Rehabilitating Child Welfare: Children and Public Policy, 1945–1980

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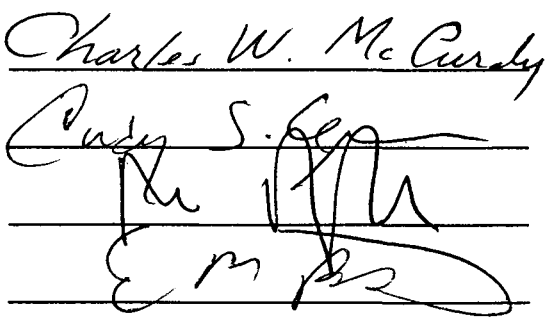

Abstract

In the period after World War II, a network of activists attempted to reform the programs that supported and assisted delinquent, dependent, neglected, abused and abandoned children and their families in the United States. This dissertation examines their efforts to reshape child welfare arguing that it was motivated by the "rehabilitative ideal," a belief that the state was ultimately responsible for the physical and emotional development of every child and a faith in therapeutic services as a way of providing for children and their families. This argument contributes to our understanding of the rise of a therapeutic state, placing this notion within a particular historical period and within the narrative of the changing nature of American liberalism. The rehabilitative ideal and the child welfare network emerged out of a confluence of trends within American liberalism, social welfare agencies, and social work approaches in the period after 1945. This study provides detailed examination of this phenomenon through the lives of Justine Wise Polier, Joseph H. Reid, and Alfred J. Kahn, and the histories of the Citizens' Committee for Children of New York, the Child Welfare League of America, and the Columbia University School of Social Work. Investigations of the developments in juvenile justice, foster care and adoption, child protection, and federal assistance to child welfare services over the 1950s and 1960s demonstrate how the rehabilitative approach shaped child welfare reform. In each of these areas, the child welfare network and the rehabilitative ideal achieved great influence by the 1960s. By the 1970s, however, new ideological and intellectual trends challenged the rehabilitative ideal and the postwar activists. Exemplified by Marion Wright Edelman and the Children's Defense Fund, these new

activists and organizations had a more ambivalent attitude toward the role of the state and its intervention in families than the postwar network. These new perspectives transformed the approach to and the justification for reforming child welfare policy, and continue to shape public policy for children and families.

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Introduction:
The Paradox of Child Welfare History

On July 3, 1899, the world's first juvenile court opened in Chicago, Illinois. In the first decades of the twentieth century, the concept of a court for children would spread across the United States and around the world. Germany, for example, created juvenile courts in 1908 and Japan applied the American Progressive model in its juvenile law of 1922. Back in the United States, every state but two had created a juvenile court by 1925. The role of these juvenile courts varied from location to location, but in many instances these courts were at the center of a system of child welfare acting as a gateway to a host of institutions, services, and financial support. While federalism prevented the creation of a national child welfare policy, the United States was a world leader in providing for children in need of care, guardianship, and financial support.[1]

Nearly a century later, the United States no longer held such a hallowed place among the nations for its care of children. In 1997, child welfare experts Sheila B. Kamerman and Alfred J. Kahn could write that "the United States has no explicit national, comprehensive family or child policy, nor has there been any such policy or cluster of policies in the past." The promising beginnings of the progressive era failed to lead to a national, integrated child welfare system that now exists in many European nations.[2]

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[1] David S. Tanenhaus, "The Evolution of Juvenile Courts in the Early Twentieth Century: Beyond the Myth of Immaculate Construction," 42–45; Akira Morita, "Juvenile Justice in Japan: A Historical and Cross-Cultural Perspective," 360–367; Jaap E. Doek, "Modern Juvenile Justice in Europe," 510–512 in Margaret K. Rosenheim, Franklin E. Zimring, David S. Tanenhaus, and Bernardine Dohrn, eds. *A Century of Juvenile Justice* (Chicago: University of Chicago Press, 2002).

[2] Sheila B. Kamerman and Alfred J. Kahn, eds. *Family Change and Family Policies in Great Britain, Canada, New Zealand, and the United States* (Oxford: Clarendon Press, 1997), 308.

This dissertation attempts to explain this paradox in the history of child welfare in the United States. How is it that the U.S. led the world in creating institutions to care for children in the early twentieth century, yet never developed a national system to insure the care and development of children? The answer presented in this dissertation focuses on the philosophical orientation of child welfare advocates from 1945 to 1980. To be fair, this dissertation cannot begin to explain why the United States is not Sweden or even Britain. Instead, this dissertation provides a focused examination of why a network of experts supported programs that set the United States on a unique child and family policy trajectory. Unlike their European counterparts, in the 1960s the American child welfare network aimed their efforts at developing programs for rehabilitating specific children and families. It was only later in the mid-1970s that activists began, with little success, to call for programs---child allowances, universal child development, national child care—that resembled family policies in other industrialized nations. By that time the unique shape of child and family policy in the United State was already set.

Before turning to the specific beliefs of the child welfare policy network, it is necessary to explain why the postwar era became such a critical period in the development of child welfare policy. The history of child welfare reaches back into the nineteenth century. Adoption and foster care have their origins in the 1850s; child protection can be traced back to the 1870s. And in the early-twentieth century the great Progressive contributions to child welfare, the juvenile court and the mother's pension, were developed. By the 1920s, most states had established the basic institutions of child welfare. Children could be removed from their home, they could be placed in an institution or with another family, and they could be adopted by a new family. If a child

committed a crime or other offences he or she could be ordered to receive treatment or supervision by a court dedicated to juveniles, and if the child lost a father monetary support would be provided so that he or she could remain with his or her mother.[3]

The legislation of the New Deal helped secure this basic system of child welfare. While the child welfare provisions of the Social Security Act of 1935 remained administered by the states, additional federal dollars were intended to bolster existing programs and spread child welfare institutions across the nation. The most notable child welfare program of the New Deal was Aid to Dependent Children (ADC) which provided federal contributions to the pre-existing state widow's or mother's pensions. Also incorporated into the Social Security Act was support for maternal and child health, and programs for "crippled" children. The final child welfare program in the Act was federal assistance for child welfare services. Due to opposition from urban Catholic charities, the Roosevelt administration agreed to limit aid to "predominantly rural and other areas of special need" and removed any requirement for state matching funds. The New Deal, therefore, provided needed but limited support for child welfare programs in the states.[4]

In the aftermath of the Second World War, a new community of activists concerned with the welfare of children began to emerge. Many individuals were concerned about the barriers that excluded some children from the best child welfare

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[3] E. Wayne Carp, *Family Matters: Secrecy and Disclosure in the History of Adoption* (Cambridge: Harvard University Press, 1998), 1-35; Linda Gordon, *Heroes of Their Own Lives: The Politics and History of Family Violence* (New York: Penguin Books, 1988); Andrew J. Polsky, *The Rise of the Therapeutic State* (Princeton: Princeton University Press, 1991); David S. Tanenhaus, *Juvenile Justice in the Making* (New York: Oxford University Press, 2004).

[4] Edwin E. Witte, *The Development of the Social Security Act* (Madison: University of Wisconsin Press, 1962), 167–171.

services.[5] Others were struck by the increasing rates of juvenile delinquency during and after the war.[6] The war had also precipitated a shortage in child care for working mothers.[7] Finally, federal reorganization in 1945 limited the authority of the U.S. Children's Bureau, undermining its leadership in child welfare and allowing new activists to rise to the fore.[8]

The individuals that flocked to this new child welfare network came from a variety of backgrounds. Some were liberals concerned about the state of social welfare programs for children and families. Others were social workers and judges who worked within the child welfare system. Psychiatrists also demonstrated a deep interest in the functioning of child welfare. These activists realized that they could combine their diverse concerns and work together to improve the entire system of child welfare in the United States. To be sure, their holistic vision of child welfare echoed themes of Progressive Era reformers, individuals whom this new generation viewed as role models if not personal mentors. Yet, in reality, the goal of this new child welfare policy community was, in many cases, to reform the very institutions that the progressives had created.

This network would begin to shape policy for children in the postwar era. While influential, there were certain constraints that limited the network's vision for public policy. These constraints help explain the unique shape of child and family policy in the

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[5] See, for example, Justine Wise Polier, *Everyone's Children, Nobody's Child: A Judge Looks at Underprivileged Children in the United States* (New York: Charles Scribner's Sons, 1941).
[6] See James Gilbert, *A Cycle of Outrage: America's Reaction to the Juvenile Delinquent in the 1950s* (New York: Oxford University Press, 1986), 24–41.
[7] See Sonya Michel, *Children's Interests/ Mother's Rights: The Shaping of America's Child Care Policy* (New Haven: Yale University Press, 1999), 150–191.
[8] Kriste Lindenmeyer, *"A Right to Childhood:" The U.S. Children's Bureau and Child Welfare, 1912-46* (Urbana: University of Illinois Press, 1997), 249–261.

United States. The first was institutional. All the major institutions of child welfare had been developed in the early twentieth century if not before and, by 1945, all needed serious reform. Still, it made sense for child welfare activists to attempt to orient and organize existing institutions into a new effective system rather than to start from scratch. One answer to the paradox of child welfare in the U.S., therefore, is that early American entry into child welfare limited the opportunity for later reform.[9] The second factor that limited the authority of this network was the prevalence of women and the concentration of social work expertise. The child welfare network was led by strong-willed professional women who reshaped the field. However, they had only limited access to the institutions that could create a national child welfare system. Even those men in the network were often social work experts, not the Keynesian economists shaping economic policies in the period after World War II. Third, federalism and the nature of policy-making during this period made such broad reform impossible. Even in the post-New Deal era, it was difficult to imagine creating a European-style child welfare system. Instead, activists had to advocate reform on the state level while encouraging financial support from the federal government. Finally, and most importantly, members of the child welfare network recognized that services and institutions were needed immediately to assist children. While they hoped for a more extensive national welfare state to prevent these problems, they worked to solve the problems at hand—abused, neglected, abandoned, and delinquent children—as best they could.

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[9] The presence of institutional constraint does not rise to the level of what economists and political scientists would call "path dependence." The fact that other nations based institutions on American models but still developed more comprehensive systems of child welfare seems to undermine any claims of path dependence. For more on path dependence see Paul Pierson, "Not Just What, but *When*: Timing and Sequence in Political Processes," *Studies in American Political Development* 14 (2000): 72–92; and Jacob S. Hacker, *The Divided Welfare State: The Battle over Public and Private Social Benefits in the United States* (Cambridge: Cambridge University Press, 2002).

Based on these constraints, the diverse members of the child-welfare policy community coalesced around a coherent vision. They believed that the state---or, in the terms they preferred, the community or society—was ultimately responsible for the well-being of every child. This responsibility went beyond the physical needs of the child to ensuring the healthy development of his or her psyche. While they recognized social causes for the problems children faced, they advocated individualized treatment. Given the existing institutions of child welfare, these beliefs shaped specific policy goals. First, despite tension over the mix of public and private institutions, all members of the network agreed to work toward an integrated, publicly supervised child welfare system that used both public and voluntary elements. Second, members of the network agreed to incorporate psychiatric or therapeutic analysis and treatment into the child welfare arsenal. Third, network members advocated for the protection of children's rights. Despite potential conflict, they understood this to mean both procedural due process rights for children and positive rights for adequate care.

I have termed this shared perspective by members of the child-welfare policy network the "rehabilitative ideal." The term "rehabilitative ideal" is drawn from the work of legal scholar Francis A. Allen.[10] It is also used by Christopher P. Manfredi in his insightful work on *The Supreme Court and Juvenile Justice.*[11] My use of the term, however, differs from that of Allen or Manfredi. While Allen is focused on penal policy and Manfredi on delinquency, I see the notion of rehabilitation as applicable to a wide variety of social policy. While Allen traces the notion of rehabilitation back into the

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[10] Francis A. Allen, *The Decline of the Rehabilitative Ideal: Penal Policy and Social Purpose* (New Haven: Yale University Press, 1981).
[11] Christopher P. Manfredi, *The Supreme Court and Juvenile Justice* (Lawrence: University Press of Kansas, 1998).

nineteenth century, my interpretation of the rehabilitative ideal is situated in a particular period in American history with its origins in the 1940s and reaching the height of its influence in the 1960s. Recently, Jennifer Mittelstadt has examined "rehabilitation" as the centerpiece of welfare reform in the 1950s and 1960s. As will be seen, I agree with many of Mittelstadt's interpretations. If anything, my use of the term is broader than hers as I attempt to capture not only a particular approach to welfare, but also the belief system of the child welfare network. For Mittelstadt, the term rehabilitation refers to policies aimed at moving welfare recipients towards self-sufficiency. For child welfare activists, rehabilitation was reflected in a whole series of policies aimed at ensuring sound development of children.[12]

The application of a new analytic term to issues well described by historians requires some justification. Critics will point out that the arguments in this dissertation could have easily been made using the existing notion of the therapeutic ethos or, more specifically, the therapeutic state. As Allen has explained, "twentieth-century expressions of the rehabilitative ideal . . . may be seen as part of a modern faith in therapeutic interventions."[13] The literature on the therapeutic has been invaluable in shaping my understanding of this period and the motivations of child welfare activists, but falls short in explaining the particular child welfare policies that emerged in this period.

It is worthwhile to review the historiography of the therapeutic before explaining why I have developed a new framework. The study of the rise of the therapeutic is, at its

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[12] Jennifer Mittelstadt, *From Welfare to Workfare: The Unintended Consequences of Liberal Reform* (Chapel Hill, University of North Carolina Press, 2005), 11–15.
[13] Allen, *Decline of the Rehabilitative Ideal*, 5.

heart, a study of modernity. The intellectuals who began to frame modern culture in terms of a therapeutic ethos were fascinated by the questions of what happened to Western culture once individuals were "liberated" from the strictures of religion or freed from ties to community. Instead of a turn to the past in the face of this "crises of authenticity," as recounted by historians like T. J. Jackson Lears, scholars like Philip Rieff and Christopher Lasch examined a new constellation of belief. "The best sprits of the twentieth century have thus expressed their conviction," Rieff recounted, that "the new center, which can be held even as communities disintegrate, is the self."[14] Focusing on the state of modern American culture, Lasch made the point more succinctly: "The contemporary climate is therapeutic, not religious. People today hunger not for personal salvation, let alone for the restoration of an earlier golden age, but for the feeling, the momentary illusion, of personal well-being, health, and psychic security."[15] If the self was the modern religion, then therapeutic professionals—psychiatrists, psychologists, social workers—were the modern priests. For social critics like Rieff and Lasch, the outcome of this meta-historical narrative was a negative one. The therapeutic was a false God, leading not to the restoration of communal bonds, but instead to a "culture of narcissism."[16]

Lasch was particularly interested in the effects of this "therapeutic sensibility" on the family. Speaking from a perspective that seemed at once radically leftist and neoconservative, Lasch lamented the loss of family "privacy" and attacked "the

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[14] Philip Reiff, *The Triumph of the Therapeutic* (Chicago: University of Chicago Press, 1966), 5.
[15] Christopher Lasch, *The Culture of Narcissism: American Life in an Age of Diminishing Expectations* (New York: W.W. Norton, 1978), 7.
[16] Reiff, *Triumph of the Therapeutic*, 261; Lasch, *Culture of Narcissism*, 10.

expropriation of child rearing by the state and by the health and welfare professions."[17] His work, *Haven in a Heartless World*, however, was not a study of the interventions of these professions into the family. Instead, Lasch traced the social scientific understandings of the family over the twentieth century. It was this re-conception of the family that allowed new interventions by the state. Lasch argued that the modern family, with its lack of authority, socialized individuals to understand the new and subtle techniques of social control in society.

> Today the state controls not merely the individual's body but as much of his spirit as it can preempt; not merely his outer but his inner life as well; not merely the public realm but the darkest corners of private life, formerly inaccessible to political domination. The citizen's entire existence has now been subjected to social direction, increasingly unmediated by the family or other institutions to which the work of socialization was once confined. Society itself has taken over socialization or subjected family socialization to increasingly effective control.[18]

If the rise of industrial capitalism marked the family as private, as a "haven in a heartless world," then the new therapeutic ethos had broken down these barriers incorporating the family as a mechanism of state control.

Scholars like Lasch, however, showed little interest in social policy except as evidence for the growing therapeutic ethos. As cultural critics, Lasch and Rieff appeared unconcerned about particular policy choices; the fact that policies reflected broader cultural trends was unsurprising. Political scientist Andrew J. Polsky, however, saw the notion of the therapeutic as a way of understanding a set of policy choices. In his work, *The Rise of the Therapeutic State*, Polsky developed a distinctive argument about social

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[17] Christopher Lasch, *Haven in a Heartless World: The Family Besieged* (New York: Basic Books, 1977), xvi–xvii.
[18] Lasch, *Haven in a Heartless World*, 189.

control. In his formulation, "therapeutic" interventions were attempts to impose mainstream values and behavior on marginal populations. Retracing the rise of a therapeutic ethos from the early-nineteenth century to the 1970s, Polsky argued that activists beginning in the Progressive Era combined state power with therapeutic discourse in an effort to "normalize" the poor and help them meet middle-class expectations. For Polsky, unlike earlier theorists, the mechanisms of social control were overt "therapeutic" polices advocated by the "helping" professions that gained increasing state sanction before reaching their height in the 1960s. Rather than a vague critique of American culture, Polsky questioned a particular set of polices as both misguided and ineffective.

This dissertation covers much of the same territory examined by Polsky. Yet, I come to very different conclusions about the motives and outcomes of child welfare activists. I diverge from Polsky and other theorists of the therapeutic by discussing the outlook of the child welfare policy network as a belief in a "rehabilitative ideal." There are three reasons why I chose to examine the "rehabilitative" rather than the therapeutic.

First, the literature on the therapeutic has negative baggage associated with the notion of social control. This includes both the idea of the therapeutic ethos as part of a cultural mechanism of state control, and Polsky's more explicit "therapeutic state" which uses therapeutic methods to impose middle-class values on the poor. In doing so, I follow closely the model set out by Ellen Herman in *The Romance of American Psychology*. Herman explains that she views the growing authority of psychology in the United States after 1945 as neither an "unqualified good," nor "a sinister form of social

control." Similarly, I examine both the positive and negative consequences of actions taken in the name of the rehabilitative ideal.[19]

Second, the concept of the therapeutic ethos has become so widely used that it has ceased to be explanatory. As we have seen, scholars have traced different chronologies for the concept whether studying a cultural milieu, the rise of a particular social scientific approach, or the functions of government. Polsky and others are correct that therapeutic interventions represent a new and unique use of state power during the twentieth century. By emphasizing continuity, however, Polsky misses the great differences between the philanthropists of the early-nineteenth century, the Progressives, and the reformers of the 1960s. In my conception, the rehabilitative ideal refers to a particular set of beliefs tied to a particular ideological framework in a particular period of time. In other words, the concept of the rehabilitative ideal explains a set of policy outcomes that can not be understood simply through an analysis of the therapeutic. In addition, this dissertation is able to trace the decline of the rehabilitative ideal in the 1970s, while recognizing the continuing influence of therapeutic discourse in American society.

Third, and most importantly, "rehabilitative" better reflects the language and thinking of the individuals shaping policies for children and their families. Members of the child welfare network often referred to rehabilitation or the notion of reincorporating individuals into society. As Alfred J. Kahn, one of the formulators of the rehabilitative ideal explained, "a modern approach to children in trouble has little validity if it does not

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[19] Ellen Herman, *The Romance of American Psychology: Political Culture in the Age of Experts* (Berkeley: University of California Press, 1995), 15.

organize itself to rehabilitate."[20] In their discourse, therapy and its related tools were used in the interest of rehabilitation.

The rehabilitative ideal did not represent a well-defined intellectual movement. Instead, it is better understood as a faith in a series of broad principles. The concern of this dissertation is how this faith, shared by a group of influential activists, shaped social policy for a brief period of time. Public policy—not new understandings in social science or new movements in legal thought—was the focus of the child welfare network and how they measured their success. As Henry J. Aaron astutely observed about the Great Society, social science knowledge did little to explain policy choices.[21] The same held true for the child welfare network. Social science and law were important tools in advocating for particular public policies, but they remained simply tools. Despite the academic training of many of the members of this network, a belief in the rehabilitative ideal and its basic principles animated their work on public policy. Intellectual contributions and statistical studies were appreciated as long as they did not challenge this overarching belief system of the rehabilitative ideal.

One difficulty in using a term to describe the beliefs of a particular group in a particular time is the protean nature of language. To assign the notion of rehabilitation to the period from the late 1950s to the early 1970s does not mean that the word was not used in the progressive era or in current discourse. Instead, I am asserting that its meaning, or more importantly the meaning of a set of beliefs associated with rehabilitation, were consistent over this period and differed from the periods before and

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[20] Alfred Kahn, *Planning Community Services for Children in Trouble* (New York: Columbia University Press, 1963), 45.
[21] Henry J. Aaron, *Politics and the Professors: The Great Society in Perspective* (Washington, D.C.: Brookings Institution, 1978).

after.[22] Even within this period there were distinctions in how the word was used. Its most frequent use was in reference to delinquent or troubled children who needed to be "rehabilitated" into society. Sometimes writers would discuss the "rehabilitation" of a family, meaning the reunification of a child with their biological parents or parent. My intention is to focus on the notion of rehabilitating the child; the belief that no matter what happened to the child—abuse, neglect, delinquency, separation from their parents, adoption, long-term foster care—the child deserved to become functioning members of society.

The rehabilitative ideal reached the height of its influence in the 1960s. Reformers used its principles to achieve a series of far-reaching reforms. This included: a reformulation of the Juvenile Court and the system that served delinquent and neglected children; a reconstruction of the system of foster care to provide better for the emotional needs of children and their families; orchestrating a new system of child protection to better identify and treat children suffering from abuse and neglect; and an attempt to enshrine these services as part of the national welfare state supported and directed by the federal government.

Despite these accomplishments, by the mid-1970s the authority of the child welfare network and the rehabilitative ideal had begun to wane. While individuals remained interested in child welfare, or as they sometimes renamed it, family policy, they approached the subject from a new ideological perspective. Influenced by the civil rights

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[22] According to the *Oxford English Dictionary* the word rehabilitate dates back to the sixteenth century. However, the definition closest to the one I use, "to restore (a disabled person, a criminal, etc.) to some degree of normal life by appropriate training," is first used in 1944. The word rehabilitative was first used in 1958. (*Oxford English Dictionary Online*, 2nd ed., Oxford: Oxford University Press, 1989), http://dictionary.oed.com/)

movement and the new left, many of these activists were ambivalent about the role of the state and avoided the statist solutions of the old coalition. Others became focused on the needs for child care for middle-class mothers, losing focus on the many needs of poor children. The direction of public policy for children moved toward the developmental, the preventive, the educational, and away from the rehabilitative notions that had reigned in the 1960s. Much was gained by this transition, but for the most marginal of populations such as children facing abuse, trapped in foster care, or labeled delinquent, something was lost. The decline of the rehabilitative ideal, this dissertation argues, precipitated a crisis in child welfare that continues today.

My interest in studying this rehabilitative ideal is to recover a strand of post-war liberalism that has become obscured. Scholars have termed the post-war liberal ideology in the United States "compensatory liberalism." By the 1950s, most liberals were content with the overall economic system; the role of government was to "compensate" those who lost out in the capitalist economy.[23] The "rehabilitative ideal" fits within this conception of American liberalism. Its goals were to assist those children and families that failed to thrive for various economic, cultural, or psychological reasons. The labels of compensatory liberalism, Cold War liberalism, or, even, Great Society liberalism, however, obscure tensions within liberal ideology. It seems that there is a long standing tension in American liberalism between focusing on the social or the individual. Gary Gerstle, for example, has claimed that a shift in focus from individual failings to social

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[23] For more on postwar liberalism see, Alan Brinkley, *The End of Reform: New Deal Liberalism in Recession and War* (New York: Vintage Books, 1995), 265–271; Gareth Davies, *From Opportunity to Entitlement: The Transformation of Great Society Liberalism* (Lawrence: University Press of Kansas, 1996), 10–29; Allen J. Matusow, *The Unraveling of America: A History of Liberalism in the 1960s* (New York: Harper Torchbooks, 1984), 3–59.

failings was the primary distinction between Progressivism and New Deal liberalism.[24] This tension tore at the rehabilitative framework of the child welfare network, and presumably, at liberalism in this period. Mired in this conflict, child welfare activists questioned themselves: If an individual's problems were caused by social shortcomings, was it enough treat the individual? If social support for families was not enough, how far must society go to rehabilitate individuals? It is in the space between these two conceptions that the failure of child welfare in America becomes clear. While they made great improvements to child welfare, the network was never able to institute its complete rehabilitative vision. By 1980, the United States had developed neither a comprehensive policy of family support nor a well-supported program of rehabilitation. For example, there existed neither family allowances nor effective foster care. America was left with the worst of both worlds, a fragmented and under-supported system of social services for children and families without preventive programs to support families.

This dissertation is organized to highlight the influences of both the institutional past and belief in the rehabilitative ideal in child welfare reform in the postwar era. For this reason, it is organized topically. Except for the first and last, each chapter is an essay presenting the history of a particular child welfare institution, the role of the child welfare network in reforming this institution after 1945, and decline of the networks rehabilitative perspective in the 1970s. The very structure of the dissertation portrays the networks greatest failure, their inability to breakdown the institutional barriers that typified child welfare policy since the early twentieth century. These barriers continue to make it difficult to envision a coherent child or family policy in the United States.

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[24] Gary Gerstle, "The Protean Character of American Liberalism," *American Historical Review* 99 (1994): 1043–1073.

Chapter 1 examines both the creation of the child welfare network and the formulation of the rehabilitative ideal. The confluence of developments among liberals, child welfare leaders, and social work intellectuals helped create a consensus over the direction of child welfare reform. This occurrence is documented by examining the history of three individuals and the institutions they were most closely associated—Justine Wise Polier and the Citizens Committee for Children of New York City, Joseph Reid and the Child Welfare League of America, and Alfred Kahn and the New York School of Social Work. That all these individuals lived and worked at the same time in New York City, strengthened the connections within this child welfare policy community.

Chapter 2 investigates the reform of the juvenile court and services directed at juvenile delinquency. I argue that the rehabilitative ideal is the only way to understand the reform of the juvenile justice system in this period. Expanding beyond the network presented in chapter one, I demonstrate how lawyers and legal scholars were also adherents of the rehabilitative ideal. This framework led to a new focus on therapeutic services available to children outside the courtroom while as the same time an increasing formalization of juvenile court procedure. Following the insightful work of Christopher Manfredi, I argue that this rehabilitative consensus was embodied in Justice Abe Fortas's decision *In re Gault*, which required new procedural protections for juvenile courts throughout the nation. The chapter then turns to the dissolution of this rehabilitative consensus by examining the controversies surrounding the creation of new IJA-ABA guidelines for juvenile justice.

Foster care and adoption are the focus of Chapter 3. There is a growing literature on adoption in the United States, but no comprehensive history of foster care exists. The narrative presented here reveals that despite their efforts between 1959 and 1973, the child welfare network failed to institute a rehabilitative system to care adequately for "children without families." Foster family care began in the 1920s as an effort to replace institutional care. In 1959, however, a study sponsored by the Child Welfare League of America (CWLA) came to a startling conclusion: thousands of children remained in foster care for long periods of time with no hope of either adoption or reunification with their birth parents. This discovery led to a threefold effort on behalf of these children without homes. First, child welfare activists worked to encourage adoption of these children. Second, they attempted to develop new services to keep children in their homes and to encourage reunification or "rehabilitation" of families. Third, they worked to improve foster care services and develop systems to track children in foster care. The chapter concludes with the decline in the number of adoptions and the declining faith in foster care as a successful form of substitute care for children.

Chapter 4 examines the reform of child protection in the 1960s. While many scholars have discussed the role of doctors in publicizing the problem of child abuse, I argue that members of the child welfare network were already attempting to reformulate child protection so that it would better rehabilitate children and their families. When the issue became a national crisis, therefore, members of the child welfare network worked to develop a rehabilitative system of child protection. The high water mark of the child welfare network on this issue was reached in the Child Abuse Prevention and Treatment act of 1974. This act demonstrated the continuing ability of the network in conjunction

with newcomers to the child welfare field to pass federal legislation. The constraints placed on the bill, however, demonstrated the emerging hostility to the rehabilitative ideal.

Chapter 5 examines the history of federal legislation for child welfare. Here, I examine how the experience of the child welfare network with federal legislation led to a reevaluation of the rehabilitative ideal. Following the work of Jennifer Mittelstadt, I argue that the child welfare network and the rehabilitative ideal were central in shaping the Social Security Amendments of 1962. These amendments provided new funding to services for recipients of the renamed Aid to Families with Dependent Children (AFDC). The incorporation of child welfare services with AFDC revealed a tension within the rehabilitative consensus. While most child welfare services had been directed at poor children, members of the network had believed the rehabilitative ideal was one that could be applied universally. Focusing services on the poor undercut the notion that these services were available for all children or families who needed services in order to be well adjusted. This notion was exacerbated by the Social Security Amendments of 1967 which tied services specifically to AFDC and ended the separate administration of a program of child welfare services. The experiences of 1962 and 1967 shook many members of the child welfare coalition. Despite a continuing faith in rehabilitative services, they realized that services alone could not end poverty. While many remained interested in child welfare institutions, some activists turned their attention to social assistance. As part of the emerging notion of family policy, activists began to call for European-style child allowances, a departure from the rehabilitative framework that had animated their earlier efforts.

The eclipsing of the postwar community and the rehabilitative approach by new perspectives and new experts is the topic of Chapter 6. In particular, the rise of the notion of children's rights and a new ambivalence towards state intervention in families undermined the rehabilitative vision. New organizations such as the Children's Defense Fund, led by civil rights veteran Marian Wright Edelman, challenged long time child advocates like the Child Welfare League of America. Conservatives also played a new role in this period challenging the liberal approaches to child welfare. The result of this reorientation was a focus on family preservation and a preference for minimal government intervention in family life. The ideology of child welfare had shifted from a belief in the state ensuring the well-being of the child, to ensuring that the state did the least amount of harm in its intervention. These ideas were inscribed into the Child Welfare and Adoption Assistance Act of 1980. This minimalist approach to child welfare policy, in the context of a new conservative era, has created, as the Epilogue explains, a continuing crisis in child welfare. The new focus on adoption contained in the 1997 Adoption and Safe Families Act appears to have little hope in providing a permanent solution to this crisis. The accomplishments of the postwar child welfare network may, in the current context, leave children in the worst of all possible worlds: subject to state intervention without the resources to ensure successful rehabilitation.

Chapter One:
The Emergence of the Child Welfare Network

In March 1941, Justine Wise Polier, a judge on New York City's Children's Court, lamented the social failings that led children into her courtroom. "Each boy and girl brought before the Children's Court embodies a challenge to society," Polier asserted. "Almost always their stories portray the failure of parents, schools, churches and the state to provide security and opportunities that enable children to start life well." To answer this challenge, Polier argued, the country had to ask itself two related questions. "How far shall the state assume responsibility for relieving children of burdens they should not carry? How far shall the state assume responsibility for equipping children to carry burdens they cannot and should not avoid?" Polier contended that "the lives and happiness of millions of children and the direction of America's entire social welfare program" depended on the way her "generation" answered these questions.

This notion of state responsibility for the physical, social, and emotional development of American children shaped the vision of public policy presented by an emerging child welfare network in the postwar era. In answering Polier's questions, this policy community asserted that no child should slip through the cracks; that the state should take ultimate responsibility for the upbringing of every child. As it developed, this approach did not lead to intervention into every family or even to support or services to assist all families and children. Instead, the postwar child welfare community assumed that in most cases the social institutions that Polier referred to—parents, schools, churches—would provide adequate care for children. When these institutions failed,

however, every community across the nation needed a system of services that could appropriately meet the needs of every child.

The desire to reform child welfare institutions emerged concurrently among three groups to form a postwar child welfare community. First, liberals like Polier, and especially elite liberal women, committed themselves to reform in child welfare. Second, the organization long representing the interests of child welfare workers and agencies, the Child Welfare League of America (CWLA), began asserting a role in public policy decisions. Third, a shift in the intellectual basis of social work practice led to a focus on integrating various programs and services in the field of child welfare. This chapter tells the story of the emergence of this policy network in the period after World War II. To do so it examines the experiences of three individuals, Justine Wise Polier, Joseph H. Reid, the director of the CWLA, and Alfred J. Kahn, a professor at the New York School of Social Work. While Polier, Reid, and Kahn came at the problems of child welfare from different directions, they all worked together to institute reforms both in New York, where they all lived and worked, and across the country.[1]

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[1] The political scientist Hugh Heclo first suggested the growing importance of issue networks in American public policy over the 1960s and 1970s. Heclo was attempting to describe the increasing influence of "open networks of people" on government that were not represented by the concept of "iron triangles" made up of a executive bureaus, congressional committees, and interest groups. The child welfare network fits within Heclo's description of an issue network. As he explained, "it is through networks of people who regard each other as knowledgeable, or at least as needing to be answered, that public policy issues tend to be refined, evidence debated, and alternative options worked out." (Hugh Heclo, "Issue Networks and the Executive Establishment," in *The New American Political System*, Anthony King, ed. Washington, D.C.: American Enterprise Institute, 1978, 102–104)

The term "policy community" has been used by John W. Kingdon to describe a similar group of individuals. For Kingdon, "policy communities are composed of specialists in a given policy area." Members of such communities are found among congressional staff, executive officials, interest group members, and academics. In Kingdon's framework, the post-war child welfare community resembles a closely knit policy community with "common outlooks, orientation, and ways of thinking." (John W. Kingdon, *Agendas, Alternatives, and Public Policies*, HarperCollins, 1984, 126.) Building off this concept, the historian Julian E. Zelizer examined the distinctive "political culture" that formed within the "tax policy community" during the postwar period. Zelizer explains that "This political culture included a distinct

What is interesting about this policy community in the period after World War II is that the axis of the network lay outside of the state. To be sure, there were members of the New York legislature with interests in child welfare, state institutions responsible for overseeing child welfare programs, and even members of the U.S. Congress concerned with this policy realm. However, most of the innovation and advocacy in this area on both the state and national level was developed by organizations outside of government. In a sense, the postwar child welfare community filled the niche vacated by the diminishing authority of the U.S. Children's Bureau. The Bureau had demonstrated national leadership in many areas affecting children including child welfare institutions since its creation in 1912. By 1946, however, due to several bureaucratic reorganizations, the Bureau no longer carried as much influence in public policy.[2] The Children's Bureau, as will be seen, continued to be active in child welfare concerns—organizing the White House Conferences on the child, developing standards, and holding meetings on critical issues—but it was no longer the nexus of a child welfare network. From the 1940s to the 1980s, the center of child welfare activism moved from the federal offices in Washington to the juvenile courtrooms, university classrooms, and social welfare agencies of New York City.

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discourse with its own vocabulary and conceptions of the political economy, certain types of social interactions between members of government, and established ways of learning the political process." (Julian E. Zelizer, *Taxing America: Wilbur D. Mills, Congress, and the State, 1945–1975*, 10.)

This dissertation is a study of the issue network or policy community, terms I use interchangeably, surrounding child welfare policy between 1945 and 1980. More specifically, it is an examination of the shared discourse among diverse elements of this community. While members of the community certainly played rolls on legislative staffs or in executive departments I ague that the heart of the community, and the center of the formulation of a discourse of rehabilitation, was found outside of the state. There was, of course, interaction and overlap between the child welfare network and other issue networks and the discourse of rehabilitation was picked up, for a time, by a broader welfare policy community. See for example, Jennifer Mittelstadt, *From Welfare to Workfare: The Unintended Consequences of Liberal Reform, 1945–1965* (Chapel Hill: University of North Carolina Press, 2005) or chapter 5 below.

[2] Kriste Lindenmeyer, *"A Right to Childhood:" The U.S. Children's Bureau and Child Welfare, 1912–46* (Urbana: University of Illinois Press, 1997), 254.

The postwar child welfare community was unified by an allegiance to a set of four principles. First, as Polier's questions suggested, members of the child welfare policy community believed that the state had to take ultimate responsibility for the needs of every child. Second, to meet these needs the community called for therapeutic services that could rehabilitate both families and troubled children. Third, the network of services and programs for children and their families need to be well-coordinated so that children would receive the treatment best suited to their needs. For this to happen, members of the network argued, they needed to bridge the longstanding divisions and animosities between public and private child welfare providers. The child welfare community envisioned a system made up of public and private institutions but overseen by the state, insuring that every child no matter their race or religion was appropriately served. Finally, the child welfare community attempted to balance the rights of children against intervention in their lives. While this balance was, at times, difficult to find they asserted that child welfare should provide the least invasive intervention to meet the needs of a child or his or her family. Together these principles formed a rehabilitative ideal that all children would receive the care and support they required to become fully functioning adults.

There is a large and growing body of literature on the "therapeutic state."[3] This literature, however, fails to provide an explanation for why the principles of the

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[3] See, for example, Philip Reiff, *The Triumph of the Therapeutic* (Chicago: University of Chicago Press, 1966); Christopher Lasch, *The Culture of Narcissism: American Life in an Age of Diminishing Expectations* (New York: W.W. Norton, 1978); Ellen Herman, *The Romance of American Psychology: Political Culture in the Age of Experts* (Berkeley: University of California Press, 1995); James L. Nolan, Jr. *The Therapeutic State: Justifying Government as Century's End* (New York: New York University Press, 1998.); Andrew Morris, "Charity, Therapy and Poverty: Private Social Service in the Era of Public Welfare" (Ph.D. diss., University of Virginia, 2003); Peter Phillips Sheehy, "The Triumph of Group Therapeutics : Therapy, the Social Self and Liberalism in America, 1910–1960" (Ph.D. diss., University of Virginia, 2002).

rehabilitative ideal would become attractive to child welfare experts in the period between 1945 and 1980. To be sure, the post-war period was a time when psychology and psychological thinking was held in high regard. This therapeutic zeitgeist, however, does not explain why child welfare activists with a variety of backgrounds came to a consensus over a particular set of principles. For the child welfare community, this consensus arose out of particular moments in the histories of American liberalism, child welfare, and social work theory. This unique constellation of events allowed this perspective on child welfare to become prevalent, reaching its height of influence in the 1960s before it was eclipsed by new trends that led to the unraveling of the rehabilitative consensus over the 1970s

The histories of Justine Wise Polier, Joseph Reid, and Alfred Kahn and the institutions with which they were most closely aligned exemplify this fortuitous moment in the emergence of a rehabilitative perspective on child welfare. The multiple origins of the rehabilitative approach to child welfare are evident in the intellectual development and the policy proposals of these three individuals. Polier moved from a focus on labor and social insurance to child welfare, where, partially based on her gender, she emerged as an influential voice emphasizing importance of children's programs in social policy. Reid, trained as a social worker, rose to the helm of the Child Welfare League of America while expanding the organization's mission from a focus on voluntary child welfare agencies to a concern with national social policy for children. And Kahn bridged divisions within social work by asserting that social workers had a vital role to play in shaping and planning social welfare policy. He then demonstrated that role by providing his vision of social planning in the field of child welfare.

Justine Wise Polier and the Citizens Committee for Children of New York

For Justine Wise Polier, and for most liberal activists coming of age in the 1920s, public policy for children was not a primary concern. The previous generation of reformers had focused much of their energy on developing institutions to save children. To someone like Polier, child welfare issues must have appeared somewhat old fashioned. Of course, the accomplishments of the child savers of the Progressive Era were some of the furthest reaching social policy accomplishments of the time. Juvenile courts, first established in Chicago in 1899, provided care rather than punishment for delinquent, dependent, and neglected children. Mother's pensions, passed by 40 states before 1920, provided income for widowed and, in some states, divorced and deserted mothers so that they could care for their children at home.[4] And the Children's Bureau, using the authority of the federal government to research the conditions children faced, expanded the use of birth registration, challenged the use of child labor, and administered an extensive national program for maternal and infant health care.[5]

For Polier, however, the future of American reform in the1920s was in the labor movement. As the child of the progressive Rabbi Stephen S. Wise, Polier quickly found work in labor organizations. While still in college, Polier assisted Charlotte Carr, a prominent labor reformer, in studying women and industrial accidents. Polier also worked with the Women's Trade Union League, meeting members of the organization

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[4] Theda Skocpol, *Protecting Soldiers and Mothers: The Political Origins of Social Policy in the United States* (Cambridge, Mass: Belknap Press, 1992), 424; see also Linda Gordon, *Pitied But Not Entitled: Single Mothers and the History of Welfare* (Cambridge, Mass.: Harvard University Press, 1994).

[5] For more on the history of the U.S. Children's Bureau see Lindenmeyer, *A Right to Childhood* and Robyn Muncy, *Creating a Female Dominion in American Reform, 1890–1935* (New York: Oxford University Press, 1991).

like Rose Schneiderman and Eleanor Roosevelt. After she graduated from Barnard, Polier went undercover to investigate the labor conditions in the textile mills in Passaic, New Jersey. When a strike broke out, Polier worked to support and rally the workers.[6]

In order to strengthen her ability to fight for working people, Polier decided to attend Yale Law School graduating in 1928. She figured "that it would be a good idea to get some legal background and know what my rights and the rights of other people were." But, she later explained, "I had no intention of practicing law. I didn't take the commercial business courses." Instead, she focused on her interests "in Constitutional Law and Labor Law and Administrative Law."[7] With her legal training, and probably with the help of her family's political connections, Polier was appointed as a Workmen's Compensation referee in the New York State Department of Labor. As a referee, Polier discovered a corrupt system in which employers selected the doctors that evaluated injured workers. After submitting suggestions for reform including an impartial panel of doctors to evaluate workers' claims to Governor Franklin Delano Roosevelt, Polier helped write legislation to reform the state workman's compensation program.[8]

Next, Polier was appointed an Assistant Corporation Counsel for the city of New York by Mayor Fiorello La Guardia. Polier's focus in her work for the city was in expanding social insurance. Polier's efforts reflected the efforts of the Roosevelt Administration to develop a national social welfare system. As the *Washington Post*

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[6] Justine Wise Polier, "The Reminiscences of Justine Wise Polier," transcript of 1980 to 1981 interviews with Kitty Gellhorn, Columbia Oral History Microfiche Collection, Series V, 81–84, 103–107 (hereafter cited as JWP Columbia Oral History); Andrea Jennifer de Forest, "Justine Wise Polier and her Struggle for Juvenile Justice in New York City" (Ed.D. dissertation, Harvard University, 2005), 25–42.

[7] Justine Wise Polier, "Women Lawyer in the Depression: An Oral History," (Transcript of Interview of JWP by Ann Fagan Ginger on June 22, 1982), *National Lawyers Guild Practitioner* 39 (1982): 121–128, 122.

[8] JWP Columbia Oral History, 121–123.

reported in 1934, Polier was "doing her part in bringing the promised 'New Deal' into municipal government."[9] La Guardia later asked her to be counsel for the Emergency Relief Bureau, the New York City agency in charge of relief work during the depression. In this capacity, Polier discovered serious problems in the administration of work programs. Workers routinely lost their WPA jobs for the most arbitrary offenses from "sleeping with the wrong women to saying anything that was regarded as radical to being rude to your superior."[10] Polier helped write a well-received report calling for the expansion of work relief, but she soon became the focus of controversy in a dispute over the implementation of the Works Progress Administration in the city.[11]

In 1935, Mayor La Guardia, perhaps in an attempt to remove the troublesome youngster from his administration, offered Polier a temporary position on the Domestic Relations Court. Polier demurred; she would have preferred to work on the Magistrate's Court, "where injunctions against trade unions were being issued in wholesale fashion." After observing the Domestic Relations Court, however, Polier agreed to take the position, becoming the first woman in New York appointed to a judicial position higher than magistrate. Polier assumed she would stay on the bench for a few years and write a report. Constantly challenged by the work and fascinated by the perspective it provided on social problems, Polier ended up serving on the juvenile court for 37 years.

Polier's political perspective was reflected in her initial understanding of the issues facing the Court. When asked how her experiences prepared her to become a juvenile court judge, Polier explained:

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[9] "Women Hopes to Bring N.Y. its 'New Deal,'" *Washington Post*, September 14, 1934.
[10] JWP Columbia Oral History, 153.
[11] Ibid., 153–163.

> I have not done much social welfare work. But since I was graduated I have concerned myself with some phase of trade unionism, and I feel I understand pretty well how much economic conditions influence the cases that come before the bench in these courts. I shall be alert to determine how much lack of income has had to do with some of these disputes—to see how much enforced idleness and small wages are to blame for family discord.[12]

The issues that led children and families into the Domestic Relations Court were, in Polier's mind, the same issues that she had fought against her entire political life.

As a juvenile court judge, Polier was able to observe the primary gateway into New York City's system of child welfare. The system of juvenile justice and child welfare that Polier had become a part of had not been created overnight; instead, it was the product of a number of policy innovations. The first juvenile court in the nation began to hear cases in Cook County, Illinois in 1899. The progressive reformers who created and shaped this new court wanted children removed from the adult system of criminal courts. In addition, they instituted a system of probation that would investigate and treat delinquent children and their families.[13] New York, however, followed a different path towards the creation of a Children's Court in the early twentieth century. In Illinois, the new tribunal was part of chancery proceedings, whereas in New York, courts for juveniles remained part of the criminal courts. These courts maintained criminal court procedures, but they did not limit themselves to trying children for actions that would have been crimes if committed by an adult. They also handled cases of neglect and dependency in which they placed children under the supervision of various

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[12] "Mrs. Tulin Studies New Role on Bench," *New York Times*, July 10, 1935, p. 8.

[13] David S. Tanenhaus, "The Evolution of Juvenile Courts in the Early Twentieth Century: Beyond the Myth of Immaculate Construction," in *A Century of Juvenile Justice*, ed. Margaret K. Rosenheim and others (Chicago: University of Chicago Press, 2002), 42–73; Andrew J. Polsky, *The Rise of the Therapeutic State* (Princeton: Princeton University Press, 1991). Steven L. Schlossman, *Love and the American Delinquent: The Theory and Practice of "Progressive" Juvenile Justice, 1825–1920* (Chicago: University of Chicago Press, 1977).

welfare agencies.[14] Acts passed in 1922 and 1924 by the New York State legislature established Children's Courts throughout the state that were separate from the criminal courts. These new courts received exclusive jurisdiction over cases of delinquency and neglect. While the treatment for both categories of children was often similar, the law distinguished between delinquents who had committed a potentially criminal act, and neglected children who lacked proper guardianship. Children who were subjected to mental or physical abuse, as well as children whose morals were "endangered" all fit into the latter category. A final piece of legislation passed in 1933 created a Domestic Relations Court in New York City by slightly broadening the jurisdiction of the Children's Court over some custody issues.[15]

In New York City, as in other urban areas in the country, the Children's Court emerged as the central institution in child welfare. Whether a complaint of neglect or delinquency was filed, the Children's Court would use probation officers to investigate the condition of the child and his or her home. If the officer deemed the involvement of the court necessary, the judge would determine the best treatment for the child and family. Often judges removed children from their home and sent them to institutions or foster homes. In either environment, social workers aimed to rehabilitate the child so they could return to their family. In some cases, the child remained in their parents' home while probation officers worked to improve the living conditions and the emotional relationships within the family.[16] Juvenile Court judges, therefore, coordinated many of the services provided to children. In some jurisdictions, this included juvenile court

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[14] Merril Sobie, *The Creation of Juvenile Justice, A History of New York's Children's Laws* (Albany: New York Bar Foundation, 1987), 97–125.
[15] Sobie, *Creation of Juvenile Justice*, 125–155.
[16] Steven L. Schlossman, *Love and the American Delinquent,* 57–62.

supervision of mother's pension payments to widows.[17] Despite the supervisory role of the Children's Court, the judges remained limited in their ability to meet the needs of children and their families. This was especially true in the city of New York, where private and sectarian agencies provided many of the services.

The public subsidization of private services in New York dated back to 1811 with a grant to the New York Orphan Home.[18] When the legislature ended the system of almshouses in 1875, it simultaneously strengthened private institutions by providing further public support. Charles Loring Brace's placing-out system created an additional impetus for the creation of Catholic agencies. Brace's Children's Aid Society placed neglected, often Catholic children with Protestant families throughout the country. In response, Catholic charities developed institutions to provide for children within their own religion. Many of these Catholic institutions soon became publicly subsidized.[19]

By the time of the New Deal, private welfare agencies were firmly established in the children's services of New York and other cities. While the juvenile courts often supervised local systems of child welfare, private and often sectarian organizations provided many of the services. These private welfare organizations successfully fought off an attempt to create national public child welfare in the Social Security Act of 1935. In a compromise between those drafting the legislation and private, especially Catholic, charitable organizations, the requirement to create public child welfare services was limited to rural areas. While the act barred the use of federal funds to support private

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[17] David S. Tanenhaus, "Growing Up Dependent: Family Preservation in Early Twentieth-Century Chicago," *Law and History Review* 19: 547–582.

[18] Justine Wise Polier, *Everyone's Children, Nobody's Child: A Judge Looks at Underprivileged Children in the United States* (New York: Charles Scribner's Sons, 1941), 16.

[19] Polier, *Everyone's Children, Nobody's Child*, 3–42; see also Grossberg, "Changing Conception of Child Welfare," in Rosenheim et al, *A Century of Juvenile Justice*, 19–21.

welfare, the law, in another concession to private institutions, did not require the states to match federal contributions. This ensured that states could continue to use their resources to support private agencies. By the 1950s, federal funds were used to pay administrative expenses for public agencies throughout the nation, while some states, including New York, continued to subsidize private welfare providers.[20]

The existence of powerful sectarian welfare agencies in a city of growing ethnic, religious, and racial diversity portended a crisis. Because of the large migration of, mostly Protestant, African Americans from the South, New York City faced potentially high needs for welfare services that the largely Catholic welfare agencies would not address. This problem would remain at the center of the child welfare crisis in New York City through the 1980s.

In her 1941 book, *Everyone's Children, Nobody's Child*, Polier combined her previous interest in social insurance with a new found understanding for the need of therapeutic support in child welfare. She dedicated the book to her friend the psychiatrist Marion E. Kenworthy noting that Kenworthy was a "pioneer in making the new science of mental hygiene part of the thinking of social workers throughout this country."[21] Yet the work did not simply praise therapeutic methods in child welfare. At times, Polier noted the limitations placed on the Children's Court by the lack of other social programs. As she explained:

> Children's Courts cannot supply adequate parents, minimum economic security, good schooling, proper medical care, sanitary housing conditions, or any other basic needs for wholesome family life. They can seek to discover what has brought each child to Court, and enlist appropriate community facilities to grapple

[20] Marguerite G. Rosenthal, "Public or Private Children's Services? Privatization in Retrospects," *Social Service Review* 74 (2000): 281.
[21] Polier, *Everyone's Children, Nobody's Child*, v.

> with causative factors or ameliorate their effects. This is their strength and their weakness.[22]

The work of the Children's Court, and the therapeutic direction she advocated for the institution, would only succeed within the context of other social supports.

More than a broad critique of the American welfare state, *Everyone's Child, Nobody's Children* castigated a child welfare system that was incoherent, uncoordinated, and inefficient. The juvenile court and associated agencies, Polier demonstrated, often failed to provide appropriate treatment for children and families. However, she found even more troublesome the "action in spurts, assistance and withdrawal of assistance, intervention by an authoritative agency and a return to a passive approach—particularly when such changes are without plan or purpose."[23] To solve these problems, Polier argued, the city needed to reorganize institutions for children and place services in a rehabilitative framework. She thus called for a "more complete understanding of family background; the timely use of expert advice; careful evaluation of a child's problems; adequate foster-home facilities and psychiatric treatment for children of all races and religions; special facilities for children of unusual ability; and finally the courage to maintain a consistent course of action where the facts demand it, regardless of the unpleasantness or pressures that must be faced."[24] Polier was convinced that the use of rehabilitative methods would better serve the children in the child welfare system.

The use of therapeutic methods alone would not solve New York City's child welfare shortcomings. The city also had to provide for greater oversight and coordination. Polier believed that New York's continued reliance on private welfare

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[22] Ibid., 77–78.
[23] Ibid., 183.
[24] Ibid., 207.

services provided the greatest obstacle toward improving the city's child welfare services. Most disturbing was the fact that despite receiving public funds there was little public oversight of these facilities. Polier argued that the public needed to supervise these private agencies more effectively, and she hinted at the creation of a completely public system of child welfare. The autonomy of private agencies increased both the inefficiency and the inequality that existed in the system. Since "each private agency retain[ed] absolute power to reject any child," Children's Court judges were at the mercy of the private agencies in determining the best treatment for a child. In addition, most of the sectarian agencies refused treatment to children of another religion. This was especially troublesome for the burgeoning population of Protestant African American children excluded from the many Catholic facilities in the city. Before 1937, for example, there were no facilities available for neglected Protestant black children under the age of twelve.[25]

Polier's book provided a broad critique of child welfare in New York City. It was not a plan for how to solve these problems, but it recognized that continuing social inequality and the power of private and religious interests stood in the way of creating more effective and equitable child welfare. The need to improve the system became even more urgent as rates of juvenile delinquency continued to rise after the United States entered World War II. During the war, Polier described the child welfare system in New York as overwhelmed, with most private and public facilities crowded with children.[26] In light of the role of women in the wartime economy, Polier advocated increased funding

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[25] Ibid., 243–244.
[26] Justine Wise Polier, "Wartime Needs of Children and Federal Responsibility," *Federal Probation* 8 (1944): 9.

for day care, a concept that she had not addressed in her previous work. Through the Lanham Act, the federal government had committed limited resources for child care for women engaged in wartime production. Polier called for expansion of the program to all working mothers. This would help relieve more children from pressures brought on by the war, and help care for the children of those women drawn into the expanding economy but not working in a war related industry. For Polier, an expanded federal role in the lives of children was a necessary outgrowth of mobilization for the war. "If total war and a united war effort really mean that all able bodied adults must be in the army or in essential war services, we must recognize that children everywhere are being, or will be, deeply affected by these dislocations and that the Federal Government through Congress must meet its obligations to America's children on a far broader basis than it has in the past."[27]

Polier's vision of federally supported child welfare did not become reality during the war. As the fighting subsided, Polier and her fellow left-liberals struggled to make sense of the waning New Deal and the war. Following Franklin D. Roosevelt's death in April 1945, liberals regrouped in an effort to continue the tradition of reform that his presidency represented. The Union for Democratic Action (UDA), formed by left-leaning but anti-Communist liberals in 1941, was one organization claiming the mantle of the New Deal.[28] In 1945, Justine Wise Polier and her husband Shad both contributed to

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[27] Polier, "Wartime Needs," 12. See also Sonya Michel, *Children's Interests/ Mother's Rights: The Shaping of America's Child Care Policy* (New Haven, Yale University Press, 1999).

[28] Steven M. Gillon, *Politics and Vision: The ADA and American Liberalism, 1947–1985* (New York: Oxford University Press, 1987), 6–16.

the UDA.[29] This organization would later become Americans for Democratic Action, one of the most influential liberal organizations over the 1950s and 1960s.[30] While Justine refrained from explicit political activities after her appointment to the bench, Shad was active in the UDA serving on the board of directors of the New York City Chapter.[31] In a sense, the New York City Chapter of the UDA was simply the formal representation of a liberal-political network that existed within the city. At the center of this network was Eleanor Roosevelt, who returned to New York after her husband's death.

Polier had first met Roosevelt during her work with the Women's Trade Union League in the 1920s. In 1938 and 1939, Roosevelt worked with Polier and other members of the Non-Sectarian Committee on German Refugee Children to expand the immigration quotas for children fleeing Nazi Germany. When Roosevelt became assistant director of the Office of Civilian Defense (OCD) in September 1941, she asked Polier to take a leave of absence from the Domestic Relations Court to assist her with the work. Eleanor Roosevelt would only remain at the OCD for five months, but during her tenure she advocated a broad notion of civilian defense. For Roosevelt, the work was not only about preparing the home front for war but also about creating the kind of society worth fighting for. This understanding matched Polier's progressive perspective and the two women became close friends during this time. As Roosevelt explained in a note

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[29] List of contributors to the New York Branch of the UDA, Americans for Democratic Action, *Papers, 1932-1965*, (Sanford, North Carolina: Microfilming Corp. of America, 1978), Series I (Hereafter cited as ADA Papers)

[30] See Gillon, *Politics and Vision*.

[31] List of UDA New York City Board Members, ADA papers, Series I.

thanking Polier for her work, "I hope that between us there has developed a respect and a friendship which will lead to close cooperation in many interests in the future."[32]

Polier was not the only liberal that Eleanor Roosevelt brought on board at the OCD. Joseph Lash, Eleanor's good friend also was given a position with the agency. Lash, a student radical, met Eleanor Roosevelt when he was called to Washington to testify before the House Un-American Activities Committee (HUAC) in 1939. Impressed with his performance before the committee, Eleanor invited him back to the White House. Lash soon became a confidant to Roosevelt and would remain a close friend throughout her life. In the 1930s, Joseph Lash also met fellow liberal activist Trude Pratt. Born Gertrude von Adam Wenzel in Germany, Trude received a Ph.D. in philosophy from the University of Freiberg in 1930. The next year she taught at Hunter College in New York and became active in the International Student Service (ISS). Returning to Germany in the fall of 1932, she wrote for a liberal newspaper which would be shut down when the Nazis seized power in 1933. Trude, meanwhile, immigrated to the United States, marrying Eliot D. Pratt, a member of a prominent New York family, who she had met through the ISS. It was also through the ISS, that Trude Pratt came to know Joseph Lash and, in turn, Eleanor Roosevelt. Like Joseph, Trude became part of Eleanor's inner circle of friends. "It was the kind of relationship in which one had daily contact," Trude later explained. "We would telephone each other every morning or at

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[32] Eleanor Roosevelt to Justine Wise Polier, Dec 31, 1941, Roosevelt to Polier, Feb 18, 1942, Polier to Roosevelt, April 3rd, 1942, Roosevelt to Shad Polier, June 22, 1942, Justine Wise Polier Papers, Box 1, Folder 1, American Jewish Historical Society, New York (hereafter cited as AJHS); Maurine H. Beasley, Holy C. Shulman, and Henry R. Beasley, eds. *The Eleanor Roosevelt Encyclopedia* (Westport, Connecticut: Greenwood Press, 2001), 387–390, 406–407; Doris Kearns Goodwin, *No Ordinary Time: Franklin and Eleanor Roosevelt: The Home Front in World War II* (New York: Simon and Schuster, 1994), 280-299.

least at a certain time. There were few days without a voice contact."[33] Roosevelt encouraged the romantic relationship between Trude and Joseph. With advice from Eleanor Roosevelt, Trude divorced Eliot Pratt and married Joseph Lash in November 1944.[34]

In 1945, many of New York's liberals turned their attention to the plight of children. Justine Wise Polier joined with Stanley Issacs, a New York City Council member, to write a report on the needs of children for the UDA. Like Polier's previous writing, this report demonstrated the need for reform of child welfare in New York. Polier later recalled a meeting "late one afternoon in the small garden of my home." Polier discussed the need for a new organization to improve the conditions for children with psychiatrists Marion Kenworthy and Viola Bernard, philanthropist Adele R. Levy, the city's Commissioner of Public Health and some education experts. After several months of organization, Eleanor Roosevelt introduced the Citizens' Committee on Children of New York City (CCC) to the public in December 1945.[35]

The CCC was an outgrowth of the New York Chapter of the UDA. Justine and Shad Polier were active in the UDA and would become leaders of the CCC.[36] Trude Lash, who would later become the head of the CCC, was on the national board of

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[33] Interview with Mrs. Trude Lash by Dr. Thomas F. Soapes, Oral Historian, November 21, 1977, for the Franklin D. Roosevelt Library, Hyde Park, New York, 35 as quoted in Mary Jean McDonald, "The Citizens' Committee for Children of New York and the Evolution of Child Advocacy, 1945–1972," (Ph.D. Diss., New York University, 1993), 153.

[34] Beasley et al. eds. *The Eleanor Roosevelt Encyclopedia*, 309.

[35] See "First Annual Report of the CCC," April 25th, 1946, Viola W. Bernard Papers, A.C. Long Health Sciences Library, Columbia University, box 170, folder 9, (hereafter cited as VWB Papers.); Polier, *Juvenile Justice in Double Jeopardy*, 31. Edward Weinfeld claimed that Polier's *Everyone's Children, Nobody's Child* was the inspiration for the creation of the CCC. "Justine Wise Polier, In Memoriam," Justine Wise Polier Papers, Schlesinger Library, Harvard University, box 1, folder 1, (hereafter cited as JWP Papers). Mary Jean McDonald describes the creation of CCC as emerging out of a Committee to assist the Mayor with the wartime child care issue. McDonald, "The Citizens' Committee for Children," 56–57.

[36] McDonald, "The Citizens' Committee for Children," 58.

directors for the UDA and Joseph was the director of the New York City chapter. Stanley Issacs, served on the national board of the UDA, also joined the CCC. Dorothy Norman, another member of the UDA, prepared an early study of children's needs for the CCC. The CCC, therefore, contained a particular liberal perspective in its advocacy for children.[37]

Despite its ties to the liberal UDA, the CCC did not envision itself as primarily a political organization. Instead it hoped to bring together lay and professional experts on children to share knowledge and advocate improvements among a range of institutions. The level of professional knowledge within the CCC was quite high. As the psychiatrist Viola Bernard later explained, "This was unusual because in a way the professional members, a great many, on these different sections would cost a fortune, if they were serving as paid consultants. This way they met and were very knowledgeable about what was going on and therefore could guide the staff and the director and the Board of Directors to positions based on their [expertise], in a sense, serving as consultants and the staff could carry things out."[38] With all its expert knowledge, the CCC immediately carried a great deal of influence on policy for children in New York City.

To give the organization greater insight into a broad set of issues, the CCC was divided into sections with focus on specific institutions. These sections examined issues such as education, foster care, health, legislation, mental health, and protective services. Given the concentration of welfare expertise in New York, many of the individuals involved in the CCC had national reputations. Bernard herself acted as head of the

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[37] List of contributors to the New York Branch of the UDA, and List of UDA New York City Board Members, ADA papers, Series I.

[38] Viola W. Bernard, Oral History with Dr. Martha Kirkpatrick, April 8, 1995, VWB Papers, Box 3, folder 12.

mental health section during the organizations early years. Leonard W. Mayo directed a section that examined foster care and other child care institutions starting in the late 1950s. City Councilman Stanley Issacs acted as chairman of the legislative section. Overseeing all this activity and organizing the work of the CCC first as program director and after 1953 as executive director was Trude Lash.[39]

The CCC took as its goal "to promote the well-being and happiness of the children of New York."[40] One of the prime means to reach that goal was "working toward" what the members of the CCC "called 'a master plan' for children—a blueprint of all services, public and private."[41] This notion represented the primary contribution of postwar liberals to reforming child welfare. For reforms to succeed, the group's beloved reformers needed to proceed towards a rational plan. This plan contained both the notion of public responsibility for all children, and the need for integration of the various services to children. The CCC's work represented a liberal mission to reform child welfare.[42]

The formation of the CCC and its active role in public policy in the post-war era represents a unique moment in the history of women's political activism. While CCC included men and women as members, women were well-represented in leadership roles for the organization. As the historian of the CCC, Mary Jean O'Sullivan, has noted women outnumbered men in the organization both as members and in leadership positions. Of the fifteen members of the organization's initial Board of Directors,

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[39] McDonald, "The Citizens' Committee for Children,"142–146.
[40]Citizen's Committee for Children, "A New Tool for Community Planning and Action," VWB Papers, Box 172, folder 2.
[41] Ibid.
[42] McDonald, "The Citizens' Committee for Children," 145.

Fourteen were women.[43] While all of the women of the CCC came from a fairly elite class, there was a division between lay members of the organization like the sisters Adele Rosenwald Levy and Marion Rosenwald Ascoli, the heirs to the Sears and Roebuck fortune of their father Julius Rosenwald, and the professional members like Polier and Viola Bernard whose involvement in the CCC overlapped with their daily work with children.[44]

The outlook and contributions of the first generation of women after suffrage to New Deal social reform have been well described by the historian Susan Ware. Most of the women active in the CCC were born between 1890 and 1910 and, therefore, belonged to the generation that succeeded the New Dealers examined by Ware. Ware describes a political network whose formative experiences included World War I and work in the New Deal. For this next generation of reformers coming of age in the 1920s and 1930s, participation in political activism and government service during World War II proved to be an important experience. Both Polier and Trude Lash, for example, temporarily moved to Washington to work in the war effort.[45]

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[43] Ibid., 96.

[44] What was unique about the CCC was that women and men, professionals and laypeople all took part in leading various parts of the organization. Of course, women activists had long worked with men to achieve their policy goals. See, for example, Kathryn Kish Sklar, "Hull House in the 1890s: A Community of Women Reformers," *SIGNS* 10 (1985): 658–77. Also, professional and volunteer women had also worked together. The alliances between Hull House and the other women's organizations are well documented. See Sklar, 665-666, and David S. Tanenhaus, *Juvenile Justice in the Making* (New York: Oxford University Press, 2004), 3–22. The membership of the CCC, perhaps exemplifying reform activity in the postwar period, overcame divisions of gender and profession in a single organization.

