

# William & Mary Bill of Rights Journal

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Volume 24 (2015-2016)  
Issue 3 Symposium: *The Liberal Dilemma in  
Child Welfare Reform*

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Article 10

March 2016

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Daniel Heimpel, *Child Protection's Parental Preference*, 24 Wm. & Mary Bill Rts. J. 755 (2016),  
<https://scholarship.law.wm.edu/wmborj/vol24/iss3/10>

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## CHILD PROTECTION'S PARENTAL PREFERENCE

Daniel Heimpel\*

### INTRODUCTION

In March 2015, a dozen child welfare experts visited William & Mary Law School in Virginia for a symposium provocatively titled “The Liberal Dilemma in Child Welfare Reform.”<sup>1</sup>

I was happy to have been chosen to join the group, which ranged from law professors to social work instructors to a journalist like myself.

Although some will blanch at the title of the conference and further recoil from the ideas shared in the pages of this symposium issue, one of the event’s organizers, William & Mary’s James Dwyer, was on to something very important.

Liberal-minded people rule the field of child welfare.<sup>2</sup> This is understandable. Child maltreatment is highly correlated with poverty.<sup>3</sup> Poverty is highly correlated with race.<sup>4</sup> And the structural racism that consigns certain American populations to higher rates of poverty and, correspondingly, higher rates of child maltreatment, calls for a social justice driven response not typically considered the provenance of conservative ideology.<sup>5</sup>

And so it would seem that a liberal mindset would naturally fasten to child protection and serve the interests of children who have been, or are at risk of being, abused.

But if we are to take as truth the arguments written in this symposium issue and which were shared during the 2015 symposium, the liberal mindset may be unwilling, due to ideological rigidity and a hollowed empirical foundation, to choose the best interest of the abused child over the interest of an abusing parent.

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<sup>1</sup> Symposium, *The Liberal Dilemma in Child Welfare Reform*, 24 WM. & MARY BILL RTS. J. 595–772 (2016).

<sup>2</sup> Elizabeth Bartholet, *Thoughts on the Liberal Dilemma in Child Welfare Reform*, 24 WM. & MARY BILL RTS. J. 725, 725 (2016) [hereinafter Bartholet, *Thoughts on the Liberal Dilemma*].

<sup>3</sup> See ANDREA J. SEDLAK ET AL., U.S. DEP’T OF HEALTH & HUMAN SERVS., FOURTH NATIONAL INCIDENCE STUDY OF CHILD ABUSE AND NEGLECT (NIS-4): REPORT TO CONGRESS 11–12 (2010).

<sup>4</sup> See U.S. DEP’T OF EDUC., NCES 2015-144, THE CONDITION OF EDUCATION 2015, at 52–54 (2015).

<sup>5</sup> See James G. Dwyer, *Diagnosing Liberal Resistance to Needed Child Welfare Reforms*, 24 WM. & MARY BILL RTS. J. 595, 595 (2016) (explaining that conservatives tend to “oppose spending on programs that could lift people out of poverty and help them recover from adverse experiences”).

Instead, according to some of the conference participants, the liberals who lead child welfare prefer to insist on defending parents' rights, even if those rights have been compromised by parental behavior that violates the rights of their children.<sup>6</sup>

This, according to conference participant David Stoesz, is compounded by the degraded nature of modern social work education, which has, in postmodernist fervor, thrown out institutional knowledge and science in favor of narratives of the oppressed and a soft set of "values."<sup>7</sup>

Devoid of scientific foundation, liberals, trained in social work, latch on to a social justice ideology which is partially blind.<sup>8</sup> While they see the parentage rights of impoverished adults who may also be the victims of structural and generational racism in stark relief, they struggle to discern how their defense of those adults' rights can have lifetime consequences or be downright deadly for children.<sup>9</sup> To the liberal mind, social justice for children depends on improving the lives of parents.<sup>10</sup>

As Elizabeth Bartholet argues, such a parent-first ideology is built on faulty research, and can have terrible consequences for children.<sup>11</sup>

The majority of the participants at the conference argued for more assertively using the coercive power of the state to enforce constraints against parents who are known to be a threat to their children.<sup>12</sup> But, as they describe with precision, although laws exist that lean further toward the rights of the child, their interpretation by child welfare practitioners often strips those laws of their child-protective power.<sup>13</sup>

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<sup>6</sup> See, e.g., David Stoesz, *How the Liberati Sabotaged Child Welfare*, 24 WM. & MARY BILL RTS. J. 603, 603–04 (2016).

<sup>7</sup> See *id.* at 611–12.

<sup>8</sup> See *id.* at 612–13.

<sup>9</sup> See *id.* at 614.

<sup>10</sup> Bartholet, *Thoughts on the Liberal Dilemma*, *supra* note 2, at 725–26.

<sup>11</sup> See *id.* at 726, 732 (arguing that the liberal research behind the child welfare reform movements does not focus on a child's best interests, but rather demonstrates that the programs "are successful in terms that will persuade policymakers to adopt them" as well as whether they "succeed in keeping maltreated children home with the parents," but that children suffering from repeat maltreatment will grow up to "disproportionate unemployment, homelessness, and substance abuse").

<sup>12</sup> See, e.g., *infra* note 13 and accompanying text.

<sup>13</sup> See generally Cassie Statuto Bevan, *The Impact of Liberal Ideology on Child Protection Reform*, 24 WM. & MARY BILL RTS. J. 709 (2016) (discussing the lack of implementation and enforcement of child protection laws and the impact of liberal ideology on child protection reform and action); Richard J. Gelles, *Why the American Child Welfare System Is Not Child Centered*, 24 WM. & MARY BILL RTS. J. 733 (2016) (arguing that the focus on parents rather than children makes the child welfare system unable to ensure the safety and well-being of children); Andrew J. Weisberg & Frank E. Vandervort, *A Liberal Dilemma: Respecting Autonomy While Also Protecting Inchoate Children from Prenatal Substance Abuse*, 24 WM. & MARY BILL RTS. J. 659 (2016) (arguing that the courts have recognized the rights of children to hold their mothers liable for injuries inflicted at any time after conception, but the rights and needs of children are not being considered when it comes to pregnant mothers using drugs and alcohol).

This aversion to employing existing mandates to protect children is not only felt in interpretation of the law but also in policy reform efforts that, in the name of social justice, would leave children at greater risk of harm.<sup>14</sup> Inasmuch, there is urgency behind this conference and symposium issue.

In addition to a wholesale dismantling of the prevailing ideologies in child welfare, the participants offered some of their own solutions to refocus liberal thinking to better encompass justice for vulnerable children.<sup>15</sup>

Being a reporter, it is unsurprising that I was assigned the role of rapporteur and will in this Article do my best to synthesize the main thoughts shared at the conference and in the papers I have read.

