

University of Pennsylvania Carey Law School

Penn Carey Law: Legal Scholarship Repository

Faculty Scholarship at Penn Carey Law

1999

Poverty, Race, and New Directions in Child Welfare Policy

Dorothy E. Roberts

University of Pennsylvania Carey Law School

Follow this and additional works at: https://scholarship.law.upenn.edu/faculty_scholarship



Part of the [Family Law Commons](#), [Family, Life Course, and Society Commons](#), [Inequality and Stratification Commons](#), [Juvenile Law Commons](#), [Law and Society Commons](#), [Policy Design, Analysis, and Evaluation Commons](#), [Race and Ethnicity Commons](#), and the [Social Work Commons](#)

Repository Citation

Roberts, Dorothy E., "Poverty, Race, and New Directions in Child Welfare Policy" (1999). *Faculty Scholarship at Penn Carey Law*. 592.

https://scholarship.law.upenn.edu/faculty_scholarship/592

This Article is brought to you for free and open access by Penn Carey Law: Legal Scholarship Repository. It has been accepted for inclusion in Faculty Scholarship at Penn Carey Law by an authorized administrator of Penn Carey Law: Legal Scholarship Repository. For more information, please contact PennlawIR@law.upenn.edu.

Poverty, Race, and New Directions in Child Welfare Policy

Dorothy E. Roberts*

The following essay is based on a presentation by Professor Dorothy Roberts, the Spring 1999 Orthwein Scholar in Residence, who spoke on 10 March 1999 as part of an interdisciplinary panel.

Most of my work over the last ten years has concerned reproductive freedom, especially the relation between race and the meaning of reproductive liberty.¹ I have just turned my attention to the child welfare system, and I will present some of my early thoughts about how race and class affect recent shifts in federal child welfare policy. Everyone agrees that America's child welfare system is deeply flawed. The perspective does not matter; social workers, sociologists, politicians, promoters of adoption, and promoters of family preservation all agree that something is terribly wrong with our child welfare system.

First, an alarming half a million children are in foster care in America.² There is something wrong with that number even before one confronts what happens to the children in the foster care system. Too many children drift from temporary home to temporary home and too few families are kept together, despite a major legislative change in 1980 to support the preservation of families.³ Rates of termination of

* Professor, Northwestern University School of Law; Faculty Fellow, Institute for Policy Research. I elaborate this presentation in Dorothy E. Roberts, *Is There Justice in Children's Rights?: The Critique of Federal Family Preservation Policy*, U. PENN. J. CONST. L. (forthcoming 1999).

1. See, e.g., DOROTHY ROBERTS, *KILLING THE BLACK BODY: RACE, REPRODUCTION, AND THE MEANING OF LIBERTY* (1997); Dorothy E. Roberts, *Punishing Drug Addicts Who Have Babies: Women of Color, Equality, and the Right of Privacy*, 104 HARV. L. REV. 1419 (1991).

2. See CHILDREN'S DEFENSE FUND, *THE STATE OF AMERICA'S CHILDREN* 66 (1998).

3. See RENNY GOLDEN, *DISPOSABLE CHILDREN: AMERICA'S WELFARE SYSTEM* 16-19

parental rights are still alarmingly high, and many children who are returned to their homes end up back in foster care. Unfortunately, many children who should not have been returned find themselves returned to violent homes. Finally, too few children who we know cannot safely be returned home never get adopted.

On every count the system is failing. It seems that every couple of decades there is a dramatic shift in policy, yet nothing seems to work.⁴ Policy changes rarely reflect careful deliberation about the best way to reduce the numbers of children in foster care or to promote the welfare of children in America. Typically, legislators scramble to revise the law because of a story embraced by the media. When a dramatic case involving child welfare makes it to the papers, there is a large rush to change the system in order to prevent this case from happening again. Too often the change is based on the interests of a privileged group of adults and not on the best interests of the children in foster care.

The number of children in foster care is not diminishing but increasing.⁵ Other than the fact that everyone complains about the foster care system, one thing remains constant—the public child welfare system in America is populated almost exclusively by poor children, a disproportionate number of whom are Black.⁶ Despite family preservation programs an alarming number of poor Black children continue to pour into the foster care system, and the state continues to supervise their families. If an outsider looked at the American child welfare system, she would likely conclude that this is not a system designed to promote the welfare of America's children. Rather, it is a system designed to regulate, monitor, and punish poor families, especially poor Black families.