[45] Susan Ware, *Beyond Suffrage: Women in the New Deal* (Cambridge: Harvard University Press, 1981). Ware mentions the difficulty in characterizing the generation that came of age in the 1920s, but explores its perspective no further (Ware, 20). It is also interesting to note, that Eleanor Roosevelt was a central figure for Ware's New Deal Network and for this next generation of reformers in New York. There has been relatively little attention to the postwar political activism of this generation of women. The major exceptions are the snapshots of women's activism in the 1950s in the collection edited by Joanne Meyerowitz, *Not June Cleaver*. See Susan Lynn, "Gender and Progressive Politics: A Bridge to Social Activism of the 1960s," Harriet Hyman Alonso, "Mayhem and Moderation: Women Peace Activists during

Like the previous generation of female political and policy activists, the women members of the CCC rejected the label "feminist," focusing instead on their role as social reformers. When Polier was first appointed to New York City's Corporation Counsel in 1934, she explained her beliefs on the role of women in government. "I'm no feminist," she explained. "I think women have a real place in city, State and Federal government, but as human beings. They have no special sphere, but they have a great opportunity if they become skilled and useful people. The better they equip themselves, the better government we shall have."[46] Polier realized the barriers that professional women faced but she refused to "join organizations for women only." Instead, she met with "groups of women" to "get them concerned with social problems." It was in social reform that Polier thought women "could make the greatest contribution," rather than in the "problems that affected them directly." Polier avoided arguments based on maternalism—that women had a "special sphere" in social reform—but she saw educated, professional women as a group that could and should dedicate itself to help society. For Polier her identity as a reformer trumped her role in expanding opportunities for women.[47]

While the women members of the CCC worked closely with men in the organization, friendships with other women strengthened their work. Justine Wise Polier and Viola Bernard, both members of elite New York Jewish families, first met in the 1930s. "We connected immediately and forcefully," Bernard remembered, "and that was

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the McCarthy Era," and Dee Garrison, "Our Skirts Gave Them Courage," The Civil Defense Movement in New York City, 1955–1961," in Joanne Meyerowitz, *Not June Cleaver : Women and Gender in Postwar America, 1945–1960* (Philadelphia: Temple University Press, 1994),103–150, 201–226, and Susan Lynn, *Progressive Women in Conservative Times: Racial Justice, Peace, and Feminism, 1945 to the 1960s* (New Brunswick, New Jersey: Rutgers University Press, 1992).

[46] "Woman Hopes to Bring N.Y. its 'New Deal,' *Washington Post*, September 14, 1934.

[47] JWP Columbia Oral History, 185–186.

it. From then on our friendship developed . . . in professional ways and every other way." After the death of Polier's first husband, Bernard helped out with caring for her young son. While Bernard completed her medical training, she lived in an apartment above Polier's house and the two often shared meals together. Their friendship was both personal and political; Bernard later explained "we both gave each other a great deal. We also gave the community a great deal as allies."[48] Bernard also introduced Polier to her mentor Marian Kenworthy, a psychiatrist and professor at the New York School of Social Work. Unlike her younger friends' German Jewish roots, Kenworthy's "tall, angular, blue eyed" appearance betrayed her Protestant New England lineage.[49] In spite of the difference in background, the three became close friends and political allies. Kenworthy's Fifth Avenue apartment became a meeting place for Polier, Bernard, and other acquaintances to discuss the problems of the world and brainstorm solutions. As Bernard explained, "many innovative projects were hatched and efforts launched during long evening meetings held in Marion's living room."[50] Among the projects they worked on was an effort to rescue Jewish children from Nazi Germany in the 1930s and the organization of the Wiltwyck School for Boys, the only institutional treatment available for troubled African American boys under the age of 12. All three women helped found and lead the CCC.

The presence of several women with training in professions not traditionally pursued by women made the CCC unique. The representation of women lawyers and

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[48] "Re: getting to know Justine Polier", Dictated July 10, 1992 to David Rosner and Gerry Markowitz, VWB Papers, Box 44, Folder 1; Oral History with Martha Kirkpatrick, April 8, 1995, VWB Papers, Box 3, Folder 12.

[49] Albert Deutsch, *Dr. Marion E. Kenworthy*, New York School of Social Work, 1956, p. 5, VWB Papers, Box 46, folder 1.

[50] Viola W. Bernard, "Marion E. Kenworthy, M.D.," *Psychiatric Annals* 9 (1979): 6.

doctors in the organization certainly did not reflect national trends. While the percentage of women practicing law had increased from 1920 to 1940, women still made up only 2.4 percent of the lawyers in the country. The percentage of women doctors had actually decreased since 1920 reaching a level 4.6 percent in 1940.[51] The irony in the lives of these professional women like Polier, Kenworthy, and Bernard was that while they dismissed their role in expanding women's opportunities in society they acted as path breakers in these professions. Each realized, of course, the difficulties they faced because of gender. Kenworthy, the eldest of the three, was encouraged by her family to become a nurse rather than a doctor. She insisted on medical school, beginning her studies at Tufts University around 1912. When she enrolled, she explained in an oral history, "there were 144 in our class, and there were 12 women and at the end of the year, there were only 7."[52] Polier found similar constraints on beginning her professional career in the law. When she applied to law schools in 1925, she recalled that of the top schools only Yale and Chicago would accept women. At Yale, she found herself one of approximately 5 women among a class of 125 men. Once Polier graduated, she still found opportunities limited by her gender. She recalled that even though she had done well in law school, "I was told there wasn't a single law firm in New York which would employ me unless I was willing to sit in a back room and draw wills and trusts but not see clients."[53] Bernard, who had spent much of her youth at an ashram studying yoga before finally completing college at NYU, feared that this experience on top of her gender

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[51] Cynthia Fuchs Epstein, *Women's Place: Options and Limits in Professional Careers* (Berkeley: University of California Press, 1971), 7, as cited in Ware, *Beyond Suffrage*, 25.
[52] Marion E. Kenworthy, Interview with Albert Deutsch, 2/22/56, p. 5, Marion E. Kenworthy Papers, Oskar Diethelm Library, New York Hospital, Cornell University, Box 1, folder 3.
[53] JWP Columbia Oral History, 102, 119, 185.

would hold her back. "To get into Cornell Medical School was a helluva business," she reflected later in life. "I was Jewish, I was a woman, and I certainly looked like I had a very unstable educational background." In the end, she got into Cornell and was one of four women who graduated in her medical school class. However, of the four women, Bernard later noted, "I'm the only one that's continued to have any kind of medical career."[54] For most women in the 1930s and 1940s, the obstacles to a professional career in law or medicine were too high.

While all of these women rejected maternalist arguments that claimed women had special expertise over issues regarding children, they all had successful careers partially due to their focus on children. It was in this realm that professional women had the occasion to thrive. None of these women ever said "I chose to study children because other options were closed." Instead, these women dedicated their lives to helping children because they realized that children needed advocates. They spoke up for children not out of motherly motivations, but because they simply realized that children needed a voice. However, in spite of how these women envisioned themselves, social constructions of gender both created obstacles in their professional development and provided the opportunity for them to become leaders in the field of child welfare.

The CCC was a new type of child welfare organization. It did not play any role as a child welfare agency in providing services for children or families. It had no official role and received no public support from the city or state. Instead, supported by foundation grants, it set out to watch over the many agencies and institutions that affected children's lives in New York City. As Mary Jean O'Sullivan has noted, the unofficial

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[54] Viola W. Bernard, Oral History with Nancy Chadarow, March 27, 1981, VWB Papers, Box 2, folder 14; VWB Oral History with Martha Kirkpatrick, April 7, 1990, VWB Paper, Box 3, Folder 2.

motto of the Committee was "fact-finding before fault-finding."[55] It set out to collect as much information as it could on the various programs in the city in order to offer well-researched proposals for reform. In a sense, the CCC became a self-appointed private children's bureau for New York City. To accomplish reform, however, both within the city and across the country, members of the CCC had to work with the more established child welfare organizations; the most important of these being the Child Welfare League of America (CWLA).

Joseph Reid and the Child Welfare League of America

In the early twentieth century, as the number of private child welfare agencies proliferated, directors of these organizations recognized a need for the exchange of information and techniques. The effort to create a national organization to provide guidance and standards in child welfare practice led to the creation of the Child Welfare League of America in 1920. From the start, the League was committed to the use of casework methods in treating children; in all its various aspects---child protection, foster care, instructional care---child welfare was seen as a form of social work. In 1922, the League began publication of its *Bulletin*, later renamed *Child Welfare*, which would evolve into the leading journal in the field. In the 1940s, however, the CWLA began to revaluate its role promulgating standards and resources among its private member agencies. By the end of the decade, the League had begun to assert itself as a national leader in child welfare policy and to reconsider its relationship to public child welfare agencies. By the time Joseph H. Reid was appointed executive director in 1953,

[55] McDonald, "The Citizen's Committee for Children," 90; See also de Forest "Justine Wise Polier and her Struggle for Juvenile Justice," 160–161.

therefore, the league was already playing a role in shaping child welfare policy across the country. During his 25 years directing the organization, Reid would expand the role of the CWLA in public policy, shaping the practices of public and private child welfare work and advocating for national programs on behalf of children.[56]

Joseph H. Reid did not share the New York upbringing of other members of the child welfare network. Born in Lima, Ohio, Reid was educated on the West Coast. Reid liked to recount how he was kicked out of the University of Oregon by Wayne Morse, later to become a U.S. senator, for being too outspoken in the student newspaper—perhaps hinting at the radical views of the young Reid. Nevertheless, Reid would go on to earn a B.A. and M.S.W. from the University of Washington. During the war, Reid joined the Navy and served as a lieutenant. Returning to Seattle, Reid worked at Ryther Child Center, a residential treatment center for children. In 1950, he came to New York to join the staff of the Child Welfare League of America (CWLA) as Assistant Executive Director before being selected to as Executive Director. In his long tenure leading the organization, Reid became known as "Mr. Child Welfare." Reid constantly engaged in a type of self-criticism. He wanted the League to be aware of its own mistakes and would often play the devil's advocate with the staff to challenge and revaluate the organization's positions.[57]

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[56] "The History of the Child Welfare League of America, Inc.," 1915–1987," 1–5, 14–18, 61–70,86–87, 103, 106, Child Welfare League of America Supplement, Social Welfare History Archives, University of Minnesota, box 44, folder "History of the CWLA," (hereafter cited as CWLA Supplement). I owe a special thanks to Andrew Morris who brought this history to my attention. See also Child Welfare League of America, *A Quick Trip Through CWLA's History* (Washington, D.C.: Child Welfare League of America, 2003).

[57] Steven A. Minter, "Joseph H. Reid Testimonial Dinner," April 27, 1978, CWLA Supplement, box 1, folder "Joseph Reid, Retirement Testimonial Dinner, 1978;" Wolfgang Saxon, "Joseph H. Reid, 78, Director of League on Child Welfare," *New York Times*, November 24, 1994, p. D18; "The History of the Child Welfare League of America, Inc.," 106-107.

Reid made three major contributions during his tenure with the League. First, Reid helped bridge divisions between public and voluntary child welfare providers. When Reid took charge of the organization, the CWLA was primarily a professional and standard setting organization for voluntary child welfare agencies. Reid expanded the organization to include members from the public sector. Reid also realized that to improve child welfare the League could not only produce voluntary standards, it also had to become an actor in shaping public policy towards children. Finally, Reid provided a clear definition of child welfare based on two aspects: that child welfare was a distinct specialization within the field of social work, and that child welfare was a critical component of the American welfare state.[58]

In defining child welfare, Reid faced challenges from two directions within the field of social work. On one extreme, social work modernizers questioned the need for specific training and preparation in child welfare. To these critics, the discipline of child welfare recalled a time of frequent removal of children from their parents and placement in orphanages and other institutions. Rather than a specific focus on children, they believed social workers should be trained to deal with all people and their individual problems. Such an approach, they argued, would, in the end, provide better treatment for children and their families. While recognizing the shortcomings of child welfare in the past, Reid argued that workers trained in the specific problems of children and their families along with the tenants of social casework would provide the best treatment. Just like a medical doctor would specialize in pediatrics after learning basic medicine, social

[58] Joseph H. Reid, "A Definition of Child Welfare," Speech at the National Conference of Social Work, 1954, CWLA Supplement, box 1, folder 14; Reid, "The Decade Ahead in Child Welfare," Speech Given at Child Welfare League of America Eastern Regional Conference, February 7, 1959, CWLA Supplement, Box 1, Folder 16.

workers would specialize in child welfare after sufficient training in casework methods. Rather than encouraging unnecessary removal of children, specialized training would encourage family preservation.[59]

While meeting this intellectual challenge from social work innovators, Reid also faced opposition from more conservative forces among child welfare workers. These individuals feared the involvement of social workers in policy making. Based in the traditional membership of the CWLA of voluntary welfare agencies, they derided the inferior training and services found in public institutions. Involving the CWLA in debates over public welfare, they worried, might politicize the organization and undermine its mission to set standards for child welfare training and services. Reid took just the opposite approach. He recognized that the "development of our social security programs" had "greatly strengthened family life" and "sharply reduced the numbers of children who live outside of their own homes." For voluntary child welfare to be successful, the CWLA could no longer ignore debates over public policy. Instead, it had to become engaged in debates about public welfare. This included demanding standards for public and voluntary child welfare agencies to improve services across the board, and advocating changes in programs like Aid to Dependent Children (ADC).[60]

The fullest examination of Reid's and the CWLA's understanding of child welfare was expressed in a pamphlet developed jointly by CWLA and the United States Children's Bureau (CB), *Child Welfare as a Field of Social Work Practice.* This statement was an attempt to define the meaning of child welfare. In a sense, the report set the parameters of the emerging consensus about the future of child welfare. The

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[59] Reid, "A Definition of Child Welfare."
[60] Reid, "A Definition of Child Welfare"; Reid, "The Decade Ahead in Child Welfare."

CWLA and the CB recognized a broad definition of child welfare as "the expression of a community's interest in fostering those social and economic forces which safeguard family life and insure to every child the fullest development of his mental, physical, and spiritual potentialities."[61] However, for the purposes of the CWLA and the CB a definition based on social work practices was more appropriate. Since social work set out to solve the problems that arose when social institutions fail, child welfare was the field of social work that dealt with failures in the institution of the family. The CWLA and the CB asserted three basics causes for these failures. First, "when circumstances or personal problems impair [the parent's] ability to perform the parental role." Second, "when the child has special needs, handicaps, or problems with which no parent can be expected to cope." Third, "when the community lacks resources required in modern society to supplement or facilitate the child-rearing function of the family." In other words, child welfare was needed when families failed due to the problems with parents, problems with children, or problems with society. The amount of attention given to each of these causes would emerge as a point of tension within the child welfare community.[62]

While asserting the importance of child welfare as a specialization within social work, this report also provided a specific philosophy for child welfare services. Conscious of criticism that workers unnecessarily removed children from their homes, this statement asserted that the role of child welfare was to treat, support and supplement the institution of the family. Only in the most extreme circumstances would children be

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[61] Mary Irene Atkinson, "Social Trends in Child Welfare Programs," in *Mary Irene Atkinson Speaking for Children*, Parthenon Press, Nashville, 1949, p. 141, as quoted in Child Welfare League of America and the United States Children's Bureau, *Child Welfare as a Field of Social Work Practice* (New York: Child Welfare League of America, 1959), 3.

[62] Child Welfare League of America and the United States Children's Bureau, *Child Welfare as a Field of Social Work,* 6.

removed form the home. Even in cases of removal, every effort would be made to place the child in a foster family home rather than an institution. Most importantly, *Child Welfare as a Field of Social Work* asserted the social responsibility of child welfare agencies and institutions to ensure the appropriate care of all children. As the report explained, "Child welfare services discharge a delegated responsibility of the community for seeing to it that the needs of the child are adequately met if parents are unable to provide for him."[63]

Under Reid's leadership, then, the CWLA attempted to expand the social responsibility for children. The organization continued to study and develop standards for various child welfare institutions. It also represented its traditional constituency of voluntary child welfare organizations. However, it increasingly saw the role of these private agencies as providing services under public direction and in some cases purchased with public funds.[64] The focus of the organization expanded from the particular methods of child welfare practice to the condition of child welfare across the nation. One indication of this redirection was the League's new research agenda initiated in 1954 that led, among many studies, to the publication of Henry S. Maas's and Richard E. Engler's *Children in Need of Parents*, a book that would revolutionize foster care and adoption in the United States.

The CWLA and Joseph Reid would work closely with other parts of the child welfare community like the CCC. Reid or other representatives of the CWLA served on several boards and commissions with CCC members both in New York and in

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[63] Ibid., 14-18.
[64] Ann W. Shyne, ed. *Child Welfare Perspectives: Selected Papers of Joseph H. Reid* (New York: Child Welfare League of America, 1979), 11-13.

Washington. The groups often contacted each other for information concerning policy decisions on the state and national level. However, the personal friendships that strengthened the CCC internally did not exist between the CWLA and the CCC. Instead, the alliance between the two organizations was professional—held together by the commitment to improve institutions serving children and their families.[65]

Like the CCC, the CWLA was an organization made up of both men and women. However, while women dominated the leadership positions of the CCC, men were appointed to most of the prominent positions in the CWLA. The gender patterns in the Child Welfare League reflected long-established patterns across the field of social work in which women formed the majority of social workers but many of the leadership positions were reserved for men. The major exception to this pattern was in the CWLA's journal, *Child Welfare*, where several women, such as Henrietta Gordon and E. Elizabeth Glover, served as editor of the periodical and where the number of articles written by women were more than or nearly equal to those written by men. Compared to other professions, women continued to play a significant role in the development of social work. By the 1950s, however, it appears that male contributions to social work were imbued with a certain scientific authority. A reviewer of a collection of essays edited by

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[65] The relationship between Justine and Shad Polier and Joseph Reid exemplifies the interaction between these two branches of child welfare network. While they were not necessarily friends they certainly had a close professional relationship. In a speech at the adoption agency started by Justine Polier's mother, Reid noted "Judge Polier herself has been instrumental in a series of important judicial decision in affecting the thinking of the American judiciary in many important areas where laws and the interpretation of laws have seriously impaired the right of a child to a future." (Speech Given by JHR at Louise Wise Services, 50th Anniversary Celebration, October 24, 1966, CWLA Supplement, box 1, folder "Speeches – Joseph Reid – 1957–1966.") In a letter to Reid declining to write a paper for a conference at the Children's Bureau, Justine Polier wrote, "Because of my high regard for you and the League, I regret having to say I cannot serve as you suggest." (JWP to JHR, October 16, 1975, CWLA Supplement, box 52, folder "Child Welfare Goals and Strategy.") See also correspondence between Reid and Shad Polier, CWLA Supplement, Box 1, folder "JHR Correspondence, 1978–1986."

social work professor Alfred J. Kahn seemed to equate maleness and advanced training, noting that "ten of the twelve contributors are men and that most of them hold Ph.D.'s."[66] Where the assumption of a natural affinity for children's issues provided opportunities for the professional women who were members of the CCC, in the field of social work masculine voices appeared to legitimize the field. Therefore, men found leadership roles in organizations like the CWLA and in schools of social work.[67]

In the postwar era, the CWLA became the leading child welfare organization in the county. Led by Joseph Reid, the organization assumed a new role in advocating for public policy and spurring innovation in child welfare practice. To fulfill these new missions, the CWLA looked to a new generation of social work theorists to provide direction in public policy and method. Alfred Kahn, a professor at the New York School of Social Work, emerged as one of the leading child welfare theorists of the time. His work joined a conversation taking place at social work schools and in the pages of *Child Welfare*. Together, this conversation presented the principles behind rehabilitative child welfare.

Alfred J. Kahn and the New York School of Social Work

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[66] Callman Rawley, "Book Notes," *Child Welfare* 40 (1961): 31.

[67] Jeanne M. Giovannoni and Margaret E. Purvine, "The Myth of the Social Work Matriarchy," *Social Welfare Forum, 1973*, (New York: Columbia University Press for the National Conference on Social Welfare, 1974), 166-195. Giovannoni and Purvine examined the number of women in various social work positions. Looking at the officers for the CWLA every five years, they only found one when a women served as president. For the Leagues publications *Bulletin* and *Child Welfare* they found the women appeared more frequently as authors until the years 1965 and 1970 when men were the majority of authors by a small margin. See also Clark A. Chambers, "Women in the Creation of the Profession of Social Work," *Social Service Review* 59 (March 1986): 1–33; and Daniel J. Walkowitz, *Working With Class: Social Workers and the Politics of Middle-Class Identity* (Chapel Hill: University of North Carolina Press, 1999), 87–111.

The New York School of Social Work, later to become the Columbia University School of Social Work, held a reasonable claim as the first school of social work in the United States. The school was a direct descendant of the Summer School in Philanthropic Work first held by the Charity Organization Society of New York in 1898. This institution first held classes for a full academic year from 1903 to 1904 and had evolved into a two-year training program by 1910. By 1919, the school became known as the New York School of Social Work.[68]

It was at the New York School that Alfred Kahn would develop, through his research and teaching, an approach to organizing child welfare services that was central to the rehabilitative ideal. Kahn's contribution was to bridge the gap between focusing on services to the individual and on the institutional framework of child welfare. For child welfare to work, Kahn argued, communities needed to organize all public and private providers of child welfare so that each child was matched to the services that met their particular needs. Kahn's work represented an approach to social work that emerged in the 1950s, overcoming long held divisions over casework approaches and balancing individualized services with social reform.

The New York School had long been at the forefront of psychiatric social work. The psychiatrist Marion Kenworthy, a close friend and political ally of Justine Wise Polier, joined the school's faculty in 1921. Through the Bureau of Child Guidance established at the New York School, Kenworthy both developed her theories of dynamic psychiatry and trained psychiatric social workers. In 1929, Kenworthy and Porter Lee,

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[68] Ronald A. Feldman and Sheila B. Kammerman, "Introduction," 1-2, and Alfred J. Kahn, "Themes for a History: The First Hundred Years," 9-12, *The Columbia University School of Social Work: A Centennial Celebration*, Ronald A. Feldman and Sheila B. Kammerman, eds. (New York: Columbia University Press, 2001).

the dean of the New York School, published *Mental Hygiene and Social Work*; this textbook established Kenworthy as "the patron saint of psychiatric social work."

Kenworthy and Lee's book embodied the approach to psychiatric social work that had evolved in the child guidance movement of the 1920s. As the historian Kathleen W. Jones has demonstrated, in understanding delinquent and "problem" children, the child guidance movement moved from sociological and environmental explanations to universal psychological explanations. Kenworthy and Lee noted the diversity of their clients, "they were confined to no one economic class, to no one social stratum, to not one nationality, to no one religion."[69] The psychodynamic methods of child guidance were applicable to all children, not only the poor and immigrant children where most cases of delinquency emerged. Rather than the social investigations that had defined early casework practice, in child guidance clinics psychiatrists, psychologists and social workers all provided therapeutic treatment to the child and their families. According to Kenworthy and Lee, treatment involved "the recognition that the behavior of the patient, whether insane or neurotic, is sympathetic of a deeper underlying problem of emotional and personality unadjustment frequently of long duration prior to the onset of the so-called disease."[70] In Kenworthy's framework, maladjustment occurred in the development of ego and libido. When children failed to receive appropriate expressions of love and other "ego needs," their emotional development became stunted. In place of healthy personality development, these children naturally turned to other pleasurable experiences. Sometimes, Kenworthy theorized, experiences that lead to pleasure are

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[69] Porter R. Lee, and Marion E. Kenworthy, *Mental Hygiene and Social Work* (New York: The Commonwealth Fund, 1931), 3.
[70] Ibid., 23

"destructive, i.e. growth-preventing. In such a case the individual by repeating for pleasure makes no forward step on the road to maturity."[71] The role of the child guidance clinic was to put children back on the path to normal emotional development.

The importance of psychiatry in social work education and practice has, to some extent, been overemphasized by historians of social work. At the New York School, for instance, Kenworthy's classes in psychopathology, clinical psychiatry, and psychiatric social work remained electives for those concentrating in social case work from the 1920s to the 1940s.[72] The students enrolled in Kenworthy's classes and training in the Bureau of Child Guidance were almost exclusively students concentrating in Mental Hygiene, preparing for work in psychiatric clinics and hospitals. Still, Kenworthy and Lee voiced their belief in the importance of psychiatry in all social work practice. They viewed psychiatric social work "not as a specialized field, but rather as social case work in whatever field whose practitioners have at their command an adequate knowledge of mental hygiene." Furthermore, they pushed for the expanded use of psychiatric methods, because "all work involving the treatment of human beings requires an understanding of human personality and its reactions to environment."[73] While social workers were not being trained in clinical psychiatry, psychiatric approaches and concepts seeped into social work methods over the 1920s.

In the 1930s, the social work professoriate became engaged in a rancorous debate over psychiatry and social work practice. Two schools—the diagnosticians with continuing allegiance to Freud, and the functionalists following the work of psychiatrist

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[71] Ibid., 71.
[72] Martha Morrison Dore, "Clinical Practice," in Feldman and Kammerman, *The Columbia University School of Social Work,* 129
[73] Lee and Kenworthy, *Mental Hygiene and Social Work,* 161.

Otto Rank—battled on the pages of the social work journals. At its most simple, this was a debate between those who saw the role of casework as discovering and resolving the inner conflicts faced by clients (the diagnosticians), and those who focused on the will of the client recognizing the limitations placed on therapy in the casework relationship (the functionalists). Functionalist social workers did not engage in "treating" the client for a particular ailment, instead they engaged in a "helping" process without a predetermined goal. In this debate, the New York School emerged as a center of diagnostic thought. By 1945, however, the debate had largely dissolved with the diagnostic or, as it became known, psychosocial approach victorious. Still, the functionalist school seems to have influenced social work practice as practitioners focused more on strengthening the ego of the client rather than attempting to gain insight into the unconscious. The functionalist critique may have also created increasing interest in the role of agencies within a community. Despite the disagreement over psychiatric approaches, by 1945 psychiatry had become pervasive in social work training.[74]

It was in this environment that Alfred J. Kahn trained as a social worker and conducted his research into child welfare institutions. Born in New York, Kahn graduated from City College in 1939 and then continued his education by studying Hebrew literature at the Seminary College of Jewish Studies. During the war, however, he worked as a psychiatric social worker for the Army Air Forces, rising to the rank of staff sergeant. After leaving the army, Kahn continued his training in social work

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[74] For more on the role of psychiatry in social work see Roy Lubove, *The Professional Altruist: The Emergence of Social Work as a Career, 1888-1930,* (Cambridge: Harvard University Press, 1965), 55–117; John H. Ehrenreich, *The Altruistic Imagination,* 60–77. For the functionalist diagnostic split see Ehrenreich, 124–138; Ruth E. Smalley, "The Functional Approach to Casework Practice," in Robert W. Roberts and Robert H. Nee, eds. *Theories of Social Casework* (Chicago: University of Chicago Press, 1970), 79–128.

graduating with a M.S. from Columbia's New York School of Social Work in 1946 and earning the school's first doctorate in social welfare in 1952. Kahn became a dedicated teacher and social policy expert. Beginning with his appointment as research instructor in 1947, Kahn trained countless masters and doctoral students.[75]

In developing the research for his doctorate, Kahn began a series of studies for the Citizens' Committee for Children (CCC), the organization founded by New York liberals including Polier, Lash, Bernard, and Eleanor Roosevelt. His relationship with the organization would continue over his long career. During the 1950s, Kahn worked with the CCC to examine various institutions that contributed to child welfare in New York City. This work led to the publication of several monographs including studies of the juvenile division of the New York Police Department, the New York City Children's Court, New York Training Schools, and, eventually, culminated in the publication of *Planning Community Services for Children in Trouble* in 1963.[76]

Planning presented an overarching study of the various institutions and agencies involved in child welfare. The work suggested how these institutions could be improved individually and, more importantly, recommended changes in order to turn these various institutions into a system of child welfare. It was, as one of his colleagues recently noted, the first study "to envision a community system of services for children rather than a collection of discrete children's service programs." While Kahn's focus was primarily on those children traditionally termed as delinquent or neglected, he emphasized the

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[75] Alfred J. Kahn," *Contemporary Authors Online*, Gale, 2007, Reproduced in *Biography Resource Center*. Farmington Hills, Mich.: Thomson Gale. 2007, http://galenet.galegroup.com/servlet/BioRC; Sheila B. Kammerman, "Social Policy," in Feldman and Kammerman, eds., *The Columbia University School of Social Work*, 201.

[76] "Kahn," *Contemporary Authors Online.*

interconnectedness of all services for children and families. With an introduction by Eleanor Roosevelt, Kahn's *Planning* became an influential text of how to organize a system of child welfare. It even affected child welfare outside the United States with the publication of a Spanish edition in Argentina in 1967.[77]

Historians of social work have emphasized the tension between treating individuals and instituting social reforms in the development of the profession of social work. Kahn's focus on community planning presented one approach to resolving this tension. Kahn asserted that services were a necessary part—but only one part—of a community's welfare system. In developing this social planning perspective, Kahn was greatly influenced by the work of Bradley Buell and the Community Research Associates, especially Buell's 1952 study *Community Planning for Human Services*. Buell's work was a call for social workers to move beyond debates over methodology and to investigate and suggest how to organize the many services available in a community to best meet the needs of individuals. For Kahn, the history of social work after World War II had been characterized by a series of missteps. Kahn lamented "the 'psychoanalytic deluge' of the period immediately after the war," because it "offered a method of intervention not suitable to many of those who needed to be helped."[78] Kahn was optimistic for the development of a new ecumenical approach to social work that avoided the failures of the past. Where earlier methods often focused on internal or intrapsychic issues with a focus on consciousness or superego and id or impulse, Kahn

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[77] National Association of Social Workers, "Alfred Kahn," NASW Social Work Pioneers, http://www.naswfoundation.org/pioneers; Kahn, *Planning Community Services for Children in Trouble* (New York: Columbia University Press, 1963); Brenda G. McGowan, "Family and Children's Services," Feldman and Kammerman, *Columbia University School of Social Work,* 234; Bradley Buell and Associates, *Community Planning for Human Services* (New York: Columbia University Press, 1952). For more on Buell see Morris, "Charity, Therapy and Poverty", 290–333.

[78] Kahn, *Planning*, 353.

recognized greater promise in methods focusing on the ego and its interaction with the individual's environment. This new ego psychology incorporated many of the criticisms of the functionalist revolt of the 1930s. As he explained, "the basic point is simple and, once made, inevitable: it is not valid to conceptualize only in intrapsychic terms causation of and intervention in a broad range of maladjustments, depredations, problems, and tensions." While treatment would often still focus on the individual, "in seeking to intervene one cannot ignore the social backgrounds, peer-group pressures, and value systems which affect aspirations, view of reality, attitudes toward constituted authority, presence or absence of guilt, and concepts of adequate family life and of parent-child relationships"[79] The openness of innovators like Kahn to a social planning perspective in child welfare, therefore, arose out of a particular moment in the history of social work methodology.

For Kahn, the profession of social work should not be defined by its methodology; instead, he argued that social work served a particular social function. Social work, through social welfare institutions, provided for society's needs that went unmet by other institutions. Kahn, however, rejected a remedial understanding of this social welfare function that saw social work as stepping in when "normal" institutions failed. Conversely, social workers had to view social welfare institutions as "essential components of modern life." The existence of unmet needs was simply part of the condition of modernity. However, since these needs were constantly in flux, social workers had to remain vigilant in reexamining and reforming social welfare institutions to meet current social needs. This was what Kahn meant by social planning, that social

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[79] Ibid., 360.

workers had a professional obligation to organize social welfare in ways that met the needs of every individual and, in turn, of society as a whole.[80]

Kahn's book embodied the consensus around the rehabilitative ideal. As he explained, "a modern approach to children in trouble has little validity if it does not organize itself to rehabilitate; rehabilitation, in turn, requires some individualization of measures. There must, in fact, be consensus at the beginning of program development that the objective is to treat those in trouble as individuals and to undertake that program which corrects, redirects, and restores them to useful family and community membership."[81] The notion of rehabilitation in Kahn's usage often referred specifically to children who, without help, could be dangerous to society. But it was based in the notion that all children had the potential to become "useful" members of society. To meet this goal of rehabilitation, Kahn emphasized four principles.

First, Kahn forcefully argued for public responsibility for children. *Planning Community Services for Children in Trouble* focused on children who were either delinquent or neglected, or were in danger of falling into one of these two categories. Kahn's chapters, therefore, focused on schools, the police, juvenile courts, detention centers, protective services, and treatment facilities. Despite discussing only these institutions in detail, Kahn's vision did not prioritize these services over all others. "The entire premise," he explained," is, of course, that the community has assumed certain basic obligations for the welfare of its children and that these obligations extend even to

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[80] Alfred J. Kahn, "The Function of Social Work in the Modern World," in *Issues in Social Work*, Alfred J. Kahn, ed. (New York: Columbia University Press, 1959), 3-38.
[81] Kahn, *Planning*, 45.

those who are aggressive, anti-social, and destructive." This responsibility was at the heart of the American welfare state.

> In the broader national and state contexts there have been established certain minimum underpinnings for all people in the fields of employment security, housing, public education, public health, income maintenance, and social security. For children, all children, communities now affirm and, to varied degrees, seek to give full meaning to the right to competent health supervision from infancy to adulthood, opportunities for good education to the limits of one's potential; access to religious or moral training, as determined by parental background and wishes; adequate recreational facilities; vocational guidance and career planning with the assistance of skilled counselors. On this *foundation* and only on such foundation is it possible to talk of services which may be required by *some* children because of special problems. Among these are the "children in trouble."[82]

The brilliance of *Planning* was that it integrated specific findings and suggestions within the powerful, but wide-ranging, vision of liberal child welfare reform. Kahn also carefully considered the second principle in rehabilitation, the importance of therapeutic services to children and their families. Consistent with his view of child welfare as part of a broader system of social services, Kahn emphasized the limits of professional expertise focused on individuals. "The professions which help individuals directly, i.e., psychiatry, social work, psychology, education, etc., would do well to remember that, however much they are able to do with and for *individuals*, they cannot alone solve the total *community* problem of children in trouble."[83] Kahn did not reject the use of services in the treatment of children, far from it. Instead, he hoped to develop a systematic way of "matching of type of person-situation to type of treatment." Kahn rejected the notion that one particular approach could solve the problems faced by children and their families. Psychoanalytic methods, case work, group work, emphasizing the worker's authority, and

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[82] Ibid., 71, emphasis his.
[83] Ibid., 59–60.

organizing communities to help themselves all had a place in treating "children in trouble." Kahn welcomed continuing innovations and suggestions for helping children and their families. "Unfortunately," he lamented, "scientific literature dealing with causes and professional literature specifying orientations and methods do not always lead directly to soundly organized community efforts." The shortcoming in child welfare was not a lack of ideas or suggestions but a failure to effectively implement these programs.[84]

This failure of implementation, Kahn argued, could be solved through better integration within child welfare. The central finding of Kahn's extensive studies of child welfare institutions was that the "system" of services failed to provide for children. Unlike other observers, Kahn did not simply call for more facilities, more personnel, and more funding. Instead, he argued that unless services for children were restructured the system would remain ineffective. "Far too little is being done to ensure the right services for the right child—at the right time," he explained. "Further, community services are not patterned or interrelated in a manner to ensure that we will be more effective in the future than we are now. Results will be no better than they have been unless something new happens."[85] Kahn's analysis, therefore, recognized, in a fairly sophisticated way, the interconnectedness of child welfare policies. Unless communities recognized how these different institutions worked together, any reforms were doomed to fail. Kahn's perspective, however, was not particularly pessimistic. In line with the hopefulness of the early 1960s, Kahn argued that the knowledge and support for children was available, it simply needed to be arranged in coherent fashion. Child welfare policy was like a jigsaw puzzle, all the pieces existed and with some basic reform they could be put

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[84] Ibid., 352–392, 6.
[85] Ibid., 14.

together to create a positive picture of services for children. This focus on coordination and rehabilitation formed the third pillar of rehabilitative child welfare.

Kahn also asserted the need to protect the rights of children, the fourth principle of the rehabilitative consensus. Child welfare reform was not possible without respect for legal rights. "Little is accomplished," Kahn asserted," if planning is not carried out in the context of our concepts of individual rights and due process."[86] This meant that the intervention of child welfare agencies had to be restricted unless a formal and fair hearing process found intervention warranted. Uncovering a potential conflict within the child welfare network, Kahn also discussed a broader view of children's rights. As he explained, "there is another aspect of individual rights which deserves mention, using the term 'rights' now not to refer to court process but to a community's moral and legal obligations vis-à-vis an individual." How to balance the community's legal obligations to children with the children's and their family's rights to autonomy remained an open question.[87]

Planning Community Services for Children in Trouble represented not only the specific principles that unified the child welfare network, but also expressed the network's philosophical outlook. At the heart of this cult of rehabilitation was, of course, a belief in society's responsibility for all children. Yet, the child welfare network also expressed a providential belief that their reforms would succeed simply because they were the best ideas. In the conclusion to his book, Kahn explained that rehabilitation provided a more utilitarian and efficient solution to caring for children than any other option. To those who argued for hasher treatment of children, he explained that

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[86] Ibid., 53.
[87] Ibid., 55.

rehabilitation promised "greater protection" of society at less cost than punishment. Kahn was not dissuaded in his belief by current failures in child welfare. Rehabilitative treatment had not failed, Kahn observed, "For the fact is that *systematic, comprehensive rehabilitation based on validated knowledge has not yet been tried.*"[88] Kahn's mission and the mission of other welfare reformers was to institute an integrated system of child welfare that could provide true rehabilitation and care for all children.

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Justine Wise Polier, Joseph Reid, and Alfred Kahn worked at the center of the postwar child welfare network. But they did not work alone, lawyers, psychologists, psychiatrists as well as other juvenile court judges, social workers, and concerned individuals all contributed to the movement to reform child welfare institutions. While these individuals and their organizations were based in New York, activists across the country corresponded and collaborated with this network. Some activists focused their attention on reforming particular institutions like juvenile courts or foster care, but virtually all child welfare reformers shared a common vision of a coordinated system of child welfare that provided state supervised individual rehabilitation through therapeutic services. Where there were disagreements within the child welfare community, they were disagreements about emphasis, strategy, and resources, not the overall direction of child welfare reform. It was not until the 1970s that arguments emerged that weakened and eventually undermined the rehabilitative consensus. Before their vision was eclipsed, however, the postwar child welfare network made significant contributions to the reform of juvenile courts, foster care and adoption, child protection, and services to

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[88] Ibid., 525.

children and families. It is to the reforms in each of theses specific realms that we now turn.

Chapter Two:
Rehabilitating Juvenile Justice

"A single day spent in the Children's Court leaves the sympathetic spectator bewildered and deeply troubled," wrote Justine Wise Polier in 1941. "The aspect of children and parents, stories of complaining witnesses, words and even more the silence of children when questioned lay a heavy load upon the spirit. One's first impulse is to comfort the lonely child, lecture the parent who lacks understanding, move the family that exists in dingy overcrowded quarters, provide special food and clothing for the undernourished or ill-clad, secure work for the father whose unemployment darkens the household, transfer the child whose teachers have obviously failed to grasp his problems. Many obvious needs cry for action." As Polier quickly learned, it was impossible for a juvenile court judge to provide for all these needs. The solution, the postwar child welfare network concluded, was to create an integrated system of services to meet these problems. In this framework, the juvenile court would act, in many cases, as a gateway into a more expansive child welfare system.[1]

To the Progressive architects of the juvenile court, the court was primarily a child welfare institution. The postwar child welfare community continued to view juvenile justice as a child welfare concern over the second half of the twentieth century. They envisioned a system of juvenile justice that incorporated recent developments in the behavioral sciences to best treat and rehabilitate children and juveniles. They also realized that the informality of the juvenile court was, at times, more damaging than helpful to neglected and delinquent children. Beginning as early as the 1930s, therefore,

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[1] Justine Wise Polier, *Everyone's Children, Nobody's Child: A Judge Looks at Underprivileged Children in the United States* (New York: Charles Scribner's Sons, 1941), 81.

the child welfare network along with allies in the legal community, set out to develop a system of juvenile justice that provided both new protections within the juvenile court while at the same time strengthening the rehabilitative nature of juvenile justice. To do this, they realized, they would have to minimize the role of the juvenile courtroom and strengthen the child welfare institutions that surrounded the court. As Polier explained to the CWLA in 1946, "to the extent that the community meets the needs of its children through adequate homes, schools, recreational facilities and community services the function of the court diminishes." The best juvenile courts were institutions focused on the most serious issues of delinquency and neglect. Polier noted that "in those communities which are intelligently aware of and generously responsive to the needs of their children we are likely to find Courts that meet needs in those special areas in which Court action can be constructively used."[2]

The legislation and litigation surrounding the juvenile court from the 1930s through the 1960s, therefore, was part of a reevaluation of child welfare that attempted to make the institution more rehabilitative; in a sense, to reinvigorate the therapeutic mission of the court that its progressive founders had envisioned. Much of the large body of literature on the history of juvenile justice dismisses the attempts to reform courts in the 1960s. Scholars often tell a tale of an institution doomed at its creation, inevitably torn between its role as a social welfare provider and its duty to act as a court of law.[3] In

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[2] Justine Wise Polier, "The Function of the Court in a Community," Speech to the Child Welfare League of America, Cleveland, March 27, 1946, Justine Wise Polier Papers, Schlesinger Library, Harvard University, (hereafter cited as JWP Papers), box 45, folder 557.

[3] See, for example, Barry Feld, *Bad Kids: Race and the Transformation of the Juvenile Court* (New York: Oxford University Press, 1999), , Elizabeth S. Scott, "The Legal Construction of Childhood," in *A Century of Juvenile Justice*, ed. Margaret K. Rosenheim, Franklin E. Zimring, Davis S Tanenhaus and Bernardine Dohrn (Chicago: University of Chicago Press, 2002), 113–141; Ellen Ryerson, *The Best-Laid Plans: America's Juvenile Court Experience* (New York: Hill and Wang, 1978).

the 1960s, they explain, critics expressed unease with the procedural informality of the court and questioned the therapeutic experience in the courtroom. The U.S. Supreme Court eventually adopted this position pointing out that the child received the worse of all possible worlds—few procedural protections and little rehabilitation. The short lived reforms of the 1960s, then, are viewed as simply one last attempt to rationalize this internal contradiction before the Supreme Court decision *In Re Gault* clarified that juvenile courts would be criminal courts for children, a concept that came to fruition in the juvenile justice legislation of the 1970s.

Yet, as most careful readers of *Gault* have noted, the case was not a rejection of a rehabilitative juvenile court per se. Instead, Justice Abe Fortas, speaking for the court, embraced the new rehabilitative juvenile courts created in the 1960s that included basic due process protections along with psychiatric services for the care and treatment of delinquent children.[4] As the political scientist Christopher P. Manfredi has demonstrated, *Gault* is necessary but certainly not sufficient to explain the criminalization of juvenile justice in the 1970s.[5] The teleological narrative of a juvenile court doomed from the beginning is certainly flawed. The chapter at hand focuses on how the postwar network of child welfare advocates reformed juvenile justice to remain or become even more rehabilitative. Most importantly, it notes that these reformers recognized that the juvenile court's role as both a social welfare institution and a court of law was complicated, but not incompatible. The decision in *Gault* required a more formalized juvenile court, but it did not reject the belief in rehabilitative justice. Instead, following the insights of

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[4] *In re Gault*, 387 U.S. 1 (1967).
[5] Christopher P. Manfredi, *The Supreme Court and Juvenile Justice* (Lawrence: University Press of Kansas, 1998).

commentators and reforms by the states, *Gault* adopted a model of a formalized court within a system of services and institutions that could provide therapeutic services for children before they reached the courtroom or after their case had been adjudicated. The decline in rehabilitative juvenile justice occurred after *Gault*, as experts lost faith in the ability of the state to provide rehabilitation for some juveniles.

One of the major faults of the writing on the history of the juvenile court, is a tendency to focus only on the court, or, even more narrowly, on the issue of due process protections. However, providing protections for children in the court was only one of several reforms advocated to improve the system of juvenile justice nationwide. While commentators and experts of the 1950s and 1960s varied in the specific solutions they sanctioned, they shared a belief that juvenile courts and their associated institutions should continue to strive towards the rehabilitative ideal. To understand this, it is necessary to examine the reforms implemented for the whole system of juvenile justice, not simply the protections created for juvenile hearings.

This chapter focuses on the history of juvenile justice institutions in New York City where the network of child welfare advocates influenced much of this reform. Individuals like Justine Wise Polier, Marion E. Kenworthy, Viola W. Bernard, and Alfred J. Kahn would eventually join forces with legal activists like Charles Schinitsky to develop a juvenile court system that provided basic due process protections for children and parents as well as supporting institutions with the potential to rehabilitate. New York, of course, was not alone in implementing such reforms and similar narratives could be told about efforts to reform the juvenile courts in California and Illinois over the same

period.[6] This narrative, therefore, provides a single example in what I argue was an emerging consensus over rehabilitative juvenile justice.

Reforming Juvenile Justice in New York

Years before juvenile delinquency came under increased scrutiny across the nation, activists in New York began to form a network of child advocates that worked to improve juvenile justice and child welfare programs. One representation of this network was the Citizens Committee for Children of New York (CCC), an organization created in 1945 with a broad mandate to improve a wide range of child welfare institutions.[7] The CCC focused on three principles. First, was a belief in rehabilitation. For this system to work, these activists argued, trained psychiatric experts would have to evaluate, and provide individualized treatment for children. Second, they envisioned the creation of a coherent system of services under public supervision. The existing system of welfare relied heavily on voluntary welfare agencies that had little accountability to the juvenile court or other public officials. Even when a child remained in public facilities, their whereabouts were often unknown to juvenile court judges. Finally, the child advocates looked to reverse the racial and religious inequality that riddled the New York City child welfare system. The ability of private facilities and services to choose whom they would care for led to overt religious discrimination and covert racial segregation by sectarian welfare agencies. While Catholic and Jewish children often received adequate care, Protestants, and especially the growing number of Black Protestants, who came before

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[6] For a study of juvenile justice reform in California see Edwin M. Lemert, *Social Action and Legal Change: Revolution Within the Juvenile Court* (Chicago: Aldine Publishing, 1970.)

[7] See Mary Jean McDonald, "The Citizens' Committee for Children of New York and the Evolution of Child Advocacy, 1945–1972," (Ph.D. Diss., New York University, 1993).

the court faced limited options for placement with a handful of private facilities or in inferior public institutions.[8]

One tool this group saw as central to solving these problems was psychiatry. As the historian Ellen Herman has demonstrated, psychological thinking would gain new ground in American society and public policy during and after the Second World War. The juvenile court was, of course, from its inception a therapeutic institution. As juvenile courts were established across the United States in the early twentieth century, they were endowed with a "rehabilitative" mission. Rather than punish the children that came before them, judges were instructed to order individualized treatment. Beginning in the late-1930s and gaining force through the 1960s, psychiatry provided a new means by which to fulfill the rehabilitative mission of the juvenile court. The use of psychiatric analysis in juvenile courts was not new. The Chicago juvenile court created a Psychopathic Institute in 1909, and New York created its clinic in 1916. Initially, however, courts used psychiatry only as a diagnostic tool to help judges and other officers of the court determine the best disposition of the child's case. In the late 1930s, recognizing that the court often failed in its rehabilitative mission, activists began to call for the use of psychiatry not only for diagnosis, but also as a treatment for children under court supervision. These advocates viewed psychiatry and psychiatric social work as invaluable to the services provided for children both within and outside of the juvenile court. Even before the crises over juvenile delinquency emerged in the 1940s and 1950s,

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[8] Justine Wise Polier, *Everyone's Children, Nobody's Child: A Judge Looks at Underprivileged Children in the United States* (New York: Charles Scribner's Sons, 1941); Justine Wise Polier to Marion E. Kenworthy, Oct 26, 1937, Marion E. Kenworthy Papers, Oskar Diethelm Library, Cornell University. New York Presbyterian Hospital (hereafter MEK Papers), box 13, folder 18.

reformers were quietly creating new therapeutic or, more specifically, psychiatric institutions to bolster the rehabilitative nature of juvenile justice.[9]

By 1945, the procedure of the juvenile court, at least in New York City, was fairly standardized. Children could enter the court system by a number of means: they could be brought in by the police, they could be taken to the court by their parents, they could be referred by school officials, or they and their parents could be sent to the court by the Society for the Prevention of Cruelty to Children (SPCC). Once at the court, the child and his or her family would in minor issues be referred to the Bureau of Adjustment, and in more serious cases go directly to the petition desk. The Bureau of Adjustment would attempt to find an informal solution to the issue, while the petition desk would simply initiate the formal court procedure. If the probation officer working in the Bureau of Adjustment failed to find services for the child or family, the case would be sent to the petition desk. Once a petition was filed, a judge would adjudicate the validity of the charge in an initial hearing. After adjudication, the judge would ideally order investigation by probation officers or examination by the psychiatric services of the court. With new insight into the social and psychological state of the child, the judge would, in a subsequent hearing, determine an appropriate rehabilitative disposition for the minor and his or her parents. The judge could select from probation, public and voluntary services, as well as residential facilities in choosing treatment for the child.[10]

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[9] On the postwar role of psychology see Ellen Herman, *The Romance of American Psychology: Political Culture in the Age of Experts* (Berkeley: University of California Press, 1995); on the therapeutic role of the juvenile court, see Polsky, chap. 3, on the Chicago Psychopathic Institute see David Spinoza Tanenhaus, "Policing the Child: Juvenile Justice in Chicago, 1870–1925" (Ph.D. diss., University of Chicago, 1997), chap. 7; on the New York clinic see Alfred J. Kahn, *A Court for Children: A Study of the New York City Children's Court* (New York: Columbia University Press, 1953), 224.

[10] See Kahn, *A Court for Children*, 30–135.

One way that psychiatry could improve the performance of the juvenile court, reformers reasoned, was by incorporating the use of psychiatric social work in probation. Juvenile courts around the country had long used probation as a way of providing treatment without institutionalization or removal of children from their families. The historian Steven L. Schlossman has explained that the most important contribution of the nineteenth-century juvenile court movement was the system of probation that made the home the center of treatment.[11] Still, probation services often failed to provide the type of rehabilitative treatment that juvenile court advocates desired. These reformers recognized a solution to this problem in the growing field of psychiatric social work.

Psychiatric social work had its origins in efforts to professionalize social work beginning in the 1920s. In 1921, psychiatrist and child welfare activist Marion E. Kenworthy became one of the first to teach psychiatry at a school of social work. As a professor at the New York School of Social Work, Kenworthy pushed to expand the psychiatric training for social workers in various positions.[12] Judge Justine Wise Polier appointed to the New York City Children's Court in 1935, was equally hopeful that the use of psychiatric training would improve the probation services. Writing to Kenworthy in 1937, Polier noted optimistically that an experimental program would demonstrate "that trained psychiatric social workers can work intensively with the child and his parents" and would "provide a model on a small scale as to what can and should be

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[11] Steven L Schlossman, *Love and the American Delinquent: The Theory and Practice of "Progressive" Juvenile Justice, 1825–1920* (Chicago: University of Chicago Press, 1977), 62.
[12] Viola W. Bernard, "Profiles of Famous American Psychiatrists: Marion E. Kenworthy," (New York: Insight Publishing, 1979).

done."[13] Polier, Kenworthy and other members of the child advocacy network would continue to emphasize the value of psychiatric training for decades to come.

Beyond pushing for the use of psychiatry in probation, Polier and Kenworthy also recognized a need for psychiatric treatment for more serious cases that came before the court. To these ends, they sought to create a new treatment clinic for the juvenile court that went beyond the psychiatric evaluation provided by the current diagnostic clinic. Together Polier and Kenworthy convinced the head of the Children's Court and the director of the diagnostic clinic to support the creation of an experimental clinic to treat children and their parents. The cost to the city was minimal since philanthropic foundations provided support and graduate students staffed the clinic as part of their training. Polier and Kenworthy believed that the clinic would fulfill services desperately needed by the court and demonstrate the utility of psychiatry in serving delinquent and neglected children. As early as 1937, therefore, advocates like Polier and Kenworthy embraced psychiatry as the path to reforming child welfare. Psychiatry, they argued, would decrease the number of children placed in institutions or foster care while providing effective treatment for the problems that led children and their parents into the court.[14]

The creation of the treatment clinic of the New York City Children's Court represented the influence of both the child guidance movement and beginnings of the campaign for community mental health.[15] The treatment clinic provided "out-patient"

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[13] Polier to Kenworthy, October 26, 1937, MEK Papers.
[14] Kahn, *A Court for Children*, 225; Polier, *Everyone's Children, Nobody's Child*, 47–48.
[15] See Gerald N. Grob, *From Asylum to Community: Mental Health Policy in Modern America* (Princeton: Princeton University Press, 1991); and Margo Horn, *Before It's Too Late: The Child Guidance Movement in the United States, 1922–1945* (Philadelphia: Temple University Press, 1989).

services for children without institutionalization and beyond the limited resources offered by the city's Bureau of Child Guidance. In its early stages, one part-time psychiatrist, one full-time psychiatric social worker, eight student workers and one stenographer served the Manhattan clinic. With this limited staff, only about 160 children received treatment each year. Still, Polier, Kenworthy, and other members of the child welfare community pressed the city to appropriate funding to turn the clinic into a permanent feature of the children's court.[16]

A 1942 report provided some insight into the clinic's activities. Rather than subscribe to a particular school of psychiatry or explanation of the causes of delinquency, this report presented a set of ecumenical therapeutic beliefs. "If there is one truth which has emerged from the mass of study about human behavior," the report explained, "it is this: Emotional handicaps can play as much havoc with our growth and well-being as mental defects, physical illness, or environmental limitations." Taking a behaviorist slant, the report continued to explain the origins of many emotional problems. "Children share all our adult urges and desires. They want to avoid pain, find comfort, enjoy affection, receive notice, feel power, command respect. All perfectly valid incentives – but when the view is distorted, when the 'conditioning' is warped, children . . . try to find their objectives through undesirable or ineffective avenues of conduct." The children that came before the juvenile court had internalized a faulty attitude probably from their interaction with their parents. Since they are children, the report emphasized, "the attitude is not firmly crystallized, the hope of readjustment is more often within reach."[17]

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[16] Treatment Services of the Psychiatric Clinic of the Manhattan Children's Court, June 14, 1943, JWP Papers, box 6, folder 63.
[17] Ibid.

The treatment clinic report admitted that the causes of delinquency were complex, "overcrowded homes, submarginal budgets, neighborhood influences, unhealthy attitude of parents," all could lead to delinquency. Yet, not all children in these conditions became delinquent; instead, "something already incorporated in him" led to "a child's anti-social behavior." The problem was, therefore, psychological, and could be ameliorated through psychiatric services. The report advocated a form of psychotherapy as the treatment for many of these children. First, "the clinic must establish a friendly relationship with the child, an atmosphere free from suspicion, fear, or censure, in which the child is encouraged to talk about anything that comes to mind – his feelings about his family, his school, his friends, his likes, his dislikes, his dreams." Sometimes, the creation of this "'accepting' attitude" was enough. "For if a child can bring his hostility and rebellion to the surface and get it out, his compulsion to behave badly becomes less intense." Ideally, the therapy would progress to where the child "begins to understand *why* he acts as he does, or what he really wants to do. Then, even if the home situation cannot be altered greatly, he will learn to accept its limitations better because he understands the source of his difficulties." Despite the many issues leading to delinquency, this psychiatric clinic would transform the one issue they could influence, the child's attitude and his relation to his surroundings.[18]

The report included the story of a child that exemplified the treatment clinic at its best. Norman was brought before the court on a delinquency petition concerning his sexual behavior since he had possessed "indecent literature," and attempted "sex experiments with younger boys." The judge placed Norman on probation and referred

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[18] Ibid.

him to the treatment clinic. Norman was unusually tall for his age, "at fifteen he was six and a half feet tall," and the clinic found his size contributed to his maladjustment. As the report explained, "everyone expected a lot of Norman, because he was big." Establishing a relationship with a clinic social worker began to transform the child; "for the first time Norman began to see himself as a person worthy of someone's trust." Over his six months of therapy, he became more comfortable with himself and realized "there was nothing peculiarly abnormal" about his sexual development. When he reappeared before the children's court judge, his case was discharged and his probation discontinued. As Norman explained to the judge, "I'm not so scared about things, and I get along better with people, and I—I guess I'm not afraid of myself any more." The treatment clinic had done its job.[19]

The often simplistic description of the treatment clinic and its work in this report can be partially attributed to its aim at an audience of philanthropic organizations rather than specialists in child psychiatry. Still the report emphasized the basic outlook and method of the supporters of psychiatric services for delinquent children. First, that maladjustment was a central cause in creating delinquency. Second, that among the various social and economic issues leading to this problem, it was the individual pathology that the court could best treat. Third, that the nature of the interaction between court representatives and clients was what made rehabilitation possible. The greater the psychiatric training of court personnel, the report reasoned, the greater the likelihood of a positive relationship. This basic psychiatric outlook would shape many of the rehabilitative programs created in conjunction with the juvenile court.

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[19] Ibid.

While the creation of a treatment clinic aimed to provide rehabilitation in the disposition stage, child welfare advocates also looked to reform the beginning stage of the juvenile court process. To this end, in 1951 Polier and Kenworthy joined other members of the court and its clinic in calling for a new system to evaluate children before they entered the courtroom. The creation of rehabilitative intake procedures would become a central component of the 1960s consensus on the juvenile court. As noted above, the court already contained a Bureau of Adjustment. This Bureau was created in 1936 in order to reach informal disposition of cases before they reached the court. Importantly, the Bureau of Adjustment helped to keep the judges and other court staff from becoming overburdened with less serious petitions. However, since only certain types of cases went through the adjustment process, many children and their families were directed immediately into the sometimes traumatic petition and adjudication process. This left these respondents unprepared for what was about to occur, and provided little information on the situation for the judge before the initial hearing.[20]

An experimental court intake project went into operation in February 1952. Unlike the Bureau of Adjustment, the goal of this intake process was not to resolve issues before the court hearing, instead the children would be evaluated to determine underlying psychological issues and to consider possible dispositions to the case. In addition, the intake process would help clients understand the hearing process they were about to experience. A team with representatives from the court's judges, clinic, and probation staff oversaw the interdisciplinary program. This team trained personnel to create a reception unit made up of a psychiatrist, a clinical psychologist and several psychiatric

[20] Kahn, *A Court for Children*, 60–88; John Warren Hill to the Justices of the Domestic Relation Court, April 10, 1952, JWP Papers, Box 6, Folder 65, copy also in MEK Papers, Box 3, Folder 9.

social workers. Immediately after cases were brought to the petition desk, clients were given the option of meeting with a member of the reception unit before entering the court. If they agreed, clients met with a psychiatric social worker in consultation with the psychologist. When it was deemed necessary, the psychiatrist would also enter the process. By meeting with this reception team, children were immediately placed in contact with psychiatric and psychological experts. As the proposal for the project explained, "the selection of a case for psychiatric study, and thus ultimately for treatment, generally is carried out by judges and probation officers whose training, traditions, equipment and practices are not especially designed to assist them in carrying out these particular functions." Through the use of the reception team, the court could be assured that those who most need psychiatric treatment would receive it.[21]

Overall, the intake experiment was considered a success. The findings of the reception team were not used by judges in adjudicating whether a child was delinquent or neglected, but the information the unit provided eased the disposition process. Clients were better prepared for what they would experience in the hearing and often were aware of the possible treatment options that the judge would consider. In most cases, it was possible "to make a diagnostic evaluation of a case on its first day in court and prior to [an] initial hearing" rather than wait the months it took probation officers to complete their investigation. The intake experiment also emphasized the importance of psychiatric and psychological knowledge. As the initial report on the study explained, "there appeared to be in almost every case an important and sometimes critical aspect of the

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[21] Preliminary Report on the Operation of the Court Intake Project of the New York City Court of Domestic Relations, February 1, 1953;MEK Papers, Box 3, Folder 9; copy also in JWP Papers, Box 6, Folder 65. Harris B. Peck, M.D., A Project to Explore and Demonstrate the Possibilities of Universal Psychiatric Screening at the New York City Court of Domestic Relations, 1951, p. 2, JWP Papers, Box 6, Folder 65.

problem which seems to demand the participation of clinical personnel in order to achieve optimal results."[22]

The intake study also led to some disturbing conclusions about the interaction of the court with other community institutions. The study's data appeared to point to a high level of "severe reading disabilities" among the children brought to the court. Since the study had excluded referrals through the schools, it appeared that these problems went unrecognized in schools and only appeared when the child presented other problems. It was unclear, however, if these educational problems contributed to the juvenile's delinquency, or the reading delay was symptomatic of "the total breakdown in motivations and adjustment on the part of a child." Either way the court was forced to step in where the schools had failed.[23]

Similarly, the study uncovered several neglect cases where the parent showed evidence of psychosis. Upon further investigation, it was found that these parents had been seen by state or city psychiatric services and that the appearance in court "could be directly traced to the failure in the part of the hospital or clinic to assume continuing responsibility for the case." In both these instances, the court was required to handle problems created by shortfalls in other community services. This question of how the court could most efficiently interact with other community institutions was at the heart of the most exhaustive study of the New York Children's Court by Alfred J. Kahn.[24]

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[22] Preliminary Report on the Operation of the Court Intake Project of the New York City Court of Domestic Relations, February 1, 1953.;MEK Papers, Box 3, Folder 9.
[23] Ibid.
[24] Ibid.

A Court for Children

In 1952, the CCC hired Alfred J. Kahn to investigate the juvenile court and suggest possible areas for reform. As a colleague of Marion Kenworthy's at Columbia's New York School of Social Work and a staff member of the CCC, Kahn was at the center of the city's child welfare policy network. In fact, Kahn would dedicate his life to studying social welfare and its effects on children in the United States and around the world. Kahn represented an academic professional perspective on social work; he held the first doctorate in the field of social welfare granted in New York State, and he often advocated for the use of psychiatric social work.

Kahn's *A Court for Children* provided a vivid portrait of the New York City Children's Court, highlighting its many faults. Kahn, however, did not reject the mission of the juvenile court; he believed that rehabilitation was possible. Importantly, his study was not limited to the courtroom; instead, he focused on how facilities related to the court used psychiatry and social work to diagnose and treat children. Kahn's focus on these extra-judicial institutions provided a unique insight into the operation of the system of juvenile justice. *A Court for Children* demonstrated that the court failed to rehabilitate children, not only because the judges performed poorly, although many judges did perform poorly, but because other institutions—the intake system, the probation system, the psychiatric clinic, and the public and voluntary treatment facilities—lacked the training and staff to provide appropriate services.

Kahn began his study by examining the "doorways to the court," the effectiveness of the various activities involved in intake. Like the intake study undertaken at the same time, Kahn concluded that the Bureau of Adjustment had significant potential to improve

the system of juvenile justice. Between 1950 and 1953, the Bureau resolved almost a quarter of the cases before petitions were filed in the court. The Bureau of Adjustment, however, processed only certain cases, since all serious cases went directly to the petition desk. The Bureau was also limited in what it could achieve since all parties had to agree to the resolution. Kahn found that the interviewing and referral practices of the Bureau lacked the attention to individual solutions necessary for rehabilitation. Despite these constraints, the Bureau provided an important gateway into various welfare services through the voluntary agreements of clients.[25]

Kahn also made a number of recommendations on the work of the Children's Court Judges. "The majority of judges," Kahn explained, "define their roles in ways which in some respects do not seem to be consistent with the intent of the law and in others fail to implement it successfully."[26] Most judges, in Kahn's evaluation, used a punitive approach, rather than the therapeutic method intended in the juvenile court. Many judges patronizingly lectured the children before them. One, for example, questioned a child's understanding of morality by testing his knowledge of the Ten Commandments. The judge explained that the boy "could not possibly know the difference between right and wrong without knowing the Ten Commandments."[27]

The Judges also routinely ignored the rights of the children and their parents. They often failed to inform them of their right to counsel and of their right to request an adjournment. While Kahn did not believe that most traditionally trained attorneys provided appropriate representation in the Children's Court, he realized that there was "a

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[25] Kahn, *A Court for Children*, 53–94.
[26] Ibid., 106.
[27] Ibid., 108–110.

great need to consider how individual rights can be guarded while justice is individualized through informal procedure."[28] Without providing specifics, he called on the court to "strengthen 'due process' safeguards," while maintaining its rehabilitative goals.[29]

Based on these findings, Kahn argued that a new method should be devised for the selection of more qualified judges. Given the nature of New York City's politics, mayors often selected judges based on political favors or the need to maintain religious balance rather than on ability.[30] He also argued that the legal labels of "delinquency" and "neglect" hindered the mission of the court. If the role of the court was to identify children in need and provide treatment these legal labels often stymied these goals. Finally, he called on the judges to improve their performance: religious instruction needed to be removed from the court, judges had to take the recommendations of probation officers, social workers, and psychiatrists seriously, and judges had to make the courtroom an inviting environment that met the rehabilitative goals of the juvenile court.[31]

The actions of the judges of the Juvenile Court troubled Kahn, but the deficiencies in the probation department disturbed him even more. Kahn claimed that probation was a form of social work, that probation officers should follow the casework methods of the diagnostic school of social work.[32] Since the establishment of juvenile courts, probation

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[28] Ibid., 133.
[29] Ibid., 133–135.
[30] Ibid., 98.
[31] Ibid., 133–135.
[32] Kahn, *A Court for Children,* 138–141, esp. footnote 17. For more on the professionalization of social work see John H. Ehrenreich, *The Altruistic Imagination: A History of Social Work and Social Policy in the United States* (Ithaca: Cornell University Press, 1985); and Daniel J. Walkowitz, *Working With Class:*

played an important role in both investigating and providing rehabilitation for children and their families.[33] According to Kahn's study, the probation department failed in both of these functions. He did not, however, lay all of the blame on the probation officers; he pointed out that they were underpaid, overburdened with high case loads, and given insufficient time and inadequate facilities for their work. In addition, he realized that many judges ignored the advice of the officers, further damaging morale in the department. Overall, however, Kahn argued that the expectation and understanding of the role of the probation officer had to be transformed. Trained social workers needed to be hired and the position should be re-titled from "officer" to "counselor." These changes would cost more for the probation department, Kahn admitted, but a successful rehabilitative probation department would save the city by reducing the cost of unnecessary institutionalization.

There were also serious gaps in the interaction between the court and public and voluntary services that often provided care for children. Some agencies, like the Catholic and Jewish organizations, had liaisons with the court to ease the process. There were however, few agencies that served black Protestants and they did not have a liaison to interact with the court. This discrepancy institutionalized inequality into the court structure. One of the greatest problems was finding temporary placement for children in need of shelter. At times, the judge had no choice but to send a neglected child back home due to lack of space. In other instances, institutions refused to accept permanent responsibility for children; this forced children into a legal limbo, stuck in a temporary

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Social Workers and the Politics of Middle-Class Identity (Chapel Hill: University of North Carolina Press, 1999)

[33] Schlossman, *Love and the American Delinquent*, 57–62.

placement without formal disposition of their case. The presence of voluntary agencies that refused to care for particular children demonstrated to Kahn that the ability to provide better services existed if the state and city truly took responsibility for all children.[34]

For Kahn, the court's potential to provide for the welfare of children, was lost in its current practices.

