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Drawing Idea from Expression: Creating a Legal Space for Culturally Appropriated Literary Characters

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ESSAY

CHILD WELFARE'S PARADOX

DOROTHY E. ROBERTS*

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INTRODUCTION

Researchers and government officials now recognize racial disproportionality as a pressing problem facing the child welfare system.¹ In this country, most children in foster care are children of color.² Black children are especially overrepresented in the child welfare system:³ they make up about one-third of the nation's foster care population, despite representing only 15 percent of the nation's children.⁴ A black child is four times as likely as a white child to be placed in foster care.⁵

Although alarming, these statistics do not reveal the spatial dynamics of the child welfare system's racial disparities.⁶ State custody of children has a *racial geography*. In the nation's cities, child protection cases are concentrated in communities of color.⁷ Many poor black neighborhoods in particular have extremely high rates of involvement by public child welfare agencies, especially with respect to placement in foster care.⁸ In 1997, for example, one in ten children in Central Harlem was in foster care.⁹ In Chicago,

1. See generally RACE MATTERS IN CHILD WELFARE: THE OVERREPRESENTATION OF AFRICAN AMERICAN CHILDREN IN THE SYSTEM (Dennette M. Derezotes, John Poertner & Mark F. Testa eds., 2005); DOROTHY ROBERTS, SHATTERED BONDS: THE COLOR OF CHILD WELFARE (2002); ROBERT B. HILL, CTR. FOR THE STUDY OF SOC. POLICY, SYNTHESIS OF RESEARCH ON DISPROPORTIONALITY IN CHILD WELFARE: AN UPDATE (2006), http://www.racemattersconsortium.org/docs/BobHillPaper_Final.pdf.

2. ADMIN. FOR CHILDREN AND FAMILIES, U.S. DEP'T OF HEALTH AND HUMAN SERVS., THE AFCARS REPORT: PRELIMINARY FY 2005 ESTIMATES AS OF SEPTEMBER 2006 (13), at 2 (2006), http://www.acf.hhs.gov/programs/cb/stats_research/afcars/tar/report13.pdf.

3. Child Welfare League of America, Children of Color 2004, http://ndas.cwla.org/research_info/minority_child/ (last visited Nov. 21, 2007).

4. See Child Welfare League of America, CWLA Fact Sheet and Relevant Research, http://ndas.cwla.org/research_info/specialtopic1a.asp (last visited Nov. 23, 2007) ("While African American/Black children represented 15% of the total population under the age of 18, they were 34% of the foster care population.").

5. Casey Family Programs, Child Welfare Fact Sheets, <http://www.casey.org/MediaCenter/MediaKit/FactSheet.htm> (last visited Nov. 23, 2007).

6. See FORDHAM UNIV. INTERDISCIPLINARY CTR. FOR FAMILY AND CHILD ADVOCACY, THE RACIAL GEOGRAPHY OF THE CHILD WELFARE SYSTEM: COMMUNITY IMPACT AND RESPONSE 5 (Dorothy Roberts, Leah Hill & Erik Pitchal eds., 2006), available at <http://law.fordham.edu/documents/int-2RacialGeography.pdf> [hereinafter RACIAL GEOGRAPHY].

7. *Id.* at 4-5.

8. *Id.* at 3.

9. Alyssa Katz, *Mommy Nearest*, CITY LIMITS MAG., June 2000, <http://citylimits.org/>

most child protection cases are clustered in a few zip code areas, which are almost exclusively African American.¹⁰ Such overrepresentation of black children in the foster care population represents considerable state supervision and dissolution of families concentrated in these neighborhoods.¹¹ Moreover, racial differences in foster care placement rates affect more than an individual child's risk of placement; they also affect his or her chances of growing up in a neighborhood where foster care placement is prevalent.¹² The racial geography of child welfare, then, "makes the child welfare system a distinctively different institution for white and black children in America."¹³

What is the sociopolitical impact of this spatial concentration of child welfare supervision in poor, black neighborhoods? Although researchers have investigated the reasons behind racial disparities in the child welfare system,¹⁴ the community impact of these disparities remains obscure.¹⁵ During the summer of 2005, I conducted a small case study to begin to explore the effects of concentrated child welfare agency involvement in black neighborhoods.¹⁶ The study conducted and analyzed the results of in-depth interviews with twenty-five black women living in Woodlawn, a black neighborhood on the South Side of Chicago. Woodlawn is an area exposed to a particularly high level of involvement by the Illinois Department of Children and Family Services (DCFS). The study sought to

content/articles/articleview.cfm?articlenumber=337.

10. See Mark F. Testa & Frank F. Furstenberg, *The Social Ecology of Child Endangerment*, in A CENTURY OF JUVENILE JUSTICE 237, 238, 255 (Margaret K. Rosenheim et al. eds., 2002); Children and Family Research Center, CFRC Factbook, <http://xinia.social.uiuc.edu/outcomes/factbook/indicator9a.html> (last visited Nov. 23, 2007) (follow the "Compute Table" hyperlink related to the "Chicago Community Area" of interest) (displaying foster care statistics by Chicago neighborhood).

11. HILL, *supra* note 1, at 27 (quoting ROBERTS, *supra* note 1, at 236-37, 240-41).

12. Dorothy E. Roberts, *The Community Dimension of State Child Protection*, 34 HOFSTRA L. REV. 23, 31 (2005).

13. *Id.* See generally RACIAL GEOGRAPHY, *supra* note 6.

