Challenging the Overuse of Foster Care and Disrupting the Path to Delinquency and Prison

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Foster care is supposed to be a temporary safe haven for abused and neglected children, a place where they are cared for while their parents solve the problems that led to the mistreatment of the children. For many children foster care undoubtedly serves this function well. However, thousands of children live in foster care for extended periods of time, many of them leaving care only when they become adults. Recent studies show that for many of these children, foster care is not a safe, nurturing system. Instead, being in care exposes these children to substantial risks of later juvenile delinquency and adult criminal arrest and conviction, as well as mental health problems, difficulties in school, poor employment prospects, poverty and homelessness. Other, related studies also show that many children are placed in foster care unnecessarily, in the sense that they could safely remain in their parents’ homes if appropriate services were provided to the parents. This evidence suggests that law and public policy should place greater emphasis on providing such services and on reducing the use of foster care. As it turns out, though, reducing the use of foster care and focusing more on in-home services have been public policy goals in the United States for more than thirty years, and the roots of these policies go back more than a century. Despite agreement that foster care is overused, the foster care system has been stubbornly resistant to change.

This paper examines the problem of the overuse of foster care and argues that conventional reform proposals are unlikely to succeed, as they have not succeeded for a century. Borrowing from the work of French social historian and philosopher Michel Foucault, the paper suggests that the current foster care system may persist because it is performing other, covert functions very well. In particular, the system allows society to assert that it is protecting children from harm while refusing to provide substantial material support to poor parents. The system conforms to the more generally applicable policy to minimize direct economic assistance to poor adults while allowing us to believe that poor children do not really suffer from this policy. This paper argues that turning this analytical lens on the actual functioning of the foster care system and its harmful effects on many children could provide new ways to argue for legal and policy reforms to the child welfare system that could reduce the unnecessary use of foster care.

The paper first reviews the recent research that demonstrates how harmful foster care is to many children. The second section examines the history of child welfare interventions over the last century, showing that for many decades well-informed professionals have argued that the child protection system should leave children at home if possible, rather than removing them from their parents’ custody. Despite these calls, hundreds of thousands of children have been and continue to be removed from their parents’ homes and placed in foster care, and their parents have not received the services that might make removal unnecessary to protect the children. Reform efforts have made small inroads on this reality. The third part of the paper turns to Foucault’s study of prisons and particularly his analysis of why prisons have continued to be the dominant mode of punishment, little changed for centuries, even though they have long been criticized for being ineffective (not reducing crime) and even harmful (producing recidivism). He argues that when an institution persists despite its apparent failure to achieve its social purpose, it is in fact serving some other, unarticulated goals very well. The final section of this paper uses
this analytical structure to reexamine the overuse of foster care and suggests how the insights that the analysis produces might be used to support more effective reform efforts.

I. Correlations between foster care, delinquency, and conviction of adult crime

A great deal of social science research shows that children who spend significant amounts of time in foster care are at increased risk for being found delinquent in juvenile court and convicted of crimes as adults. (Bender 2010) Almost 20 percent of the U.S. prison population under the age of 30 and 25 percent of those with prior convictions are former foster children. (Doyle 2008) A recent large-scale study of foster children, conducted by the Chapin Hall research center at the University of Chicago, explores this connection in detail. The Chapin Hall researchers compared data about youth who had been in foster care homes in several states in the Midwest to a very large control data set.

More than half the young people in the Chapin Hall study who had been in foster care had been arrested, over one-third had spent a night in jail, and one-third had been convicted of a crime. (Courtney, Terao and Bost 2005) For most offenses, the proportion of former foster care youth 17 to 18 years old committed offenses at twice the rate of the control group or more. The offenses considered were damaging property, stealing, going into a building to steal something, selling drugs, hurting someone badly enough to need medical care, using or threatening to use a weapon, participating in a group fight, pulling a knife or gun on someone, and shooting or stabbing someone. For 19-year-old young people, the Chapin Hall researchers found much smaller differences in offending, although youth who had been in foster care reported that they were significantly more likely to damage property, steal something worth more than $50, take part in a group fights, and pull a weapon on someone. More significantly, the 19-year-olds who had been in foster care faced much higher rates of arrest; 57 percent of the males reported that they had been arrested at least once, compared to 20 percent of control group, and 36 percent reported having been arrested since age 18, compared to 2 percent of the control group. The percentage of female foster youth reporting that they had ever been arrested was not only higher than that of the female control group but also than the male control group. (Cusick and Courtney 2007)