> The majority of the children before the Court . . . receive service which does not reflect the juvenile court movement's aspirations or the kinds of help that fully qualified personnel with adequate community resources at their disposal would be able to provide. For some of the children, the Court represents a well-intentioned but inadequately prepared, pressured group of individuals who cannot achieve what they strive to do. For many, it is the insensitive instrument of an indifferent or hostile social world.[35]

Kahn believed in the rehabilitative concept of the juvenile court, but, in New York City, the court never had the adequate resources or staff to fulfill that vision. Kahn's evaluation of the court—focusing on the faults in the services surrounding the court as well as in the courtroom—provided a touchstone for reform of the entire system of juvenile justice.

The Rehabilitative Consensus

Kahn's work on New York City soon became part of a national conversation on the role of juvenile courts, especially in light of the concern over rising rates of juvenile delinquency. *A Court for Children* had emphasized the role of the court as a therapeutic institution and its interaction with other child welfare institutions within the community.

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[34] Ibid., 240–263.
[35] Ibid., 264–265.

Other commentators, however, began to focus on the hearing process within juvenile courts and limitations placed on the rights of minors. For decades, critics had called for the abolition of the juvenile court.[36] More recently, observers of the court had noticed the problems created by limited protections for the rights of minors.[37] By the 1950s, even those sympathetic to the aims of juvenile courts began to question the lack of due process rights in these proceedings.

In his article "Fairness to the Juvenile Offender," law professor Monrad Paulsen mapped out a middle ground between the informality of the juvenile court and strict criminal court procedure. Rejecting the notion of criminalizing juvenile justice, Paulsen hoped "to discover what courts can do to protect the rights of the child more adequately without sacrificing the very real benefits of our courts for children."[38] In many ways, however, Paulsen's piece read as a defense of the wide discretion of juvenile courts. While he recognized the potential for "over enforcement," he argued that the laws should defer to the juvenile court process. "If the treatment process is, in fact, rehabilitative and redemptive, it ought to be applied to cases in which the youngster's commission of an actual criminal act is just a matter of time."[39] Paulsen, therefore, was comfortable with the language of juvenile court acts, which he admitted "would be unconstitutionally vague if it were used as the basis for criminal prosecution."[40] Following this reasoning, he rejected such reforms as public trials and higher standards of evidence.

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[36] See Jesse Olney, "The Juvenile Courts--Abolish Them," *California State Bar Journal* 13 (1938): 1-6.
[37] Fred E. Ellrod, Jr. and Don H. Melaney, "Juvenile Justice: Treatment or Travesty?" *University of Pittsburgh Law Review* 11 (1950): 277-287; Note, "Due Process in the Juvenile Courts" *Catholic University Law Review* 2 (1952): 90.
[38] Monrad G. Paulsen, "Fairness to the Juvenile Offender," *Minnesota Law Review* 41 (1957): 547-576, 550.
[39] Ibid., 557.
[40] Ibid., 556.

The one reform, however, that Paulsen strongly supported was a provision to supply counsel to represent children before the court. Citing recent cases arising out of the District of Columbia, Paulsen noted that even if it is only "treatment" that is at stake in juvenile court hearings, it is treatment "performed under the compulsion of the state." Therefore, "the need for any intervention by the government into the life of the child ought to be clearly demonstrated in a fair proceeding wherein the legal rights of the child are protected."[41] This call for lawyers in the court was controversial. In his study, Alfred Kahn had noted the potential abuses of children's rights in the courts, but argued that counsel for child might not be an appropriate solution. "Far too many lawyers," Kahn explained, "bring with them to the courtroom their traditional emphasis on technicality and orientation of contentiousness."[42] These values did little to advance the mission of the juvenile court. Paulsen, however, forcefully rejected this criticism as shortsighted. "That lawyers are not ordinarily trained to be helpful," he asserted, "does not argue against assigning them a role in delinquency cases, but rather in favor of giving lawyers an understanding of the aims and methods of the juvenile courts." With special training, Paulsen explained, lawyers could protect the rights of their juvenile clients without destroying the rehabilitative mission of the juvenile court.[43]

As rates of juvenile delinquency continued to rise over the 1950s and greater attention was focused on this problem, supporters of the juvenile court examined what reforms could strengthen the institution. They looked to the work of individuals like Polier and Kenworthy in providing greater therapeutic services for the court; they looked

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[41] Ibid., 569.
[42] Kahn, *A Court for Children,* 100.
[43] Paulsen, "Fairness to the Juvenile Offender," 570

to Kahn's study of how these auxiliary services and other community institutions often failed to mesh with the work of the juvenile court; and they looked to legal commentators like Paulsen who argued that some basic due process protections were needed in juvenile courts. In March 1959, Kahn, Paulsen, and other experts on the juvenile court representing judges, social workers, and probation officers met at the School of Social Service Administration of the University of Chicago to analyze the status of the juvenile court fifty years after its creation. The papers from this conference, later published as *Justice for the Child: The Juvenile Court in Transition,* represented a rehabilitative consensus on the juvenile court. While there was disagreement among these observers of the court, all agreed that the function of the court must remain rehabilitative, that basic due process rights must be protected, and that the court must act as a doorway to effective therapeutic institutions. These 1960s reformers did not call for the end to the rehabilitative ideal; instead they embraced the notion of a fairer yet more rehabilitative institution.

The rehabilitative consensus was best exemplified by one of the most outwardly critical pieces on the failure of the juvenile court in the *Justice for the Child* collection. Orman W. Ketcham, a judge on the juvenile court for the District of Columbia, entitled his contribution "The Unfulfilled Promise of the American Juvenile Court." As Ketcham explained, the original juvenile court was based on a questionable interpretation of the equitable doctrine of *parens patriae*. The concept was one which arose out of the English court of chancery through which the king "assumed the general protection of all infants in the realm." In practice, the doctrine was used almost exclusively to supervise and protect wealthy minors. In the juvenile court acts passed by nearly every state in the early

twentieth century, however, *parens patriae* was cited to justify that the state would act as a parent to the child, and therefore traditional criminal court protections were not necessary in these civil court proceedings. Ketcham argued that in practice this conception of *parens patriae* represented a mutual compact which allowed the juvenile court to "substitute state control for parental control" based on "the assumption that the state will act in the best interests of the child and that its intervention will enhance the child's welfare." The question, as Ketcham framed it, was had the state held up to its end of the compact by acting "for the improvement of the child's welfare"? If it had not, then "the child and his parents may demand the full protection of criminal due process afforded adults charged with a crime."[44]

Ketcham held the juvenile courts to a high standard, but his analysis rested upon a belief in the importance of rehabilitation to the mission of the juvenile court.

> Performance, rather than good intentions, must be the standard by which to judge the success of juvenile courts today. The state through its juvenile courts, must demonstrate that it is conscientiously striving to achieve the rehabilitation it promises and to employ the best institutions, probationary, medical, psychiatric, and other techniques in order to offer each child an opportunity to develop into a mature, law abiding citizen. The state has no right to substitute governmental for parental neglect.[45]

If the juvenile court was found to be truly rehabilitative in practice, then it had to fulfill its part of his theoretical mutual compact. To become rehabilitative, however, courts should rely on modern therapeutic techniques perhaps unknown to the founders of the court, but crucial to the future operation of the court.

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[44] Orman W. Ketcham, "The Unfulfilled Promise of the American Juvenile Court," in *Justice for the Child*, ed. Margaret Keeney Rosenheim, (New York: Free Press, 1962), 25–27.
[45] Ibid., 26–27.

Ketcham's analysis of the juvenile courts throughout the country found many that failed in their rehabilitative mission. Yet, he was not ready to simply turn juvenile courts into junior criminal courts. Instead, he argued that those interested in "justice for children" must "insist that the state take prompt steps to perform on its promises." He provided four broad suggestions for the reform that needed to be made for juvenile courts. First, he insisted "that legislatures provide juvenile courts with sufficient trained judges and adequate professional staff to dispose patiently yet expeditiously of all cases referred to them." Second, without providing specifics he recommended juvenile courts institute procedures that ensured "due process and fair treatment for the child and his parent." Third, he requested "that procedures for assessing the needs of children coming before these courts be developed by behavioral scientists." Fourth, looking at the disposition stage of the court process, he called for "the prompt construction and adequate staffing of institutions truly designed to provide delinquent and dependent juveniles the care, guidance, and discipline that should have been provided by their parents."[46] These four demands encapsulate the consensus over a rehabilitative juvenile court.

Working within this broad agreement over the future of juvenile justice, experts needed to determine how to combine due process protections and therapeutic treatment. Legal, sociological, and social work experts all appeared to point to a similar solution: formal juvenile court hearings should be insulated from the more rehabilitative processes of the court. Attorney Alex Elson recommended that that courts adopt a two hearing process. In the first hearing, judges would rule on jurisdiction and the facts of the case.

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[46] Ibid., 38–39

In a second hearing, the court would determine the most appropriate treatment for the child. Social investigations and reports would only be admitted in the second disposition phase.[47] Sociologist Paul W. Tappan agreed with Elson that the legal authority should be sealed off from the more administrative work of the court. For Tappan, however, that meant that the formal apparatus of the court should only be used in the most serious circumstances. "Exercise of legal authority should be predicated upon a scrupulous determination that the child has engaged in delinquent conduct of a character seriously threatening to the community or that he has suffered from the willful neglect of his parents."[48] The juvenile court's jurisdiction under this framework would become more restricted and focused. The compromise reached by Elson and Tappan developed the notion of a more formalized juvenile court within the framework of rehabilitative juvenile justice.

The problem with this conception, as both Alfred J. Kahn and social welfare professor Howard E. Fradkin noted, was in defining the extra-judicial capabilities of the juvenile court. Fradkin examined the various types of disposition that occurred once children were referred to the juvenile court. He noted that in many cases disposition occurred either at intake, before the child entered the court process, or through an informal arrangement developed without a hearing before a judge. These outcomes certainly deferred some of the burden on the juvenile court system by providing general child welfare services. The problem, Fradkin explained, was that "even the best of our courts are ill-suited to conduct the essential tasks that fall within the province of modern

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[47] Alex Elson, "Juvenile Courts and Due Process," in *Justice for the Child,* 105–106.
[48] Paul W. Tappan, "Juridical and Administrative Approaches to Children with Problems," in *Justice for the Child,* 167.

child welfare agencies—foster-home finding and placement, residential psychiatric treatment, and the operation of congregate care facilities for nondelinquent teenagers." To provide the necessary treatment, juvenile courts needed to be either at the center of all child welfare services, or limit themselves to a specific function within the community's system of child welfare.[49]

Looking at the same question, Kahn also concluded that juvenile courts would best serve the community by fulfilling their role as courts and referring children to other institutions where they could receive the best care. Kahn asked: "Has not the juvenile court been too long regarded as the hub of the entire system for dealing with children in trouble? Should it not have a more clearly defined, more specialized, and, subsequently, a narrower and more modest role?"[50] Tappan, Fradkin, and Kahn all agreed that juvenile courts should become more formalized, less extensive institutions. It would be a mistake, however, to interpret this as a retreat in support for the rehabilitative ideal. Rehabilitation was still critical to juvenile justice and child welfare in general, but they argued children would best be served by therapeutic institutions outside of the juvenile court. The question that remained unanswered, however, was how child welfare institutions would care for the many children that had once solely been clients of the juvenile court.

The New York Family Court Act of 1962

While national experts re-imagined the role of the juvenile court, local child welfare activists in New York continued to respond to harsh criticism. Justine Wise Polier griped in 1958 "crisis after crisis has been played up in the press, and the City has

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[49] Howard E. Fradkin, "Disposition Dilemmas of American Juvenile Courts," in *Justice for the Child,* 125
[50] Kahn, "Court and Community," in *Justice for the Child,* 218.

been caught between the demands for a get tough approach and the suggestions for more thoughtful efforts to prevent and rehabilitate."[51] Like the national experts, New York child advocates continued to have faith in the rehabilitative ideal. From their perspective, the concept of the juvenile court was not "fundamentally flawed," just "imperfectly implemented."[52] Therefore, Polier continued to argue that rationalization of the child welfare system and the provision of better services would ameliorate the delinquency problem. Those advocating a punitive approach to delinquency, Polier explained, were simply being short sighted. "There has been no adequate recognition of the fact that existing, complex social problems will create more delinquents to fill the places of children 'put away,' that children come back to the community after they have been put away and commit more serious offenses unless they have been helped." Locking children up was not the solution to delinquency; instead, it would be necessary to find rehabilitative services that prepared minors to become better citizens.[53]

Like Paulsen and other commentators, members of the child welfare network remained uneasy about the potential violation of individual rights inside the courtroom.[54] In 1958, recognizing "the danger that rights which are protected for the accused adult are lost in the informal process," the CCC contemplated how to meld their rehabilitative vision with mechanisms to protect the rights of children. In conjunction with the New York Civil Liberties Union and National Probation and Parole Association, the CCC

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[51] CCC, Juvenile Delinquency Subcommittee of the Protective Services Section, May 1958, Viola W. Bernard Papers, box 170: folder 2, A. C. Long Health Sciences Library, Columbia University (hereafter cited as VWB Papers).

[52] I borrow these terms from Christopher P. Manfredi, *The Supreme Court and Juvenile Justice*, 41. For more on Juvenile Court reform before Gault see Manfredi, chap. 2.

[53] Protective Services Section Report, CCC, May 1958, VWB Paper, Box 170, Folder 2.

[54] See for example, Monrad G. Paulsen, "Fairness to the Juvenile Offender," *Minnesota Law Review* 41 (1957): 547–576.

seriously considered several proposals including expanding the role of counsel in the Children's Court.[55] Under the Domestic Relations Court Act and Rules of Practice of the court, the child and its parents had a right to counsel; however, judges did not assign counsel and most respondents simply waived this right. In 92 percent of the cases before the Children's Court in 1959, no attorney represented either the child or parent.[56]

Charles Schinitsky, a lawyer with the New York Legal Aid Society, personally dedicated himself to providing legal representation for children and their parents in the New York Children's Court. Schinitsky spent a year in the Children's Court observing over one thousand hearings and representing more than one hundred respondents in the court. He found that rather than functioning as an informal body attempting to help the child, most courtrooms resembled a criminal court in which the judge was expected to act as "an able prosecutor, conscientious defense counsel and impartial arbiter."[57] The frequent result was a failure to represent the rights of the child, an inability to determine the facts of the case, and adjudication based on evidence that would be inadmissible if the respondent were in a criminal court. The solution, as Schinitsky saw it, was to provide trained counsel to the children and parents in the Children's Court.

Schinitsky proposed that the court assign, on a permanent basis, an attorney or group of attorneys to provide representation for those who could not afford it. These lawyers would be aware of the purpose of the court, and would assist the judge in determining the facts of the case, while they represented parents accused of neglect or children accused of delinquency. As Schinitsky demonstrated with his experimental

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[55] Protective Services Section Report, CCC, May 1959, VWB Papers, Box 170, Folder 3.
[56] Charles Schinitsky, "Role of Lawyer in Children's Court," *Record of the New York City Bar Association* 17 (1962): 15,18.
[57] Schinitsky, "Role of Lawyer in Children's Court," 23.

representation of respondents in the court, the presence of counsel could make the court more efficient while protecting the rights of children and parents.[58]

By 1961, New York's child welfare activists realized that the most effective way of reviving the institution of the juvenile court was wholesale reform. The piecemeal solutions that they had presented failed to create the coherent system of care for children. For these reasons, the CCC and other child welfare organizations urged acceptance of the New York constitutional amendment on court reorganization when it went before the voters in November 1961.[59]

Soon after the approval of the New York's court reorganization amendment, the CCC announced its recommendations for the new Family Court. The concept of a family court provided the opportunity to apply social knowledge to other family issues like support, custody, adoption, and guardianship, and, therefore, revive the juvenile court from its marginal status. The CCC envisioned a court with broad jurisdiction, some basic procedural due process protections, large areas of judicial discretion, and legislative instructions for creating auxiliary services such as intake and probation.[60] They recommended, therefore, that the court gain additional authority over minors between ages 16 and 21. To further facilitate the court's rehabilitative mission they advocated that the terms delinquent and neglected, which had gained negative connotations be dropped from the court. While the court should be required to show specific cause in asserting supervision over the child, the CCC argued, the treatment of the child should be based exclusively on the minor's needs. To protect the interests of the child in the court, they

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[58] Ibid., 24-25.
[59] CCC, Annual Report of the Protective Services Section, p. 9, VWB Papers, box 170: folder 5.
[60] CCC, Recommendations to The Joint Legislative Committee on Court Reorganization, January 1962, VWB Papers, box 181:folder 18.

adopted Schinitsky's proposal to provide lawyers in the court. Finally, the CCC asserted its commitment to adequate auxiliary services, including probation, mental health professionals, and an extensive intake system, as critical to the rehabilitative vision of the court.[61]

The Family Court Act passed by the New York State legislature embodied the national consensus on a rehabilitative juvenile court. As law Professor Monrad G. Paulsen explained, "on the whole, it represents a brave attempt to fit the socialized aims of a family court into a traditional procedural system."[62] The legislation provided quite extensive protections for the rights of minors. First, rather than abolishing the labels of delinquent and neglected, as the CCC had advocated, the law redefined these legal categories. While the legislature maintained the traditional meaning of "neglect," they revised the term "delinquent" to include only those children who had broken the law. In addition, the act created a new category of "Persons in Need of Supervision" (PINS) to include those children who had not broken the law but who were "incorrigible, ungovernable or habitually disobedient."[63]

In order to adjudicate that a minor was delinquent, a judge had to find, by a preponderance of the evidence, that the minor had committed an act that would be a crime if committed by an adult.[64] Furthermore, ordering treatment in a state training school was limited to delinquents. This limitation protected a child who had broken no specific law from institutionalization; however, as the CCC noted in protest, this

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[61] Ibid.
[62] Monrad G. Paulsen, "The New York Family Court Act," *Buffalo Law Review* 12 (1962): 441.
[63] Laws of New York, Chapter 686, Section 714, See also, Nanette Dembitz, "Ferment and Experiment in New York: Juvenile Cases in the New Family Court," *Cornell Law Review* 48 (1963): 507.
[64] Laws of New York, Chapter 686, Section 742 and 745.

provision threatened the notion of individualized justice, restricting a judge from sending PINS to state training schools even if that was where they would receive the best care. The CCC was also disappointed by the limited jurisdiction of the court over minors older than 16. In a bizarre compromise, the law maintained delinquency jurisdiction only for children under 16 and limited PINS petitions to boys under 16, but extended the court's PINS jurisdiction to girls younger than 18.[65]

New legal categories were not the only procedural protection in the new Family Court Act. The law also distinguished between two types of hearings in the juvenile court. First, the judge was required to hold an "adjudicatory hearing" to weigh the evidence presented in support of the petition. For this phase, the legislature placed strict limits on the type of evidence allowed, barring the reports of social investigations that were frequently featured in juvenile courts. Once the judge made a finding on the petition, then social evidence could be considered in the "disposition hearing" to determine the appropriate treatment for the individual. While the court maintained wide jurisdiction over the lives of minors, it could no longer order treatment for a child based solely on a perception of the child's needs.[66]

The final and most notable, procedural protection in the Family Court Act was the provision for law guardians. Here, despite a long history of juvenile courts functioning without attorneys, the legislature not only reaffirmed the right of those in court to retain counsel, but also required that lawyers would be provided at public expense in delinquency and PINS cases. In addition to the right to representation, the law required that in delinquency and PINS hearings minors be informed of their "right to remain

[65] Paulsen, "New York Family Court Act," 429–430.
[66] Ibid., 432

silent," providing protection against self-incrimination. The inclusion of these protections for juvenile proceedings a year before *Gideon v. Wainwright* and four years before *Miranda v. Arizona* were decided by the U.S. Supreme Court demonstrates the commitment to protecting the rights of juveniles contained within this legislation.[67]

Despite the extensive protections of the rights of children, the Family Court Act remained committed to the rehabilitative vision of the juvenile court. First, while the act provided restrictions on the treatment of non-delinquents, it allowed judges broad authority in determining the disposition of children and their families. Second, the legislation required that courts provide probation and therapeutic auxiliary services to assist in evaluation and to provide treatment to juveniles. Third, the law required the creation of intake services to attempt to resolve issues informally before they reached the courtroom. While such services existed under the previous law, they were limited to particular cases; now every case would go through some type of intake service. While the service could not prevent anyone from the right of filling a formal petition, it was hoped that such a system would cut down on the number of cases actually handled by the court. This would allow many cases, under the court's jurisdiction, to be referred directly to public or voluntary welfare services for treatment.[68]

The New York Family Court Act of 1962 kept alive the concept of rehabilitation for minors in trouble just as it created more procedural protections for children's rights. While the adjudicatory phase would become judicial in its nature, both the intake phase and disposition hearings maintained the concept of a social court seeking the best

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[67] Dembitz, "Ferment and Experiment in New York," 508–509.
[68] Paulsen, "New York Family Court Act," 439–440, John A. Wallace and Marion M. Brennan, "Intake and the Family Court," *Buffalo Law Review* 12 (1962): 443–451.

treatment for children. The compromise contained in the Family Court Act had the potential to protect the rights of juveniles while working towards rehabilitation through the court's auxiliary services as well as voluntary and public agencies. To make rehabilitative treatment a reality, however, it would be necessary to provide effective treatment options for those adjudicated or diverted by the court. A year after the Family Court Act went into practice, Justine Wise Polier reflected on the new courts operation. While Polier had strongly supported maintaining the rehabilitative mission of the court, she was skeptical that the institutions that the CCC had fought to maintain and expand would ever receive adequate resources to achieve their mission.[69]

The greatest success of the New York Court Act was in the work of the intake service. Due to the work of the intake service, official petitions to the court had decreased by 31 percent over the first six months under the new act.[70] By 1964, 35.7 percent of delinquency and PINS cases were resolved being resolved in intake. A year later, the figure had reached 42.7 percent.[71] In neglect cases, however, intake procedures failed to resolve as many cases. Most likely, this was because many issues of minor neglect were handled by public or private welfare services. Therefore, only the most serious cases of neglect entered the juvenile court system, those with the least likelihood of informal disposition.[72]

The new intake system instituted as part of the Family Court Act of 1962, demonstrated at least partial success of the rehabilitative features of the court. Polier,

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[69] Justine Wise Polier, *A View From the Bench: The Juvenile Court* (New York: National Council on Crime and Delinquency, 1964).
[70] Polier, *View From the Bench*, 7–8.
[71] U.S. Children's Bureau, *Juvenile Court Statistics, 1962* (Washington, D.C.: U.S. Government Printing Office, 1963); U.S. Children's Bureau, *Juvenile Court Statistics, 1964* (Washington, D.C.: U.S. Government Printing Office, 1965).
[72] Polier, *View From the Bench*, 8.

however, saw little else to celebrate in the new court. The faith in individualized justice, the heart of the progressive institution, often led to "justice" based on a particular judge's attitude rather than the needs of the child. The lack of adequate facilities and services outside of the court continued to lead to significant delays. Racial segregation remained prevalent in the placements of the court. The mental health services, to which Polier had personally dedicated so much time, still lacked the staff to function effectively. The law guardians, while potentially helpful in protecting children's rights, struggled to determine whether their role was to help the court develop treatment, or to avoid any adjudication of their clients as delinquents or PINS.[73]

The new court, and the compromise it contained, had potential to improve services for children in need, but, as Polier lamented, "the Family Court Act is not self-fulfilling." In numerous ways, the act preserved the ability of the court to provide help for children, but that help would only be effective if there was support for the "necessary provisions for court houses, additional judges, probation services, mental health services, community services to families, and facilities for children in need of placement." Polier was not optimistic that the New York City Court could provide these programs without significant financial support. "It may well be" she explained "that, without greatly increased aid from both state and federal governments, the City of New York cannot provide the preventive and rehabilitative services for the children and families requiring court action."[74]

While Polier hoped for the best and made specific recommendations for how to improve the court, she warned that the new Family Court might end up in the same fate

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[73] Polier, *View From the Bench.*
[74] Ibid., 68.

as the New York City Children's Court. "The new court must not become, like its predecessor, a 'dumping ground' for all the persons and problems for which the community has neither adequate services nor sufficient concern. It must not become a lid to contain troubled people, a curtain to conceal problems—an institution whose pretensions are far beyond is capacity." New York's child welfare advocates had achieved a legislative success in preserving the rehabilitative potential of the juvenile court in the New York Family Court Act of 1962. However, the new act provided no assurances that the system of rehabilitative services they envisioned would ever receive adequate resources.[75]

Gault and the "Constitutional Domestication" of the Juvenile Court

In the history of child welfare, the 1967 U.S. Supreme Court decision *In Re Gault* looms large. In his majority opinion, Justice Fortas explained that specific procedures were necessary to protect juveniles in delinquency proceedings. These included: written notice of the allegations made against a child, notice of the right to an attorney or the provision of counsel by the state, and a right against self-incrimination.[76] According to many scholars, this decision "exposed the flawed foundations of the rehabilitative model of juvenile justice."[77] Soon after the decision, Monrad Paulsen observed that "the *Gault* decision is built upon the premise that the juvenile court system has failed to provide the

[75] Ibid., 59–60.
[76] *In Re Gault*, 387 U.S. 1 (1967).
[77] Scott, "The Legal Construction of Childhood," 134.

care and treatment that the theory underlying it had posited."[78] To focus on the due process protections required by *Gault*, however, obscures the actual transformation in child welfare that had already occurred. *Gault* provided constitutional sanction for the consensus on rehabilitative juvenile justice implemented in the New York Family Court Act of 1962 and in other states.

In fact, Fortas's decision emphasized that the constitutional requirements imposed in Gault would not undermine the attempt to rehabilitate juveniles. "The observance of due process standards," Fortas explained, "will not compel the States to abandon or displace any of the substantive benefits of the juvenile process." The benefits of the juvenile court would "not be impaired by constitutional domestication." Furthermore, the ruling in *Gault* had no bearing on the processes of intake and disposition where, experts had argued, the actual rehabilitative work of juvenile justice should take place. "We are not here concerned," Fortas emphasized, "with the procedures or constitutional rights applicable to the pre-judicial stages of the juvenile process, nor do we direct our attention to the post-adjudicative or dispositional stage." Finally, the court pointed out that these constitutional requirements would simply impose accepted or recommended practice. Fortas cited the New York Family Court Act, the Children's Bureau model juvenile court act, and the report of the President's Commission on Law Enforcement and Administration of Justice to demonstrate that requirements for notice to the accused and their parents, right to counsel, and protections against self-incrimination were already

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[78] Monrad Paulsen, "Children's Court Gateway of Last Resort," *Columbia University Forum*, X, No. 2 (Summer 1967), 4, as cited in Justine Wise Polier, *The Rule of Law and the Role of Psychiatry* (Baltimore: Johns Hopkins Press,1968), 99.

being followed in some jurisdictions or were recommended as reforms by many juvenile justice experts.[79]

More than any other document, the report of the President's Commission on Law Enforcement and Administration of Justice embodied the new compromise position on juvenile justice. Fortas, it appears, closely followed the guidance of this report citing it several times even though it was produced only months before the decision and, therefore, not referred to in any of the briefs submitted to the court. The report placed issues of juvenile justice at the heart of the problem of crime in America. It noted that in 1965 "a majority of arrests for major crimes against property were of people under 21, as were a substantial minority of arrests for major crimes against the person."[80] The commission argued for broad reforms to alleviate the social ills leading to delinquency. Along these lines the commission recommended programs to reduce unemployment, to provide a minimum family income, to keep families on welfare together, to "improve housing and recreation facilities," to provide access to family planning assistance, to provide more support for childcare, to create easy access to therapy, and to help develop family activities.[81] The ire of the commission, however, did not rest only with the failure of social programs; the mission of the juvenile court had also failed. "It has not succeeded significantly in rehabilitating delinquent youth," the commission reported, "in reducing or even stemming the tide of delinquency, or in bringing justice and compassion to the child offender." Most significantly, the commission asserted that juvenile courts

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[79] *Gault*, 387 U.S. 21–22, 13–14, n. 11, 37–38, n. 2, n. 63; see also, Manfredi, *The Supreme Court and Juvenile Justice*, 122–123.
[80] President's Commission on Law Enforcement and Administration of Justice, *The Challenge of Crime in a Free Society* (Washington, D.C.: U.S. Government Printing Office, February 1967), 55.
[81] Ibid, 66.

needed to accept their role in the "protection of the community" from juvenile offenders.[82] This did not mean that courts should abandon efforts of rehabilitation, but that they should recognize that not all their actions were truly conducted in the name of rehabilitation. As the commission explained, "while rehabilitative efforts should be vigorously pursued in deference to the youthfulness of the offenders and in keeping with the general commitment to individualized treatment of all offenders, the incapacitative, deterrent, and condemnatory purposes of judgment should not be disguised."[83]

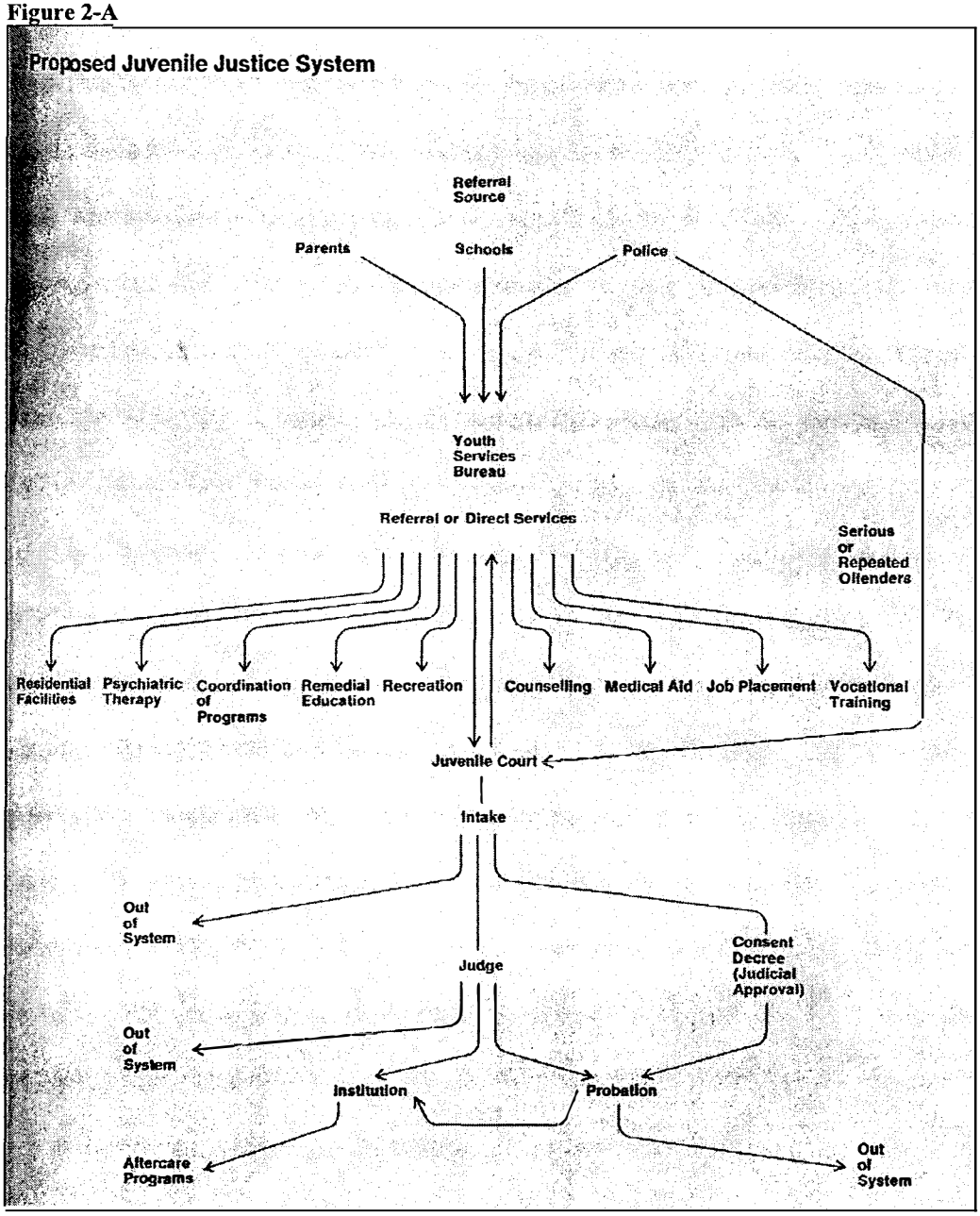
The commission presented a threefold reformation of the juvenile court to fulfill its role as an institution with a "greater emphasis on rehabilitation," not an "exclusive preoccupation with it." First, the commission argued most juvenile justice issues should be resolved outside the "formal sanctioning system." This meant the creation of new alternative services to provide rehabilitation to juveniles. At the heart of this system would be the existing services related to intake, but the commission imagined a broader network of services coordinated by a community-based "Youth Service Bureau" as a way of providing rehabilitation. Second, the jurisdiction of the juvenile court should be narrowed. Juvenile courts should oversee cases when a child committed an act that would be a crime committed by an adult and they should continue to have jurisdiction over issues of neglect. The commission was less clear in it recommendations for status offenses, those acts that were only crimes if committed by children (what was known as Persons in Need of Supervision under the New York Family Court Act). At the very least, the commission found the court should only oversee cases where there was "a real risk of long range harm to the child." Perhaps representing a lack of consensus on this

[82] Ibid., 81.
[83] Ibid., 81.

issue the report also opined that states should consider the "complete elimination of the court's power over children for noncriminal conduct." Third and finally, the commission recommended a more formalized juvenile court process that included due process protections for the child such as a clear distinction between the adjudicatory and disposition phases, the appointment of counsel whenever coercive action by the court was a possibility, and the right to notice of charges and scheduled hearings for parents and juveniles. These suggestions encapsulated the view of juvenile justice that critics had developed over the past decade. The chart included in the report (Figure 2a) represented the ideal of a formalized juvenile court within a rehabilitative system of juvenile justice.[84]

[84] Ibid., 81, 83, 85, 85–87, 89.

Figure 2-A



Source: President's Commission on Law Enforcement and Administration of Justice, *The Challenge of Crime in a Free Society* (Washington, D.C.: U.S. Government Printing Office, February 1967), 89.

In Re Gault, therefore, was not the end of the rehabilitative ideal in juvenile justice. The brief for the ACLU in *Gault* argued, and Justice Abe Fortas accepted, that

due process protections were "not incompatible with rehabilitation."[85] Furthermore, based on the experience of the New York Family Court Act and the recommendations of the President's Commission on Law Enforcement and Administration of Justice, *Gault* only addressed one part of juvenile justice reform—the formalization of juvenile court procedures. To see the decision as leading inevitably to a breakdown in the rehabilitative ideal and the recriminalzation of juvenile justice is simply wrong. The "constitutional domestication" that occurred in *Gault* was only one part of a broader process of juvenile justice reform that retained faith in the power of rehabilitation.

The real test of post-*Gault* juvenile justice was not the rise of formalized procedures such as the appointment of counsel in delinquency cases, but the ability to develop the diversionary services to provide rehabilitation to juveniles without them setting foot in the courtroom. The implementation of the intake procedures under the New York Family Court Act, therefore, reflects a national trend in juvenile justice reform that would accelerate after *Gault*. In 1962, the year the New York Family Court Act went into effect, 49 percent of the nation's delinquency cases were resolved informally. When *Gault* was decided in 1967, 53 percent of delinquency cases were disposed without petitions being filed. Finally, in 1972, 59 percent, or approximately 651,200 cases nationally were resolved unofficially by some type of intake service.[86]

Subsequent decisions by the U.S. Supreme Court continued to reflect this vision of juvenile justice. *In Re Winship*, decided in 1970, presented the court with the question

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[85] Manfredi, *Supreme Court and Juvenile Justice*, 104.

[86] U.S. Children's Bureau, *Juvenile Court Statistics, 1962*; U.S. Children's Bureau, *Juvenile Court Statistics, 1967* (Washington, D.C.: Government Printing Office,1968); U.S. Department of Health, Education, and Welfare, Office of Youth Development, *Juvenile Court Statistics, 1972* (Washington, D.C.: Government Printing Office, 1974).

of whether juvenile courts were required to apply "proof beyond a reasonable doubt" in delinquency adjudications. Writing for the court, Justice William Brennan, Jr. reversed the decision by the New York Court of Appeals that had upheld the use of "a preponderance of the evidence" as an acceptable standard of proof in the juvenile court. Brennan's decision significantly expanded on the "essentials of due process" required in delinquency cases by *Gault* since the court had never ruled that the "beyond a reasonable doubt" standard was constitutionally required in trials for adults. Still, Brennan made it clear that the decision applied only to the adjudicatory phase of delinquency proceedings and had no bearing on the intake and dispositional process or on PINS proceedings. Rehabilitation could continue, outside the formalized process of delinquency adjudication. "The opportunity," Brennan explained, "during the post-adjudicatory or dispositional hearing for a wide-ranging review of the child's social history and for his individualized treatment will remain unimpaired. Similarly, there will be no effect on the procedures distinctive to juvenile proceedings that are employed prior to the adjudicatory hearing."[87] Therapeutic services in intake and disposition, the court asserted, should continue unabated by the finding in *Winship*.

In *McKeiver v. Pennsylvania*, Justice Harry Blackmun halted the expansion of due process rights to juvenile proceedings by ruling that jury trials were not required in delinquency adjudications. Blackmun reiterated the ambivalence of the Court toward the system of juvenile justice. "The Court" had recognized, "the high hopes and aspirations of Judge Julian Mack, the leaders of the Jane Addams School and the other supporters of the juvenile court concept," but, Blackmun recounted, it "also noted the disappointments

[87] *In Re Winship*, 397 U.S. 358 (1970), 358 n. 1, 366–367; see also Manfredi, *The Supreme Court and Juvenile Justice*, 144–148.

of the system's performance and experience and the resulting widespread disaffection." Blackmun concluded, "There has been praise for the system and its purposes, and there has been alarm over its defects." For Blackmun, however, to create jury trials in delinquency cases was in a sense, to abandon the purposes of the juvenile court. The jury trial would bring with it "the traditional delay, the formality, and the clamor of the adversary system and, possibly, the public trial." This was a long distance away from the intended purposes of the juvenile court. The formalization of the juvenile delinquency proceedings begun in *Gault* and *Winship* could only go so far without ending the notion of a juvenile court entirely. "If the formalities of the criminal adjudicative process are to be superimposed upon the juvenile court system," Blackmun explained, "there is little need for its separate existence. Perhaps that ultimate disillusionment will come one day, but for the moment we are disinclined to give impetus to it." Blackmun, writing for only four justices, revised the legal reasoning behind the "constitutional domestication of the juvenile court," but he also presented juvenile justice in a different view. Unlike *Gault* and *Winship* the decision in *McKeiver v. Pennsylvania* continued to place importance in the distinctiveness of juvenile proceedings in comparison with adult trials. Simply keeping juries out of the juvenile courtroom, however, would not preserve the experiment with rehabilitative juvenile justice. For the experiment to succeed, especially in the period after *In Re Gault*, reformers had to bolster existing services, create new therapeutic institutions, and demonstrate the success of rehabilitative juvenile justice.[88]

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[88] *McKeiver v. Pennsylvania*, 403 U.S. 528 (1971), 534, 550, 551; see also Manfredi, *The Supreme Court and Juvenile Justice*, 150–152.

The Search for Rehabilitative Services

The promise of *Gault* and *Winship*—that the formalization of the juvenile court would not detract from the court providing rehabilitation through intake and disposition—was predicated on the ability of courts to provide truly rehabilitative treatment. In the early 1970s, supporters of the rehabilitative consensus, like Justine Wise Polier, became concerned about the lack of services available to meet the needs of neglected, delinquent, and potentially delinquent children. It was this inability to provide true rehabilitation, rather than any fundamental contradiction in *Gault*, that led to a breakdown of the rehabilitative consensus and, in the long run, to the "recriminalization" of juvenile justice.

Juvenile Justice Confounded, the title of a 1972 report on the mental health services available to the New York City Family Court, exemplified the growing frustration with juvenile justice reform. Chaired by Justine Wise Polier, the committee producing the report concluded that the juvenile justice system in New York City failed to provide appropriate individualized treatment to the children under its supervision. The convoluted system of child welfare in New York contributed to this failure. The state had insufficient psychiatric and psychological services to meet the needs of children, and autonomous voluntary agencies that could provide these services often refused to treat the most serious cases. This situation was exacerbated by "a rapidly increasing number of seriously disturbed children" coming before the Family Court.[89] As Polier summarized

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[89] Committee on Mental Health Services Inside and Outside the Family Court in the City of New York, *Juvenile Justice Confounded: Pretensions and Realities of Treatment Services* (Paramus, N.J.: National Council on Crime and Delinquency, 1972), 110.

in her forward to the report, "treatment services have been made least available for those who are in greatest need."[90]

As the child welfare network had complained since the 1940s, the autonomy of voluntary agencies also led to racial and ethnic inequality in the juvenile justice system. The committee reviewed a sample of case files of children adjudicated either as delinquents or "Persons in Need of Supervision." Based on the selection process of voluntary agencies, 76 percent of black children in the sample and 66 percent of the Puerto Rican children were placed in a state training school or public shelter with little access to therapeutic services. Meanwhile, 78 percent of the white children were placed in treatment-oriented private agencies that received public funding. Voluntary agencies no longer overtly excluded children based on race or religion; however, agencies refused children based on non-cooperative families, serious emotional problems, low IQ levels, low reading levels, drug use, and age. These practices added up to a process of large-scale exclusion of black and Puerto Rican children. These practices also led to inappropriate placement for many children, especially minority children. Based on the studies sample, 55 percent of the children for whom placement in a "treatment-oriented center" was recommended were instead placed in a training school or shelter. "The picture drawn from the case sampling," the report summarized, "reveals serious discrimination." Blacks and Puerto Ricans were being funneled into state institutions at much higher rates then whites, and, more importantly, they were not receiving the therapeutic services they needed.[91]

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[90] Ibid., 4.
[91] Ibid., 22–26, 22.

In spite of the troubling state of juvenile justice services in New York, the committee recognized the potential for reform. The court needed to better coordinate and supervise voluntary agencies and to provide more therapeutic services in state institutions. This committee, comprised of juvenile court judges, other members of New York's judiciary system, and community experts, was not yet ready to abandon the system of juvenile justice constructed by the New York Family Court Act of 1962 and *Gault*. "It may well be," Polier reflected, "that other social institutions will in time, through community programs, supplant the juvenile court, so that it will be regarded as only an interesting museum piece. However, neither opposition to nor wishing for such developments reduces the duty of juvenile courts to provide due process and to seek the dispositions most appropriate to meet the needs of children at the present time." In fact, Polier saw in the growing recognition of individual rights a path to ensuring that children who came before the family court would receive individualized treatment. She was intrigued by the growing recognition of a "right to treatment" and its application to the juvenile justice system. Based on the body of right to treatment cases, Appellate Courts attempted to "ensure that the child or adult is receiving the promised treatment and at the same time are directed to protect the community against further danger from the child or adult." However, based on the state of therapeutic services it was difficult for courts to fulfill this right to appropriate treatment. "It is all but impossible," Polier noted, "for trial courts to respond to such a double message when treatment and rehabilitation services are not available." Without the provision of actual treatment, the juvenile justice system was simply serving a custodial or even punitive function by keeping children out of society.

This, unfortunately, was the experience of many the delinquent and PINS cases in New York City.[92]

Such a state of affairs, Polier reasoned was not only bad public policy but was also unconstitutional. Polier continued to advocate for the system of juvenile justice spelled out in *Gault* that provided rehabilitation for individuals while protecting procedural due process rights. The "right to treatment" cases allowed Polier to frame the ideal of rehabilitation as consistent with the notion of due process. As she quoted from one of these cases, "To deprive any citizen of his or her liberty upon the altruistic theory that the confinement is for humane therapeutic reasons and then fail to provide adequate treatment violates the fundamentals of due process." To fulfill its due process obligations, therefore, the Family Court needed to bolster the therapeutic services available to children. "The climate created by *Gault* and the decisions dealing with the 'right to treatment' provide the framework for the acceptance of greater responsibility by the judiciary so that substantive justice as well as procedural due process will be accorded to every child brought before the courts." Far from abandoning the rehabilitative ideal in juvenile justice, Polier constructed a right to rehabilitation that was compatible with increasing procedural formality. As the committee report demonstrated, however, it remained to be seen if states would provide the therapeutic services to fulfill these rights or simply abandon this notion of rehabilitative juvenile justice.[93]

The Juvenile Justice and Delinquency Prevention Act of 1974 represented a federal effort to support state and local services for the treatment and prevention of delinquency. The act emphasized the diversion of juveniles away from the court

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[92] Ibid., 1,9.
[93] Ibid., 14.

apparatus and into services accepted voluntarily. In addition, the act required as a condition of receiving federal grants that states did not place juveniles who had not committed criminal offenses in "juvenile detention or correctional facilities."[94] In testifying to the Senate subcommittee investigating delinquency in 1973, Polier was cautiously optimistic about this effort and the proposed bill. "I was tremendously impressed by the emphasis you placed on diverting children from the [juvenile court] system" she explained, "and welcome such diversion where there are real community services that are appropriate." However, Polier continued, "I do not want to see us fall into the same mistake that has haunted the juvenile court where we pretended to provide services, which the courts were not able to secure."[95] Polier noted two emerging and, in her mind, opposing trends in juvenile justice. First was the removal of status offender, "children who have engaged in noncriminal offences," from the jurisdiction of juvenile courts. The second was the rise of new statutes to ease the transfer of children from juvenile courts to criminal courts. Polier understood that these efforts were in part an effort to resuscitate the juvenile justice system that could now focus resources on "more hopeful and attractive children." Polier warned, however, that the combination of these two trends was "fraught with peril." Such a system would simply cast aside and reject the needs of those children and youth who needed the most assistance. Polier starkly explained that this was "no road to Juvenile Justice."[96]

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[94] Public Law 93-415, 88 U.S. Statues at Large, 1111, 1121.
[95] Senate Committee on the Judiciary, Subcommittee to Investigate Juvenile Delinquency, *The Juvenile Justice and Delinquency Prevention Act-S. 3148 and S. 821*, 92nd Cong., 2nd sess., and 93rd Cong., 1st sess., p. 492.
[96] Ibid., 499.

The debate which ensued over whether the funding of the juvenile justice act should be housed in the Department of Health, Education, and Welfare or in the Department of Justice portended an increasing focus on juvenile delinquency as criminal behavior. To the chagrin of the framers of the bill, they ultimately had to accept that the new federal effort against juvenile delinquency would be housed in Justice. This debate, however, was largely symbolic. More important were the trends that Polier had noted: the diversion of noncriminal and less serious cases away from the juvenile court and the increasing transfer of serious criminal cases to criminal courts. The rehabilitative consensus that was represented in *Gault* began to unravel as the experts on the court endorsed these new procedures as those that could best protect the rights of the juvenile. Over the 1970s, the opinions of someone like Polier who continued to believe in rehabilitation and its compatibility with due process became marginalized. This was demonstrated in the tortured effort of the Institute of Judicial Administration and the American Bar Association to develop uniform standards for juvenile justice.

The IJA–ABA Standards and the Decline of the Rehabilitative Consensus

Over the late 1970s and early 1980s, the juvenile justice systems of many states were "recriminalized." This meant the removal of status offenses from the jurisdiction of the court, an increase in the transfer of juveniles to criminal courts, and a rise in the imposition of punitive sanctions by juvenile courts.[97] These changes were partially a response to a perceived increase in violent crime committed by juveniles. The criminalization of juvenile justice, however, can only be fully understood by examining

[97] Manfredi, 169; see also Jeffrey Fagan and Franklin E. Zimring, eds. *The Changing Boarders of Juvenile Justice: Transfer of Adolescents to the Criminal Court* (Chicago: University of Chicago Press, 2000).

the breakdown of the rehabilitative ideal that had shaped juvenile justice reform since the 1930s and was embodied in the Supreme Court's decision in *Gault*. The reasons for the decline of rehabilitative juvenile justice are not revealed by examining the critics of juvenile justice, these critics had existed since the courts founding; instead, the reasons can be found in the changing orientation of the court's defenders.

The attempt, during the 1970s, by the Institute of Judicial Administration (IJA), housed at New York University, and the American Bar Association (ABA) to formulate comprehensive, model standards for juvenile justice exemplify the philosophical reorientation of juvenile court experts. The controversy surrounding the project demonstrated the breakdown of consensus. Justine Wise Polier, a member of the IJA-ABA Commission, insisted that her dissents be published in eight of the standards' twenty-three volumes.[98] "After a lengthy and often heated debate," the American Bar Association's House of Delegates finally adopted twenty of the volumes in 1980; the remaining volumes of the standards were withdrawn.[99]

As reflected in Polier's dissents, the essence of the controversy over the IJA-ABA standards concerned the effort to restrict the authority of the juvenile court and to limit the therapeutic orientation of juvenile justice. Both these points of contention arose from a concerted effort by those drafting the standards to avoid any unnecessary coercion by

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[98] Justine Wise Polier insisted that her dissents appear in the published volumes of the IJA-ABA standards. In memo to Marion Wright Edelman dated February 6, 1976, Polier explained "Prior to the meeting on these and other volumes, I spoke to Judge [Irving] Kaufman about my concerns and was asked to attend the Executive Committee meeting. At this meeting I raised the question of how members of the Commission could indicate that they did not approve either of sections of volumes or, indeed, of entire volumes. Judge Kaufman first stated that he had hoped to avoid this issue, but later it was agreed that a procedure would be worked out so this could be done." (JWP papers, box 33, folder 413) See also Polier to Judge Irving R. Kaufman, April 19, 1976 and draft dissents in JWP papers, box 33, folder 413. In total, Polier wrote dissents to appear in eight of the volumes.

[99] Memorandum from David Gilman, To the Members of the Joint Commission and Reporters, March 7, 1980. JWP Papers, Box 33: folder 414.

the state on children and families; essentially the standards restricted the role of court intervention to explicitly criminal behavior. "The standards," one of the volumes clarified, "have rejected any approach that would justify coercive treatment merely for rehabilitative purposes or that would justify any sacrificing of procedural protection on the ground that the objectives of the system are benign."[100] The criticisms of the 1960s and the decision in *Gault* reflected an implicit balancing act between protecting a child from coercion and providing rehabilitation. The commentary on the court in the 1970s dismissed such consideration preferring to minimize the coercive power of the state in juvenile justice even if that meant limiting or even abandoning rehabilitation.

From the perspective of Justine Wise Polier and other juvenile court judges, the IJA-ABA standards essentially abandoned the juvenile courts created in the Progressive Era. As the commentary for one of the standards explained, "a juvenile court founded upon the doctrine of *parens patriae* is no longer legally valid."[101] But the standards rejected more than the wide reaching Progressive basis for the court, they also turned their back on the efforts of Polier and her generation to resuscitate rehabilitative juvenile justice.

The *Standards Relating to Noncriminal Misbehavior* and the *Standards Relating to Dispositions* exemplify the disagreement between the old guard, as represented by Polier, and those looking to remake juvenile justice. The jurisdiction of juvenile courts over noncriminal misbehaver or status offenses—those who had committed no criminal act but were "incorrigible, ungovernable, or habitually disobedient"—had long troubled

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[100] IJA-ABA Joint Commission of Juvenile Justice Standards, William Buss and Stephen Goldstein, Reporters, *Standards on Schools and Education*, (Cambridge, Mass.: Ballinger, 1977), 3.
[101] IJA-ABA Joint Commission on Juvenile Justice Standards, Ted Rubin, Reporter, *Standards Relating to Court Organization and Administration* (Cambridge, Mass.: Ballinger, 1980), 20.

juvenile justice observers. The reforms of the 1960s represented a compromise in this area. As represented by the New York Family Court Act of 1962, this included the creation of a legal category separate from delinquency (known in New York as Persons in Need of Supervision or PINS) so that these juveniles would not be subjected to the same dispositions and stigma as those who had committed crimes. Several states had adopted similar models of segregating status offenders. In addition, the reformers of the 1960s had encouraged the resolution of noncriminal misbehavior through the intake process, funneling troubled children to voluntary services rather than resorting to the coercive power of the court. The IJA-ABA standards rejected this middle way, preferring instead that the jurisdiction of juvenile courts over noncriminal misbehavior "should be cut short." The standards, therefore, removed virtually the court's entire jurisdiction over status offenses. In its place, they asserted, "a system of voluntary referral to services provided outside the juvenile justice system" should be created.[102] The reasoning of the framers of the standards was two fold. First, the court's jurisdiction over status offenses was of questionable constitutionality. Second, voluntary services would prove more effective in assisting troubled children than judicially mandated treatment.

Polier's dissent questioned the wisdom of this reorientation of the juvenile court. In typical fashion, Polier chose to ignore the constitutional arguments preferring to focus on the most effective way to rehabilitate children. Polier agreed that the most effective and efficient way to treat noncriminal misbehavior was through services accepted voluntarily. The problem, she explained, was that in many communities such services simply did not exist. She recognized the desire for the "dejudicalization of status

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[102] IJA-ABA Joint Commission on Juvenile Justice Standards, *Standards Relating to Noncriminal Misbehavior*, (Cambridge, Mass.: Ballinger, 1977), 2.

offenders." However, she lamented, "this purpose is not matched by positive plans or requirements for creating alternative, accessible, and appropriate services. The standards fail to confront the essential problem of who is to be responsible for the development of alternative services, for their funding, for setting standards, for monitoring, and for protecting the rights of children who are either excluded or denied appropriate services." To Polier, "the premature ending of juvenile court jurisdiction," would deprive the "children and families most in need of services," from the treatment which they were entitled.[103]

Polier also dissented strongly from the standards' positions on dispositions and sanctions. As a protection to juveniles found by the court to be delinquent, the standards suggested that legislatures should mandate maximum sentences for juveniles based on the offense they committed. To Polier, this fundamentally undermined the notion of individual rehabilitation at the heart of juvenile justice. "The standards are contradictory," she explained, "in regard to both the purposes and responsibilities of juvenile courts to secure rehabilitative and treatment services in accordance with the needs of individual children." By basing dispositions on the offense "consideration of the child's individual needs is postponed until after the category and length of penalty are determined. The standards thus postpone consideration of the individual child's needs so late as to make it all but meaningless."[104] To follow such a procedure was essentially to abandon the idea of a special court for juveniles and replace it with a juvenile criminal court. "It does not seem rational or sound," Polier reflected "to ignore the vast

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[103] Ibid, 67; Justine Wise Polier, "Dissent to Non-Criminal Behavior Standards," April 19, 1976, JWP Papers, Box 33, folder 413.
[104] IJA-ABA Joint Commission on Juvenile Justice Standards, *Standards Relating to Dispositions* (Cambridge, Mass., Ballinger, 1977), 133.

differences between juveniles and adults, the unique capacity for change by juveniles, the need for careful assessment of the needs of individual juveniles, and the government responsibility to provide services for juveniles on an individualized basis."[105] For Polier, such a system would not protect the due process rights of children but would lead to dispositions that were more punitive and more damaging to children than currently existed.

The experience of the IJC-ABA Standards on Juvenile Justice revealed to Polier the direction of the political winds. As her career came to an end, she hoped that the shortsightedness of the standards would appear as a momentary aberration in the history of juvenile justice. In her dissent to the volume on Abuse and Neglect, she reflected on the historical context of the standards and the decline of the rehabilitative ideal. "Unfortunately," she explained about this particular volume but in language that could be applied to the entire project, "it was prepared during a decade when disillusionment, frustration, and increasing avoidance of concern for human problems dominated the ethos. The response is too largely one of lowering goals required to protect children. At this time, despite past failures, standards of the future should require more rigorous assessment of children's needs, effective monitoring of services, research on the results of different ways of providing services, and expansion of services to all children in accordance with their needs." Instead, paralyzed by the fear of state coercion and in

[105] IJA-ABA Joint Commission on Juvenile Justice Standards, *Standards Relating to Juvenile Delinquency and Sanctions* (Cambridge, Mass., Ballinger, 1980), 49.

deference to family autonomy, Polier argued, the emerging child welfare experts were willing to abandon a generation of children who needed assistance.[106]

Juvenile Justice and Child Welfare

No state ever fully implemented the IJC-ABA Standards. The long-term consequence of the reforms of the 1960s and 1970s was to create a bifurcated system of juvenile justice. The system of juvenile justice funneled delinquents or potential delinquents into one of two possible paths. "Status offenders" and those that had committed minor offences were directed into child welfare institutions traditionally reserved for "neglected" and "dependent" children—that is, children whose parents, for whatever reason, could not appropriately care for them. This included placement in family foster care, but for delinquency cases more frequently meant placement in a group home or a residential treatment facility. For juveniles who committed serious crimes, however, juvenile courts acted to protect the community by placing children in public juvenile correctional institutions such as training schools or transferring the case to the criminal courts where the child was subject to the same punishment as an adult.[107]

Such a state of affairs paradoxically represented both abandonment of and support for elements of the rehabilitative ideal. The notion of proportional punishment, that the punishment of the juvenile offender should fit the crime, undermined the concept of individualized justice that was at the heart of the juvenile court movement since the nineteenth century. The President's Commission on Law Enforcement and

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[106] IJA-ABA Joint Commission on Juvenile Justice Standards, *Standards Relating to Abuse and Neglect* (Cambridge, Mass., Ballinger, 1977), 184–186.
[107] Paul Lerman, "Child Welfare, The Private Sector, and Community-Based Corrections," *Crime & Delinquency* 30 (January 1984): 5-38, 26–29.

Administration of Justice had first given voice to the notion that juvenile courts needed to consider seriously their role in protecting the community. The IJA-ABA Standards expanded on the notion of protection calling for dispositions based on the act committed by the juvenile not on his or her psychological or emotional needs. However, as courts began to follow "proportional punishment" they also excluded status offenders from incarceration and increasingly attempted to find therapeutic placement for those who had only committed minor offences. For these juveniles, placement based on individual needs continued. For some children, therefore, the belief expressed by Alfred Kahn that treatment should be based not on the labels of delinquent or neglected but on individual needs became a reality in the 1970s. In fact, the diversion and placement of those who would have once been considered delinquents in child welfare institutions increased over the 1970s.[108]

Many youngsters who encountered the system of juvenile justice were not treated as criminals, but were instead diverted into traditional child welfare institutions and services. The open question—as juvenile justice became spilt between a more serious criminalized path and a less serious child welfare path—was whether the resources were available to provide truly rehabilitative child welfare services to this growing population. To answer this question, we must turn to the parallel transformation in rehabilitative foster care occurring over the same period.

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[108] Ibid., 23–25.

Chapter Three:
"Orphans of the Living," Foster Care and Adoption

"It is a delusion to consider foster care primarily a means for providing children with temporary substitute homes," wrote Henry S. Maas co-author with Richard E. Engler, Jr. of a 1959 study of foster care. Their work, published by the Child Welfare League of America (CWLA), revealed that "once children have been in foster care three months, it gives promise of being long term for most of them."[1] This realization would affect the next twenty years of reforms to America's child welfare programs.[2] In reaction to the growing recognition of foster care failure, the child welfare network pushed for new approaches that followed the rehabilitative ideal. They sought to imbue these programs with the notion of state responsibility for children, with therapeutic approaches that ensured the healthy development of children, and with a focus on the legal rights of children.

In order to achieve these goals, the child welfare network pursued two strategies simultaneously. First, they worked to improve rates of adoption of children in foster care. Rates of adoption had increased in the postwar period, but the activists now looked for ways to make more children in foster care available for adoption and to encourage the adoption of "hard to place children." As we will see, these efforts led to new legislation terminating the rights of neglectful parents, creating adoption clearinghouses, and establishing adoption subsidies. Second, they worked to make foster care more

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[1] Henry S. Maas, "Highlights of the Foster Care Project: Introduction," *Child Welfare* 38 (July 1959): 5.
[2] See for example the book review by Martha L. Jones who noted "Children are 'drifting' in unplanned, long-term foster care. The plight of these children, recognized in the 1959 Maas and Engler study, was front page news in a 1979 Wall Street Journal." (Jones, "Review of *Children in Foster Homes: Achieving Continuity of Care*," *Child Welfare* 58 (December 1979): 689.) See also Martha L. Jones, "Stopping Foster Care Drift: A Review of Legislation and Special Programs," *Child Welfare* 57 (November 1978): 571–580; and Kermit T. Wiltse, "Review of *Children in Foster Care*," *Child Welfare* 57 (November 1978): 620–623.

rehabilitative and less disruptive to children's lives. This included efforts to supervise and track children in foster care, to shorten the length of foster care stays, and to reduce the number of different placements a foster child experienced. In addition, child welfare activists attempted to use therapeutic means to provide successful reunification of foster children with their families.

In the terminology used by the child welfare network, "foster care" refers to any care provided outside a child's birth home or adoptive home. "Foster family care" refers to care provided by a substitute family under the supervision of a public or private agency. By 1950, most foster children were in foster family care, but many remained in institutions or group homes (arrangements where several children were cared for in a home setting). The exact number of children in foster care in this period is difficult to quantify. Joseph Reid, executive director of the CWLA, estimated that in 1959 there were 268,000 children in foster care in the United States. Of these 44,000 were in preadoptive homes, leaving approximately 224,000 children split between institutions and foster family care.[3] For the same year, the Children's Bureau estimated 154,096 children were in foster family care and an additional 64,268 children lived in institutions and other facilities.[4] By 1969, there would be 246,000 children in foster family care and group homes and an additional 106,000 in institutions.[5] But it is not the increase in the use of foster care that is important, but how, over the period from 1950 to 1973 the prevailing view of foster family care was transformed from that of an innovative response

[3] Joseph H. Reid, "Next Steps: Action Called for—Recommendations," in Maas and Engler, 379–380.
[4] Children's Bureau, *Child Welfare Statistics, 1959* (U.S. Government Printing Office, 1960), 7.
[5] National Center for Social Statistics, *Child Welfare Statistics, 1969* (U.S. Government Printing Office, 1970), 22.

to caring for children to a disruptive and possibly damaging intervention in children's lives.

The Origins of Foster Family Care

The use of foster family care, at least as a formal practice, dates back to the nineteenth century. In 1853, Reverend Charles Loring Brace founded the New York Children's Aid Society (CAS) and began implementing the placing out system. Brace looked to remove immigrant children from the slums of New York City and place them in good Christian homes. Care in a family, he asserted, would be more beneficial to the child than institutional care in the almshouses or orphan asylums available at the time.[6] The placing out system led to orphan trains shipping children from New York to families in what is now the Midwest. There were several problems with this system, however. First, many of the children were not actually orphans; approximately 47 percent had one or both parents living. Critics, therefore, accused Brace of stealing children and of undermining the cultural and, especially, religious affiliation of these children of often Catholic immigrants by placing them in Protestant homes. Second, the placing out system created, in some cases, permanent placement without adoption. Some critics claimed that these children merely served as cheap labor on the farms of their new guardians.[7]

Beginning in the late 1880s, investigators revealed the flaws in the CAS system. Studies exposed "numerous hasty placements and inadequate supervision, which resulted

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[6] Carp, *Family Matters*, 9.
[7] Ibid., 9–11.

in many abused and exploited children."[8] Meanwhile, Catholic religious leaders began to react to Brace's "stealing" of Catholic children for placement in Protestant homes. They organized new institutions to care for Catholic children and instituted investigations before separating children from their parents. The next generation of institutions, Children's Homes Societies, followed these practices by providing institutional care for children and social investigation before either removal of the child from his parents or placement for adoption.[9]

In spite of the potential for adoption, by the early twentieth century most children cared for outside their birth homes remained in institutions. By 1910, there were 1000 orphanages in the United States caring for over 100,000 children.[10] By the 1920s, critics, like the pediatrician Dr. Henry Dwight Chapin, castigated the treatment of children in these orphanages and called instead for foster family care or adoption. This criticism led to the foundation of new adoption agencies as well as an effort to standardize the care of children outside the home. The Child Welfare League of America (CWLA) was founded in 1921 as part of the effort to create clear standards. In 1933, the League published *Standards for Children's Organizations Providing Foster Family Care*, the first guide for child welfare agencies on how to place children in private foster homes.[11]

The reemergence of foster family care, therefore, was part of an effort to remove children from institutions. To make this transition smoother, the CWLA emphasized the use of social work methods in removing and placing children in new homes. The

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[8] Ibid., 13.
[9] Ibid., 14.
[10] Bernadine Barr, "Spare Children, 1900-1945: Inmates of Orphanages as Subjects of Research in Medicine and in the Social Sciences in America" (Ph.D. diss., Stanford University, 1992), p. 32, figure 2., as cited in Ellen Herman, The Adoption History Project, http://darkwing.uoregon.edu/~adoption/archive/Barrstats.htm.
[11] Carp, *Family Matters*, 19–20, 24–25.

organization also emphasized family preservation: foster family placements, therefore, would ideally lead to the reunification of the child with his birth parents. In the postwar period, foster family care became the preferred placement for children who needed only temporary care or who were not available for adoption.[12] In 1950, it was estimated that 98,082 children were living in foster family homes while 95,073 remained in institutions. For the first time the majority of children cared for outside their homes were in foster homes rather than institutions.[13]

Rehabilitative Foster Family Care

Simply moving children from institutions to foster family homes would not ensure that these children were properly cared for. Instead, members of the postwar child welfare network worked to integrate foster care into a system of rehabilitative child welfare. In the early 1950s, both the Citizens' Committee for Children of New York (CCC) and the CWLA presented visions of rehabilitative foster care. They pushed for several reforms. First, they attempted to coordinate foster care with other services that could assist children and families. They were especially interested in services that could prevent the removal of the child from his or her home. Second, they wanted to ensure that all children who needed foster care received the best care possible. This meant breaking down racial and religious barriers to care and ensuring that children received the best care to meet their individual needs. Third, they asserted public responsibility for caring for all children. Even if private agencies helped care for children, they argued, the state was ultimately responsible for the placement of every child. Fourth, they looked to make the experience of family foster care itself rehabilitative. Whether care was

[12] Ibid., 24–28.
[13] Barr, "Spare Children, 1900-1945," 32, figure 2.

temporary or long-term, the period a child spent in foster care should "correct" for the shortcomings in his or her development.