14. See, e.g., Mark E. Courtney et al., *Race and Child Welfare Services: Past Research and Future Directions*, 75 CHILD WELFARE 99, 110, 112 (1996); Wendy G. Lane et al., *Racial Differences in the Evaluation of Pediatric Fractures for Physical Abuse*, 288 JAMA 1603, 1608-09 (2002); HILL, *supra* note 1, at 8.

15. Roberts, *supra* note 12, at 25.

16. See Dorothy E. Roberts, *High Rates of Child Welfare Agency Involvement in African-American Neighborhoods: The Impact on Community and Civic Life* (Feb. 5, 2006) (unpublished working paper, on file with author).

evaluate how the involvement of child welfare agencies affects community and civic life and shapes residents' attitudes about government and self-governance.¹⁷

Almost all of Woodlawn's 27,000 residents are African American.¹⁸ Furthermore, "Woodlawn is also one of Chicago's poorest neighborhoods.... Half of the female-headed households with children in Woodlawn live in poverty."¹⁹ Additionally, the neighborhood has one of the highest rates of foster care placement in Chicago. At the end of 2005, almost 200 of Woodlawn's approximately 9,000 children were in state-supervised substitute care, living either with relatives or strangers.²⁰

Conversely, in the vast majority of Chicago neighborhoods, the foster care rate is less than half of Woodlawn's.²¹ Although several other poor African American neighborhoods, such as Grand Boulevard and the Near West Side, have double Woodlawn's rate,²² there is not a single white neighborhood in Chicago whose children are placed in foster care at a level even approaching these black neighborhoods.²³

Although the study set out to investigate the ways in which intense child welfare agency involvement affected residents' social networks and civic involvement, I discovered three profound contradictions in residents' relationships to the child welfare system. In particular, resident responses highlighted paradoxical views on the role of caseworkers, foster parents, and parents. They described

17. *Id.*

18. Census Data: Chicago Community, <http://xinia.social.uiuc.edu/outcomes/census/chidata.htm> (last visited Nov. 23, 2007) (displaying demographic information for all Chicago neighborhoods).

19. Dorothy Roberts, *The Racial Geography of State Child Protection* 6-7 (Inst. for Policy Research, Northwestern Univ., Working Paper No. 07-06, 2007), available at <http://www.northwestern.edu/ipr/publications/papers/2007/wp0706.pdf>. This paper is now a chapter in a forthcoming book, *NEW LANDSCAPES OF INEQUALITY* (Jane Collins, Micaela di Leonardo & Brett Williams eds., forthcoming 2008).

20. Census Data: Chicago Community, *supra* note 18; CFRC Factbook, *supra* note 10 (select "Woodlawn" from the "By Chicago Community Area" dropdown; then follow the "Compute Table" hyperlink) (displaying foster care statistics for Woodlawn).

21. See CFRC Factbook, *supra* note 10 (allowing user to display foster care statistics for individual Chicago neighborhoods).

22. *Id.* (selecting "Grand Boulevard" and "Near West Side," respectively, to display relevant foster care statistics).

23. Roberts, *supra* note 12, at 37.

caseworkers as both meddling investigators and appreciated helpers.²⁴ They believed that some foster parents take care of children for the money, but also that some need more money to take proper care of their foster children.²⁵ Lastly, they resented child protection agencies' pervasive regulation of their lives, yet relied on the resources that these agencies provide.²⁶

Scholars have noted the tension in the child welfare system's design. It is a system that seeks both to help and punish poor parents, based on a philosophy grounded in child protection.²⁷ The residents' responses exemplify this tension and show how it has intensified as the safety net dwindles in poor inner-city neighborhoods and changes the child welfare system's institutional function. Part I examines the three paradoxes that emerged from responses of residents about DCFS involvement in their neighborhood. Part II considers the implications of these paradoxes in light of the growth of kinship foster care. Part III then discusses the relationship between child welfare's fundamental contradiction, arising from the system's dual functions as both investigator and service provider, to the dwindling safety net in poor inner-city neighborhoods. Families in these neighborhoods must increasingly rely on coercive state agencies for the economic support they need. Thus, the child welfare system's racial geography is connected to the geography of social service provision.²⁸ I conclude that the growing yet overlooked role of child welfare agencies in the shrinking welfare state heightens the paradox inherent in the U.S. approach to child welfare, which centers on the punitive regulation of poor parents, and makes change more imperative than ever.

24. *See infra* Part I.A.

25. *See infra* Part I.B.

26. *See infra* Part I.C.

27. JANE WALDFOGEL, THE FUTURE OF CHILD PROTECTION: HOW TO BREAK THE CYCLE OF ABUSE AND NEGLECT 81 (1998); Leroy H. Pelton, *Child Welfare Policy and Practice: The Myth of Family Preservation*, 67 AM. J. ORTHOPSYCHIATRY 545, 551 (1997).

28. *See infra* notes 100-09 and accompanying text.

I. THE THREE PARADOXES

The residents' responses revealed three key contradictions in views about DCFS involvement in Woodlawn and the role of caseworkers, foster parents, and parents. The women described caseworkers as both investigators and helpers, foster parents as both greedy and altruistic, and parents as both subjects of regulation and recipients of support. These contradictory views are all related to child welfare agencies' dual nature, which ties services for families to investigation, coercion, and child removal.