To an outsider, the child welfare system would look similar to the criminal justice system.⁷ It certainly seems that the purpose of our

(1997).

4. See Patricia A. Schene, *Past, Present, and Future Roles of Child Protective Services*, 8 THE FUTURE OF CHILDREN 23 (1998).

5. See CHILDREN'S DEFENSE FUND, *supra* note 2, at 64 ("Approximately 502,000 children were in foster care at the end of 1996—about 25 percent more than in 1990.")

6. See GOLDEN, *supra* note 3, at 17.

7. See DAVID COLE, NO EQUAL JUSTICE (1999); JEROME G. MILLER, SEARCH AND DESTROY: AFRICAN-AMERICAN MALES IN THE CRIMINAL JUSTICE SYSTEM (1996).

criminal justice system is to punish poor people because only the poor populate the system. One might conclude it is especially meant to punish Black people, who now comprise the majority of those in prison. Dependency proceedings in urban centers in America resemble criminal proceedings because all you see are black and brown people in court.

I think this is an injustice; there is something profoundly wrong with this picture of the child welfare system. We need to figure out how to end it, yet recent trends in federal child welfare policy do not make this picture any better.⁸ Instead, these trends make the picture worse both for the material conditions of the families in the child welfare system and for the message that the policy sends about these conditions.

The policy I would like to focus on is incorporated in the Adoption and Safe Families Act (ASFA),⁹ which President Clinton signed in November of 1997. I believe ASFA is tied to welfare reform and changes in federal policy regarding transracial adoption.¹⁰ When Clinton signed ASFA he stated it would further his adoption initiative, which had the goal of doubling the number of children adopted in America by the year 2002.¹¹ ASFA is generally seen as a major shift in federal child welfare policy. Its predecessor, the 1980 Child Welfare Act,¹² was also a major shift in child welfare policy at the time, because it emphasized reunification of children in foster care with their families and tried to prevent children from entering foster care. Although not very successful as a family preservation policy, at least the Child Welfare Act tried to prevent state disruptions of families. ASFA, however, reflects criticisms of the family preservation

8. See Adoption and Safe Families Act of 1997, Pub. L. No. 105-89, 111 Stat. 2115 (1997) (codified in scattered sections of 42 U.S.C.); Personal Responsibility and Work Opportunity Reconciliation Act of 1996, tit. III, Pub. L. No. 104-193, 110 Stat. 2105 (1996).

9. See Adoption and Safe Families Act of 1997, *supra* note 8.

10. If I had more time, I would also explore the analogy I suggested in my opening and tie shifts in child welfare policy to changes in the criminal justice system, as well. I think there are also connections between the child welfare system and the criminal justice system that help to explain why there are so many Black children in the child welfare system. Both the child welfare and the criminal justice systems provide ways for the state to control children.

11. See *Cheers for New Law on Adoptions*, N.Y. TIMES, Nov. 20, 1997, at A24.

12. See Adoption Assistance and Child Welfare Act of 1980, Pub. L. No. 96-272 (1980).

approach and instead emphasizes adoption as the way to solve the problem of foster care. One way ASFA promotes adoption is through expedited termination of parental rights to “free” children for adoption. Whereas the Child Welfare Act sought to reduce the foster care population by preserving families and reunifying children with their parents, ASFA seeks to reduce the foster care population by speeding up the termination of parental rights to allow more children to be adopted.

ASFA also addresses the concern that the family preservation philosophy returned too many children to dangerous homes. The congressional testimony and newspaper articles during the pre-ASFA hearings emphasized cases of children who were returned home and killed.¹³ One of the primary supporters of a change in the law was Richard Gelles, a domestic violence expert now at the University of Pennsylvania. He wrote a popular book called *The Book of David, How Preserving Families Can Cost Children’s Lives*,¹⁴ which is based on a compilation of cases concerning abused children. The book recounts the tragic story of a child suffocated by his mother after he was returned to her from foster care. Gelles argued that cases like this happen because of family preservation policies such as the Child Welfare Act, which provided that a state would receive money for foster care only if the state made “reasonable efforts” to reunite children in foster care with their biological families. He claimed that social workers and courts interpreted “reasonable efforts” to mean absolutely all efforts—do whatever possible to put children back, even when it meant endangering children’s lives.¹⁵ According to Gelles and other critics, family preservation policies did more to hurt children than to help them. Gelles writes, “The basic flaw in the child welfare system is that it has two contradictory goals: protecting children and