I will start with an examination of the current legal framework that allows for the more aggressive use of removal to protect children, as described by conference participants. I will then discuss two major themes highlighted by conference participants: liberal reticence to take punitive action against parents to protect children and the results of social work education becoming unmoored from science. Finally, I will describe the solutions that participants submitted. I will also propose that new advances in technology may provide a window for a different way to view child protection: one wherein the warring factions of the child welfare community may be able to come together.

## I. THE DECRIMINALIZATION OF CHILD ABUSE

Richard Gelles, past-Dean of the University of Pennsylvania's School of Social Policy & Practice, argued in his article that the issue at hand was not one of liberal ideology versus conservative thought but rather a prevailing bias in social workers and child welfare administrators to see parents, rather than children, as the clients.<sup>16</sup>

Gelles argues that the Adoption Assistance and Child Welfare Act of 1980 (AACWA)<sup>17</sup> widened the ability of the field of child welfare to pursue a parent-as-client

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<sup>14</sup> Stoesz, *supra* note 6, at 608–10 (explaining how the advancement of narratives voiced by victims of social injustice has negative consequences on children).

<sup>15</sup> See, e.g., Bartholet, *Thoughts on the Liberal Dilemma*, *supra* note 2, at 732 (explaining her view of what future child welfare reform should be); Stoesz, *supra* note 6, at 616–18 (arguing that any serious reform for child welfare will not come without “disruptive innovation”); Weisberg & Vandervort, *supra* note 13, at 689–91 (arguing that the ideal solution to substance abuse among pregnant mothers is to provide more resources for voluntary treatment and civil commitment when substance abusers refuse voluntary treatment); see also Bruce A. Thyer, Professor, Fla. State Univ., Coll. of Soc. Work, Panel on Preventing Prenatal Harm at the William & Mary Law School Symposium: *The Liberal Dilemma in Child Welfare Reform* (Mar. 20, 2015).

<sup>16</sup> See Gelles, *supra* note 13, at 738 (arguing that while it is tempting to blame liberals “for the parent-focus of the child welfare system . . . [t]here are a number of structural and cultural factors that generate the fact that parents are considered the prime client of the child welfare system”).

<sup>17</sup> Adoption Assistance and Child Welfare Act of 1980, Pub. L. No. 96-272, 94 Stat. 500 (1980) (codified as amended in scattered sections of 42 U.S.C. (2012)).

bias.<sup>18</sup> One part of the law called for child welfare agencies to make “reasonable efforts” to maintain children in the home of their families.<sup>19</sup>

“As a result of AACWA, parents became the primary clients as caseworkers, supervisors, and agency administrators worked to meet the standard of ‘reasonable efforts,’” Gelles writes.<sup>20</sup> “Given the nature of the workforce and the lack of a definition of the threshold of ‘reasonable efforts,’ reasonable efforts morphed into ‘every possible effort’ before too long.”<sup>21</sup>

Because, as we will discuss later, social work is a “value-based profession”<sup>22</sup> deeply rooted in ideals of social justice,<sup>23</sup> it became commonplace to see the parents as victims, and thus focus on their needs, sometimes at the cost of children.

Given that the current paradigm of explaining and understanding child abuse and neglect is that poverty, stress, and oppression are key correlates of child maltreatment, it is easy to understand that the paradigm and the values of the social work profession combine to produce a view that pursuing social justice, particularly with, and on behalf of, vulnerable and oppressed individuals and groups of people, means that caseworkers and supervisors see parents as their clients.<sup>24</sup>

Gelles goes on to describe three Supreme Court cases that “established a high bar for government intervention in matters of caregiving” and how, with that high bar set, there have been successive waves of family preservation efforts that clearly put parents first in decision-making.<sup>25</sup>

Gelles’s most incisive observation comes when applying probability theory to parental versus child bias in the child welfare system.<sup>26</sup> Although child welfare workers would rather not have to make the choice between children and their parents, Gelles argues that basic math forces them to do so.<sup>27</sup> By choosing to keep children in their families, the child welfare system is trading fewer “false positives,”

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<sup>18</sup> Gelles, *supra* note 13, at 739.

<sup>19</sup> *Id.* (discussing Adoption Assistance & Child Welfare Act of 1980 § 471(15)).

<sup>20</sup> *Id.* at 740.

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

<sup>23</sup> *Code of Ethics*, NAT’L ASS’N SOC. WORKERS (2008), <http://www.socialworkers.org/pubs/code/code.asp> [<http://perma.cc/4RNG-DJW6>].

<sup>24</sup> Gelles, *supra* note 13, at 741 (footnote omitted).

<sup>25</sup> *Id.* at 742 n.85, 743 (discussing *Santosky v. Kramer*, 455 U.S. 745 (1982); *Smith v. Org. of Foster Families for Equal. & Reform*, 431 U.S. 816 (1977); *Stanley v. Illinois*, 405 U.S. 645 (1972)).

<sup>26</sup> *See id.* at 745–46.

<sup>27</sup> *Id.*

where children are unduly removed from their homes, for more “false negatives,” where children are unduly left in unsafe homes.<sup>28</sup>

This is an important point. Child protection administrations often call themselves Departments of Children and Family Services, or something along those lines, implying that it is possible to hold these two goals of family preservation and child safety together.<sup>29</sup> Gelles argues that tipping too much in either direction will affect the other.<sup>30</sup> Whether or not this is due to a liberal bias, as the symposium was set up to argue, is not entirely clear. It may be that such a parent focus is more rooted in an adult bias, wherein adults more easily empathize with and, for obvious reasons, communicate with adults rather than children.

This parent bias plays out in the weakened enforcement of laws created to protect children to the benefit of parental privilege, according to both James Dwyer of William & Mary Law School and Cassie Statuto Bevan of the University of Pennsylvania.<sup>31</sup> “Liberals do not want to have to choose between children and adults,” Dwyer writes, “so they insist, with no valid research to support their position, that the best, perhaps only, way to help at-risk children is to focus on helping biological parents and their communities.”<sup>32</sup>

During a presentation on decision-making about parental fitness at birth, Dwyer argued that child welfare administrations and juvenile dependency courts often disregard existing law that allows for immediate termination of parental rights in cases of egregious parental unfitness.<sup>33</sup>

The Adoption and Safe Families Act of 1997 (ASFA)<sup>34</sup> was a legislative effort to orient the system more toward child protection.<sup>35</sup> Among the provisions is the ability for courts to “bypass” the reasonable efforts clause established in AACWA in “aggravated circumstances,” such as torture, sexual abuse, chronic abuse and abandonment.<sup>36</sup> In certain cases, such as those involving parents who have been found

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<sup>28</sup> *Id.*

<sup>29</sup> *See, e.g.*, L.A. COUNTY DEP'T CHILD. & FAM. SERVICES, <http://dcfs.co.la.ca.us> [<http://perma.cc/CN8C-4PPZ>].