Other recent studies also find a strong correlation between foster care placement and later involvement with the juvenile justice and criminal systems. Researchers using child welfare and juvenile justice system data from Cook County, Illinois, between 1995 and 2000 found that children placed in foster homes or other substitute care for at least a year were at twice as much risk of becoming involved in the juvenile delinquency system as abused or neglected children left at home. For girls, being placed in just one out-of-home placement significantly increased the risk, while boys’ risk did not rise until they experienced multiple placements. (Ryan and Testa 2005)

However, the reasons that placement in foster care increases the risk of future involvement with the delinquent and criminal systems are not obvious. For example, it seems quite possible that the experience of being maltreated makes it more likely that children would engage in behavior that would bring them into conflict with the law as they grow older. MIT economics professor Joseph J. Doyle developed a method of analyzing foster care and criminal arrest data that teases out the relationship between foster care and later criminal involvement. He found that for a significant number of children, removal from home and placement in foster care in itself increases the risks of adjudication as a delinquent and conviction of crimes in adult court.
Doyle’s study is limited to poor children between the ages of 5 and 15 who live in the urban Chicago area. He focused on children whom he identified as being “on the margin” of placement, that is, ones as to whom professional child welfare workers could reasonably disagree about the need for placement in foster care. (Doyle 2008). Some of the children in this marginal group had ‘strict’ caseworkers who removed them to foster care, and others had more “lenient” workers who left them at home while working with their parents. (Doyle 2008) Doyle concluded that children on the margin of placement had a much lower risk of criminal involvement if left at home. The children placed in foster care had a delinquency rate three times that of children left at home. (Doyle 2007) They also had adult arrest, conviction and imprisonment rates that were three times higher than the rates of children who had been left at home. (Doyle 2008)

Doyle, the Chapin Hall project, and other researchers have also examined other ways that former foster children differ from their peers in the general population, finding that they are much more like to have the kind of health, education and employment problems that are associated with an increased risk of involvement in the juvenile and criminal justice systems.

By the time they turned 21 years old, nearly a quarter of the Chapin Hall foster care alumni had not obtained a high school diploma or a GED; they were more than twice as likely to lack either credential compared to similar young people in the general population. Only 30 percent had completed any college, compared to 53 percent of 21-year-olds in the general population. Just over half were currently working, compared with nearly two-thirds of 21-year-olds nationally. (Courtney, Dworskey and Pollack 2007). Doyle also found that children who were removed were less successful in the employment market; they worked 11 percent fewer quarters and earned $850 less than those who stayed at home. (Doyle 2007)

The findings from another large-scale study of former foster children from Oregon and Washington, conducted by the Casey Family Programs in Seattle, are similar. The proportion of Casey alumni who had a high school diploma or a GED was comparable to that of the general population (84.8 per cent), but the alumni were much more likely to have only a GED -- 28.5 percent compared to 5 percent of the general population. While more than a quarter of the general population aged 20 to 34 had completed a bachelor’s degree, only 1.8 per cent of the foster care alumni had. (Pecora et al 2005) Not counting people who were not in the workforce, only 80 percent of the Casey foster care alumni aged 20 to 34 were employed, compared to 95 percent in the general population. A third of the foster care alumni had household incomes at or below the poverty level, double the national average for people 18 to 34, and 22 percent experienced homelessness after leaving foster care. (Pecora et al 2005)

Perhaps the most striking information from the Casey study was the very high incidence of mental health problems among former foster children. Within the 12 months before the study was conducted, more than half the foster care alumni (54 per cent) had had clinical levels of at least one mental health problem, and 20 per cent had had three or more such problems. In contrast, less than a quarter of the general population had mental health problems in the same time period. Twenty-five percent of the foster care alumni had been diagnosed with post-traumatic stress disorder within the previous 12 months, a rate twice as high as that of U.S. war veterans. (Pecora et al 2005)

The clear implication of all of this research is that efforts to keep children in their homes rather than removing them to foster care should pay off by generally improving the life prospects of abused and neglected children, as well as avoiding the costs of future lawbreaking. (Pecora et al 2005) Of course, federal and state child welfare policy has long recognized the importance of trying to keep maltreated children in their own homes by providing services to families. For three
decades federal and state laws have provided that children should not be removed from their parents’ homes if possible and that child welfare agencies should make reasonable efforts to prevent the need to remove children and, if removed, to reunite them with their families. (Adoption Assistance and Child Welfare Act of 1980) Moreover, leaving mistreated children with their families of origin if possible has been advocated by children’s advocates for much longer, as the next section outlines.