A. Caseworkers as Investigators and Helpers

The women interviewed in Woodlawn poignantly expressed the tension created by caseworkers' dual roles as both investigator and supporter of neighborhood families. The child welfare system employs social workers who are responsible for providing services to families. Yet, these same service providers also investigate parents alleged to have maltreated their children and coerce parents to comply with rehabilitative measures by threatening to take away their children permanently.²⁹ Social work professor Leroy Pelton emphasized the threat to family integrity created by the child welfare system's dual function of simultaneously coercing parents while trying to help them.³⁰ In particular, he observed:

The investigative/coercive/child-removal role diminishes, hampers, and overwhelms the helping role within the dual-role structure of public child-welfare agencies, as huge and increasingly larger portions of their budgets are devoted to investigation and foster care, with little money left over for preventive and supportive services to combat the impermanency of children's living arrangements.³¹

29. See Leroy H. Pelton, *Has Permanency Planning Been Successful? No, in* CONTROVERSIAL ISSUES IN CHILD WELFARE 268, 271 (Eileen Gambrill & Theodore J. Stein eds., 1994).

30. See *id.* at 268-71.

31. *Id.* at 271.

Thus, agencies fail to maintain a balance between coercion and support of families because their intimidating role tends to dominate.

Some Woodlawn residents viewed caseworkers with suspicion and believed that they unnecessarily disrupted family and community life.³² They felt that caseworkers' investigations were often unwarranted and their responses overzealous.³³ Some portrayed caseworkers as spies who infiltrated the neighborhood to gather evidence against parents. According to twenty-six-year-old Cassie:

[Y]ou got to watch what you do and what you say and all this, 'cause you don't know who you could be talking to. Out on the street you don't know who you could be talking to.... She could be DCFS, writing down stuff, taking notes, all of that, and you don't know who she is. So you have to be careful. You have to be very careful.³⁴

Parents perceive caseworkers' use of a foreign standard to judge neighborhood families as part of the problem. Pearl, a counselor who provided services for DCFS, but who also had relatives and neighbors involved with the agency, said, "I think sometimes the [DCFS caseworkers] who do the interviews come from a different walk of life, you know, and when they come from a different walk of life, they see things a little different than people within the home community."³⁵

Additionally, caseworkers' investigative roles spread beyond those performed by DCFS to influence relationships in the neighborhood. Many of the women reported distrust among neighbors created by the pervasive DCFS surveillance of families.³⁶ Respondents believed that residents often falsely accused others of child abuse to seek retribution against them. Tiara, a twenty-four-year-old whose close friend was the subject of a DCFS investigation, complained:

Teachers are even using it for revenge too. If you even went to school with these teachers and they made it all right in their

32. Roberts, *supra* note 16, at 17-29.

33. *See id.* at 29-31.

34. *Id.* at 29. Pseudonyms are used for all the respondents quoted in this Essay.

35. *Id.* at 19.

36. *Id.* at 29-31.

career and now they're teaching in your community and your kids is one of their students, that if she didn't like you unknowingly all this time since high school ... you got teachers that set you up at the end of the school year.³⁷

In this fashion, the presence of DCFS has not only bred distrust between residents and caseworkers, but also among residents.

Despite their criticism of caseworker surveillance, however, the women also expressed gratitude for the support caseworkers provided.³⁸ Francis, a forty-eight-year-old whose daughter was the subject of a DCFS investigation, explained:

You can get some [caseworkers] that will help you. They helped [my daughter] get an apartment, furniture, you know, everything they did. You have to know how to work these agencies. Like, you know, anything else.... She helped us with a lot of programs that a lot of people don't know about. You know, because a lot of workers won't tell you about the different programs that they have for you to help you.... A lot of people don't know that if you cooperate with them, they'll help you more.³⁹

Francis and her neighbors were well aware of the paradox created by caseworkers' coercive and supportive roles. According to the Woodlawn residents, although caseworkers were often unfair investigators to be feared, they were also potential sources of useful information and material aid for families. Some residents, like Francis, developed strategies for negotiating this paradox to gain the most advantage from the system that is supposed to serve them. As the next Section discusses, many residents nevertheless believed that caseworkers should increase their surveillance of some foster parents in the neighborhood.

37. *Id.* at 30.

38. *Id.* at 36-37 (discussing neighborhood gratitude for financial aid).

39. *Id.*

B. Foster Parents as Greedy and Altruistic

In May 2006, foster parents in Washington State became the first in the nation to unionize.⁴⁰ Washington foster parents joined the state government's largest labor union, the Washington Federation of State Employees.⁴¹ Frustrated by state government's disregard of their concerns, the foster parents may next pursue collective bargaining rights with the state to influence their remuneration and working conditions.⁴² Some people may find it strange that foster parents would unionize because they are supposed to be altruistic saviors who rescue children from abusive parents and treat them as their own.⁴³

This idealized role, however, is not the legal relationship foster parents have with respect to the children in their care. In *Smith v. Organization of Foster Families for Equality and Reform*,⁴⁴ the Supreme Court upheld limitations on the rights of foster parents on the grounds that a foster family has "its source in state law and contractual arrangements."⁴⁵ Foster parents receive government stipends for each child in their care,⁴⁶ and the state often gives them other forms of assistance, including medical services, counseling, clothing vouchers, respite care, and training.⁴⁷ Daniele and Steve Baxter, who have fostered more than 700 children and share the presidency of the Foster Parents Association of Washington State, described their position on business cards as "professional parent."⁴⁸ Yet Republican State Senator Joe Zarelli criticized the union effort for being contrary to foster care's nature as voluntary care for needy children.⁴⁹ "From my perspective, the whole idea of opening your

40. Curt Woodward, *Foster Parents in State Are Nation's First To Join Union*, SEATTLE POST-INTELLIGENCER, May 19, 2006, available at http://seattlepi.nwsource.com/local/270817_foster19.html.