<sup>30</sup> *Id.*

<sup>31</sup> *See* Statuto Bevan, *supra* note 13, at 722 (explaining that opposition to reforms are biased in the direction of the parent or adult); Dwyer, *supra* note 5, at 598–602 (explaining the liberal position that focusing on parents will help children).

<sup>32</sup> Dwyer, *supra* note 5, at 597.

<sup>33</sup> James G. Dwyer, Arthur B. Hanson Professor of Law, Wm. & Mary L. Sch., Panel on Decision-Making at Birth at the William & Mary Law School Symposium: The Liberal Dilemma in Child Welfare Reform (Mar. 20, 2015) [hereinafter Dwyer, Panel on Decision-Making].

<sup>34</sup> Adoption and Safe Families Act of 1997, Pub. L. No. 105-89, 111 Stat. 2115 (1997) (codified as amended in scattered sections of 42 U.S.C. (2012)).

<sup>35</sup> *See, e.g.*, Statuto Bevan, *supra* note 13, at 714 (explaining the legislative enthusiasm from both parties to protect children as the “most precious resource”).

<sup>36</sup> *Id.*

to have killed other children, this “bypass” of reasonable efforts and termination of parental rights is “involuntary.”<sup>37</sup> Parental rights must be terminated.<sup>38</sup>

In his oral remarks, Dwyer argued that despite the authorization to use termination of parental rights in serious cases, child protection agencies are loath to do so.<sup>39</sup> Dwyer recalled having proposed during a 2005 conference at William & Mary expanding the list of circumstances where the courts would have authorization to bypass reasonable efforts such as when parents were serving prison terms of more than one year or had two children previously removed and placed in foster care.<sup>40</sup>

“The opposition in the room to this proposal was also fairly uniform and arose from sympathy for adults and notions of parents’ rights,” Dwyer said during the symposium.<sup>41</sup> “The loudest proponents of parents’ rights are so-called child protection agency workers. I have heard some local agency directors say they simply will never use this fast-track termination of parental rights (TPR) authority, because ‘we don’t give up on parents.’”<sup>42</sup>

Dwyer further pointed to the proliferation of drug courts and prison nurseries as evidence of the parent bias run amok.<sup>43</sup> He dismissed drug courts as having no evidence of success, and noted that prison nurseries, available in ten states, confine babies in prison with their mothers, in what Dwyer described as an absurd effort to preserve attachment.<sup>44</sup> Dwyer said:

Imagine if someone proposed putting in prison elderly relatives of inmates, e.g., their mothers who need constant care, arguing that this would reduce criminal recidivism and would be better for those relatives than remaining in the community with other relatives or in a care facility. Advocates for the elderly would vehemently object.<sup>45</sup>

Dwyer’s alternative, as we will discuss in greater detail below, is to direct the state and its child protection apparatus to engage in a markedly more pro-child stance, which

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<sup>37</sup> *Id.*

<sup>38</sup> *Id.*

<sup>39</sup> See Dwyer, Panel on Decision-Making, *supra* note 33.

<sup>40</sup> *Id.* (discussing James G. Dwyer, Arthur B. Hanson Professor of Law, Wm. & Mary L. Sch., Remarks at the William & Mary Law School Task Force Roundtable: Reforming Parentage Laws (Sept. 30–Oct. 1, 2005)).

<sup>41</sup> *Id.*

<sup>42</sup> *Id.* (quoting the director of Child Protective Services for a large Virginia city).

<sup>43</sup> *Id.*; see also Chhaya Nene, *The Controversial, Emerging Notion of Prison Nurseries*, CHRON. SOC. CHANGE (Mar. 28, 2013), <https://chronicleofsocialchange.org/featured/the-controversial-emerging-notion-of-prison-nurseries/2362> [<http://perma.cc/VVC2-8M5K>].

<sup>44</sup> Dwyer, Panel on Decision-Making, *supra* note 33.

<sup>45</sup> *Id.*

would result in removing more children from their parents' custody.<sup>46</sup> The through line of his thinking, which is supported by University of Michigan Law School Professor Frank Vandervort's discussion of the rights of the "inchoate child" in this symposium issue,<sup>47</sup> hinges on the idea that the state is responsible for bestowing custodial rights to parents, and is, in the case of determining parental fitness at birth, under a deeper obligation to ensure the child's rights than a "damaged" parent's.<sup>48</sup> "[G]iving priority to the liberty of damaged people who have children in their custody puts those children at serious risk of becoming badly damaged themselves . . . ."<sup>49</sup>

While Dwyer veers into the philosophical to bolster his arguments, Statuto Bevan relies squarely on the law.<sup>50</sup> Like Gelles, Statuto Bevan considers both conservatives and liberals guilty of putting parents first.<sup>51</sup> Her argument centers on the weak enforcement of ASFA and the Child Abuse Prevention and Treatment Reauthorization Act of 2010.<sup>52</sup> Statuto Bevan points out that beyond the authorization to "bypass" reasonable efforts under ASFA, the 1997 law also promised that the paramount concern to child welfare agencies and the courts was a "child's health and safety."<sup>53</sup> Further, she notes that ASFA created a strict timeline for termination of parental rights after a child has been removed.<sup>54</sup> Under the federal law, state-run agencies must move toward a termination of parental rights if the child has been in foster care for fifteen of the most recent twenty-two months.<sup>55</sup> The exception, Statuto Bevan points out, is if the state has a "compelling reason" that a termination of parental rights is not in the best interest of the child.<sup>56</sup>

Building on Dwyer's argument that use of "bypass" authorization is weak, Statuto Bevan adds that the "compelling reason" exception alongside two other exceptions, including if the child is in the care of a relative or services have not been provided to the parent, have literally "gutted the rule."<sup>57</sup> She goes on to write, "These

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<sup>46</sup> *Id.*; see also Dwyer, *supra* note 5, at 599.

<sup>47</sup> Weisberg & Vandervort, *supra* note 13, at 661.

<sup>48</sup> See *id.* at 707.

<sup>49</sup> Dwyer, *supra* note 5, at 597.

<sup>50</sup> See generally Statuto Bevan, *supra* note 13 (focusing on the Adoption and Safe Families Act of 1997 (ASFA) and the CAPTA Reauthorization Act of 2010 in examining liberal ideology and child-centered policies).

