# Thoughts on the Liberal Dilemma in Child Welfare Reform

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# THOUGHTS ON THE LIBERAL DILEMMA IN CHILD WELFARE REFORM

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*Table of Contents*



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## I. INTRODUCTION

Yes the "Liberal Dilemma" is a problem in child welfare – a central problem.

My own definition of the liberal dilemma is as follows. The dominant group in the child welfare area defining policy and policy reform is and has been for the past several decades a self-styled liberal group. There are others who see themselves as liberal, including myself, who take different positions from this group. But the dominant liberal group has had a silencing impact on many liberals who fear being labelled as right-wing conservatives simply because they disagree. This can make it seem as if *the* liberal position is the dominant group position.

The dilemma or problem has to do with the nature of the policy the liberal group promotes. The policy focus is not on children, as should be the case in the child welfare area -- in theory all agree that children's best interests should be the guiding principle, or at least a major guiding principle. Instead the policy focus is on adults and their welfare. While the dominant liberal group claims to care about child interests, their real goal appears to be to serve the interests of poor adults, and to alleviate the suffering associated with poverty, including any harm parents might suffer from state intervention in cases of child maltreatment. This translates into a powerful emphasis on family preservation, keeping children at home at almost all costs when parents are charged with abuse and neglect, and providing the accused parents with "services" which often take the form of modest financial stipends or their equivalent.

A related aspect of the problem has to do with the liberal group's domination over research as well as policy in the child welfare area –

what I have called the corrupt policy-research merger.[2] The result is that programs chosen on the basis of ideology, are then supported by research designed not to *test* but instead to *prove* the programs' efficacy. This research is then presented to policy makers as proof that the programs are "evidence-based," and worthy of development on a mass scale.

The research reveals its ideological relationship to the liberal group's policy preferences, not simply in its results but in its design. There is no real focus on child best interests. Instead the focus is on demonstrating that various family preservation programs are successful in terms that will persuade policy makers to adopt them.

For example, there tends to be an emphasis on the money that such programs will save. And short-term, most family preservation programs do save money. Child protective service system intervention involves costs: costs to investigate abuse and neglect allegations, to monitor families where such allegations are substantiated, to provide services, in the more serious cases to remove children and keep them in foster care, and in the most serious cases to terminate parental rights and facilitate adoptions. But if intervention protects children from suffering abuse and neglect, and moves children to nurturing homes where they can flourish, then it saves very significant costs in the long run. Abuse and neglect have long-term financial costs in terms of such things as crime and the criminal justice system, substance abuse, domestic violence, unemployment, and homelessness. And of course there are the emotional and other costs to the children affected. However policy makers are often most interested in short-term financial cost-benefit

[2] See Bartholet, *Differential Response, supra* n.1.

analysis. The dominant liberal group knows this and so its research emphasizes short-term financial cost savings.

This research also focuses on the group's family preservation goal, and tends to define the success of programs largely in terms of whether they succeed in keeping maltreated children home with the parents responsible for maltreatment. Of course if programs are designed with a family preservation goal, it's likely that they will succeed at least to some degree in achieving this goal. But the question in child welfare research should be whether achieving this goal is good for children.

The dominant liberal group *claims* that keeping children with their birth parents almost always is good for children. But rarely does the research focus on the issue of whether family preservation programs *actually do* serve child interests.

And even when the research examines the question of child interests, it often does so in a dishonest way, making claims in glossy research reports that programs serve child interests when in fact the underlying data don't support such claims.

## II. ILLUSTRATIONS OF THE DILEMMA: THE THREE MOST SIGNIFICANT CHILD WELFARE "REFORM" MOVEMENTS OF RECENT DECADES

Each of the last major child welfare "reform" movements illustrates the essential features of the liberal dilemma noted above.

## A. Intensive Family Preservation Services (IFPS)[3]

First in time is the Intensive Family Preservation Services (IFPS) movement of the 1980s and 1990s. Edna McConnell Clark Foundation and its liberal allies were the primary forces behind this movement. The basic idea was to keep children identified as victims of abuse and neglect at home instead of removing them to foster care, providing intensive social work services to support their families for a period of roughly six weeks. The claim was that abuse and neglect generally resulted from short-term crises in family life that could be resolved with support.