13. See 143 CONG. REC. H10776-05, H10789 (statement of Representative Pryce); *From Foster Care to Adoption*, WASH. POST, May 10, 1997, at A27; Jeff Katz, *Finally the Law Puts These Kids’ Interests First*, MILWAUKEE J. SENTINEL, Dec. 28, 1997, at 1; Michael Quinn, *Family Preservation—It Can Kill*, NEWSDAY (New York), Jan. 11, 1996, at A33.

14. RICHARD J. GELLES, *THE BOOK OF DAVID: HOW PRESERVING FAMILIES CAN COST CHILDREN’S LIVES* (1996).

15. See *id.* at 115-20.

preserving families.”¹⁶ This view pits protecting children’s rights against preserving families by returning children home. When viewed from this perspective, family preservation starts to look like a dangerous policy. Therefore, ASFA amends the Child Welfare Act by exempting severely abused and tortured children from family preservation requirements. Under ASFA there is no requirement that social workers try to preserve these families.

ASFA also implements a shift in emphasis from family preservation to adoption by using expedited timetables for terminating parental rights, offering assistance to states to increase adoptions, and providing financial bonuses to states based on the number of adoptions of children in foster care above a base level from a prior year. States receive four thousand dollars from the federal government for each child adopted above the baseline and six thousand dollars for each child adopted with special needs. The logic behind these incentives is to help the one hundred thousand children in foster care who cannot be returned safely home to get adopted. These children have been languishing in foster care and suffering developmental damage from the lack of a stable home.

Generally, I think the government should encourage and facilitate the adoptions of these children. If children cannot return home or maintain contact with their parents, then it is often better for them to be adopted than to stay in foster care. The problem with ASFA’s preference for adoption is that it expedites the termination of parental rights when family preservation is not hopeless. It also pressures state agencies to increase the number of children adopted rather than reuniting them with their families. This exacerbates the conflict that is characteristic of child welfare agencies. While caseworkers are trying to reunite children with their biological parents and provide supportive services, they must simultaneously plan for the termination of the parents’ rights and find adoptive homes. The result will be that some children and parents, who could have been kept together with assistance obtaining the adequate and appropriate resources, will be permanently separated.

16. *Id.* at 152.

Although one critique of family preservation is that too many children are returned to dangerous homes, another critique finds that sufficient efforts were never made to preserve families.¹⁷ The typical family preservation program provides too little support for too little time. We do not know the potential of long-term, well-funded family preservation services. ASFA's emphasis on adoption will make it less likely that states will provide such services. It is also unlikely that states will find adoptive homes for all the children whose parental rights are terminated. I am especially concerned about the message from Congress this Act conveys—that these children are coming from hopeless homes and it is both dangerous and not cost efficient to preserve them. In effect, we might as well abandon these families and encourage more privileged families to adopt these children.

I absolutely agree that clarifying the “reasonable efforts” mandate does not mean doing whatever it takes to reunite a family regardless of the condition of the home and the fitness of the parents. However, I do not believe that most social workers interpreted “reasonable efforts” that way. There are many appellate decisions reversing orders terminating parental rights.¹⁸ The courts found that social workers made meager efforts and sometimes even hindered parents' attempts to reunite with their children in foster care. Thus, it is not completely true that social workers returned children home no matter what the circumstances.

Moreover, when one examines the more tragic cases, one finds that procedures often just went wrong (the case went from judge to judge or from caseworker to caseworker who eventually lost track of the family).¹⁹ In hindsight, if someone would have just read the entire record, the child would not have been returned home. I suspect some children were mistakenly sent back to violent parents because of

17. See GOLDEN, *supra* note 3; Alice C. Shotten, *Making Reasonable Efforts in Child Abuse and Neglect Cases: Ten Years Later*, 26 CAL. W. L. REV. 223, 241050 (1989-90).

18. See, e.g., *In re Verona Jonice N.*, 581 N.Y.S.2d 11, 12 (App. Div. 1992) (finding caseworker failed to “do anything” to help mother obtain housing); *In re Amber “W.”*, 481 N.Y.S.2d 886, 888-90 (App. Div. 1984) (citing agency's interference with mother's attempts to visit her daughter).