Providing individualized care for every child unable to be cared for by their parents was especially difficult in large cities. In New York City in the 1950s, for example, estimates found almost 20,000 children in the foster care system at any one time. By the mid-1950s, a temporary shelter intended to house 323 children while they awaited foster care placement, housed close to 375 children each day. While no child was supposed to remain in the shelter for more than 90 days, some children stayed for as long as four years. New York's foster care system was overwhelmed. Struck by the inefficiencies that plagued the foster care system, liberal child welfare activists in the CCC looked to improve foster care by integrating it into a coordinated system of rehabilitative child welfare services.[14]

In 1954, the organization published "The Uprooted: Children in Need of Foster Care," a pamphlet that called for action in four areas.[15] First, the CCC recommended providing more services to support and preserve families. These included the assistance of trained caseworkers for "families in trouble," day care centers to care for children while mothers worked, and homemaker services "to substitute for ailing mothers."[16] Second, the CCC pushed for better coordination of existing foster care services. "Many more children could be served more effectively by the facilities we have today," the pamphlet stated, "if only these facilities were truly part of an overall pattern and no

[14] Citizens' Committee on Children of New York, "The Uprooted: Children in Need of Foster Care," c. 1954, Viola W. Bernard Papers, A.C. Long Health Sciences Library, Columbia University, box 182, folder 13, (hereafter VWB Papers).
[15] Ibid.
[16] Ibid., 4. The gender implications of homemaker services are interesting. If a father was absent their breadwinner role could be substituted by ADC, but if a mother was absent homemaker services were required.

longer scattered pieces of a jig-saw puzzle."[17] While the state took nominal responsibility for dependent, neglected, and delinquent children in the city, in practice they were cared for by a "complicated network" that included "more than a hundred different private agencies and six different municipal subdivisions."[18] The CCC opined that the shortcomings of the foster care system would continue unless all these entities saw themselves as part of a comprehensive child welfare system.[19]

The CCC called for "more help for those who need it most" as their third area for foster care reform. This topic, however, encompassed two issues. One was that children with specific problems---emotional disturbance, physical handicaps, educational retardation—often failed to get the individualized placement that they needed. This also included a shortage of services for infants, who obviously had specific needs for care. The solution for these problems was the creation of institutions or agencies that specifically focused on meeting these needs. The second issue was even more disturbing to the liberals of the CCC—this was the continuing institutional racism that existed in New York's foster care system. Three quarters of the so-called "hard-to-place" foster care children were African American. Once black children were placed in temporary shelters or boarding homes like the Children's Center, 70 percent remained longer than the 90 day minimum. In 1952, the CCC and other liberals successful lobbied for legislation banning discrimination based on race by private agencies. However, the sectarian orientation of New York City services with separate Catholic, Protestant, and Jewish agencies continued to lead to inequality. With a shortage of Protestant services,

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[17] Ibid., 21.
[18] Ibid., 8.
[19] Ibid., 8–10.

the largely Protestant population of African American children were less likely to receive foster care placements. The racial inequality at the heart of the system of foster care and adoption would continue to be a major concern for the child welfare network through the 1960s and 1970s.[20]

The final area of improvement recommended by the CCC was that the public take responsibility for "improved quality of service." The state needed to realize its responsibility to children by providing more support to families, by overseeing better coordination, and by ensuring that all children received the services they needed. To make sure that agencies met the standard required by the state, the CCC recommended that the state use the power of the purse. Since the public provided most of the funding for private agencies, it should use funding as an incentive for agencies to "provide well-rounded programs for the children under their care." Only agencies that provided these types of services should receive the highest public subsidy. This would create an incentive to improve foster care services for children.[21] The CCC was focused on the problems created by a shortage of care in the city of New York. But the solutions they recommended—a coordinated, nondiscriminatory, publicly supervised system—represented a model for foster care for all cities.

The CWLA, representing child welfare agencies across the country, professed a similar desire for an integrated child welfare system. In addition, however, they wanted to make sure children received the most up-to-date services from child welfare agencies. Over the 1950s, the CWLA looked to make foster care more rehabilitative by

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[20] Ibid., 12–13, 20–21. For more on the long struggle against racial inequality in New York City's Child Welfare System see Nina Bernstein, *The Lost Children of Wilder: The Epic Struggle to Change Foster Care* (New York: Pantheon, 2001).

[21] Citizens' Committee on Children of New York, "The Uprooted," 21.

incorporating recent scientific and social scientific insights. As one member of the league explained knowledge from fields "such as child development, psychology, sociology, medicine, psychiatry, genetics, anthropology and law" had led to changes in "understanding of normal child development and growth, the needs of the child, the importance of the child-parent relationship," and, perhaps most critically, "the concept of the 'healthy personality.'"[22] A new set of *Standards for Foster Family Care Service* promulgated in 1959 exemplified the CWLA's expectations for how rehabilitative foster family care should ideally function.

For the CWLA, foster family care was part of society's responsibility in caring for children. The notion of social responsibility for ensuring healthy development of all children represented the essence of the rehabilitative ideal. "During the past century there has been increasing emphasis on the importance of meeting the child's physical, emotional and social needs," the *Standards* recounted. "From the concept of worth and dignity of the individual has been derived the child's right to optimum conditions for development of his individual potentialities and his ability to meet life situations to achieve personal satisfactions. It is held that the welfare of society can best be served through the development of healthy and socially adequate individuals."[23] The CWLA argued that innovations in psychology and social work allowed for services to children that would ensure the development of well-adjusted adults. Furthermore, the social responsibility for providing for healthy development was not simply an ethical duty, but

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[22] Zitha R. Turitz, "Values, Assumptions and Concepts Underling the Revised Standards for Foster Family Care Service," *Child Welfare* 38 (May 1959), 9.
[23] Child Welfare League of America, *Standards for Foster Family Care Service* (New York: Child Welfare League of America, 1959), 2.

was a pragmatic approach to preventing future social problems. If society did not act today, these children could become the criminal or dysfunctional adults of tomorrow.

Foster family care, then, played an important part in a rehabilitative system of child welfare services. The CWLA emphasized that foster family care was more than simply a place for children who needed supervision; it was also a form of rehabilitative treatment. As the *Standards* explained, "The ultimate objectives of foster family care should be the promotion of healthy personality development of the child, and amelioration of problems which are personally or socially destructive."[24] Foster family care fulfilled this rehabilitative function in two ways. First, as the *Standards* made clear, agencies providing foster family care service had to do more then simply find foster homes for children in need of care. They also needed to provide casework services for children in order to meet "the normal developmental needs of children under care, and for treatment of their emotional problems." This included "help to their parents with problems associated with impaired parental functioning."[25] The ultimate goal of these services was to successfully reunify the child with his parents. To do this, agencies had to provide therapeutic services from the moment the child entered the child welfare system through the difficult transition of the child's return home.

Rehabilitation of foster children did not rest only on providing therapeutic services; foster family care itself was viewed as "a corrective living experience."[26] By living in foster family home, the child was exposed to "experiences inherent in family living, which are regarded as essential to achieving maturity and the ability to initiate and

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[24] Ibid., 6.
[25] Ibid.
[26] Ibid., 33.

sustain a family of one's own."[27] These included such natural occurrences as the development of "emotional relationships of the child with other members of the family, relatives, and friends," and "observations of the roles of father and mother, husband and wife, which provide models for a home and family."[28] While the origins of twentieth century foster family care may have been grounded in cultural assumptions that favored family care or a dislike of impersonal institutions, the CWLA had developed a psychologically-based justification for foster family care as a type of rehabilitative treatment. "Foster family care should provide," the CWLA explained," experiences and conditions which promote normal maturation (*care*), which prevent further injury to the child (*protection*), and which correct specific problems that interfere with healthy personality development (*treatment*)."[29] The experience of care, protection, and treatment in foster family care would assist the child in becoming a psychologically healthy adult whether he or she were returned to their parents, entered a new family through adoption, or remained in foster care until adulthood.

In keeping with the rehabilitative ideal, the CWLA emphasized the importance of integrating foster family care with other community services. As the *Standards* detailed, "The adequacy and quality of foster family care services depend in large measure upon the availability of other services and provision in the community"[30] Most important among these were services that could prevent the use of foster care by enabling the child to remain with his or her parents including "financial assistance, family counseling, homemaker service, day care services, protective service, public health programs,

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[27] Ibid., 6.
[28] Ibid., 5.
[29] Ibid., 7.
[30] Ibid., 65.

provision for medical care and psychiatric service."[31] The *Standards* also called for a clarification of the relationship between child welfare agencies and the courts. While the courts role in ordering treatment or in limiting the legal rights of parents were critical to successful foster care, it was child welfare agencies that had to provide for rehabilitation for the child and, when possible, his or her family. Finally, successful foster family care required cooperation between public and voluntary child welfare agencies. The CWLA expected voluntary agencies to select their own area of specialization, but this decision would ideally respond to the needs of the community. In addition, while the CWLA recognized the sectarian limitations in voluntary agencies, they argued that no restrictions on treatment should be made on the basis of race. The standards also allowed for the practice of public agencies purchasing services from voluntary agencies. Reflective of the rehabilitative ideal, the CWLA argued that whether services were provided under public or voluntary auspices, the state department of welfare had the ultimate responsibility to oversee foster family services in each state.[32]

The CWLA *Standards* presented an ideal. As Executive Director Joseph H. Reid stated, "these standards are intended to be *goals* for continuous improvement of services to children." They did not necessarily reflect current foster family care practices. Even these goals, however, left some questions open. For example, how long was an appropriate length of time for a child to remain in family foster care? Since foster care was intended to be rehabilitative, the Standards explained, it was more appropriate to look at outcome—when the child was ready to return home or be adopted—rather than a specific duration of time. "The needs, age and problems of the child, the nature of

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[31] Ibid.
[32] Ibid., 65–71,

relationships with his parents and siblings, and the extent of parental incapacity" needed to be taken into consideration.[33] Even "the child's need for a long-term correctional experience in a foster home" was factored into the equation. Yet, despite the rehabilitative framework, the standards still accepted that some children would be placed in foster family care with "no foreseeable possibility of adoption or return to his own home."[34] The question of how many children remained in foster care indefinitely was one of the many that concerned Professors Henry S. Maas and Richard E. Engler as they undertook a study of foster care in several communities in the United States.

Children In Need of Parents

Henry S. Mass's and Richard E. Engler's *Children in Need of Parents* would frame the debate over foster care for the next two decades. The book provided a detailed sociological examination of foster in nine communities. The striking conclusion was that, despite the many differences between these communities and their child welfare systems, they all failed to provide adequate care for "children in need of parents."[35]

Maas and Engler attempted to follow an objective social scientific approach in their work. They viewed each community they studied as "a separate *culture*, and the phenomena of foster care and adoption had particular meaning for participants within each culture."[36] In addition, they examined each community "as a social system in which the participating persons and groups were interrelated." What they found most

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[33] Ibid., 6.
[34] Ibid..
[35] Henry S. Maas and Richard E. Engler, Jr., *Children in Need of Parents* (New York: Columbia University Press, 1959).
[36] Ibid., 5.

interesting was the "*role* of the participants." As they explained, "we attempted to infer, in all our interviewing, what the expected and actual behaviors and attitudes were for persons and groups located in different positions in the community system and involved differently in its drama of dependency."[37] For Maas and Engler, this work was not intended simply as a demonstration of foster care failure, but an attempt to explain what features of particular communities led to better outcomes in foster care.

Despite their claims to objectivity, Maas and Engler's view of child welfare was framed by a belief in the rehabilitative ideal. Like other members of the child welfare network, Maas and Engler praised the potential of American society. "The distinctive way of life," they explained, "has developed, traditionally, around certain human values. The great democratic experiment of which we are a part is primarily an experiment in the hoped-for realization of these values. They are the values which inhere in the personality as a thing of dignity and intrinsic worth, possessing certain potentials for development within the human community."[38] One value that they attempted to measure in this study was the extent to which Americans accepted the child without parents "as 'our' child, one of the larger family which includes us all."[39] Maas and Engler emphasized society's responsibility for children and the need to break down cultural barriers in order to meet this responsibility.

The rehabilitative nature of the study was deeper than a profession of social or democratic values. Maas and Engler also incorporated psychiatric and psychological assumptions into their sociological study. "Without homes and guidance," the authors

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[37] Ibid., 6.
[38] Ibid., 2.
[39] Ibid., 7.

asserted about the children studied, "they will have lacked the warmth of parental love and guidance which must accompany life's early challenges." The child in foster care "will have been deprived of adequate parental figures as models for their own development. They will have great difficulties in making the positive linkages to life which grow from one's sense of being a part of the web of human relationships—all with their beginning in the family circle."[40] The consequences of missing these family relationships were all too clear in Mass and Engler's findings. Their work, they noted, "is a story of children in America for whom problems of consistent personality development have been greatly multiplied and for whom a sense of worth and identity is difficult to acquire and even more difficult to retain."[41] The consequences of not acting to help these children, Maas and Engler implied, would be dire for American society.

For child welfare activists, *Children In Need of Parents* made four points about foster care that needed to be addressed immediately. The first, and most important, was that foster care failed to provide temporary care for many children. Instead, foster care became simply a way of life for these children. "Of all the children we studied," Maas and Engler pointed out, "better than half of them gave promise of living a major part of their childhood years in foster families and institutions."[42] The most striking were the "children likely to leave care only when they came of age, often after having had many homes—none of their own—for ten or so years."[43] In the communities they studied most children remained in care from 2 to 5 years. But there was great variation among the communities. In one the average time in foster family care was 8 years while in another

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[40] Ibid., 8.
[41] Ibid., 1.
[42] Ibid., 356.
[43] Ibid., 356.

it was only 1.2 years. Across all the communities, however, most children who were going to return home did so after a year or less in foster care. "Time was a most important factor in the movement of children out of every care in every setting," Mass and Engeler's data revealed, "for staying in care beyond a year and a half greatly increased the child's chances of not being adopted or returned home."[44] Rather than being rehabilitated in foster care, children remained trapped in arrangements intended to be temporary.

The length of time in foster care was connected to another issue, the number of placements experienced by children. In six of the nine communities studied, most children experienced more than one foster care placement. "The predominant experience," according to Maas and Engler, was "two to three placements."[45] This finding led to the study's second significant conclusion. "Emotional disturbance was related in a highly positive way not to the length of time children spent in care but rather to the number of placements they had."[46] Causality was difficult to ascertain. Were disturbed children moved to new placements because of their emotional problems or did they experience emotional disturbance because of these frequent moves? What was clear was that "forty to fifty percent or more of children in foster care in every one of our nine communities showed symptoms of maladjustment."[47] The consequences were easy to see, emotional disturbance formed "a major barrier to adoptive placement."[48] While emotional disturbance was observed in many children when they entered the foster care

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[44] Ibid., 351.
[45] Ibid., 350.
[46] Maas, "Highlights of the Foster Care Project," 5.
[47] Ibid.
[48] Ibid.

system, the problem "was not reduced in extent during their period of care."[49] Rather than rehabilitating children and preparing them for reunification or adoption, foster care appeared to simply move children between placements leaving them as maladjusted if not more maladjusted then when they entered care.

The community-level focus of *Children in Need of Parents* highlighted a third disturbing feature of foster family care in the United States—outcomes for children were more closely correlated to community dynamics than the needs or symptoms of the children.[50] The type of placement that children received—be it with a foster family, in an institution, or adoption—varied greatly from community to community. There were also significant discrepancies among the communities in the length of time in care and the number of placements. The best explanations for these differences were the particular features of the local child welfare systems and the cultural orientation of the communities. Maas and Engler found that the orientation of the local legal system was often a determining factor in the placement of children. Based on state or local law or simply the inclinations of the judge, some communities prioritized the protection of parents' rights while others emphasized the protection of children's rights. The functioning of child welfare agencies, especially the interaction among individual agencies and the courts also explained the outcomes for children.[51] Finally, cultural factors such as the homogeneity or size of the community seemed to determine how children without parents fared. For example, Maas and Engler hypothesized that communities with economic and ethnic heterogeneity, especially places where

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[49] Ibid.
[50] Ibid..
[51] Maas and Engler, *Children in Need of Parents*, 6–8.

"sociocultural gaps" separated "dependent children and prospective adoptive parents," would have low levels of adoption.[52] Such findings called the existence of rehabilitative foster care into question. How a child was treated was not based on their individual needs as proscribed by the rehabilitative ideal, but by the particular features of the community in which they lived.

Maas and Engler's fourth and final finding of interest to child welfare activists concerned the operation of adoption agencies. Children from a so-called "hard to place" categories constituted less than half of the adoption in the communities studied. These included children from a minority ethnic group, with a physical disability, with psychological problems, or with below normal intelligence. In addition, the vast majority of adoptions were of children under the age of two. The authors recognized that there were real barriers to adoption in some cases, but they questioned whether agencies were unnecessarily labeling some children as "hard to place." As Maas summarized, "we found that adoptive parents have broader tolerances for difference in the children they are willing to take than the characteristics of the children the agencies place in adoptive homes would indicate."[53] This finding supported some of the liberal optimism of the rehabilitative ideal. To be sure, there were serious shortcomings in the system of foster care, but there were families out there willing to give these children new, permanent homes.

This optimistic attitude towards the child welfare system was also reflected in the prescriptions for reform by Joseph H. Reid, executive director of the CWLA, included as the final chapter to *Children in Need of Parents*. The findings of this study, Reid argued,

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[52] Ibid., 287–292.
[53] Maas, "Highlights of the Foster Care Project," 5–6.

should spur child welfare advocates to initiate serious reform of foster care. "It is evident to anyone reading this study," he asserted, "that radical action is necessary if American communities are to protect adequately the children now living outside their own homes and the additional thousands of children in danger of losing their own homes."[54] If the nine communities were representative in that less than 25 percent of children in care were likely to return home, Reid extrapolated, "we can only conclude that there are roughly 168,000 children today who are in danger of staying in foster care throughout their childhood years."[55] If action was not taken quickly, the consequences for these children would be dire.

Reid viewed Maas and Engler's study through the lens of the rehabilitative ideal. From this perspective, foster care failed to fulfill society's responsibility to ensure the healthy development of children. This was a failure of national duty. "These children," Reid explained, "are denied the birthright of every American child—the right to a happy and secure childhood, enabling them to make full use of their inherent capacity."[56] Furthermore, the failure of foster care to rehabilitate children endangered the future of American society. As Reid emphasized, "no one can read this material without coming to the conclusion that for a large number of children in foster care there are overwhelming deterrents to their becoming responsible, mature adults capable of being good parents."[57] The child welfare network had to act to fix foster care because it was both the right thing to do and it was necessary to preserve American society.

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[54] Joseph H. Reid, "Next Steps: Actions Called For—Recommendations," in Henry S. Maas and Richard E. Engler, Jr., *Children in Need of Parents* (New York: Columbia University Press, 1959), 378.
[55] Ibid., 379–380.
[56] Ibid.
[57] Ibid., 379.

Reid's suggestions anticipated the direction of foster care reform over the 1960s and 1970s. He identified four categories where improvements could be made. First, services and programs that could prevent children ending up in foster care needed to be improved. Second, both the law and agency practices had to be reformed in order to encourage adoption. Third, since some children would remain in long-term foster care, practices needed to be developed to ensure that this care was consistent and rehabilitative. Fourth, foster care and child welfare generally needed greater support from the community and the state. It is worth examining some of Reid's specific prescriptions before looking at how these reforms actually reshaped foster care practices on the ground.

The best way to resolve the shortcomings of foster care, Reid argued, was to institute preventive measures so children could remain in their homes. Looking over the entire twentieth century, Reid noted that the United States had made "tremendous advances" in "preserving family life."[58] These had included a reduction in the death of mothers in child birth, decreases in industrial accidents, and a decline in communicable diseases. In addition, social assistance like the ADC provisions in the Social Security Act had allowed poor families to care for children at home. Finally, casework services had helped children return home from foster care and helped prevent family breakdown. Together all these provisions had "sharply reduced the proportion of children in the United States who live outside their homes." Looking at the number of children in foster care, Reid noted, "As compared with 1920 there are less than one sixteenth as many orphans in the United States today."[59]

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[58] Ibid., 380.
[59] Ibid..

Despite these developments, Reid realized there was "still much to be done."[60] He saw three sets of programs as critical to reducing the number of children in foster care. Since foster care was still associated with poverty, income maintenance programs could help reduce these rates. As Reid pointedly put it, "only as the nation protects the earning capacity of families, particularly those in minority groups, can some foster placements be prevented."[61] Poverty alone, however, did not explain the removal of children from the home. Reid recognized that "the single most important cause of foster placement of children is marital breakdown." His second preventive recommendation, therefore, was services to preserve marriages and families. "In order to keep families intact," he argued "every community must provide a wide range of service, including financial assistance, marital counseling, psychiatric services, homemaker service, day care, and many other social services that are as necessary as a clean water supply in every American community."[62] But such programs might not be enough. Even in an era of relative family stability, Reid feared the rising rates of illegitimacy that "social agencies alone" were "helpless in combating." Reid recognized "in the broader sense, the only preventive for children having to live unnecessarily in foster care is a healthy, economically prosperous, morally strong American family and a healthy, prosperous, and morally strong community."[63] Finally, Reid called for innovations in diagnostic services in schools and in other community programs to swiftly identify the children who might be experiencing problems at home. These might help find and treat troubled families before foster care became necessary.

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[60] Ibid.
[61] Ibid., 381.
[62] Ibid.
[63] Ibid..

If all these programs failed to keep a child from entering foster care, another recommendation was to remove the child from foster care through adoption. Maas and Engler had demonstrated that many children in foster care would never return to their homes. The first step in encouraging adoption was to create a mechanism to sever the parent's legal rights to a child "where it was obvious that the parents will never take responsibility for the child."[64] Second, recognizing Maas and Engler's criticism that children being unfairly labeled as "hard-to-place," Reid called on agencies to seek out adoptive homes for all children. This meant removing the "conscious or unconscious attitudes" that created "a barrier to the placement of such children."[65] Furthermore, agencies needed to publicize themselves and reach out to communities, including minority communities, to encourage adoption. In some cases, changing practices like the requirement that the mother not work outside the home would open more homes for adoptive children. Subsidies to adoptive parents, Reid suggested, might also help increase adoptions of children in foster care. Finally, the creation of a national adoption resources exchange, Reid argued, would increase the rates of adoption. Some states had already instituted adoption resource exchanges to match parents with children across the state. A national program would provide many more homes to children in need of adoption. Child welfare advocates would take up all these suggestions over the 1960s and 1970s.[66]

When preventive measures failed and adoption was not possible, children would have to be cared for in long-term foster care. With reform, Reid argued, indefinite or

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[64] Ibid., 383.
[65] Ibid., 384.
[66] Ibid.," 383–388.

even permanent foster care did not need to be viewed as a negative outcome. Since Maas and Engler had suggested that successive placements were damaging to the child's emotional state, Reid first looked to ways to promote stability for the foster child. One possibility was increasing the use of group homes. This would provide care for several children in the home setting. Even if the foster parents employed by the agency left, the children would at least remain in the same agency-owned home. Also, Reid called for studies to determine the kinds of parents that could best provide adequate long-term care for the emotionally disturbed child. Perhaps, Reid suggested, adding services like baby-sitting could ease the burden for these families. Second, Reid looked to increase state oversight of children. He called on states to require agencies to report to "a responsible government agency on their plans for children in care."[67] This would force both the child welfare agency and the state to track and evaluate the child and provide a sense of the number of children in care with no chance of returning home. Finally, Reid instructed that even if a child remained in long-term care, agencies should strive to keep birth parents part of the child's life. This meant continuing case work with the birth parents, arranging for visits, and requiring parents to contribute financially for the child's care. Such actions would maintain the relationship between parent and child and keep open the possibility of a return home. In keeping with this policy, Reid argued that the state should not force parents to amend their legal rights when the child enters foster care and should not move the child to a community far away from the parents. As long as the

[67] Ibid., 391.

child was to remain in foster care the relationship with the parent should be sustained and encouraged.[68]

Reid's final set of recommendations concerned community support for foster care and child welfare. This was a call for child welfare agencies to become active in their communities. They needed to publicize their work and "reach the many people whose latent concern for children will provide yeast for action."[69] Most importantly they needed to find financial support. "Because services are starved for money," Reid explained, "children are emotionally starved." Maas and Engler described a system of foster care in dire need of assistance; the only hope for improvement was if advocates focused new attention on child welfare needs. Reid concluded his chapter by emphasizing the urgency of the situation, "children need what they need when they need it. Providing it 'later' is always too late." He called on all adults to become advocates for children. "Children cannot be their own spokesmen, their own lobbyists," he pointed out. "Only as responsible adult citizens make clear to their legislators, to their directors of united funds and community chests, to their county commissioners, to their governors, what it is that children require, and what the price of fulfilling these requirements is, can we eliminate the tragedies of the 'orphans of the living.'"[70]

Maas and Engler had revealed that foster care often failed to serve the rehabilitative function that child welfare advocates had envisioned for it. Joseph H. Reid and other members of the child welfare network were not, however, deterred. Foster care, they believed, could become an important part of a rehabilitative system of child

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[68] Ibid., 388–393.
[69] Ibid., 396.
[70] Ibid., 397.

welfare. Members of the child welfare network moved simultaneously in two directions to ameliorate the problems in foster care. First, they initiated a series of measures to encourage the adoption of children out of foster care. Second, they attempted to institute reforms to make foster care more rehabilitative. In spite of success in both these areas, child welfare activists faced over the 1960s and 1970s a growing crisis in child welfare that neither adoption nor therapeutic services were able to handle. The reaction was a growing resistance to the rehabilitative perspective and increasing disdain for foster care itself.

Encouraging Adoption

The efforts to encourage adoption took the form of four programs. First, members of the child welfare network pushed state legislatures and courts to free children in foster care for adoption without the permission of the natural parents. If parents were taking no involvement in their child's lives but refused to voluntarily give the child up for adoption, activists reasoned, the state should step in to terminate the rights of the birth parents. Second, the network set up statewide adoption clearinghouses and eventually a national adoption clearinghouse to match children with families who wanted them. Third, welfare activists helped create adoption subsidies to encourage parents who could not easily afford it, to adopt. Finally, they worked to encourage agencies to find homes for minority children. This meant encouraging adoption among African-American families and advocating transracial adoption.

Members of the child welfare network found it particularly jarring that some children remained in foster care only because their parents, with whom they had little or

no contact, refused to consent to adoption. A 1955 study by the Welfare and Health Council of New York City, found that almost 82 percent of the children in foster care for whom adoption would be a sound plan were legally unavailable for adoption. This included 17 percent who had no contact with parents over the last year and 14 percent where the whereabouts of the parents were unknown.[71] In the communities they studied, Mass and Engler had noted the poor outcomes for these children in foster care whose parents never or "almost never" visited them.[72] The child welfare network realized that these children would spend their childhoods in foster care unless they could be legally freed for adoption.

Most states allowed for children who had been abandoned by their parents to be freed for adoption. However, there were two problems with applying abandonment statutes as they existed in the mid-1950s to children in foster care. First, some states set the standard for abandonment so high that it would not be met even by parents who rarely or never visited their children in foster care. In New York, for example, the standard for dispensing with a parent's consent for adoption based on abandonment rested on a 1924 Court of Appeals decision. Judge Benjamin Cardozo, speaking for the court, held that the actions taken by the natural parents must be "so unequivocal as to bear one interpretation and one only the parents manifested an intention to abandon the child forever."[73] Based on this standard, New York courts through the 1950s, refused to find a

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[71] Welfare and Health Council of New York City, *Children Deprived of Adoption* (New York: Welfare and Health Council of New York City, 1955), 10–11; Jean P. Ritz, "Termination of Parental Rights to Free Child for Adoption," *New York University Law Review* 32 (1957): 579.
[72] Mass and Engler, *Children in Need of Parents*, 357.
[73] *Application of Bistany*, 239 N.Y. 19 (New York Court of Appeals, 1924), 24.

child abandoned if there was no "settled intent to abandon" even when there was no emotional relationship with the parent.[74]

The second obstacle to using abandonment statues to free children for adoption was procedural. A determination of abandonment could be found only as part of an adoption proceeding. This created a road block for children in foster care. It was difficult, if not impossible, for child welfare agencies to initiate adoption proceedings for children who were not yet legally free do be adopted. In practice, then, the only way agencies could begin to seek adoptive homes for a child in their care was to get the consent of the child's parents. To address this problem, child welfare experts proposed the creation of a two hearing process: one hearing would evaluate the petition to terminate parental rights and a second would formalize the adoption. The termination procedure, therefore, could be used to allow "unvisited" foster children to become candidates for adoption.[75]

In response to these problems, several states passed legislation to ease the termination of parental rights. Pennsylvania passed an act in 1953 allowing child welfare agencies to petition the court for a finding of abandonment after no contact with the parent for six months. Wisconsin included similar language in its children's code of 1955. Both of these pieces of legislation also allowed new procedures to determine abandonment separate from an adoption hearing. However, they did not necessarily redefine the concept of abandonment. The 1953 Pennsylvania act, for example, defined abandonment as "conduct on the part of the parent which evidences a *settled purpose* of relinquishing parental claim to the child and of refusing or failing to perform parental

[74] Ritz, "Termination of Parental Rights," 588.
[75] Ibid., 582–583.

duties."[76] For child welfare advocates, such language focused too much on the intentions of the parent rather than the welfare of the child. Any action taken by the parent, no matter how insignificant in the life of the child, could be viewed as evidence that the parent's purpose was not to abandon the child.

In New York, partially because of the courts' insistence on maintaining a high standard for abandonment, simply creating a pre-adoption termination procedure would not be enough. Legal activists such as Shad Polier, Justine Wise Polier's husband, realized they also needed a new legal category that incorporated the situation faced by children in foster care. As a member of the CCC and legal council for Louise Wise Services, the adoption agency founded by Justine Wise Polier's mother, Shad Polier was at the center of New York's child welfare network. With the support of this New York network, Polier drafted and successfully lobbied for the passage of legislation creating the legal notion of "the permanently neglected child" in 1959.[77]

Polier's act created a "new concept to cover the case of a child already in the care of a social agency, when the agency believed that an adoptive home could and should be found for the child."[78] In short, the legislation was designed to deal directly and exclusively with children trapped in foster care. To achieve this goal Polier developed "a new legal category" called the "permanently neglected child."[79] This new category contained some innovative features. First, it only applied to a child placed or committed "in the care of an authorized agency, whether in an institution or in a foster home." In

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[76] Ibid., 589–591.
[77] See Shad Polier, "Amendments to New York's Adoption Law: The 'Permanently Neglected' Child," *Child Welfare* 38 (July 1959): 1–4; and Henrietta L. Gordon, "Freedom from Obstacles to Adoption," *Child Welfare* 38 (May 1959): 16.
[78] Shad Polier, "The 'Permanently Neglected' Child," 2.
[79] Ibid.

other words, the law focused specifically on foster children. Second, the statute required child welfare agencies to apply "diligent efforts to encourage and strengthen the parental relationship." This placed a legal burden on agencies to attempt to reunify families. Third, for parental rights to be terminated, the parent had to fail "substantially and continuously or repeatedly for a period of more than one year, to maintain contact with and plan for the future of the child."[80] The use of the terms "substantially and continuously or repeatedly," in Polier's interpretation, implied that parental rights could be terminated even if the parent made contact with the child within a year. As he explained, the phrase "was intended to make possible the finding of permanent neglect not only in the case of a parent who does not visit or communicate with the child, but also one who does so only occasionally."[81] Finally, creating the category of permanent neglect overcame the issue of how the child had ended up in foster care. If a child had been forcibly removed from the parents, it was difficult under the previous law for courts to find that their parents had abandoned them. Permanent neglect would free children for adoption even if they had been placed in foster care against their parent's will.[82] The essence of the permanent neglect legislation was to focus on the needs of the child rather than the intent of the parent and to institute a procedure to terminate parental rights separate from adoption proceedings.

No other states followed New York in creating a legal category of "permanent neglect." However, several states either passed legislation or reinterpreted existing statutes to make it easier to terminate parental rights and give child welfare agencies the

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[80] Ibid.
[81] Ibid., 3.
[82] Hiram D. Gordon, "Terminal Placements of Children and Permanent Termination of Parental Rights: The New York Permanent Neglect Statute," *St. John's Law Review* 46 (1971): 227.

authority to consent to adoptions. In New Jersey, for example, the Attorney General issued an opinion allowing child welfare agencies to petition for the termination of parental rights in 1959. In Maryland, a 1958 decision of the Court of Appeals upheld a degree appointing the Baltimore Department of Public Welfare as guardian for a child with the right to consent to adoption. In 1960, Virginia passed amendments to clarify the authority of child welfare agencies to consent to the adoption of children in their care. Finally, Delaware agencies were able to use a clause in the state's 1951 adoption act allowing for termination in cases of parental unfitness to expand their authority to petition for termination and free children for adoption. While no state followed the same path, the trend towards facilitating the termination of parental rights for children in foster care was widespread.[83]

The variety of approaches in attempting to free children for adoption was reflected in the legislative guide "for the termination of parental rights and responsibilities" developed by the U.S. Children's Bureau in 1961.[84] First, the Bureau made it explicit that termination of parental rights should be a separate procedure from adoption. Second, the guide drew from existing state statutes to develop possible grounds for terminating parental rights. Among the grounds considered was the abandonment of the child. The Children's Bureau realized that abandonment was defined differently in different jurisdictions, but pushed legislatures and courts to recognize that there was more to abandonment "than a specific time period of no contact between parent

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[83] E. Kathryn Pennypacker, "Reaching Decisions to Initiate Court Action to Free Children in Care for Adoption," *Child Welfare* 40 (December 1961): 13–15.

[84] Children's Bureau, *Legislative Guides for the Termination of Parental Rights and Responsibilities and the Adoption of Children* (Washington, D.C.: U.S. Government Printing Office, 1961).

and child."[85] Instead, the Bureau argued that the focus should "be on the parent's intention to forsake the parent-child relationship."[86] While this concern with intent followed traditional definitions of abandonment, the Children's Bureau also considered "substantial and continuous or repeated neglect" as grounds for the termination of parental rights.[87] Clearly influenced by the New York statute, this category would allow for the termination of parental rights based on the action, or lack of action, taken by parents without considering the parents intention to abandon the child.

It is unlikely that any state passed legislation exactly like that recommended by the Children's Bureau. By the early-1970s there was still a great deal of variation among states in procedures terminating parental rights. It does appear, however, that many states did adopt two features of the model act. First, most states instituted termination procedures separate from adoption. This allowed children in foster care to be made available for adoption. Second, states either created new legal categories or reworked existing legal categories to allow termination based on the actions of parents and not their intentions. Based on the analytical framework used by Maas and Engler, this trend demonstrated a shift from courts protecting "parent's rights" to focusing on "children's rights."[88] The decisions of courts in terminating parental rights had become less focused on the intentions of parents and more focused on the needs of children.

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[85] Ibid., 14–15.
[86] Ibid.,15–16.
[87] Ibid.,15.
[88] See Mary S. Coleman, "Standards for Termination of Parental Rights," *Wayne Law Review* 26 (1980): 315-353; and Deborah Bell, "Termination of Parental Rights: Recent Judicial and Legislative Trends," *Emory Law Journal* 30 (1981): 1065-1107. As both these articles note, by the late 1970s the pendulum began to swing back as courts and legislatures protected the rights of parents through procedural protections. The Supreme Court solidified this trend in *Santosky v. Kramer* 455 U.S. 745 (1982) where they found the New York termination statute unconstitutional since it required only a "fair preponderance of the evidence" and not "clear and convincing evidence" in termination proceedings. This lower standard

In spite of all the energy that went into easing the termination of parental rights, such legislation was used infrequently to assist children in foster care. Child welfare agencies often did not have the time or staff to dedicate to the termination procedure. In 1966, Justine Wise Polier lamented that "contrary to the expectations of those who supported the legislation, few, if any," termination proceedings "have been brought before the courts by either public or private agencies."[89] Even if the rehabilitative ideal had been enshrined in New York law, it was not always implemented. As Judge Polier explained, "there is generally no one to protect the rights of such children by instituting legal actions to compel the public departments responsible to exercise faithfully their function—that of providing, on a non-discriminatory basis, appropriate care for *all* children who require placement"[90]

Polier decided if child welfare agencies were not going to free children for adoption, she would take the matter into her own hands as a New York Family Court judge. Polier's authority in this areas were based on two provisions of the Family Court Act of 1962. First, the act required that placement of children be reviewed and approved by the Family Court. Second, the Act incorporated the concept of permanent neglect first developed in 1959, placing the authority to terminate parental rights in the Family Court.[91] The problem, Polier realized, was that both public and private agencies failed to initiate termination proceedings and, consequently, children remained in foster care. In January 1966, Judge Polier, using her power to review foster care placements, pressed a

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of evidence, wrote Justice Blackmun for the court, violated the due process clause of the Fourteenth Amendment. Still, the later statues required courts to consider the actions, not only the intentions, of parents even as they instituted procedural protections.

[89] Justine Wise Polier, "Problems Involving Family and Child," *Columbia Law Review* 66 (1966): 310.

[90] Ibid., 310.

[91] *Laws of New York* 1962, Chapter 686, Family Court Act.

child welfare agency to free three minority children for adoption. For one of these children, Polier was told that termination of parental rights was not even considered. "Counsel for the agency," Polier wrote, "which has resisted referral of this healthy, attractive nonwhite child for adoptive care, has stated in court that his agency believed in only limited application of the statutory authorization to free a child for adoption when there is permanent neglect." Considering all three children's cases together, Polier refused to approve continuing foster care for any of them. Following the conclusions of Maas and Engler, Polier concluded that adoption not foster care was in the "best interest of these three children." She explained, "They are healthy intelligent, attractive toddlers in need of permanent homes in which they can find the security that only adoptive parents can provide."[92]

In Polier's view, the problem at the heart of the application of the law was race. The state, by subsidizing voluntary agencies, failed to provide the best care for children when these children were not white. Polier opined: "The conclusion seems inescapable that the Department of Welfare, which largely delegated its responsibility for the care of dependent and neglected children to voluntary agencies, is providing only infinitesimal adoptive services for Protestant Negro children. Without determining the constitutionality of public services that are restricted by race and religion, this court is satisfied that procedure under such discriminatory policies cannot govern the court's determination of what is in the best interest of these children." Polier would use her position as a judge to enforce the integrationist vision of the rehabilitative ideal even if public and voluntary agencies were unwilling to cooperate. When the public welfare

[92] *In re Bonez*, 48 Misc. 2d 900, (Family Court of New York, 1966), 905

agency refused to take responsibility for finding an adoptive home for the child, Polier used the authority of the court to remove the child from foster care and place her in an adoptive home. While the court was not equipped to do this in every case, Polier wanted to set an example for how child welfare agencies should proceed.[93]

Termination procedures alone were not enough to break the barriers that left children in foster care. In order to move children from foster care to permanent homes, the child welfare network had to develop programs to encourage potential parents to adopt. As more children became available for adoption, however, child welfare experts found that the number of families willing to adopt these children was not inexhaustible. In the early 1960s, a rumor began to spread through the child welfare community that the number of homes applying to adopt children was rapidly decreasing. As the CWLA and the Children's Bureau began to study the problem they found that the number of homes available had actually increased over the period 1958 to 1962, however the number of children available adoption had increased at an even greater rate.[94] Child welfare experts postulated the reasons for this change. First, an increase in illegitimate births had led to an increasing number of children available for adoption. Second, changes "in the definition of an adoptable child" allowed for the adoption of special needs children "who, in the past, would have been considered unadoptable." Finally, some surmised that "some agencies are more courageous today in taking legal steps toward freeing children for adoption."[95] In other words, child welfare experts were victims of their own success;

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[93] Ibid., 906.
[94] Lydia F. Hylton, "Trends in Adoption, 1958-1962," *Child Welfare* 44 (1965): 377–386.
[95] Florence G. Brown, "Reduction in Adoptive Applicants: Implications for Agencies—A Symposium: Positive Aspects in Our Current Situation," *Child Welfare* 43 (1964): 293.

by encouraging the increased adoption of children out of foster care they had precipitated a shortage in adoptive homes.

Adoption agencies initiated a number of strategies to help find homes for the growing number of children available for adoption. Following the advice of the CWLA, they reduced restrictions and requirements that had excluded some households as candidates for adoption. Agencies relaxed age restrictions, allowed more leeway in "matching" the child's religion, removed requirements for couples to prove infertility, allowed adoption for couples who already had their own or other adopted children, and reduced fees.[96] Some agencies even allowed for single-parent adoptive homes.[97] This loosening of restrictions, however, did not create enough homes for all the children available for adoption.

The greatest obstacle to finding adoptive homes for many children was race. The large numbers of minority children in foster care had concerned child welfare activists since the 1950s.[98] Along with pursuing subsidized adoption and developing the adoption resources exchange, agencies also developed strategies to deal exclusively with minority children. One of the most disturbing of these experiments was an effort over the 1950s to determine the racial characteristics that "mixed-race" children would develop based on there appearance as babies. The Dight Institute of Human Genetics at the University of Minnesota consulted with adoption agencies across the country concerning children of "possible racial admixture."[99] The idea was to match the anticipated physical

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[96] Hylton, "Trends in Adoption," 386.
[97] E. Elizabeth Glover, "Editor's Page," *Child Welfare* 45 (1966): 492, 538.
[98] See *The Uprooted: Children in Need of Foster Care*, VWB Papers, Box 182, folder 13.
[99] Esther B. Nordlie and Sheldon C. Reed, "Follow-up on Adoption Counseling for Children of Possible Racial Admixture," *Child Welfare* 41 (September 1962): 297–327.

characteristics of the children with those of their perspective parents. In some cases the institute concluded that the child "could pass for white." For children with darker features "it was recommended that they be placed in families of Mediterranean ancestry."[100] Based on a 1962 follow-up study, the institute found that their project was a success, as 80 percent of the children they had categorized found adoptive homes. In some of these cases, the agencies had withheld the racial background from the adoptive parents. However, according to their own interpretations of racial characteristics "the predictions of the Dight Institute were not 100 percent correct." As they got older, some of the children "were appraised as Negro" and were not "able to pass for white or Mediterranean origin" as originally predicted. However, the most important finding of the follow-up study was that only one child was removed from his adoptive home "because of his Negro ancestry."[101] No matter their appearance, adoptive parents accepted these children as their own. The authors of the follow-up study concluded, therefore, that success in the placement of "children of mixed racial backgrounds" should "be based on the satisfaction of the parents with their children and the happiness of the children in their homes."[102] Still, in the early 1960s racial matching remained the rule for most adoption agencies. Thus, in order to find adoptive homes for the growing number of African-American children in foster care, child welfare workers had to encourage black families to adopt.

There was some debate among the child welfare community about the why there was a shortage of African-American families willing to adopt. One study found that even

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[100] Ibid., 300.
[101] Ibid., 304.
[102] Ibid., 327.

as blacks moved into the middle class "the values to which successful urban Negroes subscribe" kept them from pursuing adoption.[103] Another study, conversely, calculated that adjusting for income blacks adopted at higher rates than whites.[104] The simple fact was that the limits of income and opportunity based on race made it difficult for African-American families to adopt. With a growing population of minority children in foster care, the number of minority families adopting children had to increase quickly to keep pace and provide homes for these children.[105]

One program intended to encourage adoption of minority and other hard-to-place children was subsidized adoption. First implemented in New York in 1968, public subsides for adoption quickly spread across the country. By 1973, 27 states had passed legislation creating adoption subsidies.[106] There were several precedents for publicly subsidized adoption. Some agencies had assisted parents in adopting children with special needs. For example, Louise Wise Services in New York City had offered subsidies to pay for the medical care of adopted handicapped children. Also, some states instituted programs of quasi-adoption or long-term foster care which provided payments to families who made a commitment for caring for a child until adulthood.[107] The innovation of subsidized adoption was to commit public funds to assist families that had

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[103] Sterling Tucker, "Discussion," *Child Welfare* 41 (1962): 408-410 as cited in Seaton W. Manning, "The Changing Negro Family: Implications in the Adoption of Children," *Child Welfare* 43 (1964): 482.
[104] Myron R. Chevlin, "Adoption Outlook," *Child Welfare* 46 (1967): 79.
[105] One recent article noted in passing that "black families have always adopted at a higher rate than white families." (Rita J. Simon and Howard Altstein, "The Relevance of Race in Adoption Law and Practice," *Notre Dame Journal of Law, Ethics and Public Policy* 11 (1997): 171.) See also Randall Kennedy, *Interracial Intimacies: Sex, Marriage, Identity, and Adoption* (New York: Pantheon Books, 2003), 402–411.
[106] Monrad G. Paulsen, Walter Wadlington, and Julius Goebel, Jr., *Domestic Relations: Cases and Materials*, 2nd Ed. (Mineola, New York: The Foundation Press, 1974), 503.
[107] Harriet L. Goldberg and Llewellyn H. Linde, "The Case for Subsidized Adoptions," *Child Welfare* 48 (February 1969): 96–97.

formally adopted children. These families would be like any other family created through adoption with no intervention from the state except for monetary support.[108]

Subsidized adoptions were targeted at one particular situation, foster parents who wanted to adopt the child they cared for but could not afford to lose the board payments that foster care provided. While these subsidies could be used to assist in the placement of children with physical or other disabilities, in most cases subsidies were used as a way of finding homes for the growing population of African-American foster children already placed in African-American foster families that otherwise could not afford to adopt. The account of an adoption specialist with the Maryland State Department of Social Services was particularly telling. "In Baltimore," she explained, "there was a substantial number of black children free for adoption, living in good foster homes, whose foster parents were trying to rear and educate their children and could not take on additional financial responsibility."[109] The first subsidized adoption legislation, passed in New York, limited subsidies to children "who has been adopted by foster parents in whose home" they had received care.[110] While not every state included this restriction in its legislation, one expert noted that "the general thrust of the programs seems directed toward converting into adoptive placement those situations rooted in a satisfactory foster family that has been financially unable to adopt."[111] In order to distinguish subsidized adoption from foster care, states required that the subsidy received after adoption be less than the foster

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[108] There was some debate within the social work community whether case workers should continue to interact with families receiving adoption subsidies. Most state legislation and social workers, however, concluded that the definition of adoption required that parents be allowed to care for their children without interference. (Goldberg and Linde, "Case for Subsidized Adoptions," 98–99; Kenneth W. Watson, "Subsidized Adoption: A Crucial Investment," *Child Welfare* 51 (April 1972): 227–228.)

[109] Mary Polk, "Maryland's Program of Subsidized Adoptions," *Child Welfare* 49 (December 1970), 581.

[110] Angela Gentile, "Subsidized Adoption in New York: How Law Works—and Some Problems," *Child Welfare* 49 (December 1970): 576.

[111] Watson, "Subsidized Adoption," 224.

care board payment. In New York, for example, the maximum subsidy was set at $120 a month while the board rate for foster home care was $125 a month.[112] In Maryland, the subsidy was set at 75 percent of what foster parents received.[113] These limits on subsidies embodied two desires encapsulated in subsidized adoption. First, states wanted parents to demonstrate their commitment to their adopted child by taking less support than they received as foster parents. Second, advocates had claimed that subsidized adoption would cost the state less than foster care and capping subsidies would ensure that this was the case. Most importantly, subsidies began to place adoption within "the total complex of child welfare programs."[114] Subsidized adoption represented a shift from thinking about adoption "as a resource of babies for childless couples," to a recognition of the "community's responsibility . . . to obtain an adoptive home for every child who needs one."[115]

Subsidized adoption spread quickly across the country. By January 1971, six states had followed New York's lead in implanting the program. By 1972, the number of states with adoption subsidies had increased to 14, and by 1973 to 27 states. Still, members of the child welfare network realized that subsidized adoption was not the cure-all that would find permanent homes for all children in foster care. In fact, the number of subsidized placements remained small. By June 1970, New York had approved 302 subsidized adoptions. Illinois had improved only 130 subsidized adoptions by January 1971. The importance of finding adoptive homes for these children should not be

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[112] Gentile, "Subsidized Adoption in New York," 577.
[113] Polk, "Maryland's Program of Subsidized Adoptions," 582.
[114] Bernice Q. Madison, "Adoption: Yesterday, Today, and Tomorrow—Part II," *Child Welfare* 45 (June 1966): 342.
[115] Watson, "Subsidized Adoption," 221.

minimized; however, to make a significant dent in the foster care populations of these states the numbers of subsidized adoptions needed to be in the thousands not the hundreds. Some social workers feared "that in the continuing effort to reduce long-term foster care, more will be expected of subsidized adoption than it can offer."[116] Others realized that "subsidized adoption alone is not going to place all of the children who wait". Instead, "it should be only one of the creative approaches . . . to assure each child a home."[117] Despite these warnings, subsidized adoption would remain a central component of child welfare policy.

Another tool to encourage adoption of minority children was the establishment of registries of children available for adoption and families seeking to adopt. As early as 1955, The National Urban League began a three year project to find homes and establish national registries for hard-to-place children. While some children found homes, the program had only limited success in finding African-American families willing to adopt.[118] Still, some child welfare activists saw potential in the development of registries or adoption resource exchanges. Under these programs states created a state-wide registry of children available for adoption and families seeking children. When adoption agencies failed to place a child they could turn to this exchange with the hope of finding a family from another community.[119] In spite of the support of the child welfare network for such programs, by 1962 only 14 states had established adoption resource

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[116] Roberta G. Andrews, "When is Subsidized Adoption Preferable to Long-Term Foster Care?" *Child Welfare* 50 (April 1971): 200.
[117] Watson, "Subsidized Adoptions," 228.
[118] Barbara Melosh, *Strangers and Kin: The American Way of Adoption* (Cambridge, Mass.: Harvard University Press, 2002), 173.
[119] Reid, "Next Steps," 387.

exchanges.[120] In 1968, CWLA advanced this initiative by creating the Adoption Resource Exchange of North America as a way of finding homes for hard-to-place children across the United States and Canada. Initially a temporary program, its supporters hoped that the exchange would "demonstrate that there are adoptive families for children of minority groups, children with physical or emotional handicaps, older children and groups of siblings, as well as for the normal white infant." The underlying assumption of the adoption resource exchange was that "if the child is adoptable, there must be a home for him in the United States or Canada."[121] The resource exchange would be successful in finding homes for almost 200 children annually.[122] The faith in finding a home for every child, however, was misplaced. As the percentage of African-American children in foster care increased over the 1960s and even more sharply in the 1970s, it became clear that the greatest barrier for finding homes for foster children was race.[123]

By the mid-1960s, the members of the child welfare policy network agreed that the welfare of the child—not race, religion, or ethnicity—should be the standard for finding adoptive homes. Revising the notion of "matching" potential parents to adoptive children, child welfare leaders began to encourage "transracial adoption." Breaking down the barriers of race seemed to be the best way to find permanent homes for the rising number of minority children in foster care. "Transracial adoption," however, proved to be a difficult proposition. Child activists faced opposition based upon

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[120] Madison, "Adoption—Part II," 347.
[121] Clara J. Swan, "Adoption Resource Exchange," *Child Welfare* 47: 4; and Carp, *Family Matters*, 168.
[122] Carp, *Family Matters*, 168.
[123] See Alfred Kadushin, *Child Welfare Services*, 2nd ed. (New York: Macmillan, 1974), 467.

traditional social work practice, the racism of potential adoptive parents, and, by the late 1960s, an emerging black nationalism.

"Matching" children to their adoptive parents became accepted social work practice beginning in the 1930s. On a basic level, "matching" implied that children should resemble their adoptive families in order to appear biologically related. For social workers in adoption agencies, matching meant that potential families had to be able to meet the particular needs of their adopted child. Still, most obviously matching attempted to find families that shared the same religion, race, ethnicity or even skin tone as their adopted child.[124] Some members of the child welfare network, like Justine Wise Polier, had spoken out about this kind of matching since the 1950s.[125] As adoption practice became less concerned with meeting the needs of families without children and more concerned with finding homes for all children in need, social workers realized the need to revise their practices. Some social workers came to believe that "'matching' is not so much looking for similarities in physical characteristics and backgrounds per se as it is [a] process through which there is a focus on the identification of the needs of individual children and a corresponding study, selection of, and giving help to families with the capacities to respond to those needs."[126] In a 1964 CWLA publication, the psychiatrist Viola Bernard provided her own perspective. "Experience has shown," she explained, "that couples can identify with children whose appearance and background differ markedly from their own." Matching, Bernard instructed, should be viewed

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[124] Melosh, *Strangers and Kin*, 51–55.
[125] See Ellen Herman, "The Difference Difference Makes: Justine Wise Polier and Religious Matching in Twentieth-Century Child Adoption," *Religion and American Culture* 10 (2000): 57–98.
[126] Dorothy C. Krugman, "The Psychologist in an Adoption Agency," *Child Welfare* 43 (1964), 241 as cited in Bernice Q. Madison, "Adoption: Yesterday, Today, and Tomorrow—Part I," *Child Welfare* 45 (May 1966), 258.

psychologically focusing on the "corespondencies between the child's estimated potentialities and the parents' personalities, values, and modes of life."[127] According to this view, meeting the emotional needs and expectations of both the child and parents was more important than matching race or ethnicity.

By the mid-1960s, the number of African-American and other minority children awaiting adoption greatly outnumbered the number of potential homes of the same race.[128] As Myron R. Chevlin, Joseph Reid's assistant at CWLA, explained, paraphrasing Senator Fulbright on the America's policy toward China, "it would now seem that the time had come 'to think unthinkable thoughts and do unthinkable things' with respect to adoption practice." This new approach to adoption included the encouragement of "interracial adoption."[129] Transracial adoption was not necessarily new. As the historian Barbara Melosh notes, following the strange rules of race in America, African-American parents had been allowed to adopt biracial children, that is children with one black and one white parent, for most of the twentieth century. The innovation in the 1960s was to permit and encourage white parents to adopt children that had some African-American, Hispanic, or American Indian lineage. One experiment in Minnesota promoted the adoption of American Indian, Mexican, and African-American children. The planners of this campaign were surprised when white families applied to care for black children but found positive outcomes in these adoptions. Often these families showed less prejudice and were more accepting of the situation then the social workers assigned to help them with their adoption. The program, through small, did not

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[127] Viola M. Bernard, *Adoption* (New York: Child Welfare League of America, 1964), 99 as cited in Rita J. Simon and Howard Altstein, *Transracial Adoption* (New York: John Wiley & Sons, 1977), 15.
[128] Melosh, *Strangers and Kin*, 149.
[129] Myron R. Chevlin, "Adoption Outlook," *Child Welfare* 46 (February 1967): 79.

experience any hostility from the white community. As one social worker involved in the experiment reported, "the community was far more ready than even the most hopeful of hopefuls had anticipated." This success was not necessarily a sign of racial enlightenment. As the social worker surmised, the acceptance of the community "was not so much an affirmation of integration, equal rights, or the brotherhood of man as it was recognition of the need to grant a place in the sun to unfortunate children."[130] Child welfare experts, looking at the outcome of this experiment and others like it, pressed to expand transracial adoption. In the 1968 revision of its *Standards for Adoption Service*, the CWLA made it its official policy to "encourage consideration of trans-racial adoption."[131] Local adoption agencies responded; in 1968, 733 transracial adoptions were reported. By 1971, agencies reported 2,574 transracial adoptions. To be fair, this was only two or three percent of all adoptions for the year. But for child welfare advocates who hoped to remove minority children from foster care these transracial adoptions demonstrated potential. However, transracial adoptions would decline sharply after 1971. By 1975, there were only 831 adoptions of children of a race different than their parents in the country.[132]

The first reason for the failure of transracial adoption was the continuing opposition among adoptive parents to accept a child of another race especially an African-American child. One study by Donald E. Chambers, a social work professor at the University of Kansas, examined the willingness of adoptive applicants to accept "atypical children." He included all the classic "hard-to-place" categories: physically

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[130] Harriet Fricke, "Interracial Adoption: The Little Revolution," *Social Work* 10 (1965): 92–97.
[131] Elizabeth Bartholet, *Nobody's Children: Abuse and Neglect, Foster Drift and the Adoption Alternative* (Boston: Beacon Press, 1999), 73.
[132] Melosh, *Strangers and Kin,* 175; Bartholet, *Nobody's Children*, 72.

handicapped children, older children, children that were members of racial and ethnic minority groups, emotional disturbed children, and mental retarded children. Many of his findings demonstrated a high potential for finding homes for "atypical children." Of his sample applicants, 51 percent would accept a child with a physical handicap and 22 percent would accept a child with mental retardation. Evaluating the willingness to accept children of minority groups, Chambers found that of these "non-Indian, non – Negro, non-Spanish-American adoptive applicants" 52 percent would accept an American Indian child and 56 percent would take a child of "Spanish-American" descent into their home. However, this acceptance of Native Americans and Hispanics strongly contrasted with attitudes towards African-Americans. "Only 2 percent of this non-Negro applicant group were willing to accept black children in adoption." This was the lowest level of acceptance of all the types of children evaluated in the study. The problem, which child welfare experts knew all too well, was that the racial calculus of many white adoptive parents continued to exclude African Americans.[133]

Even if white adoptive parents began to accept African-American children in greater numbers, opposition from black nationalists and black members of the social work community discouraged such placements in the 1970s. In 1972, the National Association of Black Social Workers (NABSW) made their position clear. "Black children," they demanded, "should only be placed with black families whether in foster care or for adoption." Rather than providing homes for children in need, white parents who adopted black children, the NABSW concluded, were engaging in "a form of

[133] Donald E. Chambers, "Willingness to Adopt Atypical Children," *Child Welfare* 49 (1970): 275–279.

genocide."[134] Law professor Elizabeth Bartholet has suggested that faced with pressure form black nationalists and black social workers, the social work establishment caved and quickly backed off from its encouragement of transracial adoption. Even before the NABSW had released its statement, *Child Welfare* the journal of the CWLA, had expressed its ambivalence toward interracial adoption. After discussing the number of articles published by the journal on transracial adoption, the editor Carl Schoenberg expressed the opinion of the journal and, presumably, the CWLA. Schoenberg questioned "the amount of energy being devoted to transracial adoption, and whether it represents any diversion of time, skill, and money for developing new, expanded efforts to recruit black families." Schoenberg then reasserted the principle that children in foster care should be exposed to as little risk as possible. "Transracial adoption involves more risk than inracial adoption, if only because it is less known and less knowable at this point when compared with the demonstrated success of countless inracial adoptions." His statement called into question whether transracial adoption was truly in the best interests of the child. Schoenberg was correct that few studies of interracial adoption had been completed. But his call for new efforts to encourage adoption by black families seemed disingenuous. By the time he wrote these words in 1971, child welfare activists had been attempting to recruit black families and encourage adoption for more than a decade.[135]

In 1973, the CWLA revised its *Standards for Adoption Service* expressing a preference that children be placed with families of their own race. "In today's social climate," the *Standards* stated, "children placed in adoptive families with similar racial

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[134] Melosh, *Strangers and Kin,* 172.
[135] Carl Shoenberg, "On Setting the Record Straight," *Child Welfare* 50 (February 1971), 64.

characteristics can become more easily integrated."[136] This reversed the encouragement of transracial adoption that had appeared in the 1968 CWLA *Standards*. Faced with a shortage of white parents that would accept black children and opposition from black social workers the CWLA and other parts of the child welfare network retreated from their encouragement of transracial adoption. Transracial adoption continued but it never would reach the numbers of the early 1970s and it would no longer be viewed as a significant solution to the problem of long-term foster care.

The controversy over transracial adoption revealed a fracture within the child welfare policy network. On one side of this debate were the postwar liberals, like Justine Wise Polier, who believed that race had no place in determining what was best for a child. The liberal activists had spent their careers arguing that the parochialism of race, religion, and ethnicity were some of the major obstacles to effective child welfare services. As early as 1960, Polier had expressed her displeasure with racial and religious matching in foster care and adoption. "We underestimate the capacity for love and enjoyment for children," she complained, "when we assume that families can accept only children who look like them, or seem to come from the same social group."[137] On the other side of the divide, were those that questioned whether transracial adoption was always best for the child. In a sense, they accused the liberal activists of sacrificing the development of individual children to achieve a social ideal. Even after the CWLA sponsored a 1974 study of transracial adoption that showed the children to be relatively

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[136] CWLA, *Standards*, as cited in Simon and Altstein, *Transracial Adoption*, 48.
[137] Justine Wise Polier, "Attitudes and Contradictions in Our Culture," *Child Welfare* 39 (1960): 3. See also Ellen Herman, "The Difference Difference Makes: Justine Wise Polier and Religious Matching in Twentieth-Century Child Adoption," *Religion and American Culture* 10 (2000): 57-98.

well adjusted, opponents continued to question the practice.[138] The CWLA's 1978 *Standards for Adoption Service* reflected the ambivalence of many social workers toward the practice. In one section the *Standards* explained that "the opportunity to have a permanent family should not be denied a child by reason of age, religion, race, nationality, residence."[139] In another section, however, the CWLA recommended that "it is preferable to place a child in a family of his own racial background."[140] The consensus that developed within the social work community was that transracial adoption should only be attempted when all opportunities to place the child with a family of the same race had been exhausted. This rejection of transracial adoption by child welfare agencies throughout the country began to unravel the child welfare network and its liberal ideology of rehabilitation. Writing in 1987 at the end of her life, Justine Wise Polier was struck by the failure to find permanency for minority children. "American nonwhite children," she observed, "wait in large numbers and outgrow the likelihood of ever being adopted. Progress has been slow, stymied by old prejudices."[141]

Transracial adoption, despite all the controversy it produced, was only one of the attempts to remove children from long-term foster care. Legislation to terminate parental rights, subsidized adoption, and adoption resource exchanges showed better success in finding permanent homes for children. Still, it was impossible to find adoptive homes for

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[138] The study was Lucille J. Grow and Deborah Shapiro, *Black Children, White Parents: A Study of Transracial Adoption* (New York: Child Welfare League of America, 1974); see Rita James Simon and Howard Altstein, *Transracial Adoption* (New York: John Wiley & Sons, 1977), 35–44.
[139] Child Welfare League of America, *Standards for Adoption Service*, revised (New York: Child Welfare League of America, 1978), 12, as cited in Rita J. Simon and Howard Altstein, *Transracial Adoption: A Follow-Up* (Lexington, Mass.: Lexington Books, 1981), 59.
[140] Child Welfare League of America, *Standards for Adoption Service*, revised (New York: Child Welfare League of America, 1978), 7, as cited in Simon and Altstein, *Transracial Adoption: A Follow-up*, 59.
[141] Justine Wise Polier, *Juvenile Justice in Double Jeopardy : The Distanced Community and Vengeful Retribution* (Hillsdale, New Jersey: Lawrence Erlbaum Associates, 1989), 90.

every child. There would always be some children for whom adoption was impossible and others who needed care for several months or years before returning to their families or other relatives. The reality was that foster care would not disappear as a child welfare program. Child welfare activists realized, therefore, that they had to make foster care as responsive, as therapeutic, as rehabilitative as they possibly could.

Rehabilitative Foster Care

The attempt to make foster care, and especially long-term foster care, more rehabilitative took two directions. First, child welfare activists investigated the methods used to treat children in foster care. This included ways of making foster parents part of a therapeutic team and investigating the possibilities of group care. Second, they worked to create greater public oversight over foster care. The state, they argued, should take public responsibility for every child in foster care. The outcomes for these children should be closely supervised so that all children received the best treatment and placements to fit their needs.

Maas and Engler's criticism of foster care practice stung many child welfare workers. In the early 1960s, however, most still believed that foster care could and should be rehabilitative. Social workers Nina Beck Tegethoff and Harriet Goldstein explained, for example, that "the purpose" of placing a child in a foster home was "to provide a therapeutic and rehabilitative experience for child and parent."[142] Rehabilitation, however, could be achieved in different ways. "In some situations," these social workers wrote, "we may try to reunite the family." At other times, though, the

[142] Nina Beck Tegethoff and Harriet Goldstein, "A Realistic Appraisal of Homefinding," *Child Welfare* 41 (1962): 253.

goal of rehabilitation was "to effect a child's permanent separation from his own family through adoption or self-support." The ultimate goal of rehabilitation was to prepare a child to successfully function in society. As one psychiatrist wrote, "the goal of care is not only economic independence but a productive and integrated personality, within the limits of each individual." In order to achieve this, foster care needed to provide "consistent use of psychiatric and psychological services, integrated in a casework program." [143] No matter what the outcome for children in care—adoption, reunification with their birth parents, or completing their childhood in foster care—these children needed rehabilitation through therapeutic services.

By 1963, child welfare experts were revaluating the conclusions about foster care in Mass and Engler's study. "Many child welfare practitioners," E. Elisabeth Glover, the editor of *Child Welfare* wrote, " have stopped reeling from the punches delivered by the Maas-Engler study and, in regaining a balanced state, have begun questioning two of the major assumptions that have been inferred from that study." Glover disagreed with the view that "most children could be returned home or placed in adoption, and that if agencies made early determinations "few children would need long-term foster care." [144] She realized that adoption, which in 1963, provided "a permanent home for little over one hundred thousand children a year," could not, even with massive reforms and incentives, provide care for "three or four times that number of children." She also argued that

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[143] June Jackson Christmas, "Psychological Implications of Long-Term Foster Care," *Child Welfare* 40 (1961): 27.
[144] E. Elizabeth Glover, "Foster Care," *Child Welfare* 42 (January 1963): 4.
[144] E. Elizabeth Glover, "Foster Family Care," *Child Welfare* 41 (September 1962): 290.
[144] Glover, "Foster Care," 37.
[144] Christmas, "Psychological Implications," 27–28; Martin Wollins, "Licensing and Recent Developments in Foster Care, *Child Welfare* 47 (1967): 570-581; Lela B Costin, "New Directions in the Licensing of Child Care Facilities," *Child Welfare* 49 (1970): 64–71.
[144] Delores A. Taylor and Philip Starr, "Foster Parenting

"there are children and parents who should be separated if the children are to have a chance for healthy development; there are adults who cannot be parents to their children, even if they receive the most skilled professional help; there are thousands more children who have been so damaged by the time they come into foster care that they can never live in foster family homes, let alone in adoptive homes even if there were adoptive homes available; there are children who cannot go home again and who must and should grow up in foster care."[145] The fact was, she explained in another column, that foster care, and especially foster family care, "is now and will continue to be, for the foreseeable future, a major method of providing care for thousands of children."[146] Child welfare experts, therefore, should stop criticizing foster care and start finding ways to make foster care truly rehabilitative. The only question she wanted answered was: "Is a given type of foster care appropriate for and meeting the developmental needs of the children who are in it?"[147] Child welfare activists would spend the next decade developing systems to try to ensure that the answer to this question was "yes."