41. *Id.*

42. *Id.*; Associated Press, *State Foster Parents Seek Greater Power Through Union*, June 17, 2006, available at <http://Kamoradio.com/news/archive/4189401.html> [hereinafter *State Foster Parents*].

43. Woodward, *supra* note 40 (citing view of foster parents as volunteers).

44. 431 U.S. 816 (1977).

45. *Id.* at 845.

46. Woodward, *supra* note 40.

47. *State Foster Parents*, *supra* note 42.

48. *Id.*

49. *Id.*

home to children that need parental role models is one of volunteerism and not one of employment," Zarelli explained.⁵⁰ "You don't do it for what you get, other than directly from the kids in the form of appreciation."⁵¹ Although foster parents are paid contractors, as Senator Zarelli's comments show, many still view them as altruistic child savers.

The women interviewed in Woodlawn had a similarly mixed view of foster parents. Despite their gratitude for the material support DCFS gave to foster parents, many of the women in Woodlawn commented on the harmful effect of financial incentives associated with becoming a foster parent.⁵² They believed that foster parents often took poor care of children because they were in the business "just for the money."⁵³ Forty-five-year-old child care worker, Estelle, complained:

I know people who ... just used the children, you know, just 'cause they get paid, you know. I mean, you know, if you want a child, you take care of the child and you should want it from the heart instead of just because you get the money. I know it's a lot of people who are just using the children.⁵⁴

Aisha similarly observed:

A lot of people do it just for the money. A lot of people are taking these people's children for the money. Not that they care anything about the child. I know from my grandmother that sometimes that people do not care about the child as long as that check is rolling in every month, they will let the child stay there.⁵⁵

Francis, who was grateful for the help a caseworker extended to her daughter, also questioned foster parents' motives:

50. *Id.*

51. *Id.*

52. Roberts, *supra* note 16, at 37-38.

53. *Id.* at 37.

54. *Id.*

55. *Id.* at 37-38.

Because foster people, they don't give a care about them kids. All they want is the money, you know. And then a lot of times you see foster kids with foster parents, and the kids look like some thrift store reject, you know. And you get money for these kids, ain't no way they should look like they look, you know.⁵⁶

As illustrated in these excerpts, many of the Woodlawn interviewees cynically viewed foster parents as profit maximizers.

Paradoxically, the women also believed that DCFS should be more involved in foster homes because some foster parents were only interested in the money and because the agency did not support foster parents enough. Beverly, who was involved with DCFS as both a foster child and as the adoptive mother of her niece, expressed such sentiments about the agency:

I don't think they're involved enough. Why? Because I believe that what they need to do before they even put children in other people's homes, relative or whoever.... [is] to observe the person's house, the person whose house they're going to put the children in, at least a month before. Why I say that, because a lot of people get these kids, they start this for the money, the kids are still being neglected, and I don't think DCFS is going out checking on them enough.⁵⁷

Despite her suspicion of some foster parents' motives, Beverly also called for greater financial assistance for foster parents:

There's another lady over here, she got her nephew and she was complaining about how they weren't sending her no money, like \$80 she got. First she had one baby, she wasn't getting nothing for that baby.... You need money to take care of these kids. I'm not asking for a million dollars, but give me something to work with. And that kind of thing people have problems with, with the DCFS. The money thing.⁵⁸

The tension these women expressed appears to stem in part from their distrust of others' motives for being foster parents while

56. *Id.*

57. *Id.* at 41.

58. *Id.* at 38.

wanting greater remuneration for their own foster parenting. By virtue of its overreliance on substitute care for children, the state creates financial incentives for bad caregivers and provides insufficient support for good ones. Additionally, the women's concerns also stem from the child welfare system's preference for paying foster parents to care for children rather than providing adequate support directly to poor mothers. Although Congress restructured welfare in 1996 by abolishing the federal entitlement to public assistance for children, foster care remains a well-funded entitlement program;⁵⁹ of course, it is primarily foster parents who can benefit financially from this program, not poor mothers themselves.

C. Parents as Subjects of Regulation and Recipients of Support

This pinpoints the heart of the contradictions that marked the lives of the women interviewed in Woodlawn. I went to Woodlawn to test my hypothesis that the concentration of intense child welfare agency involvement in black neighborhoods had a disruptive impact on community life. On one hand, the women interviewed confirmed my theory. They described how DCFS interfered with their parental authority, how it caused family fights over the placement of children, how it made neighbors distrust each other, and how it damaged children's ability to form healthy, long-lasting social bonds.⁶⁰ On the other hand, they also responded in unanticipated ways.

