be claimed. Child welfare (barnevern) services have been transferred to the Ministry of Family and Consumer Affairs. Because personnel themselves were transferred with the unit, it remains to be seen whether reorganization will diminish bureaucratic resistance in the ministries.

5. Demographic Change

Another longer-term reason for a special voice for children in Norway is that there are proportionately fewer "special voices" as the population increases. Norway has a quite low birth rate, with few large families, and the aging of the population has been quite dramatic. In 1950, there were four children aged 14 or under for every adult the age of 70. By 1984, the ratio had decreased to 2:1, and by 2020, it is projected to have decreased to 1:1.

A report to the Storting in the mid-1980s stated the problem tersely as one in which "too few children are now being born in Norway" and recommended a broad program to "maintain and strengthen the role of the family by improving conditions for families with children and by making it possible for both women and men to find a reasonable combination of child care, employment and participation in society." The ministry's report suggested that only such a broad agenda would prevent a circumstance in which the birth rate fell so far as to endanger the country's "fulfilling necessary tasks in society, such as care for the elderly," development of the economy, and maintenance of the culture.

Interestingly, although the Barneombudet also has discussed the long term consequences of failure to develop human potential, the office has emphasized the effects of the de facto population policy on children now—fewer siblings and children in the neighborhood with whom to play, and community leadership that commonly does not include adults with children now in their families. The Barneombudet has pointed out that a significant decline in the birth rate can be expected when the amount available for child support is only one-sixth of an old-age pension and preschools are available for only a small proportion of the children under age 6.

154 BARNEOMBUDET, supra note 91, at 4.
155 Id. at 4.
156 LONG-TERM PROGRAMME, supra note 132, at 255.
157 Id. at 257 (emphasis added).
158 Id. at 255.
159 Interview with M. Flekkøy (Oct. 10, 1989).
160 Id.
6. Summary

The general picture that is presented is one of a nation whose children may be at a historic point of special vulnerability related to changes in economic and demographic structure. Such socioeconomic changes have been sufficiently recent, however, that political structures and cultural norms have not been developed or reshaped to respond to the challenges presented by social change. In such a social context, the Barneombudet fits into the political culture not only because of the traditional receptivity to experts by policymakers in Norway, but also because other voices for children are essentially absent.

D. The Needs of Children Around the World

Of course, advocacy for children is not a need unique to Norway, even if the lack of such advocacy outside the Barneombudet is especially notable in Norway itself. In the preamble to the United Nations Convention on the Rights of the Child, the General Assembly declared "that in all countries of the world there are children living in exceptionally difficult conditions, and that such children need special consideration." Thus, beyond the special needs of Norwegian children (especially those most vulnerable) at this historical moment, they share needs for advocacy with other children around the world—needs that can be met through a barneombud.

The Barneombudet has focused much of its work on problems which may be universal—particularly—instances in which children's interests are just ignored. Flekkøy has pointed out some particularly poignant examples of regulations of "conditions of employment" for teachers that are also not applied to children in schools. Threats to teachers' safety are legally sanctioned (and even have been used to exclude unruly pupils from school), when the same conditions may be tolerable for children. Teachers and other adult workers may be able to stay indoors when the temperature is bitterly cold, but children still may be required to go outside for recess. One official with whom I spoke in the Ministry of Education suggested that the problem may have been, in part, the disproportionate growth of the power of the teachers unions—generally acknowledged as a politically potent group in Norway—relative to the voices of parents and children. Nonetheless, it is not difficult to imagine comparable issues arising in other countries, in which the conditions for teachers are examined, but there is a tacit belief that environmental conditions do not matter to children.

162 Id. (emphasis added). The drafters also recognized the need for political structures for the protection of children's rights. Id. at arts. 42 to 45.
163 M. FLEKKØY, supra note 23, at 100.
Less flagrantly, children’s interests may be ignored even by purported child advocates who presume that they know what children really want or feel, even when they have not asked children themselves. Apart from the particular lack of interest groups concerned with children in Norway, the children, like children in other countries, need a spokesperson who takes their views seriously and articulates them in the political arena.

VI. DOES THE BARNEOMBUDET WORK?

A. Acceptance of the Barneombudet

1. General Impressions

To summarize the discussion thus far, it may be said that some sort of structure for child advocacy, maybe even an ombudsman-like institution, probably would be useful in most countries, and that it is not mere coincidence that the institution of barneombud arose and has been sustained there in Norway.

Perhaps the most important finding is that the Barneombudet has quickly become an established institution in Norway. Even the few skeptics among the officials whom I interviewed indicated personal respect for Flekkøy and Torgersen, and they commonly attributed weaknesses in the Barneombudet to its quite limited staffing.

2. Acceptance by Founders and Critics

One test of the success of the Barneombudet is the perceptions of its early critics and its “parents.” The Barneombudet arose from an inter-ministry committee that considered a number of possible outcomes from the celebration of the International Year of the Child in 1979. The committee split evenly in its view of the prospect of a barneombud, with the Ministries of Justice, Consumer Affairs and Government Administration, and Environment in support, and the Ministries of Education, Municipal Affairs, and Health and Social Welfare in opposition. The opponents proposed creation of an advisory council for children (perhaps with local affiliates) and strengthening of the State Child Welfare Council, which had met only twice in 24 years. It is interesting to note that opposition came from the ministries most involved in services to individual children and, therefore, the most likely targets of a barneombud.

The political parties also were split, with the parties on the left (who at the time had a majority in the Storting) in favor, and those on the

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164 See generally R. COLES, THE POLITICAL LIFE OF CHILDREN (1986); Melton, supra note 8.
165 M. FLEKKØY, supra note 23, at 48.
166 Id.
167 Id.
center to right in opposition. Some of those on the right invoked party discipline, which was later regretted by some members.168

Interestingly, although the Barneombudet was embroiled in perpetual controversy for the first few years, this political opposition evaporated within a few years. No one in authority now appears to be arguing for its abolition.

