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Permanency Planning and the Child Abuse Prevention and Treatment Act: The Paradox of Child Welfare Policy

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The Child Abuse Prevention and Treatment Act of 1974 and the Adoptions Assistance and Child Welfare Act of 1980 have imposed conflicting mandates on the public child welfare system. CAPTA places the moral weight of the federal government behind professional intervention with troubled families, while the Adoptions Assistance Act was designed to protect the autonomy of families. As these policies currently stand, the goal of protection of vulnerable children is seriously undermined.

One of the major themes in child welfare since the Progressive Era has been a growing commitment to the emotional, social and economic dependence of children. The belief in the legitimacy of this dependence is at the center of child welfare policy, especially policies designed to prevent child abuse and neglect and those intending to provide substitute care for children. This paper presents an analysis of two policies designed to promote the goal of protection of dependent children: the Child Abuse Prevention and Treatment Act (1974) and the Adoption Assistance and Child Welfare Act (1980). The article begins by offering an historical perspective of the emergence of the belief in childhood vulnerability in the Progressive Era and discusses subsequent efforts to fashion a set of policies that would consistently insure the protection of children. The tension between family rights and the necessity for public intervention in family life has been an ongoing theme in child welfare policy since the progressive Era; this theme was sharply outlined in the debates surrounding the passage of the two landmark federal policies which currently underlie public child welfare practices.

The contradictory hypotheses of these policies has led to conflicting mandates for child protective services which constrain the best efforts of child welfare professionals to safeguard vulnerable children.

The Progressive Era and the Emergence of Child Welfare

Throughout the colonial period and well into the 19th century, all but the children of the wealthiest families were viewed largely in economic terms: as an asset to the family or, in cases where there was no viable family, a burden to the state. It is this perspective which undergirded the system of apprenticeship or "binding out" of dependent children in the 18th and 19th centuries. Public care of children was limited to almshouses, orphanages and houses of reform for much of the 19th century (Rothman, 1971). Public concern for the emotional well-being of children and their developmental and social needs awaited a confluence of factors: the emergency of the child saving movement at the end of the 19th century; the discovery of child abuse as a social problem in the same period; and the increasing demand for skilled labor facilitating the passage of child labor laws in many states around the turn of the century.

Another sign of the increased legitimacy of the conception of childhood vulnerability was the passage of laws in several states at the end of the 19th century removing children from almshouses, where many had been confined alongside adult poor, some of whom were mentally disordered (Folks, 1902; Bremner, 1972). These policies were seen as humanitarian efforts to subtract children from the economic equation of industrialization. While the child labor laws presented poorer families with severe hardships, they also set the stage for a less instrumental view of children than had existed previously.

In terms of public policy, during the Progressive Era children began to be seen as having substantially different needs than adults; vulnerability became a major characteristic of childhood. This conviction demanded that adults insure the child's protection and proper development.

White House Conference on Youth

The question of how best to protect children and insure their proper development was first addressed in a public forum at the first White House Conference on Youth in 1909. Conference participants strongly endorsed family care of poor children as a far preferable alternative to institutionalization in almshouses or orphanages. The theme of family as the most important factor in child development had not been a significant one before this Conference; its emphasis there gave an important boost to Progressive reformers' crusade to provide financial assistance for widowed or abandoned mothers caring for their children in their own homes (Gibson and Lewis, 1980). By 1913, 20 states had enacted mother's pensions to enable children from poorer families to be cared for in their own homes rather than in institutions (Bremner, 1972).

The Growth of Foster Care

In highlighting the importance of a family environment for children, reformers also gave impetus to the trend toward foster care that had been evident since 1853, when Charles Loring Brace organized the Children's Aid Society in New York to send homeless children West where they were cared for by rural families. Almost 20,000 children were sent West in the first 20 years of the Society's operation (Folks, 1902; Bremner, 1972). As the creation of the Children's Bureau in 1912 focused more attention on children, foster care too gained increased legitimacy as a way to care for vulnerable children. It is important to note that during the Progressive Era, foster care originally was seen as a means of preserving family values, not as constituting a challenge to those values.