Following the 1958 CWLA *Standards*, child welfare experts continued to assert that foster care could be a therapeutic experience for children. To accomplish these ends, social workers, psychologists, and psychiatrists became involved in several aspects of foster care. Detailed home studies were required of potential foster family homes to ensure that the homes would provide the best care for children. In some cases, social workers evaluated to what extent the foster family would "match" the needs of the child. To evaluate the needs of the foster child "comprehensive psychological and psychiatric

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[145] Ibid., 4, 37.
[146] E. Elizabeth Glover, "Foster Family Care," *Child Welfare* 41 (September 1962): 290.
[147] Glover, "Foster Care," 37.

study" was conducted. In some cases, children received psychotherapy while they were in foster family care. In all cases, periodic review of the child in the foster family was conducted by the caseworker. Casework was also conducted with the child's natural parents in order to work towards rehabilitation of the family, when reunification was possible, and to prepare and facilitate the permanent separation of the child, when return of the child to his birth family was impossible. Since all foster family homes, as well as other foster care institutions, required licenses from the state, child welfare experts suggested that the license requirements should be designed in order to encourage therapeutic care for children outside their homes.[148]

One of the ways that child welfare experts envisioned making foster care more rehabilitative was in changing the role of the foster parent. To some extent this change was pragmatic since, as in adoption, over the 1960s the number of foster homes failed to keep up with the number of children in need of care. In order to encourage families to provide foster care, experts reasserted the need for adequate financial compensation for foster families. Agencies expanded their recruitment efforts in an effort to find families.[149] One voluntary agency recounted its success in finding foster homes "in the ghetto."[150] Agencies also realized that if foster parents were going to be partners in rehabilitating children they often needed support, guidance, and therapy themselves. One agency in New York supported foster parents by providing "parties, length-of-service

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[148] Christmas, "Psychological Implications," 27–28; Martin Wollins, "Licensing and Recent Developments in Foster Care, *Child Welfare* 47 (1967): 570–581; Lela B Costin, "New Directions in the Licensing of Child Care Facilities," *Child Welfare* 49 (1970): 64–71.

[149] Delores A. Taylor and Philip Starr, "Foster Parenting: An Integrative Review of the Literature." *Child Welfare* 46 (1967): 372–373.

[150] Michael Garber, Sister Mary Patrick, Lourdes Casal, "The Ghetto as a Source of Foster Homes," *Child Welfare* 49 (1970): 246–251.

(not quality) awards, and tangible public recognition."[151] Out of these efforts developed "a smaller selectively composed group of foster mothers for more individualized and deeper consideration of their difficulties and hardships."[152] This was essentially group therapy for the foster parents. In another study, foster mothers were offered services at a psychiatric clinic as a way of assisting in the rehabilitation of children in their care.[153] Finally, agencies offered more training to assist foster parents in the care and treatment of children. All of these services reflected a changing view of the role of foster parents. Social workers were now "perceiving and treating foster parents as colleagues (as opposed to subordinates)."[154] Ideally, foster parents would be partners in rehabilitating children.

Child welfare activists also asserted that even long-term foster care was an important element in a rehabilitative child welfare system. E. Elisabeth Glover explained that Maas and Engler's findings were not an "indictment of foster care." Instead, the study was "an indictment of the quality of service being provided thousands of children and of the country's incredible indifference to them." She asserted that "*children in long-term foster care do not have do be children in limbo.*"[155] Long-term care was necessary in cases where parents could not care for a child, but still maintained a relationship with their offspring. It was also needed for the increasing number of cases in which the natural parent had relinquished rights to the child but no adoptive home could be found. In order to make long-term foster care less traumatic for children, child welfare workers

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[151] Elizabeth K. Radinsky, Bessie Schick Freed, and Helen Rubenstein, "Recruiting and Serving Foster Parents," *Child Welfare* 42 (1963): 19.
[152] Ibid.," 21.
[153] Jerome Jungreis, Liller B. Green, and Matilda Kroll, "Foster Mothers in Child Guidance," *Child Welfare* 41 (1962), 147–152.
[154] Taylor and Starr, "Foster Parenting," 380–381.
[155] E. Elizabeth Glover, "There is an Alternative," *Child Welfare* 42 (1963): 368.

attempted to create mechanisms to insure some consistency for the child. One of Maas and Engler's most interesting findings was that the number of different foster placements experienced by a child showed a stronger correlation with emotional disturbance than did the length of time in child spent in foster care. Building off this data, child welfare agencies attempted to quickly predict whether long-term care was needed. This allowed children to be placed with families who anticipated that the child would remain with them for a number of years if not their entire childhood.[156] Since it was not always possible to determine immediately the outcome of a case when the child entered foster care, some agencies implemented "concurrent planning." Under this system, social workers would make arrangements for possible long-term care while they continued to attempt to prepare the birth parents for reunification with their child.[157]

Planning for long-term foster care required a reevaluation of the process for selecting foster parents. The evaluation of foster parents tended to be less thorough than the evaluation of adoptive homes. If a child was to remain with a family for his entire childhood this distinction made little sense.[158] Furthermore, in the past foster parents were discouraged from becoming attached to or seeking to adopt their foster children. Families who expressed a desire to adopt were often considered "too risky" for a foster placement "because the family might not be able to relinquish the child."[159] One social worker recalled warning foster parents that "that foster child is not yours and it may be

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[156] Draza Kline, "The Validity of Long-Term Foster Family Care Service," *Child Welfare* 44 (1965): 186–187.
[157] Edward T. Weaver, "Long-Term Foster Care: Default or Design? The Public Agency Responsibility," *Child Welfare* 46 (June 1968): 341.
[158] Kenneth W. Watson, "Long-Term Foster Care: Default or Design? The Voluntary Agency Responsibility," *Child Welfare* 46 (June 1968): 335.
[159] Watson, "Long-Term Foster Care: The Voluntary Agency Responsibility," 334.

removed at any time."[160] In seeking long-term foster families, however, "such instruction may frequently prevent both the foster parents and the child from developing relationships that enhance the emotional and social growth of the child."[161] Long-term foster care, social workers concluded, required parents who would care for the child as their own even though they did not have legal custody over the child.[162]

This new view of foster care broke down the barriers between foster care and adoption. Child welfare agencies began to evaluate families on a "continuum of care" for children. On one end was the "total, permanent commitment to a child," embodied in adoption. The next level was the foster care for a child who was available for adoption with the possibility of adoption in the future. This approach was termed quasi-adoption and was implemented in some states as part of the effort to find homes for African-American children. The next stop on the continuum was long-term foster care. This was essentially permanent care for children who were expected to remain in foster care until adulthood, including children whose "prior families are no longer involved in their lives" as well as "children who continue to have meaningful contact with their natural parents but will never return to live with them." The fourth level was short-term placement. It provided foster care for a child "whose own family is unable to care for him, but for whom rehabilitation is expected and the return of the child anticipated." At the end of the spectrum of care, were various types of temporary care including care of the child while

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[160] Weaver, "Long-Term Foster Care: The Public Agency Responsibility," 344.
[161] Weaver, ""Long-Term Foster Care: The Public Agency Responsibility," 344.
[162] Watson, "Long-Term Foster Care: The Voluntary Agency Responsibility," 335.

diagnosis and planning were conducted, to providing emergency shelter for a child removed from his or her home.[163]

Another option for care that was revived in the 1960s was group homes. Group care had been denigrated by its association with child caring institutions. However, as other countries, such as the U.S.S.R. and Israel, demonstrated success in group care of children, and as the shortage of foster homes became apparent child welfare experts began to reconsider group care. Group homes represented a hybrid of institutional care and foster family care. Care was provided in houses or apartments rather than institutional structures, but these residences were owned by the child welfare agency. These homes would care for up to 12 children, larger than a foster family home, but much smaller than institutions. The "house parents" were employees of the agency. Sometimes they were a husband and wife couple, at other times they were three or four individuals that would share in the care for the children. Most group homes also had a full-time social worker assigned to them, and, if needed, additional psychologists and psychiatrists provided services to the children.

Group homes had a more explicit therapeutic mission than the typical foster care. Since care was provided by a team of agency employees, care could be directed toward a particular rehabilitative approach. This differed from the more organic rehabilitation that was expected to occur in foster family homes. For these reasons, emotionally disturbed children especially in adolescence were selected for group homes. It was thought that for these children, the group home could be more successful in coping with their emotional and psychological issues while providing more permanence and continuity than an

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[163] Watson, "Long-Term Foster Care: The Voluntary Agency Responsibility," 335.

institution. While group homes expanded over the 1960s, child welfare activists did not advocate them as a wholesale replacement of foster family homes. Instead, group homes were one more weapon in the arsenal of rehabilitative child welfare that attempted to provide a type of care that met the individual needs of the child.[164]

For foster care to be truly rehabilitative, child welfare activists argued, states had to truly take responsibility for every child. This meant that states needed to know what happened to every child who entered foster care. This approach was first implemented in New York legislation introduced by Senator Joseph Pisani. The law required the family court to review the status of every child in voluntary foster care placement for 24 months. "The intent of the law, in mandating such a review, was to insure that children do not sink into what has been commonly called the limbo of foster care."[165]

The effects of the legislation were examined by Trudy Bradley Festinger, the daughter of Shad and Justine Wise Polier. Not surprisingly, the immediate effect of implementing such a review was to overwhelm New York's family courts. Once the courts adjusted, however, the reviews appeared to have a beneficial effect as indicated by a higher placement of children in permanent homes than in the immediate past. Festinger found that over 49 percent of the children were placed for adoption, and over 28 percent were discharged or in the process of being discharged from foster care. However, over 21 percent remained in foster care with no clear plans for the child's future. Other states such as South Carolina and Virginia followed New York in attempting periodic reviews

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[164] See Martin Gula, "Group Homes—New and Differentiated Tools in Child Welfare, Delinquency, and Mental Health," *Child Welfare* 43 (1964): 393–397; Norman Herstein, "What is a Group Home?," *Child Welfare* 43 (1964): 403–414; Irving Rabinow, "Agency-Operated Group Homes," *Child Welfare* 43 (1964): 415–422; Martin Wollins, "Another View of Group Care," *Child Welfare* 44 (1965): 10–18.

[165] Trudy Bradley Festinger, "The New York Court Review of Children in Foster Care," *Child Welfare* 54: 211.

of their foster care systems over the 1970s. These systematic reviews appeared to help find permanent homes for many children either through adoption and reunification. More importantly, they provided a clearer understanding of the scope of the foster care population.[166]

The Decline of Adoption and Foster Care

The period after World War II was the heyday of American adoption. In 1970, however, adoptions in the United States reached their peak with approximately 175,000 adoptions in that year. Since that time, both the number of adoptions and the rate of adoption have declined. Today, there are about 125,000 adoptions annually.[167] At the same time the reputation of foster family care and the faith in foster care as a rehabilitative experience began to decline. Critics rightly pointed to the inability to find permanent homes through adoption or reunification for many children in foster care. These observations were similar to those made by Maas and Engler in their 1959 book, *Children in Need of Parents*. In 1959, the response was to reinvigorate public and private services to children and families, to encourage the adoption of children out of foster care, and to strengthen the therapeutic aspects of foster care. By the 1970s, commentators favored "minimum intervention" in families asserting that in many cases state intervention did more harm then good.

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[166] Martha L. Jones, "Stopping Foster Care Drift: A Review of Legislation and Special Programs," *Child Welfare* 57 (1978): 572–575.

[167] Ellen Herman, "Adoption Statistics," *The Adoption History Project*, http://darkwing.uoregon.edu/~adoption/index.html. See also, Melosh, *Strangers and Kin*, 1–5. Melosh notes that there were 89,000 non–relative adoptions in 1970 and only 48,000 non–relative adoptions in 1975.

The decline in the number of adoptions was observed almost immediately by child welfare agencies. The first sign of this trend was a sharp decrease in the number of mothers, especially white mothers, interested in relinquishing their children for adoption. "In the last year or so," *Child Welfare* reported in 1971, "agencies throughout the country have been reporting a decrease in applications for service from white pregnant unwed women." This report also noted that "agencies also have reported that more of the white mothers who do seek service are keeping their children." Adoptive agencies across the country "indicated a decrease in the white infants for whom adoptive placements are sought."[168] Examining a sample of public and voluntary agencies the CWLA found an 11 percent decrease in white children accepted for adoption between 1969 and 1970. Interestingly there was an 18 percent increase in the number of nonwhite children accepted over the same period.[169] This trend would continue over the 1970s. Between 1971 and 1974, the total number of children accepted for adoption dropped by 45 percent with a 48 percent decline for white children and a 35 percent decline for nonwhite children.[170]

It is difficult to fully explain this change. The liberalization of abortion laws in several states including the repeal of abortion laws in New York, Washington state, Alaska, and Hawaii followed by the U.S. Supreme Courts ruling in *Roe v. Wade* provides some explanation for this change.[171] However, changes in abortion law and contraceptive practice like birth control pills do not entirely explain the decrease in the number of

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[168] Lucille J. Grow and Michael J. Smith, "Adoption Trends: 1969–1970," *Child Welfare* 50 (July 1971), 401.
[169] Ibid., 403.
[170] Barbara Haring, "Adoption Trends, 1971–1974, *Child Welfare* 54 (July 1975), 524.
[171] David Garrow, *Liberty and Sexuality: The Right to Privacy and the Making of* Roe v. Wade (New York: Macmillan, 1994), 431–432, 466.

children available for adoption. The clearest explanation is a cultural shift that removed some of the stigma associated with illegitimacy. Statistics reveal that before 1973, 8.7 percent of children born to never-married women were relinquished for adoption. For the period from 1973 to 1981 that number dropped to 4.1 percent. Over 19 percent of the children born to never-married white women (including "white" women of Hispanic origin) had been relinquished for adoption before 1973; between 1973 and 1981 that rate was 7.5 percent. The percentage of children relinquished by black women, while always low, decreased from 1.5 percent to 0.2 percent over the same periods.[172] In the early 1970s, adoption agencies were observing a cultural shift as single mothers chose to raise their own children. This shift, combined with other policy choices, would have great significance for child welfare.[173]

The decrease in the number of children relinquished for adoption was not reflected in the rates of children in foster care, which increased over the 1960s and early 1970s. Social work professor Alfred Kadushin, author of a comprehensive study of child welfare services, reported that in 1960 the rate of children in any type of substitute care (foster family home, group home, or institution) was 3.7 per thousand children in the U.S. population. By 1965 this rate had increased to 4.0, by 1969 it had reached 4.5, and by 1975 it was estimated to reach 4.7 children per thousand children in the general population.[174] Little reliable data on children in foster care exists for this period. However, several trends could be observed. First, the century–long transition from

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[172] Anjani Chandra, Joyce Abma, Penelope Maza, and Christine Bachrach, "Adoption, Adoption Seeking, and Relinquishment for Adoption in the United States," *Advance Data from Vital and Health Statistics* 306 (Hyattsville, Md.: National Center for Health Statistics, 1999.), 9.

[173] For more on the changing attitudes toward single mothers see Rickie Solinger, *Wake Up Little Susie: Single Pregnancy and Race Before* Roe v. Wade (New York: Routledge, 1992), 223–231.

[174] Alfred Kadushin, *Child Welfare* Services, 2nd ed. (New York, Macmillan Publishing, 1974), 401.

institutions to foster family homes as the primary form of substitute care continued. Since 1950, most children in substitute care were in a foster family home; by 1965, there were only 1.1 children in institutions for every 1000 children in the U.S. population and this number was expected to decline. According to a March 1971 count by the U.S. Department of Health, Education, and Welfare, the foster family care population was 260,000 children with an additional 6000 children in group homes.[175] Second, while the majority of children in foster care were white, "nonwhite children" were overrepresented.[176] Finally, foster care experts noticed a third trend, that the children in foster care had greater emotional and psychological problems than in the past. Since new services were available to help families before foster care became necessary, "the families of children needing foster family care are those that demonstrate the greatest disorganization, the greatest pathology."[177] These children had "suffered more deprivation," and had "more emotional difficulties" than children in "foster care earlier in our history."[178]

The decline in the number of adoptions and the declining reputation of foster family care would lead, over the 1970s, to a revaluation of child welfare policy. With the rate of children in foster care increasing, child welfare activists looked to create a new federal program of support for child welfare. This desire would eventually be fulfilled in the Adoption Assistance and Child Welfare Act of 1980. The 1980 act, however, would

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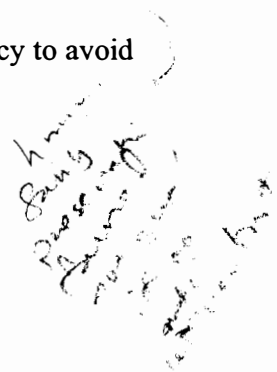
[175] U.S. Department of Health, Education, and Welfare, *Children Served by Public Welfare Agencies and Voluntary Child Welfare Agencies and Institutions, March 1971*, (Washington, D.C.: National Center for Social Statistics, March 1973), as cited in Kadushin, 2nd ed., 401. Interestingly, in 1982 there were 262,000 children living in foster care a rate of 4.2 per thousand children in the population. See U.S. Department of Health and Human Services, *Trends in the Well-Being of America's Children and Youth* 2003 (Washington, D.C.: U.S. Government Printing Office, 2003), 61.
[176] Kadushin, 2nd ed., 467.
[177] Ibid., 463.
[178] Ibid., 463.

emerge from an ideological framework that diverged from the rehabilitative approach of the postwar era. To be sure, child welfare would still rely on therapeutic services to children and their families, but the belief that the state could in the worst case scenario provide sufficient care for every child had dissolved. Instead, a new generation of activist demonstrated ambivalence toward the role of the state and a tendency to avoid intervention into the lives of children and families.



Chapter Four:
Rehabilitating Child Protection

"Of the many thousands of children who appeared before me," Justine Wise Polier wrote at the end of her 37 year career as a juvenile court judge, "the face of one small child has remained unforgettable and chastening." Roxanne Felúmero appeared before Judge Polier in December 1968. The three-year-old girl had been placed in foster care at birth when her homeless mother was unable to care for her. Now, the mother and her new husband requested asked that Roxanne be released to their care. Based on the investigation of a probation officer and the testimony of a caseworker from the foster care agency, Polier placed the child with her mother and stepfather. Three months later, the body of Roxanne Felumero was discovered in the East River and the young girl's stepfather was soon charged with her murder. For Polier and other child welfare activists, this case along with the abuse and neglect of hundreds of other children pointedly demonstrated the failure of the child welfare system. While the death of Roxanne Felumero led to changes in New York's family court, it did not lead to the creation of the comprehensive, integrated system of child welfare that activists like Polier had advocated for decades.[1]

Child protection provided a unique challenge in the quest to create rehabilitative child welfare. First, the child welfare network had to develop a vision for rehabilitative

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[1] Justine Wise Polier, *Juvenile Justice in Double Jeopardy: The Distanced Community and Vengeful Retribution* (Hillsdale, New Jersey: Lawrence Erlbaum Associates, 1989), pp. 54–55; Nancy Hicks, "Parents Held on Homicide Charge in Death of Girl, 4, Tentatively Laid to Malnutrition," *New York Times*, 1 April 1969, p. 35, col. 1; Martin Tolchin, "Family Judge Rebukes Fontana in Girl's Slaying," *New York Times*, 11 April 1969, p. 60, col. 5; Morris Kaplan, "Slain Child's Life Called Nightmare," *New York Times*, 26 November 1969, p. 30, col. 1.

child protection that could overcome an older punitive approach to protecting children and attract social workers to the field. Second, the network worked to ensure public oversight of the system of child protection, an area in which, for some cities, private agencies maintained surprising autonomy through the 1960s. Third, the rehabilitative network faced the greatest challenge over their authority and expertise in the realm of child protection. While in juvenile justice, foster care, and adoption the child welfare community drove public policy until they were challenged in the early 1970s, in child protection child welfare experts had to compete with alternative views and approaches beginning in the early 1960s. The involvement of medical doctors brought the issue of child abuse to the pages of America's newspapers and magazines, and it led to the quick passage of reporting laws across the United States. On the one hand, the popularization of this issue was a boon to the child welfare network. In no other area was there such widespread success as the passage of reporting laws in every state. On the other hand, besides helping to identify the many cases of abuse and neglect, reporting laws did little to create a system of services that could truly assist families in preventing or ameliorating problems of abuse and neglect. In many ways, comprehensive child welfare policy was a victim of the success of child protection. As more and more potential abuse and neglect cases were identified, resources became more focused on these cases and drawn away from the systematic approach to child welfare that the network had proposed. To be sure, many children were saved from abuse, neglect, or

even death, but by putting child protection before other services the ability to prevent abuse or appropriately treat families and children were seriously undermined.[2]

Child Protection and the Rehabilitative Ideal

The oft repeated narrative of the creation of modern child protection goes something like this: In the early 1960s almost everyone was turning a blind eye to the physical abuse of children. Doctors, nurses, social workers, teachers all either ignored the signs of abuse or were unable to contact resources to help abused children. In 1962, however, a group of doctors led by the pediatrician C. Henry Kempe publicized the growing cases of abuse often identified by the use of X-rays. This announcement was picked up by newspapers and popular magazines. With little effort, between 1962 and 1967 every state passed legislation requiring doctors, and in some cases other professions, to report signs of abuse. In 1974, Congress passed legislation that provided federal funding for child protection if the states agreed to follow certain guidelines. As the political scientist Barbara Nelson suggested, this case could provide the model of how to place an issue on the national agenda in order to successfully change public policy.[3]

This story is, of course, a little too neat and clean. While there is an element of truth to it—medical doctors reshaped the policy debate over child abuse and assisted in the quick passage of reporting laws—it obscures many of the elements in the development of modern child protection. Most importantly this story ignores, first, the

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[2] For more on the recent consequences of the focus on child protection see Jane Waldfogel, *The Future of Child Protection: How to Break the Cycle of Abuse and Neglect* (Cambridge: Harvard University Press, 1998); and Duncan Lindsey, *The Welfare of Children* (New York: Oxford University Press, 1994).

[3] Barbara J. Nelson, *Making an Issue of Child Abuse: Political Agenda Setting for Social Problems* (Chicago: University of Chicago Press, 1994); Even Justine Wise Polier, a participant in these events largely accepted this narrative crediting doctors with placing new attention on child abuse. See Justine Wise Polier, *Juvenile Justice in Double Jeopardy*, 51–53.

effort to create a rehabilitative system of child protection over the 1950s before pediatricians and other doctors were alerted to the issues. And, second, the conventional tale misses the conflicts over how to best reformulate child protection. It is impossible to understand fully the shape of modern child protection in the United States without investigating the role of the child welfare network and the rehabilitative ideal in this area.

The inadequacy of child protection was one of the first areas that post-war child welfare activists identified as an area for reform. The child welfare community was disturbed by two features in child protection. First, child protection failed to develop a successful rehabilitative approach. This was, in part, a remnant of a long standing feud in child protection. The nation's first child protection agency, the New York Society for the Prevention of Cruelty to Children (NYSPCC), founded in 1874 and led by Elbridge Gerry, had committed itself to a punitive approach to child protection. The organization saw its role as investigating possible abuse, and removing the child and punishing the parent if abuse or neglect was discovered. In the early twentieth century, some child protection organizations led by the Massachusetts Society for the Prevention of Cruelty to Children (MSPCC) developed an alternative approach to protection that emphasized strengthening family life rather than the removal of children and viewed protection as only one type of service that supported families and children.[4]

By the 1920s, the MSPCC perspective had prevailed with most agencies adopting this approach. Still, according to the child welfare network, many child protective organizations failed to exhibit successful rehabilitative measures in the early 1950s. The

[4] Lela B. Costin, Howard Jacob Karger, and David Stoesz, *The Politics of Child Abuse in America* (New York: Oxford University Press, 1996), 83–86; Linda Gordon, *Heroes of Their Own Lives: The Politics and History of Family Violence* (New York: Penguin Books, 1988), 59–81.

reason for this was two-fold. First, based on tradition, some agencies refused to incorporate therapeutic methods. As late as 1958, the director of the NYSPCC would assert that his organization was "first and foremost a law enforcement agency and fundamentally nothing else." Furthermore, the director explained, the NYSPCC did "not consider providing casework service to be its function."[5] Even those agencies that wanted to provide casework and other therapeutic services to families often were unable to do so successfully. The negative history of child protection meant, according to social worker Bertram M. Beck, that "protective casework was not held high in the esteem of social work." Discussing the period before the 1950s, Beck noted that "protective casework that seemed to be as a vestigial remnant of an earlier stage in the evolution of practice."[6] This state of affairs made it difficult to attract trained social workers to do protective work viewed as the "dregs of the case load."[7] When workers did engage in protective casework, the approach was often completely inappropriate to the situation. Strategies developed to help parents who had asked for assistance at a child guidance clinic did not work with neglectful parents placed under supervision by the juvenile court. In the 1950s, however, under the influence of ego psychology, new research and approaches to protective casework began to emerge. Social workers developed a concept of aggressive casework—methods of successful casework with an uncooperative participant. These new approaches allowed social workers to envision rehabilitative child protection. The development of new protective services in Louisville, St. Louis,

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[5] Communication from Thomas T. Becker, October 20, 1958 as cited in Alfred J. Kahn *Protecting New York City's Children* (New York: Citizens' Committee for Children of New York, April 1961), Viola W. Bernard Papers, A.C. Long Health Sciences Library, Columbia University, (hereafter cited as VWB papers), Box 183, Folder 5.

[6] Bertram M. Beck, "Protective Casework: Revitalized," *Child Welfare* 34 (November 1955): 1–7, 2.

[7] Dorothy Berkowitz, "Protective Case Work and the Family Agency," *The Family* (November 1943: 261, as cited in Beck, "Protective Casework," 3.

Oklahoma City, Denver, Los Angeles, San Francisco, and Wilmington demonstrated the growing popularity of this approach.[8] By the early 1950s, the child welfare network began to push for the expansion of rehabilitative child protection.

The second concern of the rehabilitative network was the continuing autonomy of private providers in the area of child protection. This conflict also reached back into the nineteenth century. In 1894, the New York State Board of Charities attempted to investigate the work of the NYSPCC. The NYSPCC successfully argued before the New York Court for Appeals, however, that the Society was a law enforcement organization, not a charity, and, therefore, not subject to supervision.[9] This decision, which clothed a private agency with the powers of the state, continued to shape child welfare policy in the middle of the twentieth century. Writing in 1941, Justine Wise Polier was particularly disturbed by the powers of the NYSPCC agents. "Despite the sweeping powers that they exercise," Polier wrote, "these agents are not required to have any special qualifications and are not subject to public control. Civil Service requirements for far less skilled social positions in the public agencies do not apply to them, and their Boards of Directors have not seen fit to impose comparable requirements."[10] Despite the obvious problems with child protection under private auspices, many child welfare experts refused to exclude private agencies from the function of child protection. With limited child protection resources, they reasoned, it was preferable to have any child protection agency whether public or private to none at all. In addition, while the New York situation demonstrated

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[8] Beck, "Protective Casework," 1.
[9] Costin, Karger, Stoesz, *Politics of Child Abuse,* 85; the case was *The People of New York, ex. Rel. The State Board of Charities v. The New York Society for the Prevention of Cruelty to Children*, 161 N.Y. 233.
[10] Justine Wise Polier, *Everyone's Children, Nobody's Child: A Judge Looks at Underprivileged Children in the United States* (New York: Charles Scribner's Sons, 1941), 247.

private child protection at its worst, the MSPCC continued to provide leadership in developing protective casework.

When the CWLA published its *Standards for Child Protective Service* in 1960, it allowed for protective service provided by either a public or private agency. To many adherents of the rehabilitative ideal, such a position was absurd. One professor of social work pointed out, "that children have a right to protection and, as with education, in a democratic society there should be public protective services for all children throughout the land."[11] Such a position did not exclude private agencies from providing services to help families resolve issues of abuse or neglect, just as a public school system did not preclude private schools. However, this professor argued, the child welfare community should insure that a public agency oversaw child protection in every locality.[12] This controversy would continue throughout the 1960s.

By the early 1960s, the child welfare network was intent on the implementation of rehabilitative child protection as part of a comprehensive system of child welfare. While they had found success in implementing such proposals in many communities, they still struggled to create such a system in some cities like New York. Alfred Kahn's *Protecting New York City's Children*, written for the CCC in 1961, embodied the rehabilitative vision in the field of child protection. From Kahn's perspective, New York's system of child protection failed on two counts. First, it failed to provide therapeutic casework services. While some of the city's child protection agencies like the Brooklyn SPCC attempted, with limited resources, to provide casework services that

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[11] E. Elizabeth Glover, "Protective Service and Administrative Auspices," *Child Welfare* 42 (March 1963): 108; Norris E. Class, "Some Comments on the *Child Welfare League of America Standards for Child Protective Service*," *Child Welfare* 42 (March 1963): 139–147.

[12] Class, "Comments on *Standards for Child Protective Service*," 140.

would preserve families and allow children to remain in the home, others like the NYSPCC covering Manhattan saw their role as one of law enforcement. Second, as the incoherence of the many SPCCs demonstrated, child protection in New York City had to be public in order to provide uniform rehabilitative services. The CCC declared it unacceptable for a private agency to provide this public responsibility. "The protective casework services of the future," the report announced, "should be part of a public family and child welfare service, available to all."[13]

Successful child protection, Kahn argued, required four integrated functions. First, cases of neglect needed to be identified. This task of case finding had to make use of many community members who could identify families suspected of neglect. There also had to be clear resources so individuals knew where to report such suspicions.[14] Second, every community needed a system of case evaluation. Here is where trained protective caseworkers were needed to determine the existence and extent of neglect. In distancing the new child protection from a law enforcement model, Kahn made it clear that in cases where children were in immediate danger the police should be called in. Removal of children from the home was not the role of protective caseworkers.[15] Once the case had been evaluated, the third function was a decision about the status and treatment for the child and family. The protective caseworker needed to determine whether to file a formal neglect petition with the juvenile court. In some cases, the situation could be resolved outside of the court through voluntary referral to various services such as casework treatment, homemaker services, daycare, and psychiatric and

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[13] Kahn *Protecting New York City's Children.*
[14] Ibid., 12.
[15] Ibid., 12–16.

psychological services all of which needed to be available to the child protection agency.[16] Finally, therefore, child protection agencies needed to be able to provide casework services to help rehabilitate families. The ultimate goal was "to help the parents restore or enhance their capacities as parents to the fullest potential, and to modify situational factors so that their children may have the opportunity to develop into mature adults able to handle parental functions in their turn."[17] Kahn realized, however, that complete rehabilitation was not always possible. Instead, he explained, "more modest attainments are more common: sustaining the child in his home without damage, correcting specific defects in parental care, correcting and alleviating the effects on the child of prior parental mishandling."[18] In the language of rehabilitation, Kahn believed helping "parents resolve those problems and modify those patterns which prevented or inhibited adequate parental functioning" were reasonable goals of protective casework.[19]

While Alfred Kahn and the CCC attempted to institute public, rehabilitative child protection in New York City, a rejuvenated Children's Division of the American Humane Association (AHA) pushed for therapeutic child protection across the country, albeit under either private or public auspices. The AHA was founded in 1877 as a federation of organizations "seeking to prevent cruelty to children and animals."[20] Like the CWLA, the AHA attempted to set minimum standards for the functions of its member organizations. By the early 1950s, however, many voluntary child protection agencies

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[16] Ibid.,16–18.
[17] Isabel Stamm, Unpublished Manuscript (1957) as cited in Kahn, *Protecting New York City's Children*, 19.
[18] Kahn, *Protecting New York City's Children*, 19
[19] Stamm, Unpublished Manuscript.
[20] American Humane Association, *Standards for Child Protection Agencies* (Albany, NY: American Humane Association, 1951), 7–9 as reprinted in Robert H. Bremner, *Children and Youth in America: A Documentary History* (Cambridge, Harvard University Press, 1974), Vol. 3: 852–853.

had merged with other private agencies or had their functions usurped by public child welfare agencies that provided child protection. In an effort to reassert its leadership, the AHA opened its membership to both private and public child protection agencies. In 1954, Vincent De Francis became head of the AHA's Children's Division. A lawyer by training, he had entered the field of child protection as a legal consultant; De Francis eventually rose to the position of Executive Director of the SPCC in the Borough of Queens in New York City.[21] As head of the AHA Children's Division, he turned the organization into a center for both research and the dissemination of information on child protection.

In 1954, as part of De Francis's research initiative, the AHA undertook a study of the status of child protection across the United States. The purpose of this study was three-fold. First, De Francis wanted to ascertain the extent of child protection in communities across the country. Second, he wanted to determine if public or private agencies took responsibility for child protection. Third, the study attempted to discern to what extent child protection took a rehabilitative orientation. In its survey of agencies, the AHA defined child protection in an unmistakably rehabilitative fashion: "Child protective services are a specialized casework service to neglected, abused, exploited, or rejected children. The focus of the service is preventative and non-punitive, and is geared toward a rehabilitation of the home and a treatment of the motivating factors which underlie neglect."[22]

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[21] U.S. Senate Committee on Labor and Public Welfare, *Child Abuse Prevention Act, 1973: Hearings on S. 1191*, 93rd Cong., 1st sess., 1973, 296.
[22] Vincent De Francis, *Child Protective Services in the United States: Reporting a Nationwide Survey* (Denver: American Humane Association, Children's Division, 1956), 18.

The survey found that in nine states neither private nor public agencies took responsibility for child protection.[23] Additionally, the study found that private child protection was concentrated in a few states. Thirty-two states and the District of Columbia had no private child protection agencies.[24] Most of the 84 private agencies were concentrated in New England and the Mid-Atlantic.[25] The distribution of private or public child protection appeared uneven and incomplete. Finally, the extent to which therapeutic casework services were supplied was also in question. As the report summarized, "a large percentage of replies to the questionnaires on this survey reflect a lack of understanding of what protective services to children involves."[26] The state of child protection in the United States, while both expanding and becoming more therapeutic over the 1950s, remained troubling.

The focus on rehabilitation and on the psychological well-being of the child over the 1950s led to new trends in child protection. Chief among these was an increasing focus on the notion of emotional neglect. Child protection efforts began to argue that it was not enough to protect children from physical abuse or neglect, but that a parent could neglect a child by withholding his or her emotional support. "We know now," CWLA staff member Henrietta Gordon explained, "that adequate food, clothing, shelter—essential though they are—may in themselves not be enough to assure even the child's physical development and indeed not the realization of his potential for adulthood."[27] The psychological and ideological framework of rehabilitative child protection

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[23] Ibid., 43.
[24] Ibid., 37.
[25] Ibid., 36.
[26] Ibid., 7.
[27] Henrietta L. Gordon, "Emotional Neglect," *Child Welfare* 38 (February 1959): 24; see also Robert M. Mulford, "Emotional Neglect of Children: A Challenge to Protective Services," *Child Welfare* 37 (October 1958): 19–24.

encouraged social workers to ensure the maximum potential of every child. Social workers were attempting to expand the legal interpretation of neglect to include cases where there was no physical evidence of harm to the child. Their intention was to intervene only in those cases of excessive emotional neglect or cruelty to children. The method of intervention, however, bordered on unsolicited parenting advice. "Since we know that most people want to be good parents," Robert M. Mulford, General Secretary of the MSPCC, instructed, "we look for those experiences in their lives which prevent them form being the 'giving kind of person' which every parent should and would want to be."[28] While their intentions were admirable, later critics such as the historian Linda Gordon have argued that the concept of emotional neglect led to a focus on mother-blaming in child protection.[29] Additionally, as child protection became more focused on the child's psyche there was a risk that less attention was being paid to the physical condition of the child.[30] This criticism was particularly biting as, unbeknownst to the child welfare system, more and more cases of physical abuse of children emerged over the 1960s.

The "Rediscovery" of Child Abuse

"The battered-child syndrome, a clinical condition in young children who have received serious physical abuse," wrote pediatrician C. Henry Kempe and several of his University of Colorado Medical School colleagues, "is a frequent cause of permanent injury or death." Written in the July 1962 Journal of the American Medical Association,

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[28] Mulford, "Emotional Neglect of Children," 21.
[29] Linda Gordon, *Heroes of Their Own Lives*, 158–165.
[30] Nelson, *Making an Issue of Child Abuse*, 40–41.

this statement would lead to flurry of media attention on the issue of abuse and, eventually, to state and federal legislation aimed at stemming the physical abuse of children. An editorial appearing in the same issue of the journal expanded on Kempe's findings. The battered child syndrome, mused the journal, "will be found to be a more frequent cause of death than such well recognized and thoroughly studied diseases as leukemia, cystic fibrosis, and muscular dystrophy." The journal continued to explain that abuse might also rank as one of the leading causes of injury to the central nervous system. While these claims contained some hyperbole, they demonstrated the seriousness of the issue Kempe had termed the "battered-child syndrome." Based on growing radiological evidence of repeated injuries in young children, Kempe was determined to uncover the extent of the problem. Through a survey of 71 hospitals, Kempe and his co-investigators found 302 cases of abuse over a year with 33 leading to death and an additional 85 causing permanent brain injury.[31] This study revealed only the tip of the iceberg that was the number of physically abused children in the United States.

If so many cases of abuse and neglect appeared before physicians, yet remained unreported to the system of child protection, the easiest solution was to require doctors to report suspected cases of abuse. Between 1962 and 1967, every state passed some type of mandatory reporting law requiring doctors and in some cases other professionals, to make such reports. Even before Kempe's article on the battered-child syndrome had been published, both the Children's Bureau (CB) and the AHA were developing recommendations for the shape of this mandatory reporting legislation.

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[31] C. Henry Kempe, Frederic N. Silverman, Brandt F. Steele, William Droegemueller, and Henry K. Silver, "The Battered-Child Syndrome," *Journal of the American Medical Association* 181 (1962): 17.

The debates over reporting legislation were shaped by two questions: Who should be required to report evidence of abuse and neglect? And to whom should these reports be made? Doctors led the fight to require physicians to report but did not want to be the only profession required to do so. Also they hoped to have legal immunity from prosecution as long as they reported in good faith. The child welfare community, led by social workers, wanted reports by physicians and others to provide case finding for the existing rehabilitative system of child protection and child welfare. Therefore, they insisted that reporting be made to child protective or child welfare agencies, not to the police or directly to the juvenile court.

The recommendations of the CB and the AHA reflected both sets of concerns. Cutting against the rehabilitative grain of the child welfare policy network, the CB favored a punitive and criminal approach to the problem of abuse. Reporting on a meeting to discuss the problem of abuse, Katherine B. Oettinger, head of the Children's Bureau stated that "parents who abuse their children are the most difficult to reach in ways that will assure that the abuse is stopped." She concluded, "Therefore, the abused child often must be removed from the home."[32] While the CB's model reporting act avoided controversy, it reflected a criminal rather than a rehabilitative approach towards abuse. The basic intent and structure of the model act was clear. It required physicians to report cases where they had reasonable cause to suspect that a child "has had serious physical injury or injuries inflicted upon him other than by accidental means by a parent

[32] "Child-Abuse Cases Said to Be Growing," *New York Times*, 19 January 1962, p. 20: col. 2.

or other person responsible for his care."[33] It provided criminal and tort immunity for the person making the report, and it exempted evidence in these cases from both the physician-patient and the husband-wife privilege. Lastly, the model act recommended that anyone violating the act would be guilty of a misdemeanor. Most controversial, was the acts suggestion that reports of abuse be made both by telephone and in writing to "an appropriate police authority."[34] This appeared to avoid the entire child protection and child welfare system and place issues of abuse in the hands of the police. The CB was intentionally vague in defining "an appropriate police authority." To specify a particular agency "would be impossible" the comments on the model act explained, "in view of the nationwide diversity as to the identity of the authority having responsibility to investigate and follow up reports of this kind." However, the commentary continued, "In most political subdivisions, the police department would be the appropriate authority." While the CB realized that many cases would require referrals to a "public child welfare agency for protective services," it preferred that the police make the initial investigation of any case of abuse.

Child protective workers strongly disagreed with a punitive approach towards abuse and quickly amassed evidence to demonstrate the effectiveness of rehabilitation. A MSPCC study showed that immediately removing a child from a home where he or she was physically mistreated was not always the best course of action. Examining abused children from across the state, these social workers found that by using "intensive, aggressive, protective, casework treatment" the agency was able to keep 66 percent of the

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[33] Children's Bureau, U.S. Department of Health, Education, and Welfare, *The Abused Child: principles and suggested language for legislation on reporting of the physically abused child*, (Washington, D.C.: Government Printing Office, 1963), 11.
[34] Ibid., 12.

families intact over the year that the study was made. The social work community applauded the new attention being focused on child abuse and the suggestions for mandatory reporting legislation. They believed, "however, that legislation without thoughtful implementation that includes adequate diagnostic and casework treatment services is not sound."[35]

The AHA, therefore, followed a rehabilitative approach in its suggestions for mandatory reporting legislation. In his introduction to the recommendations, Vincent De Francis explained the deficiency of a child protection approach that focused on notifying the police and prosecuting parents, or notifying the juvenile court to initiate removal of the child. "Punishment," De Francis asserted "is not a cure." Instead, he explained "what these parents need is help and treatment." Child protection agencies could provide this through casework "services to guide and counsel them toward accepting their responsibilities as parents." Parents, he concluded "need services which will help build up their damaged personalities and give them the strength and stability to successfully live up to parental roles.[36] The legislative recommendations followed this rehabilitative perspective. While following most of the recommendation of the CB's model act, the AHA's recommendations differed in one critical area, where reports of abuse were made. The recommendations stated "that all reports of cases of suspected inflicted injuries be made to the public or voluntary Child Welfare service which carries the child protective function in the community."[37] The AHA realized that other institutions like the police or

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[35] Harold D. Bryant, Andrew Billingsley, George A. Kerry, Walter V. Leefman, Edgar, J. Merrill, Gordon R. Sencal, and Barbara G. Walsh, "Physical Abuse of Children—An Agency Study," *Child Welfare* 42 (March 1963): 125–130, 130.
[36] Ibid., 5.
[37] Ibid., 9.

the juvenile court would have to become involved in some cases. However, they asserted that "of all the possible investigative agencies to which reports might be made, the Child Protective agency is best qualified to focus on the problem of 'what happens to children' in these circumstances." It is important to note, that the AHA called for reports to be made to public or private child protective agencies. While all supporters of the rehabilitative ideal would agree that a child protective agency was best suited to investigate and treat these families, many preferred that this take place under public auspices.

Despite disagreements about the specific provisions of mandatory reporting laws, legislation was quickly passed in state capitals across the country; every state had a child abuse reporting law by 1967. Political scientist Barbara Nelson accounts for this rapid diffusion by the fact that reporting legislation provided legislators with "the opportunity to be on 'the side of the angels'"—to oppose the physical abuse of children—at little or no cost to the state.[38] However, the rapid passage of legislation in the 1960s should not obscure the debate over these laws and the diversity in the types of reporting laws passed by the states. In many states controversy over rehabilitative versus punitive approaches to child protection, along with tension between public and private protective agencies, influenced the composition of the reporting legislation passed. In New York, with its unique child welfare history, these disputes went a long way in shaping the legislation that was eventfully signed by Governor Nelson Rockefeller in 1964.

In February 1964, the Health Section of the Citizen's Committee for Children of New York (CCC) developed a broad set of principles for child abuse legislation. At the

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[38] Nelson, *Making an Issue of Child Abuse*, 76–77. 80–81.

heart of the rehabilitative child welfare network, the CCC denounced any efforts to pass a punitive measure. Instead they suggested five basic principles for any reporting legislation. First, they asserted physicians should be required to report to a local child protective agency. In New York City, the CCC declared, bypassing the established SPCCs, this was the public Department of Welfare. The suggestions left it open that reports could go to other agencies in other communities. Second, the child protective agency should keep a central register of all reports of abuse or neglect. Third, the protective agency needed to be required to promptly investigate all complaints either though its own staff or by contracting with a private agency. Here was where the CCC believed the existing SPCCs could contribute to child protection: by providing investigatory and casework services. Fourth, the agency needed to protect the child and take "appropriate action which may include either casework or other services to help the family function more adequately or court action on a neglect charge if the child must be removed from the home. Finally, the CCC argued that a successful reporting law required civil and criminal immunity for the reporting physician or hospital.[39]

The framework presented by the CCC was incorporated into legislation drafted by New York City's Corporation Counsel and introduced by the senate minority leader, Democrat Joseph Zaretzki.[40] If anything, the bill favored reporting to a public agency to a greater extent than the CCC. The proposed language mandated that reports be made to "the public welfare official of the city or county charged with the power and duty of

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[39] Memorandum from Samuel Karelitz, March 10, 1964, VWB Papers, Box 181, folder 10; also in *Governor's Bill Jacket for 1964*, Chap. 811, 34-44.

[40] Community Service Society of New York, *Family and Child Welfare Legislation in New York State In 1964*, 38-39; for more on Zaretzki see, Glenn Fowler, "Joseph Zaretzki, Former Albany Leader, Dies," *New York Times*, December 21, 1981, D11.

investigating complaints of neglect of children and with instituting appropriate proceedings in the family court."[41] Unfortunately for the CCC, this act failed to pass the Senate. It appears the lobbying by SPCCs across the state killed the legislation. Two other reporting bills, however, did pass the New York State Assembly. One required reporting to the police.[42] A second provided that the reports be made to "a society for the prevention of cruelty to children or other duly authorized child protective agency or to a public welfare official."[43] At the urging of both the CCC and the state's SPCCs, Governor Rockefeller vetoed the first more punitive bill and signed the second. For the CCC, it was better that a system of rehabilitative child protection be instituted than to push for clear public supervision. The CCC also did not support legislation requiring that public welfare agencies complete investigations of suspected child abuse. "The Citizen's Committee for Children believes that child protective services are a public welfare responsibility," explained CCC Chairman Marion R. Ascoli in a letter to the governor's counsel. "However, in the present stage of development of public welfare department protective services in many communities, the opportunity to use appropriate voluntary agencies is necessary."[44] In other words, it was more important that children and families receive experienced therapeutic services than to make sure they were provided by a public official.

The experience in New York was reflected in states across the country. As other states passed child protection legislation, they debated the merits of a rehabilitative rather

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[41] New York Senate, *An Act to amend the social welfare law, in relation to reports of abuse of children*, 24 February 1964, Intro. 3410, Print. 3711.
[42] New York Senate, *An Act to amend the penal law, in relation to cruelty to children* February 3, 1964 Intro. 2253, Print. 2352.
[43] Laws of New York, 1964, Chapter 811.
[44] Marion R. Ascoli to Sol Neil Corbin, April 7, 1064, *Governor's Bill Jacket for 1964*, Chap. 811, 31–33..

than a punitive system of child protection. In most cases, it appears that the rehabilitative approach won the day. In those states where social workers initially failed to gain control of the reporting mechanism, many would gain control in later legislative revisions. The universal problem with these laws was that while the mandated reporting had specified where the reports should go, they put little consideration into the process of investigation and treatment needed children and their families. As the reports of child abuse began to grow over the 1960s, a new source of pressure on the child welfare system emerged.[45]

From Reporting Laws to New Systems of Child Protection

As mandatory physician reporting laws spread across the country, careful observers of child welfare policy—lawyers, juvenile court judges, and doctors—commented on the need for a comprehensive system of child protection. Columbia law professor Monrad Paulsen, for example, completed a survey of mandatory reporting laws. Despite significant variation in the reporting laws, Paulsen argued that even the most detailed would do little to counteract the problem of abuse. "Fundamentally," Paulsen noted, "child abuse reporting laws are casefinding devices – a first step in the process of insuring a child's protection. The laws themselves provide a basis upon which to build

[45] The patterns of passage of child abuse reporting laws in the mid-Atlantic states demonstrate a trend towards greater involvement of social workers. In New Jersey, for example, a reporting act passed in 1964 that required that reports of abuse be made to county prosecutors was, later in the same legislative session, amended to allow report to any public or private child protection agency. In Maryland, an initial reporting law passed in 1964 requiring reports be made to city or county police departments was replaced in 1966 by an act requiring reports of abuse be made to local welfare departments. (Abner J. Kaplan, "Achievement of Effective Legislation on Child Abuse," *Child Welfare* 46 (November 1967): 522–525. For more see Ethan Sribnick, "The Birth of Modern Child Protection: Child Abuse and the State in the United States, 1962–1974," (master's thesis, University of Virginia, 2001).

more complete community programs of child protection."[46] In a separate 1966 article, Paulsen argued that the effectiveness of the reporting laws could be judged only by the effectiveness of the entire legal framework in protecting children. This framework included provisions from the criminal law, the juvenile court enabling acts, protective services legislation, and the physician reporting laws. To fight child abuse successfully states not only had to enact reporting legislation, but, in addition, they had to revise the criminal law and strengthen the juvenile court and protective agencies.[47]

As a judge on the New York Family Court, Justine Wise Polier was intimately familiar with the shortcomings of child protection in New York. Writing from the bench, Polier noted that one case raised "serious questions as to the adequacy of New York legislation to protect the 'battered' or abused child, the procedures under the legislation, and its implementation in New York City."[48] In her 1966 decision regarding a young girl named Marion Frances, Polier criticized the Protective Unit of the Department of Welfare, for its ineptness and its failure to implement rehabilitative child protection. In August 1965, Sydenham Hospital had reported suspicions that Marion Frances was a battered child. The Protective Unit decided to discharge the child to the parents "with a referral for clinic care." Judge Polier lamented that "there was no record of subsequent clinic attendance. There was no referral for court action."[49] The Protective Unit did attempt to supervise the child. However, according to Polier, "the supervision was

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[46] Monrad G. Paulsen, *Columbia Law School Project on Child Abuse Reporting Legislation* (Washington, D.C.: Government Printing Office, 1966), "Introduction."
[47] Monrad G. Paulsen, "The Legal Framework for Child Protection," *Columbia Law Review* 66 (1966): 679.
[48] *In Matter of Marion Francis, a Neglected Child,* 49 Misc. 2d 372 (Family Court of New York, 1966).
[49] Ibid., 373

delegated to a professionally untrained worker."[50] The worker made two visits to the home, one at which the child was not present. Meanwhile, the child was treated for injuries at a second hospital. This treatment was not reported and the physician later testified "that it was not his business to investigate."[51] The Protective Unit of the Department of Welfare thus failed to provide the child protection from further injury. Instead, it was the child's grandmother who discovered the injuries and called the SPCC, which in turn filed a petition in the family court.

Disturbed by the actions of those involved in the case, Judge Polier cited the findings of several studies on the issue of child abuse and made a set of five recommendations to improve the system of child protection. First, she stated that the reporting law should be expanded to require teachers, registered nurses, visiting nurses, and social workers, as well as physicians, to report cases of abuse or neglect to the police. Second, she asked that written reports to the "responsible protective service" from physicians or hospitals be required "without delay when there is a suspicion that a child has been abused or battered." Third, "immediate reporting should be required to the police by physicians and hospitals." Fourth, "the Department of Welfare Protective Services Unit should be required to employ licensed social workers to investigate all cases of reported battered or abuse children." Fifth, when evidence of willful neglect and abuse had been found "the Department of Welfare Protective Services Unit should be required to file a petition in the Family Court to secure a prompt hearing and adjudication." In addition to these five recommendations, Polier suggested that a central clearinghouse to register all cases of abuse be set up in New York City. This would

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[50] Ibid., 374
[51] Ibid.

avoid the ease with which the parent took Marion Frances to a second hospital that was unaware of her previous injuries.[52]

Like Polier, pediatrician Laurence Finberg also observed the failure of child protection in New York first hand. First, Finberg warned that physical abuse was only one type of abuse that doctors came across. He listed undernutrition, malnutrition, refusal to accept needed medical advice, and neglect of child care, as problems he had observed. While Finberg thought that the mandatory reporting law was a step in the right direction, he explained, "I seriously doubt that it will change anything because most of the difficulties arise after the report and not before."[53] The greatest difficulty was the failure of the private SPCCs in New York City to fully investigate cases of abuse and neglect. The Bronx SPCC, covering the area where Finberg worked, was understaffed and underfunded with no public funds available for its work. Meanwhile, the number of reported cases of abuse and neglect were rapidly increasing. In May 1964, even before New York's reporting law became effective, the Bronx SPCC caseload had quadrupled the number of reports from 1963. The only effective answer to the problem of child protection, asserted Finberg, was "a protective social agency supported by public funds." In the end, this was a "public problem," and it needed "to be vested in the hands of a public agency responsive to public opinion."

The New York State Assembly passed additional provisions to support child protection in 1966 and 1967. These revisions reflected trends across the country. First, in 1966, the assembly created a statewide register of all cases of abuse reported in the

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[52] Ibid., 379.
[53] Laurence Finberg, "A Pediatrician's View of the Abused Child," *Child Welfare* 44 (January 1965): 41–43, 42.

state. This was intended to avoid incidents like Polier observed in the case of Marion Frances where a child was treated by a doctor or hospital unaware of previous reports. Second, New York, in 1967, expanded the list of professions required to report suspicions of abuse. While Polier had suggested that teachers and social workers be added to the list of those mandated to report abuse, the state legislature limited the requirement to medical professionals. The law explained that "any physician, surgeon, dentist, osteopath, optometrist, chiropractor, podiatrist, resident, intern, registered nurse or Christian Science practitioner" was required to make reports of suspected abuse. Third, the 1967 act moved towards a publicly supervised system of child protection that all reports be made to a public welfare official. However, the act required that copies of reports be made to the SPCCs if they had requested such reports and suggested that public agencies could designate other organizations to complete investigations. The 1967 law, however, nearly embodied the notion of rehabilitative child protection by requiring public officials to "offer protective social services to prevent injury to the child, to safeguard his welfare, and to preserve and stabilize family life whenever possible." The basic framework for a successful system of child protection appeared to be in place in New York by 1967. For this system to be successful, however, all its parts had to work together smoothly.

On March 25, 1969, the body of three-year-old Roxanne Felumero was discovered in the East River. Investigators quickly discovered that the girl had been beaten to death and her stepfather was charged with her murder. Like countless tragedies around the country, the death of Roxanne Felumero pointedly demonstrated the failure of the child protection system to function effectively. The tragedy of errors that was the life of Roxanne Felumero began soon after her birth. Following a finding of neglect by the

family court, the child was placed in the care of the New York Foundling Hospital. This voluntary agency then placed Roxanne with a foster family. In November 1968, Roxanne's mother applied to the family court that the child be returned to her custody. A hearing was held before Justine Wise Polier on December 12, 1968. Relying on the testimony of the caseworker from the Foundling Hospital, Polier terminated the foster care placement, leaving the child in the mother's care without supervision. Subsequent investigation revealed that the caseworker had never met the stepfather with whom the child would live, that she had considered, but not recommended, a probational placement with the mother, and that only a single home visit had been conducted. When bruises appeared on the child, the former foster parents contacted the Foundling Hospital and initiated a petition of neglect in the Family Court. This time the case came before Judge Sylvia Jaffin Liese. During questioning by the court and her law guardian, the child claimed that her bruises were a result of falls. These claims were corroborated by the mother's testimony. While Judge Liese did not believe that the injuries were sustained in falls, the analysis of the representative of the Foundling Hospital was that these injuries did not reveal a pattern of abuse. Judge Liese adjourned the case for three weeks and asked that a representative of Catholic Charities provide counseling to the mother. Meanwhile, a Foundling Hospital physician who had examined the bruises on Roxanne Felumero failed to make the required telephone report to the Bureau of Child Welfare. The report was not mailed until six days later, at which time the Bureau did not investigate because the case was already under the supervision of the Family Court. Finally, when the mother and child failed to appear at the subsequent neglect hearing on January 27, Judge Liese directed the mother to appear and asked the representative from

Catholic Charities to make a visit to the child's home and the matter was adjourned for an additional four weeks. Since Judge Liese's assignment to this term for the court had ended, the subsequent hearing was before an additional judge, Judge Jane Bolin. When the mother and child failed to appear once again, a warrant was issued for the arrest of the mother and the production of the child on February 24, 1969. In the four weeks before the child's death, the two police officers that constituted the Family Court's warrant squad failed to locate the mother or child. The committee appointed to investigate the case concluded "if the Family Court and the complex of public and private agencies operating within it had functioned more effectively, Roxanne Felumero would probably not have met her tragic death."[54]

The New York Legislature acted quickly in responding to the Felumero tragedy. Roxanne's body was discovered on March 25, 1969 and the new law was signed by Governor Nelson Rockefeller on April 28.[55] The legislature did not even wait for the investigation of the incident to be completed. Instead, it formulated its own solution to the problem of child abuse by creating a new child abuse part in the Family Court to focus exclusively on the physical mistreatment of children. Most child welfare organizations found this action troubling on a number of levels. The legislature had created a new function for the Family Court without providing additional appropriations. Critics argued that this legislation could actually weaken the state's system of child protection by overwhelming the Family Court. Additionally, by making no mention of the existing law regarding neglect, the law created an arbitrary distinction in Family

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[54] The Report of the Judiciary Relations Committee on the Handling of the Roxanne Felumero Case, June 19, 1969, p.2, JWP Papers, Box 6, Folder 62.
[55] *Laws of New York*, Chapter 264, p. 363,

Court proceedings between abuse and neglect.[56] Cases of physical and mental abuse and cases where a child was cared for by a narcotics addict would be directed to the new child abuse part of the family court; other neglect cases would be placed on the regular family court docket. Such a distinction seemed arbitrary and poorly devised. As the secretary of the NYSPCC explained, "some types of neglect (malnutrition, starvation, lack of medical or surgical care, for example) can and do cause results more serious and lasting as physical or mental injury."[57] Finally, the legislature removed from the Family Court any discretion in the disposition process; if the suspected abuse was substantiated, the court was required to remove the child from the home. This law succeeded in placing responsibility for child abuse in a single institution, the Family Court, but it undermined the notion of rehabilitative child welfare by devising legislation based solely on the perceived problems in the Felumero tragedy.

The recommendations of the Appellate Division that investigated the Felumero case seemed more on target to most child welfare activists. Their report called for greater funding and personnel for the Family Court to allow them to better perform their job and for greater public oversight and involvement in child protection. Like many child welfare activists, the investigators were troubled by the fact that the Family Court had to rely on private organizations with little public oversight for investigations and services to families. "By relying heavily upon private agencies," the report found, "a degree of

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[56] Jack L. Smith, "New York's Child Abuse Laws: Inadequacies in the Present Statutory Structure," *Cornell Law Review* 55 (1970): 298, 300.

[57] John Lane, Secretary, The New York Society for the Prevention of Cruelty to Children, to Hon. Perry B. Duryea, Speaker, New York State Assembly, April 20, 1969, David Roth, Chairman, National Association of Social Workers, New York State Council of Chapters, to Governor Nelson A. Rockefeller, May 14, 1969, Mrs. Frank H. Peters, Acting Chairman, and Alan Palwick, Vice Chairman, Committee on Family and Child Welfare, Community Service Society of New York, to Governor Nelson A. Rockefeller, May 1, 1969 in New York State Governor Bill Jacket, 1969, Chapter 264, pp. 9–16.

control over the case is relinquished by the court." The only effective way for a system of child protection to operate, the report argued, was to have a public agency conduct investigations and review the recommendations of private providers.[58]

The Felumero case demonstrated the child protection system's shortcomings, but the legislation passed in reaction to the incident did not advance the creation of a comprehensive, publicly supervised, and rehabilitative system of child protection. Led by the Select Committee on Child Abuse that had been created by the speaker of the New York Assembly in the wake of Roxanne Felumero's death, the legislature began to revise the child abuse legislation in 1970. Realizing, as Justine Wise Polier explained, that there was only a "fine line between neglect and abuse," the legislature clarified definitions of abuse and neglect and replaced the new child abuse section of the family court with a child protection section to hear cases of both abuse and neglect. The 1970 legislation also allowed judges discretion in determining disposition for children and their families in neglect and abuse cases. This restored the possibility of rehabilitation to the Family Court proceedings.[59]

The Select Committee on Child Abuse also conducted an intensive investigation into child protection in New York and concluded that only a publicly supervised, statewide system of child protection could successfully investigate and provide rehabilitative services in order to reduce cases of abuse and neglect. Many of the Select Committee's recommendations were incorporated in the Child Protective Services Act of 1973; this act reflected the systematic reorganization of child protection that occurred in

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[58] Report of the Judiciary Relation Committee, 29, 39–45.
[59] "An Appraisal of New York's Statutory Response to the Problem of Child Abuse," *Columbia Journal of Law and Social Problems* 7 (1971): 51, 63–64.

many states and continues, to this day, to serve as the basis for New York's system of child protection. The Select Committee examined the entire process of child protection from case identification, to investigation, to treatment and services, and found serious faults in each of these area.

After almost a decade of having a mandatory reporting law in place, the number of child abuse cases in the state appeared to be seriously underreported. There were several factors for this underreporting. First, the state had made little effort to educate doctors and other individuals about their legal obligation to make these reports. Second, the state department of social services refused to accept reports from non-mandated reporters. Third, reporting was required only in cases of abuse. Evidence of neglect was not part of the state register. Fourth, reports did not require enough specifics about the case. The committee called for a well-publicized statewide telephone hotline where reports could be made 24 hours a day, seven days a week. They asked that legislation require reports of both neglect and abuse, and that the register record reports from both required and voluntary reporters. Finally, the state registry needed to contain enough detailed information to allow for identification of patterns and for analysis of the problem in the state.

Like many observers, the committee found that the child protective system was disorganized and often incoherent. Many child protective workers, they found, were ill-trained in how to conduct an investigation in order to substantiate or refute suspicions of neglect or abuse. The committee called for a specialized department of child protection in every county in the state. These departments would exclusively provide child protection investigations by specially trained staff. The committee also looked into the

system of rehabilitative treatment of children and their families. They were particularly disturbed by the foster care system which often failed to provide rehabilitation to the child or his family. In many cases the child remained in foster care for long periods of time without the opportunity for reunification with his family or adoption. Keeping a child in his home was often not only healthier for both the child and his or her parents, but it was also less expensive to the state than long-term foster care. But the Committee realized that "to be successful, a rehabilitative program must have easy access to a range of counseling and concrete services designed to alter or modify many of the specific psychological and environmental conditions which lead parents to abuse their children."[60] In other words, rehabilitative child protection would work only if families were served by a coordinated, comprehensive, system of services to children and their families. Unfortunately, as the Select Committee realized, "the fragmented patchwork of child welfare agencies is responsible for lack of communication, inefficiency and inadequate service."[61] While the Select Committee devised legislation to improve the system of child protection, they realized that without true rehabilitative child welfare services, the child protection system was limited in what it could accomplish.

In designing a publicly supervised, statewide system of child protection, the Select Committee was forced to face the long standing tension in New York child protection between the public and private agencies. The renewed interest in child abuse that began in the early 1960s had proved fatal to the tradition of voluntary child

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[60] New York State Assembly, "Report of the Select Committee on Child Abuse," Alfred D. Lerner, Chairman, Peter J. Costigan, Chairman, Douglas J. Besharov, Executive Director, April 1972, 78.
[61] Ibid., 83.

protection. "Child Protective Services under voluntary agency auspices," the AHA reported in 1967, "like the old soldier it is, is slowly fading away."[62] Private child protection institutions existed in only ten states by 1967. The rising child protection caseload was crushing to organizations that still relied primarily on voluntary contributions. In New York, two counties simply took over the local SPCCs and turned them into public agencies. The AHA explained that "the change in auspices for protective services was rooted in a determination of who was to pay the costs of the program."[63] As public agencies, these SPCCs were eligible for state funds they otherwise could not receive. The future of the SPCCs in New York and across the country seemed extremely tenuous by 1973.[64]

As the SPCCs struggled to maintain their existence in the early 1970s, there was one arrangement that would allow them to continue to provide some child protective function: "purchase of service." States had provided funding for private social providers since the nineteenth century. In child welfare, it was fairly common for the state to provide funding to private agencies for the care of children.[65] However, in New York's system of child protection there was little public funding of voluntary services before the 1970s.[66] In the 1967 Amendments to the Social Security Act, Congress, for the first time, made state purchases of services from private providers eligible for federal matching

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[62] American Humane Association, Children's Division, *Child Protective Services: A National Survey* (Denver: American Humane Association, Children's Division, 1967), 11.
[63] AHA, Children's Division, *Child Protective Services: A National Survey*, 11.
[64] Ibid., 44.
[65] In New York, for example, institutions caring for children had received public subsidies since the early nineteenth century. See Justine Wise Polier, *Everyone's Children, Nobody's Child: A Judge Looks at Under privileged Children in the United States* (New York: Charles Scribner's Sons, 1941), 114–22.
[66] Alfred Kahn reported in 1961 that the Brooklyn SPCC received fee payments from the city for its investigative work, but no other SPCCs in New York City received such payments. (Alfred Kahn, *Protecting New York City's Children*, 1961, 25).

funds. Suddenly, there was an explosion of in state "purchase of services" from private agencies.[67] In New York, the SPCCs saw purchase of service as a way of preserving there role in child protection. The head of the Brooklyn SPCC, for example, admitted that "the protective function is now mandated as a public responsibility," but, he explained, "such a function might be carried out less expensively, and possible more effectively through a 'purchase of services' agreement." In order to continue its work the Brooklyn SPCC was willing to subject itself to public oversight. "To put it very simply," continued the Society's executive director, "Brooklyn SPCC would be willing to take responsibility for protective services on behalf of all the children of Brooklyn, provided sufficient funding for such an endeavor can be made available. We are ready to provide such services through a system of accountability to appropriate government authorities. We are willing to consider whatever steps are necessary to carry out the responsibility for protective services to the children of Brooklyn if such responsibility and the necessary funds are available to us."[68] Such on offer was tempting to the Select Committee formulating child protection reform because it allowed the state to virtually capture private resources for child protection rather than remaking a system from scratch. In order to pursue this direction, however, they needed to ensure that a strong system of public oversight and supervision was in place.

The 1973 Child Protective Services Act embodied the major concerns of the Select Committee while preserving a role for voluntary child protective agencies. It is

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[67] See Martha Derthick, *Uncontrollable Spending for Social Services Grants* (Washington, D.C.: The Brookings Institution, 1975).

