

RACE & CHILD WELFARE:
DISPROPORTIONALITY, DISPARITY, DISCRIMINATION:
REASSESSING THE FACTS, RE-THINKING THE POLICY OPTIONS

A Working Conference

Harvard Law School, Cambridge MA

January 28-29, 2011

SYNOPSIS of Remarks by Elizabeth Bartholet

My remarks were limited to two brief Introductions, one to the Conference as a whole, and one to the sessions held all day Saturday. I focused on the Nature, Design and Goals of the Conference. My ideas on the issues are set forth in my article: *The Racial Disproportionality Movement in Child Welfare: False Facts and Dangerous Directions*, 51 AZ L Rev 871 (2009), available on the Conference website, under Conference-Related Materials.

This Conference brings together, as Speakers and Participants, an extraordinary group of child welfare leaders, with an impressive range and depth of knowledge, experience, and influence. The sponsoring and participating organizations include Chapin Hall at the University of Chicago, the National Council of Juvenile and Family Court Judges, and the National Court Appointed Special Advocates.

The Conference takes on the issue of what is called “Racial Disproportionality” in Child Welfare, which relates to the conceded fact that black children appear in foster care in numbers disproportionate to their population percentage. One goal is to explore in depth the reasons for this phenomenon and specifically to address the question as to *whether or not* child welfare system bias is responsible. A second goal is to explore policy options based on our best understanding of the facts. We mean to take seriously the idea that empirical understanding should guide policy.

We begin Friday afternoon with a panel on the historical and social context, believing that this context is helpful in thinking about today’s issues.

Saturday morning the first Facts panel is designed to address entry into foster care, and identify whether current child protective system (CPS) bias *is or is not* responsible for the racial disparity in entry rates. The speakers will explore how *actual* maltreatment rates compare to *official* rates, by race, the significance of the NIS-4 which concluded that black maltreatment rates were roughly twice white maltreatment rates, and the degree to which foster care provides important protective services for children.

Dorothy Roberts in the Friday afternoon session characterized removal to foster care as punitive for black children, based on her claim that CPS was systematically guilty of *overintervention*. I responded in brief to this claim, arguing that the evidence indicates CPS is more guilty of

*under*intervention, and that fostercare functions generally to protect rather than punish black children. I stated:

- I did not believe that the caseworkers referred to by John Mattingly, Commissioner of the NYC child welfare system, were regularly removing children to foster care because of a mother's mere poverty or lack of childcare as Dorothy indicated.
- Children characterized as victims of "neglect" die at the same or higher rates as those characterized as victims of "abuse."
- Most studies of *actual* incidence of maltreatment show far more serious maltreatment takes place than is reflected in the removal rate.
- Children reunified die and are otherwise maltreated at higher rates than those kept in foster care.
- And while I agree with Randy Kennedy that the Drug War is irrationally punitive, this has little bearing on the key issues here. Children are not removed because of mere drug law violations by their parents, but because of serious substance abuse which fundamentally undermines their capacity to parent.

The second Facts panel is designed to address exit from fostercare, and again to identify whether current CPS bias plays any role.

The third and fourth panels are designed to address Policy and Practice Options. To date the Racial Disproportionality literature has placed great emphasis on CPS system bias as the problem, and reducing bias as the solution. *But if* current system bias is not the primary explanation for the high level of black child representation in foster care, *if* black children are subject to significantly higher rates of actual maltreatment than white, *if* official removal rates largely mirror actual maltreatment rates, *then we should think about other policy options, ones more focused on prevention and protection.* These two panels are designed to open up for discussion a range of such options. Included are presentations on early family support and maltreatment prevention, early intervention to protect infants born affected by drugs and alcohol, family drug treatment courts, concurrent planning, and removing irrational barriers to nurturing forms of permanency.

The final Policy Panel Discussion is designed for panel members to provide their reflections on what can be learned from the prior Fact and Policy sessions, based on their own experience, knowledge and varied perspectives.

For "The Racial Disproportionality Movement in Child Welfare: False Facts and Dangerous Directions," 51 Ariz. L. Rev. 871 (2009), click [here](#):

<http://www.law.harvard.edu/programs/about/cap/cap-conferences/rd-conference/rd-conference-papers/bartholetfinalrd.pdf>