The Rise of Child Protection

The theme of protecting children from family abuse developed separately from that of promoting family life as the strongest guarantee of children's well being, but it too was linked to the emerging view of children as dependent and vulnerable. The now famous case of Mary Ellen, a child severely abused by her foster mother in 1874, has been described

frequently as responsible for the creation and legitimation of protective services for children (Richett and Hudson, 1979; Nelson, 1984). As a result of this case and the subsequent creation of the New York Society for the Prevention of Cruelty to Children, the formerly private arena of parent-child relationships began to be subject to public intervention, initially from private agencies with public mandates (like the NYPCC). Progressive reformers were later to question the intrusiveness of these agencies, which they felt unfairly disrupted poor families. Instead these reformers urged a reaffirmation of the superior value of the home and family unit as the best means of insuring the child's well-being. Nevertheless, the principle of child protection had been legislated in most Eastern states by the end of the 19th century and would reemerge with vigor in the 1960s (Nelson, 1984).

During the Progressive Era the tensions evident in current child welfare policy were first formulated: what were the respective roles of the family and the state in the protection of the vulnerable child? The assumption that the child should be instrumental in meeting the needs of the family had been replaced by the conviction that the family had the duty to be instrumental in the development of the child. This duty implied a public responsibility to guarantee its fulfillment and would ultimately claim considerable public resources.

Conflicts in Contemporary Child Welfare Policy

Since the Progressive era, the power of the government to intervene in family life has increased substantially. In spite of the firmly established principle of government intervention on behalf of the child and the commitment of public resources to the goal of protection, a perception exists that public child welfare has not accomplished its mission (Besharov, 1983; Besharov, 1987; Cox and Cox, 1984; Faller, 1985). The feeling that public child welfare has not entirely succeeded in its mandate is linked to the continuing increase in reports of child abuse. In particular, the increase in the number of child fatalities due to maltreatment has quickened public interest in the protective service system (National Center on Child Abuse Prevention Research, 1987; Little Hoover Commission, 1987).

At least part of the reason for the difficulties faced by child welfare workers in their efforts to carry out their mandates to protect children lies in conflicting contemporary policies which embody the same unresolved conflicts about the family and the government originating in the Progressive Era. The Child Abuse Prevention and Treatment Act of 1974 (Public Law 93-247) positioned the federal government to assume a proactive role in the detection, and to a far lesser extent, prevention and treatment of child abuse, especially as it occurs in the family. This legislation put the moral weight of the federal government behind the necessity for *professional intervention* in the family unit in cases of suspected abuse or neglect. The Adoption Assistance and Child Welfare Act of 1980 (PL 96-272) embodied the ethos of permanency planning, and shifted the support of the federal government away from intervention in the family system, and towards placement prevention and reunification. In short, the Adoptions Assistance Act of 1980 casts the federal government in the role of *protector* of the family from *outside interference*.

Social Origins of the Two Policies

Both of these policies evolved from a new interest in children's rights that appeared as part of the wider movements of the 1970s (Pine, 1986). The movement for social equality and civil liberties of the 1960s and early 1970s, which transformed the ways members of minority groups and women defined themselves, also sought to reorder the relationship of members of these groups to the political and economic structures in the country. These movements for social equality focused attention on the rights of children, especially since the denial of these rights was perceived to be intimately tied to the oppression of women. The movement for children's rights followed logically out of these gender and ethnic based struggles for equality. The disillusionments attendant on the Vietnam War and Watergate also led to the recognition that sanctioned authority (including parental authority) could be oppressive, that its legitimacy was open to question and that advocacy on behalf of those underrepresented in systems of power was legitimate and even necessary.

The Child Abuse Prevention and Treatment Act of 1974 was fashioned out of this ethos, although it received its immediate impetus from media attention to the "battered child syndrome" in the late 1960s and early 1970s. New attention had been directed to the problem of abused children as a result of a series of investigations of childhood injuries by the medical profession in the late 1940s and 1950s. In 1962, C. Henry Kempe published "The Battered-Child Syndrome" in the *Journal of the American Medical Association*, thereby establishing a new definition of an old social problem (Kemp). The public interest in child welfare grew as a result of the publicity generated by this article, leading every state to enact legislation between 1963 and 1967 encouraging the reporting of child abuse (Richett and Hudson, 1979; Nelson, 1984).