Parallel changes were observed among women's groups in their views about the Barneombudet. Although women's rights groups generally supported the establishment of the office, more traditional groups generally were in opposition, presumably because of concerns about possible threats to the integrity of the traditional family. Such groups apparently no longer have qualms about the Barneombudet. For example, the Norwegian Housewives Association was an early opponent,169 but it has since become an active ally of the Barneombudet on a number of issues.170

Although there was antipathy on the right toward the Barneombudet in its early days, it may be fair to say that there was apathy on the left. Even though the Ministry of Justice supposedly favored the establishment of the office (as did the governing party in general), the ministry did not want to take the time to draft the legislation. Therefore, both the authorizing statute and the implementing instructions were drafted by two law students under the supervision of Anders Bratholm, a professor at the University of Oslo, who had proposed the idea. Bratholm is aware of no other instance in which such a procedure has been followed.171

Bratholm is convinced that the Barneombudet has worked as intended to give children a voice in the government.172 Another early proponent on the drafting committee, Erik Hauglund, an official in what was then the Ministry of Consumer Affairs and Government Administration, regrets that the Barneombudet has never been as heavily staffed and powerful as the proponents had envisioned. He thinks that significant political change has not occurred because of the weakness of the office.173

An early opponent, Turid Vogt Grinde, was a psychologist who supported local or county initiatives to strengthen child welfare programs rather than a central Barneombudet.174 Although she regrets that insufficient power has been given to the Barneombudet to result in fundamental change, Grinde now believes that establishment of the Barneombudet

168 Id. at 49.
169 Id. at 48.
170 See supra note 119.
171 Interview with A. Bratholm (Oct. 9, 1989).
172 Id.
173 Interview with E. Hauglund (Oct. 31, 1989).
was wise, because the minimal new resources that in fact were invested could not have supported the diffuse local efforts which she initially advocated. Grinde thinks that Flekkøy's personal motivation and skill helped to establish the office and increase attention to children's issues, although she also worries that the existence of the Barneombudet may have diminished the perceived responsibility of other institutions.

3. Public Opinion

Perhaps even more impressive than the fact that the early opponents of the Barneombudet are now uniformly supporters (or at least no longer opponents) of the office is the fact that the Barneombudet—an office that usually has consisted of just three or four staff—is now widely known and respected throughout the country. That such a status has been achieved in less than a decade is impressive.

Strong evidence of the success of the Barneombudet came from a UNICEF-commissioned survey of a representative sample of the Norwegian population in November 1989.\textsuperscript{175} Asked to name a national institution responsible for protecting children's interests, 63% mentioned the Barneombudet (71% if incorrect forms of the word are included), even though no prompt was given (the answer was free-recall), with little differentiation across regions of the country (59% to 67%; 70% to 76%, if incorrect forms of the word are included).\textsuperscript{176} Asked to name who has held that job, more than 80% mentioned Torgersen, and almost 40% identified Flekkøy.\textsuperscript{177} The results are remarkable, given that they were free-recall, and that Flekkøy had consciously attempted to build recognition for the office rather than for herself. Consistent with the apparent salience of the Barneombudet in the national consciousness, most people estimated its staff size to be larger than the actual size.\textsuperscript{178}

Not only was there extraordinary recognition of the Barneombudet, but there also was remarkable acceptance of an institution whose initial existence was quite controversial. Only 2% of the respondents advocated abolition of the office, including just 3% of Conservatives (a party that had strongly opposed the establishment of the Barneombudet) and 10% of Progressives (the far right of Norwegian politics).\textsuperscript{179} Gender, age, income, and region of residence all were unrelated to opinions about


\textsuperscript{176} Id. at Table 2.A. Similar but incorrect forms of Barneombudet mentioned by some respondents included Barnehageombudet (nursery-school ombudsman) and Barnevernombudet (child-welfare ombudsman).

\textsuperscript{177} Id. at Table 3.

\textsuperscript{178} Id. at Table 6.

\textsuperscript{179} Id. at Table 8.
the continuing need for the Barneombudet.\textsuperscript{180}

B. Is the Barneombudet a Voice for Children?

1. Survey Data

The MMI poll did not include respondents under age fifteen. It is reasonable to ask whether children themselves perceive the Barneombudet as a resource. Although a national survey has not been conducted, two studies in different regions of the country have provided some data about children’s knowledge of and attitudes toward the Barneombudet. A survey of seventy-four twelve-year-olds in the Bergen area by several education students showed that about two-thirds had heard of the Barneombudet, and a comparable number said that they would trust it with a problem.\textsuperscript{181} Only one-fourth could name Torgersen as the barneombud,\textsuperscript{182} a surprisingly low figure in view of the results of the adult survey, the location of the survey (Torgersen’s hometown), and the media blitz that had accompanied Torgersen’s appointment just a few weeks earlier.

In a study that I conducted in several Trondheim schools in the 1989-90 academic year, knowledge of the Barneombudet was reported by about two-thirds of first and second graders (mostly seven- and eight-year-olds in Norway, where school begins at a later age than is customary in many countries), three-fourths of third and fourth graders, and nearly all fifth through eighth graders. Most children had accurate knowledge of the barneombud’s role.

Unsurprisingly, that knowledge is increasingly differentiated as children grow older. Most first and second graders simply said that the barneombud “helps children.” Older schoolchildren also described the barneombud as helping children, but they also gave specific examples (e.g., “He makes sure that children get education”; “Children can call him and tell him their problems”). Seventh through ninth graders sometimes framed their answer in terms of protection of rights.

Although few children in the sample had actually contacted the Barneombudet, almost all identified instances in which they would do so. Among the examples given were:

If I had a dangerous way to school.
If they [my parents] didn’t let me go to the doctor.
If my sister and I hid away because our parents were quarreling.
If I were being harassed [by peers].
If I was sexually abused.

\textsuperscript{180} Id.
\textsuperscript{181} M. Flekkøy, supra note 23, at 166.
\textsuperscript{182} Id.
2. Use by Children

Perhaps the best test of the degree that the Barneombudet serves as a voice for children is the amount of actual use by children. In that regard, it is hard to know how to interpret the raw data. What can be said is that the proportion of cases brought by children during Flekkøy’s term actually dropped across time from 12.4% to 7.0%, perhaps reflecting declining television coverage. As might be expected, Torger sen’s TV show has seemed to increase the Barneombudet’s load of cases referred by children themselves, from about one-tenth to one-third of all cases.