<sup>51</sup> See *id.* at 709.

<sup>52</sup> *Id.* at 713; see also CAPTA Reauthorization Act of 2010, Pub. L. No. 111-320, 124 Stat. 3459 (2010) (codified as amended at 42 U.S.C. §§ 5101–5106, 5116 (2012)).

<sup>53</sup> Statuto Bevan, *supra* note 13, at 714.

<sup>54</sup> *Id.* at 714–15.

<sup>55</sup> See *id.*; see also CHILD WELFARE INFO. GATEWAY, GROUNDS FOR INVOLUNTARY TERMINATION OF PARENTAL RIGHTS (2013), <https://www.childwelfare.gov/pubPDFs/groundtermin.pdf> [<http://perma.cc/T56M-93YJ>].

<sup>56</sup> Statuto Bevan, *supra* note 13, at 715.

<sup>57</sup> *Id.* at 715–18.



exceptions that must be documented by the states to be ‘compelling’ have become the rule.”<sup>58</sup> Statuto Bevan points out that CAPTA, which uses limited federal monies to induce states to live up to child safety requirements, mirrors ASFA in its child safety focus.<sup>59</sup> But like ASFA, state and local agencies disregard these rules in favor of family preservation.<sup>60</sup> “Thus, states receive the same language on when to bypass reasonable efforts twice in federal law,” Statuto Bevan writes.<sup>61</sup> “One would assume this would strengthen the provision, but it appears that giving states the discretion to define when reasonable efforts to preserve or reunite the family are not required is tantamount to giving states the discretion to ignore the law altogether.”<sup>62</sup>

In early 2015, a pair of advocacy groups—First Star and the Children’s Advocacy Institute—released a report that decried poor enforcement of CAPTA.<sup>63</sup> In a story that ran in *The Chronicle of Social Change* shortly thereafter, one of the report’s authors, Amy Harfeld, explained why. “‘The excuse we got [from the U.S. Department of Health and Human Services], in terms of CAPTA, was that it was not worth enough money to merit enforcement,’ Harfeld said. They are afraid states would just turn down the money. We think that’s unacceptable on its face.”<sup>64</sup>

Beyond the constraints of trying to compel states to act with a weak funding stream, Statuto Bevan’s article clearly points out that the greater challenge to those who want to see stricter enforcement of child protection laws is the fundamental bias of state-run administrations, which are prone to act in the best interest of parents over that of children.<sup>65</sup>

Frank Vandervort, a law professor at the University of Michigan Law School, cowrote his symposium article with Andrew Weisberg.<sup>66</sup> Vandervort and Weisberg’s article centers on the general unwillingness of states to protect the rights of the inchoate (read unborn) child when pregnant mothers are clearly abusing drugs.<sup>67</sup> In the most exhaustive analysis submitted in this symposium issue, Vandervort and Weisberg argue that “liberals must advocate for a continuum of well-funded drug treatment programs that address the needs of pregnant addicts.”<sup>68</sup> “We must also recognize, however,

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<sup>58</sup> *Id.* at 718–19.

<sup>59</sup> *Id.* at 718.

<sup>60</sup> *Id.* at 719.

<sup>61</sup> *Id.* at 722.

<sup>62</sup> *Id.*

<sup>63</sup> CHILDREN’S ADVOCACY INST. & FIRST STAR, SHAME ON U.S.: FAILINGS BY ALL THREE BRANCHES OF OUR FEDERAL GOVERNMENT LEAVE ABUSED AND NEGLECTED CHILDREN VULNERABLE TO FURTHER HARM 29 (2015).

<sup>64</sup> See John Kelly, *Federal Child Welfare Cash Should Be Tied to Full Compliance*, *Groups Say*, CHRON. SOC. CHANGE (Jan. 27, 2015), <https://chronicleofsocialchange.org/featured/federal-child-welfare-cash-should-be-tied-to-full-compliance-groups-say/9274> [<http://perma.cc/7536-LP5D>].

<sup>65</sup> Statuto Bevan, *supra* note 13, at 721–22.

<sup>66</sup> See generally Weisberg & Vandervort, *supra* note 13.

<sup>67</sup> See *id.* at 661.

<sup>68</sup> *Id.* at 662.

that inchoate children are entitled to state intervention when necessary to protect them from harm caused by addicted mothers—mothers who will not, or cannot, protect them.<sup>69</sup> Beyond protection, the authors also point to statistics that tell the devastating story of young lives that have been significantly degraded or cut short due to a parent's drug abuse.<sup>70</sup> The basic conflict that Vandervort and Weisberg wrestle with is: At what point does the high burden of intrusion into personal privacy, in this extreme case a woman's body, trump the inherent rights of a child yet to be born?<sup>71</sup> Walking the minefield of politically charged words when discussing children *in utero*, Vandervort and Weisberg settle on “the inchoate child,” and argue quite convincingly that there is precedent to allow for a much more aggressive regime available to those who would want to protect their rights.<sup>72</sup> But as it stands, they argue, laws designed to protect the inchoate child are inadequate.<sup>73</sup>

Similarly, Adam Duso and John Stogner of the Department of Criminal Justice and Criminology at the University of North Carolina at Charlotte, argue for the constitutionality of ratcheting up punitive measures against alcohol-abusing pregnant mothers but also point to the unintended consequences of such a threat of criminal punishment, including aversion to prenatal care and isolation for pregnant women.<sup>74</sup>

As we have seen, symposium participants have shown how adult bias has morphed into family-centered readings of laws that, on their face, offer provisions that favor children's rights to not become victims of abuse. In the next section, we will look at what some symposium participants see as the motivation for and the consequences of child welfare reforms that run counter to the intent of child-centered federal policy.

## II. LEMMINGS

David Stoesz, a professor at Kean University in Union, New Jersey, is as bruising in his article for this symposium issue as he was during the symposium itself.<sup>75</sup> Stoesz argues that social work education, of which he is a part, is unmoored, adrift from the

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<sup>69</sup> *Id.*

<sup>70</sup> *See id.* (providing statistics throughout the explanation of each type of substance abuse).

<sup>71</sup> *Id.* at 663–68.

<sup>72</sup> *See id.* at 667–68.

<sup>73</sup> *Id.* at 691–96 (examining several states' approaches to minimizing the harms associated with prenatal exposure to drugs and alcohol).

<sup>74</sup> Adam J. Duso & John Stogner, *Re-evaluating the Criminalization of In Utero Alcohol Exposure: A Harm-Reduction Approach*, 24 WM. & MARY BILL RTS. J. 621, 622 (2016) (arguing that punitive measures against alcohol-abusing, pregnant mothers are inconsistent with harm reduction).