The Adoptions Assistance Act of 1980 reflected the same interest in protecting the rights of vulnerable children as had CAPTA, but it also was a product of the more conservative climate of the Carter administration and its concern for family values (Antler, 1978). An eagerness to protect the family from outside influences, especially what were seen as the social, moral and governmental excesses of the late 1960s and early 1970s, characterized the political rhetoric of the Carter administration. This climate led to a reaction to the growth of the foster care system, which was seen as infringing on family rights. Federal support for foster care had come in the form of the Social Security Act Amendments of 1962, which appropriated money for state sponsored child welfare services and provided federal funds for foster care for the first time. The availability of these funds increased the incentives for states to place children in foster care (Gibson and Lewis, 1980). The different strategies reflected in the policies are evident in an analysis of the hearings surrounding their passage. CAPTA is based on the assumption that professionals have the duty to intervene inside the boundaries of family life in order to insure the well-being of children. The Adoption Assistance and Child Welfare Act, on the other hand, is an effort to protect the family from the interference of the child welfare professional and the policies of the child welfare establishment. CAPTA, in short, seeks to protect children from parents who would misuse their authority, while the 1980

Act seeks to protect children from policies which undermine the authority of parents.

The Child Abuse Prevention and Training Act

CAPTA authorized limited government research into child abuse prevention and treatment; created a national clearing-house for child abuse data, and established funding incentives to tighten up state reporting laws. The only provision of the 1974 law that suggested the increased role protective services were to have in the coming decade was a requirement that states must have personnel and facilities available for treatment as well as for reporting and investigating in order to receive federal funds. Since the problem of child abuse was viewed as limited to a small minority of psychologically disturbed families, the implications of this requirement for the dramatic increase in protective services was not anticipated by lawmakers. In fact, the perception that this low cost measure did not abridge any rights or forge any serious new federal commitments was critical to the passage of the act (Nelson, 1984).

After 1974 states revised their own reporting laws in line with CAPTA to qualify for federal funds. It was in this round of revisions that states added the "protective custody" provisions to mandatory reporting laws that were to have profound consequences for the growth in protective services (Nelson, 1984). Protective custody made explicit what had always been implicit in reporting laws: the necessity for direct intervention by child welfare professionals in the family system. In hindsight it is clear that the intentions of the sponsors of CAPTA and state reporting laws were confounded by their ignorance of the actual incidence of child abuse and the magnitude of reporting that would occur. By the time of the Congressional hearings on the renewal of the legislation in 1977 and 1981, however, there was a sense that the problem was far greater than had been believed in 1974, though exact figures were still elusive (House, Hearings, 1977, p. 2, 13, 134; House Hearings, 1981, pp. 44-45). In 1977 child abuse was considered to be of "epidemic" proportions, as protective service agencies in various states were flooded with reports of child abuse that overran the child welfare system (House Hearings, 1977, p. 28). In the 1981 hearings child abuse

similarly was described by one witness as reaching "alarming proportions" (House Hearings, 1981, p. 45). One physician testified in 1977 that in New York City reports of child abuse had increased dramatically since 1974. He complained that "We are being flooded with case reports but we don't investigate them. The children necessarily are being sacrificed." (House Hearings, 1977, p. 43.) Several states reported a dramatic increase in the reports of child abuse since the passage of CAPTA; one Massachusetts official told of a 700% increase (House Hearings, 1977, p. 85,89). The most important response to this increase in reports of child abuse was the urgent call for more professional training and services to treat abusing families and protect abused children. Social workers were frequently cited as the most critical professionals among those working in protective services. One NASW representative argued staunchly that the "social worker is the key professional in services to abused children and their families" (House Hearings, 1977, p. 24, 68, 116, 128; House Hearings, 1981, p. 33, 124-125).