Referrals by children have accounted for some of the Barneombudet’s most important cases. For example, the complaints about unfair treatment in schools generally came from children themselves, with the Barneombudet serving as the children’s analogue to the teachers union. More specifically, the Barneombudet’s major and continuing initiative on asylum-seeking children began several years ago with the case of a Moroccan girl who said that she was being sent back for an arranged marriage. The question of consideration of children’s interests above the legal status of adults in custody and visitation disputes was raised by a twelve-year-old girl, who wished to see her stepfather, with whom she had lived since she was a toddler.

Other issues, while perhaps having less significant consequences, were ones that would have been unlikely for adults to “see” without children’s having brought them forward. A vivid example was the complaint of a number of children concerning grocers’ refusals to reimburse children with money (unlike adults) for the deposit on returned bottles, but instead paying them with candy—even when the child was diabetic! In general, children were more likely to bring questions relating to their self-determination than were adults.

C. Effects on the Resolution of Issues

1. Overall Impact

 Determination of whether the Barneombudet has really made a difference in the way that issues are handled in Norway is not easy. It is not

183 M. Flekkøy, supra note 23, at 75, n.33.
184 In the author’s research at Trondheim, children commonly ascribed their knowledge about the Barneombudet to television.
185 T. Torger sen, supra note 49.
186 M. Flekkøy, supra note 23, at 101-05.
187 Interview with M. Flekkøy (Oct. 11, 1989).
188 M. Flekkøy, supra note 23, at 135.
189 Interview with M. Flekkøy (Oct. 9, 1989).
190 M. Flekkøy, supra note 23, at 81.
possible to determine whether issues might have arisen soon anyway without the Barneombudet, or whether those issues that were carried by multiple parties were brought to the surface faster and more convincingly because the Barneombudet was involved. The best that can be done is to form impressions by examining the chronology of events and the opinions of protagonists on the issues.

No one with whom I spoke—certainly not anyone in the ministries—was convinced that the Barneombudet has changed the overall approach to children’s issues at a national level. On the other hand, there also was a conviction that some issues had been handled differently—and perhaps handled at all—because the barneombud had become involved. As a senior official in the Ministry of Education put it, policymakers have paid attention when the barneombud has “crystallized” issues on which the interests of children had not been carefully considered.\(^1\) In that regard, many informants referred to the detailed hearing-statements by the Barneombudet as being influential in child policymaking.

Flekkøy’s own list of national policy reforms that resulted from action by the Barneombudet is generally consistent with others’ impressions and my own. (Several of the reforms are ones whose history I tracked carefully, outlined in Table 1). Flekkøy’s list includes:

- legislation prohibiting corporal punishment\(^2\);
- legislation permitting municipalities to restrict minors’ access to videos;
- regulations on psychosocial care of children in hospitals;
- legislation increasing the minimum age of imprisonment;
- legislation strengthening safety requirements in new housing;

\(^1\) Interview with H. Thorbjørnsen (Oct. 27, 1989).
\(^2\) The prohibition of corporal punishment is the only item on the list where the causal impact of the barneombud’s work is unclear. According to a senior official in the Ministry of Justice, the barneombud often called for a status report on the issue but was not involved in the negotiations within the ministry. The key turning point was a change of government. The Conservative minister of justice had favored the measure, but she could not convince a majority of the cabinet in the coalition government, especially the ministers from the Christian Democratic Party. When the Labor Party was restored to power, the measure was introduced and passed. Interview with K. Coward (Oct. 20, 1989).

M. Flekkøy, acknowledges that the legislation “would have been adopted at some point anyway.” Flekkøy, supra note 23, at 181. However, she claims that the Barneombudet was responsible for the speed with which the provision was adopted and for its being adopted with a legislative history that made clear the intended broad impact:

\[T]he Ombudsman was responsible for taking this item out of a much larger context, and kept it alive under three different ministers, so it is reasonable to believe that the Ombudsman’s efforts were important in bringing the proposal to the Storting. Our most important effort was, however, not so obvious. The work we did in the Storting and through the press to lay a foundation for interpretation of the law was imperative if the law was to be an improvement.

\textit{Id.} See also \textit{id.} at 86-88.
• regulations requiring seat belts or other restraints for children in late-model automobiles;
• legislation requiring representation of children’s interests in all local planning;
• an amendment to the Parents and Children Act providing for children’s right to know both parents, regardless of the parents’ marital status or past living arrangement.\(^{193}\)

A noteworthy aspect of all of these reforms is that none require substantial direct expenditure of money by the government. At the same time, most cannot be criticized as merely symbolic. Perhaps the major hope for institutions without decisionmaking power is such reform in the way children’s policy is conducted but without a significant shift, at least in the short term, in the level of societal investment in children.

2. Asylum-Seeking Children

In addition to the list of actions that resulted from the work of the Barneombudet, there are some issues that the office is consensually recognized to have stimulated or kept alive, even if major results have not yet occurred. Most notable among these is the question of the status and welfare of asylum-seeking children, whether they come to Norway alone or with their families. Along with Redd Barna, the Barneombudet receives credit from all concerned for the fact that the issue is on the national agenda at all.\(^{194}\)

The advocacy groups claim to have achieved government policies that are just in principle but have failed to live up to their potential in application. For example, although the government has a policy of accepting unaccompanied minors seeking asylum in Norway, the advocates argue that the de facto policy is to find someone from the home country to take custody and then to deport the minors. As of fall 1989, only one unaccompanied minor out of a total of 124 seeking asylum had actually been granted it, and Norway has been unwilling to accept groups of displaced children awaiting placement from resettlement camps.\(^{195}\) Similarly, although the ministries have developed a plan allocating

\(^{193}\) M. Flekkerø, supra note 23, at 181.

\(^{194}\) Individuals not in the Barneombudet who were primary informants about the issue included H. Bugge (Redd Barna) (interview on Nov. 1, 1989), G. Fleischer (Selvhjelp) (Oct. 26, 1989), A. Rustand (Directorate for Immigrants) (Nov. 23, 1989), M. Stephansen (Directorate on Immigration) (Oct. 20, 1989), and A. Thommessen (Norwegian Organization for Asylum-Seekers) (Oct. 20, 1989).

In addition to the agencies included in the study, Oslo Bispedemård (the Oslo Diocesan Council) and the Norwegian Red Cross have been involved in the coalition advocating for asylum-seeking children. Correspondence involving these agencies to and from the Barneombudet also was reviewed.