[68] Statement of Robert R. Walsh, Executive Director The Brooklyn Society for the Prevention of Cruelty to Children, before the Select Committee on Child Abuse of the New York State Assembly, in New York State *Governor's Bill Jacket 1973*, Chapter 1039, 30

worth examining some features of this legislation in detail because its features reflected systems of child protection in many states. First, the legislation required detailed reports of abuse and neglect from an expansive list of professionals. The legislature had added to this list several times since its initial 1964 physician reporting law; in 1974 the list included: "any physician, surgeon, medical examiner, coroner, dentist, osteopath, optometrist, chiropractor, podiatrist, resident, intern, registered nurse, hospital personnel engaged in the admission, examination, care or treatment of persons, a Christian Science practitioner, school official, social services worker, day care center worker or any other child care or foster care worker, mental health professional, peace officer, or law enforcement official."[69] Reports were required immediately by telephone and in writing within 48 hours. The report required detailed information such as the nature and extent of the injuries. There was a criminal penalty for failure to report and individuals were also civilly liable for failing to report abuse or neglect. Additionally, the law allowed child protection workers, law enforcement officers, and doctors to take a child into protective custody if they thought the child was in "imminent danger." Second, the act required the Department of Social Services to set up a statewide registry available twenty-four hours a day and seven days a week and able to receive and process detailed reports of abuse and neglect. The report was to include information such as "services offered and services accepted," and, "the plan for rehabilitative treatment," along with basic identifying information. Third, the law required each local department of social services to establish a child protective service. This service had the primary responsibility for receiving and investigating all reports of suspected abuse or neglect

[69] Laws of New York, 1973, Chapter 1039, p. 2910.

and, if needed, supervising rehabilitative treatment and services to children and their families. The law did allow the child protective service to "purchase and utilize the services of any appropriate public or voluntary agency including a society for the prevention of cruelty to children."[70] Private agencies could be used in both the investigatory and treatment phases of the child protection function. Their services would "be reimbursed by the state to the locality in the same manner and to the same extent as if the services had been provided directly by the local department."[71] Finally, the legislation required a yearly local plan providing details of how child protection is being provided in each locality.

After nearly a decade, the state of New York had devised a fairly comprehensive, statewide, publicly supervised system of child protection. As the law explained, this system was intended to provide "protection for the child or children from further abuse or maltreatment and rehabilitative services for the child or children and parents involved." While it preserved a role for voluntary child protection, this was far from the fractured competing public and private institutions that had existed when the first reporting legislation was passed in 1964. The framework of the New York law—an extensive list of required reporters, a statewide registry, a public child protection agency in each locality, and a rehabilitative approach to treatment—would be reflected in the requirements for federal funding contained in legislation passed by Congress in 1974. The 1973 New York legislation provided a model of child protection legislation. The concern of the Select Committee, however, that child protection could not succeed unless

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[70] Ibid., 2916
[71] Ibid.

services for children and families were more widely available remained a source of anxiety.

The Child Abuse Prevention and Treatment Act

Nineteen seventy-four was not a particularly promising year to propose a new federal social program aimed at child abuse. Reflecting back, Senator Walter F. Mondale, one of the main sponsors of the bill that would become the Child Abuse Prevention and Treatment Act of 1974, recalled that the bill was proposed "24 months after the presidential veto of the comprehensive child care legislation," that it was "less than a year after a proposal for a drastic reduction in social services," and that while the bill was being drafted "HEW was cutting back staff for . . . the maternal and child health program."[72] The act that eventually passed Congress and was signed by President Richard M. Nixon, therefore, was relatively modest in both the funds authorized and the requirements placed on the states for child protection. Still, the legislation successfully codified some minimum requirements for state child protection that reflected the decade-long development of policy in the states. Also, it provided some funding exclusively available for child protection at a time when funding sources for child welfare services appeared to be drying up.

Two issues emerged in the debate over the child abuse act. First, was the question of whether Congress should supplement existing state programs of child protection or encourage the development of new approaches. Second, was a debate over the extent the

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[72] Walter F. Mondale, speech to Region Five Child Abuse Conference, Milwaukee, Wisc., May 3, 1976 as cited in Ellen Hoffman, "Policy and Politics: The Child Abuse Prevention and Treatment Act," *Public Policy* 26 (Winter 1978): 71, 72.

federal government should attempt to shape a national child protection policy. What was striking was that even within this debate there was agreement on many of the features of child welfare, and even where there was disagreement, both sides argued for rehabilitative approaches to child welfare. In the end, political considerations proved a greater constraint on developing a national child protection policy than the long standing tensions between rehabilitative versus punitive approaches or the question of whether child protection should be under public or private auspices.

On one side of the debate over the future of child protection were those who believed that existing systems of child protection could never adequately protect children from abuse and neglect. This view was best expressed by C. Henry Kempe, Brandt Steele, Ray Helfer, and others associated with the National Center for the Prevention of Child Abuse and Neglect in Denver, Colorado. Led by the doctors who had "discovered" the battered-child syndrome, this center had developed a multidisciplinary approach to child protection that drew upon the skills of pediatricians, psychiatrists, psychologists, and social workers in evaluating children and their families to determine whether cases need to go to the juvenile court or other possible treatment options. They argued that only state-run multidisciplinary child welfare would adequately protect children.[73] The bill proposed by Senator Mondale reflected this view by making the funding for child protection demonstration projects the centerpiece of the legislation. Such funding, Mondale assumed, would encourage adoption of the Denver approach and other innovations in child protection.

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[73] U.S. Senate Committee on Labor and Public Welfare, *Child Abuse Prevention Act, 1973: Hearings on S. 1191*, 93rd Cong., 1st sess., 1973, 288–292.

Opposing widespread reconstruction of child welfare were those who believed that existing systems of child protection could work if they received additional funding. As Vincent De Francis, Director of the Children's Division of the AHA explained, "The framework is there; the machinery is there; all we need is the oil which that machinery has lacked. It has become rusty in many ways because we have not greased it, because we have not provided the funds."[74] Along with the AHA, the CWLA viewed the problem as one of lack of funding for child protection. The shortage of funds appeared particularly acute since, in an effort to restrain the explosion in costs for social services, Congress had capped funding for services to AFDC recipients.[75] For those advocating an injection of federal resources into the child protection system, the 1973 New York legislation provided something of a model. While the program had only just gone into effect, New York Assemblyman Peter J. Costigan, Chairman of the Select Committee on Child Abuse, testified to some of the features of the New York Act to Congress. He emphasized the importance of specialized divisions of child protection that contained specially trained social workers. He also commented on the success of the statewide hotline, noting that in the two months since the hotline had been implemented they had received more reports than they had for the entire year of 1972.[76] Legislation introduced by New York Congressman Mario Biaggi embodied a federal approach to child protection that emphasized supplementing and strengthening existing state resources. As Biaggi explained "my bill offers large amounts of money now for those States that will form comprehensive plans to fight the horror of child abuse. These plans will have to

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[74] Ibid., 298.
[75] U.S. House Committee on Education and Labor, *To Establish a National Center on Child Abuse and Neglect: Hearings on H.R. 6379, H.R. 10552, and H.R. 10968*, 93rd Cong., 1st sess., 1973, 150-151.
[76] Ibid., 158-169.

meet specific standards calling for reporting laws designed to make certain we can find the child abuser, and then treat him."[77]

The debate over how to approach child protection was, to a large extent, a clash between professions. On one side were the doctors who believed that social workers were ill-prepared to provide child protection work. As Kempe explained, "the idea that social work owns child protection is what I am opposed to."[78] On the other side, social workers felt that medical doctors did not fully appreciate the nature of abuse and neglect. William Lunsford, director of the CWLA's Washington Office, showed disdain for what he termed the "medical view" of child protection. "As I see it," he explained in congressional testimony, "the medical view is focused on the physically abused child. The central problem is seen as physical abuse, the battered child syndrome and what one does about it." This excessive attention to physical abuse, Lunsford explained, undermined a rehabilitative approach to child protection. "The Child Welfare League does not view child neglect and child abuse as separate child welfare problems." Abuse was only one aspect of the problem of neglect. Lunsford asserted the social responsibility for every child, the mantra of rehabilitative child welfare. "The child welfare services viewpoint," in contrast to the medical viewpoint, he noted, "holds government, and the general community, as well as the parents or guardians of a child responsible for the child's upbringing." He argued that the medical approach focusing on the already injured child when he or she arrived in the hospital failed to reach all families in need of rehabilitative services. "The child welfare services viewpoint," he reiterated, "seeks change in relation to living and working conditions as a means of preventing

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[77] Ibid., 28.
[78] Senate Committee, *Child Abuse Prevention Act, 1973,* 299

neglect, abuse, and exploitation." Only child welfare services provided by state social service agencies, Lunsford argued could really fulfill social responsibility through therapeutic services.[79]

Lunsford's dichotomy between the medical view and the child welfare services view were somewhat overdrawn. As he admitted, the differences in approach were really "more philosophical than substantive."[80] In reality, the two perspectives represented a consensus over rehabilitation rather than disagreement. Both sides supported therapeutic services to children and their families to eliminate abuse and lead toward recovery for children. Both sides agreed on the need for greater national leadership in this area. It is also important to note that everyone wanted clear public supervision of child protection by 1973. Vincent De Francis at the AHA, once the defender of private child protection, made this perfectly clear. "I work for a private agency," he explained, "we are not a governmental agency, yet I am making a plea to Congress . . . with respect to supporting a program that is not simply on the drawing board, it is a program which is in operation only in a token way in far too many communities, granted, but in a very excellent way in many other communities. But what is needed is more money."[81] This did not mean that voluntary agencies would be barred from providing child protective and child welfare services, the final bill specified that public or private treatment facilities were acceptable, but that child protection would be supervised by state or federal agencies.

The CWLA developed a compromise bill that included features of both the Mondale and Biaggi Bills. In essence, this bill combined the grants for demonstration

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[79] House Committee, *To Establish a National Center on Child Abuse and Neglect*, 149–154.
[80] Ibid., 151.
[81] Senate Committee, *Child Abuse Prevention Act, 1973*, 297.

programs and direct grants to state systems of child protection. This framework would become the Child Abuse Prevention and Treatment Act of 1974. Fearing a veto from the Nixon administration, the final legislation remained fairly conservative on providing national leadership on the problem of child abuse.[82] First, the bill failed to include a provision for the establishment of a national child abuse registry. As the New York legislation demonstrated, state-wide registries were important tools in recognizing patterns of abuse. A national registry would extend this tool across state lines. Fears of the controversy over privacy such legislation would ignite, Mondale and the others negotiating the final act avoided such a feature. Second, while the act set ten requirements for states to receive grants for child protection, states could meet many of the requirements with little reform of their systems of child protection. Among the requirements were a reporting law, a system to collect reports, a statewide ability to investigate and treat reports of abuse and neglect, cooperation between law enforcement and human services, and the dissemination of information. One provision which would require some change in most states was a requirement that a guardian ad litem be appointed in judicial proceedings involving abuse or neglect. In 1973, only four states—New York, Kansas, Colorado, and Tennessee—had such a requirement.[83]

The Child Abuse Prevention and Treatment Act of 1974 did not revolutionize child protection across the country. State and localities led the way in developing the features of modern child protection. Still, the new law's minimum requirements represented a consensus of what child protection should look like: a system that was public, statewide, and rehabilitative. It was also a system that encouraged reports of

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[82] Hoffman, "Policy and Politics," 87.
[83] House Committee, *To Establish a National Center on Child Abuse and Neglect*, 17.

mistreatment, either through mandatory reporting or by educating and encouraging reports of abuse. As these systems of child abuse reporting were instituted across the country and reports began to climb, the unintended consequences of this new system of child protection began to be felt.

The Unintended Consequences of Modern Child Protection

If the goal of the new system of child protection developed in the states over the 1960s and enshrined in the Child Abuse Prevention and Treatment Act of 1974 (CAPTA) was to increase the reports of suspected child abuse, then these laws were an overwhelming success. In 1967, the number of reports of suspected abuse across the nation was estimated at 9,563. By 1975, that number had reached 294,796 reports. One year later, that number had more than doubled to 669,000 reports. By 1980, the number of reports of child abuse would surpass one million. They would surpass 3 million by 1994.[84]

The reasons for this explosion in reports of suspected abuse and neglect are difficult to determine. The passage of CAPTA in 1974, creating standards for state child protection, is part of the explanation. The commitment by states to increase mandatory reporters, to publicize the issue of abuse and neglect, and to encourage reports of abuse also contributed greatly to this phenomenon. Florida, for example, saw an increase from 17 reports in 1970, to 19,120 reports in 1971 after they created and widely advertised a twenty-four hour statewide hotline.[85] Still, the increasing number of reports of abuse and neglect can not be attributed to changes in public policy alone. Growing public interest

[84] Waldfogel, *The Future of Child Protection*, 7.
[85] Lindsey, *The Welfare of Children*, 93

in abuse and neglect over the 1970s and 1980s fueled an increase in reporting that policymakers could not have imagined.[86]

Despite continuing debate over child protection policy, it seems safe to assume that children were better protected after the institution of child protection reforms than before. While it is impossible to calculate the exact numbers, the new system of child protection certainly saved the lives of some children and protected others from further abuse and neglect. Still, as the system was fully implemented over the 1970s and 1980s, questions of its effectiveness were raised. In 1980, for example, 79 percent of suspected cases of abuse remained unknown to child protective services. In 1990, 67 percent of the child abuse cases that ended in death were also unknown to child protective services. This raised the question of whether the increasing number of reports was actually providing better protection for children.[87]

One of the reasons for the ineffectiveness of child protection was simply that the system was overwhelmed by the large volume of cases.[88] As the number of reports of abuse began to rise over the 1970s, state social services had neither the personnel nor budgets to conduct sufficient investigations of every report. In addition, the commitment to rehabilitation and the use of social workers to conduct these investigations may have created additional inefficiencies. As the Select Committee of the New York Assembly had noted in 1972, social workers were often ill trained to conduct investigations of abuse

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[86] Waldfogel, *The Future of Child Protection*, 100.
[87] Ibid., 102-103.
[88] Ibid., 109.

and neglect. This problem continued to plague states as they committed social workers to this investigatory role.[89]

Ironically, the explosion in child protection helped prevent the creation of a comprehensive system of services to children and families, the very programs that could have helped prevent abuse and neglect. The needs for personnel and funding for child welfare would overwhelm other public child welfare reforms. Alfred Kahn and Sheila Kamerman reported in 1990 that child protective services had "emerged as the dominant public child and family service." Child protection they observed was "in effect 'driving' the public agency and taking over child welfare entirely." Kamerman and Kahn quoted social service administrators explaining that "the increased demand for child protection has driven out all other child welfare services."[90]

The dominance of child protection in the field of child welfare, however, took decades to develop. When child welfare activists and medical doctors focused new attention on the problem of child abuse and the shortfalls of child protection in the early 1960s they considered robust child protection as only one part of a comprehensive system of child protection. As they would with CAPTA, the child welfare network looked to the federal government to provide financial support for services to children and to place rehabilitation at the center of American social welfare. It is this effort and its implications for both child welfare and the rehabilitative ideal that we now turn.

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[89] Lindsey, *The Welfare of Children*, 164–165.

[90] S. B. Kamerman and A. J. Kahn, "Social Services for Children, Youth, and Families in the United States," *Children and Youth Services Review* 12 (1990): 1–184, as quoted in Lindsey, *The Welfare of Children*, 96.

Chapter 5:
Rehabilitating the Welfare State: National Policy for Children

"In truth, a monthly check is not enough," wrote Robert H. MacRae about welfare recipients in the pages of the October 1960 issue of *Child Welfare*. "These ADC mothers desperately need skilled counseling and rehabilitation services."[1] James R. Dumpson, New York City's Commissioner of Welfare and one of the most prominent African Americans in social welfare circles, expanded on the need for services by welfare recipients in a subsequent article. "Certainly these people are in financial need, but they are in need of more," Dumpson explained. "They require protective and rehabilitative services—family counseling, day care, psychological treatment for personality disorders, homemaker services, and child welfare services—if chronic dependency is not to take hold, if total individual and family breakdown is to be prevented."[2] By the 1960s, the belief in rehabilitative services, so central to reform of child welfare services, was being advocated for all welfare recipients. At the same time, child welfare activists realized that for comprehensive child welfare reform to be effective there had to be reform in Aid to Dependent Children. This chapter examines the role of both the network of child welfare activists and the notion of rehabilitation in shaping and reacting to national welfare policy over the 1960s and 1970s.

The rise of a faith in services as a solution to welfare dependency and the incorporation of a services approach into the Public Welfare Amendments of 1962 have been well described by other historians such as Jennifer Mittelstadt and Andrew Morris.

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[1] Robert H. MacRae, "Jane Addams and Our Unfinished Business, *Child Welfare* 39 (October 1960): 4.
[2] James R. Dumpson, "Public and Voluntary Agency Partnership Responsibilities," *Child Welfare* 41 (January 1962): 5.

Morris has traced the origins of the services approach to welfare reform to the efforts of family service agencies to deal with "multi–problem families," the small number of families that required much of a community's services and resources.[3] Mittelstadt has correctly recounted the transformation of the notion of rehabilitation over the 1960s from a focus on therapeutic services to a focus on employment.[4] The role of the child welfare community in the welfare reform over the 1960s complicates this narrative as child welfare activists contributed their own understanding of rehabilitation to welfare policy in this period. Child welfare reformers also found themselves in a difficult position as they simultaneously advocated a strengthening of services to ADC families and child welfare services, while insisting that child welfare services should not be viewed as a program for the poor.

Members of the postwar child welfare community served on the three major panels that shaped the welfare amendments of 1962. In accommodating their ideas about child welfare to the broader welfare reform agenda, however, child welfare activists compromised some of their principles. First, they signed on to the argument that therapeutic services including services to children and families would lead to a decrease in the welfare rolls, a proposition with little evidence to support it. Second, in order to find new sources for federal funds, they accepted child welfare services as an element of services to the poor therefore weakening their claims to the classless nature of child welfare needs. In the long run, the association of members of the child welfare network and the notion of rehabilitation with the Public Welfare Amendments of 1962

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[3] Andrew Morris, "Charity, Therapy and Poverty: Private Social Service in the Era of Public Welfare" (Ph.D. diss., University of Virginia, 2003), 290–333.

[4] Jennifer Mittelstadt, *From Welfare to Workfare: The Unintended Consequences of Liberal Reform, 1945–1965* (Chapel Hill: University of North Carolina Press, 2005).

undermined the authority of the child welfare community and its rehabilitative approach. As welfare policy moved in new directions over the 1960s, the child welfare community struggled to claim the continued relevance of both child welfare programs and the rehabilitative ideal. By the early 1970s, some members of the child welfare community began to reorient their efforts around the concept of "family policy" rather than child welfare.

Origins of National Child Welfare Policy

Federal support for child welfare services had its origins in the Social Security Act. During the framing of the 1935 act, the Children's Bureau proposed four programs to benefit children. The first was federal support for state Mother's Pensions, a program that would become Aid to Dependent Children (ADC). The second was aid for maternal and child health, an attempt to resurrect the defunct Sheppard-Towner Act. The third request of the bureau focused on services for "crippled children." Finally, the Children's Bureau recommended federal support for services for children. As the head of the Children's Bureau, Katharine Lenroot, later explained, this last program was to provide "the basic services necessary to deal with the conditions of neglect, delinquency, and mental disturbance or physical handicaps."[5]

The proposed Social Security Act included an authorization of 1.5 million dollars for this final program of child welfare services. Compared to other programs in the bill this was modest; still, the program met with opposition. Representatives of Catholic

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[5]Katherine F. Lenroot, "The Children's Titles in the Social Security Act: Origins of the Social Welfare Provisions," *Children* 7 (1960): 130–131 as quoted in Marguerite G. Rosenthal, "The Children's Bureau and the Juvenile Court: Delinquency Policy, 1912–1940," *Social Service Review* 60 (1986): 313.

charities disapproved of federal support to services for children especially the federal guarantee to match state spending on such services. The Catholics feared that federal restrictions would upset existing arrangements in many American cities where voluntary agencies provided services for children with state financial support. The two sides reached a compromise as the Catholic representatives pledged support of the Social Security Act and the Roosevelt Administration agreed to an amendment limiting aid to "predominantly rural and other areas of special need" and removing the requirement for matching state funds. The provision of the act was clarified further when members of the House Committee on Ways and Means questioned the meaning of the term "child welfare services." In response, Edwin E. Witte defined child welfare services as those services for "homeless, dependent, and neglected children, and children in danger of becoming delinquent."[6] This last-minute construction would remain the legal definition of child welfare services for nearly three decades. Child welfare services, therefore, became Title V, Part 3 of the Social Security Act providing federal support for children's services based on a vague definition and severe restrictions.

Limited funding further constrained the child welfare program. The funding authorized and appropriated would remain at $1.5 million until 1947, when it was raised to $3.5 million. Funding was held constant at this level until 1950. Over the same period, state and local expenditures for Child Welfare Services rose from $26 million in 1935 to $77.4 million in 1947 and finally reached $100.7 million in 1950. With relative

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[6] Edwin E. Witte, *The Development of the Social Security Act* (Madison: University of Wisconsin Press, 1962), 167–171.

federal support decreasing, states shouldered the burden of providing services for neglected, delinquent, and dependent children.[7]

While federal support for child welfare services remained relatively meager, Aid to Dependent Children continued to expand over the 1940s and 1950s. The number of families receiving ADC doubled between 1945 and 1950 causing significant increases in spending. At the same time the demographics of ADC also shifted. Intended as a program for widowed mothers, by 1941-1942, 39 percent of the children receiving such aid were in homes where the mother had never married or the father had disserted, separated, or divorced the mother. The racial composition of ADC recipients also changed with 30 percent of ADC families recorded as nonwhite in 1948.[8] ADC was further marginalized as other forms of social assistance were incorporated into the system of social insurance. By the 1950s, the term welfare came to refer almost exclusively to the Aid to Dependent Children program.[9]

By the late 1950s, two impulses began to merge into a desire to reshape federal policy. Child welfare activists, eager to make their vision of rehabilitative child welfare a reality, looked to the federal government as a source of funding and regulation of services for children across the country. Meanwhile, advocates for expansion of public welfare

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[7]U.S. Department of Health, Education, and Welfare, *Report of the Advisory Council on Child Welfare Services,* (Washington, Government Printing Office, 1960) republished in House Committee on Ways and Means, *Public Welfare Amendments of 1962*, 87th Cong., 2nd sess., 1962, 272–274.

[8] Mittlestadt, *From Welfare to Workfare,* 44.

[9] With the 1939 Amendments to the Social Security Act, what was formally old–age insurance became available to survivors, widows and children of the insurance recipient. This meant that ADC, once intended to support state mother's and widow's pensions programs, would be directed primarily to those children who had no connection to a male breadwinner, mostly the children of disserted, divorced, and unmarried mothers. See Arthur R. Altmyer, "The New Social Security Program," *School Life* XXV (January 1940), 103–104, as cited in Robert H. Bremner, *Children and Youth in America: A Documentary History*, Vol. III (Cambridge, Mass.: Harvard University Press, 1974), 536–538. See also Edward D. Berkowitz, *America's Welfare State: From Roosevelt to Reagan* (Baltimore: Johns Hopkins University Press, 1991).

with their own understanding of rehabilitation were calling for a family service orientation in reforming public assistance. These views first influenced public policy in the amendments to the Social Security Act passed in the 1950s. In 1956, amendments to the ADC portion of the act provided funding for services for "maintaining and strengthening family life," and encouraging "self-support."[10] The later 1958 amendments provided a significant expansion of child welfare services extending "services to urban children on the same basis as rural children." [11] This amendment essentially overturned the limitations on child welfare added to the 1935 Act to appease Catholic charities. Thus, the framework for rehabilitative reform for both child welfare services and ADC were already established when John F. Kennedy was elected President in 1960.

Rehabilitation and the Public Welfare Amendments of 1962

Controversy over the administration of the ADC program in the early 1960s provided an additional impetus for welfare reform. Two crisis—one in Louisiana, the other in Newburgh, New York—demonstrated a rising backlash against the ADC program and the need for liberals to provide a non-punitive path to decreasing the welfare rolls. In July 1960, the Louisiana state legislature, exploiting a clause in the ADC regulations that forbade assistance to "unsuitable homes," passed legislation that defined any home headed by a woman who had children out of wedlock as unsuitable. The law, nominally intended to protect the welfare of children, effectively cut 6,000 mothers and more than 23,000 children from Louisiana's welfare roles. There was, in addition, a

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[10] Katherine Brownell Oettinger, "The Rights of Children," *Child Welfare* 37 (June 1958): 4; Mittelstadt, *From Welfare to Workfare,* 64–66.
[11] Martha M. Eliot, "New Social Security Act Amendments," *Child Welfare 37* (November 1958): 6.

racial element to this action. Louisiana politicians were aware that least 80 percent of the affected families were African American. Members of the child welfare network along with other social policy experts and civil rights organizations argued to Secretary of Health, Education, and Welfare that the Louisiana law violated the letter and spirit of the Social Security Act. In the last weeks of the Eisenhower administration, Secretary Fleming accepted the arguments of the laws opponents ruling that Louisiana had violated the ADC regulations.[12] A year later, another crisis over ADC broke out in Newburgh, New York, when the city manager implemented a thirteen-point code restricting eligibility for public welfare. Again, race had motivated the action which was presented as a way to stem the increasing black population of Newburgh. Child welfare activists again joined with other social policy organizations to fight the new welfare code. In December 1961, the courts ruled that most of the changes implemented by the city manager had violated the law. Once again, an attack on public welfare was parried by the child welfare network.[13]

In the context of these attacks on ADC, the election of Kennedy created a great deal of excitement among those interested in public welfare reform. The signs coming from those planning for the new administration, such as Wilbur Cohen, soon to be an assistant secretary of Heath, Education, and Welfare, were that the Kennedy administration was eager to put together a program of welfare reform. This was the moment when members of the child welfare network had the greatest influence over

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[12] Mittlestadt, *From Welfare to Workfare,* 86–91. The interconnections within the child welfare network were demonstrated by the fact that Joseph Reid turned to Shad Polier, Justine Wise Polier's husband, to write the brief on behalf of the CWLA urging Fleming to rule against the restrictive Louisiana legislation. (Mittlestadt, 89)

[13] Mittlestadt, *From Welfare to Workfare,* 91–104; James T. Patterson, *America's Struggle Against Poverty, 1900–1994* (Cambridge, Mass.: Harvard University Press, 1994), 107–109.

national welfare policy. The policy choices they advocated and the vision of the rehabilitative ideal they proposed were reflected in the findings of the three panels addressing reform to ADC and child welfare—the Advisory Council on Child Welfare Services, the Ad Hoc Committee on Public Welfare, and the Project on Public Services for Children and Families.

Members of the child welfare network served on all three of these panels examining reform of the child welfare services and ADC programs. As director of the CWLA, Joseph Reid contributed to all three committees. Justine Wise Polier helped organize the Project on Public Services and served as a member of the Ad Hoc Committee on Public Welfare. Her friend Trude Lash was also a member of those two panels. Fred DelliQuadri, director of Wisconsin's Division of Children and Youth and later the dean of the New York School of Social Work served on all three panels. Alfred Kahn was a consultant to the Project on Public Services. These experts were joined by proponents of therapeutic services from outside the child welfare community. For example, Clark W. Blackburn, general director of the Family Service Association of America, and Joseph P. Anderson, executive director of the National Association of Social Workers, both were members of the Project on Public Services and the Ad Hoc Committee. Finally, these groups were rounded out with general social welfare experts like Ellen B. Winston, North Carolina commissioner of welfare and a leader in the American Public Welfare Association, who contributed to all three reports. Wilbur Cohen consulted for the Project on Public Services and, as assistant secretary of H.E.W., organized the Ad Hoc Committee. Finally, Elizabeth Wickenden, a social welfare veteran, and Winifred Bell, an emerging expert of public assistance, authored the report

of the Project on Public Services shaping the contours of the debate about welfare reform.[14]

Considering the composition of these panels on welfare reform, their commitment to the rehabilitative ideal was not surprising. The panels, for example, reiterated the social responsibility for children. The report of the Project on Public Services to Families and Children made one of its goals "a positive reassertion of the obligation of this country to protect and help all of its children and most especially those whose special vulnerability has brought them to public welfare agencies."[15] Furthermore, this obligation was to both the psychological and physical development of the child. In the words of the Advisory Council on Child Welfare Services, the goal of these programs was to foster "the fullest possible realization of the potentialities of children."[16] The importance of coordination of various services was also emphasized in these reports. As the Advisory Council explained, "a comprehensive program of services in local communities is one of the acid tests of the U.S. system of child welfare. Lack of one service can cause actual misuse of another."[17] In the context of wholesale welfare reform, this coordination applied not only to services for children but all welfare grants and services. Wickenden and Bell hoped "to strengthen all our governmental resources

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[14] *Report of the Advisory Council on Child Welfare Services,* 223; Elizabeth Wickenden and Winifred Bell, *Public Welfare: Time for a Change* (New York: Project on Public Services for Families and Children, 1961); "Report of the Ad Hoc Committee on Public Welfare to the Secretary of Health, Education, and Welfare," republished in House Committee on Ways and Means, *Public Welfare Amendments of 1962*, 87th Cong., 2nd sess., 1962, 67-68; Justine Wise Polier to Maxwell Hahn, May 15, 1961, Justine Wise Polier Papers, Schlesinger Library, Harvard University (hereafter cited as JWP Papers), box 37, folder 461. For more on Ellen Winston, Elizabeth Wickenden and the American Public Welfare Association, see Mittlestadt, *From Welfare to Workfare*, 30-38. For more on Clark W. Blackburn, see Morris, "Charity, Therapy, and Povery." For more on Wilbur Cohen see Mittlestadt, *From Welfare to Workfare*, esp. 127-129 and Edward Berkowitz, *Mr. Social Security: The Life of Wilbur J. Cohen* (Lawrence: University Press of Kansas, 1995).

[15] Wickenden and Bell, *Public* Welfare, 111–112.

[16] *Report of the Advisory Council on Child Welfare Services,* 247.

[17] Ibid.

for child welfare and other social services, assistance to needy families, and community welfare services in a coordinated program of family and children's services."[18] From their perspective, the result of welfare reform should be a single comprehensive and rehabilitative welfare system that met the needs of those now served by various child welfare, family service, and social assistance programs.

There was a basic consensus, therefore, among all three panels that child welfare needed to be better coordinated with other welfare programs like ADC, and that services, including services to children and families, could provide needed assistance to welfare recipients. This consensus broke down, however, over the specific relationship between child welfare services and ADC. The child welfare community was wedded to the notion that child welfare programs served all classes of children, not only the poor. While they agreed that generous social assistance benefits would help reduce pressures on families and children, they refused to accept a program of child welfare services available only to welfare recipients. Paraphrasing the act which established the Children's Bureau in 1912, Joseph Reid asserted that "the concept of concern for *all classes of the people* should not be abandoned."[19] This concern about limiting the child welfare services to welfare recipients was practical as well as philosophical. The social worker Bertram Beck noted that "only 19 percent of the children receiving public child welfare services are in public assistance families."[20] In addition child welfare activists asserted the uniqueness of child welfare services, in contrast to the family services that would be needed by many welfare families. Family oriented services would exclude "areas that are peculiar to child welfare

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[18] Wickenden and Bell, *Public Welfare*, 111–112.
[19] Joseph H. Reid, "Proposed Changes in the Structure of the Children's Bureau," *Child Welfare* 40 (March 1961): 33 (Emphasis is Reid's).
[20] Beck, "Children on the New Frontier," *Child Welfare* 40 (April 1961): 2.

alone, such as foster home finding, adoption placement, relationship with juvenile courts, licensing of private agencies, children's institutions, group care." Work on these issues were "child-centered and require special knowledge and skill because the family has broken down."[21] The greatest concern, however, was that combining child welfare services, programs with generally positive public associations, with ADC, a program increasingly under attack, would only tarnish the reputation of child welfare services. "Combination of ADC with Child Welfare Services might raise ADC standards," Bertram Beck admitted, "or, it is important to add, might radically lower standards of public child welfare services."[22] For the child welfare network, coordination between ADC and child welfare programs was acceptable; child welfare as services only available to ADC recipients was not.

There was also disagreement among the various welfare factions about the function and potential of rehabilitation through therapeutic services. Jennifer Mittlestadt has described the changing orientation of rehabilitation from a focus on psychological adjustment to a focus on employment over the 1950s and in the construction of the Public Welfare Amendments of 1962. Rehabilitation meant different things to different people. While child welfare activists accepted that therapeutic services could relive the problems associated with ADC families in the long run, they did not focus on rehabilitation as a method to immediately reduce the welfare rolls. The economic savings of services to welfare recipients would not necessarily be realized through a reduction in ADC spending; instead, the savings of services would be realized in preventing the social costs of delinquency and neglect. Furthermore, services to families would help "break the

[21] Wickenden and Bell, *Public Welfare*, 88.
[22] Beck, "Children on the New Frontier," 2.

cycle of inadequate parents" that led to generations of delinquency and poverty.[23] For child welfare activists, services might not provide short term reductions in welfare dependency, but they would decrease social problems and over generations lead to stronger families.

The report of the Ad Hoc Committee on Public Welfare, the most influential document in shaping the Public Welfare Amendments, ignored or papered over areas of disagreement among welfare experts. Rehabilitative services to welfare recipients formed the primary recommendation of the report. "A new and dynamic approach to strengthening family life in America must supply the dimension of social welfare endeavors in the 1960s," the report announced. The services the Committee recommended were "designed to reinforce and support family life through rehabilitation, prevention and protection."[24] Rather than rely on one definition of rehabilitation, the report expressed several understandings of the potential of these services. In its main recommendations, the Committee asserted that the combination of services and financial assistance could solve the problem of welfare dependency. This system would return families to "self-support," shorten "the period of need of assistance," reduce "reapplications for aid," and decrease "behavior detrimental to the community."[25] Yet in a supplement to the report, the Committee admitted that services would not always succeed in returning welfare recipients to the labor market. For some, the report noted, "restoration to employment may be a remote or even unobtainable goal." For these

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[23] Dumpson, "The Economy of Adequate Service," *Child Welfare* 39 (December 1960): 1–6.
[24] "Report of the Ad Hoc Committee on Public Welfare to the Secretary of Health, Education, and Welfare," republished in House Committee on Ways and Means, *Public Welfare Amendments of 1962*, 87th Cong., 2nd sess., 1962, 77–78
[25] "Report of the Ad Hoc Committee on Public," 81.

individuals, "rehabilitative service should aim at developing the highest degree of self-care of which they are capable." The focus would be breaking the intergenerational "chain of dependency" that appeared to be the cause of so many social problems.[26] The main report, therefore, suggested that services could accomplish something that child welfare activists on the Committee were not sure they could deliver—significant reductions in the welfare rolls.

The report also provided guidance for improving child welfare services. Services to children, like the other services the Committee recommended, should strive to support and maintain families. However, the Committee explained, "public child welfare services have never reached the point of adequacy, either in quality or coverage, to meet the needs of great numbers of children who require them." It was necessary to increase the support for such services. The report noted that "more and better trained staff is needed to keep family homes intact and avoid foster home or institutional care, and to protect children who are in circumstances detrimental to their well-being. Such measures are fundamental to the prevention of delinquency and future dependency by assuring fair opportunities for all children." In conjunction with family services, the Committee asserted, services for children could prevent future problems. Child welfare services were not only for those with psychological, emotional, or economic needs, but also could keep those needs from arising.[27] While it called for services to both families and children, the committee ducked the controversial issue of how these programs should be coordinated. While the chairman of the Committee, Sanford Solender, stated in one

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[26] Ibid., 101
[27] Ibid., 87, 98–99.

meeting that "we seem to believe in a unified approach to child welfare and family welfare services," this notion of unified services did not make it to the final report.[28]

The claim that services to families and children would reduce welfare rolls that was suggested in the report of the Ad Hoc Committee on Public Welfare was accentuated as the committee's recommendations were turned into the Public Welfare Amendments of 1962. President John F. Kennedy explained in his 1962 state of the union address that the nation needed a new public welfare program "stressing service instead of support, rehabilitation instead of relief and training for useful work instead of prolonged dependency."[29] Even Elizabeth Wickenden and Winifred Bell emphasized the budgetary savings of increased services. In a report for their Project on Public Services for Families and Children, Bell reported that "numerous demonstration projects carried out in the public welfare agencies have provided convincing evidence that substantial saving to the taxpayer can be secured by reducing caseloads of public assistance workers so that they have time to counsel actively with troubled families seeking financial aid."[30] Some child welfare experts, however, were not sure that these services would deliver all that its supporters claimed. E. Elizabeth Glover, editor of *Child Welfare* and, therefore, the public voice of the CWLA, urged support for the Public Welfare amendments. She took notice, however, of those social workers who feared "that in our effort to gain support for social work services in public social welfare, the public may be promised far more

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[28] Ad Hoc Committee on Public Welfare, Minutes of Meeting, June 30–July 1, 1961, p. 11, JWP Papers, box 37, folder 461.
[29] *Public Papers of the Presidents of the United States, John F. Kennedy, 1962* (Washington, D.C.: U.S. Government Printing Office, 1963), 8.
[30] Winifred Bell, "The Practical Value of Social Work Service: Preliminary Report on 10 Demonstration Projects in Public Assistance," republished in House Committee on Ways and Means, *Public Welfare Amendments of 1962*, 87th Cong., 2nd sess., 1962, 410.

rehabilitation of families than it is possible to produce."[31] The shape of the welfare legislation that became law in 1962 largely ignored these concerns in advocating rehabilitative services as the solution to welfare dependency.

The heart of the Public Welfare Amendments was the provision of federal funding to match 75 percent of state expenditures on services for Aid to Families with Dependent Children (AFDC) recipients. (In keeping with the family-centered emphasis, the law renamed Aid to Dependent Children (ADC), Aid to Families with Dependent Children.) But the 1962 legislation also made four critical changes to child welfare services. First, the act revised the definition of child welfare services. Expanding from the focus on neglected, dependent and delinquent children in the original 1935 act, the legislation now authorized child welfare service funds to be used in "promoting the welfare of children of working mothers," in providing services to strengthen children's homes, and to provide "adequate care of children away from their homes in foster family homes or day-care or other child-care facilities." This was the first permanent provision of federal assistance for family preservation and for the substitute care of children.[32] Second, the 1962 act provided a significant increase in the federal funds authorized for child welfare services. Congress settled on an authorization starting at $25 million in 1961 and increasing $5 million dollars each year until it reached an authorization of $50 million for fiscal year of 1969. This exceeded the request of the Ad Hoc Committee, but it did not restructure the funding formula or pledge the federal government to cover a significant portion of the

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[31] E. Elizabeth Glover, "Public Welfare Amendments," *Child Welfare* 41 (April 1962): 146.

[32] In providing legislative sanction to the "Flemming Rule," Congress provided temporary aid to children receiving ADC funds who were removed from their homes. This provision became a permanent entitlement in the 1962 Amendments. See Emilie Stoltzfus, "Valuing Foster Care Provision: Toward Understanding Unequal Public Subsidy of Kin and Non-Kin Providers" (paper presented at the Annual Meeting of the Organization of American Historians, Memphis, Tenn., April 2003), 10-11.

costs. Despite the generous increase in authorization, there was no guarantee of increasing appropriations over the next seven years. Third, the Public Welfare Amendments followed the desires of the child welfare community by requiring coordination, but not integration, between child welfare services (Title V, part 3) with AFDC (Title IV). The law required that each state provide a plan for coordination between services for children and the new services funded through the AFDC program. Embodying the vision of individualized rehabilitation, the act aimed to provide "welfare and related service which will best promote the welfare of [each] child and his family."[33]

As Jennifer Mittlestadt has explained, the 1962 Public Welfare Amendments, as passed, closely associated rehabilitation with work. The law implied that increased services would limit the growth in welfare rolls over the 1960s. By this standard, the 1962 amendments failed. Rather than shrinking the welfare rolls, AFDC experienced massive growth and increased costs for the federal government over the 1960s.[34] In a less notable fashion, the child welfare services provisions also failed to fulfill their goals. Services to families did not lead to a decrease in the need for child welfare services. Partially encouraged by local advocates, the number of children receiving such services grew over the 1960s. While the federal contribution to these services increased, it remained a drop in an ever-growing bucket of state and local expenditures. Though difficult to prove, it appears that, if anything, the 1962 act extended the obligations of states and localities to provide services, without the support necessary to foot the bill.

The limits of the 1962 act are revealed in Congress's budget appropriations. While federal funding increased over the 1960s, the funds appropriated never reached the

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[33] *U.S. Statutes at Large* 76 (1962): 182–185.
[34] Berkowitz, *America's Welfare State*, 110–111.

amounts authorized by the 1962 amendments. In 1963, the federal government spent $26.1 million, although $30 million was authorized. In 1965 when the authorization was to reach $40 million; Congress appropriated $34.2 million. The fear that federal funding would replace the use of state revenue was largely unfounded. The percent of federal contribution to child welfare services did increase from 6.1 percent nationally in 1961, to 9.8 percent of total expenditures in 1963. However, the federal portion of funding soon leveled off, reaching a high of 10.1 percent in 1967. States and localities kept pace with, or exceeded, the increases in federal funds.[35]

There was, of course, some variation among states. In large urban states, the federal government only contributed a small percentage of the funding. In New York, only 2 percent of expenditures for child welfare services came from federal funds in 1965. For the same year, Illinois received 9.9 percent and California received 5.7 percent from federal contributions. These figures were typical for the period from 1963 to 1967. For states with smaller populations, a much larger portion of the child welfare services budget came from federal coffers. In Nebraska, for instance, the federal portion was 49.7 percent for 1965. For South Carolina in the same year, 48.5 percent came from the national government. These states tended to have much smaller expenditures for child welfare services from federal, state, and local funds combined. Compare Nebraska's

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[35] Children's Bureau, U.S. Department of Health, Education, and Welfare, *Child Welfare Statistics, 1963* (Washington, D.C.: U.S. Government Printing Office, 1964), 33; Children's Bureau, U.S. Department of Health, Education, and Welfare, *Child Welfare Statistics, 1965* (Washington, D.C.: U.S. Government Printing Office, 1966), 48; Children's Bureau, U.S. Department of Health, Education, and Welfare, *Child Welfare Statistics, 1961* (Washington, D.C.: U.S. Government Printing Office, 1962), 8; Children's Bureau, U.S. Department of Health, Education, and Welfare, *Child Welfare Statistics, 1967* (Washington, D.C.: U.S. Government Printing Office, 1968), 42.

total expenditure of $600,367 to New York's $98,509,883, or South Carolina's $1,394,156 to California's $38,002,221.[36]

Looking at the nation as a whole, expenditures per child served by public child welfare services increased over the period from 1961 to 1967. In 1961, federal, state, and local sources spent about $555 per child; by 1967 that rate had reached $745 per child. Part of this change was due to the increase in federal appropriations, which increased from $34 per child to $75 per child, but most of the increase came from state and local sources. The increase in federal funds did little to lesson the financial inequality among the states for child welfare services. Looking again at 1965, Nebraska spent $337 per child served by public welfare services, while New York spent $2008 per child. Looking only at funding, the amendments of 1962 did not cause significant change in the national operation of child welfare services.[37]

The Public Welfare Amendments of 1962 may have had a greater effect on the operation of child welfare services within individual localities. This was evident in the law's requirement for expansion of child welfare services into every county. In 1961, only 54 percent of the nation's counties had a full-time public child welfare worker, by 1967 that rate had reached 74.4 percent. This was extraordinary growth even if it did not yet reach the 100 percent coverage required by 1975. Despite this extension of child welfare, it was unclear whether the 1962 act improved the quality of services that children received. While New York City was not typical of the nation, the combination of a large number of children in need, high levels of funding, and extensive expertise

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[36] Children's Bureau, *Child Welfare Statistics, 1965*, 48.

[37] I have calculated the per child expenditures based on the estimated number of children receiving public welfare services and the total expenditures published in Children's Bureau, *Child Welfare Statistics, 1961–1967*.

provides a particularly telling case of the operation of child welfare services in the 1960s.[38]

The experience of New York City demonstrates both the success and failure of the Amendments of 1962 on child welfare services. New York City continued to reform its public system of child welfare, partially in response to federal legislation. A 1964 study by the Citizens Committee for Children of New York (CCC) observed that the city had "reorganized" its Bureau of Child Welfare to "emphasize family rehabilitation." The goals professed by the city bureaucracy echoed the vision of the Advisory council and the Ad Hoc Committee in calling for "more intensive casework services to families and children," and "services to children in their own home to prevent actual placement." Yet two years after the passage of the Social Security Amendments, the city still struggled to implement the law's requirements. In recommending reorganization and more personnel in the Department of Welfare, the CCC noted these reforms were "particularly important in view of the Department's growing emphasis on services to families and children throughout its program and the close working relationship between child welfare and public assistance programs for children, mandated in the 1962 amendments to the Social Security Law." The federal act had influenced the direction of child welfare in New York City, but change was both slow and expensive.[39]

To be sure, New York City faced a unique problem with a large sector of voluntary agencies providing care, with public funding, for a large portion of the children in need. The CCC noted the improvements that had been made, but explained "in spite of

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[38] Children's Bureau, *Child Welfare Statistics, 1961*, 3; Children's Bureau, *Child Welfare Statistics, 1967*, 34.

[39] Citizens' Committee for Children of New York, "A Proposal for a Comprehensive Child Welfare Program for New York City," March 19, 1964, VWB Papers, Box 172: Folder 6.

these advances, the major gaps in services which were identified more than 20 years ago remain—in some aspects have grown—and the tragic results of our inability to protect and care for our children are more and more evident." The solution according to the CCC was "to establish the elements required in a comprehensive network of services which will be sufficiently flexible to provide appropriate care for each child at the time of need and as these needs change." Like the CCC, the child welfare activists shaping welfare reform in the 1960s had hoped to create services that were both comprehensive and individualized. While the 1962 Public Welfare Amendments may have helped to advance this goal, they certainly had not made it a reality.[40]

Child Welfare and the War on Poverty

It did not take long after the passage of the 1962 Public Welfare Amendments for activists to realize that the act would fall short in creating a comprehensive child welfare system. As they began to rethink their approach to reform of America's welfare system, the child welfare community was challenged by another government program, the War on Poverty. The programs of the War on Poverty would evoke mixed, but largely negative, reactions among the child welfare community. Welfare reform in the early 1960s, as the Public Welfare Amendments demonstrated, embodied the perspective of child welfare activists and other social workers who adhered to the rehabilitative ideal. Antipoverty legislation in the mid-1960s took a new approach. Rather than relying on the advice of social workers and traditional social welfare experts, Lyndon Johnson's

[40] "Proposal for a Comprehensive Child Welfare Program for New York City,"

War on Poverty avoided social work expertise and traditional welfare institutions.[41] The approach implied that social workers were part of the problem of enduring poverty not part of the solution.[42] Project Head Start, the antipoverty program aimed at children, reflected this perspective; social workers and members of the child welfare network were largely excluded from its development. Head Start tried to be many things—a nutritional program, a health program, a catalyst for community organization, a developmental and educational program—but it was never intended to be part of a rehabilitative system of child welfare.

The planners of the War on Poverty never expected a program for preschoolers to be an important part of their legacy. Although the Economic Opportunity Act of 1964, the legislation that created the War on Poverty, included authorization for a preschool program, little thought had gone into developing such a program. The real motivation behind the creation of Head Start was the overwhelming budget surplus for the Community Action Program (CAP). CAP was intended to be the heart of the War on Poverty; as such, the Office of Economic Opportunity (OEO), the agency created to oversee the antipoverty campaign, had received an enormous appropriation of $300 million to fund the first year of CAP. By mid-1964, only $26 million of the funding for CAP had been spent. Sargent Shriver, the head of the OEO, feared that he would not

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[41] For more on the War on Poverty see Allen J. Matusow, *The Unraveling of America: A History of Liberalism in the 1960s* (New York: Harper & Row, 1986); Nicholas Lemann, *The Promised Land: The Great Black Migration and How it Changed America* (New York: Knopf, 1991).

[42] Mittelstadt, *From Welfare to Workfare*, 145-151; Morris, "Charity, Therapy, and Poverty," 389–394, Andrew Morris, "The Voluntary Sector's War on Poverty," *Journal of Policy History* 16 (2004): 275–305. Morris examines one effort by social workers in traditional voluntary agencies to involve themselves in the War on Poverty called Project ENABLE.

spend the entire allocation by the end of fiscal year 1965. He needed to create another ambitious program as part of CAP.[43]

The answer to Shriver's embarrassment of riches was a program for young children. Several factors led Shriver to develop what would become Project Head Start. First, the statistics on poverty in the United States revealed that children made up nearly half of the nation's poor. "If we were conducting what was then called a war—an all out war—against poverty," Shriver later explained, "we couldn't really think we were doing very well if we didn't have special programs to help 50 percent of the target population, namely children."[44] Second, Shriver recalled several projects funded by the Kennedy family's foundation to support research into mental retardation. One of these had demonstrated that early childhood intervention had actually raised the IQs of mentally retarded children. Another had demonstrated that nutrition had important effects on intellectual development. Based on these studies, Shriver figured that a program providing developmental education and nutritional meals to preschool children would help raise IQs and school preparedness among poor children. The third factor that encouraged Shriver to pursue Head Start was the political potential of a program for children. Even those who opposed the War on Poverty would have a difficult time opposing a program for innocent children.[45]

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[43] Edward Zigler and Susan Muencow, *Head Start: The Inside Story of America's Most Successful Educational Experiment* (New York: Basic Books, 1992), 2-4; for more on head start see Edward Zigler and Jeanette Valentine, Eds. *Project Head Start: A Legacy of the War on Poverty* (New York: Free Press, 1979); Edward Zigler and Sally J. Styfco, eds. *Head Start and Beyond* (New Haven: Yale University Press, 1993); and Maris A. Vinovskis, *The Birth of Head Start: Preschool Education Policies in the Kennedy and Johnson Administrations* (Chicago, University of Chicago Press, 2005).

[44] Zigler and Valentine, *Project Head Start*, 50.

[45] Zigler and Muenchow, *Head Start*, 3–8; Zigler and Valentine, *Project Head Start*, 49–53.

To plan the Head Start program, Shriver turned to Dr. Robert Cooke, a pediatrician at Johns Hopkins University. Cooke organized and chaired a committee consisting of medical doctors, a nursing professor, a clinical psychiatrist, a college president, a dean of a college of education, and developmental psychologists.[46] In line with much of the War on Poverty, input from the traditional child welfare community was notably lacking on this committee. The only social worker on the committee was Mitchell Ginsberg, a professor and assistant dean at the Columbia School of Social Work and therefore a colleague of Alfred Kahn and Marion Kenworthy.[47] Another member of the committee, Mamie Clark, had worked with Viola Bernard, Justine Wise Polier, and other members of the child welfare community on civil rights issues and when creating her and her husband Kenneth Clark's Northside Child Development Center.[48] Still, the committee showed little interest in integrating Head Start with other child welfare programs or with existing therapeutic services to children and families. Ginsberg realized that "as a social worker I was very much in the minority," and felt that his suggestions for incorporating social work into Head Start were not taken seriously. "I emphasized that social work could make important contributions," he later explained, "in helping youngsters to relate more effectively to one another; working with families that had relationship problems; and when necessary, informing families about, and referring them to, social-welfare services in the community."[49] In retrospect, Ginsberg felt that most of the other members of the committee did not understand how such services could

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[46] Zigler and Muenchow, *Head Start*, 7–21.
[47] Zigler and Valentine, *Project Head Start*, 91–93.
[48] See Gerald Markowitz and David Rosner, *Children, Race, and Power: Kenneth and Mamie Clark's Northside Center* (Charlottesville: University of Virginia Press, 1996).
[49] Zigler and Valentine, *Project Head Start*, 92.

contribute to the child development goals of Head Start.[50] The committee planning Head Start deliberately avoided tying the program to existing community child welfare institutions.

Despite the committee's avoidance of existing child welfare and social work services, the program they developed was intended to be more than a program for child development. It was to provide a place for children to receive basic medical and dental care. Two meals were to be provided to help stave off the malnutrition suffered by so many poor children. Most importantly, Head Start included an important community organization element. Based on the suggestions of Urie Bronfenbrenner, the Head Start committee pushed for a program that would change not only the child, but his family, his neighborhood, and his community. In other words, Head Start hoped to reshape a child's environment. To do this they would require Head Start programs to be sponsored by local community organizations and would encourage active parent involvement in the program. Head Start was to be a comprehensive child development and community action program, not just a preschool for poor children.[51]

Like many of the War on Poverty programs, Head Start grew quicker than even its planners could envision. While most experts probably would have preferred a small demonstration program serving about 2,500 children across the country, Shriver realized that the program had to be large and dramatic if it was to be politically successful. Without asking the opinion of the planning committee, Shriver set the goal for the program to serve 100,000 children over the summer of 1965.[52] When the program

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[50] Ibid., 92–93.
[51] Zigler and Muenchow, *Head Start*, 7–27.
[52] Ibid., 21–23.

actually began in May, over 500,000 children were enrolled in Head Start.[53] By August 1965, as the first summer of Head Start came to an end, President Johnson announced that Head Start would become a full-year program.[54] With little evidence of its successes, Project Head Start had become a significant part of the War on Poverty.

As was to be expected, the child welfare community held ambivalent feelings towards the War on Poverty in general and Head Start specifically. Three areas of concern were voiced about the War of Poverty. First, there was criticism of the philosophy and approach of the antipoverty program. Elizabeth Wickenden, the long-time social welfare expert, was perhaps most concerned on these grounds. Wickenden argued that there were many reasons why people were poor. These included being unable to work due to age, temporary unemployment, a lack of availability of employment in particular areas, and a lack of training or education. Only a subset of the poor was suffering from "social and personal problems" that led them to "a point of self-defeating discouragement." It was this subset of the poor that might need individualized services "if they are to break the bonds of poverty."[55] This was the philosophy behind the Public Welfare Amendments of 1962. But the war on poverty took a different tact; it attempted to attack a "culture of poverty." Rather than assist individuals, the War on Poverty was attempting to reshape entire communities. Wickenden feared that the term culture of poverty was politically dangerous "because it suggests that something other than the absence of money distinguishes the poor as a group from the rest of us." Not only did such a concept not apply to all poor people, but it suggested "that these qualities

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[53] Ibid., 25.
[54] Ibid., 53–55.
[55] Elizabeth Wickenden, "Notes on Poverty: Cause and Cure," *Child Welfare* 43 (May 1964): 246.

are intrinsic to the poor themselves rather than the end-product of remediable social ills. The danger lies in the ease with which this assumption moves toward the charge that the poor are poor by their own fault."[56] Before the War on Poverty got off the ground, Wickenden worried that the programs of the OEO would end up blaming the victims of poverty rather than assisting them.[57]

The second issue that concerned the child welfare community was the exclusion of social workers from the many of the War on Poverty programs. "We get the sense," wrote E. Elizabeth Glover, editor of *Child Welfare*, "that social workers are not quite sure whether they are pleased by the programs being developed through the Office of Economic Opportunity." Glover reiterated the comments of many child welfare workers that "social work is not being consulted sufficiently and that social services are not being built into the new programs."[58] The resentment of the social work community was motivated by a mix of disagreement with the methods of the War on Poverty and professional jealousy. Glover suggested that "social work is upset because it is being left with the programs that do not attract favorable attention, while many of the more 'glamorous' operations and positions are going to professionals who are not social workers."[59] Child welfare workers also envied the extravagant funding available for the War on Poverty. While they welcomed the attention and federal funding for programs aimed at the poor, they still saw their programs as hopelessly under funded. "Hopefully," Joseph Reid commented, "some OEO programs like Head Start may help document the

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[56] Ibid., 246.
[57] For more on Wickenden's opposition to the War on Poverty see Mittlestadt, *From Welfare to Workfare*, 146–148. Mittelstadt reports that Wickenden and Wilbur Cohen actually developed an alternative proposal for the War on Poverty.
[58] E. Elizabeth Glover, "Fermentation and Experimentation," *Child Welfare* 44 (June 1965): 304.
[59] Glover, "Fermentation and Experimentation," 304.

needs in the child welfare field and thus serve as an impetus for having child welfare programs more adequately financed."[60] Social workers felt left out of the party that was the War on Poverty, but they hoped that the program could focus attention and funding on their attempt to create rehabilitative child welfare.[61]

The final complaint of the child welfare network about the War on Poverty was that it failed to focus on the easiest way to end poverty in America, income maintenance. Again Glover provided the voice for the community: "Until a plan is developed that will provide an adequate income—a financial floor—to all American families," she explained, "we cannot eliminate poverty as a major social problem with its manifold disastrous effects on individuals, the family, and society."[62] This criticism may seem strange coming from the network that strongly supported the integration of rehabilitative services into AFDC. Still, the child welfare network never lost sight of the importance of income support; if anything, the experience of the Public Welfare Amendments of 1962 led the community, by 1965, to place an even higher value on the importance of financial assistance. This, in the end, was the strongest criticism of Head Start, that it dealt more with the effects than the causes of poverty. Glover explained the CWLA's feelings toward the OEO, "On the one hand, the OEO has set up Project Head Start—a project we endorse—with the purpose of assisting disadvantaged children to become better prepared to enter school, 'with special emphasis on health services, social services, supervised play, and pre-school learning and enrichment experiences.' On the other hand," Glover

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[60] Joseph H. Reid, "The Role of Public and Voluntary Agency in Providing Services to Children," in *Organization of Services That Will Best Meet Needs of Children*, Helen Fradkin, ed., Arden House Conference, (New York: Columbia University School of Social Work, 1965), 80.

[61] Andrew Morris has examined a case in which social workers in the Family Services Association of America and the Child Study Association of American to engage with and receive funding from the War on Poverty. See Morris, "The Voluntary Sector's War on Poverty."

[62] E. Elizabeth Glover, "Antipoverty," *Child Welfare* 43 (December 1964): 512.

noted, "many of the children who will be fortunate enough to be enrolled in Head Start child development centers will be children who are now being half-starved physically, let alone in other ways, because their parents are on public assistance—especially AFDC."[63] From the perspective of the child welfare network, the War on Poverty would fail because it did not reform the welfare programs that already existed to fight poverty and family breakdown, namely AFDC and child welfare services.

Civil Rights and Child Welfare

The War on Poverty was not the only event that challenged the child welfare network and forced it to rethink its approach in the mid-1960s. Events in American race relations also challenged the approach of child welfare policy. By 1965, the Civil Rights movement was in full swing. President Johnson had signed the Civil Rights Act the year before and what would become the Voting Rights Act was working its way through Congress. Controversy had erupted over the report written by Daniel Patrick Moynihan on "the state of the Negro family." Moynihan, following much of the social scientific studies of the time, argued that economic advancement for African-Americans had been hampered by the matriarchal focus of black families. He was harshly attacked for "blaming the victim" for the outcomes of racism and segregation. Finally, in August 1965, riots broke out in the Watt's section of Los Angeles inaugurating a period of racial violence that would last through the late 1960s.[64]

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[63] Glover, "Fermentation and Experimentation," 304.
[64] For more on the Moynihan Report see, Lee Rainwater and William L. Yancey, *The Moynihan Report and the Politics of Controversy* (Cambridge, Mass.: The M.I.T. Press, 1967).

Despite this outbreak of violence, the success of the civil rights movement, the philosophy embodied in the War on Poverty, and Johnson's landslide election in 1964 all led to optimism within the child welfare network. In November 1965, many of the leaders of the child welfare community met at Arden House, the former estate of New York Governor Averell Harriman, to discuss the future of child welfare. The prominent speakers at the conference included Katherine B. Oettinger, the chief of the Children's Bureau, Julius B. Richmond, program director of Head Start, Law Professor Richard J. Clendenen, Justine Wise Polier, Joseph H. Reid, Alfred J. Kahn, and James Dumpson, now associate director of Hunter College's school of social work. Reid best expressed the optimism of the child welfare network about the future of social welfare in the U.S. "Our last national election and some recent acts of Congress," he explained, "have seemed to lay at rest the issue of whether the American people wish government to be used as the first means by which an individual is assured his welfare, as opposed to government being used only as the last resort when everything else has failed." Reid summarized his analysis of the state of American politics: "In short, the American people have accepted the idea of the welfare state as something desirable."[65] For members of the child welfare network, the answer to racial unrest was to create a comprehensive welfare state that met the needs of all Americans.

While no paper presented at the conference focused specifically on race, changes in American race relations were commented on by almost every speaker. Many of the members of the child welfare network had worked on the frontlines of the effort to end racial inequality. Still, concerns about both public relations and strong belief in race

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[65] Reid, "The Role of Public and Voluntary Agency," 70.

neutral polices had often led the community to overlook social concerns that corresponded to racial difference. James Dumpson, one of the few African-American attendees at the conference, felt that the reality of race relations tempered some of Reid's optimism about the future of child welfare. "I fear," Dumpson stated, "that in reflecting the social advances which have come as a result of the Negro revolution, there has been a greater lag in child welfare services than in almost any other social service area. I daresay that the welfare needs of Negro children are not being met either proportionately or more adequately than before the Negro revolution began its dramatic drive."[66] The desire to provide equally for children of all races went back to the 1930s and Polier's earliest writings; still, according to Dumpson, in 1965 much progress needed to be made.

Because of the desire to improve the services available to all children, the child welfare network refused to view the needs of children and families through the lens of race. Justine Wise Polier provided the network's response to the Moynihan report. Her chief criticism was not that the report blamed the black family for society's failing. Instead, Polier questioned "that there is such a thing as the Negro family." To assume that family structure varied by race struck at the very heart of race neutral, color-blind society that liberals like Polier envisioned. "Let's not pretend there is 'THE family' in any religious, in any racial, in any geographical, or in any economic group," Polier continued. "It is certainly most inappropriate to suggest, without awareness of its real lack of depth, that suddenly there is to emerge an institution called "The Negro

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[66] James R. Dumpson, "A Discussion of Mr. Reid's Paper," in *Organization of Services That Will Best Meet Needs of Children*, 83.

Family."[67] Polier's reaction to the Moynihan report exhibited a simplistic understanding of race and social policy.

The best way to deal with the problems in social welfare related to racial inequality, the papers presented at the Arden House conference implied, was to re-conceptualize the field of child welfare. As expected, Alfred Kahn presented the most expansive and dramatic vision of the future of child welfare. Three years after the passage of the Public Welfare Amendments of 1962, Kahn's paper repudiated the approach of that legislation—that therapeutic services to individuals and families were the best solution to the problems of delinquency, neglect, and welfare dependency. The child welfare community, Kahn advised, needed to break "out of the long American tradition of seeing problems as residing solely in the individual or the family unit, and therefore always to [be] interpreted as signaling the need for personal or family rehabilitation."[68] To do so, child welfare experts needed to broaden their focus from child welfare in the traditional sense of "foster homes; institutions; shelters; protective services for the neglected and abused; service to delinquents (sometimes); and an extremely limited component of day care, homemakers, and casework services to the family at home."[69] This traditional approach was failing, Kahn pointed out, because "children face problems and situations not adequately addressed by what we offer."[70] Instead, the community needed to truly focus on "the welfare of children." This meant understanding the problems faced by children and families "as symptomatic of social

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[67] Justine Wise Polier, "Legal Rights of Children," in *Organization of Services That Will Best Meet Needs of Children*, 65.
[68] Alfred J. Kahn, "Planning Service for Children," in *Organization of Services That Will Best Meet Needs of Children*, 111.
[69] Ibid., 110.
[70] Ibid., 113.

conditions" and to provide planning that would ameliorate these conditions. "Such an overall perspective," Kahn summarized, "permits one to plan basic social provisions and institutional interventions, as well as service for helping and reforming individuals."[71] This was the approach to rehabilitation and child welfare that was emerging in the late 1960s, a continuing faith in therapeutic services, but only in the context of a robust system of financial assistance. This was the vision that the child welfare community hoped would be reflected in any future amendments to the Social Security Act.

The Right to Welfare and the Decline of Rehabilitation

The challenges of the period following the passage of the Public Welfare Amendments of 1962—the increase in AFDC rolls, the lack of coherence in child welfare, the rise in racial conflict—caused members of the child welfare community to reevaluate their approach to social policy. Some publicly confessed their complicity in the farcical claim that services could decrease the need for welfare payments. Trude Lash, executive director of the CCC and a member of the Ad Hoc Committee that planned the 1962 welfare amendments, lamented her role in testimony to Congress in 1967. "I am afraid we were not very realistic in believing that our proposals would reduce welfare rolls," she recalled. "They did no such thing. The rolls have been growing ever since, and it seems to me—and it has seemed to me increasingly over the last few years that one of the big mistakes was that we thought by offering social services we could deal with abject poverty. It now seems obvious that it is an insult to offer

[71] Ibid., 111.

services and not money enough to eat at the same time."[72] James Dumpson similarly lamented the approach of the 1962 amendments in a 1968 article in *Child Welfare*. "In 1962, we heralded the 'service amendments' that were expected to help restore people as taxpayers, not tax-eaters," he explained. "We were still placing primary focus on the intra-psychic functioning of the poor, and little or no focus on changing the socioeconomic system that perpetuated dependency." He blamed the welfare community for the shortcomings of the act. "We stood by and watched a phony implementation of the 1962 Amendments, and the failure of Congress to accompany the subsidization of social services with a mandate for adequate levels of financial assistance."[73] The mea culpas surrounding the 1962 welfare amendments, however, did not indicate an abandonment of the rehabilitative ideal in public welfare. Instead, social welfare experts argued that rehabilitation required therapeutic services along with a public commitment to adequate financial support.