II. A century of calls for leaving children at home

By the late nineteenth century, the desirability of raising children in their homes rather than institutions was generally accepted (Breckenridge and Abbott 1912) and child welfare professionals have long recognized that keeping children at home if possible was better for them. For example, in 1909 Judge Julian Mack, one of the leaders of the juvenile court movement, argued that children should not be removed from home because their parents were too poor to care for them. (Mack 1909). Simultaneously with the development of the first juvenile courts in the early 1900s, states developed Mother’s Aid programs that provided funds to enable poor children to remain in their (worthy) mothers’ homes rather than being placed in poorhouses, orphanages and other institutions. (Kahn 1962) The first White House Conference on Children, convened in 1909, endorsed programs intended to keep children at home rather than removing them because of their parents’ poverty. (Proceedings of the Conference on the Care of Dependent Children 1909) The report of the conference proclaimed, “Home life is the highest and finest product of civilization,” and “children should not be deprived of it except for urgent and compelling reasons.” (Proceedings of the Conference on the Care of Dependent Children 1909, 5) However, mothers’ aid programs were always limited and poorly funded, reflecting social ambivalence about providing cash assistance to the poor, and despite the expressed preference for leaving children at home thousands of children continued to be placed in orphanages and other institutions. (Grossberg 2002)

Throughout the twentieth century, the developing child welfare profession continued to emphasize the value of preserving children’s families. In 1930 the Public Charities Association of Pennsylvania declared, “Every effort should be made to prevent the removal of children from their own homes with services which their own families may, with assistance, perform with better and long-lasting results.” (Levine 1973, 19) Grace Abbott, an early social worker who led the United States Children’s Bureau during the 1930s, made the same argument in The Child and the State, a seminal book that explores the obligation of the state to care for dependent children. (Abbott 1938) The Depression of the 1930s completely overwhelmed states’ modest efforts to support families through Mothers’ Aid laws; in 1935 the Social Security Act created the Aid to Dependent Children program, which provided federal funds to enable impoverished mothers to keep their children at home with them. (Witte 1963) In 1951 the American Humane Association recommended that every reasonable effort to protect a child in the parents’ home should be made and that a child should be removed only if these efforts failed. (American Humane Association 1951) Statements of good practices during the 1960s emphasized that when a child was taken into foster care, parents should be offered help to correct the problems that led to removal, and plans should be made to return the child promptly. (Lewis 1964, Arnold, 1960)

Despite this theoretical recognition of the value of leaving children at home and efforts to reunite them with their parents when they were removed, every year thousands of children were removed from home, first to institutions, and then, as foster care replaced institutional care, to foster homes. In 1959, an estimated 254,000 children were in out-of-home care, (Mass & Engler 1959) and ten years later 249,000 children were in foster families. (White 1973) The estimates of
the number of children in foster care in the mid-1970's ranged from 200,000 to 500,000. (Law Enforcement Assistance Administration 1976, Mnookin 1973, Davidson 1981)

While foster care was in theory temporary, a place for children to stay safely while their parents got their acts together, a 1959 article by Maas and Engler presented data showing that many children remained in foster care for very long periods of time, often until they reached the age of majority. (Mass and Engler 1959) In the next decade and a half, other academic social workers replicated and expanded on their findings, and the term foster care drift became the shorthand designation for this phenomenon and its consequences. (Emlen 1976). Social work researchers who studied the causes of foster care drift concluded that neither demographic factors, modes of entry into foster care, nor the reasons for placements accounted for most of the variance in how long children remained in foster care. (Emlen 1976)

During the 1970s, a major social work research project set out to identify the causes of foster care drift and to develop steps for eliminating them. The project identified foster children considered unlikely to return home and assigned them caseworkers with reduced caseloads and training in techniques of case assessment, obtaining and organizing legal evidence, participating in court hearings, and adoptive planning. (Emlen 1976, Downs et al 1978, Emlen 1978). The project succeeded in moving the great majority of these children into permanent homes, mostly by returning them to their parents. (Downs et al 1978, Emlen 1978) Similar results were achieved in other states that later replicated this program. (Harris 1983).