The program was obviously suspect from the outset from a child best interest perspective. Extensive evidence existed at the time showing child maltreatment was generally associated with serious family dysfunction including serious drug addition, domestic violence and mental illness – problems for which short-term limited support services would provide no magic cure. Keeping victimized children at home instead of removing them to foster care posed obvious risks for repeat maltreatment. But the risks to children were defined away by the movement: children victimized by abuse and neglect were defined as "children at risk of placement," not children at risk of repeat maltreatment.

The research on IFPS during the early years of the movement was not objective research designed to educate policy makers as to the pros

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[3] These IFPS issues are discussed in more detail both in the Bartholet *Differential Response* article cited in n. 1 *supra*, and in Bartholet, NOBODY'S CHILDREN: ABUSE AND NEGLECT, FOSTER DRIFT, AND THE ADOPTION ALTERNATIVE 118-21 (Beacon Press, 1999).

and cons of the program from a child's perspective. Instead it was simply part of the IFPS advocacy movement, designed to persuade policy makers of the virtues of IFPS.

This advocacy research focused on family preservation as the key criterion to measure in assessing IFPS success – whether the program in fact kept more children in their homes of origin than would have been the case in the absence of IFPS. Of course one would expect that a program designed to keep children at home might succeed in doing so. The important child welfare question was whether children kept at home instead of being placed in foster care were better or worse off in terms of maltreatment and other measures of well-being.

But only years later did research focus on this child best interests question, and then it was only because people outside of the IFPS movement conducted the research. They found no evidence of success in terms of child best interests. But in the meantime IFPS had spread throughout the country, based on the false claim it was evidence-based and posed no risks for children.

The independent research did help stop the IFPS momentum. But family preservation forces soon focused on another program designed to keep more children at home, this one utilizing a racial discrimination theory.

B. Racial Disproportionality[4]

The various Casey Foundations and their liberal allies – known together as the Casey Alliance -- were the forces behind the Racial Disproportionality movement. The basic idea was that black children were removed to foster care at unduly high rates because of racial bias in the child protective services system. The proposed solution was to stop removing them at rates exceeding their percentage of the general population.

The program was again obviously suspect from a child best interest perspective. Child welfare experts were well aware that black families were disproportionately affected by poverty and other factors that were strong predictors for child abuse and neglect, and that it was thus highly likely that black children were disproportionately victimized by maltreatment. Keeping black children at home pursuant to some arbitrary quota based on population percentage seemed likely to put them at risk for maltreatment. But the movement framed the debate as one of discrimination against black parents, and ignored the risk to black children.

The research on Racial Disproportionality was dominated by insider advocacy research during the early years of the movement. The Casey Alliance seized upon a claim in reports put out by the National Incidence Studies (NIS) that was obviously dubious. NIS stated in its 1996 NIS-3 report that there was no difference between black and

[4] These Racial Disproportionality issues are discussed in more detail both in Bartholet, *Differential Response,* supra n. 1, and in Bartholet, *The Racial Disproportionality Movement in Child Welfare: False Facts and Dangerous Directions*, 51 Ariz. L. Rev. 871 (2009).

white maltreatment rates, and thus the disproportionate rates of black child removal must be due to bias in the child protective services system. This claim should have been hard for anyone with knowledge about child maltreatment to believe, given the common understanding that poverty and other characteristics affecting black families disproportionately were predictors for maltreatment. And those leading the Casey Alliance had significant knowledge about maltreatment.

However the Casey Alliance took the NIS-3 claim and ran with it. It produced, directly and indirectly, a huge collection of research reports on Racial Disproportionality which relied on the NIS-3 claim as proof of racial bias in the system and the related need to reduce the number of black children removed to foster care. The Casey Alliance used this research to help push child welfare administrators throughout the country to institute programs designed to keep more black children at home, and pushed for legislation in Congress that would measure state child welfare system success in terms of the degree to which black child removal matched population percentages.