\(^{195}\) Interview with A. Rustand (Nov. 23, 1989).
responsibility for services to the children, municipalities often have failed to follow through. Advocates also argue that insufficient priority has been given to the resolution of children’s cases.

Two other points are relevant about the work of the Barneombudet on the problem of asylum-seeking children. First, the strategy that seems to have resulted in the most response by the ministries is careful research, analysis, and follow-up. For example, the action that has occurred seems to have resulted from (a) a survey showing the ministries’ and municipalities’ lack of information about the asylum-seeking children in their midst and (b) the Barneombudet’s follow-up on conflicting policy statements by the government (for example, in regard to the status of children born to asylum-seekers while in Norway).

Second, the difficulty that Norway has had in dealing with the problem is an illustration of the more general social change that has occurred in the past decade. Significant numbers of non-white immigrants did not begin coming to Norway until 1979, and the numbers remain small in comparison to the standards of other Western nations. Structures designed to respond to the prospective immigrants (private advocacy groups and the Directorate on Immigration) have been developed only within the past five years. The problem of families in crisis thus can be seen as including the need of a previously homogeneous society to respond to increasing diversity among its children, whether the diversity is in cultural background or family structure.

3. Individuals as Change Agents

Two success stories of the Barneombudet concern instances showing that individuals, when given the authority of an ombudsman, can make a difference. In one such instance, the key actor was Flekkøy. That case involved advocacy for promulgation of comprehensive regulations governing the psychosocial care of children in hospitals.

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196 PLAN FOR MOTTAK AV MINDEÅRIGE ASYLSKERE UTEN FORELDRE ELLER ANDRE MED FRELDREANSVAR I NORGE (July 6, 1989).
197 To some extent, apparent unresponsiveness was related to ambiguity over responsibility among levels and branches of government. See, e.g., Letter from the Barneombudet to the Ministry of Church & Education (Feb. 10, 1988).
199 See, e.g., Redd Barna & Barneombudet, Asylskerbarn i Norge (1988); Flekkøy, Skoletilbud for asylskere i skolepliktig alder og som oppholder seg på midlertidige innkvarteringssteder (Feb. 8, 1988) (letter from Barneombudet to municipalities); interview with H. Bugge (Nov. 1, 1989) and G. Fleischer (Oct. 26, 1989).
200 Interview with A. Thomessen (Oct. 20, 1989).
201 Regulations Concerning Children in Hospital, stipulated by the Ministry of Health and Social Affairs (Sept. 7, 1988). These recent regulations provide for a broad array of special provisions for the care of children in hospitals: (a) special wards for children; (b) continuity of staff; (c) children’s access to parents; (d) access of parents to a social worker; (e) visitation outside regular
Concern about the psychological consequences of hospital procedures has been a matter of interest in Norway for a long time. The major advocacy group was Mental Barnhjelp, which began to work on the issue in earnest after a visit in 1964 by James Robertson, a British psychoanalyst who had been instrumental in identifying the ill effects of separation of young children from their parents when children went to the hospital.\(^\text{202}\) Flekkøy was on the board of Mental Barnhjelp from the beginning, and her mother, Åse Skard (an eminent child psychologist), was the leader of its professional council for many years.\(^\text{203}\)

Largely through the advocacy of Mental Barnhjelp, the document that became the regulations originally was promulgated as guidelines in 1979.\(^\text{204}\) The issuance was as guidelines was an unusual step resulting from concern about cost, especially in regard to parent travel. When the barneombud sought to have the guidelines enforced as regulations, the Finance Ministry again was the sticking point. Ultimately, the key individual in that ministry was persuaded by the hospitals' experience with the guidelines (revealed through surveys) that substantial cost would not be incurred.\(^\text{205}\) Perhaps equally important, the attitudes of the medical community itself had been changed by their experience in implementing the guidelines.\(^\text{206}\)

Actually making the regulations work required follow-up by the barneombud, because some municipalities were slow in providing special education for children in hospitals, most of which are county-administered.\(^\text{207}\) In response to inquiries by from the Barneombudet, the Minis-

\(^{202}\) See e.g., J. Robertson HOSPITALS AND CHILDREN: A PARENT'S-EYE VIEW (1962); Bowlby, Robertson, & Rosenbluth, A Two-year-old Goes to Hospital, 7 PSYCHOANALYTIC STUDY OF THE CHILD 82 (1952); Robertson, Some Responses of Young Children to the Loss of Maternal Care, 49 NURSING TIMES 382 (1953). Robertson's influence with practitioners was the product in part of his preparation of poignant films designed to teach health professionals about children's emotional reactions to hospitalization. A TWO-YEAR-OLD GOES TO HOSPITAL (Tavistock Child Development Research Unit & N.Y.U. Film Library 1952); Going to Hospital with Mother (Tavistock Child Development Research Unit & N.Y.U. Film Library 1958); Young Children in Brief Separation (Tavistock Child Development Research Unit & N.Y.U. Film Library 1967). Robertson also was influential in the development of attachment theory and related scholarship. See, e.g., J. Bowlby, ATTACHMENT xvii (1969).

\(^{203}\) Interview with E. Boasson (Oct. 31, 1989).

\(^{204}\) Interview with K. Holst (Nov. 1, 1989).

\(^{205}\) Id.

\(^{206}\) Id.; interview with E. Boasson (Oct. 31, 1989); phone interview with D. Nilsson on Dec. 18, 1989.

\(^{207}\) Interview with H. Thorbjørnsen (Oct. 27, 1989).
try of Education has been negotiating long-term solutions (e.g., lump-sum allocations per municipality instead of case-by-case resolution of responsibility) between the hospitals and the local school systems.\textsuperscript{208}

A second major accomplishment involving an issue in which there had been long-standing individual involvement was the adoption of a law requiring representation of children’s interests in community planning decisions. In that instance, the central players were Marika Kolbenstvedt,\textsuperscript{209} who served as deputy barneombud and now works in the Transport Economics Institute, and Anne Salterdal,\textsuperscript{210} an architect and sociologist, who is a senior researcher at the Building Research Institute and who was a member of the Barneombudet’s advisory council. Both have traveled through several government agencies and research institutes, with their collaborative work having originated at the Norwegian Institute on Urban and Regional Research (NIBR), a large and influential policy institute.\textsuperscript{211}

During the International Year of the Child, Kolbenstvedt and Sterdal began a series of projects to bring attention to the role of the physical environment in child development. Concurrently, the Barneombudet was involved in several major inter-ministry planning efforts to prevent child injuries\textsuperscript{212} and questions of child safety and comfortable places for children to play and work have been persistent since the Barneombudet began.\textsuperscript{213} The Barneombudet’s cases provided the data and the local alliances necessary for reform.