When the women were asked to rate DCFS involvement in Woodlawn as too involved, not involved enough, or involved just the right amount, I expected everyone to shout, "Too involved!" and demand that the agency leave them alone. To my surprise, most of the women answered that DCFS was not involved enough.⁶¹ Although they criticized the agency's distortion of neighborhood

59. See Julie Shraver, *What the Welfare Law May Mean for Certain Recipients*, N.Y. TIMES, Aug. 23, 1996, at A22; Jean Tepperman, *Foster Care: The Last Entitlement*, CHILD. ADVOC., Nov.-Dec. 1998, available at <http://www.4children.org/news/ent1198.htm>. Child welfare, foster care, and adoption assistance programs are authorized under Titles IV-B and IV-E of the Social Security Act. See 42 U.S.C. §§ 620-629 (2006) (Title IV-B); 42 U.S.C. §§ 670-679b (2006) (Title IV-E).

60. Roberts, *supra* note 16, at 17-31.

61. *Id.* at 35-43.

relationships, most nevertheless expressed a desire for greater DCFS presence in Woodlawn to meet the material needs of its struggling families.⁶²

Many respondents understood the agency's function not only to investigate parents, but also as a chief financial resource for families.⁶³ Positive comments about DCFS typically concerned its financial support for mothers, foster parents, or foster children and not its protection of children from abuse and neglect. Twenty-seven-year-old Angela, who had been in foster care, explained:

They're doing a good job [in Woodlawn].... Because it does help them out with their, you know, financial wise, pay bills and stuff like that, they help them out, they do give them money for keeping the kids too.... Because I know the caseworkers are so nice because, like I said my husband, his mom had adoptive kids and she get \$2,500 to the kids, a month alone.⁶⁴

Thus, the Woodlawn women valued DCFS's financial support, in spite of the corresponding surveillance.

The child welfare system exacts an onerous price: it requires poor mothers to relinquish custody of their children in exchange for state support needed to care for them.⁶⁵ Those women who wanted greater DCFS presence in Woodlawn, however, did not accept the terms of its current involvement uncritically.⁶⁶ In fact, many condemned the agency's narrow role rooted in investigating families rather than helping them.⁶⁷ Michelle, thirty-four, who helped to raise her nephew when her sister was investigated by DCFS, movingly observed that the agency responded only to allegations of child abuse rather than family need:

The way I see it is that [people in Woodlawn] don't look like DCFS can really help them. Like I said, the advertisement, it just says abuse. If you being abused, this is the number you call,

62. *See id.*

63. *Id.* at 36-37.

64. *Id.*

65. *See* Dorothy E. Roberts, *Kinship Care and the Price of State Support for Children*, 76 CHI.-KENT L. REV. 1619, 1631 (2001).

66. *See* Roberts, *supra* note 16, at 38-41.

67. *Id.*

this is the only way you gonna get help. It doesn't say if I'm in need of counseling, or if I'm in need of my children don't have shoes, if I just can't provide groceries even though I may have seven kids, but I only get a hundred something dollars food stamps. And my work check only goes to bills. I can't feed eight of us all off a hundred something dollar food stamps. So I'm saying, they don't know that DCFS can help them in a positive way. They only do negative things, they only take my children away. I think that is the big issue. I don't want to lose my children, so I'm not going to call DCFS for help because I only see them take away children.⁶⁸

Mirroring this sentiment, many of the women in Woodlawn rejected the linkage of family financial assistance with investigation and child removal, preferring more financial support with less disruption of family relationships.

II. IMPLICATIONS OF FAMILY RELIANCE ON KINSHIP CARE

The tensions in caseworkers', foster parents', and parents' roles have a particular significance in black neighborhoods because so many foster children in those neighborhoods are placed with relatives. Between 1986 and 1990, the proportion of foster children living with relatives grew from 18 percent to 31 percent in twenty-five states.⁶⁹ In Illinois, for example, relative placements increased 232 percent in a five-year period.⁷⁰ By 1997, there were at least as many relative caregivers as traditional foster parents in California, Illinois, and New York.⁷¹ Moreover, kinship care is a significant type of out-of-home placement for black children in New York City, Chicago, and Philadelphia.⁷² Kinship foster care, then, is a major

68. *Id.* at 39.

69. See Annie Woodley Brown & Barbara Bailey-Etta, *An Out-of-Home Care System in Crisis: Implications for African-American Children in the Child Welfare System*, 76 CHILD WELFARE 65, 76 (1997).

70. See James P. Gleeson, *Kinship Care as a Child Welfare Service: The Policy Debate in an Era of Welfare Reform*, 75 CHILD WELFARE 419, 429 (1996).

71. See James P. Gleeson et al., *Understanding the Complexity of Practice in Kinship Foster Care*, 76 CHILD WELFARE 801, 802 (1997).

72. See *id.* (indicating that the role of kinship care has risen drastically in New York City since 1985); Maria Scannapieco & Sondra Jackson, *Kinship Care: The African American Response to Family Preservation*, 41 SOC. WORK 190, 193 (1996) (noting that kinship care

source of financial support for relatives' caregiving and is especially crucial because kinship caregivers tend to have substantially lower incomes than traditional foster parents.⁷³

Many experts have heralded kinship foster care as a way of enhancing the stability of placements and keeping African American children in their extended families and their communities, thus solving some concerns about the disproportionate removal of these children from their parents.⁷⁴ Because foster care assistance is also the most generous form of welfare, however, it offers families an incentive to remain in the kinship care system.