<sup>75</sup> *See* Stoesz, *supra* note 6; David Stoesz, Professor, Kean Univ., Panel on Social and Political Science Background at the William & Mary Law School Symposium: The Liberal Dilemma in Child Welfare Reform (Mar. 20, 2015) [hereinafter Stoesz, Panel on Social and Political Science Background].

bedrock of scientific inquiry because of an overzealous adoption of postmodern thinking.<sup>76</sup> “Rather than apply scientific methods to describe and advocate for the victims of inequality, social work interpreted science as just one more method that a patriarchal society used to exploit the marginalized via power imbalances,” he writes.<sup>77</sup> “Postmodernists favored authentic narratives of marginalized people over the truth of established authorities.”<sup>78</sup> Beyond what Stoesz argues is an ideological perspective that devalues empiricism in social work education, he cites his own research in an attack on the quality of the students entering schools of social work across the United States.<sup>79</sup> “[A] standard test to assess the language and math proficiency [for some 180 graduate disciplines], schools of social work often make the GRE optional, suspecting that it is discriminatory,” he writes.<sup>80</sup> “Regardless, of those applicants to [Masters of Social Work (MSW)] programs, the combined [Graduate Record Examination (GRE)] scores are next to last among graduate disciplines, just above physical education, while the math scores of social work applicants are the lowest among graduate disciplines.”<sup>81</sup>

These students have since moved up in the ranks of child welfare and social work education. As Stoesz sees it, social workers subjected to social work education are reduced to little more than an endless line of moronic lemmings, leading each other along on principles and values more often than evidence.<sup>82</sup> “Child welfare practice, absent grounding in empirical evidence, fell to ideological fashion,” Stoesz writes, “vacillating between keeping children with their biological families (family preservation) or expediting termination of parental rights to move toward adoption (child safety).”<sup>83</sup> Without evidence, Stoesz argues, the field has been left to its liberal notions about social justice, which, as discussed above, tend to lean more toward family preservation than child safety.<sup>84</sup>

In her article and presentation, Elizabeth Bartholet, a professor of law at Harvard Law School, describes three family preservation “movements” that she has been railing against for years now<sup>85</sup>: “Intensive Family Preservation Services”;

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<sup>76</sup> Stoesz, *supra* note 6, at 608–13.

<sup>77</sup> *Id.* at 609.

<sup>78</sup> *Id.*

<sup>79</sup> *Id.* at 612 n.62 (relying on DAVID STOESZ, HOWARD JACOB KARGER & TERRY CARRILIO, *A DREAM DEFERRED: HOW SOCIAL WORK EDUCATION LOST ITS WAY AND WHAT CAN BE DONE* 14–15 (2010)).

<sup>80</sup> *Id.* at 612.

<sup>81</sup> *Id.*

<sup>82</sup> *Id.* at 612–14.

<sup>83</sup> *Id.* at 613.

<sup>84</sup> *See, e.g., supra* notes 25–30 and accompanying text.

<sup>85</sup> *See generally* Elizabeth Bartholet, *Differential Response: A Dangerous Experiment in Child Welfare*, 42 FLA. ST. U. L. REV. 573, 582–86, 593–98 (2015) [hereinafter Bartholet, *Differential Response*]; Elizabeth Bartholet, *The Racial Disproportionality Movement in Child Welfare: False Facts and Dangerous Directions*, 51 ARIZ. L. REV. 871, 910–20 (2009) [hereinafter Bartholet, *Racial Disproportionality*].

“Racial Disproportionality”; and “Differential Response.”<sup>86</sup> In light of Stoesz’s critique, Bartholet’s accusation that a cast of charitable foundations used weak, self-serving research to push forward a decidedly family preservation agenda becomes more comprehensible.<sup>87</sup> Further, it helps to explain why these efforts enjoyed so much success, given that child welfare leadership is largely drawn from the suboptimal pool of students of social work.<sup>88</sup> “While the dominant liberal group claims to care about child interests,” Bartholet writes, “its real goal appears to be to serve the interests of poor adults and to alleviate the suffering associated with poverty, including any harm that parents might suffer from state intervention in cases of child maltreatment.”<sup>89</sup>

This family preservation bias first appeared as Intensive Family Preservation Services (IFPS) in the 1980s and 1990s, according to Bartholet.<sup>90</sup> The idea behind IFPS was that six weeks of intensive family services could make it possible for a child to safely stay at home as opposed to being removed to foster care.<sup>91</sup> Despite a dearth of evidence that children were any safer because of the policy,<sup>92</sup> IFPS caught on like wildfire, with child welfare administrators happy to trade the label of baby snatchers for family builders.<sup>93</sup> The only problem was that IFPS’s evidence base was weak, and research out of Chapin Hall at the University of Chicago showed that children whose parents received IFPS were no better off.<sup>94</sup> While IFPS ebbed,<sup>95</sup> it quickly metastasized and came back in new forms.<sup>96</sup>

The second wave of family preservation, manifested as a stack of since-discredited research and white papers that suggested that racial disproportionality in the child welfare system, wherein a disproportionate number of black children enter foster care,

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<sup>86</sup> Bartholet, *Thoughts on the Liberal Dilemma*, *supra* note 2, at 728–31.

<sup>87</sup> See Bartholet, *Differential Response*, *supra* note 85, at 575–76, 578–79.

<sup>88</sup> Daniel Heimpel, *Harvard’s Elizabeth Bartholet Takes On Differential Response*, CHRON. SOC. CHANGE (Nov. 19, 2014), <https://chronicleofsocialchange.org/report/harvards-elizabeth-bartholet-takes-on-differential-response/8731> [<http://perma.cc/269D-GCS8>]; see also Stoesz, *supra* note 6, at 612–13.

<sup>89</sup> Bartholet, *Thoughts on the Liberal Dilemma*, *supra* note 2, at 725–26.

<sup>90</sup> *Id.* at 722.

<sup>91</sup> *Id.*

<sup>92</sup> Ira M. Schwartz, Opinion, *Family Preservation Elusive Without Credible Risk Assessment*, CHRON. SOC. CHANGE (July 21, 2014), <https://chronicleofsocialchange.org/opinion/family-preservation-elusive-without-credible-risk-assesment/7575> [<http://perma.cc/CRD4-W9VV>].

<sup>93</sup> Bartholet, *Thoughts on the Liberal Dilemma*, *supra* note 2, at 728; see also, e.g., N.C. Div. of Soc. Servs., *What Is the Family Support Movement?*, 5 CHILD. SERVICES PRAC. NOTES 1 (2000), [http://www.practicenotes.org/vol5\\_no1/what\\_is\\_family\\_support\\_mvmt.htm](http://www.practicenotes.org/vol5_no1/what_is_family_support_mvmt.htm) [<http://perma.cc/423H-SYZW>].