In spite of the accumulation of convincing testimony that more than reporting laws were necessary to protect at risk children, Congress did not authorize any significant increase in funding for social services to vulnerable families. Instead, the blind faith that mandatory reporting would solve the problem of child abuse was reiterated in 1977 and in subsequent extensions of the original bill. Legislative myopia notwithstanding, it is not surprising that CAPTA and its extensions had the net effect of increasing professional and government intervention in family life, given the theme of professional expertise and intervention that was a *leitmotif* of the hearings. The perception of this interference has provoked several critics. One child welfare expert, Theodore Stein, characterized the legislation as providing for "coercive intervention into family life that is unprecedented in American history," and noted that it "jeopardizes the values that we place on family privacy and on parental autonomy" (1984, p. 302). Douglas Besharov, who has written extensively on issues of child protection, similarly pointed out "an unprecedented increase in the level of state intervention into private family matters over the past twenty years" (1985, p. 19). Governmental interven-

tion into the family has come from police officers, lawyers and judges; all are caught up increasingly in the nexus of family life.

The profession most concerned with child abuse and the one which has attracted the most public criticism is social work. Since public agencies mandated to receive child abuse reports were staffed with social workers, the connection in the public mind between child abuse and the social work profession was axiomatic. This connection was strengthened by the insistence of the lawmakers that the connection between poverty and child abuse be ignored. Lawmakers instead preferred to support what has been called the "myth of classlessness" in order to limit the scope of the problem to the individual, psychological realm (Pelton, 1981).

This emphasis implied a casework approach, one that was seen to be the domain of the profession of social work. This perspective on the problem precluded a critical look at child care services, nutrition, economic inequality, joblessness, and other factors impacting children at risk for abuse. Such a perspective, completely missing in the assumptions underlying CAPTA, would have revealed that the absence of public goods such as child care, prenatal and family nutrition programs were at least as significant in placing children at risk as the psychological problems presented by some parents. Failure to look at wider issues, such as joblessness and serious structural inequality that impact on the well-being of families, was a fundamental constraint on any policy attempt to protect children from abuse.

In spite of this narrow emphasis on the casework approach to the problem of child abuse, one unanticipated consequence of CAPTA was an adversarial relationship that tended to develop between the child welfare worker and the family. Due to the requirement for reporting and the consequent necessity of investigating incidents of suspected child abuse, child welfare workers have sometimes functioned more as detectives than as empathetic caseworkers or change agents (Faller, 1985). Since federal funding has not kept pace with the number of families who need services as a result of reporting laws, the ability of the child welfare professional to offer casework to clients has

been seriously compromised (Stein, 1984). Under these circumstances, it is not surprising that momentum gathered among policy makers for another look at public child welfare.

Adoptions Assistance and Child Welfare Act

The discontent with public child welfare in the wake of CAPTA was growing at the same time as the social work profession was taking another look at foster care, especially at the problem of "drift" and the consequent sense of instability and impermanence that seemed to be experienced by many children placed in foster homes (Maas and Engler, 1959). The clear implication of the problem of drift was that children were suffering in foster homes. Foster care itself emerged as a public issue two years after the passage of CAPTA. The ultimate result of the public concern expressed about the problems of foster care was the passage of the Adoptions Assistance and Child Welfare Reform Act of 1980 (PL 96-272).

During the several rounds of hearings in the late 1970s that preceded the enactment of the law, it became clear that foster care, which had been upheld in the Progressive Era as an important means of protecting family values, was now viewed as antithetical to those values. An important argument of those testifying before Congress was that the child welfare system was to blame for allowing this "drift" to take place by ignoring the biological parents, failing to monitor children in foster placements, and most importantly failing to work toward the goal of reunification of parents and children. One HEW official in 1979 summed up these problems as the "crisis of foster care" (House Hearings, 1979, p. 3). There was a strong sense that child welfare professionals were interfering unnecessarily in family life. An influential report prepared for the Subcommittee on Children and Youth of the Senate Committee on Labor and public Welfare in 1975 argued that preference should be "ordinarily given first to preserving the biological family; second to creating adoptive families; and third to placing children in stable foster homes" (Mott, 1975, p. 6). The priorities had shifted away from foster care because: "Central to the rights of a child are the rights to permanence, stability, continuity, and nurture during childhood." Foster care was not seen as able to

provide for these needs, partly because "Discussions between biological parents and case workers about the care children receive are likely to be infrequent and one-sided." The report went on to explain that mothers have complained that "they were not consulted about alternatives to foster care for their children and that they had no say in the selection of the foster home for the child." Furthermore, families were discouraged from seeing their children by "the caseworkers, the foster parents, or the distance they would have to travel to see them." Caseworkers were criticized for prohibiting foster parents from "developing close emotional ties with the children placed in their care." One of the major recommendations of the report was to "Limit intervention by the case worker wherever practical" (Mott, 1975, p. 1, 37). This assault on the competency of the casework was a dramatic reversal from the reliance on the professional intervention of the social worker that was a continuing theme in the CAPTA hearings.