During the same time that this research was laying the foundation for current social work practices, legal scholars were arguing that then-current law encouraged the child welfare system to intervene too easily into families in the name of child protection without requiring caseworkers to assess whether problems could be solved while children remained at home or to compare the alternative of staying at home to removal. (Smith et al 1980, Mnookin 1975, Wald 1975, Areen 1975) The academic lawyers also criticized the law for its inattention to what happened after a child was removed from home, saying that the failure to require planning and monitoring of cases contributed substantially to foster care drift. (Wald 1976)

To solve these problems, and consistent with the recommendations of the social workers described above, the law professors argued that juvenile court laws should be revised to require child welfare agencies to prepare specific goal-oriented treatment plans in every case; that courts should review progress toward achieving the goals regularly; and that the plans should be modified as necessary, both in terms of the goals to be achieved and the means of achieving them. They also argued that the law should encourage termination of parental rights when it was clear that foster children could not return home within a reasonable time, thus freeing them to be placed in other permanent homes. (Wald 1975, Wald 1976, Mnookin 1976)

These arguments substantially shaped major proposals to revise state juvenile codes. (Law Enforcement Assistance Administration 1976, Office of Juvenile Justice and Delinquency Prevention 1980) The most influential proposal was the Institute of Judicial Administration - American Bar Association Standards Relating to Abuse and Neglect. (IJA-ABA Joint Commission on Juvenile Justice Standards 1981)

The results of the social work foster care studies and the proposals of the legal academics pointed in the same direction, and they culminated in 1980 in Congress’s enactment of the Adoption Assistance and Child Welfare Act. This Act amended the federal statutes setting out the requirements states must satisfy to be eligible to receive federal foster care funds. Besides requiring case planning and periodic reviews, the act also required state child welfare agencies to provide preventive services to allow abused or neglected children to remain at home safely rather
Juvenile courts were required to review cases to determine if these “reasonable efforts” had been made. (Adoption Assistance and Child Welfare Act of 1980)

However, these reforms did not succeed in reducing the number of children in foster care. (Children’s Bureau 1997) In 1980, the year that the federal reform legislation was enacted, 276,000 children were in foster care. (Staff of H.R. Committee on Ways and Means, 108th Congress. 2004) Five years later, the foster care population was the same, and by 1990 the population had mushroomed to 405,743. (Staff of H.R. Committee on Ways and Means, 108th Congress. 2004) This failure to reduce the number of children in foster care, combined with criticism of the reasonable efforts requirements in cases in which children returned to parents were seriously injured or killed (Gelles 1996), prompted the enactment of further reforms to the federal legislation, the Adoption and Safe Families Act of 1997 (ASFA).

ASFA requires that state law place more emphasis on child safety than the 1980 Act did, and it requires states to have laws that encourage more rapid termination of parental rights when children have been in foster care for an extended period of time. (ASFA secs. 101-103) However, ASFA retains the essential structure of the 1980 Act and the emphasis on requiring efforts to avoid foster care placements in the first place and to reunify parents and children if a child is placed in foster care.

Since ASFA was enacted, the foster care population has remained high. At the end of fiscal year 2008, 463,000 children were in foster care in the United States. (Administration for Children and Families October 2009) While the number of children in care decreased from a high of 552,000 in 2000, (Administration for Children and Families October 2006) the foster care population in 2008 exceeded that in 1995 and was one and two-thirds that of 1980, the year that the Adoption Assistance and Child Welfare Act was enacted (Staff of H.R. Committee on Ways and Means 2004).

Historically, and still today, the failures of the child welfare system have been attributed mostly to lack of resources, including money for treatment services and enough well-trained caseworkers to implement the treatment ideals of the system. (Rosenheim 1962, Keith-Lucas 1964, Empey 1979) Child welfare workers were often inexperienced, ill-trained and poorly supervised. (Polier 1941, Cheney 1966) Even though a worker might believe that the ideal solution to a problem was providing care for a child at home, he or she nevertheless might well employ foster care because that was all that was available. (Child Welfare League of America 1969)

The Chapin Hall study discussed above reached similar conclusions. In a study of 480 parents receiving in-home family preservation services and 494 parents whose children were in foster care, the researchers reported that the caseworkers were generally young and inexperienced. Caseworkers serving families whose children were left at home with family preservation services were, on average, 28 years old or younger, and their median experience in social work was 2.5 years. Caseworkers for families with children in foster care averaged about 30 years of age but had only 1.6 years of experience in social work. (Courtney et al 2004)