Independent research eventually demonstrated that the claim at the heart of the Racial Disproportionality movement was a lie. The NIS-3 study's own data, hidden in a later-published appendix, showed that black children were victimized by maltreatment at much higher rates than white children, and indeed at rates that roughly matched their removal rates. The only justification NIS-3 authors had for their claim that there was no difference in maltreatment rates between racial groups was that the sample used in that study was not large enough to show statistical significance. But that provided no basis whatsoever for the NIS-3 report claim that removal rates reflected bias in the system,

as the sophisticated social scientists who authored that report must have known.

The Racial Disproportionality movement appears now to have lost momentum. But the key forces behind it have moved on to promote another program which is similarly focused not on child, but instead on adult welfare.

C. Differential Response

Differential Response is the latest important child welfare "reform" movement. It is now sweeping the country, with over a majority of states having adopted the program to some degree. The Casey Family Foundation has taken the lead in promoting Differential Response, again working with various liberal allies. The basic idea is to take some 70% of the children now under Child Protective Services (CPS) jurisdiction, and divert them from the traditional CPS (TR) track to an entirely voluntary Alternative Response (AR) track. The claim is that these will be low-risk cases, since Differential Response proponents claim that CPS intervenes improperly in many such cases. The decision as to which track cases belong on is made without any investigation of the maltreatment charges, given the overall program goal of being "family-friendly." Parents on the AR track are offered "services" which are much more likely to take the form of financial stipends than traditional CPS services. And parents can simply walk away from the AR track at any time, free from any threat that such a decision will trigger investigation or assignment to the TR track. Funding for the AR track system and services is to come from the CPS budget.

This is the movement that I have analyzed in depth in my most recent article, *Differential Response: A Dangerous Experiment in Child Welfare.*[5] I will summarize the key points below.

Differential Response, like the earlier Family Preservation movements discussed here, is highly suspect from a child best interests perspective, based simply on its design. First, the program's orientation to adult interests is obvious. The overwhelming emphasis is on being "family" or parent-friendly. And while traditional CPS services generally involve anger management counseling, substance abuse treatment, and other services designed to enhance parental fitness, AR track services emphasize rent stipends and other financial help for parents.

Second, there is extensive evidence that most CPS cases involve children at serious risk of maltreatment from their parents. Thus the goal of diverting 70% of the CPS cases means that many will necessarily be medium- or high-risk cases, even though the program claims that the point is to divert only low-risk cases.

Third, investigations are essential to figure out whether some cases truly pose no significant risk to children and so can safely be placed on a voluntary track. Research has long demonstrated that what parents have done in the past to children is the best predictor of what they may do in the future. Yet Differential Response programs make the all-important track allocation decision without any investigation, because investigations, which focus on past wrongdoing by parents, are thought not to be "family-friendly."

Fourth, other voluntary child welfare programs in the past have demonstrated that such programs have trouble retaining a significant

[5] *Supra* n. 1.

percentage of parents. One-third to one-half of the parents targeted by Early Home Visitation programs refuse to participate, for example. Moreover, it has been the parents at greatest risk for maltreatment and other dysfunction who are most likely to opt out.

And finally, the plan to fund Differential Response by diverting funds from the CPS system would reduce the ability of the already resource-starved CPS to function, thus putting those children served by CPS at additional risk.

The Differential Response research picture to date has been dominated by insider advocacy research. Most of it has been conducted by a single research entity receiving repeat contracts for producing lengthy reports with impressive - looking statistical charts allegedly demonstrating that Differential Response is an evidence-based success story.

This research has no genuine focus on child best interests. It purports to show that Differential Response poses no risks to children, but that showing has been persuasively unmasked by a whistle-blowing research paper written by respected social scientists within the child welfare community.[6] This paper both demonstrates the reasons to fear that Differential Response puts children at risk, and calls out the insider research as advocacy research that doesn't satisfy the definition of true social science. My recent article adds to this analysis of the risks for children inherent in Differential Response, and to the critique of the advocacy research.