The turning point in adoption of the new law came in 1986 when new leaders came to the Ministry of Environmental Affairs: Sissel Rænbeck and Tone Bratteli, who formerly had served as minister and deputy minister of consumer affairs and government administration (the “family” ministry). Kolbenstvedt then was in a key position in the

\textsuperscript{208} Id.
\textsuperscript{209} Interview with M. Kolbenstvedt (Nov. 27, 1989).
\textsuperscript{210} Interview with A. Salterdal (Oct. 31, 1989).
\textsuperscript{211} The personal links among key actors in child policy and research in Norway is exemplified by the fact that Hans Christian Bugge, secretary-general of Redd Barna, was an administrator of NIBR at the time.
\textsuperscript{212} Currently, active project is the Committee for Child Safety (SAMBA), which involves departments and institutes in the Ministries of Education, Environment, Family and Consumer Affairs, Health and Social Welfare, and Municipalities, among others. Two of the past leaders of the several inter-ministry projects were enthusiastic about the role of the Barneombudet in such efforts. Interviews with S. Larsen (Oct. 27, 1989) and J. Lund (Oct. 11, 1989). The barneombud has served as vice-chair of SAMBA; Larsen and Lund would like the barneombud to be the chair.

Interesting questions arise concerning the roles of ombudsmen and interagency councils. Arguably, if the role of SAMBA is advocacy, the barneombud should be in the forefront. On the other hand, to the extent that SAMBA is itself the policy forum, then there are reasons to avoid taking a leadership role so that the barneombud is free to criticize the effort.

\textsuperscript{213} M. Flekkerøy, supra note 23, at 94, 103-05.
istry and did much of the background work for the new law in a working group that included representation from the Barneombudet.

The planning law is extremely important, because it establishes an ongoing structure for consideration of children's interests in the municipalities. Indeed, with the increasing privatization and local control (primarily through block granting), the new planning law has served as a model for community involvement in physical and social planning.\(^{214}\)

In fact, although it is difficult to document, the greatest impact of the Barneombudet may have been on the local and county level. The Barneombudet has had a substantial impact in the development of structures for implementation of child-sensitive policies. Even though the personnel has not been available to do follow-up in the local communities, the habit of sending copies of opinions to local officials and media probably has had some effect in the process of deciding such questions—and, with personnel to do follow-up with local and county officials, could have more effect. As Marianne Borgen, the current deputy barneombud summarized, "The local discussions are different after we come into the case...We make children visible."\(^{215}\)

4. A Closing Caveat

A final question that should be considered in assessing the value of the Barneombudet is one that I know of no evidence with which to provide a definitive answer: has the existence of the Barneombudet actually diverted attention from hard questions of children's policy by providing a cheap way of assuaging the conscience of public officials, assuring the nation that the government really is "being nice" to kids, and even attracting substantial international attention in doing so?\(^{216}\) Stated differently, would it be possible to do more for children if no Barneombudet existed?

Even acknowledging the Barneombudet's substantial accomplishments within a relatively short period of time, one still may ask why the Storting has chosen to support a weak Barneombudet. Staffing has never been realistic; it certainly has been substantially smaller than the drafters.

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\(^{214}\) In some communities this effort has been systematic, with a substantial contribution by children and youth themselves. The county of Vestfold is generally acknowledged as having been a model in that regard. Interestingly, the director of the Vestfold planning project, Eva Almhjell, recently has been a special consultant in the Barneombudet, thus cementing the link between national and community planning on behalf of children.

\(^{215}\) Interview with M. Borgen (Oct. 26, 1989).

of the original legislation had planned.\textsuperscript{217}

To some extent, the minuscule resources of the office inevitably have foreclosed its being truly revolutionary by infusing a children’s perspective into ministries (e.g., the Ministries of Transportation, Defense, and Oil and Energy) that generally would not be expected to regard themselves as focused on people rather than bricks and mortar, “the market,” or other non-human abstractions. Even within the more traditional realm of children’s issues, a weak Barneombudet is limited in the range of issues that it can follow carefully. Although there is no evidence of a conscious decision to keep the barneombud from becoming too active,\textsuperscript{218} the possibility that willful negligence may arise should continually be considered.

VII. \textbf{RECOMMENDATIONS FOR NORWAY}

\textit{A. Substantive Recommendations}

Taking into account its youthfulness and quite limited resources, the performance of the Barneombudet generally has been quite positive. The office seems to have found a niche in Norway and to have been recognized as a credible player in the policy arena on children’s behalf. Nonetheless, my study suggests several measures that might strengthen the Barneombudet specifically, and child policy generally, in Norway:

\textbullet\ The authorizing legislation for the Barneombudet should be amended to establish it as the entity for enforcing the United Nations Convention on the Rights of the Child in Norway.

The lack of express and specific substantive domains within the Barneombudet’s jurisdiction presents some advantages. As I noted, some informants correctly observed that the lack of responsibility for enforcement of particular statutory rights permits and indeed demands a more activist stance by the barneombud. Given the limited attention paid to children’s interests, such an approach may be necessary simply to be heard, especially in the early days of an ombudsman’s office.

On the other hand, the lack of clear statutory authority for the barneombud’s entering into particular domains of work\textsuperscript{219} also presents perpetual questions of the legitimacy of his or her action. Indeed, when the Barneombudet was established, questions were raised about whether the label of ombudsman could be appropriately applied to an office with-

\textsuperscript{217} Interview with E. Hauglund (Oct. 31, 1989).
\textsuperscript{218} The selection of a highly visible celebrity as the second barneombud argues against such a hypothesis.
\textsuperscript{219} The barneombud, unlike the other specialized ombudsmen, has no specific statute to enforce. Rather, the barneombud’s domain is the entire range of issues that affect children—potentially virtually all issues that a government might consider.
out a statute to enforce. Moreover, the lack of a statute to defend makes development of an institutional mission difficult if not impossible. Particularly, given the plethora of value conflicts in children's policy, a framework is needed to guide the barneombud's choice of issues to be elevated to priorities for action.