The researchers asked parents what services they needed and then asked the child welfare case managers what services they recommended for these parents and found significant disparities. Across the board, the parents reported higher needs for services than the case managers recommended for them. The discrepancy was particularly pronounced for concrete services such as employment assistance and help finding a place to live. (Zinn and Courtney 2008, Courtney et al 2004, Courtney et al 2002). The parents also reported that their children
needed more services than case managers recommended. The researchers wrote, “It is noteworthy that a large number of parents cited a need for services that are typically thought to be outside the mission of child welfare agencies, including educational services (48.1% of Ongoing Services and 61.7% of Safety Services parents) and afterschool services (46% of Ongoing Services and 60.2% of Safe Services parents).” (Zinn and Courtney 2008, 8)

Speculating on the reason for the differences, the researchers wrote, “One possible explanation is that case managers responded to the questions concerning service needs with an eye toward the types of services they knew to be available. Alternatively, case managers may not have viewed these types of concrete services as relevant to the issues that lead to child welfare services involvement.” (Zinn and Courtney 2008, 6-7)

Current reform proposals, like those in earlier years, typically recommend more and better-targeted resources for the child welfare system. Supporters of the 1980 Adoption Assistance and Child Welfare Act made such a recommendation, and in 2008 the Pew Charitable Trusts Commission on Children in Foster Care recommended that federal child welfare dollars, which go mostly to fund foster care, should be reallocated to provide much more money for preventive services. (Pew Commission on Children in Foster Care 2008)

However, given the long history of an underfunded child welfare system and lack of funds for services to families, it seems unlikely that society will provide enough resources any time soon. Indeed, since the number of children and families who might be identified as in need of child welfare services is indeterminate, it may be that the system will by definition always be underfunded.

The practice of placing hundreds of thousands of children found to be abused or neglected out of their homes even when their immediate safety does not demand it has persisted for more than a century, despite repeated professional criticism. Efforts to reform the system, to make it function as it is supposed to function, have been made repeatedly without reducing the use of institutions and foster care. To explain the continued vitality of this system, despite its continuing failure to achieve its expressed goals, perhaps we should revise our interpretation of what is going on. As the French philosopher and social historian Michel Foucault observed of prisons, when an institution is criticized as failing in its primary mission (for prisons, reducing crime) and yet persists for many years, it is likely doing something very well, even if that something is not the expressed goal of the system. (Foucault 1975) The next sections review his analysis and consider how it might be applied to the child welfare system.

III. Foucault on the function of the prison system

In *Discipline and Punish*, Foucault contrasts the dominant mode of punishment during the seventeenth century, torture and other forms of brutal corporal punishment, to the modern prison system. He argues that both kinds of punishment act on prisoners’ bodies to induce docility and obedience, but that they operate by very different means. Torture terrorizes the convicts and the general population, demonstrating the overwhelming power of the sovereign. (Foucault 1975) In contrast, prison controlled offenders by subjecting them to constant surveillance and repetitive exercises. Prison enforces rules, as do other disciplinary institutions (such as schools, factories and the military), by making people adhere to behavior norms down to small details. The legal processes that determine who will go to prison complement the reformative rationale of prison by seeking to identify the offenders who need to be reformed. The judge who decides whether to send someone to prison examines not merely the defendant’s act, but his or her very soul to determine how and why he or she deviates from the accepted norms. The person found guilty in this system is not simply an offender but a delinquent, one whose self
does not conform to the norms and must, therefore, be reshaped, at least in theory. (Foucault 1975)

However, Foucault observes, prisons were branded as failures almost from the time they were first established. Critics have always pointed out that prison does not reduce crime, that many prisoners are recidivists, and that prison is a school for crime. Foucault argues that these results are not surprising, and that, indeed, prisons cannot help but create delinquents. He points to the conditions of prisoners’ lives: while in prison they have no or useless work and are subject to violent and arbitrary constraints and to the corruption of the informer system, both of which induce anger, rage, and rebellion. When they leave prison, they are under constant police surveillance and cannot find work because of their criminal history, and their families are thrown into destitution. (Foucault 1975)

As Foucault describes, the official response to this criticism of prisons was usually the same: reformers argued that prisons failed because the fundamental theories upon which the prison system was based were not fully and properly implemented. The solution was to reform prisons by reintroducing those principles, which were themselves not questioned. (Foucault 1975)