In the 1976 House hearings the capriciousness of public child welfare was emphasized. Any possibility that professional skill and judgment were at the heart of the placement process was wholly eliminated: "The welfare department can place the child in virtually any licensed foster home or institution at its whim." Voluntary placements were criticized; one witness argued that they are 'informally coerced' and that these placements should be outlawed for they provide "no independent check of a social worker's determination that placement is necessary..." The entire child welfare establishment was assailed: "welfare departments are typically not accountable to anyone for what happens to these children, children who are voluntarily placed are quite often the orphans of the living;" and "Individual social workers and judges...make highly discretionary decisions" (House Hearings, 1976, p. 102, 37,75, 83). In 1979 one representative of the Children's Defense Fund testified in House Hearings that "an antifamily bias...pervades the policies and practices of the child welfare system." Furthermore children in "child welfare systems are in double jeopardy because they are also subject to neglect by public officials who have responsibility for them." The federal role "exacerbates both the antifamily bias and the public neglect of these children" through the support of the

foster placement system (House Hearings, 1979, pp. 135–136). A spokeswoman from the APWA sounded a dissident note when she argued that caseworkers in public child welfare were largely inexperienced; she suggested that money be spent on training and services, rather than solely on regulation of the child welfare departments (House Hearings, 1976, pp. 92–93). Yet regulations were far less costly than mounting elaborate training programs for caseworkers or funding comprehensive services for families at risk, a truism demonstrated by CAPTA.

Foster care itself was characterized as “long term confinement;” children were to be “deinstitutionalized.” Congressmen were reminded of “illustration after illustration where foster care parents have abused children...” (House Hearings, 1976, pp. 37, 41). During the hearings that ultimately led to the passage of the 1980 act, there was some emphasis on economic and social problems of families at risk for foster placement. Some who testified made dramatic pleas for federally funded services for these families to prevent foster placement, including homemaker, child care and counseling services (Hearings, 1976, pp. 86, 93). Yet the commitment to provide these services was undermined by another more important theme: the cost saving that was anticipated with the contraction of the foster care system (Hearings, 1976; Hartley, 1984). Not surprisingly, while federal mechanisms for funding preventive and reunification services were built into the 1980 legislation, the amount appropriated has been far short of what was authorized. This failure to authorize funds has led many to question how many services are being provided to families, despite the requirement that “reasonable efforts” must be made to prevent the removal of the child from the home and to return those that have been removed (House Hearing, 1985, p. 169; Pine, 1986; Seaberg, 1986). Several observers have voiced concern that the low level of funding for services may be undermining the best intent of the law to provide for the welfare of children (Senate Hearings, 1985, pp. 37–39; House Hearings, 1985, pp. 84–85; Cox and Cox, 1984; Hartley, 1984; Faller, 1985).

Thus the 1980 legislation served a conservative purpose by fashioning a more *laissez-faire* approach to child welfare services and family life than had existed previously. The assump-

tion behind the 1980 Adoptions Assistance and Child Welfare Act was that protecting the family from outside interference was the best way to safeguard the interests of the child. This new form of child protection was often called child advocacy, partly in order to distinguish it from the more traditional and in some ways less credible child welfare (Richett and Hudson, 1979).

The 1980 Act did have several important consequences; one has apparently been to increase the number of children being discharged from foster homes, although this trend is apparently being offset by high reentry rates of children into foster care (Rzepnicki, 1987). Another important consequence has been the establishment of a system of review of foster placements by each state, necessary in order to qualify for foster care reimbursement. The requirements for periodic review, development of case plans and other tracking mechanisms, along with those provisions for due process for families, have no doubt served to help insure that children are less likely to 'drift' in foster care without the attention of caseworkers and the courts and so to promote the goal of permanency planning. But such regulations have also multiplied the paperwork of public child welfare workers and, combined with the increasing number of reports of child abuse received by state agencies, may have served to move them further away from the provision of services which would insure that children return home to families who are able to care for them (National Center on Child Abuse Prevention Research). In fact, the ambiguous position of the child welfare professional interfering (as a result of the CAPTA mandate) with the privacy of the family has led to resentment among those who are the subject of child abuse investigations and has led to the formation of a powerful group known as VOCAL or Victims of Child Abuse Legislation. VOCAL was a powerful force in the passage of a recent law in California (SB243) which limits the authority of the protective service system to remove the child from the home in cases of physical abuse. The resentment felt by some clients of the protective services system compromises the ability of the caseworker to offer services and some argue may increase the risk for the child (Faller, 1985; Christopher-son, 1983).