The two principal sources of public financial assistance for poor families are Temporary Assistance to Needy Families (TANF) and foster care benefits.⁷⁵ All states offer TANF benefits both to relatives caring for children and to generally needy families.⁷⁶ Foster care stipends, however, are much larger than TANF benefits and unlike TANF, which provides only a marginal monetary increase per child, foster benefits are multiplied by each child in the home.⁷⁷ A relative caring for several children might receive two to four times as much

constitutes 67 percent of foster care homes in Philadelphia); Sarah Karp, *Adoption Surge: DCFS Policy Spells Pressure for Black Families*, CHI. REP., Oct. 1999, available at <http://chicagoreporter.com/1999/10-99/1099-fostercare.htm> (scroll down to "October, 1999") (stating that kinship foster care represents 57 percent of Illinois's case load).

73. See Jill Duerr Berrick, *When Children Cannot Remain Home: Foster Family Care and Kinship Care*, 8 FUTURE CHILD. 72, 77, 78 tbl.2 (1998).

74. See Scannapieco & Jackson, *supra* note 72, at 190-94.

75. See Laurie Hanson & Irene Opsahl, *Kinship Caregiving: Law and Policy*, 30 CLEARINGHOUSE REV. 481, 483 (1996); see also Tepperman, *supra* note 59 (indicating that TANF replaced AFDC).

Another important source of financial assistance for relative caregivers outside of foster care is subsidized guardianship. Sacha Coupet, *Swimming Upstream Against the Great Adoption Tide: Making the Case for "Impermanence"*, 34 CAP. U. L. REV. 405, 429-37 (2005). "Usually, the subsidy amount provided to guardians is somewhere between the amount of a TANF child-only grant and a traditional foster care payment." *Id.* at 431-32. The subsidy rate for guardians in the Illinois Subsidized Guardian Waiver Demonstration is the same as the state's foster care and adoption subsidy rates. *Id.* at 432. Professor Coupet criticizes states' preferences for adoption over guardianship "even though research reveals that subsidized guardianship offers comparable permanency outcomes." *Id.* at 453.

76. See, e.g., Rob Geen, *In the Interest of Children: Rethinking Federal and State Policies Affecting Kinship Care*, 58 POLY AND PRAC. PUB. HUM. RESOURCES 19, 21 (2000); Deborah Gibbs et al., *Between Two Systems: Children in TANF Child-Only Cases with Relative Caregivers*, 28 CHILD. & YOUTH SERVS. REV. 435, 437 (2006).

77. See Jennifer Ehrle & Rob Geen, *Kin and Non-Kin Foster Care—Findings from a National Survey*, 24 CHILD. & YOUTH SERVS. REV. 15, 21 (2002); Hanson & Opsahl, *supra* note 75, at 483.

in foster care payments as she would in welfare benefits.⁷⁸ The difference in levels of support highlights the government's willingness to give more financial aid to children in state custody than to children in the custody of their parents.

Federal law gives states wide latitude in creating the preferred system of financial support for kin caregivers.⁷⁹ Generally, the amount of kinship foster care payments depends on whether the kin caregiver is licensed by the state child welfare agency.⁸⁰ Most states require relatives to meet the same licensing requirements as nonrelative foster parents in order to receive larger foster care payments.⁸¹ Consequently, the strict requirements of the licensing process entail another layer of intrusion in relatives' lives.⁸² In this way, the level of state support for kinship caregivers directly correlates with the level of regulation: the higher the payment, the greater the intensity of state supervision.

Relatives can take advantage of the higher benefit payments of foster care only by becoming involved in the child protection system. Moreover, child welfare agencies make services available that address the parents' problems, such as drug treatment, mental health counseling, and housing assistance, but only to families under their supervision.⁸³ According to Jill Duerr Berrick, director of the Berkeley Center for Social Services Research, "This disparity spawns concerns that the foster care payment system may act as an incentive for a troubled family to seek a formal agency-supervised placement with kin rather than sharing child-rearing responsibilities informally with the same relatives."⁸⁴

Juxtaposed against such concerns is the strong support among child welfare advocates for kinship care, because it helps to keep foster children connected to their families and communities.⁸⁵ Child

78. Ehrle & Geen, *supra* note 77, at 21; Hanson & Opsahl, *supra* note 75, at 483; see, e.g., Ian Urbina, *With Parents Absent, Trying To Keep Child Care in the Family*, N.Y. TIMES, July 23, 2006, at A16.

79. See Ehrle & Geen, *supra* note 77, at 21.

80. *Id.* at 23.

81. *Id.*

82. Note, *The Policy of Penalty in Kinship Care*, 112 HARV. L. REV. 1047, 1052 (1999).

83. Ehrle & Geen, *supra* note 77, at 31; Karp, *supra* note 72.

84. Berrick, *supra* note 73, at 75-76.

85. See, e.g., Jill Theresa Messing, *From the Child's Perspective: A Qualitative Analysis of Kinship Care Placements*, 28 CHILD. & YOUTH SERVS. REV. 1415, 1418-19 (2006). See generally KINSHIP CARE: MAKING THE MOST OF A VALUABLE RESOURCE (Rob Geen ed., 2003).

welfare researchers have found that children in kinship foster care experience greater placement stability than children placed with nonrelative foster parents.⁸⁶ Mounting evidence indicates, however, that the incentives favoring kinship foster care delay reunification of foster children with their parents, and studies in several states show lower reunification rates for children placed with relatives.⁸⁷