19. See GELLES, *supra* note 14.

indifference, not zeal for family preservation.

However, the clarification of “reasonable efforts” is only going to affect a minority of children in foster care. Most children are not in foster care because their parents severely abused or tortured them; rather, neglect is the most prevalent reason children are in foster care.²⁰ In most cases the neglect is related to poverty.²¹ If these parents possessed the same resources that I have to take care of my children, their children would probably not have been removed from the home. The reasons for neglect are usually more complicated than not having enough money to buy food. For instance, parents may not be able to afford a proper heating system, so they use a faulty heater that causes a fire in the apartment. For lack of money for child care, parents leave their children alone at home and the children end up injured. Poor children placed in substitute care because of neglect are the ones primarily affected by ASFA. Are these children better off if we speed up termination of their parents’ rights and push them toward adoption?

Some people assume that speeding up the termination of parents’ rights will automatically result in adoptions.²² I am not willing to concede that result. Some people also wrongly believe that there is

20. See DUNCAN LINDSEY, *THE WELFARE OF CHILDREN* 139-56 (1994); Alex Morales, *Seeking a Cure for Child Abuse*, USA TODAY (Magazine), Sept. 1998, at 34 (“Approximately 55% of the kids who are seriously mistreated suffer from severe neglect.”).

21. See Kristine E. Nelson et al., *Chronic Child Neglect in Perspective*, 38 SOCIAL WORK 661 (1993); Richard J. Gelles, *Child Abuse and Violence in Single-Parent Families: Parent Absence and Economic Deprivation*, 59 AM. J. ORTHOPSYCHIATRY 492 (1988); Leroy H. Pelton, *Child Abuse and Neglect: The Myth of Classlessness*, 48 AM. J. ORTHOPSYCHIATRY 608 (1978). See generally LEROY H. PELTON, *FOR REASONS OF POVERTY: A CRITICAL ANALYSIS OF THE PUBLIC CHILD WELFARE SYSTEM IN THE UNITED STATES* (1989) (criticizing the removal of poor children from their homes for parental neglect). After reviewing numerous studies on the reasons for child removal, Duncan Linsey concludes:

Overall the data examined in this and other studies clearly demonstrate that child abuse is not the major reason children are removed from their parents. Rather, inadequacy of income, more than any other factor, constitutes the reason that children are removed.

... More and more the variables we thought had some bearing in deciding the issue appear a smoke screen masking the real issue, which is poverty. At the very least, we need to be honest about why children are being taken away.

LINDSEY, *supra* note 20, at 155. See also *id.* at 157-83 (criticizing the preoccupation with severe physical abuse and sexual assault rather than child poverty, which affects a much larger population of children).

22. See *supra* note 13.

something inherently good about terminating the rights of parents whose children are in foster care. Children, even neglected children, typically value and want to maintain a relationship with their parents.²³ The state severing this relationship does not benefit the child if he is not adopted, whereas it does inflict a serious sense of loss on the child. It is a false hope to believe that terminating parental rights either inherently benefits children or automatically places them in adoptive homes.

It is hard to predict ASFA's impact on the foster care population; we will need to study the outcomes. Prior research shows that in many states the number of terminations of parental rights has been increasing annually.²⁴ Although the number of adoptions has been increasing as well, it lags well behind the increase in terminations. As a result, the number of state wards (children who have no legal parents) increases, because the state has cut off the legal connection to their biological parents and new parents have not adopted them. Also, parents of Black children, the least likely to be adopted, are most likely to lose their rights. Again, there is not an automatic connection between terminating parental rights and adoption.

In most cases, it is difficult to see how extinguishing children's legal ties to a parent benefits them. Usually, termination of parental rights causes a disruption in the child's life without necessarily leading to a permanent placement. There are, however, alternatives to terminating parental rights. We tend to think that there are only two options: returning the child home and adoption. Other possibilities exist that we have not adequately explored, like permanent guardianship with family members or friends who do not want to adopt the child, which would necessarily mean the termination of

23. See Marsha Garrison, *Parents' Rights vs. Children's Interests: The Case of the Foster Child*, 22 N.Y. U. REV. L. & SOC. CHANGE 371, 379 (1996); Peggy C. Davis, *Use and Abuse of the Power to Sever Family Bonds*, 12 N.Y.U. REV. L. & SOC. CHANGE 557, 563-72 (1983-1984); Penny Ruff Johnson et al., *Family Foster Care Placement: The Child's Perspective*, 74 CHILD WELFARE 959, 963, 967 (1995) (finding that 56 % of 95 children aged 11-14 in foster care between 6 months and 2 years stated they missed their parents most of the time).