Foster Care and Protection of Children

Ironically, neither the temporary nature nor the detrimental effects of foster care assumed by policy makers have been supported by research. In reviewing studies of the effects of permanency planning on children, Seltzer and Bloksberg found that "no differences in adjustment have been found between children who were in permanent placements and those who are in temporary placements." They also found that adoption proved to be a more stable situation for children than did returning them to their biological homes from foster care (1987). In fact, recent evidence strongly suggests that children who are returned to their own homes are more likely to reenter foster placement than are those discharged to adoptive placements (Rzepnicki, 1987). Regarding the issue of "drift, one study found that a majority of foster children studied in a "large national sample experienced a low number of placements, suggesting they had a stable relationship with their foster parents" (Pardeck, 1984). A study of children placed in Pennsylvania between 1978 and 1979 found that "The majority of children who enter foster care return to their families within a relatively short time." The researchers added "Our findings also bear out those of others that the foster care experience is a relatively stable one for children with the majority having one or two placements while in care" (Lawder *et al.*, 1986).

It is questionable whether foster care in itself is harmful to children. Trudy Festinger's study of the outcomes of foster care for emancipated young adults found that "most are functioning in society in about the same way as others their age." Festinger's results moved her to ask question why so many "dire predictions" are made for children in foster care (1983).

In a recent review of research, Barth and Berry found that children who are returned to their own homes are more at risk than those who are placed in adoptive homes or with foster families (1987). The authors noted that abused children who remain in their own homes and whose families receive services are five times more likely to be reabused than children placed with foster families. They concluded that "Of all placement options, in-home services or reunification with birth families, as

it presently operates, fails most often to free from abuse and to yield developmental well-being" (Barth and Berry, 1987).

To perhaps oversimplify the thrusts of these two federal policies: the first sought to protect children from child abuse; the second to protect them from foster care. Why have few policy makers recognized that children in foster care and children from abusing homes are often one and the same? Children who are at risk for abuse may need temporary and even permanent respite from their biological families. In the absence of national child care, homemaker services and the full complement of other services that would allow us to claim a real national family policy, foster care is likely to be a very viable solution for many of these children. Child welfare professionals must be able to call on a wide range of resources to effectively accomplish their mandate to protect children. If a substantial amount of critical services are not to be made available to families, foster care takes on added significance in the effort to protect children. Barth and Berry argue that a longer service period of 2 to 3 years is necessary to protect children returned to their families, notwithstanding the family's right to privacy. Based on their review of research, the authors conclude that "Foster care, the recent whipping boy of child welfare services, appears to offer considerable developmental advantages to children and is often regarded favorably and as sufficiently permanent by them" (1987).

Conclusion

The best interests of children are not served by the confluence of these two policies. Reporting and regulations cannot by themselves provide the necessary help to children in danger of abuse or neglect. Instead substantial services to troubled families, including child care, homemaker services, widely available health care *and* foster care services should accompany a commitment to professional intervention in the form of casework services. Equally as important to the well-being of children is a domestic policy that would promote work and economic equality. With clear evidence that the despair of poverty is a serious contributing factor to the abuse and neglect of children, it is unlikely that either of these two policies by themselves can do more than transform personal tragedy into bureaucratic disorder.

Along with the growing public commitment to protect children, the belief in the importance of the family as the primary source of children's well being has remained an important theme in child welfare policy, indeed in American values generally. Child welfare professionals are suffering from the same conflicting mandates today that emerged in the Progressive Era: protect children by protecting the integrity of the family, and protect children from parental abuse. Under current conditions these goals may be too often mutually exclusive.

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