Additionally, kinship foster care also appears to *increase* the racial disparity in length of time spent in foster care.⁸⁸ Black children already stay in foster care for almost twice as long as all other children.⁸⁹ Furthermore, numerous national and state studies have linked race to the length of time spent in foster care.⁹⁰ Longer stays in foster care contribute to racial disproportionality because they increase the number of black children in the system in any given year.⁹¹ Indeed, some experts believe that exit dynamics, rather than rates of entry, more consistently explain why these children are overrepresented in the foster care population.⁹²

Why might kinship foster care increase the racial gap in children's lengths of stay in foster care? Delays in reunification may stem from financial incentives that cause families to prefer that children remain with kin caregivers because they receive higher foster care stipends. In California, for example, children in kinship care receiving foster care benefits were half as likely to be reunited

86. See, e.g., Andrew Zinn et al., *A Study of Placement Stability in Illinois* 30 (Chapin Hall Ctr. for Children at the Univ. of Chi., Working Paper, 2006), available at http://www.chapinhall.org/article_abstract.aspx?ar=1423.

87. Gleeson et al., *supra* note 71, at 803.

88. Fred Wulczyn, *Closing the Gap: Are Changing Exit Patterns Reducing the Time African American Children Spend in Foster Care Relative to Caucasian Children?*, 25 CHILD. & YOUTH SERVS. REV. 431, 444-45 (2003); see also Mark F. Testa, *The Changing Significance of Race and Kinship for Achieving Permanence for Foster Children*, in RACE MATTERS IN CHILD WELFARE, *supra* note 1 (noting that the gap in legal permanence for children in kinship care tends to reduce over time).

89. See Berrick, *supra* note 73, at 82; see also Steven L. McMurtry & Gwat-Yong Lie, *Differential Exit Rates of Minority Children in Foster Care*, 28 SOC. WORK RES. & ABSTRACTS 42, 42 (1992) (noting that black children stay in foster care one year longer than white children).

90. Mark E. Courtney & Vin-Ling Irene Wong, *Comparing the Timing of Exits from Substitute Care*, 18 CHILD. & YOUTH SERVS. REV. 307, 317 (1996); McMurtry & Lie, *supra* note 89, at 42.

91. See generally McMurtry & Lie, *supra* note 89 (discussing exit rates from foster care and the high proportion of black children in foster care).

92. See Wulczyn, *supra* note 88, at 434.

with their parents after four years as were children in kinship homes receiving lower welfare benefits.⁹³ The disparity in benefits had the greatest impact on black families.⁹⁴ Jill Berrick found that "African-American children in kinship homes supported by the foster care subsidy remained in care approximately twice as long as all other children."⁹⁵ Prolonged involvement in the formal foster care system can be conceptualized as the price families must pay to receive the level of financial support needed to care for children.⁹⁶ At the local level, the Woodlawn women involved in kinship foster care were experiencing the intense contradiction of being paid to care for their own brothers and sisters, nieces and nephews, cousins, and grandchildren, while having to accept more state surveillance, which they resented.⁹⁷ Yet, this was the price for receiving more state support, which they needed.⁹⁸

I do not see the contradictions expressed by Woodlawn residents as an indictment of kinship foster care. Rather, relative caregiving is a traditional African American arrangement that provides children with greater stability and connections to their families and communities than non-kin foster care.⁹⁹ Child welfare agencies should therefore attempt to place foster children with relatives, and then generously support those families. The contradictions described above, however, illustrate the flaw in child welfare policies that provide more assistance to children in kinship foster care than to children who are in the care of their extended families and parents. Families should receive the financial benefits and support services offered to foster parents without the prerequisite of placing children in state custody.

III. CHILD WELFARE'S PARADOX AND THE FLAWED SAFETY NET

Child welfare's dual nature as investigator and service provider has been intensified by the dwindling safety net in poor inner-city

93. Berrick, *supra* note 73, at 82.

94. *Id.*

95. *Id.*

96. See Roberts, *supra* note 65, at 1631.

97. Roberts, *supra* note 16, at 18-22, 36-41.

98. *Id.* at 36-41.

99. See Coupet, *supra* note 75, at 416-18; Scannapieco & Jackson, *supra* note 72, at 191-92.

neighborhoods. Furthermore, the child welfare system's racial geography is connected to the geography of social service provision. In his three-city study of social service providers in the wake of welfare reform, political scientist Scott Allard discovered a striking mismatch between neighborhood need and access to support services such as substance abuse treatment, food assistance, job training, education, and emergency aid.¹⁰⁰ Residents of poor black neighborhoods like Woodlawn have especially inadequate access to these services.¹⁰¹

Allard also found that distance from services had serious consequences for residents' economic opportunities.¹⁰² Spatial proximity to services helped determine utilization of services among those women receiving welfare.¹⁰³ Living closer to employment opportunities also increased recipients' chances of finding a job and leaving welfare.¹⁰⁴ According to Allard, under welfare-to-work programs, "the lack of proximity to relevant social service providers is tantamount to being denied aid."¹⁰⁵ Moreover, the neighborhoods that Allard discovered as lacking in social service access were precisely the ones experiencing intense concentrations of child welfare agency involvement.¹⁰⁶ Given this decline in access to social services, it is no wonder that the women interviewed in Woodlawn looked to DCFS for needed financial support.

The increasingly paradoxical relationship between poor families and the child welfare system suggests that we need to change our view of the system's institutional function. In poor African American neighborhoods where most cases are concentrated, child welfare

100. SCOTT W. ALLARD, BROOKINGS INST., ACCESS TO SOCIAL SERVICES: THE CHANGING URBAN GEOGRAPHY OF POVERTY AND SERVICE PROVISION 13 (2004), available at http://www3.brookings.edu/metro/pubs/20040816_allard.pdf.