To explain this adherence to a system that failed time after time and the failure to question its underlying premises, Foucault argues that the prison system in fact, successfully carries out functions other than the elimination of crime very well. He says that prison should not be understood as intended to eliminate crime but to distinguish and distribute offenses; rather than rendering docile those who are liable to break the law, this form of punishment sets the limits of tolerated lawbreaking and creates a delinquent culture. This strategy allows the dominant group to manage and control illegal conduct and cabin it into forms that are more structured and constrained and, hence, less dangerous to the status quo than roving bands of beggars who may join forces to engage in looting and rioting. (Foucault 1975) “[I]t is possible to divert this self-absorbed delinquency to forms of illegality that are less dangerous: maintained by the pressure of controls on the fringes of society, reduced to precarious conditions of existence, lacking links with the population that would be able to sustain it…. delinquents inevitably fell back on a localized criminality, limited in its power to attract popular support, politically harmless, and economically negligible…..” (Foucault 1975, 278)

While the modern criminal justice/prison system has shed some of the rehabilitative trappings that Foucault describes, its purpose is still said to be to reduce crime, and it is still criticized for failing to do so. The system continues to create a class of recidivist criminals who serve the same social functions that he describes. Of perhaps greater importance for purposes of this paper, Foucault’s analytical perspective on the prison continues to ring true and can readily be adapted to other institutions of social control, including the child welfare/foster care system.

IV. The overuse of foster care through Foucault’s lens

During the same time that prisons were being invented, the disciplinary practices that Foucault describes were also being extended to cover children of the poor, through institutions such as Houses of Refuge and reformatories and through the juvenile court. (Foucault 1975, Platt 1969, Rothman 1971) The early twentieth century arguments that children should be kept in their parents’ homes if possible, which are discussed above, were in fact criticisms of the overuse of these institutions. (Mack 1909, Proceedings of the Conference on the Care of Dependent Children 1909, Kahn 1962) By the mid-twentieth century, foster care had replaced these institutions, but essentially the same criticisms attached to this new means of providing care to
children who were removed from their parents’ homes upon juvenile court findings of abuse or neglect.

As an earlier section of this paper detailed, critics have always argued that many children who are removed from their parents’ homes to alternative care could safely remain at home, particularly if appropriate services were provided. The most high-profile reform proposals have not challenged the essential structure of the system, but rather have sought to refine it and bring it closer to its theoretical ideal. (Adoption Assistance and Child Welfare Act of 1980, Adoption and Safe Families Act of 1997) However, the resources to keep children in their homes have not been forthcoming. According to the Pew Commission on Children in Foster Care, of the millions of children reported to child protection authorities, only 2.5 percent received any kind of preventive services, and only 60 percent of children with confirmed cases of abuse or neglect received services. (Pew Commission on Children in Foster Care 2008) Ninety percent of the federal funds spend on child welfare in 2007 supported children in foster care and children adopted from foster care, leaving only 10 per cent available to the states to allocate for family services and support, including prevention and reunification services. (Pew Commission on Children in Foster Care 2008)

The child welfare/foster care system, then, may well be an institution that, like the prison, is doing something very well, something other than effectively addressing the problems of child abuse and neglect. I argue that the system may be serving two, related purposes.

First, the child welfare system, particularly the overuse of foster care, feeds young people into the juvenile justice and adult criminal systems, as this paper earlier discussed. It can, therefore, be understood as part of the prison system and as serving the ends of that system by its impact on the children themselves.

However, children’s behavior and character are not the primary focus of the child welfare system. Instead, the system primarily examines and acts on parents, parents who are found inadequate and who lose custody of their children, sometimes for only a short time and sometimes forever through termination of parental rights. The fundamental purpose of the system is supposed to be correcting the parents’ inadequacies (and, more recently, identifying those parents who cannot be corrected and finding alternative permanent homes for their children). (Adoption Assistance and Child Welfare Act of 1980, Adoption and Safe Families Act of 1997, IJA-ABA Joint Commission on Juvenile Justice Standards, 1981) Therefore, Foucault’s lens must be turned on the system’s treatment of parents.