24. See Martin Guggenheim, *The Effects of Recent Trends to Accelerate the Termination of Parental Rights of Children in Foster Care—An Empirical Analysis in Two States*, 29 FAM. L.Q. 121 (1995).

rights of their daughter, cousin, or neighbor. These relatives may like the idea of the child maintaining a relationship with the parents, even though the parents are unable to regain custody of the child.

While ASFA scrutinizes decisions to return children to potentially dangerous homes, it does not emphasize the need to scrutinize the removal of children from their parents. Unnecessarily taking children from their families is comparably as harmful to children as returning them to dangerous homes. It is, of course, beneficial for a child to be removed from a dangerous home, but it is also extremely detrimental to a child to be separated from loving parents who are temporarily unable to take care of their child.

These pragmatic problems with the law are connected to a deeper, philosophical flaw in ASFA. Congress misidentifies the problem with foster care in America as rooted in the fact that not enough children are being adopted. I believe, however, that it is that too many children are removed from their homes. This problem is magnified by the race and class dimensions of the foster care system.

Every year nearly two hundred thousand children are removed from their homes, with Black children being the most likely of any group in America to be taken.²⁵ In 1996 Black children, who make up fourteen percent of the population under age nineteen, constituted forty-seven percent of the foster care population. This figure reflects nationwide statistics, including states like Vermont and Idaho that do not have many Black children. In states with a large Black population, like Illinois and New York and urban centers like Chicago and New York City, the racial disparity is astounding. In Chicago almost ninety percent of the children in foster care are Black. Martin Guggenheim, who teaches at New York University, reports that of forty-two thousand foster care children in New York City only seven hundred

25. See Adoption and Support of Abused Children: Testimony before the Senate Comm. on Finance, 105th Cong., available in 1997 WL 14151914 (statement of Valora Washington, program director for the Families for Kids Initiative of the W.K. Kellogg Foundation); PATRICK MURPHY, WASTED: THE PLIGHT OF AMERICA'S UNWANTED CHILDREN (1997). Black children make up 56 percent of the 110,000 children in foster care waiting to be adopted. U.S. Dept. of Health & Human Services, Administration for Children and Families, Administration on Children, Youth and Families, Children's Bureau, Foster Care and Adoption Statistics (Jan. 1999) <<http://www.acf.dhhs.gov/programs/cb>>.

fifty are white.²⁶ Something is wrong. Even if the 41,250 Black and Latino children get adopted, this will not solve such a fundamental injustice.

I have nothing against adoption. I have written extensive criticism on the emphasis we place on genetic ties and the amount of money people spend to have genetically-related children.²⁷ This society supports people's efforts to have genetically-related children and the incredible amounts of money spent to do so, yet society tells another group of people that their children must be adopted. A double standard exists along class and race lines as to who makes a suitable parent and who does not.

There is a story I once heard that captures ASFA's philosophical flaw.²⁸ Three men were walking along a stream that was flowing down a hill when they began to notice babies floating in the water. The men kept scooping up the babies because the babies would drown if the men did not save them. As this occurred, more and more babies came down the stream. They kept grabbing the babies, trying to save them. Then, one man walks away and starts climbing up the hill. The other men ask, "What are you doing? You must help us save these babies." He replies, "No, I am going to find out who is throwing these babies into the river."

Like the two men in the story, ASFA directs attention away from the source of the problem. Its focus is on scooping babies out of the river, and it is not concerned with why there are so many falling in the river. Another important question to ask is why the babies are a particular color. I do not hold anything against the people grabbing the babies in order to save them, but it will not stop the influx of children into the system. Senator DeWine, one of ASFA's sponsors, stated that Congress aimed to make sure every child had an opportunity to live in a safe, stable, loving, and permanent home.²⁹ I too share that same

26. See Remarks of Martin Guggenheim, Conf. on Children's Rights and the Constitution, University of Pennsylvania School of Law, Feb. 6, 1999.

