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Posted: February 11, 2011 12:34 PM

The Future of Foster Care: Are We Too Cheap to Keep Children Safe?

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The safety of America's foster children is a window into the dramatic change this country needs.

In late January, a critical mass of the nation's top child welfare researchers and professionals assembled at Harvard Law School's Austin Hall to discuss the question of racial disproportionality in this nation's foster care system. But more than a discourse on racial inequity, the conversation lay bare, in very stark terms, the larger economic and societal deficiencies that must be rectified if we are to have a nation where children are adequately safe from the type of serious abuse and neglect that land them in foster care.

It is a fact that black children populate the foster care system at a disproportionately higher rate than white children. The question is why this occurs, and what the proper response is. Sparing nuance, there are essentially two camps on the subject: one that argues bias within the child welfare system is a significant factor in this disproportionality, and the other that explains the phenomena largely through research showing higher rates of abuse in black families as the reason for higher removal rates of black children.

The movement that espouses bias has gained traction over the years with policy and practice that work to reduce the number of black children who enter the system and speed the exit of those who do. While there is no discernible causal link, the number of children in out-of-home foster care (where they are living with a non-relative) has dropped precipitously, largely due to a stunning reduction in the number of black children. In 1998, 240,000 of the 560,000 children in out-of-home care were black, according to the Department of Health and Human Services. By 2009, that number had dropped to 127,000, representing 82 percent of the total reduction in out-of-home placements since 1998.

While increasing the numbers of children who safely make it out of foster care through healthy forms of reunification with biological parents, adoption and placement with kin is cause for

celebration, some argue that there is an inherent danger with reducing the number of black children who enter care as a strategy to reduce racial disproportionality.

"If black children are in fact subject to serious maltreatment by their parents at higher rates than white children, it is in their best interest to be removed at higher rates than white children," wrote the conference's primary organizer, Elizabeth Bartholet, in a 2009 Arizona Law Review article.

Bartholet, the faculty director of Harvard Law School's Child Advocacy Program, explains that a key driver in the movement towards reducing disproportionality has been the Congressionally mandated National Incidence Study (NIS), which periodically tracks incidences of child abuse and neglect. The third wave of these widely referenced reports was released in 1993 and asserted that there was no difference between white and black maltreatment rates.

"The NIS findings suggest that the different races receive differential attention somewhere during the process of referral, investigation and service allocation, and that differential representation of minorities in the child welfare population does not derive from inherent differences in the rate at which they were abused or neglected," the authors of NIS-3 wrote.

This powerful sentence suggests something seriously afoul in how child welfare workers make decisions about removing children. The implication being that they rip children from their families at least in part out of racial bias, not only because of the children's need to be physically protected.

Brett Drake, a researcher at Washington University, used his time in Austin Hall to drive home just how prevalent the National Incidence Study was in the debate over disproportionality, that is until January of 2010, when NIS-4 was released.

The findings drove a sword into the heart of the bias argument.

"The NIS-4 found statistically significant differences between black and white rates of child maltreatment, contrary to the findings of the first three NIS cycles," the study itself reads.

Here Drake pushed further in a discussion of the appendices of NIS-2 and 3, which show that there was a difference in the real rates of child maltreatment between black and white families all along. But because confidence intervals between the real rates overlapped in NIS-2 and 3 the studies' authors claimed that there was no difference in rates of maltreatment. In fact the ratio of black to white child maltreatment in NIS 2 was 1.87 to 1; in NIS 3 was 1.51 to 1; and in NIS 4 was 1.73 to 1.

"Need, not bias, appears to be the main driver of disproportionality," Drake concluded.

And this was precisely the point of the conference. To focus on why we as a society let certain children need foster care more than others. To ask how we as a society allow poverty to crush certain people even while knowing that this results in children being beaten or worse.

Harvard Law Professor Duncan Kennedy, an outsider to child welfare, offered a lucid basic analysis of the true state of affairs. To adequately address child maltreatment, Kennedy argued, would require addressing the underlying economic injustices that befall poor people in general and poor blacks in particular. This would require a scale of public social investment something akin to the Great Society or the New Deal. But, because we as a society accept as fact that such an investment is politically impossible, we will continue to settle on trading the safety of our children against child welfare's ability to maximize limited resources.

Most simply put: we are too cheap to keep children safe.

So, as the conference wound down, the dark and cold descending on the snow outside, the dark and cold enormity of the problem set in. Cindy Lederman, a judge in the juvenile division of the 11th Judicial Court Circuit, sitting on a panel flanked by longtime warriors for children's rights, summed up the need for this to be a country where we focus our attention on those who need it the most. Of course, this runs directly against the free-market, pick-yourself-up-by-the-bootstraps ideology that dominates so much of our political discourse.

The simple goal of keeping children safe will require dismantling this prevailing ideology. Keeping children safe will force us as a culture to look at social services as the necessary good of society, not as an unnecessary evil to be cast away.

With all the calls for slashing budgets and extending tax breaks for the rich, with the steady redistribution of wealth away from the poor, this challenge may seem insurmountable. But it is not. It may seem too complex, too hard to change. But it is not. A time of reckoning is coming, and our ability to withstand the punishment of our greed will first be a measure of how well we treat and protect our collective foster children, then our most needy citizens.

The panel from which Lederman spoke was, as I noted, peopled with long time advocates, and leaders of huge administrations such as David Sanders, who formerly ran Los Angeles County's sprawling Department of Children and Family Services, and John Mattingly, who currently runs New York City's Administration for Children and Families. These and all the others in Austin Hall are the people who stare straight at the complex horror of our society's failure to care for children, and despite woefully inadequate resources, continue to find solutions.

But if the thesis is correct, if making children safe truly requires changing the overarching ideology, then juvenile judges, social workers, children's rights attorneys and social scientists cannot do it alone.

Instead, the conversation being held in Austin Hall on a cold Saturday in January must have a broader audience. Representatives from all sectors of our economy and government, starting with the leaders of other public administrations -- health, mental health and education -- must join the conversation and offer solutions.

When we all understand what the group in Austin Hall has built their lives on, that our collective future is at its truest a measure of the success of our collective children, then I have no doubt that

the impossible will become possible; that we can break a broken ideology and create a more equitable, nay exceptional, America.

It's at least worth a life's try.

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