The campaign for welfare rights and a guaranteed minimum income greatly influenced the arguments of the child welfare community, but it did not lead them to abandon the rehabilitative ideal. For example, Justine Wise Polier and Elizabeth Wickenden had, since the early 1960s, attempted to develop a constitutional right to welfare. And they had encouraged Yale Law Professor Charles Reich to develop a legal theory to provide constitutional protections for welfare recipients.[74] These ideas had

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[72] Senate Committee on Finance, *Social Security Amendments of 1967*, 90th Cong., 1st sess., 1967, p. 2021.
[73] James R. Dumpson, "Public Welfare and Implementation of the 1967 Social Security Amendments," *Child Welfare* 47 (July 1968): 384.
[74] Martha F. Davis, *Brutal Need: Lawyers and the Welfare Rights Movement, 1960–1973* (New Haven: Yale University Press, 1993), 82–86; for Wickenden's views on welfare rights see Elizabeth Wickenden, "Poverty and the Law: The Constitutional Rights of Assistance Recipients," March 25, 1963, JWP Papers, box 13, folder 140; and Elizabeth Wickenden, "Social Welfare Law: The Concept of Risk and Entitlement," *University of Detroit Law Journal* 43 (1966): 517–539.

helped develop a national movement for welfare rights embodied by the National Welfare Rights Organization (NWRO) formed during 1966 and 1967.[75] The long-term goal of the movement for welfare rights was, either through litigation or legislation, to establish a "right to life," a guaranteed minimum income to which every American was entitled. In spite of her central role in developing the movement, Wickenden felt uneasy about this objective. "The principle difficulty with the guaranteed *minimum* income advocacy," Wickenden explained in an address to the 1966 National Conference on Social Welfare, "is that it puts the cart before the horse; it assumes that poverty must become an accepted and hence subsidized way of life for a large portion of the American population rather than a reducible evil."[76] Wickenden and other social policy experts were committed to a guaranteed minimum income and a right to welfare not as ends in themselves, but as means to a truly rehabilitative welfare system. This approach was reflected in the planning for the next step in welfare reform.

According to the historian Gareth Davies, *Having the Power, We have the Duty*, the June 1966 report of the Advisory Council on Public Welfare, "amounted to the most significant challenge yet to the self-help tradition to come from *within* the liberal community."[77] Other scholars, however, have characterized the recommendations of the same report as relatively conservative. Gilbert Steiner viewed the report as an effort to

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[75] Davis, *Brutal Need*, 44-45.

[76] Elizabeth Wickenden, "The Legal Right to a Minimum but Adequate Level of Living," delivered to the National Conference on Social Welfare, Chicago, 31 May 1966. See Wickenden Papers, Accession M73-482, folder entitled "National Conference on Social Welfare, 1966." As cited in Gareth Davies, *From Opportunity to Entitlement: The Transformation and Decline of Great Society Liberalism* (Lawrence: University Press of Kansas, 1996), 121, 270.

[77] Davies, *From Opportunity to Entitlement*, 120.

"tinker with" the welfare system, but to essentially "preserve it."[78] The confusion over the interpretation of this report comes from the failure to view it through the lens of rehabilitation. The 1966 Advisory Council report represents the high-water mark of a rehabilitative framework for welfare. While the council adopted the language of welfare rights and a guaranteed minimum income, they did so as part of a vision of a welfare system that provided rehabilitation to children, families, and individuals.

Members of the child welfare network played a less prominent role on the 1966 Advisory Council on Public Welfare than they did on the committees that planned the 1962 legislation. Still, the council included Frank W. Newgent, director of a Wisconsin's children and youth welfare division, Sanford Solender, the former chair of the 1961 Ad Hoc Committee, and was chaired by Fedele F. Fauri, the dean of the University of Michigan's School of Social Work. Most importantly, Elizabeth Wickenden, the doyen of social welfare, served on the council.[79]

The centerpiece of the council's recommendations was a new public welfare program that "would require that adequate financial aid and social services be available to all who need them as a matter of right."[80] This would require a new role for the federal government in setting national standards for public welfare. To meet this level of support the federal government would have to cover any of the costs of this program that the states could not bare. Furthermore, this new program would end the categorical approach to assistance that limited support to groups like the blind, elderly, or single parents.

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[78] Gilbert Steiner, *The State of Welfare* (Washington, D.C.: Brookings Institution, 1971), 107–110, as cited in Davies, *From Opportunity to Entitlement*, 270.
[79] Advisory Council on Public Welfare, *"Having the Power, We have the Duty" Report of the Advisory Council on Public Welfare*, June 29, 1966, (Washington, D.C.: Government Printing Office, 1966), 127.
[80] Ibid., xii.

Instead, "need would be the sole measure of entitlement." The council explained that "all persons with available income falling below this established budget level would be entitled to receive aid to the extent of that deficiency." In a nutshell, the council recommended the creation of a national minimum income, supervised and supported by the federal government.

Although the focus of the council was on guaranteeing income support, it did not view such grants as a replacement for services. Indeed, the council viewed rehabilitative services as an equally important element in a comprehensive public welfare program. This was especially true of child welfare services. "It is the goal of the Council," the 1966 report explained, "that adequate child welfare services should be available to all children in need of them as a matter of enforceable legal right."[81] The council reiterated a generational theory of rehabilitation. "Adults who in childhood have failed to receive the physical and emotional nourishment necessary for their own best development become, in their turn, inadequate parents, poor citizens, and economic misfits, incapable of the adaptations required by our technological society. Somewhere this cycle must be broken and this is the task of those social services broadly covered by the term 'child welfare."[82] These services would also be guaranteed through federal funds to ensure the best services across the nation.[83] Finally, such services would not be limited to those in economic need; instead they would be available regardless of financial status.[84]

The child welfare community reacted with enthusiasm to the recommendations of the council. "This report," wrote E. Elizabeth Glover in *Child Welfare* "enunciates

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[81] Ibid., xiii.
[82] Ibid., xvii–xviii.
[83] Ibid., 53.
[84] Ibid., 48, 54.

precisely what is wrong with our current public welfare programs and what is needed to update the entire public welfare system in order for it to fulfill its national purpose." Focusing on child welfare issues, Glover continued, "we endorse the Council's recommendations and will work for their realization, always giving careful consideration to the values in maintaining a broadly based focus on children and child life and relating this focus to public welfare." Glover realized, however, that the political moment that would have allowed such fundamental reform of public welfare had passed. "It appears that the mood of the majority of the American people, as evidenced by the results of the of the November election," she explained referring to the Republicans' gain of 47 seat in the House, "is one of let's consolidate the steps we have taken rather than one of moving ahead with new basic programs for a Great Society." Therefore, she concluded, "there is not much indication that the recommendations made by the Advisory Council will be incorporated into legislation that will be enacted immediately."[85] In revisiting welfare reform in 1967, the child welfare community would have to take its chances in a more conservative political environment and with a more conservative Congress.

Realizing the uphill battle they faced in renewing the Public Welfare Amendments of 1962, the child welfare network, and especially the CWLA, focused its energies on three specific reforms. First, they advocated the strengthening of AFDC grants as part of the path to generational rehabilitation. "The best social services in the world cannot help feed the hungry or provide them with the other necessities of life," Joseph Reid pointed out. "Living in constant poverty is not the way to promote the healthy physical or emotional growth of the next generation on which this country must

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[85] E. Elizabeth Glover, "Having the Power, We have the Duty," *Child Welfare* 46 (January 1967): 4.

depend."[86] Following the recommendations of the Advisory Council, the CWLA supported the creation of minimum level of assistance for families. Second, the child welfare network asked Congress to turn all child welfare services into an entitlement. While the 1962 Public Welfare Amendments provided $3 from the federal government for every $1 spent by the states for services to AFDC, child welfare services for those not receiving AFDC were only available through a block grant. "As a consequence," Joseph Reid observed, "it has been very difficult to get state legislatures or county commissioners to appropriate funds for child welfare personnel." The ironic consequences of the additional support for services to AFDC families, Reid explained, were that "child welfare programs have gone downhill rather than uphill."[87] Since the passage of the 1962 Act, the CWLA had lobbied the President and Congress to fund child welfare services on the same basis as AFDC services "to rectify" this "inequity."[88] The CWLA hoped that in 1967 this new funding formula for child welfare services would finally become law. Finally, the child welfare network wanted new legislation to strengthen child welfare services for all children. Even though, the CWLA wanted services to children to follow the same funding formula as AFDC, they did not want these services to be viewed as a program for poor people. Based on this belief in a universal need for child welfare services, the CWLA refused to support any legislation that would combine the AFDC and child welfare service programs. "Since all children may at some time in their lives need care or child welfare services," Reid asserted, "there must be

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[86] House Committee on Ways and Means, *President's Proposals for Revision in the Social Security System*, 90th Congress, 1st Session, 1967, p. 1996.
[87] Ibid., 1986
[88] Memorandum to Member Agencies from Joseph H. Reid, "A Review of HR 16760," October 13, 19666, CWLA Records, box 42, folder 2; Memo to League Affiliates from Jean Rubin, February 27, 1967, Child Welfare League of America Records, Social Welfare History Archives, University of Minnesota (hereafter cited as CWLA Records), box 42, folder 3.

universal availability of such services throughout the country and available to all children. Children's problems are not limited by economic, geographic, or ethnic considerations."[89] While the child welfare community did not have high expectations as the new session of Congress opened in 1967, they hoped to make progress in strengthening AFDC, creating equitable federal support for child welfare services, and moving towards a comprehensive, universal program of child welfare.

The child welfare community, along with the Johnson administration, was disappointed with the bill that emerged from the House Ways and Means Committee and would eventually become the Social Security Amendments of 1967. First, rather than strengthen the AFDC program, the new bill placed restrictions on recipients and future levels of support. Adults and older children in AFDC families would be required to work or enter a work training program or they would lose their AFDC benefits. The law also set a limit on the number of children receiving AFDC due to the absence of the father. The experience of the 1962 Public Welfare Amendments weighed heavily in creating these new restrictions. Congressman Wilbur Mills, Chairman of the Ways and Means Committee, testified to his change of heart. "It is now 5 years since the enactment of the 1962 legislation which allowed financial participation in a wide range services to AFDC families," Mills noted. "While the goals set for the program were essentially sound, those amendments have not had the results which those in the administration which sponsored the amendments predicted." In other words more services had not decreased the AFDC rolls. "In the last 10 years, the program has grown from 646,000 families that included 2.4 million recipients to 1.2 million families and nearly 5 million recipients."

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[89] House Committee on Ways and Means, *President's Proposals for Revision in the Social Security System*, 1995.

Mills argued that "further and more definitive action is needed if the growth of the AFDC program is to be kept under control."[90]

The new bill also undermined the vision of universally available child welfare services. Notably, the bill transferred the child welfare services program from Title V, the section that included various services such as the maternal and infant health program, to Title IV, the section that included AFDC. The exact reasons for this reorganization were unclear, but it could be "inferred," noted the CWLA, "that the Committee wished much closer ties between AFDC programs and child welfare services." The system of funding also undermined the belief in services available to all. The CWLA had hoped for federal matching funds for all state spending on child welfare services. Instead, the bill provided 75 percent matching funds for child welfare services but only for children receiving AFDC. The bill raised the authorization for child welfare grants, but the Committee implied that these funds were to be used for foster care. The CWLA observed that "there would be no additional federal funds available for child welfare personnel working with non-AFDC children, which is a primary need in most states."[91] The CWLA later calculated that "public child welfare agencies serve some 600,000 children per year who need services such as adoption, foster care, day care, and counseling for problems which are not necessarily related to financial need."[92] The child welfare community had failed to gain additional funding for child welfare services and had lost

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[90] House Committee on Ways and Means, *House Report on the Social Security Amendments of 1967, August 7, 1967*, 90th Congress, 1st session, Report no. 544, (Washington, D.C.: U.S. Government Printing Office, 1967), 95–96; see Mittlestadt, *From Welfare to* Workfare,163–164.

[91] Jean Rubin to Child Welfare League Affiliates, September 5, 1967, CWLA Records, Box 42, folder 4.

[92] Memorandum from Jean Rubin, Child Welfare League of America, April 12, 1968 in Robert H Bremner, ed. *Children and Youth in America: A Documentary History*, vol. 3 (Cambridge: Harvard University Press, 1974), 633.

both symbolic and financial support for the idea of universally available services for children.

As part of the bill's work requirement, the legislation offered additional funding for day care for parents receiving AFDC. The CWLA had, since the 1950s, supported day care as a therapeutic service that could assist some children and families. By the mid-1960s, the CWLA accepted that day care was needed to care for the children of the growing number of working mothers.. The organization explained that "mothers should have a choice about working, and that day care services should be available for all children in need of such care."[93] But the legislation did not provide a choice; instead it would require AFDC mothers to place their children in day care. From the CWLA's perspective, day care was not the appropriate care for all children. "Our society has long advocated the need of children to be cared for in their own homes and the necessity of a mother's presence and love," stated CWLA President Elmer L. Anderson. "This is not to say that in some instances it might not be desirable for some AFDC mothers to seek employment, and in fact many may wish to do so. The Child Welfare League of America has long advocated the establishment of proper day care facilities throughout the country, not only so some mothers might be employed, but also to supplement for children, in accordance with their individual needs, the daily care, educational opportunity, and health supervision so necessary to their development."[94] While the child welfare community supported federally funded day care, they did not want the program created as part of a punitive attempt to force mothers to work.

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[93] Rubin to CWLA Affiliates, September 5, 1967.
[94] Child Welfare League of America Press Release, August 23, 1967, CWLA Records, Box 42, folder 4.

Since the Social Security Amendments of 1967 contained a long-desired increase in social security payments along with the new restrictions on AFDC, they easily passed both houses of Congress and were signed by President Johnson. Efforts by liberals such as Senator Robert F. Kennedy to pass amendments in the Senate that removed the harshest parts of the bill came to naught when these amendments were removed in conference. For the social welfare community, the 1967 amendments represented a noteworthy failure of the rehabilitative ideal. As Elizabeth Wickenden explained, the specific provisions for the 1967 act were irrelevant, because "it is the *intent* of the law with which I disagree." She continued, "If you believe, as the framers of this legislation sincerely did, that the very receipt of public assistance by families with children is an evil, a tragedy, and an exploitation of social generosity, then virtually any means are justified to eradicate the evil."[95] Rather than ensuring that the state would be the ultimate caretaker of every child, the 1967 act implied that the fewer children that received support from the state, the better.

To some extent, the social welfare community that had placed so much faith in services and suggested to Congress that services would reverse the increasing welfare rolls in 1962 was to blame. After 1967, the child welfare community would never again argue that services alone would solve the problems of poor families. Child welfare activists realized that they had to think broadly not only to overcome the reactionary direction in social policy that the 1967 amendments represented, but to overcome the social crisis that America faced. Nothing made this sense of crisis clearer than the racial violence that plagued cities in the aftermath of Martin Luther King's assassination. "As I

[95] Elizabeth Wickenden, "The '67 Amendments: A Giant Step Backward for Child Welfare," *Child Welfare* 48 (July 1969): 388.

listen to welfare rights groups," James Dumpson recounted, "as I viewed the destruction of sections of Washington and other cities on the Eastern Seaboard, and as I listened to the expressions of shock at the realization of the depth of hate that made possible the murder of Dr. King, it appears to me that America is burning while we in social welfare play the fiddle of professionalism." No longer would piecemeal reform of welfare policy be enough. "We can no longer be satisfied," Dumpson explained, "with progress measured in inches—by a few excellent amendments to our Social Security Act, in increased insurance benefits, in increased authorization for child welfare services, in decisions to decide how we will or will not implement provisions which are basically against people."[96] The challenge to the child welfare activists was to create a framework for a more expansive welfare state. Despite the attempts to reinvent child welfare, the child welfare community and the rehabilitative ideal would never have the influence over social policy that they exhibited in the early 1960s.[97]

From Child Welfare to Family Policy

In the aftermath of the failure of 1967, activists hoped to reformulate their political approach to child welfare. It was not enough to focus on services for children; the child welfare community needed to think broadly about the problems that families

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[96] Dumpson, "Implementation of the 1967 Amendments," 390–391.

[97] Of course, as Martha Derthick has insightfully demonstrated, the 1967Amendments to Social Security had the ironic consequence of leading to an extensive increase in the funding of services. Martha Derthick, *Uncontrollable Spending For Social Services Grants* (Washington, D.C.: Brookings Institution, 1975); while these services proved costly to the federal government, they never created the type of comprehensive child welfare services that activists envisioned. It is interesting that social welfare workers noted the potential of the provision that allowed for the purchase of private services right away. "While such purchase of service from voluntary agencies is not new for some communities where foster care had been financed by local and state funds," wrote James Dumpson, "Federal law in the past had allowed services to be purchased only from other state agencies." (Dumpson, "Implementation of the 1967 Amendments," 387)

faced. Days before the 1968 election, Jean Rubin, the CWLA's consultant on public affairs, wrote, "the child welfare field will need to become more involved with the problem of poverty during the next few years. In the past," Rubin recalled, the child welfare network had "been concerned primarily with the need to provide adequate child welfare services."[98] The fact that public assistance programs were not providing adequately for children made such a narrow focus to public policy impossible. In the late 1960s and early 1970s, elements of the child welfare network attempted to place the problems of child welfare in the context of broader social policy. In doing so they engaged in an emerging notion of "family policy," a way of conceptualizing all social welfare programs besides support for the elderly. Rubin's advice, however, proved short lived. Over the long-run, the child welfare network became more closely focused on child protection, foster care, and juvenile justice and less concerned with the problems of poverty.

"American social policy until now," Daniel Patrick Moynihan wrote in 1966, "has been directed toward the individual." Moynihan explained, however, that "the United States is very possibly on the verge of adopting a national policy directed to the quality and stability of American family life."[99] As we have seen, no such policy emerged in Johnson's second term. Indeed, from the liberal perspective, social policy appeared to move in a punitive, regressive direction. The notion of a family policy, however, continued to be discussed in social welfare circles. Social work professors Nathan E.

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[98] Jean Rubin, "Prospects for Children," *Child Welfare* 47 (December 1968): 568–569.
[99] Daniel Patrick Moynihan, "A Family Policy for the Nation," *America*, September 18, 1966, reprinted in Lee Rainwater and William L. Yancey, *The Moynihan Report and the Politics of Controversy* (Cambridge: MIT Press, 1967), 385–387; see also Gilbert Y. Steiner, *The Futility and Family Policy* (Washington, D.C.: The Brookings Institution, 1981), 15–17.

Cohen and Maurice F. Connery reiterated Moynihan's call for a national family policy in a 1967 article arguing "that the strength, vitality, and growth of the family as a social institution be recognized as a necessary condition for individual and collective liberty in a democratic society."[100] In adopting the concept of "family policy" to their own concerns, child welfare activists focused on two policy realms. First, they voiced increasing support for new income transfer programs such as a guaranteed minimum income and a family or children's allowance. Second, they attempted to reorient social services from a focus on children towards a focus on families. In both of these ventures they emphasized notions of universality, expanding social polices to all families not just the poor.

In the fall of 1967, the CCC held a conference to evaluate the possibility of children's allowances in the United States. Experts from France, Britain, and Canada spoke to the success of such programs in their countries and the possibility of implementing universal payment to all families with children in the United States. The longstanding criticisms of such a proposal were that it would do little to focus resources to children in poverty and that the cost of such a program would be exorbitant. The organizers and presenters, however, challenged such notions. They demonstrated that a small allowance, even $10 a month, could lift many poor families above the poverty line. Also, by making the allowance taxable income some of the costs of the program could be recouped while still providing support for those who needed it most. Looking at the punitive measures in the 1967 Social Security Amendments, supporters argued that a children's allowance would carry no stigma because it would be viewed as a right of all

[100] Nathan E. Cohen and Maurice F. Connery, "Government Policy and the Family," *Journal of Marriage and the Family* 29 (February 1967): 6–17, 15.

children and that it would not create a disincentive to work because it would be paid regardless of income.[101]

Child welfare activists also provided support to the campaign for a guaranteed minimum income. While this program would not be universal in its application, such as an allowance for all families, a guaranteed minimum income would replace the complicated categorical system of assistance providing a basic level of economic support to all in need. A guaranteed minimum income, especially in the form a negative income tax advocated by the economist Milton Freedman, could also lead to a economic assistance without services. As one supporter of the negative income tax explained, welfare services "produced programs that are complex and costly to administer, in which services often become devices to control recipient behavior."[102] Critics of services on both the left and the right were, therefore, attracted to a guaranteed minimum income program. After election in 1968, President Richard Nixon was enticed to follow a minimum income strategy in welfare reform by the notion that such a program would exclude social workers. This proposal, under the direction of his domestic policy adviser Daniel Patrick Moynihan, would turn into the Family Assistance Plan (FAP). The FAP promised to provide income support for all families with incomes below a certain level with no additional requirements for qualification. However, the low levels of support set

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[101] A Elizabeth Mansfield, "Children's Allowances," *Child Welfare* 46 (December 1967): 552,596; Citizens' Committee for Children of New York, Children's Allowance Conference, Fact Sheet, and Eveline M. Burns, Abstract of Background Paper, "Childhood Poverty and the Children's Allowance," Child Welfare League of America Supplement, Social Welfare History Archives, University of Minnesota, (hereafter cited as CWLA Supplement), box 28, folder "Legislation HEW;" Heather Ross, "An Experimental Study of the Negative Income Tax," *Child Welfare* 49 (December 1970): 562–569; Leonard S. Kogan, "The Negative Tax: A Rose by Any Other Name. . ." *Child Welfare* 49 (December 1970): 570–572; Martha N. Ozawa, "Family Allowances and a National Minimum of Economic Security," *Child Welfare* 50 (June 1971): 312–321.

[102] Heather Ross, "An Experimental Study Of the Negative Income Tax," *Child Welfare* 49 (December 1970): 562.

by the Nixon administration were an affront to the liberals who initially supported the proposal. In the end, a combination of liberals, who saw the support of the FAP as too meager, and conservatives, who refused to create another expensive entitlement, killed the proposal.[103]

For members of the child welfare community, support of a guaranteed income in no way excluded efforts to expand services. The CCC, in fact, argued that the only way to strengthen child welfare services was to re-conceive of them as family services.[104] This was in many ways the ultimate realization of the rehabilitative ideal. The CCC called for a reorientation of community goals "from providing substitute care to providing protection and enhancement of a child's development within his family."[105] To meet this goal, however, services had to be provided for "not just those whose families are considered temporarily or permanently jeopardized—but rather *all* families."[106] The CCC recommended the reorganization of many social services to create family oriented services. Most controversially, the CCC proposed that problems traditionally handled by child welfare workers would now be referred to general family social workers. The notion of child welfare as a distinct field of social work, an argument long made by the CWLA, was threatened by this formulation. Still, the CCC plan presented services in a positive light in opposition to their growing denigration in welfare literature. For the CCC and those who still believed in the rehabilitative ideal, the problem was not that services had failed but that they had not been extensive enough.

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[103] For more on the Family Assistance Plan see Davies, *From Opportunity to Entitlement*, 211–233.
[104] Citizen's Committee for Children of New York (CCC), "Toward a New Social Service System," *Child Welfare* 50 (October 1971): 448–459.
[105] CCC, "Toward a New Social Service System," 448.
[106] Ibid., 448.

While the postwar child welfare community dabbled in "family policy"—providing proposals for children's allowances, guaranteed incomes, and a system of family services—their authority was eclipsed by new experts in the field. In September 1973, Senator Walter F. Mondale arranged hearings for his Subcommittee on Children and Youth on the topic of "American Families: Trends and Pressures." "During my 9 years in the Senate," Mondale reflected, I have probably devoted more of my time to working on the problems of children than to any other issue."[107] Mondale had seen many successful and potentially helpful programs for children, but, he explained, "It has become increasingly clear to me that there is just no substitute for a healthy family—nothing else . . . can give a child as much love, support, confidence, motivation or feelings of self-worth and self-respect."[108] While Mondale worked closely with members of the child welfare network in other contexts, at this hearing he turned to experts from outside the child welfare establishment. Among those he invited to testify were Edward Zigler, a Yale psychologist, adviser on Head Start, and former head of HEW's Office of Child Development, Urie Bronfenbrenner, a Cornell psychology professor, and Andrew Billingsley, a sociologist at Howard University. The notion of a family policy meant different things to different experts and activists, but at the very least it meant that the federal government would take the institution of family into account in developing public policy. As Billingsley explained, the government needed to designate "the family unit . . . as the most important in our society." This would require "a national commitment to use all the resources of the federal government at all levels and the private sectors of

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[107]Senate Committee on Labor and Public Welfare, *American Families: Trends and Pressures, 1973*, 93rd Cong., 1st sess., September 24, 25, and 26, 1973, 1; see also Steiner, *The Futility of Family Policy*, 13–14.
[108] Ibid.

society as well, to enhance the functioning of families."[109] Mondale's hearing produced a great deal of rhetoric but little agreement on a set of distinct polices to strengthen families in the United States.

While child welfare activists and a new generation of experts were imagining comprehensive programs of support for American families in the early 1970s, the Nixon administration was imposing new restrictions on grants for social services. At issue were the social services provisions of the Social Security Act that child welfare activists had worked hard to develop in 1962 and to protect in 1967. Ironically, while the child welfare community had lamented the 1967 Social Security Amendments, the legislation contained language that allowed states to expand their requests for funding from the federal government including, notably, requirements for programs for child care and foster care. As Martha Derthick documented in her *Uncontrollable Spending for Social Service Grants*, in the early 1970s imaginative state administrators recognized the loopholes in the law and the permissive regulations and began to exploit this entitlement. As a result the federal spending on social service grants increased from $354 million in fiscal year 1969 to $1.69 billion in 1972. Realizing that this program could truly grow out of control, Congress placed a $2.5 billion dollar cap on these service grants in 1972.[110]

The rancor that ensued over how to best control this federal spending demonstrated the new contours of debate over social welfare in the 1970s. First, concern about government expenditures, virtually absent from social welfare debate in the early

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[109] Ibid., 308.
[110] Martha Derthick, *Uncontrollable Spending for Social Services Grants* (Washington, D.C.: The Brookings Institution, 1975), 1–6.

1960s now took center stage. For members of the child welfare community such restrictions were anathema. The "problem of protecting children," Joseph Reid testified to Congress, "requires an approach that is not only based upon the saving of federal funds." Even though much of this funding had been directed to child welfare agencies, the administration's proposal restricted funding to families in danger of needing public assistance to six months. Such limitations were incompatible with a rehabilitative system of child welfare. "The goal," Reid explained, "of protective services is to help a child who has been abused or neglected—not to keep him off the public assistance rolls during the next 6 months. The goal is to protect his whole future, his personality, his growth, and his development." Arbitrary funding restrictions, Reid argued, would undermine therapeutic care for children and families.

Second, the notion of federalism viewed only as a hindrance to national welfare policy in the 1960s took on greater importance after Nixon pledged his administration to a new federalism. The ultimate irony in the debate over social service grants was that it was the social welfare liberals that clothed themselves in the language of federalism in opposition to the administration's regulations. Elizabeth Wickenden, probably the leading expert on public welfare, was not alone in noting the hypocrisy of the president. "The Nixon administration has placed special emphasis on its concept of the new federalism," Wickenden stated, "under which simplified federal requirements are supposed to give greater freedom of decision-making to state and local governments." But the administration's regulations "move in precisely the opposite direction." Wickenden combined the language of new federalism with the faith in rehabilitative services. "It seems to me," she testified to the Senate Finance Committee, "that . . . the

narrower you make your definition of service, the less chance you have of states coming up with an ingenious new method of reducing assistance rolls."[111] Reid agreed with Wickenden's New Federalist argument. "I have yet to see the Federal Government mandate a standard that was absurdly high," Reid observed, "or even high. The leadership primarily comes from the States that have experimented or made studies." That both Wickenden and Reid did not call for federally mandated welfare standards exemplified the new political environment of the 1970s. With a less generous administration in the White House, these leaders who had pushed for a national, comprehensive system of child welfare reoriented their perspective and placed greater faith in developments on the state level.[112]

The debate over the growing spending in social services was resolved by the creation of Title XX of the Social Security Act in 1974. The new title continued to provide 3 dollars for every state dollar spent on social services, including those for child welfare; however, this entitlement remained capped at 2.5 million with individual states' portions determined by population. The flexibility with which states could spend this money reflected a devolution of authority. As one social worker noted in 1977, "with Title XX the responsibility for planning and priority setting in social services was shifted from the federal government to the states. Concomitantly, programmatic accountability was shifted to the citizens of the states." While this might have been preferable to the restrictions of the Nixon and Ford administrations, this was not close to the national child welfare system activists had imagined in the early 1960s. While Title XX was not the

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[111] Senate Committee on Finance, *Social Service Regulations*, 93rd Cong., 1st sess., May 8, 15, 16, and 17, 1973, 288–293.
[112] Senate Committee on Finance, *Social Service Regulations*, 352–364.

only child welfare program, activists had to face the difficulties "compounded by the fact that Title XX looks different in every state."[113]

Conclusion

By the early 1970s, both child welfare activists and their successors dreamed of a comprehensive European-style welfare state, but the political reality moved them in a much more conservative direction. While social welfare experts imagined an expansive family policy in the United States, there was a disconnect between what they envisioned and the policy choices of the 1970s. While the notion of family policy would be briefly resurrected during the presidential administration of Jimmy Carter, it had little lasting effects on the programs for children and families in the United States. Instead, services for children would continue to move in the direction of less national oversight and more state autonomy and variation.

The legacy of the child welfare network's involvement in national social welfare policy was mixed. They succeeded in pushing the government to take the small child welfare services grants limited to rural areas and turning them into expansive programs of support for children in Title IV-B and Title XX of the Social Security Act. Many more children were assisted by child welfare programs in 1975 than they were in 1955. However, child welfare activists failed to create a comprehensive system of services for all children. While they increased federal support for children's programs, they failed to create a federal entitlement to child welfare and a right to rehabilitation. They also failed to resolve the tensions between social assistance and child welfare. If anything, child

[113] Dorothy C. Miller, "Children's Services and Title XX From a National Perspective," *Child Welfare* 57 (February 1978): 134–139.

welfare services were more closely associated with AFDC—and more easily dismissed as a program for the poor alone—by the mid-1970s.

The loss of national influence by the child welfare community—and, in turn, the undoing of a potential national child welfare policy—was partially due to the choices the network had made and partially a result of political shifts beyond their control. By strongly allying themselves with the push for welfare services in 1962, the child welfare network undermined their credibility. While child welfare advocates probably subscribed to a multigenerational perspective on rehabilitation—that services to children and families would help the next generation avoid welfare dependency, they encouraged the mistaken belief that services would lead to immediate decreases in the welfare rolls. The network, like most Americans, also failed to sense the shifting political winds as they committed themselves to expansive welfare programs at the very moment support for such programs was waning. Shocked by the direction in which the Nixon administration took social policy in the early 1970s, members of the child welfare network took defensive positions committing themselves to state autonomy in ways they would not have contemplated a decade earlier.

Chapter Six:
"What Ever Happened to Child Welfare?" 1974-1980

On August 1, 1974, the long-time social welfare activist Elizabeth Wickenden wrote a brief letter to her friend Wilbur Cohen. "I am now very much troubled," she explained, "by the low state of morale of child welfare people and the general denigration of their performance." The consummate strategist, Wickenden pondered the most practical and politically acceptable way of moving towards a comprehensive child welfare system. In an attached memo, therefore, she asked the simple question "what ever happened to child welfare?" Wickenden jotted brief answers to this interrogatory. Among the causes for the degradation of child welfare, she considered a misunderstanding of the importance of child welfare to society, the "down-grading" of the state's responsibility for children in the "post-Gault legal climate," an "emphasis on child abuse" rather than the larger problem of neglect, and, finally, a "revolt against the alleged paternalism and authoritarian approach of child welfare workers."[1] As always, Wickenden was quite astute in her diagnosis. As her memo reflected, she sensed the problem that would plague efforts at child welfare reform through the 1970s: the breakdown of the rehabilitative consensus.

The approaches to child welfare that emerged in the 1970s, led by a new generation of activists, moved away from the notion of social responsibility for every child. Legal strategies framed around protecting children's rights bolstered child

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[1] Elizabeth Wickenden to Wilbur J. Cohen, August 1, 1974, National Social Welfare Assembly Papers, Social Welfare History Archive, University of Minnesota (hereafter cited as NSWA Records), box 53, folder "SIP [Committee on Social Issues and Policies], Children's Legislation, 1973–1975."

autonomy rather than a child's right to welfare. Concerns about community development overshadowed efforts to coordinate existing programs of child welfare. This chapter examines several of the strategies of national child advocacy that emerged in the 1970s. First, it examines the efforts to create national program of child development. Second, it explores the decline of the CWLA as the leading national organization focused on children's issues, and the rise of competing organizations like the Children's Defense Fund (CDF). Third, it examines the rise of the concept of children's rights and the creation of a litigation strategy to assist children. Fourth, it investigates the attempt to reformulate child welfare as family policy. Each of these strategies moved away from the rehabilitative consensus towards new ideological frameworks for helping children. The debate over the Adoption Assistance and Child Welfare Act of 1980 demonstrated the effects of new approaches to child welfare and the eclipse of the rehabilitative ideal.

Child Development and the Rise of New Child Welfare Activists

In the early 1970s, several organizations emerged that focused on the needs of children. While long term child welfare activists were involved in their development, the focus of these new organizations was different than organizations like the CWLA or the CCC. These new organizations developed out of an effort to create a national program of child development—an expansion of Head Start that would provide developmental education and child care to young children across the country. While this effort failed, the organizations and individuals that came together to support such legislation realized both the need and the potential for national organizations focused on children. The most successful organization to emerge from the struggle for child development was the

Children's Defense Fund (CDF) led by Marion Wright Edelman. By the late-1970s, as the CWLA became increasingly focused on the issues of foster care and adoption, the CDF became the premier child-focused organization in the country.

Unlike the traditional child welfare organizations, the CDF was a direct outgrowth of the civil rights movement. Edelman herself was a veteran of the movement in Mississippi and had worked with Martin Luther King, Jr. in planning the Poor People's Campaign shortly before his death. This legacy bequeathed a political orientation to the CDF distinct from the existing child welfare organizations forged in post-war liberalism and therapeutic social work. Edelman's decision to focus her energies on children rather than African Americans or the poor was partially strategic. "CDF came into being in the early 1970s," Edelman explained in 1987, "because we recognized that support for whatever was labeled black and poor was shrinking and that new ways had to be found to articulate and respond to the continuing problems of poverty and race, ways that appealed to the self-interest as well as the conscience of the American people."[2] Edelman also realized that the inequalities in American society fell hardest on children, a constituency that had no voice in American politics.

The creation of the CDF was the culmination of a long effort by Edelman to create an organization that could protect and enforce the legislative gains of the civil rights movement. Edelman's experiences as a civil right's lawyer convinced her of two things. First, that litigation and legislation were useless without community support. "The thing I understood after six months there," she explained about her work in Mississippi several years later, "was that you could file all the suits you wanted to, but

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[2] Marian Wright Edelman, *Families in Peril: An Agenda for Social Change* (Cambridge: Harvard University Press, 1987), ix.

unless you had a community base you weren't going to get anywhere."[3] Thus, Edelman attempted to "work through the law, but to back it up with all kinds of other things—mainly community organization."[4] Second, that a Washington-based organization was necessary to protect and oversee how legislation was implemented. She explained to Congress in 1967 that "after two civil rights bills and the third year of the poverty bill's operation, the situation of the Negro in Mississippi is that he's poorer than he was; he has less housing; he's as badly educated; he's almost in despair."[5] Passing legislation was not enough, she explained in a subsequent congressional hearing, strong federal enforcement was required to ensure these laws were implemented.

Edelman's experience with the Child Development Group of Mississippi (CDGM), a local sponsor of several Head Start programs across the state, was influential in her political development. First, CDGM convinced her of the importance of community organization. Community organization had its roots in several sources, Saul Alinsky, Richard Ohlin, and Ella Baker all preached various versions of community organization. The notion that local organizing movements could truly empower individuals and change society was at the heart of the War on Poverty's Community Action Program and the Student Non-Violent Coordinating Committee's civil rights campaign.[6] The CDGM exemplified this ideal as it used a Head Start grant to provide

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[3] Robert Borosage, Barbara Brown, Paul Friedman, Paul Gewirtz, William Jeffress, and William Kelly, "The New Public Interest Lawyers," *Yale Law Journal* 79 (May 1970): 1069–1152, 1081.

[4] Wright as quoted in Polly Greenberg, *The Devil Has Slippery Shoes: A Biased Biography of the Child Development Group of Mississippi* (New York: Macmillan, 1969), 30.

[5] Senate Committee on Labor and Public Welfare, *Examination of the War on Poverty, Part 1: Hearings before the Subcommittee on Employment, Manpower, and Poverty*, 90th Cong., 1st sess., 15 March 1967, 157.

[6] For more on organizing and the Community Action Program see Allen Matusow, *The Unraveling of America: A History of Liberalism in the 1960s* (New York: Harper & Row, 1984); Nicholas Lemann, *The Promised Land: The Great Black Migration and How it Changed America* (New York: Vintage Books,

developmental education for impoverished children as well as to empower parents who worked in the Head Start centers. CDGM and other poverty programs "had a major impact about how people feel about themselves" Edelman testified in 1967, "because for the first time poor people are participating. They are making decisions, and they are insisting that they be included in all decisionmaking processes of government here."[7] Edelman became convinced that the anti-poverty program would only work if funding was provided directly to poor communities. Discussing the Community Action program, Edelman complained to Congress that in Mississippi "the money in the CAP boards are going through the very same power structures that helped create the poverty problem in the first place."[8] Successful community action, Edelman observed, could ameliorate poverty by empowering individuals and communities.

The CDGM experience also demonstrated to Edelman that organizations needed to act to protect successful programs. CDGM invoked controversy based on the organization's ties with the civil rights movement, especially the overlap in membership with the Mississippi Freedom Democratic Party.[9] In August 1965, under pressure from powerful Mississippi Senator John A. Stennis, the Office of Economic Opportunity (OEO) cut all federal funding to CGDM based on accusations of financial misuse. While

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1992), 97–103, 111–221; Alice O'Connor, *Poverty Knowledge: Social Science, Social Policy, and the Poor in the Twentieth Century U.S. History* (Princeton: Princeton University Press, 2001), 166–195. For more on the Student Non-Violent Coordinating Committee and community organizing see Charles M. Payne, *I've Got the Light of Freedom: The Organizing Tradition and the Mississippi Freedom Struggle* (Berkeley, University of California Press, 1995); and John Dittmer, *Local People: The Struggle for Civil Rights in Mississippi*, (Urbana, University of Illinois Press, 1994).

[7] Senate Committee on Labor and Public Welfare, *Examination of the War on Poverty, Part 2: Hearings before the Subcommittee on Employment, Manpower, and Poverty*, 90th Cong., 1st sess., 10 April 1967, 642.

[8] Senate Committee on Labor and Public Welfare, *Examination of the War on Poverty, Part 1: Hearings before the Subcommittee on Employment, Manpower, and Poverty*, 90th Cong., 1st sess., 15 March 1967, 161.

[9] Payne, *I've Got the Light of Freedom*, 328-330, 342-48; Greenberg, *Devil Has Slippery Shoes*, 209–326.

federal funding was eventually restored, Edelman and other members on the board of CDGM recognized the vulnerability of programs intended to support the poor. Later, Edelman would look at this event as a formative influence in the creation of CDF. "This experience taught me the crucial importance of bridging the gap between local efforts and federal policy. The lack of a Washington-based advocate who could anticipate, police, and counter the hostile moves by Senator Stennis and others meant that the people who should have been concentrating on children spent inordinate amounts of time trying to survive political attacks." [10] By the time Edelman left Mississippi in 1968, she was convinced of the value of both local community organization and the need for work at the federal level to protect and support such local projects.

The Poor People's Campaign reinforced Edelman's conviction of the need for an organization in Washington to police the implementation of social welfare and civil rights programs. In congressional testimony, Edelman explained that the Poor People's Campaign had made "detailed demands in each of these agencies, all in the enforcement area where they had clear authority under the law to act." Looking back from 1970, she recalled "We got nice paper responses on most, many of which were evasive, and some commitments to provide some concessions including poor advisory boards of the poor for agencies to involve them in policymaking decisions."[11] However, two years later, Edelman noted "somehow, government has not quite gotten around to establishing these

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[10] Edelman Interview, *Harvard Educational Review* 44 (February 1974): 67

[11] Senate Committee on the Judiciary, *Public Counsel Corporation: Hearings Before the Subcommittee on Administrative Practice and Procedures on S. 3434 and S. 2544*, 91st Cong., 2nd sess., 21 July 1970, 71.

boards, or to carrying out other promised reforms"[12] Without constant pressure there was little incentive for administrative agencies to implement reform.

Edelman's first attempt to create an organization to police federal administration was the Washington Research Project (WRP). Edelman set out to create a permanent organization to provide the kind of pressure on administrative agencies to ensure legislation was implemented and enforced. First, she decided that the organization would focus on issues of education and health, a narrower scope than that of the Poor People's Campaign. As she explained to the Yale Law Journal, "One of the problems of the poor people's campaign was we were dealing across the board with many agencies, and we tried to resolve that by picking out one or two priority issues a year which we would hopefully follow up and effect reform."[13] In addition, a relatively small focus would allow the WRP to learn the intricacies of Washington bureaucracy. Edelman realized that successful administrative lobbying required the organization "to know where the decisions are made and how you can affect them."[14] Second, by creating a permanent organization in Washington, Edelman expected to realize better results than the Poor People's Campaign. "What you really need to make anything move in Washington," Edelman explained, "is just sort of a pesty operation where you call up a guy and say 'What have you done?' or 'What are you going to do?' or 'Here's what we want.?'"[15] This sort of "pesty operation" is what Edelman envisioned for the WRP.

Edelman's focus on administrative regulations, however, was not an abandonment of her commitment to community organization. "Here we are," said Edelman describing

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[12] Ibid.
[13] Senate Committee on the Judiciary, *Public Counsel Corporation*, 71
[14] "The New Public Interest Lawyers," 1082.
[15] Ibid.

the work of the WRP, "these nice bright lawyers going once a month to HEW about regulations. That's not bringing about change." For her project to succeed, Edelman wanted to connect her work in Washington to local communities. "Our big thing here, she elaborated, "is how can we get out in communities more and how can we get an effective community network." This was part of her vision for a new political force from the left. "One of the things that has to be done is to build up a different constituency on the left or at the bottom that is going to push these national civil rights groups into more relevance, and you do that through the poor communities."[16] Edelman realized that she needed a project that could create connections between poor communities, traditional political groups, and civil rights organizations.

The support for the WRP came from foundations although Edelman was careful not to become dependent on any one foundation that could control their agenda. Since its work focused on research and administrative lobbying, the WRP maintained its status as a tax-exempt non-profit organization. Edelman also set up a separate WRP Action Council with no tax-exempt status in order to engage in Congressional lobbying. While the organization would have an administrative focus, Edelman wanted to be able to shape legislation and push her organization's interests in Congress.

The ideal cause to unite grass roots community organization with Washington lobbying was a national child development act. The Nixon administration first signaled its interest in an early childhood program in 1969. Nixon, in a message to Congress, announced his decision to move Head Start from the OEO to HEW. The reasons for this move were several fold. To remove the most popular program from his predecessor's

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[16] Ibid., 1083.

War on Poverty would undermine the OEO and allow him to reformulate the function of the agency. Nixon, however, also saw this move as the first step toward a broader child development program. "We must make a national commitment to providing all American children an opportunity for healthful and stimulating development during the first five years of life," the president announced. "In delegating Head Start to the Department of HEW," Nixon explained, "I pledge myself to that commitment."[17] To house head start in HEW, the administration created a new Office of Child Development (OCD). The creation of a new office with few programs to oversee was intended to prepare the way for a new child-focused initiative. The Nixon administration was interested in creating a program of child development and child care as a counterpart to its Family Assistance Plan. If the welfare program was to focus on the value of work, the administration would have to provide support for child care.[18] Incidentally, the creation of the OCD also effectively ended the life of the Children's Bureau (CB). The 1969 reorganization left the CB as part of the new OCD without most of its programmatic functions. Jule Sugarman, who had supervised Head Start at OEO, became both acting head of the OCD and acting chief of the CB. Eventually Edward Zigler, the Yale Psychologist and Head Start organizer, was appointed to both positions.[19]

It did not take long for Congress to take the hint from the Nixon administration and develop child development legislation. However, the child development bill that emerged in the House in 1971 diverged from what HEW desired. First, it provided a step toward, as the bill explained, "universally available child development services." In

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[17] *Public Papers of the Presidents: Richard Nixon, 1969*, (Washington. D.C.: GPO, 1970), 55.
[18] Gilbert Y. Steiner, *The Children's Cause* (Washington: The Brooking Institution, 1976), 60.
[19] Ibid., 36–46.

other words, the bill created the framework for a federally sponsored system of day care. Second, the bill made no requirement that the funding for child development centers flow through any state or local government. This turned the child development program into a potential community action program, providing direct support for local community organization. The involvement of Marion Wright Edelman and the Washington Research Project was an important factor in shaping this part of the legislation. Edelman became the leader of the Ad Hoc Coalition for Child Development that included proponents of child development programs, day care, and community organization. The coalition consisted of twenty-four different organizations as diverse as the AFL-CIO, the National Welfare Rights Organization, the National Organization of Women, and the Leadership Conference on Civil Rights.

Interestingly, the CWLA was not a member of the Ad Hoc Coalition.[20] The League, and the child welfare community in general, had a long and tumultuous relationship with the movement for the expansion of day care. In the 1940s, the League had opposed day care for children of working mothers especially in institutional settings.[21] "We cannot too easily overlook the principles that a child's home is the best medium for his development," reported Henrietta Gordon in a CWLA commissioned study of day care, "and that children should not be deprived of home life except for urgent and compelling reasons."[22] In the 1950s, child welfare activists began to soften their stance on day care for working mothers. Some children's advocates began to revise

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[20] See list of Ad Hoc Coalition members in House Committee on Education and Labor, *Comprehensive Child Development Act of 1971*, 92 Cong., 1st sess., May–June 1971, 407.
[21] Sonya Michel, *Children's Interests/ Mother's Rights: The Shaping of America's Child Care Policy* (New Haven, Yale University Press, 1999), 130–131.
[22] "Trends in Applications for Service," preliminary report of a study by Henrietta Gordon, *CWLA Bulletin* 21, no. 1 (January 1942): 9, as cited in Michel, *Children's Interests/ Mother's Rights*, 137.

the view of working mothers as pathological. Justine Wise Polier, herself a working mother, explained, "There are plenty of things worse for children than finding Mother at work when you come home from school. Perhaps the worst is finding her resigned to hopelessness."[23] Still, most activists, including Polier, assumed that the only reason a mother would need to work was for financial reasons. Faced with a growing need for day care, however, child welfare experts and the CWLA needed to rethink its position on day care for working mothers.

In the late 1950s, the CWLA and child welfare workers across the country began to place day care in their arsenal of services to assist children and families. Virginia S. Ferguson, the head of the Family and Child Welfare Council of Columbus, Ohio, emphasized that "day care of children is a social service designed to help meet family problems in such a way that family relationships are strengthened and more serious problems in family life prevented."[24] In other words, day care should be used as a therapeutic tool to help support and rehabilitate families. It was not until the mid-1960s that the CWLA and the bulk of child welfare experts and practitioners abandoned the view of day care as a remedial service to dysfunctional families. As Florence A. Ruderman, director of the CWLA's Day Care Project summarized in 1965, child welfare experts had viewed day care only "as a remedy for parental failure or inadequacy."[25] The League's study, however, had demonstrated no "significant differences between working and nonworking mothers in attitudes toward child rearing, family life, domestic

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[23] Elizabeth Pope, "Is a Working Mother a Threat to the Home?" *McCall's* 82, no. 10 (July 1955): 73, as cited in Michel, *Children's Interests/ Mother's Rights*, 163.
[24] Virginia S. Ferguson, "A Community Revises its Day Care Program," *Child Welfare* 37 (April 1958): 17.
[25] Florence A. Ruderman, "Conceptualizing Needs for Day Care: Some Conclusions Drawn from the Child Welfare League Day Care Project," *Child Welfare* 44 (April 1965): 209.

responsibilities, and so on."[26] In other words, day care was "a normal, not a pathological need."[27] And this need was great—a 1958 study found over five million children under twelve whose mothers worked full time—and growing.[28] A 1965 editorial in *Child Welfare*, the official organ of CWLA, stated the League's revised position on day care. The nation, it explained, "must recognize that the provision of day care—for all socioeconomic groups—is as essential now for the future of the country as was public responsibility for schools."[29]

After 1965, CWLA dedicated new resources to research on day care. However, day care, unlike foster care or adoption, did not become one of the League's priorities. In 1969, the CWLA had voiced its support in the form of a written statement to the House Subcommittee. The League supported the legislation especially as a way of "strengthening a comprehensive focus on children and youth" in the new Office of Child Development. The League also expressed its support for day care as a developmental program for children. Day care services were needed to "provide time for a mother free from child care duties," but their primary purpose was to "add to a child's healthy development."[30] In the formulation of historian Sonya Michel, while supportive of day care legislation, the CWLA was much more concerned with ***children's interests*** than they

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[26] Ibid., 211.
[27] Florence Ruderman, "Some Conclusions Drawn from the Child Welfare League Day Care Project," paper presented before the Maternal and Child Health Section of the American Public Health Association, October 6, 1964, CWLA Collection, SWHA, box 23, folder 3, p. 4, as cited in Michel, *Children's Interests/ Mother's Rights*, p. 240.
[28] Florence A. Ruderman, "The Child Welfare League's Day Care Project: Research and Action," *Child Welfare* 40 (June 1961): 24; Milton Willner, "Day Care: A Reassessment," *Child Welfare* 44 (March 1965): 126.
[29] E. Elizabeth Glover, "Day Care in Danger," *Child Welfare* 44 (January 1965): 44.
[30] House Committee on Education and Labor, *Comprehensive Preschool Education and Child Day-Care Act of 1969*, 91st Cong., 1st and 2nd sess., November 1969–February 1970, 1045–1047.

were with *mother's rights*.[31] In 1971, the CWLA appears to have deferred the issue of day care to organizations more interested in the access of women to the labor market or social change through community organization. In spite of continuing research and lobbying on the issue in the early 1970s the CWLA would never regain leadership over this realm of child welfare

Without the involvement of the CWLA, leadership of the movement for child development legislation in 1971 was left in the hands of Marian Wright Edelman and the Washington Research Project. Based on Edelman's political predilections, two issues proved contentious in negotiations with the Nixon administration. The first was the income cutoff for families to receive child care at no cost. Under the proposed act, child care was to be available to all families on a sliding scale, but the federal government would pay the costs of care for the poorest families. The bills that had passed the House and Senate set the income level below which families could receive free care at $6,960. This could have set the cost of the program as high as 17 billion dollars, much higher than the 7 billion dollar authorization in the bill. In a compromise with Nixon's Secretary of Health, Education and Welfare, Eliot Richardson, the conference committee set the income cutoff at $4,320 despite the fact that the estimated costs would be higher than the 2 billion dollar authorization to which the conference committee agreed.[32]

The issue of the size of prime sponsorship proved more intractable. The administration, following its orientation towards a "new federalism" would have preferred that states act as the sponsors of child development centers. For Edelman such a position was unacceptable. Sponsorship at the state level would only reinforce the

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[31] Michel, *Children's Interests/Mother's Rights*, 1–10, 240–243.
[32] Steiner, *The Children's Cause*, 111—112; Michel, *Children's Interests/Mother's Rights*, 248–249.

problems she had observed in Mississippi. For the child development act to provide support to community organization, the minimum population of a prime sponsor, if such a limit would be required at all, would have to remain low so support would be provided directly to the communities who needed it. Based on Edelman's efforts, Congress rejected the administration's offer of setting a prime-sponsor limitation at 500,000 people. In compromise with HEW on the original bill, Congressman John Brademas agreed to set the prime sponsor population at 100,000. This compromise, however, proved unacceptable to the chairman of the full House Labor and Education Committee, Carl Perkins. Perkins reduced the size of the population of prime sponsors to 10,000 people. Since the Senate bill included no minimum population for a prime sponsor and the House bill set the figure at 10,000 people, the bill that emerged from the conference committee set the population limit at 5,000. Thus the bill that passed both houses provided a federal subsidy for child care that could not be covered in the bill's authorization and set the population of prime sponsors at such a level that the bill could act as a community action program.[33]

There were, therefore, several reasons that observers might expect Nixon to veto such a bill. However, the signals from the administration and especially from Secretary Richardson were that the bill was "close to a workable arrangement" and that "he would urge President Nixon to sign it."[34] Both Nixon's veto and the tone of the veto message, therefore, came as something of a shock to supporters of the child development act. The long term implications of this veto were to make the passage of a national child care program of this type virtually impossible for the remainder of the decade. The language

[33] Stiener, *The Children's Cause*, 109–113; Michel, *Children's Interests/Mother's Rights*, 249–250.
[34] Stiener, *The Children's Cause*, 113.

of the veto message was shaped by a concerted campaign of conservatives working both inside and outside the Nixon White House. Jeff Bell, the legislative director of the American Conservative Union at the time of the Child Development Act, later explained "we wanted to drive a stake through its heart because we thought otherwise it would become an entitlement that would explode in the future."[35] Worried about his weakening support on the right due to his welfare proposal and his move to open relations with the People's Republic of China, Nixon acquiesced to the conservative's demand that speechwriter Patrick Buchanan pen the veto message. Despite complaints from HEW Secretary Richardson that a strongly worded veto would place him "in an exceedingly embarrassing position," the veto message wholeheartedly adopted the language of the conservatives.[36] Calling the bill "the most radical piece of legislation to emerge from the Ninety-second Congress," the message suggested that this bill "would commit the vast moral authority of the National Government to the side of communal approaches to child rearing over against the family centered approach."[37] In appeasing his conservative supporters, Nixon effectively cut-off the possibility of a national child development program during his presidency. None of the moderate Republicans who had initially supported the legislation would dare vote for a child development bill in future session of Congress after the veto message.

The failed Child Development Act of 1971 had broader repercussions than simply frustrating the campaign for federal support for child care. As we will see below, this experience also led to two major efforts to create political organizations focused on the

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[35] Kimberly Morgan, "A Child of the Sixties: The Great Society, the New Right, and the Politics of Federal Child Care," *Journal of Policy History* 13 (2001):233.
[36] Ibid., 233.
[37] *Congressional Record*, 92nd Cong., 1st sess., 1971, 117, pt. 35: 46058–46059.

needs and rights of children. In addition, Nixon's veto message also marked a historic moment in the emergence of the movement that would become known as the New Right. As the political scientist Kimberly Morgan has argued, the campaign against the Child Development Act "energized the growing conservative moment of the early 1970s."[38] Even more critical for the future of child welfare this incident demonstrated "the power of a traditional ideology of the family" to inspire a grassroots campaign. When Mondale and Brademas attempted to reintroduce child development legislation in 1975, they were subjected to a widespread smear campaign that distracted from the topic of the legislation. One flier that quickly spread across the country—and was quoted as fact by a television station in Brademas's home district——fabricated quotes from the Congressional Record. It quoted supposed supporters of the bill as claiming "the government shall exert control over the family because we have recognized that the child is not the care of the parents but the care of the state," and that "communal forms of up-bringing had an unquestionable superiority over all other forms."[39] John Brademas later recalled that "those attacks poisoned the well for early childhood programs for a long time—indeed, ever since."[40] The rise of political contestation over the family would also have important consequences for child welfare policy. Child welfare activists and their political supporters now had to be conscious of a conservative vision of the family as they developed policy proposals. The rehabilitative ideal, which included a belief that

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[38] Morgan, "A Child of the Sixties," 236.
[39] House Committee on Education and Labor, *Background Materials Concerning Child and Family Services Act, 1975, H.R. 2966*, 94th Cong., 2nd sess., December 1976, 77; Morgan, "A Child of the Sixties," 237.
[40] John Brademas interview with Kimberly Morgan, as cited in Morgan, "A Child of the Sixties," 238.

society was ultimately responsible for the well-being of every child, now faced an ideological challenge from the right.

The Children's Lobby and the Children's Defense Fund

The early 1970s saw two attempts to create national political organizations that focused on the interests of children. The first, the Children's Lobby, would fail and fade away before it had any effect on public policy. The second, the Children's Defense Fund, would become one of the major liberal political institutions of the late twentieth century. The Children's Lobby was the brainchild of Jule Sugarman, the founding director of Head Start, the acting director of OCD after its creation, and, by 1970, the New York City human resources administrator for Mayor John Lindsay.[41] Sugarman envisioned the organization as "frankly and openly a lobbyist for the interests of children, youth, and families." The Lobby would focus its "energies on efforts to enact legislation, secure appropriations and promote effective administration."[42] Sugarman's hope was that pressure on Congress would force them to appropriate funds for child welfare programs that had been underfunded for decades.[43] The Lobby, however, saw little tangible successes and was plagued by financial problems over its short life. Sugarman's efforts to create such a lobby are interesting for the way the CWLA reacted to them, simultaneously viewing the organization as a potential threat while considering how the group could be co-opted to promote its own child welfare agenda. The frank

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[41] Eric Wentworth, "Sugarman, Head Start Pioneer, to Leave HEW and Join Lindsay," *Washington Post*, April 2, 1970, p. A4.
[42] "Dear Friend" letter dated November 1970, headed "Temporary Committee for the Children's Lobby" and signed by Jule M. Sugarman, as cited in Steiner, *The Children's Cause*, 164.
[43] Francis X. Clines, "A Children's Lobby With No Tax-Exempt Status Set up by Sugarman," *New York Times*, December 13, 1970, p. 1.

correspondence of William Pierce, head of CWLA's Washington office, to Joseph Reid, CWLA's head in New York, revealed the League's concerns regarding the new competition for advocacy of children's issues. In 1971, before he realized the weakness of the Lobby, Pierce warned Reid of the potential competition for attention and resources. "The impact of the lobby should not be underestimated, Joe," Pierce wrote. "It would be preferable," he questioned, "to have a Lobby that coincided with League goals, whatever the auspices. . . wouldn't it?" This was an argument for working with and supporting Sugarman's new organization. On the other hand, the need to gain funding for the Lobby from corporate interests might undermine the goals of the CWLA. Therefore, Pierce suggested, Reid might prefer not getting involved in the new venture. "It may be," Pierce wrote, "that you will want to decide, at bottom, that it is impossible to fund a Lobby of any sort over the long haul that will not be subservient to some interest that is opposed to what's best for children's welfare." Pierce astutely observed that the creation of new organizations focused on children was going to occur no matter what action the League took. "It's certain that, what ever you decide and what ever the League does," he summarized, "some sort of something resembling a Children's Lobby is inevitable."[44]

By the Lobby's first meeting in December 1971, Reid had decided that the best policy for the CWLA was to work with the new Children's Lobby. The CWLA's encouragement and support, however, did little to save the doomed organization. Prior to the meeting, Sugarman hired Terry Lansburgh, a former president of the National

[44] William Pierce to Joseph Reid, "Children's Lobby, nationally and in California," 5/13/1971, William Pierce Papers, Social Welfare History Archives (hereafter cited as Pierce Papers), box 14, folder "Reid, 1970–1971."

Council on Day Care for Children, to oversee the organization in Washington.[45] The meeting was well-attended, including representatives from the AFL-CIO and the Children's Committee for Children of New York City, but two areas of weakness stood out to Pierce. First, there was confusion about the issues on which the Lobby should focus. "This was an incredibly bad meeting," Pierce wrote in a confidential memo to Reid. "Both Lansburgh and Sugarman were unable to carry any issue beyond the stage of generalized debate." Another attendee of the meeting mentioned to Pierce that "it was clear that neither Terry nor Jule had any idea of where they were going and how they were going to get there." The second weakness that Pierce sensed was a lack of money for the new organization. It seemed that Sugarman had failed in his fund raising efforts. As Pierce summarized his report, "the potential of the Lobby is very small."[46]

The Children's Lobby managed to limp along for another three years. Pierce, who served as the organization's secretary was never very optimistic about the organization's potential. "The Lobby will have to be monitored and controlled so that it will not harm children-oriented processes," Pierce explained in a March 1972 memo to Reid. "Until that unlikely time when Mr. Sugarman is entirely disassociated from the Lobby," he complained, "it will not accomplish anything of real note."[47] In 1974, Sugarman left New York to become the city administrator for Atlanta.[48] When questioned about the future of the Children's Lobby, Sugarman answered, "I am taking it

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[45] Theresa Weil Lansburgh, *New Orleans Times-Picayune*, October 12, 2001, Metro, pg. 1.
[46] W. Pierce to J. H. Reid, 12/21/1971, "Meeting, 12/20/71, in Washington, on the Children's Lobby," Pierce Papers, Box 14, folder "Reid, 1970–71."
[47] William Pierce to Joseph Reid, March 5, 1972, Re: The Children's Lobby, Pierce Papers, Box 14, Folder "Reid 1972"
[48] "Sugarman is Taking Post in Atlanta," *New York Times*, January 8, 1974, 12.

to Atlanta with me. It's right here in my breast pocket."[49] The short life of what political scientist Gilbert Steiner called "a lobby that never lobbied" was over.[50] Pierce had predicted the organization's trajectory back in 1972. "The Lobby will claim much, cost much, and do little except distract attention from the need for a real 'children's advocacy group that is allowed to influence legislation.'" The "real children's advocacy group" that would emerge, it turned out, was Marian Wright Edelman's Children's Defense Fund. But its creation may have been more upsetting to Pierce and other members of the CWLA than the Children's lobby.

In spite of its failure, the Children's Lobby must have been attractive to some members of the child welfare community including elements of CWLA. Sugarman was not interested in reordering or reconceptualizing child welfare; his interest was in pushing Congress to fully fund programs for children, a platform which all child welfare activists could agree. His approach was fairly conservative. In an attempt to resuscitate child development legislation in 1971, Sugarman worked with Republican members of Congress to develop a bill "with new administrative arrangements recognizing an enlarged role for the States."[51] This was an explicit rejection of the community action features of child development that Marian Wright Edelman had insisted upon. When one representative suggested that the Children's Lobby take part in "direct action, sit-ins and the like," Sugarman rejected the notion out of hand explaining that "he was aiming at the

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[49] Steiner, *The Children's Cause*, 163.
[50] Ibid., 162.
[51] W. Pierce to J. H. Reid, 12/21/1971, "Meeting, 12/20/71, in Washington, on the Children's Lobby," Pierce Papers, Box 14, folder "Reid, 1970–71."

Middle Americans, the conservatives," and these tactics would backfire in gaining their support.[52]

The success of the left-leaning Children's Defense Fund over the traditionally liberal Children's Lobby demonstrated the strange political tenor of the 1970s. The child welfare community appeared unable to regain the political traction it had briefly achieved in the 1960s because it faced challenges on both the left and the right. In 1973, William Pierce encouraged Joseph Reid to caricature the new child welfare activists in his effort to secure funding for the CWLA. "There exists," Pierce wrote, "two frightening alternatives that can be used to convey to the owner the danger of delay (in not committing the parcel to one or the other of your pockets)." These were, of course, the Children's Lobby and the Children's Defense Fund. "On the one hand," Pierce continued, "the source is confronted with an arch-enemy claiming credit for the illustrious work done by the source. On the other hand, the source is confronted with the Radical Left using children, politicizing children, for their own narrow ends. Mrs. Lansburgh and Jule Sugarman as bogeyman on option one. McGovernism and Black Power as bogeymen on the other."[53] To the chagrin of Pierce and other child welfare activists, the "Radical Left" approach to child welfare was to prove to be successful.

It would take two years for Marian Wright Edelman to develop the Children's Defense Fund after her experience leading the fight for a child development act in 1971. Unlike Sugarman, Edelman was able to find sources for funding through her organization the Washington Research Project. Edelman also reached out to long-standing child

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[52] W. Pierce to J. Reis, 1/10/1972, "Meeting, Various Parties, to discuss Children's Lobby," Pierce Papers, Box 14, folder "Reid, 1972."
[53] Pierce to JHR, 2/28/73, A Contingency Plan, Pierce Papers, Box 14, "Reid, January – April 1973"

welfare experts and hired two prominent figures, Justine Wise Polier and Elizabeth Wickenden, to work for her new organization. As early as 1972, Edelman began to brainstorm projects for the new organization. Her goal was not to become a lobbyist for children. Instead, her new organization would focus on research and litigation to improve the conditions of children with a particular focus on poor and minority children. Therefore, Edelman initially proposed three campaigns—a litigation campaign focused on children in custodial institutions, a study of the process leading to the institutional commitment of children, and a study of children excluded from schools.[54] The focus on these issues did not mean that the organization was not interested in other areas. In fact, Edelman produced a laundry list of children's issues for her new organization. This list was viewed by William Pierce at CWLA as an effort by the CDF to lay claim to most child welfare issues. "No single organization could possibly cover all of those issues," Pierce commented on the CDF's exhaustive list, "and I cannot understand what the purpose of such a list would be, unless it would be to suggest that absolutely everything that in any way had to do with children and families was now the responsibility of Marian's new organization."[55] Pierce was probably a bit paranoid, but he was right to recognize that the CDF would become a leading national organization on children's issues and a threat to the authority of the CWLA.

While the CDF had ties to long-standing child welfare experts and issues, the organization took a new approach. The official announcement of the CDF came on May

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[54] Marian Wright Edelman to Elizabeth Wickenden, April 20, 1972, "A Children's Defense Fund—Summary of Initial Projects," NSWA Records, Box 57, folder "SIP, EW Correspondence and Memoranda , April –June 1972;" See also Edelman to Justine Wise Polier, April 20, 1972, Justine Wise Polier Papers, Schlesinger Library, Radcliffe Institute, Harvard University (hereafter cited as JWP Papers), box 19, folder 222.

[55] William L. Pierce to Joseph H. Reid, 3/20/73, Pierce Papers, Box 14, folder "Reid, Jan-April 1973".