27. See Dorothy E. Roberts, *The Genetic Tie*, 62 U. CHI. L. REV. 209 (1995).

28. While I first heard this story attributed to Judge Leon Higginbotham, I am not sure exactly who first told it.

29. See 144 CONG. REC. S1245201, S12452.

wish, yet Senator DeWine anticipates achieving this through adoption. He did not mean that every Black child in America could be raised in her own community in a stable, safe environment by her parents. Instead, he meant we must get them adopted into other safe, stable, and loving homes. This difference in the meaning of children's welfare highlights ASFA's focus on adoption to fix a larger social problem—child poverty. In turn, child poverty is related to racism in this country. Half of all Black children are born into poverty in the United States.³⁰ The goal should be to reduce the need for adoption, because there is nothing positive about large numbers of children in foster care. We should applaud any country with low rates of child poverty and a child welfare system that minimizes the number of children going into foster care and needing adoption.³¹

Two other trends were developing at the same time as ASFA—welfare reform and transracial adoption. Within a year of ASFA's enactment, Clinton signed the new federal welfare reform law,³² which took away the federal safety net for poor children in this country. Researchers like Mark Rank are beginning to discover the impact of welfare reform on children.³³ Will changes in welfare bring increased numbers of children into foster care? Newspapers report stories about mothers saying, "I had to put my child into foster care because I could not abide by the work requirements without child care and I cannot afford it."³⁴ A recent *New York Times* article on Wisconsin's welfare program stated that five percent of mothers cut off from federal assistance had to "abandon" their children.³⁵ This is evidence that welfare reform is pushing some families into the child welfare system.

30. See Mark Rank, *The Racial Injustice of Poverty*, 1 WASH. U. J.L. & POL'Y 95 (1999).

31. See RUTH SIDEL, KEEPING WOMEN AND CHILDREN LAST: AMERICA'S WAR ON THE POOR 180-82 (1996) (Attributing Low Child Poverty Rates In The Netherlands, France, And Sweden To Generous National Welfare Programs).

32. See Personal Responsibility and Work Opportunity Reconciliation Act of 1996, *supra* note 8.

33. See Rank, *supra* note 30, at 95.

34. Jason DeParle, *Welfare Law Weighs Heavily on Delta, Where Jobs Are Few*, N.Y. TIMES, Oct. 16, 1997, at A1. See generally Martha Matthews, *Assessing the Effect of Welfare Reform on Child Welfare*, 32 CLEARINGHOUSE REV. 395 (1999).

35. See Jason DeParle, *A Welfare Plan Justifies Hopes and Some Fear*, N.Y. TIMES, Jan. 15, 1999, at A1.

At least one county in California imposes “full family” sanctions that cut off payments to children.³⁶ This sanction triggers a visit by a welfare case worker that may lead to a child welfare investigation.

Former Speaker of the House, Newt Gingrich, believed a connection between welfare reform and termination of parental rights existed; he proposed taking the money saved by the reduction in benefits to poor mothers and using it to build orphanages for their children.³⁷ Moreover, the federal welfare law leaves federal funds for foster care and adoption uncapped as entitlements. On the other hand, cash assistance sent directly to families and the funds for family preservation programs are capped and these funds have been reduced. Thus, money is transferred from poor assistance programs to foster care.

The press when discussing ASFA would mention reducing barriers to transracial adoption in connection with terminating parental rights and freeing children for adoption.³⁸ Thus, they have also added a racial element to ASFA’s goals. *U.S. News and World Report* recounted the experience of a white couple who adopted two Romanian children because they were unable to adopt a Black child in America.³⁹ This couple encountered so many barriers to adoption that they were forced to leave the country to find a child. The story served as an opening to the magazine’s coverage of ASFA. However, ASFA does not deal with transracial adoption. The conclusion one is left to draw is that perhaps ASFA will increase the termination of Black parents’ rights, thereby freeing more Black children for white couples to adopt. Some people link the faster termination of parental rights with the end of race-matching policies, which had existed until recently, as strategies to increase the adoption of Black children by white families.