The Differential Response advocacy research places strong overt emphasis on the degree to which the program pleases the adults

[6] Hughes et al, *Issues in Differential Response,* 23 Research On Social Work Practice 493 (Sept. 2013).

involved. The first section of almost every report claims success in terms of parent satisfaction. This aspect of the research fails to pass the laugh test. Parents on the AR track are treated in a supportive, non-threatening way from start to finish. They are offered financial stipends. They are told they can walk away without fear of consequence. Parents on the TR track are told that if they don't improve their ways they might lose custody of their children. They are encouraged to engage in counselling and treatment designed to improve their parental fitness, and know that failure to cooperate might result is losing custody. What's not to like about the AR track from the viewpoint of the parents? And what does the fact that parents may prefer that track prove about its success or failure in protecting children?

Despite the dominance of the advocacy research to date, disturbing facts about Differential Response have begun to surface, all of which were predictable from the design. Some independent research has shown that a large proportion of the cases on the AR track are in fact high- or medium-risk cases, rather than the low-risk cases that are supposed to be diverted to that track. Research also has begun to show that one-third to one-half of all parents diverted to AR refuse to participate either from the get-go or later on. And it shows that very high percentages of children on both the AR and the TR tracks are victimized by repeat maltreatment.

The Differential Response movement appears to still have momentum, with new jurisdictions adopting the program. But there have been very significant challenges raised in the social science[7] and broader

[7] See Hughes et al, *supra* n. 6.

academic community,[8] and in the press.[9] And a number of states have cancelled plans to adopt DR or cut back on existing DR programs.[10]

## III. DIRECTIONS FOR TRUE CHILD WELFARE REFORM

Differential Response may in the end be defeated, as policy makers and the press become concerned over child deaths on the AR track, and as critique of the advocacy research mounts. But in the meantime many children will likely have paid the price. And we can anticipate that another extreme family preservation "reform" will rear its head, one that again focuses on adult rather than child welfare, and one that is again supported by advocacy research designed to persuade policy makers of its virtues. We need to change the basic dynamics of policy reform and related research in the child welfare area, or history will simply repeat itself endlessly.

For the future we need first to think of how to galvanize new forces to support policy reform that would make child best interests the true focus. And I believe we need to reach out to liberals as the group to lead this charge. I don't think we can afford to give up on liberals, and I don't think we need to write them all off as necessarily captured by the

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[8] See Bartholet, *Differential Response, supra* n. 1.

[9] See, e.g.: Chronicle of Social Change series of articles critical of DR, https://chronicleofsocialchange.org/research-search-results?phrase=Differential%20Response; Heimpel, *Harvard's Elizabeth Bartholet Takes on Differential Response*, The Chronicle of Social Change (11/19/14), https://perma.cc/XY74-27EG?type=live; Bartholet and Heimpel, *Through the Cracks*, Op-ed on Differential Response, The Boston Globe (12/24/13), http://www.law.harvard.edu/faculty/bartholet/Saving%20Children%20From%20Child%20Welfare%20System.pdf; Heimpel and Bartholet, *DCF Shift Puts Children's Safety at Risk*, Op-ed on Differential Response, The Hartford Courant (1/24/14), http://www.law.harvard.edu/faculty/bartholet/DCF%20Shift%20Puts%20Children.pdf

[10] See Bartholet article, *supra* n. 1, *Conclusion*.

kind of thinking characterizing the dominant group in child welfare to date.

Liberals should see children as a natural constituency. Children are one of the ultimate powerless groups, unable by definition to speak for themselves, to demonstrate on the streets, to vote, to take political office, or to do the other things that various adult groups do to protect their rights and interests.

Liberals should understand that what poor people need is a true war on poverty, and that the limited kinds of support services and financial stipends associated with family preservation programs don't fit that bill, and don't do much of anything to truly empower poor communities.

Liberals should understand that condemning poor children to suffer repeat maltreatment will not liberate their parents, but will simply condemn those children to suffering, and to grow up to adulthoods marked by disproportionate unemployment, homelessness and substance abuse, as well as victimization of the next generation.

Liberals should understand that we can fight *simultaneously* to address poverty and thus get at the root causes of child maltreatment, *and* to protect children against abuse and neglect so that they have a chance of growing up to live healthy, happy and productive lives.

But we need more than a new policy focus. We need a new research culture. We need additional and varied resources devoted to research, so that truly independent social science will flourish. We need social science that will provide genuine guidance to policy makers about the pros and cons of different policy choices in terms of child best interests and other important values.