The UN Convention should be considered a "constitutional" document with a coherent underlying theory: the necessity, as a matter of human rights, of preservation of the dignity of children. As such, it is a legal instrument that could provide a framework for action by the barneombud without unduly constraining the breadth of its advocacy.

Indeed, most of the issues that the barneombud has considered would be informed by application of the principles embodied in the Convention. As I have noted elsewhere, the expected adoption of the UN Convention by Norway will provide a legal mandate and a moral obligation to ensure that the child protective (barnevern) system functions with due care and diligence, that asylum-seeking and refugee children are offered the full protection of the state, that mass media promote children's development but do not subject them to harm, that education is designed to promote children's development to optimal levels, that disabled children and their families are served in their home communities, and that children are offered opportunities to be full participants in the cultural life of the community as a whole, with due respect to the cultural identity of eth-

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220 Interview with M. Flekkøy (Nov. 27, 1989).

221 Given the highly individualized nature of an ombudsman's office, especially one without a statutorily defined mission, each change of barneombud raises an obvious risk of a seemingly arbitrary shift in the definition of children's interests and key issues in their recognition and fulfillment. Whether because of similarities in their political ideologies, national consensus (at least among child advocates) as to the most important issues facing Norwegian children, the continuity in the staff supporting the barneombud, or some other factor, the primary issues on which the Barneombudet has concentrated since Torgersen took office are ones which the Barneombudet had already been heavily involved under Flekkøy. Notably, since Torgersen took office, the failures in the child welfare [barnevern] system and lack of sufficient consideration of children in immigration policy have been attended to. See interview with T. Torgersen and E. Almhjell (Aug. 30, 1990). An additional emphasis by Torgersen has been the need to lengthen the schoolday, or at least to provide for after-school activities in the schoolbuilding. Whether such stability of concern will occur in the next transition of barneombuds is, of course, a matter of conjecture.

222 Supra note 156.


nic and linguistic minorities.225

Ratification of the Convention obligates a nation to develop means of informing "adults and children alike" about "the principles and provisions of the Convention"226 and reporting periodically and comprehensively to its own citizens as well as an international committee about the "degree of fulfillment of obligations under the...Convention."227 Apart, then, from the benefits that might accrue from clarification of the mission and philosophy of the Barneombudet, designation of that office as the watchdog of the Convention in Norway would avoid the establishment of a new bureaucracy to consider such matters.

- An analogue to the new local planning law should be adopted to require consideration of children's interests in national policy decisions.

Consistent with the Barneombudet's function as a guarantor of consideration of children's interests, such a law would further institutionalize concern for children at a national level, even in those ministries with relatively less responsibility for children's issues. Note that such a law would not require the dominance of children's interests, merely that thought is given to the significance for children of various policies.228 Besides heightening the salience of such concerns for policy, a national children's planning law might systematize the full integration of older children and adolescents into the community.229

B. Structural Recommendations

- The staff of the Barneombudet should be substantially increased in order to permit establishment of county-level offices.

As already noted, one vision of the Barneombudet when it was cre-

225 Melton, Welfare State, supra note 224, at 83.
226 UN Convention, supra note 156, at art. 42.
227 Id. art 44.
228 An obvious analogue is the National Environmental Policy Act (NEPA), 42 U.S.C. § 4321 (1990). NEPA states overarching policies in regard to the protection of the environment, as the author is proposing that the UN Convention would do in regard to protection of children in Norway. NEPA does not mandate that the ultimate disposition of projects change, but it does require the preparation of an environmental impact statement to illuminate the likely effects on the environment of a given government action. Whether the specific procedural requirement is for a children's impact statement or, more directly analogous to the local planning law, a children's representative in national policy councils, the point is to set procedures into place that will magnify the Barneombudet's impact on Norway's response to its children.
229 The youth organizations affiliated with Norway's political parties already provide one model for such involvement. Notably, Framfylkingen, the group affiliated with the Labor movement, recently held a convention at which no adults were allowed. Note, though, that the author is advocating the development of structures for the integration of children and youth into the broader community, not segregation from it.
ated was of a multitude of local offices, rather than a single national barneombud. The decision made at that time was wise, especially given the minimal resources made available to the office. By the nature of the office, the authority of an ombudsman can be best established with a strong individual.

Circumstances have changed, though. Some children’s programs and budgeting have been decentralized through block grants, and the local planning law has been instituted to give children a say in municipal policy. The Barneombudet itself has become reasonably well established. Accordingly, county-level offices would have the opportunity to scrutinize policy on the level at which much of it is now made, while keeping a sufficiently few number of offices, so that central direction would still easily be feasible, and the number of new staff required would not be overwhelming.

It is noteworthy that the level of growth that I am suggesting, while substantial, is still not enough to support a strong case advocacy program nationwide. Instead, it would provide more resources to track the range of policy decisions involving children.

- A research arm should be established for the Barneombudet, perhaps through a formal agreement with an existing research institute, for generation of social indicators, economic data, and other descriptive data about child welfare and the views of children about conditions in Norway.

Although the growth of research on children in Norway has been significant, it has not been enough. In particular, there is not a clear and continuing responsibility for assessing the well-being of children in Norway and determining children’s own views about issues of concern to them. Too frequently, when policy issues arose (e.g., the welfare of asylum-seeking children), data about the nature of the problem simply were not available.

The capacity for economic analyses of the needs of children and cost-benefit calculations of the effects of various policies on them is also not well developed. There is a need, too, for psycholegal research on the effects of legislation, the assumptions by courts, and the means of resolving disputes involving children so that they feel that they have been treated justly.

230 One of the cases studied involved a similar change—the localization of regulation of barnehager (preschools).

231 See supra notes 204-09 and accompanying text.

232 Norway has 20 counties containing 450 municipalities. The Norwegian terms for these levels of government are fylke and kommune, respectively. In general, the counties have responsibility for specialized services (e.g., tertiary-care hospitals), and the municipalities provide general services (e.g., primary health care).