<sup>94</sup> Francine Jacobs, *What to Make of Family Preservation Services Evaluations* 10–11 (Univ. of Chic. Chapin Hall Ctr. for Children, Discussion Paper No. CS-70, 2001), [http://www.chapinhall.org/sites/default/files/old\\_reports/58.pdf](http://www.chapinhall.org/sites/default/files/old_reports/58.pdf) [<http://perma.cc/BJF6-4CH9>].

<sup>95</sup> Frank Farrow, *The Shifting Policy Impact of Intensive Family Preservation Services* 1, 11 (Univ. of Chic. Chapin Hall Ctr. for Children, Discussion Paper No. CS-68, 2001), [http://www.chapinhall.org/sites/default/files/old\\_reports/59.pdf](http://www.chapinhall.org/sites/default/files/old_reports/59.pdf) [<http://perma.cc/2EC4-7GJG>].

<sup>96</sup> Bartholet, *Thoughts on the Liberal Dilemma*, *supra* note 2, at 728.

was driven by racial bias rather than a difference of rates of abuse among black and white families.<sup>97</sup>

Much of the racial disproportionality panic was driven by the National Incidence Study (NIS), which periodically tracks child abuse and neglect.<sup>98</sup> The third wave of these widely referenced reports was released in 1996, and it asserted that there was no difference between white and black maltreatment rates.<sup>99</sup> Instead, the authors reasoned, racial disproportionality was driven by “differential attention somewhere during the process of referral, investigation, and service allocation”<sup>100</sup>—the implication being that child protection workers rip children from their families more because of racial bias than because of the children’s need to be protected.

But in 2010, NIS-4 was released, which offered an about-face on the earlier assertion that racial bias, more than disparate rates of abuse, caused more black children to enter foster care.<sup>101</sup> “[T]he NIS-4 found statistically significant differences between Black and White rates of child maltreatment, contrary to the findings of the first three NIS cycles,” NIS-4 reads.<sup>102</sup> Back in 2009, before NIS-4 turned the racial disproportionality movement on its head, Bartholet had sounded the alarm about efforts to reduce the numbers of black children entering the foster care system in a law review article<sup>103</sup> as well as a later 2011 conference on racial disproportionality.<sup>104</sup> While the culmination of Bartholet’s work, NIS-4, and the work of other academics would slow momentum behind racial disproportionality, Bartholet argues that the liberal family preservation bias—so well embedded in the thinking of child welfare’s ruling class—would find itself a new home in yet another reform effort: Differential Response (DR).<sup>105</sup>

DR is grounded in the idea that traditional investigations of child abuse are too police-like, which compromises social workers’ capacity to engage families and

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<sup>97</sup> See Daniel Heimpel, *The Future of Foster Care: Are We Too Cheap to Keep Children Safe?*, HUFFINGTON POST (Feb. 11, 2011), [http://www.huffingtonpost.com/daniel-heimpel/future-of-foster-care\\_b\\_821682.html](http://www.huffingtonpost.com/daniel-heimpel/future-of-foster-care_b_821682.html) [<http://perma.cc/GW9Q-HBTA>].

<sup>98</sup> See *National Incidence Study (NIS)*, U.S. DEP’T HEALTH & HUM. SERVICES, <https://www.childwelfare.gov/topics/systemwide/statistics/nis/> [<http://perma.cc/RL9V-VNXX>].

<sup>99</sup> ANDREA J. SEDLAK & DIANE D. BROADHURST, U.S. DEP’T OF HEALTH & HUMAN SERVS., *THE THIRD NATIONAL INCIDENCE STUDY OF CHILD ABUSE AND NEGLECT (NIS-3) 4-28 to 4-30 (1996)*.

<sup>100</sup> *Id.* at 4-30 (footnote omitted).

<sup>101</sup> ANDREA J. SEDLAK ET AL., U.S. DEP’T OF HEALTH & HUMAN SERVS., *FOURTH NATIONAL INCIDENCE STUDY OF CHILD ABUSE AND NEGLECT (NIS-4) 9–10 (2010)*.

<sup>102</sup> ANDREA J. SEDLAK ET AL., U.S. DEP’T OF HEALTH & HUMAN SERVS., *SUPPLEMENTARY ANALYSES OF RACE DIFFERENCES IN CHILD MALTREATMENT RATES IN THE NIS-4*, at 4 (2010).

<sup>103</sup> See Bartholet, *Racial Disproportionality*, *supra* note 85.

<sup>104</sup> Elizabeth Bartholet, Professor of Law, Harv. L. Sch., *Race & Child Welfare: Disproportionality, Disparity, Discrimination: Re-Assessing the Facts, Re-Thinking the Policy Options*, Working Conference at Harvard Law School (Jan. 28–29, 2011).

<sup>105</sup> Bartholet, *Thoughts on the Liberal Dilemma*, *supra* note 2, at 729–31.

prevent children from entering foster care.<sup>106</sup> To fix this, the designers of DR argued that the child protection system should offer a “differential response” for families that show fewer risk factors when a call of child maltreatment comes into the hotline.<sup>107</sup> Calls that meet the legal threshold to warrant an investigation are broken into two tracks.<sup>108</sup> Those cases deemed less risky fall into the Alternative Response (AR) track.<sup>109</sup> In these cases, workers are instructed to forgo fact-finding investigations for softer, strengths-based and family-centered assessments.<sup>110</sup> Parents are then offered voluntary services.<sup>111</sup> This is unlike traditional investigations, where families can be compelled to follow a service plan or risk losing their children.<sup>112</sup>

In the article that Bartholet submitted for this symposium issue, she contends that the research that has been used to propel the adoption of DR “fails to pass the laugh test.”<sup>113</sup> “The Differential Response advocacy research places strong overt emphasis on the degree to which the program pleases the adults involved,” Bartholet writes.<sup>114</sup> She argues that much of the research is based on surveys wherein parents on the AR track, who were offered voluntary and often monetary support, are compared to parents who were threatened by the state with removal of their children.<sup>115</sup> “[W]hat does the fact that parents may prefer that track prove about its success or failure in protecting children?”<sup>116</sup> In Minnesota<sup>117</sup> and Massachusetts,<sup>118</sup> differential response programs have been rolled back because of documented lapses in child safety. In addition, research out of Illinois,<sup>119</sup> another state that discounted its DR experiment, showed that children on the DR track were no safer than those in the traditional track.

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<sup>106</sup> See Bartholet, *Differential Response*, *supra* note 85, at 589.