22, 1973. According to Edelman, this new wing of the WRP would provide a voice for children. Children were "probably more in need of representation in an organized way than any other group in America." Viewing the mandate of the new organization broadly, she stated that children were "non-persons and simply don't have any rights in the present system." An anonymous member of the WRP, probably Edelman herself, revealed the strategic thinking behind the creation of CDF. "Things called 'poor' and 'integration' are not very popular these days. . . . We had to find new ways to achieve the goals of social reform begun in the sixties and to extend the base to attack those problems that affect the black and the poor but also affect white kids." The CDF would continue to work to protect blacks and the poor, but to do so it had to create a new conception of the rights of children.[56]

Children's Rights and the Litigation Strategy for Child Welfare

The 1967 Supreme Court Decision *In Re Gault* forever changed the landscape of legal rights for children. As Justice Abe Fortas wrote for the court, "neither the Fourteenth Amendment nor the Bill of Rights is for adults alone." The court ruled that notification of charges, right to counsel, protection against self-incrimination, and the right to confront witnesses were required in delinquency hearings. As discussed in Chapter 2, at the heart of *Gault* was a debate over the rehabilitative ideal. The court continued to put faith in rehabilitation, but wanted to ensure that children were not losing rights in the name of rehabilitation. As the court explained in *Kent v. United States*, a case which preceded *Gault*, there may be grounds for concern that the child receives the

[56] Bill Kovach, "New Unit to Fight for Child Rights," *New York Times*, 23 May 1973, p. 16, col. 1.

worst of both worlds: that he gets neither the protections accorded to adults nor the solicitous care and regenerative treatment postulated for children." The decision in *Gault* would inspire a new language of children's rights and lead to an effort to create a children's rights movement.[57]

Despite the appeal of the term "children's rights," the idea probably led to more disagreement than consensus on how to expand the "rights" of children. As a young Hillary Rodham opined in 1973, "The phrase 'children's rights' is a slogan in search of a definition."[58] On one side of the children's rights spectrum were those who termed themselves child liberationists. Richard Farson's *Birthrights* and John Holt's *Escape from Childhood*, both published in 1974, argued for an expansion of adult rights to children.[59] Farson explained that the children's rights movement was an outgrowth of the civil rights movement "and the various liberation efforts it has ignited." Children were another oppressed group struggling for freedom. Farson continued, "we are now seeing the children as we have not seen them before—powerless, dominated, ignored, invisible. And we are beginning to see the necessity for children's liberation."[60] *Birthrights* called for children to have self-determination in all the decisions that affected them. This included the decision of how the child was to be raised. At its core, *Birthrights* was an attack on the notion of childhood itself as a cultural construct. Farson's claim was that society would be better off if the notion of children as a category separate from adults did not exist.

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[57] *In re Gault*, 387 U.S. 1 (1967); *Kent v. United States*, 383 U.S. 541, 556 (1966).
[58] Hillary Rodham, "Children Under the Law," *Harvard Educational Review* 43 (1973): 487–514, 487, 506–507.
[59] Richard Farson, *Birthrights* (New York: Macmillan, 1974); John Holt, *Escape From Childhood* (New York: E.P. Dutton, 1974).
[60] Farson, *Birthrights*, 2

While most children's advocates had no desire to abolish childhood, many still found the notion of a "children's rights movement" appealing. Focusing on the lack of rights for children under the law, these legal activists worked to expand the child's procedural rights. This work had important consequences in broadening the use of guardians ad litem and in expanding the recognition of children as parties in divorce, custody, and estate settlements. From the perspective of those concerned with child welfare, however, the jury was still out on the children's rights movement. "The protection of legal rights," Justine Wise Polier explained, "cannot be regarded as a panacea so long as there is a failure to achieve an earthy sense of justice that demands and secures more fundamental social change." Despite the inadequacy of children's rights, Polier saw the movement to expand children's legal rights as a "positive force" that could awaken political groups to vast problems and to challenge the ignorant, the prejudiced, and the complacent." Yet, Polier had not yet seen this potential of the children's rights movement fulfilled. "Unfortunately," she wrote, "thus far the drive to protect legal rights has not succeeded in commanding any appreciable increase in skills, services, or institutions essential to constructive help to children in trouble." Polier realized that there had been gains in children's rights. Yet, these gains failed to improve children's lives or ameliorate the care that children received.[61]

In the early 1970s, members of the newly created Children's Defense Fund (CDF) debated the notion of children's rights in an attempt to provide a coherent philosophical grounding for the new organization. Elizabeth Wickenden, a veteran of the welfare rights movement, took a first crack at developing a legal theory and litigation strategy for the

[61] Justine Wise Polier, introduction to *The Rights of Children: Emergent Concepts in Law and Society*, ed. Albert E. Wilkerson (Philadelphia: Temple University Press, 1973), xiii–xix.

CDF. Wickenden recognized a "need for a process to clarify policies, entitlements, and protections in the field of child welfare through litigation and other legal approaches."[62] However, Wickenden realized "this right of children is not clearly asserted of defined in law. Nowhere does the Constitution of the United States refer to such a right or the obligation of government to assure the provisions necessary to its implementation."[63] She therefore struggled to find a legal basis for child welfare as a right. One option was to expand on the common law concept of parens patriae. This principle, as CDF Attorney Jane Fitzgerald explained, was "a very weak peg" to hang a theory of children's rights. Parens patriae could not be "invoked unless there is unfitness on the part of the parent." In addition, the child's best interest had increasingly been defined as "food clothes, shelter only," without consideration of the child's emotions.[64]

Wickenden's second suggestion was to base the legal theory of child welfare on the state's police power. This was also problematic. First, Fitzgerald noted, "the police power has never been adequately defined. It is that inherent residue of power all governments assume to themselves to regulate public conduct for the public safety." Second, she added, the police power "is in no way a creative government tool. Rather it functions to protect the state from fraud and violence and to protect the health, safety, and public order of the citizenry." Third, the police power "applies only to state governments; it is not a power of the federal government."[65] Finally, Wickenden realized that the police power did not apply to child welfare services provided "prior to state

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[62] Elizabeth Wickenden to Justine Wise Polier, January 2, 1974, "Litigation in the Field of Child Welfare, JWP Papers, Box 13: 140.
[63] Elizabeth Wickenden to Justine Wise Polier, February 5, 1974, "3rd Draft: Child Welfare Policies and Law," JWP Papers, Box 13, folder 140.
[64] JEF (Jane E. Fitzgerald) to JWP (Justine Wise Polier), January 11, 1974, "Toward a Broader Theory of Child Welfare," JWP Papers, Box 13, Folder 140.
[65] Ibid.

intervention."[66] The police power, it appeared, was of limited use as the basis for a legal right to child welfare.

By November 1974, Wickenden had abandoned her attempt to develop a legal theory of child welfare. "As you know," she wrote to Marian Edelman and Justine Wise Polier, "I have been groping—with some sense of frustration—for a way to dramatize the right of children to protective and developmental nurture. While this is the oldest and most fundamental of children's rights, it seems at the present time to be little understood and widely abused." On one side were those developing a legal theory of children's liberation "to equate children's rights with adult rights thus virtually nullifying the special right of childhood to societal protection and developmental support." Others, subordinated "the rights of children to societal expectations of and sanctions against their parents, as in AFDC." Wickenden concluded that "children are caught in the worst of both worlds: they are expected to act like adults . . . and they are punished for the socially unacceptable behavior of their parents." Her suggestion was to abandon a strategy of litigation and turn instead to federal legislation focusing on children.[67]

As head of the CDF, Marian Wright Edelman was equally ambivalent about the notion of children's rights. "We don't yet have a sound enough conceptual framework to approach children's rights," she explained. "I think it is clearly incorrect to state that every child should be liberated. Similarly, the narrow legal approach of merely extending adult rights to children is not the answer." She voiced some support for a legal right to protection. "Children do have," she noted, "in my view, special needs and

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[66] Wickenden to Polier, February 5, 1974.
[67] Elizabeth Wickenden to Marian Edelman and Justine Wise Polier, November 21, 1974, "Child Welfare Rights and Benefits," JWP Papers, box 13, folder 140.

require special protections in certain regards." Edelman's organization was not part of a quest for children's liberation or child protection, what most scholars have described as the two camps of the children's rights movement. Instead she hoped to define "the working mediums between the extremes" in her efforts to work on behalf of children. [68]

The CDF, however, was not opposed to using litigation as one of its tools to develop public policy on behalf of children. One of the first projects launched by the CDF was an examination of children excluded from education. The CDF found that schools excluded a disturbing number of poor and minority children. The CDF argued that schools created barriers or misplaced children, leading to their "voluntary" exclusion. Another serious problem was disciplinary actions, such as expulsion and suspension, which kept children out of school for significant periods. As Edelman explained, "many discipline problems seem to me to be education problems. I wonder what would happen if schools were forbidden to exclude any child. Would they feel more responsibility for educating them? I would recommend denying schools the power to suspend except in very narrowly defined emergencies—and then only on a temporary basis."[69]

Armed with data, Edelman and the CDF looked to change education policy to prevent the exclusion of so many children. One case in which the CDF was active was *Goss v. Lopez* decided by the U.S. Supreme Court in 1975. *Goss* examined the suspension of several students in the Columbus, Ohio, Public School System and challenged the constitutionality of the Ohio statute authorizing the suspension of students for less than ten days. The students argued that the statute was unconstitutional because

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[68] "An Interview with Marian Wright Edelman," *Harvard Educational Review* 44 (1974): 53–73, 67.
[69] Children's Defense Fund, *Children Out of School in America* (Cambridge, Mass.: Children's Defense Fund, 1974); "An Interview with Marian Wright Edelman," *Harvard Educational Review* 44 (1974): 57.

it failed to provide any procedural due process rights in the case of a suspension. Edelman and the CDF saw this case as an opportunity to raise the bar required for suspension and expand the responsibility of schools to educate all children. [70]

The central legal argument of the Amici Curiae Brief submitted by the CDF and the American Friends Service Committee was that suspensions of students deprived them of both liberty and property protected by the due process clause of the 14th Amendment. The CDF brief explained that the opportunity "to acquire useful knowledge" was understood as a liberty interest as far back as 1923 in *Meyer v. Nebraska*. More recent decisions such as *Goldberg v. Kelley* had asserted the creation of a property interest when a statute created conditions "for entitlement to a benefit." Since Ohio statutes required the creation of public schools and mandated attendance, such a property interest in education existed in Ohio. The CDF, therefore, argued that even a short suspension without procedural due process deprived students of their 14th Amendment rights.[71]

The CDF brief, however, did not rest on legal arguments alone. Edelman also argued that the problem of school suspensions was a national crisis "of shocking proportions." Drawing from the study by the Office of Civil Rights in the Department of Health, Education, and Welfare, and their own study, the CDF demonstrated that

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[70] For more on *Goss v. Lopez* see Franklin E. Zimring and Raymon L. Solomon, "*Goss v. Lopez*: The Principle of the Thing," in Robert H. Mnookin, *In the Interest of Children: Advocacy, Law Reform, and Public Policy* (New York: W.H. Freeman, 1985).

[71] Marian Wright Edelman and Richard D. Parker, Brief Amici Curiae For the Children's Defense Fund of the Washington Research Project, Inc. and the American Friends Service Committee, *Goss v. Lopez*, U.S. Supreme Court, October Term, 1973, No. 73-898, pp. 38-46. See also Peter D. Roos, Eric E. Van Loon, Denis Murphy, Kenneth O. Curtin, I.W. Bankin, Appellees' Brief on the Merits, *Goss v. Lopez*, U.S. Supreme Court, October Term, 1973, No. 73-898.

thousands of students were being arbitrarily suspended. Even more disturbing, of course, was that "minority pupils were 'suspended' far more often than other pupils."[72]

In a 5-4 decision, the court found that the Ohio statute was unconstitutional and that students were entitled to some type of hearing before or soon after suspension. However, the type of procedural due process required was minimal. Students, Justice Byron White explained for the court, must be confronted with the reason for their suspension and given "an opportunity to explain his version of the facts." Such a hearing was probably in use at many school districts in the country, and was, White noticed, even required by the rules currently in place in the Columbus school district in question in this case.[73]

"I was delighted to read of the victory in *Goss v. Lopez*," Polier wrote to Edelman in January 1975, "and am sure that the CDF brief played a significant part in that victory." Despite Polier's excitement, was this a significant victory for the CDF? To be sure, the court recognized a property interest in public schools applicable to most states. Furthermore, the dissenting opinion by Justice Powell noted this case could open public schools for repeated judicial intervention. Perhaps this is what the CDF desired, expansion of constitutional rights as applied to students in schools. However, as Franklin E. Zimring and Rayman L. Solomon have explained, no cases further expanding these rights occurred. Instead, by defending the due process rights of children, the CDF gained little ground in expanding state responsibility for schooling children. What *Goss v. Lopez*

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[72] Edelman and Parker, Brief Amici Curiae, *Goss v. Lopez*, pp. 19–24.
[73] *Goss v. Lopez*, 419 U.S. 565, 582–584.

accomplished was to provide constitutional protection for a policy already in practice in many of the nation's public schools.[74]

In December 1974, employees at the CDF contemplated the creation of a national Bill of Rights for Children. Among the thirteen provisions they sketched out were a need for "an adequate family income," a need for "basic ongoing preventive health and mental health care," and even the need for "protection against" accidents from "consumer goods" or "environmental hazards." As they considered their list, however, members of the CDF realized it would be impossible to consider these specific demands as "rights." As they explained, "the very term 'right' implies an entitlement, which at the present time does not exist in law." Instead, they viewed their list as a "statement of objectives." "Our hope," they wrote in their memo, "is that this statement of objectives will serve as [an] interim document on children's needs and a stimulus for action. If so, it may someday be possible to issue a meaningful bill of rights for children."[75]

By the mid-1970s, the notion of children's rights had been largely abandoned by the CDF and other child welfare activists. This did not mean that litigation on behalf of children ceased, but rather that there was less effort to develop a coherent body of jurisprudence focused on children. Litigation became a tool in order to ensure that children were properly care for by the state.

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[74] Justine Wise Polier to Marian Wright Edelman, January 28, 1975, JWP Papers, box 11, folder 119; *Goss v. Lopez*, 419 U.S. 565, 585; Zimring and Soloman in Mnookin, *In the Interest of Children*, 492–498.
[75] Brenda McGowan and Jane Knitzer, Preliminary Thoughts on Bill of Rights Document, December 1974, JWP Papers, Box 19, Folder 223.

The Carter Administration and Family Policy

"The American family is in trouble," Governor Jimmy Carter, the Democratic nominee for president announced on the campaign trail in 1976. "It is clear that the national government should have a strong pro-family policy," he continued, "but the fact is that our government has no family policy, and that is the same thing as an anti-family policy." Carter pledged to "construct an administration that will reverse the trends we have seen toward the breakdown of the family in our country."[76] This announcement was greeted with enthusiasm by members of the child welfare community. "There is overall need for the Federal Government to develop long term policies, not crash programs," wrote CWLA staff member Virginia Banerjee to Joseph Reid.[77] By 1980, however, the record of the Carter administration was disappointing; the most progress the administration had made towards developing a family policy was the conflicted White House Conference on Families. While a significant child welfare bill was passed by Congress in 1980, this legislation was developed in spite of not because of the leadership of the administration.

The commitment of the Carter administration to the American family proved to be superficial. While concern about the breakdown of the family and the lack of public policy aimed at the family was shared across the political spectrum, this concern did not lead to any consensus across the political divide about solutions to these problems. In his 1981 book, *The Futility of Family Policy*, political scientist Gilbert Steiner discussed the inability of the Carter administration to take control of this issue. "Family policy is

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[76] "The American Family," *The Presidential Campaign 1976, Vol. 1, Pt. 1, Jimmy Carter* (Washington, D.C.: Government Printing Office, 1978), 462–465.

[77] Virginia Banerjee to Joseph Reid, September 13, 1976, "Jimmy Carter's Statement on the American Family, CWLA Supplement, box 1, folder "Carter on American Family."

unifying so long as the details are avoided," Steiner explained. "When the details are confronted, family policy splits into innumerable components. It is many causes with many votaries."[78] Importantly, the Carter administration failed to commit itself to any of these causes. As Steiner explained, the administration used the phase to mean "all things to all people" as a way of keeping "diverse legitimate interests within the same political camp."[79] Even Carter's initial campaign statement demonstrated this desire to appeal to both left and right. "We need a national day care program," the candidate stated committing himself to the child development bill that had become a darling of the left. But he also explained that "if we want less government, we must have stronger families," an attempt to capture the interests of the right.[80] Family policy, as a tool of the Carter administration, failed both as a political unifier and as catalyst for programs to help children and families. The administration, it seems, failed to realize how bitter and intractable the sides of the debate over the future of the American family had become. Rather than unifying left and right in the interest of the American family, the administration stepped in the middle of the emerging culture wars. The rhetoric of "family values" is a more lasting legacy of Carter's commitment to the American family than any coherent public policy for children and families.

Carter's statement on the family was clearly influenced by his newly-selected running mate, Senator Walter Mondale. Since he was appointed to the Senate Seat vacated by Hubert H. Humphrey in 1964, Mondale had made children and families a central focus of his work. He created and chaired a Senate Subcommittee on Children

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[78] Gilbert Y. Steiner, *The Futility of Family Policy*, 215.
[79] Steiner, *The Futility of Family Policy*, 20.
[80] Carter, "The American Family," 464,463.

and Youth and he became one of the leaders (along with Congressman John Brademas) in the fight for a national child development program. The idea of the family as a politically relevant issue first surfaced in 1974 as Mondale considered entering the 1976 presidential race. Peter Edelman, the husband of Marion Wright Edelman and a former member of Robert F. Kennedy's staff, suggested a number of themes for Mondale to run on, including "family."[81] Edelman sketched out ideas similar to those that would be voiced by Carter in 1976. Interestingly, Edelman attempted to find common ground between the left and right. In doing so, he excluded the efforts at child welfare and family policy that occurred during the post-war period. Edelman's first idea was for a speech on how it was "time for public policy to go beyond the New Deal."[82] He suggested that Mondale "might begin with a historical examination of the various ways in which government policy over the past forty years has affected family life negatively."[83] This explicit rejection of the efforts of a pervious generation of social policy was reflected in Carter's 1976 speech. "Because of confusion or insensitivity," the Democratic nominee explained, "our government's policies have often actually weakened our families, or even destroyed them."[84]

Edelman's other suggestions were not as conspicuous in the Carter administration's rhetoric, but they seem to have continued to frame the administration's stand. First, was an attempt to recast family policy so it was not focused on the poor or minority groups. "The idea of government policy being explicitly designed to promote

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[81] Peter Edelman to Senator Mondale, June 15, 1974, "A Series of Speeches on Post-War America," NSWA Records, box 53, folder "SIP, Children's Legislation, 1973–75;" see also Steven M. Gillon, *The Democrats' Dilemma: Walter F. Mondale and the Liberal Legacy* (New York: Columbia University Press, 1992), 149.
[82] Edelman to Mondale, June 15, 1974.
[83] Ibid.
[84] "The American Family," 463.

family life should be applied across lines of class and race," Edelman suggested. Child welfare experts came under even greater attack as he criticized the role of the state and professionals in shaping family life. "The presumption of the state's wisdom and the terms of its intervention need to be examined systematically and nationally." Edelman asserted. In shaping public policy, Edelman called for "special attention to the balance of power between the state and the family, and the related issue of the balance of power between the professional and the family."[85] Here was the central disagreement between the old child welfare community and the new child focused advocates led by Peter Edelman's wife, Marian Wright Edelman. The new advocates had little faith in the state or professionals with regards to public policy for children and families.

The difficulty in unifying various interests around the notion of a family policy was exemplified by the Carter administration's efforts to hold a White House Conference on the American Family. The controversy that the conference might inspire was already rearing its head. Based in an internal HEW study, the administration decided to rename the proposed event the Conference on Families as not to suggest a commitment to one traditional family type. After significant delay, the White House Conference on Families was held in 1980. Even the official report demonstrated the difficulty to find consensus. "The tensions within this Conference were real," the report noted. The report asserted, however, that the conference was not a failure. "While some partisan interests sought to polarize the Conference, the overwhelming number of delegates found ways to work together and forge a creative agenda for families, an agenda which does not mean more

[85] Edelman to Mondale, June 15, 1974

government interference or regulation of family life."[86] As one letter to the editor of the Killdeer North Dakota Herald reported, "Somewhere between the views of the extreme conservatives (who believe government has no business in family matters) and the extreme liberals (who want everything done for the family by the government), we are trying to find as many helpful answers to family problems as possible."[87] Unfortunately, there was not enough room between these two perspectives to develop many coherent policies for the Carter administration to implement in its last days. The administration's commitment to families became more symbolic than substantive with the Conference on Families standing in for actual changes in family policy. The administration record on child welfare legislation demonstrates a position of benign neglect on the issue.[88]

Reforming Child Welfare

The Adoption Assistance and Child Welfare Act of 1980 represented a moment of transition in child welfare policy in the United States. This legislation, in many ways, fulfilled the desires the rehabilitative child welfare community: it provided new federal funding for state services to keep families intact and, if family preservation failed, it pushed states to move children quickly towards adoption. However, the debate over the act and the nature of its passage demonstrated a shift to a new political paradigm in which the authority of the traditional child welfare community indeed the very notion of the state's ability to rehabilitate children and families were called into question. The creation

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[86] White House Conference on Families, *Listening to America's Families: Action for the 80's* (Washington , D.C.: U.S. Government Printing Office, October 1980), 10–11.
[87] White House Conference on Families, *Listening to America's Families*, 16.
[88] Steiner, *The Futility of Family Policy*, 32-46.

of a new federal program out of arguments based in the failure of the states encapsulates the weakness of American liberalism in the late 1970s and early 1980s.

The reforms in child welfare of the late 1970s can be captured in the term "permanency planning." The child welfare community of the post-war era, now mostly retired from public service, had long advocated for a sense of permanency for the children who entered child welfare. Over the 1970s, however, "permanency planning" came to represent a movement against the use of foster care. Social work professors David Fanshel and Eugene B. Shinn wrote in 1978, "The notion that all children should be living with their natural or adoptive families and that foster care should not be a permanent status has taken on such force in recent years that we face the prospect of a radical shift in the expectations placed on service providers in child welfare."[89] Fanshel and Shinn predicted a "revolution in child welfare" based on "a massive effort to make the foster care status a time-limited one."[90] Of course, the drive to make foster care truly a temporary service dates back to 1959 and the publication of Maas and Engler's *Children in Need of Parents*. However, over the 1960s the child welfare community had come to recognize that long-term foster care was not going to disappear overnight. They had dedicated themselves to ensuring that the experience of foster care was as rehabilitative as possible. In this effort they had, admittedly, only mixed success.

In the 1970s, the movement against foster care resonated with the indictments of the child welfare system as psychologically damaging to children, as racist, and as degrading to the poor. The publication of *Beyond the Best Interests of the Child* by

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[89] David Fanshel and Eugene B. Shinn, *Children in Foster Care: A Longitudinal Investigation* (New York: Columbia University Press, 1978), 478.
[90] Ibid.

Joseph Goldstein, Anna Freud, and Albert Solnit in 1973 exemplified the new perspective on child welfare. The work argued that the psychological well-being of the child was the only acceptable basis for child placement. While the authors' agreed with the ends of rehabilitative child welfare—protecting the physical, mental, and emotional development of children—they diverged from postwar activists over the means to achieve this goal. Rather then viewing the state as the ultimate parent of every child, Goldstein, Freud, and Solnit argued that state intervention in the family often did more harm than good.

Beyond the Best Interests focused on the shortcomings of the legal standard of the "best interests of the child." This doctrine had guided custody decisions since the nineteenth century when it replaced a legal framework that set the father as the sole custodian of the child.[91] Goldstein, a law professor, Freud, a psychoanalyst, and Solnit, a child psychiatrist, argued that as currently implemented the "best interests" standard failed to take the "child's psychological well–being" into account. Based on psychoanalytic theory, the authors found that "unbroken continuity of affectionate and stimulating relationships with an adult" is critical to a child's psychological development. Child placement decisions, therefore, needed to be swift and permanent. In place of the "best interests of the child" standard, Goldstein, Freud, and Solnit suggested that courts place children in "the least detrimental available alternative for safeguarding the child's growth and development." Not only did this "least detrimental" standard place new attention on a child's psychological well being, they argued, but it placed the claims of

[91] See Michael Grossberg, *Governing the Hearth: Law and Family in Nineteenth-Century America* (Chapel Hill: University of North Carolina Press, 1985), 237–242; and Mary Ann Mason, *From Father's Property to Children's Rights: The History of Child Custody in the United States* (New York: Columbia University Press, 1994), 60–62.

the psychological parent above claims to biological ties or the policies of child welfare agencies.[92]

Goldstein, Freud, and Solnit were pessimistic about the role of state welfare agencies and the judiciary in making the best decisions about the care of a child. "We have preference for privacy," the authors explained.

> To safeguard the right of parents to raise their children as they see fit, free of government intrusion, except in cases of neglect and abandonment, is to safeguard each child's need for continuity. This preference for minimum state intervention and for leaving well enough alone is reinforced by our recognition that law is incapable of effectively managing, except in a very gross sense, so delicate and complex a relationship as that between a parent and child.

Beyond the Best Interests advocated a limited role for the state in child welfare. In most cases, the work argued the state should not interfere in how parents raise their children. When the state did intervene, either because of decisions by the parents such as divorce or the perception of neglect by the state, action should be taken quickly. The authors, therefore, argued that custody decisions should be resolved before a divorce was finalized and that neglect determinations should not wait the requisite year before a determination of abandonment. In this manner, the state could help the child establish healthy relationships with a psychological parent.[93]

Based on this perspective, Goldstein, Freud, and Solnit were quite critical of foster care. They were particularly concerned with the notion that a foster parent could provide care without "any deep emotional involvement." In many cases, they argued that the foster parent must become the psychological parent. In these cases, the book

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[92] Joseph Goldstein, Anna Freud, and Albert J. Solnit, *Beyond the Best Interests of the Child* (New York: Free Press, 1973), 4, 6, 31–49, 53–54.
[93] Ibid., 7–8, 31–52.

asserted, the law should recognize "common-law adoptions," where the foster parent was transformed into the legal parent because he or she had become the psychological parent. To provide support for such foster families, the authors supported subsidized adoption. While they realized that at times foster care placements would be necessary, they emphasized that these must be temporary, conditional, and focus "on maintaining relationships between child and absent parent." If for any reason the tie between the child and birth parent was broken, however, the temporary foster parent should become the psychological parent and would deserve "recognition as a common-law adoption."[94]

Beyond the Best Interests of the Child ignited a good deal of controversy among those concerned with child welfare. While many commentators praised the authors' focus on the child's psychological well-being, some questioned if all their proposals could or should be put into practice. Following the logic of the book led to some socially questionable and politically untenable policies. Several reviewers wondered whether it really was better for a child of divorced parents to be virtually cut-off from the non-custodial parent. Others examined the potential class consequences of permanently breaking a child's ties with lower-class biological parents, and placing the child with presumably middle-class foster parents.[95]

From the perspective of social workers and other members of the child welfare network *Beyond the Best Interests* ignored the research, reforms, and daily activities conducted over the last decade. Alfred Kadushin, one of the country's leading child

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[94] Ibid., 23–28, 39.

[95] For reviews of *Beyond the Best Interests of the Child*, see Julia C. Spring, *Journal of Marriage and Family* 37 (1975): 685-688; Ingrid Utech, *Public Welfare* 32 (1972): 74-75; Mark H. Elovitz, *Emory Law Journal* 24 (1975): 93-98; Charlotte Hammell, Ner Littner, Sol Nichtern, Justine Wise Polier, "'Beyond the Best Interests of the Child': Four Reviews of a Controversial Book," *Child Welfare* 53 (1974): 195–198.

welfare experts, realized there were shortcomings in foster care placement. "We use the home we so urgently need," he explained, "but we attempt to caution against the development of an intensive relationship." This process was "admittedly a poor and unnatural expedient," but Kadushin complained that Goldstein, Freud, and Solnit did not "offer us a helpful alternative."[96] While Joseph Reid had a more favorable impression of the book, he also felt that the authors had ignored progress in the field. Concepts presented as innovations such as encouraging foster parents to adopt, subsidized adoption, avoiding changes in the placement of a child, and quasi-adoption were already accepted practices. While Reid agreed with *Beyond the Best Interests* focus on permanency, determining if a child was truly abandoned and unable to return home was often difficult. Finally, Reid questioned the simplistic understanding of a child's relationship with only one psychological parent. "Could it be," he asked, "that children are capable of more complicated relationships than we give them credit for?"[97] Overall, social workers felt that the suggestions made by *Beyond the Best Interests* were out of touch with the reality of child welfare.

Justine Wise Polier viewed *Beyond the Best Interests of the Child* as an attack on her liberal child welfare vision. She was most troubled by the authors' arguments against government intrusion in families. Polier feared that their statements on "minimal state intervention" would be "misconstrued to support the rejection of psychological parents despite the inability of the natural parents to fulfill this role." She could not understand limiting the removal of a child from his or her home "to extreme cases." As she

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[96] Alfred Kadushin, "*Beyond the Best Interests of the Child*: An Essay Review," *Social Service Review* 48 (1974): 508–516.
[97] CWLA Supp., Box 1, "Review of Beyond the Best Interests," April 1974

explained, "the limitation of removal to 'extreme cases' is at odds with the emphasis placed on a child's need for loving, feeling loved, valued, wanted as essential to the development of healthy self-esteem, and the consequences predicted for later life when there is failure to meet such needs." If the psychological well being of the child was so important, Polier argued, the goal should be to provide the best psychological environment for development and not simply the "least detrimental alternative." State involvement to bolster care giving, she asserted, would better serve children than an assumption of family autonomy.[98]

However, the argument of *Beyond the Best Interests of the Child*—that the child was best served by remaining with his or her psychological parent—proved attractive to those on the left who were critical of state intervention in the family. Andrew Billingsley and Jeanne M. Giovannoni's *Children of the Storm* argued that the child welfare system, through both design and ignorance, worked to the disadvantage of black children. "The system of child welfare services in this country is failing Black children," the book opened. "It is our thesis that the failure is a manifest result of racism; that racism has pervaded the development of the system of services; and that racism persists in its present operation."[99]

Child welfare activists had spent their entire careers attempting to resolve the racial inequality institutionalized into child welfare systems. Billingsley and Giovannoni, however, rejected the "integrationist" approach to child welfare because it failed to account for the particular needs of black children. "'Integrated' services," they

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[98] Justine Wise Polier, "'Beyond the Best Interests of the Child': Four Reviews of a Controversial Book," *Child Welfare* 53 (1974): 195–198, 196.
[99] Andrew Billingsley and Jeanne M. Giovannoni, *Children of the Storm: Black Children and American Child Welfare* (New York: Harcourt Brace Jovanovich, 1972), 3.

explained, "have come to mean services for 'all' children, without adaptation specific to one group of children." Writing in 1972, they found "the idea that integration is a goal to be sought has hindered child welfare services for the last twenty-five years." Billingsley and Giovanni were particularly disturbed by the removal of children from Black families. They argued that the white system of child welfare failed to recognize the value of the black community or the ability of black parents. The child welfare system believed that black "children should be 'rescued' and placed in better surroundings."[100]

Besides a call for black control of the child welfare institutions that served black children, *Children of the Storm* was also an attack on the rehabilitative ideal. The fact that child welfare functioned within the existing social order doomed it to failure, argued the authors. "Child welfare," they asserted, "must be oriented toward prevention of child-care problems as well as toward curative and corrective measures; it must focus on preserving and enhancing family life for children rather than on rescuing children from families that are considered malfunctioning." Not only were child welfare services focused on the wrong problems, they used the wrong cures. Billingsley and Giovannoni attacked the foundation of the rehabilitative ideal in Freudian psychology. "The Freudian doctrine of individual psychopathology as the root of human suffering," they suggested, "differs very little from the nineteenth-century doctrine of individual responsibility for poverty."[101] The rehabilitative ideal, *Children of the Storm* argued, was responsible for blaming the victim—in this case poor black families—and punishing them by removing their children.

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[100] Billingsley and Giovannoni, *Children of the Storm*, 219, 17.
[101] Billingsley and Giovannoni, *Children of the Storm*, 66.

While Billingsley and Giovannoni recounted the failings of child welfare through the lens of race, others attacked child welfare for the harm it did to the lower social classes. In an essay on "Child Welfare as a Class System," social work professor Shirley Jenkins explained her "hypothesis that the field of child welfare as system reflects the ordering of social class and socioeconomic status," and, therefore, functioned "to perpetuate the status quo."[102] This argument was expanded upon by urban studies professors Thomas E. Nutt and Martin Rein and graduate student Heather Weiss in an essay on foster care. These scholars compared foster home care with other forms of substitute care such as private boarding schools and care by relatives and services such as day care, in-home care and assistance, and psychiatric treatment. These services were used by non-poor families but remained largely unavailable to the poor. Poor families, under the same pressures as all families, found more of their children in foster care because of the lack of other forms of assistance or substitute care. The authors of the essay suggested that "the modern foster care system appears almost deliberately designed to assign a lower level of resources to the poor who are trapped in its care." The foster care system, they argued, obscured "the similarity of poor children to children in other substitute care systems who get different magnitudes and quality of resources."[103] In its design, the foster care system seemed to differentiate children based on class and cause more harm to the poor.

The radical attack on child welfare based on race and class did not become part of mainstream child welfare practice. However, these arguments—that suggested that too

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[102] Shirley Jenkins, "Child Welfare as a Class System," in *Children and Decent People*, Alvin L. Schorr, ed. (New York: Basic Books, 1974), 3–4.
[103] Martin Rein, Thomas E. Nutt, and Heather Weiss, "Foster Family Care: Myth and Reality," in *Children and Decent People*, 24–50, 48.

many children were taken from their biological families and that families needed services to assist them—meshed well with the emerging notion of "permanency planning." Child welfare experts showed an increasing discomfort with foster care, and especially long-term foster care, as part of available child welfare services. This ideological preference for permanency pushed advocates to support a turn away from foster care without social scientific evidence.[104] The most dramatic demonstration of this was the work of Fanshel and Shinn. In 1978 they completed the first longitudinal study of children in foster care, following 624 children in New York City for five years. The fact that 36.4 percent of this sample was still in foster care at the end of the five year period was not surprising. What was surprising was that an extended stay in foster care did not seem especially damaging to children. As Fanshel explained to Congress, "children who remain in care do as well, or even better, when compared with those who have returned home after a sojourn in foster care."[105] In their book, Fanshel and Shinn expanded on this conclusion: "In general, we have developed the perspective that continued tenure in foster care is not demonstrably deleterious with respect to IQ change, school performance, or the measures of emotional adjustment employed."[106]

In spite of their findings, Fanshel and Shinn committed themselves to the movement for permanency and away from foster care. As they explained, "we support the move to free children from an impermanent status in foster care on grounds other than

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[104] The argument that the move toward permanency planning was based more on ideology than social science was first made by law professor Michael S. Wald. See Michael S. Wald, "Family Preservation: Are We Moving Too Fast?" *Public Welfare* 46 (Summer 1988): 33. "I think . . . that the present preference for minimizing state intervention is based largely on ideology and theory, rather than on evidence that foster care is worse for children or that an abused or neglected child's development can be adequately protected at home." (36)

[105] Senate Committee on Labor and Public Welfare and House Committee on Education and Labor, *Foster Care: Problems and Issues*, Part 1, 94th Cong., 1st sess., December 1, 1975., 79.

[106] Fanshel and Shinn, *Children in Foster Care,* 491.

the fact that the children are being ruined by staying where they are." They continued, "The empirical data we have gathered do not support such a jaundiced view of the system of foster care for children."[107] If their study had shown stability for children in foster care, why did they choose to follow Goldstein, Freud, and Solnit and other proponents of permanency planning? One reason was a suspicion that foster care was damaging to children in ways they were not able to capture in their data. "We fear," they admitted, "that in the inner recesses of his heart, a child who is not living with his own family or who is not adopted may come to think of himself as being less than first-rate, as an unwanted human being."[108] In addition, Fanshel and Shinn had found that foster care was often exorbitantly expensive. "It is important," they argued, "to be sure that foster care—a most expensive service—is utilized on a long-term basis only where absolutely essential."[109] The underlying reason for Fanshel and Shinn's rejection of foster care, however, was ideological. In the context of the removal of children from their biological parents and the termination of parental rights, Fanshel and Shinn took the "rights of adults" as well as the rights of children into account. They emphasized:

> The termination of parental rights reflects one of the most extreme forms of state power. It should be used most gingerly and judiciously. People should not be penalized because they are poor, because they are mentally ill, or because they are afflicted with drug addiction or alcoholism. They should not be penalized because it is less expensive for society to terminate their rights and allow others, endowed with better economic means, to replace them as the parents of their children.[110]

These social scientists had essentially adopted the radical critique of child welfare as unnecessarily removing children who were poor in order to place them with middle-class

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[107] Ibid., 479.
[108] Ibid..
[109] Ibid., 481.
[110] Ibid., 490.

families. While their own study had demonstrated stability for children in foster care, their ideological preferences led them towards a position arguing for, as Goldstein, Freud, and Solnit has advocated, "minimal state intervention" in families.

The consensus for "permanency planning" strongly rejected the use of foster care, and especially long-term foster care, in child welfare. The question that remained was how to assist families in caring for their children in ways other than removal to foster care. The answer most advocates came to was new services for families. Therefore, at the same time permanency planning advocates were arguing for minimal state intervention, they were calling for new publicly supported services to help preserve families. Unfortunately, there were few investigations into the use of services to help preserve families. Those studies that had been conducted, however, appeared to point towards success in maintaining children in the homes of their biological parents. A project sponsored by the CWLA in New York City found that intensive casework services to families with a child at risk for placement in foster care helped prevent "the occurrence or recurrence of foster care placements."[111] In Oregon, special casework techniques were implemented to encourage permanency. This project succeeded in finding permanent homes for children largely by increasing the number of adoptions for children unlikely to return home.[112] While this research was promising in demonstrating that services could replace the need for long-term foster care, this was certainly a small base of knowledge from which to argue a fundamental reorientation in public policy.

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[111] Mary Ann Jones, Renee Neuman, and Ann A. Shyne, *A Second Chance for Families*" (New York: Child Welfare League of America, 1976), 118, as cited in Anthony N. Maluccio, Edith Fein, Jane Hamilton, Jo Lynn Klier, Darryl Ward, "Beyond Permanency Planning," *Child Welfare* 59 (November 1980): 520.
[112] Maluccio et al., "Beyond Permanency Planning," 521; see also Janet Lahti, et al. *A Follow-up Study of the Oregon Project* (Portland, OR: Regional Research Institute for Human Services, August 1978).

The consensus around permanency planning was based on dissatisfaction with the foster care system, not on overwhelming evidence that other services were available or successful.

The Children Defense Fund's 1978 report *Children without Homes* embodied the permanency planning consensus and the argument for a shift in public policy.[113] Lead researcher Jane Knitzer summarized the study's findings in testimony to Congress in 1979. First, the CDF found that there was "an antifamily bias that pervades the policies and practices of the child welfare system." Knitzer explained that "the system works against families, not for them."[114] Here, like other child welfare critics, the CDF argued that "the separation of child and family is often by default," and that once the child was separated, little effort was made to maintain contact between the family and the child.[115] Second, the CDF found that children "in child welfare systems are in double jeopardy because they are also subject to neglect by public officials who have responsibility for them."[116] This was the most damning argument of the CDF: not only did states overstep their authority in removing children, but they also failed to sufficiently care for the children they removed. "States are often neglectful parents," *Children without Homes* claimed, "sometimes even abusive ones—failing to meet their ongoing obligations to individual children at risk of or in placement."[117] The third finding of the CDF was that "the federal role exacerbates both the antifamily bias and the public neglect of

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[113] Jane Knitzer, Mary Lee Allen, and Brenda McGowan, *Children Without Homes: An Examination of Public Responsibility to Children in Out-of-Home Care* (Washington, D.C.: Children's Defense Fund, 1978.

[114] House Ways and Means Committee, *Amendments to Social Services, Foster Care, and Child Welfare Programs*, , 96th Cong., 1st sess., March 22 and 27, 1979, 135.

[115] Knitzer, *Children without Homes*, 5.

[116] House Ways and Means Committee, *Amendments to Social Services, Foster Care, and Child Welfare Programs*, 135.

[117] Knitzer, *Children Without Homes*, 6.

children."[118] Federal programs provided funding for AFDC children in foster care, but little fiscal support to the states for preventive services or for adoption subsidies. For many states, providing out-of-home care was the best financial option based on these incentives.

The CDF provided policy objectives to encourage permanency planning. First, they argued that, except in emergency situations, states should be required to provide services to families before removing children. Second, they called for a system of periodic review and evaluation of every child in foster care to eliminate foster care drift. Third, they called for new federal support for preventive services to families to encourage states to preserve families rather than placing children in foster care. This meant eliminating from federal law "the anti-family bias and fiscal disincentives to ensuring a child a permanent home." Fourth, the CDF urged the creation of federal support for adoption subsidies to make adoption of all children affordable. These four principles were at the heart of the legislation that would become the Adoption Assistance and Child Welfare Act of 1980.[119]

By the time President Carter signed the Adoption Assistance and Child Welfare Act into law on June 17, 1980, the bill had been debated in Congress for five years. Two questions must be addressed. First, how did child welfare gain a place on the agenda in the late 1970s? Child welfare advocates had been concerned about foster care drift since the late 1950s, why was there no federal legislation targeting the issue until the late 1970s? Second, once child welfare became an issue why did it take five years to pass

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[118] House Ways and Means Committee, *Amendments to Social Services, Foster Care, and Child Welfare Programs*, 135–136.
[119] Knitzer, *Children without Homes*, 10–12.

legislation? On the former question, four factors appear to have played a role: the rising rates of foster care, leadership on the issue in Congress especially by the Congressman George Miller, the theory of permanency planning provided a solution to the problem of foster care drift, and the desire of the Carter administration to claim credit for a program aimed at children and families. The blame for the delay on the issue, however, can also be laid at the feet of the Carter administration. The administration was late in demonstrating interest in the issue, late in producing a concrete proposal, and its failure of leadership pushed the issue into what would be the final congressional session of Carter's tenure.[120]

The increasing size of the foster care population portended a national crisis. One problem was that it was difficult to get an accurate count of the foster care population. A 1971 count by HEW showed 260,000 children in foster family care with an additional 6000 children in group homes.[121] After 1971, HEW did not collect counts on children in foster care who did not receive federal funding. Therefore, by the late 1970s, there was a wide variety in estimates of the number of children in substitute care. Carter's Secretary of Health, Education, and Welfare discussed a foster care population of 350,000 in 1977. A HEW study published in 1978 put the figure at 502,000, while the Children's Defense Fund's study came to the count of 448,000 children in out-of-home care. Whatever the actual number, the consensus seemed to be that the rate of children in foster care was increasing over the 1970s. The great difficulty in determining the number of children

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[120] Steiner, *The Futility of Family Policy*, 129–173.

[121] U.S. Department of Health, Education, and Welfare, *Children Served by Public Welfare Agencies and Voluntary Child Welfare Agencies and Institutions, March 1971*, (Washington, D.C.: National Center for Social Statistics, March 1973), as cited in Alfred Kadushin, *Child Welfare* Services, 2nd ed. (New York, Macmillan Publishing, 1974), 401.

receiving substitute care substantiated one of the reformers claims that state and federal government needed to require periodic reviews of all children in foster care.[122]

George Miller, Democratic Congressman of California, more than any other member of Congress was responsible for keeping child welfare reform on the agenda in the 1970s. Miller emphasized the crisis in foster care and formulated legislation that incorporated "permanency planning." While other members of Congress have certainly played an important role in child welfare legislation including Representative John Brademas, Senator Walter Mondale before he was elected Vice President, and Senator Alan Cranston, Miller's focus on the "continuing crises in foster care" allowed him to take leadership on this one issue. Congress initially held hearings on foster care in 1975, but it was in 1977 that Miller introduced legislation that embodied "permanency planning." First, Miller turned the child welfare service provision of the Social Security Act (Title IV-B) into an entitlement. Child welfare activists had called for this since the 1950s. Congress had consistently raised the authorization for child welfare services without appropriating funds to fully fund the program. By 1977, the authorization had reached $266 million but only $56 million had ever been appropriated. Miller's proposed legislation made the full $266 million available to the states each year. Miller's bill also provided specific guidance that some of this funding be used for services "preventing the unnecessary separation of children from their families by identifying family problems, assisting families in resolving their problems, and preventing the breakup of the family where the prevention of child removal is desirable and possible." In addition the bill required states that received child welfare funding to provide "adequate preventive

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[122] Steiner, *The Futility of Family Policy*, 131–133; Knitzer, *Children Without Homes*, 2, fn. 2.

services" to families before a child was placed in foster care. Finally, the bill included adoption subsidy payments to encourage adoption of "hard-to-place children."[123]

The Carter administration initially opposed Miller's bill as too costly, but soon reversed course, presenting its own child welfare proposal. "That was early in the administration," Califano joked about the administration's opposition to child welfare reform, the Office of Management and Budget "still thought they were working for the Ford administration."[124] Mondale's past leadership on this issue and the administration's professed pro-family stance made it difficult to avoid the issue. In addition, encouraging adoption seemed critical based on Carter and Califano's opposition to abortion. "You could certainly say," Califano noted about the legislation, "it presents an alternative to abortion."[125] All involved expected passage of legislation reforming foster care and encouraging adoption. Senator Alan Cranston, representing the administration's position in the Senate, predicted passage within a year. Unfortunately, the legislation became tied up in the Senate Finance Committee chaired by Senator Russell Long. Long insisted that only one bill amending the Social Security Act be brought to the floor. The child welfare legislation, therefore, was combined with other welfare reforms that the Carter administration opposed. A separate bill introduced in the Senate contained many of the provisions of Miller's original proposal, but included a cap on funding foster care for children receiving AFDC. This was unacceptable to the CWLA who organized a

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[123] H.R. 7200 as published in Senate Committee on Finance, *Public Assistance Amendments of 1977*, 95th Cong., 1st sess., July 12, 18, 19, and 20, 1977, 3–54, 35.
[124] Myra MacPherson, "Mondale Offers Adoption Fund Plan," *Washington Post*, July 13, 1977, p. A4. See also Steiner, *The Futility of Family Policy*, 146–147.
[125] Myra MacPherson, "Mondale Offers Adoption Fund Plan," A4.

coalition to defeat this proposal. The CWLA, political scientist Gilbert Steiner recounted, saw this "as a chance to outmaneuver both Senator Long, an old antagonist, and the Children's Defense Fund, an effective competitor for leadership in child advocacy."[126] In over its head, the Carter administration abandoned its support for the measure.[127]

In 1979, child welfare reform returned to the political agenda. The passage of the legislation in 1980 demonstrated both the strength of the theory of "permanency planning" and the weakness of the CWLA. A year after the legislation passed, Elizabeth Cole, the CWLA's point person on adoption, reflected on the forces that had shaped this legislation. She recognized "a distrust of organizations, agencies, and professionals," a proliferation of interest groups, and "a demand for cost containment, monitoring, and evaluation."[128] Much of what the 1980 legislation archived pleased Cole, but the tone that was taken during debate over the bill was disturbing. "The battle over the legislation has left its wounds," she lamented. "In establishing the problems with the foster care system that needed to be solved, some advocates made wholesale and slashing charges against agencies, foster parents, and social workers."[129] The CWLA felt child welfare workers were under attack.

Cole's analysis of the environment within which the legislation passed was largely correct. Witness after witness recounted the tragedy of foster care.[130] Professor

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[126] Steiner, *The Futility of Family Policy*, 151–152.
[127] Ibid., 152.
[128] Elizabeth S. Cole, "Implications of the Adoption Assistance and Child Welfare Act of 1980," *A Dialogue on the Challenge For Education and Training: Child Welfare Issues in the 80's*, Ellen S. Saalberg, Ed. (Ann Arbor, Michigan: National Child Welfare Training Center, 1982), 36.
[129] Ibid., 40.
[130] House Ways and Means Committee, *Amendments to Social Services, Foster Care, and Child Welfare Programs*, 1979.

Barbara Pine has documented the growing public participation in this debate with foster parent organizations, adoptive parent organizations, former foster children claiming their expertise on this issue, along with more traditional social work and child welfare associations.[131] The issue of cost seems to have created the greatest disagreement about the legislation. A few witnesses in congressional hearings questioned the claim of "permanency planning" proponents that preventive services and subsidized adoption would be les expensive than foster care.[132] The administration's proposal rested on this proposition. The bill placed a cap on foster care spending in order to turn support for preventive child welfare services into an entitlement. The CWLA took a firm stance against the foster care ceiling. As Steiner has explained both Congressman George Miller and the CDF gave "pro forma opposition" the foster care ceiling. After the experience in 1977, however, "neither would trade other foster care reforms for the retention of an open-end spending authorization."[133] The great accomplishment of the 1980 bill, besides inscribing permanency planning into law, would have been, after nearly thirty years of lobbying, the creation of child welfare services entitlement. Unfortunately, Rep. Robert H. Michael, an Illinois Republican, had pledged to remove 'the first doggone entitlement that comes down the pike." This bill turned out to be the child welfare bill which Michael successfully maneuvered to revoke the entitlement for child welfare services. What eventually emerged was a compromise. The legislation passed without child welfare services entitlement and with the foster care ceiling, but the

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[131] Barbara Pine, "Child Welfare Reform and the Political Process," *Social Service Review* 60 (September 1986): 339–359.
[132] House Committee on Ways and Means, *Amendments to Social Services, Foster Care, and Child Welfare Programs*, 1979, 154.
[133] Steiner, *The Futility of Family Policy*, 152–153.

cap on the foster care program would not go into effect until the appropriation for child welfare services had reached the authorized $266 million.[134]

The Adoption Assistance and Child Welfare Act of 1980 was the most significant child welfare legislation since, at least, 1962 if not 1935. In many ways, this legislation fulfilled the desires of the postwar child welfare community. It provided new federal funding for state child welfare services and mandated these services work to keep families intact, or when that failed, quickly move children to adoption. However, the debate over the act, and the nature of its passage demonstrated a shift to a new political paradigm in which the authority of the traditional child welfare community—indeed the very notion of the state's ability to rehabilitate children and families—was called into question. Its success also faced a serious impediment: would the support for largely unproven preventive services be enough to reduce the rates of foster care and the overall cost of child welfare? The creation of a new government program based on arguments of state failure and over-intervention in private families encapsulated the weakness of American liberalism in the late 1970s and early 1980s. It remained to be seen how liberals would defend such programs from attack by the right.

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[134] "Adoption Aid, Child Welfare," *Congressional Quarterly Almanac*, 1979 (Washington, D.C.: Congressional Quarterly, 1979), 530; see also "Adoption Aid, Child Welfare," *Congressional Quarterly Almanac, 1980* (Washington, D.C., Congressional Quarterly, 1980), 417-418; and the Adoption Assistance and Child Welfare Act, P.L. 96-272.

Epilogue:
The Continuing Crisis of Child Welfare

Since 1909, when the first White House Conference on Children was organized by Theodore Roosevelt's administration, a national conference addressing issues of child welfare had been held in Washington every decade. In 1981, the Reagan administration ended the tradition. In keeping with the administration's faith in a reinvigorated federalism, Richard S. Schweiker, Reagan's Secretary of Health and Human Services, invited governors to apply for federal funds to hold conferences in their states. For the first time in seventy years there would be no White House conference. This move was largely symbolic; even child welfare activists admitted that, with the exception of the initial meeting, little substantive work had been accomplished at these conferences. Still, it was a powerful symbol: no longer would the national government attempt to provide leadership and unity in child welfare policy.[1]

But the changes that came with the election of Ronald Reagan were more then symbolic; the child welfare community quickly found that the programs they had worked to establish were under attack. Among the new administration's proposals was the creation of a social service block grant that would replace thirteen categorical programs including funding for child welfare services, foster care, and adoption assistance. This

[1] Lynn Rosellini, "Conference on Youth to be strictly a state affair," *Chicago Tribune*, May 31, 1981, J9; "U.S. Parley on Youth Canceled," *New York Times*, May 15, 1981; for the lack of accomplishments of the White House Conferences on the Child, see Gilbert Steiner, *The Children's Cause* (Washington, D.C.: The Brookings Institution, 1976), 119–130. Conferences were held in 1909, 1919, 1930, 1939, 1950, and 1970. In 1971, a separate conference on youth was held in Estes Park, Colorado. A White House Conference on American Families was held in 1980, for more see chapter 6 and Gilbert Steiner, *The Futility of Family Policy* (Washington, D.C.: The Brookings Institution, 1981), 32–45.

proposed block grant, that would eliminate the Adoption Assistance and Child Welfare Act of 1980, was passed by the Senate and seemed likely to become law.[2]

The child welfare community that had divided over the 1980 act and its focus on the failure of foster care now came together in an effort to preserve a federal role in child welfare policy. A memo from the CWLA explained that the 1980 legislation had provided both carrots and sticks to reform child welfare and end foster care "drift." The bill had included incentives for states to conduct an inventory of all children in foster care, to implement statewide management systems, and to provide family reunification services; as well as a requirement for states to provide 25 percent of the child welfare funding. The social services block grant, the CWLA explained "takes away all the carrots and gets a bigger stick to use upon the states." In other words, the block grant would create a ceiling on state foster care expenditures while restricting the federal funding available for services to families. The social service block grant did pass, replacing Title XX of the Social Security Act. However, child welfare services, foster care, and adoption assistance were preserved as separate categorical programs. In spite of this success, the battle over the Social Services Block Grant in 1981 demonstrated the new conservative tenor of the times. The child welfare community was now on the defensive, attempting to preserve federal legislation that they had once viewed as flawed or incomplete.[3]

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[2] "Congress Adopts Some Reagan Block Grants," and "Social Service, Energy Aid," *Congressional Quarterly Almanac* 1981 (Washington, D.C.: Congressional Quarterly, 1981), 463–466, 488–490.

[3] Ibid.; "P.L. 96-272, The Adoption Assistance and Child Welfare Act of 1980," CWLA Supp., box 52, folder "1980 Child Welfare Act, 1980–1981." The CWLA credited one congressman, Republican John H. Rousselot of California, a member of the Ways and Means Public Assistance Subcommittee with withstanding "pressure from the administration in order to protect the child and keep the reforms in place." (*Congressional Quarterly Almanac 1981*, 490.)

In this new environment, the postwar child welfare reforms may have created the worst of all possible worlds—increased intervention into the lives of children without the resources to ensure adequate care. As the child protection system continued to expand, the number of children coming to the attention of child welfare agencies exploded. Characterized by aversion to foster care as a solution, the failure of efforts to increase adoptions, and limited financial support for assistance and services that could help prevent family breakdown, the post-1980 child welfare system appeared to be a recipe for disaster.

Just a year prior to Reagan's block grant proposal, Congress had enacted the Adoption Assistance and Child Welfare Act of 1980. This legislation favored family preservation—keeping children in their birth homes while providing family preservation services or, if children were removed, working toward reunification with the family. In order to be eligible for federal support for foster care, states had to demonstrate that they had made "reasonable efforts" to maintain children in their families or to reunify the child with their family. However, what the law meant by "reasonable efforts" was never clearly defined.[4].

Initially the 1980 Act, was viewed as a great success. Despite the struggle with the Reagan administration over the funding of these programs, the number of children in foster care declined over the early 1980s. By 1984, however, the rates of children entering foster care began to increase. By 1987, the number of children in foster care per

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[4] Alice C. Shotton, "Making Reasonable Efforts in Child Abuse and Neglect Cases: Ten Years Later," *California Western Law Review* 26 (1989–1990): 223–256; see also Libby S. Adler, "The Meanings of Permanence: A Critical Analysis of the Adoption and Safe Families Act of 1997," *Harvard Journal on Legislation* 38 (2001): 1.

one thousand children in the U.S. population had passed the 1980 level. This rate would continue to rise over the 1990s.[5]

By the late 1980s, as the foster care rates began to rise, experts began to question whether family preservation was really providing the best care for children. In 1988, Michael Wald, one of the early supporters of family preservation called for more data on how these programs were affecting children. While he still expressed an ideological preference for programs of minimal state intervention that helped preserve biological families, he realized that this objective must not be the only test. "Family preservation," he noted, "can not be an end of itself. The goal of intervention must be the child's well-being—and family preservation is appropriate only when it serves to protect and promote this goal."[6] The 1980 act was forged in an environment of low expectations for the state's ability to care for children in foster care. By the late-1980s, the ability of an increasingly strained child welfare system to keep or reunite children with their birth families was also in doubt.

By the 1990s, the problems in child welfare had reached the level of a crisis. Reports of abuse and mistreatment in children returned to their homes undermined the belief in family preservation.[7] Furthermore, rather than minimizing the role of the state, the 1980 Adoption Assistance and Child Welfare Act was turning into a major financial burden on the national government. Federal funding for foster care grew from $1.2 billion in 1989 to $3.1 billion in 1996. This was largely due to the growth in the number

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[5] Ira M. Schwartz and Gideon Fishman, *Kids Raised by the Government* (Westport, Connecticut: Praeger, 1999), 55.
[6] Michael S. Wald, "Family Preservation: Are We Moving Too Fast?" *Public Welfare* 46 (Summer 1988): 33-38, 46.
[7] Schwartz and Fishman, *Kids Raised by the Government*, 15.

of children in foster care from 262,000 in 1982 to 507,000 or 7 children for every 1000 in 1996.[8] These numbers reflected that children were spending a longer amount of time in foster care and that long-term foster care was increasingly viewed as a permanent placement.

In the framework of the 1980 act, which valued family preservation, few children were placed on the track for adoption. The percentage of children adopted out of foster care actually decreased from 10.4 percent in 1982 to 7.7 percent in 1990.[9] George Miller, one of the congressmen who drafted the 1980 legislation lamented the state of child welfare in 1990. "Ten years ago, we promised to clean up the foster care system, save money, and help children and families," he recalled. "For tens of thousands of children, we didn't keep that promise, while the conditions of children and the foster care system itself have deteriorated further."[10] In 1997, Congress would again try to correct the failings of child welfare by the enactment of the Adoption and Safe Families Act.

The approach of Congress to child welfare reform in 1997 resembled the ideological framework with which the program was approached in 1980. As one expert explained, the foster care crisis was simply that "too many children are staying in foster care for too long a time."[11] The 1997 act continued to profess allegiance to the notion of permanency planning but permanency was reoriented; rather than finding permanency

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[8] U.S House of Representatives, Committee on Ways and Means, *The Green Book* (Washington, D.C.: U.S. House of Representatives, 2000), as cited in Marcia Robinson Lowry, "Putting Teeth into AFSA: The need for statutory minimum standards," *Children and Youth Services Review* 26 (2004): 1022–1024.
[9] Lowry, "Putting Teeth into AFSA,"1022–1024.
[10] North American Council on Adoptable Children, *The Adoption Assistance and Child Welfare Act of 1980 (Public Law 96-272), The First Ten Years* (St. Paul, Minnesota: North American Council on Adoptable Children, 1990) 105, as cited in Schwartz and Fishman, *Kids Raised by the Government*, 21.
[11] Patrick A. Curtis, "Introduction: The Chronic Nature of the Foster Care Crisis," in *The Foster Care Crises: Translating Research into Policy and Practice*, ed. Patrick A. Curtis, Grady Dale Jr., and Joshua C. Kendall, (Lincoln: University of Nebraska Press, 1999), 1.

with their birth families, the law provided incentives to move children to permanent adoptive homes. In order to move children towards adoption, the 1997 act exempted states from the requirement of "reasonable efforts" for maintaining the child in the home or for reunification in cases where birth parents had showed particularly heinous behavior of mistreatment or abuse such as abandonment, the murder of one of their other children, or a pattern of behavior noted by the previous termination of parental rights. The 1997 act also required hearings to determine a permanency plan for the child to be held no later than 12 months after the child entered state custody as opposed to the 18 months requirement under the 1980 law. At these hearings, now renamed permanency hearings, the law essentially required the state to choose whether to pursue reunification with the birth family or to move the child towards adoption through the termination of parental rights. Furthermore, the states were required to file a termination of parental rights for every child who had been in foster care for 15 of the past 22 months unless the state met specific conditions such as the child was in the care of a relative or could provide a compelling reason why termination of parental rights was not in the best interest of the child. The ideal case in the 1980 law was a child quickly reunified with his or her family; the ideal case under the 1997 law ended with the swift termination of parental rights and the placement of the child in an adoptive home.[12]

The success of the 1997 Adoption and Safe Families act is still being debated. The legislation did not address entry into the child welfare system through the child protection and juvenile justice systems, even though both these institutions funneled an increasing number of children into child welfare programs. Nor did they examine the

[12] Lowry, "Putting Teeth into ASFA," 1024–1027 Adler, "The Meanings of Permanence," 5–14.

broader social and economic pressures on children and families leading to this crisis. The number of adoptions out of foster care, it appears, did increase after the passage of the legislation. However, as Marcia Robinson Lowry has explained, many of the children freed for adoption have not been placed in adoptive homes. Perhaps due to the failure to find adoptive homes, "children continue to remain in foster care for long periods of time." The mean length of time that children had spent in foster care in 2001 was close to three years. Finally, while the 1997 act barred the use of foster care as a permanency goal, many children remain in long-term foster care as their only permanent home.[13]

Although the debate over the organizing principles of child welfare continues, one consistent factor in child welfare programs appears to be the failure of state implementation of the programs that have been enacted. In January 2003, seven year-old Faheem Williams was found dead in the basement of a Newark, New Jersey duplex, his body stuffed into a plastic storage bin. Also locked in the basement and severely malnourished were his twin brother Raheem and four-year-old Tyrone Hill. The mother had been the subject of eleven allegations of child abuse, three of which had been substantiated. Still the child welfare worker had closed the case. While the CWLA recommended that child protective workers oversee no more than 17 cases, this New Jersey child welfare official was conducting 107 investigations.

This was not simply one case that slipped through the cracks; New Jersey's child welfare system was profoundly dysfunctional. An investigation by Leslie Kaufman and Richard Lezin Jones, reporters for the *New York Times*, found more than a decade of budget cuts and delays in implementing new programs created the crisis. The New

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[13] Lowry, "Putting Teeth into ASFA," 1027–1028.

Jersey government had, at various times, cut support for a computer tracking system of neglect and abuse cases, closed the training facility for the Division of Youth and Family Services, delayed instituting licensing of foster homes, and simply laid-off child welfare workers. While the number of children in the state's care grew from 40,000 to 58,000 from 1993 to 2003, the budget only increased from $275 million to $312 million. From 1995 to 1999, New Jersey actually cut child welfare expenditures by $67 million. The problems with the New Jersey child welfare system were considered so intractable that a federal judge approved the take over of the program by a panel of experts in June 2003.[14]

But New Jersey is only the worst case in a national pattern of state failure in child welfare. Completing a three year study of state child welfare systems in 2004, the U.S. Department of Health and Human Services found that no state met all the standards established by the federal government. Sixteen states did not meet any of the measures of child safety and well-being, and no state met the standard for "permanency and stability in their living situations." The states, reacting to this news, mostly agreed with the federal findings. Carole Keeton Strayton, the comptroller of Texas, issued a report condemning her state's foster care system. "Some of these children are no better off in the care of the state than they are in the hands of abusive and negligent parents," the report explained. The failure of child welfare systems across the country has led to two reactions. On one side of the debate are those who argue that states need to be forced to

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[14] Richard Lezin Jones and Leslie Kaufman, "Worker in Newark Abuse Case Juggled 107 Inquiries," *New York Times*, January 8, 2003; Matthew Purdy, "Little Boys Already Fading In Big Picture," *New York Times*, January 15, 2003; Leslie Kaufman and Richard Lezin Jones, "Foster Care in New Jersey is Called Inept," *New York Times*, June 10, 2003; Leslie Kaufman and Richard Lezin Jones, "How Years of Budget Cuts Put New Jersey's Children at Risk," *New York Times*, September 23, 2003.

implement adequate standards either through federal oversight or through state by state litigation. On the other side are those that view government as inherently inadequate in providing child welfare.[15]

As House majority leader Tom Delay faced indictment for his fundraising practices in April 2006, *The Washington Post* reported on a philanthropic project closely supervised by the congressman and his wife, Christine DeLay. The Rio Bend project was a housing subdivision outside of Houston, Texas built exclusively for foster families. While the families still received a stipend from the Texas division of Family and Protective Services, the project was to be supported by charitable contributions. As Christine DeLey explained to the *Post*, governments "do a sucky job taking care of individuals." This private approach to foster care was grounded on the objective to create an alternative community, "a family-like environment with a strong Christian presence that erases that stigma of being a foster kid because" everyone at Rio Bend was a foster child. The approach of the DeLays rejected the reigning beliefs in foster care. Permanency planning either through family reunification or adoption was not the goal at Rio Bend; instead, children were expected to spend their childhood in the community's foster homes. The community provided a new way to support children and foster families, but had a restricted vision for what such families should look like. Only a limited number of those who applied were accepted to live in Rio Bend, and the foundation headed by Mrs. DeLay encouraged the choice of "Christian, married couples with only one [parent] working outside the home." Rio Bend is notable because this

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[15] Robert Pear, "U.S. Finds Fault in All 50 States' Child Welfare Programs," *New York Times*, April 26, 2004.

experiment in private support for foster care may exemplify the new directions of reform in the twenty-first century.[16]

The reform of child welfare in the postwar era was based on a belief in social responsibility for every child. This translated into a state obligation to provide therapeutic care for individuals. This perspective was as much about maintaining social order as it was about ameliorating inequality. The postwar child welfare community often emphasized the interconnectedness of society, a theme that reached back to the Progressive Era. If the delinquents of today did not receive the attention they needed, they would be the criminals of tomorrow. If neglected children were not shown the benefits of a loving caring relationship, they could not be expected to grow up to successfully raise their own children. This sense of social obligation was also grounded in a belief in political and social citizenship. Each individual, and especially each child, had to be ensured of his or her healthy physical and psychological development if he or she were to function as citizens in the future. At a basic level, child welfare programs were about social preservation. If these programs did not succeed, advocates argued, American society would suffer.

Today, this sense of social responsibility leading to obligations on the state seems quaint. To paraphrase Christine Delay, the current view seems to be that governments are incapable of adequately caring for individuals. To be sure, the DeLays and others would argue that we have obligations as individuals to care for other individuals. But these obligations have limitations and require that those in need meet us part of the way. That is the message of the 1996 welfare reform act, tellingly entitled the Personal

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[16]Amy Goldstein, "DeLays' Private Campaign for Kids," *Washington Post*, A3, A15.

Responsibility and Work Opportunity Reconciliation Act. And it seems to be the message of the current state of child welfare. Ironically, the very accomplishments of the postwar child welfare community now appear to be part of the problem. The ability for states to intervene into the lives of children and their families has increased. State services are intended to form the heart of the system of child welfare. Yet, some on the left and the right have argued that it is the state's intervention itself into family life that is the problem with child welfare.

The voices of the postwar child welfare community, however, remind us how shortsighted this view is. The problem is not that we intervene too much or too forcefully into the lives of individuals, but that the resources and perspective needed to intervene successfully do not exist. Along with the ability to intervene comes an obligation to assist, to help, to rehabilitate these individuals. It is not only our failure to provide this rehabilitation, but the waning desire of our society to even attempt such assistance that makes this story so tragic.

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