233 See e.g. Melton, The Significance of Law in the Everyday Lives of Children and Families, 22
Although the former and present staff of the Barneombudet all have been professionally trained in social science, medicine, or law, the Barneombudet would benefit from development of a position for collating and analyzing research relevant to the office's work and stimulating research on key unstudied questions related to child policy. The Barneombudet has made substantial use of the research resources in Norway, but it has not had sufficient staff time to do so optimally.

The sort of research and utilization of research that I am suggesting is not clearly within the mission of any of the existing research institutes. Being primarily descriptive, it also is not the type of research that is rewarded in academia. Moreover, to use the research best, it should be the Barneombudet's own research center. However, as suggested in the recommendation, the most efficient means of developing such a research capacity may be to develop it as a collaborative venture within one of the existing institutes.

- The authorizing statute for the Barneombudet should be amended to provide the barneombud with standing to file litigation on behalf of classes of children when their rights have been violated and other measures have failed to result in correction of the situation.

As a legal scholar from the United States, I make this recommendation with some hesitancy, because I am aware of the substantial differences between our countries in the traditional uses of the courts. Nonetheless, when children, or some particular group of children, as a class have been wronged, it is unrealistic to expect those children to use the courts. As a last-resort measure, litigation should be a strategy open...
to the Barneombudet, but presently, the standing of the barneombud to file a case, when it is not the barneombud himself who has been wronged, is questionable. Such authority should be available.

A model for such legislation might be the Civil Rights of Institutionalized Persons Act, which was enacted in the United States to give the federal Justice Department standing to sue local and state authorities on behalf of residents of various kinds of institutions when their civil rights have been egregiously violated. Suit can be brought, though, only when state officials have failed to respond adequately to advocacy outside the courts. The situation in public mental hospitals—and patients' de facto lack of access to the courts—was sufficiently problematic that Congress subsequently established protection and advocacy programs with similar authority to sue after other remedies had been aggressively pursued.

C. Strategic Recommendations

- Traditional grassroots political strategies (e.g., media exposes, letter-writing campaigns, formation of coalitions) should be deemphasized as a strategy.

Given the nature of the policy process in Norway, grassroots political strategies can be expected to have little impact relative to the cost in time and money of implementing them. In the cases that I studied, the impact was small, even when the public response generated was quite impressive. In a "scientific" bureaucracy as is common in Norway, impact occurs when the key decision maker is identified and persuaded.

This recommendation does not imply that media contacts should be avoided or uncultivated. Research in the United States—research which may be generally applicable to other democratic, economically developed countries—indicates that policymakers' use of social science is greatest for that which "everybody knows." Therefore, continued use of the media by the Barneombudet is important for its downstream effect on policy and its ability to "raise the consciousness" of children themselves and adults concerned about them (e.g. to ensure that they consider the

237 Id.
238 Id. at § 1997b(a)(2).
240 A particularly notable failure was a letter writing campaign organized by a broad coalition of varied groups. The campaign targeted the national broadcasting network, requesting it move the time of the evening news and pay more attention to the sort of television to which young children are exposed. This resulted in no action at all.
241 For a comprehensive review of legal policymakers' use of child development research, see generally REFORMING THE LAW: MELTON supra note 16.
barneombud as a resource and that they think about the consequences of seemingly unrelated policies on children). In that regard, Torgersen’s imposing media presence can be a major asset in creating a climate of concern for and among children in Norway. As he described his style, he “make[s] occasions when the media have to listen” to his criticism of public officials, and then “the press does the rest of the work for us” in mobilizing public opinion.

Nonetheless, the point should not be lost that, at least for resolution of pending policy questions at the national level, interest-group politics is not a game at which children are likely to win in Norway. Success is much more likely to occur when energy is invested in locating the principal decision maker on the issue at hand and presenting carefully constructed arguments informed by hard data.

Torgersen’s familiarity among Norwegian children is particularly likely to increase the psychological availability of the Barneombudet, although it may also result in false expectations. Children sometimes expect to be able to reach Torgersen directly, although he never speaks with individual children by phone. Interview with T. Torgersen & E. Almhjell (Aug. 30, 1990).

Several informants expressed concern that Torgersen has relied too heavily on dramatic use of the media without sufficient concern for policy foundation or an adequate plan after the initial media blitz. There was particular criticism of his turning to the police amid great media fanfare, and charging local officials in several municipalities for neglect of the child protection system without adequately establishing the underlying legal foundation.

As one informant noted, public administrators in Norway are largely “immune” to such public pressure, especially when it occurs without careful follow-up to establish structures for new policies. He worried that such dramatic but unsuccessful actions will be like a “big balloon being shot down”—a grand event that backfires with ultimate diminution of the credibility of the Barneombudet.

On the other hand, some informants, including Flekkøy herself, saw an ineffectiveness in use of the media, especially the broadcast media, as having been her greatest weakness. Although the author is aware of no evidence to support such an assertion, a reasonable question is whether the national broadcasting network’s apparent shutting out of Flekkøy (while print media frequently mentioned the Barneombudet) was a response to her continuing criticism of the network’s policies regarding children.

It is still early in Torgersen’s term, and the efficacy (or inefficacy) of his strategy will be tested over the next several years. Becoming more “patient,” Torgersen has revised his own view of how long it will take to achieve major change through grassroots means. Interview with T. Torgersen & E. Almhjell (Aug. 30, 1990).

In that regard, Torgersen argues, plausibly, that there have been and will be downstream effects of his more dramatic work with the media. Id. Even if his going to the police did not have a direct effect in the communities where local officials were charged with violating the barnevern law, that event may have sensitized officials in other communities.

It is important to note that this style of decision making may be attenuated in coming years as a result of structural change in Norwegian politics. As planning becomes increasingly decentralized and decision making is localized through block granting, it is likely that decisions will be more political, less bureaucratic, and more professional. If that scenario does come to fruition, then Torgersen’s grassroots strategy may increase in its significance as a guide for future ombudsmen.
The free-access clause should be used regularly and strategically as a means of gathering data about child welfare.

The Barneombudet has almost never used its right of access to facilities caring for children. The deterrent effect that strategic use of that authority might have on administrative negligence and staff misconduct is intuitively obvious. Perhaps less obviously, when applied systematically with careful research designs, drop-in visits and review of records by staff of the Barneombudet could provide informative snapshots of the everyday life of Norwegian children, especially those who are most vulnerable.