<sup>107</sup> Bartholet, *Thoughts on the Liberal Dilemma*, *supra* note 2, at 729.

<sup>108</sup> *Id.*

<sup>109</sup> *Id.*

<sup>110</sup> Bartholet, *Differential Response*, *supra* note 85, at 589–90.

<sup>111</sup> Bartholet, *Thoughts on the Liberal Dilemma*, *supra* note 2, at 729.

<sup>112</sup> *Id.* at 731.

<sup>113</sup> *Id.*

<sup>114</sup> *Id.*

<sup>115</sup> *Id.*

<sup>116</sup> *Id.*

<sup>117</sup> Daniel Heimpel, *Family Preservation Falters in the Heartland*, CHRON. SOC. CHANGE (Jan. 7, 2015), <https://chronicleofsocialchange.org/featured/family-preservation-falters-in-the-heartland/9058> [<http://perma.cc/JU43-EKMG>].

<sup>118</sup> Jenifer McKim, *Gov. Baker Eliminates Controversial DCF Two-Tier System for At-risk Children*, NEW ENG. CTR. FOR INVESTIGATIVE REPORTING (Nov. 17, 2015), <https://necir.org/2015/11/17/gov-baker-eliminates-controversial-dcf-two-tier-system-for-at-risk-children/> [<http://perma.cc/Z82Q-P9HT>].

<sup>119</sup> Daniel Heimpel, *Differential Response Dealt Heavy Blow*, CHRON. SOC. CHANGE (June 24, 2014), <https://chronicleofsocialchange.org/featured/differential-response-dealt-heavy-blow-2/7289> [<http://perma.cc/76AA-RW3W>].

In line with Stoesz's indictment of social work education,<sup>120</sup> Bartholet's repudiation of DR and other family preservation "movements" calls into question the viability of an approach built on values that overwhelmingly tilt in the favor of parents.<sup>121</sup>

### III. SOLUTIONS

The current national climate is one of de-escalating the punitive powers of the state, not augmenting them. The popular media has made strong arguments for the dismantling of a prison system that is clearly oppressive and discriminatory,<sup>122</sup> as unlikely partners like the Koch brothers and the American Civil Liberties Union (ACLU) team up on prison reform.<sup>123</sup>

The climate is not one of steeling our resolve and more aggressively using the coercive powers of the state. Yet, some may interpret comments by many of the participants cited here as arguing for doing just that, and worse still with some of the most vulnerable families in America. But there is an underlying issue here. This country is unwilling to redistribute its wealth on the scale needed to remedy the social inequities that drive child abuse.

Now, for a moment, assume that most of the participants who wrote for this symposium issue accept that the drivers of child abuse, most pointedly poverty, will not be alleviated in the near term. Under that assumption, what are the remedies left to protect children?

Weisberg and Vandervort call for dramatically expanding the drug treatment programs for substance abusing mothers, but, in the event that those mothers do not take up the services, they suggest using civil commitment to compel pregnant mothers to combat their substance abuse: "Just as the state intervenes to protect minors from abusive parents, it should intervene to protect the inchoate child's mind and body from its mother's reckless actions."<sup>124</sup>

Although Duso and Stogner agree on the constitutionality of applying such means with alcohol abusing mothers, they add that "incapacitation-based arguments in support of these policies may have more merit than deterrence-based ones, but the claims are still suspect."<sup>125</sup> Instead of ratcheting up the enforcement regime against alcohol abusing mothers, Duso and Stogner argue that part of the solution is "advocacy

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<sup>120</sup> Stoesz, *supra* note 6, at 612–13.

<sup>121</sup> See Bartholet, *Thoughts on the Liberal Dilemma*, *supra* note 2, at 727–31.

<sup>122</sup> See generally, e.g., Ta-Nehisi Coates, *The Black Family in the Age of Mass Incarceration*, ATLANTIC (Oct. 2015), <http://www.theatlantic.com/magazine/archive/2015/10/the-black-family-in-the-age-of-mass-incarceration/403246/> [<http://perma.cc/2B9Y-42EJ>].

<sup>123</sup> See generally Tim Mak, *Koch Bros to Bankroll Prison Reform*, DAILY BEAST (Jan. 13, 2015), <http://www.thedailybeast.com/articles/2015/01/13/koch-bros-to-bankroll-prison-reform.html> [<http://perma.cc/BCN6-4SH2>].

<sup>124</sup> Weisberg & Vandervort, *supra* note 13, at 706.

<sup>125</sup> Duso & Stogner, *supra* note 74, at 637.

against the development and continued implementation of punitive policies directed towards pregnant women who drink alcohol.”<sup>126</sup>

Dwyer, on the other hand, believes the most expedient way to better serve the goal of protecting children, babies in particular, is swifter and more decisive intervention by the state.<sup>127</sup>

His idea, which he floated at a 2005 William & Mary conference on child welfare, was to make sure a state agency verifies parental fitness immediately after a birth to a parent with founded cases of child maltreatment or an involuntary termination of parental rights.<sup>128</sup> This idea was met with near revulsion by the child protection workers and administrators at the conference, Dwyer said in oral remarks at the 2015 symposium.<sup>129</sup> “As it happens, subsequently three jurisdictions actually adopted this practice, which goes by the name of ‘Birth Match,’” Dwyer said.<sup>130</sup> While unevenly implemented, Birth Match is used to alert child welfare administrations when a mother with a prior involuntary termination of parental rights has another baby.<sup>131</sup>

Interestingly, there are much more sophisticated tools in the making. In recent years, child welfare administrations in Los Angeles County, California, Allegheny County, Pennsylvania,<sup>132</sup> and New Zealand<sup>133</sup> have considered applying predictive analytics<sup>134</sup> to child abuse response and even prevention, drawing, at times, raucous debate.<sup>135</sup>

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<sup>126</sup> *Id.* at 641.

<sup>127</sup> See James G. Dwyer, *A Child-Centered Approach to Parentage Law*, 14 WM. & MARY BILL RTS. J. 843, 847–48 (2006).

<sup>128</sup> *Id.*; see also James G. Dwyer, Arthur B. Hanson Professor of Law, Wm. & Mary L. Sch., Remarks at the William & Mary Law School Task Force Roundtable: Reforming Parentage Laws (Sept. 30–Oct. 1, 2005).

<sup>129</sup> James G. Dwyer, Arthur B. Hanson Professor of Law, Wm. & Mary L. Sch., Remarks at the William & Mary Law School Symposium: The Liberal Dilemma in Child Welfare Reform (Mar. 20, 2015).