The child welfare system acts mostly on very poor families. (Guggenheim 2000) In 1994 social welfare scholar Duncan Lindsey estimated that 48 percent of children in foster care did not require it and that poverty was the greatest reason that children were removed from their parents’ homes, (Lindsey 1994) Most of the families in the Chapin Hall studies discussed above were desperately poor. (Zinn and Courtney 2008, see also Courtney et al 2004)

The families in the child welfare system are not only overwhelmingly poor; they are also disproportionately people of color. (Roberts 2001, Needell, Brookhard and Lee 2003). And families of color are more likely to experience foster care placement than are White families. An analysis of all the investigated reports of child abuse and neglect in the United States in which maltreatment was substantiated during 2005 – more than 71,8022 reports -- found that African American children have a 44 percent higher chance of being placed in foster care than Caucasian children. (The researchers controlled for child, caregiver, household and abuse characteristics.) (Knott and Donovan 2010) A significantly higher percentage of the foster care alumni in both the Chapin Hall and Casey studies were African-American than in the general population. (Cusick
Unlike poverty, which can be causally linked to some kinds of child maltreatment, the second and third National Incidence Studies of Child Abuse and Neglect found no significant racial differences in the incidence of maltreatment of children. (Miller 2009) The child welfare and foster care system’s approach to families is, then, a piece of the way that poor people, especially poor people of color, are treated and have been treated throughout history.

Americans have always been deeply ambivalent about the poor, willing to help the “worthy poor,” that is, those who cannot work, but not able-bodied people, whose poverty is often attributed to their own moral failings. This ambivalence has long manifested itself in public policy, particularly reluctance to provide even the worthy poor with financial and other material assistance much above subsistence level, lest they and others be deterred from working. (Katz 1986, Trattner 1974) These attitudes continue to inform welfare policy today. (Handler 2000) On the other hand, society also expresses deep concern for the welfare of children and the desire to protect them from harm.

The child welfare system’s actual (as compared to rhetorical) preference for foster care over in-home services reinforces and supports these policies well. The poor adults, the parents, do not receive the publicly-funded supports that would improve their lives, and children are protected from the immediate dangers in their parents’ homes. Further, losing one’s children can be seen as an additional adverse consequence of poverty, substance abuse, and the other conditions that underlie most allegations of child neglect. Parents whose children are in foster care supposedly have an even greater incentive to solve their own problems, for only by doing so can they regain the custody of their children.

This perspective on the overuse of foster care says more than “Here is another way in which the poor and people of color are mistreated.” It requires us to confront the reality that current policies and practices that avoid providing substantial financial assistance to poor parents come at the cost of harm to many children and that they operate in ways that, on their face appear quite simply to be racist. Perhaps this reality could prompt policy makers look at proposals to reform the child welfare system and reduce the use of foster care in a new way. Reform proposals that assume the problem to be simply that not enough resources are provided for in-home services are not likely to change the system (although it is certainly worthwhile to continue to try to shift funds from paying for foster care to paying for services to parents). On the other hand, proposals that make it more difficult to remove children from their parents’ homes in the first place or that directly acknowledge how poverty increases the risk of child maltreatment may have more promise.

Consider, for example, statutes that define abuse and neglect for purposes of juvenile court jurisdiction and that govern when a child may be removed to foster care. Traditional juvenile court statutes define the criteria for jurisdiction very vaguely and broadly and allow removal when the judge finds this to be in the child’s best interests. (Katz et al 1975) These kinds of statutes, which intentionally grant substantial discretion to judges, are also very vulnerable to the effects of unintentional racial and class prejudice. Legal reformers in the 1970s who developed the proposals that led to the 1980 federal Adoption Assistance and Child Welfare Act not only proposed case planning, reviews and service provision. They also recommended that the legal standards for finding children to be maltreated and for removing them from their parents’ care be significantly tightened, requiring findings of proof of specific kinds of serious harm before a court could take jurisdiction over a child and allowing removal from the parents’
home only if necessary to protect the child’s safety. (Wald 1975, Wald 1976, IJA-ABA Joint Commission on Juvenile Justice Standards 1981)

These recommendations did not, however, find their way into the federal law, and they have generally not been widely accepted by state legislatures. Instead, argument that the changes would allow some children to “fall through the cracks” has often prevailed. The harm to children of being taken from their parents often does not play an important role in legislative decisions, any more than the racial and class disparities within the system do. If the specific information about the impact on children of extended stays in foster care and about the disproportionate impact on poor and minority families discussed in this paper were highlighted for the legislatures, perhaps their decisions would be different. Perhaps then we could really begin to take steps to keep children who don’t need to be in foster care at home, avoiding the unnecessary and destructive disruption of their families.
ABBREVIATIONS


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