Some use of the free-access clause would be wise, simply for its deterrent effect, even with the current, unreasonably limited staff and travel resources of the Barneombudet. However, extensive, systematic use would require the level of staff implied in my recommendation for county offices of the Barneombudet.

In summary, my recommendations are directed toward enhancing the elements of the Barneombudet that have been most important in its success—heightening its moral and legal authority and its capacity to develop and synthesize knowledge about children’s interests and views and to ensure attention to that information in the resolution of practical policy questions.

VIII. INTERNATIONAL IMPLICATIONS

The concept of an ombudsman for children has been an especially good match to the political culture and the needs of children in Norway. In that sense, it is unlikely that a barneombud will function comparably elsewhere. The Barneombudet seems to fit a small country with a social-welfare tradition but underdeveloped policies on children. Even the other Scandinavian countries appear not to have a need comparable to that in Norway. In short, I am not convinced that the Norwegian Barneombudet could be easily exported to other countries.

On the other hand, I do believe that ombudsman-like institutions would be of value in all countries if the critical elements of the Barneombudet are preserved. In my analysis, these elements include:

- a barneombud chosen for his or her ability to provide objective leadership on children’s issues;
- protection of the barneombud’s autonomy and discretion, and

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246 See supra notes 116, 127, and 144 and accompanying text. See also M. Flekkerøy, supra note 23, at 26, 50.

247 Key attributes of successful advocates are “rationality and commitment”: Facts without a sense of personal commitment are unlikely to be persuasive, particularly if there is a question of taint by professional self-interest. On the other hand, pure emotion, particularly if accompanied by an air of self-righteousness, also is unlikely to be effective.
protection of accessibility to and by the barneombud.

Note that I have not included some of the characteristics (e.g., small size of the population within the barneombud’s jurisdiction) that often appear in discussions of the requisites for the successful operation of an ombudsman’s office (and indeed that I have suggested earlier in this Article). The omissions here are based on assumptions derived in part from examination of the Norwegian Barneombudet that there are two especially significant aspects of the barneombud’s work.

First is a function that commonly is ascribed to ombudsmen: jawboning. In other words, a barneombud should invoke moral authority and social-science knowledge to make children’s interests heard. The appointment of a person to whom people should and will listen and the preservation of his or her autonomy are absolutely critical if that function is to be fulfilled. Accordingly, although there may be a universal need for an ombudsman-like institution for children, the model is not applicable in all countries. The necessary elements for a barneombud can be present only when key executive and legislative authorities have at least a minimal commitment to serious analysis and reform of child policy so that (a) the appointment itself is taken seriously and (b) the barneombud is protected from retribution for statements that are objectionable to those in authority.

In other words, a barneombud can be an effective advocate only in a democracy in which the government is, if not child-centered, at least sympathetic to policies that promote respect for the dignity of children and enhance their welfare. To that end, the authorizing legislation for establishment of new ombudsmen for children should follow the Norwegian model to provide broad authority for the barneombud, but, unlike the Norwegian statute, should provide “whistleblower” protection for the barneombud and his or her staff.

The second function that strikes me as very important (but that as far as I am aware has not been discussed elsewhere) is the creation of legal and political structures for development and implementation of

G. Melton, CHILD ADVOCACY supra note 9, at 145.

Given the complexity of children's policy, successful advocates also need to have political savvy and expertise in children's policy per se, apart from knowledge about specific substantive issues.

248 In American slang, jawboning refers to the practice of “convincing or influencing by moral persuasion instead of using force or authority.” WEBSTER ENCYCLOPEDIC UNABRIDGED DICTIONARY OF THE ENGLISH LANGUAGE 764 (1989); see also 1 World Book Dictionary 1120 (1975). Given the lack of decisionmaking authority vested in an ombudsman, he must be skilled in the exercise of government speech in order to assert the moral authority and persuasive power that may come with the office and the analyses undertaken under its auspices.

249 President Bush's appointment of William Bennett as “drug czar” illustrated the significance of an appointment of a strong individual whose own forcefulness is symbolic of the government's commitment on a given issue.
child policy that is responsive to children’s interests. Although there has not yet been enough experience to be certain, my impression is that the most important work that the Norwegian barneombud has accomplished thus far is in this vein. Perhaps the most obvious example is the local planning law, which may prove to be a momentous legislative act that should be emulated by other jurisdictions. More subtly, when an effort is made to alert local officials to problems affecting children in the way that they have approached particular issues, that action may affect later decisions even when the specific matter of concern is realistically already decided. Still a different kind of structure creation involves follow-up to ensure that means for implementation of new policies are present (e.g., the Barneombudet’s attention to payment mechanisms to implement the regulations on care of children in hospitals).

None of these achievements are ones that necessarily involve significant changes in substantive policy. The addition of a children’s representative in planning decisions does not concurrently create new law about criteria for the decisions. The increase in sensitivity of a municipal official to some “side effects” of a given policy on children after the decision already has been made does not necessarily result in rectification of that policy itself. The substantive policy on care for children in hospitals already had changed. Nonetheless, all of these accomplishments are apt to have substantial long range effects on the well-being of children in Norway because of the structures that they have created for wiser, more child-centered decisions in the future, whether in the formulation or the implementation of policy.

The two critical functions that I have identified—jawboning and structure creation—are ones that an ombudsman can carry out even if the government is not parliamentary in form or if the jurisdiction is large. This analysis presumes that the case-advocacy function of the barneombud is not critical to its mission. Case advocacy is a useful service, and it can be helpful in discovering class issues and building the data base necessary for resolving issues at a policy level. However, I do not believe that case advocacy is necessary for either jawboning or structure creation—functions that a thoughtful, prestigious leader with appropriate investigatory and social-science staff support may be especially able to perform.

Therefore, as nations signal their commitment to children by joining as parties to the United Nations Convention on the Rights of the Child, they should consider establishment of an ombudsman for a children as a mechanism to assist in fulfillment of their obligations under the Convention. If ratification is more than empty symbolism, it will require

250 Supra note 156.
new structures for child policymaking, and it will carry the kind of political commitment necessary for a powerful ombudsman’s office for the protection of the interests of children.

251 It is in this spirit that Flekkøy organized a world conference under the auspices of UNICEF’s International Child Development Centre in Florence, Italy, to examine Models for Monitoring Protection of Child Rights (Nov.-Dec. 1990).