We do not yet know what ASFA’s actual impact will be on the number of terminations of parental rights and adoptions or what racial

36. See Conversation with Martha Matthews, Staff Attorney, Youth Law Center (Jan. 1998).

37. GOP Welfare Plan Would Take Cash from Unwed Mothers to Aid Adoptions, *Chi. Trib.*, Nov. 14, 1994, at A7.

38. See, e.g., Amanda Spake, *Adoption Gridlock*, *U.S. NEWS & WORLD REP.*, June 22, 1998.

39. See *id.*

disparities will occur as a result. However, I can describe the message conveyed by newspaper articles about ASFA and by the testimony during ASFA's hearings.⁴⁰ The message is clear: the reunification with biological families is unsafe, risky, and dangerous and adoption is safer and better for children. Virtually every mention of biological families in the testimony was negative. When biological families were mentioned, usually it was a family that killed or severely injured their child. Most spoke of adoptive homes as loving, safe, and stable and rarely acknowledged the possibility that such homes could also be with the biological family. In other words, we can find permanence and safety only in the form of adoption. The family preservation mandate and reasonable efforts language remains a part of the law, but the rhetoric surrounding the passage of ASFA contradicts this language.

Family law typically treats biological families as the real families and adoption as second-best alternative. However, ASFA's proponents called adoptive families real families and disparaged biological families. For example, one Senator stated, "The law is going to be about the joy of adoption and the bonding of a 'real family' to so many kids."⁴¹ He and others constantly reminded the audience that biology does not make a real family. Now all of a sudden adoptive families are "real families" and biological families are fake, dangerous families.

A stark contrast also exists in the way judges think about family ties in the divorce setting versus foster care.⁴² In the divorce context it is assumed that children need to maintain contact with the non-custodial parent. Usually, after a divorce the judge enters an order allowing visitation for the parent who is not the legal custodian of the child. Judges go out of their way to make sure the child maintains contact with this parent, even at the cost of sometimes inflicting trauma on the whole family. If the mother remarries and a stepfather is raising the child, the stepfather does not replace the biological father.

40. See *supra* note 13.

41. 143 CONG. REC. H10776-05, H10790.

42. See ROBERTS, *supra* note 1, at 8-21; PATRICIA HILL COLLINS, BLACK FEMINIST THOUGHT: KNOWLEDGE, CONSCIOUSNESS, AND THE POLITICS OF EMPOWERMENT 67-90 (1990); MARTHA ALBERTSON FINEMAN, THE NEUTERED MOTHER, THE SEXUAL FAMILY, AND OTHER TWENTIETH CENTURY TRAGEDIES (1995).

With foster care the only person whose rights are diminished is the biological parent. Once the child is removed from the home, it is often assumed to be in the child's best interests to end contact with the parents quickly and permanently. Why is that? One explanation is that we view adoption as being permanent, and we want children to have a clean move to a new home. Maintaining contact with the biological parents prolongs the messy situation of foster care. Another explanation is an economic one. If children are adopted into more economically privileged families, then the burden is less for the state than caring for the child in foster care while maintaining contact with the poorer parent.

I think the explanation has more to do with our society's inability to value the bonds between poor parents and their children, especially poor Black parents and their children. Historically, this bond has been disparaged and demeaned. Black mothers are portrayed as transferring deviant lifestyles to their children. It is beyond many people's imaginations that Black children in foster care have a strong, loving, healthy, and emotional attachment to their parents. Dominant American culture usually describes such a relationship in negative terms. It makes it easier to imagine the child screaming, "Don't make me go back to that horrible home" than to see the child screaming, "I want to see my mother."

The idea of family preservation as contrary to children's rights masks political struggles in this country that are centered around hierarchies of race, class, and gender. I want to advocate a notion of children's rights and welfare that accounts for this political context. These political struggles help to propel child welfare policy and to provide the sources of children's welfare. Children are affected by the value placed on the group to which they belong. Policies that devalue Black families also hurt individual Black children because their societal status, welfare, and identity are intricately tied to the status and welfare of the group.

Finally, I think we need to reclaim some of the insights of the Black liberation movement of the sixties, even though it is unfashionable. We need to find a way of thinking that incorporates child welfare issues into the broader struggle to eradicate racial oppression as well as other

kinds of oppression in this country. This is the only way to tackle the problem of foster care and to address why five hundred thousand children, primarily Black children, are in foster care. I fear that the shift in child welfare policy draws attention away from these goals and makes it less likely that we are ever going to achieve them.