101. See SCOTT W. ALLARD, OUT OF PLACE: THE NEW GEOGRAPHY OF WELFARE POLICY (forthcoming 2008) (examining poor black neighborhoods similar to Woodlawn).

102. ALLARD, *supra* note 100, at 13.

103. See Scott W. Allard, Richard M. Tolman & Daniel Rosen, *Proximity to Service Providers and Service Utilization Among Welfare Recipients: The Interaction of Place and Race*, 22 J. POL'Y ANALYSIS & MGMT. 599, 610 (2003).

104. See generally Scott W. Allard & Sheldon Danziger, *Proximity and Opportunity: How Residence and Race Affect the Employment of Welfare Recipients*, 13 HOUS. POL'Y DEBATE 675 (2003).

105. ALLARD, *supra* note 100, at 3.

106. See generally Allard et al., *supra* note 103 (analyzing whether spatial proximity to social services impacts utilization of social services among welfare mothers).

agencies function as much as economic safety nets as child protection services. Unfortunately, social scientists and feminist theorists pay little attention to the public child welfare system's role in supporting caregiving by poor mothers. Although fewer families are involved with child protection services than with TANF,¹⁰⁷ the number of children in state custody is staggering. In 2005 alone, there were more than half a million children in foster care.¹⁰⁸ Indeed, given the astronomical decline in the number of TANF recipients in the last decade,¹⁰⁹ the gap in the size of the two systems of family aid is likely to shrink dramatically. With welfare rolls slashed by the 1996 welfare law, social programs dwindling, and desperate poverty increasing, child welfare agencies are increasingly important sources of aid.

CONCLUSION

Having stripped Woodlawn, like other inner-city neighborhoods, of social programs, low-income housing, and guaranteed public assistance, the state is relying more than ever on the punitive system of foster care to address the needs of struggling single mothers and their children. The contradictions expressed by the women in my Woodlawn study reflect these tradeoffs, created because foster care constitutes a critical means for addressing parental poverty in their neighborhood. Poor families are left in the bind of resenting child welfare agencies' surveillance and interference, yet wanting the agencies' continued presence as one of the few remaining sources of public aid. Moreover, the child welfare system's racial geography shows that the agencies' role as a safety net will be most prominent in black neighborhoods, where high rates of foster care, unemployment, and inadequate social services

107. Gibbs et al., *supra* note 76, at 436-38 (stating that more than 500,000 children being cared for by relatives receive child-only TANF grants, some of which are outside the child welfare system).

108. There were 513,000 children in foster care on September 30, 2005. ADMIN. FOR CHILDREN AND FAMILIES, *supra* note 2, at 1.

109. See OFFICE OF FAMILY ASSISTANCE, U.S. DEP'T OF HEALTH AND HUMAN SERVS., TEMPORARY ASSISTANCE FOR NEEDY FAMILIES PROGRAM (TANF): SEVENTH ANNUAL REPORT TO CONGRESS I-1 fig.A (2006), available at http://www.acf.hhs.gov/programs/ofa/annualreport7/TANF_7th_Report_Final_101006.pdf (showing TANF recipients and families peaking in the early 1990s and declining since then).

converge. As this Essay demonstrates, the growing yet overlooked role of child welfare agencies in the shrinking welfare state only heightens the tensions inherent in the U.S. approach to child welfare.

The paradoxes discussed in this Essay intensify the need for radical reform of the child welfare system. At the heart of these contradictions are the punitive stipulations for receiving aid, including relinquishing custody of children to the state, and the state's unwillingness to provide needed support directly to poor families. Eliminating the source of tension within the child welfare system should be a central focus of change. Devising voluntary ways to address family poverty before a child-endangering crisis occurs—with the aim of generously supporting families' care of children—could accomplish this change. For example, some states and localities have employed strategies to address racial disparities that make communities central partners in developing policies and practices and that include community-building initiatives that expand the resources available to families.¹¹⁰ Others have implemented programs that provide subsidies and support services to relative caregivers comparable to what they would receive through foster care, but without the “requirement that children remain in or come from state custody.”¹¹¹ We should work to transform the child welfare system into a community-based institution that generously and non-coercively supports families.

110. CENTER FOR COMMUNITY PARTNERSHIPS IN CHILD WELFARE, PLACES TO WATCH: PROMISING PRACTICES TO ADDRESS RACIAL DISPROPORTIONALITY IN CHILD WELFARE (2006), available at http://www.cssp.org/uploadFiles/Promising_Practices_to_Address_Racial_Disproportionality.pdf; U.S. GOV'T ACCOUNTABILITY OFFICE, AFRICAN AMERICAN CHILDREN IN FOSTER CARE: ADDITIONAL HHS ASSISTANCE NEEDED TO HELP STATES REDUCE THE PROPORTION IN CARE (2007), <http://www.gao.gov/new.items/d07816.pdf>.

111. Coupet, *supra* note 75, at 457 (discussing the District of Columbia's Grandparent Caregivers Pilot Program Establishment Act of 2005); see also Susan L. Brooks & Dorothy E. Roberts, *Social Justice and Family Court Reform*, 40 FAM. CT. REV. 453, 456-57 (2003) (discussing the Tennessee Relative Caregivers Program).