<sup>130</sup> *Id.*; see also Terry V. Shaw et al., *Child Welfare Birth Match: Timely Use of Child Welfare Administrative Data to Protect Newborns*, 7 J. PUB. CHILD WELFARE 217, 219 (2013) (noting that the three jurisdictions are New York City, Maryland, and Michigan).

<sup>131</sup> Shaw et al., *supra* note 130, at 219.

<sup>132</sup> Holden Slattery, *Big Data Wave Breaks on Child Protective Services*, CHRON. SOC. CHANGE (Apr. 1, 2015), <https://chronicleofsocialchange.org/los-angeles/big-data-wave-breaks-on-u-s-child-protection/10822> [<http://perma.cc/SVC6-UWZH>].

<sup>133</sup> Darian Woods, *New Zealand's Child Abuse Analytics Study Hits Political Snag*, CHRON. SOC. CHANGE (Aug. 7, 2015) (noting that New Zealand's predictive analytics have been halted for the time being), <https://chronicleofsocialchange.org/featured/new-zealands-child-abuse-analytics-study-hits-political-snag/11859> [<http://perma.cc/2KNC-XM7A>].

<sup>134</sup> Daniel Heimpel, *Preventive Analytics*, CHRON. SOC. CHANGE (Oct. 27, 2014) [hereinafter Heimpel, *Preventive Analytics*], <https://chronicleofsocialchange.org/featured/preventive-analytics/8384> [<http://perma.cc/UT2U-Q52Z>].

<sup>135</sup> Daniel Heimpel, *Uncharted Waters: Data Analytics and Child Protection in Los Angeles*, CHRON. SOC. CHANGE (July 20, 2015), <https://chronicleofsocialchange.org/featured/uncharted-waters-data-analytics-and-child-protection-in-los-angeles/1086> [<http://perma.cc/9R85-XNTY>].



Advances in computer analysis and breakthroughs in linking reams of public records—including criminal histories, brushes with child protection, and birth certificates—are making it possible to identify which children are at the greatest risk of child abuse with increasing precision.<sup>136</sup>

While the discussion is currently focused on the application of predictive analytics in efforts to offer voluntary services, such as nurse home visiting, one could imagine how Dwyer would envision its potential use.<sup>137</sup>

Statuto Bevan, who spent much of the 1980s and all of the 1990s on Capitol Hill working on child welfare and safety issues, knows the fiscal realities facing poor families.<sup>138</sup> “[T]here is hope in the heart of many liberals that redistribution of wealth will improve outcomes for children who emerge from these poor and crumbling communities,” Statuto Bevan writes.<sup>139</sup> “Although redistribution of wealth is not likely, the next best strategy is to fight for every government dollar an advocate can get through whatever funding stream is available.”<sup>140</sup> But she warns that policies and laws meant to protect children should direct accountability on the perpetrators of violence against children.<sup>141</sup> “Overwhelmingly, these are the parents.”<sup>142</sup>

David Stoesz, who decries what he sees as the lamentable state of social work education, calls for more rigorous research in his article.<sup>143</sup> “Insist that Randomized Controlled Trials (RCTs) be mounted in order to determine the most effective interventions for maltreated children.”<sup>144</sup> Stoesz also wants to see a major documentary dedicated to the child welfare system, and a Teach for America styled program created for social workers.<sup>145</sup>

Bruce Thyer, the editor of *Research on Social Work Practice*, and a professor at Florida State University, wants to see an expansion of Project Prevention.<sup>146</sup> Project Prevention is a non-profit organization that offers long-term birth control and even sterilization to drug abusers who opt in to the program.<sup>147</sup> Participants are given stipends as an incentive.<sup>148</sup>

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<sup>136</sup> Heimpel, *Preventive Analytics*, *supra* note 134.

<sup>137</sup> *Id.*; *see also supra* notes 127–29 and accompanying text.

<sup>138</sup> *See generally* Statuto Bevan, *supra* note 13.

<sup>139</sup> *Id.* at 723.

<sup>140</sup> *Id.*

<sup>141</sup> *Id.*

<sup>142</sup> *Id.*; *see also id.* at 713 & n.32 (noting that 80.8% of child abuse perpetrators are biological parents, based upon data from the National Child Abuse and Neglect Data System (NCANDS)).

<sup>143</sup> Stoesz, *supra* note 6.

<sup>144</sup> *Id.* at 618.

<sup>145</sup> *Id.* at 616–17.

<sup>146</sup> *See* Bruce A. Thyer, *Project Prevention: Concept, Operation, Results and Controversies About Paying Drug Abusers to Obtain Long-Term Birth Control*, 24 WM. & MARY BILL RTS. J. 643 (2016).

<sup>147</sup> *Id.* at 647.

<sup>148</sup> *Id.*

Gelles says that the real change must be more profound, that child welfare administrations have to squarely see the children as their clients and not the parents.<sup>149</sup>

Bartholet strikes a more sweeping tone, writing that one cannot “afford to give up on liberals” or “write them all off as necessarily captured by the kind of thinking characterizing the group now dominant in child welfare.”<sup>150</sup> Instead, she writes: “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 do not fit that bill, and do not do much of anything to truly empower poor communities.”<sup>151</sup>

#### CONCLUSION

Now back to the question asked earlier: Under the assumption that redistribution of wealth is not likely, what can one do to better protect children?

The levers available seem to be using more coercive power to incapacitate parents' harming capacities. There are unintended consequences that could elongate the structural issues that contributed to the abuse in the first place. But in the short term, using that power to remove children and commit or incarcerate parents does keep children safer.

The symposium itself marks a sort of desperation in child welfare and child protection, desperation about how to mitigate a problem much deeper than the one in front of everyone in the field.

The child-centric approach articulated in this symposium issue can be seen as inconsiderate, even menacing to parents.<sup>152</sup> But I don't think that is what the papers here intend. Rather, they claw and scratch with what is at hand. This is something that happens to both the liberals and the conservatives in the field, if one could really make that distinction.

It is a battle at the bottom, where a trickle of federal, state and local dollars is meant to hold up the fragile tatters of our social safety net. Stoesz mentioned that it was postmodernism that shed social work education of its empirical base, leaving it to fight internally over ideological concepts like family preservation and child safety.<sup>153</sup>

It is much more profound than that. It is the story of two ideological camps, both socially progressive, that care deeply for children, struggling to meet this shared challenge while starved of the resources and political capital to do what is right for children.

On the one hand, you have the socially unacceptable abridgement of parentage rights, an admittedly awful circumstance. On the other, you have the morally

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<sup>149</sup> Gelles, *supra* note 13, at 753.

<sup>150</sup> Bartholet, *Thoughts on the Liberal Dilemma*, *supra* note 2, at 732.

<sup>151</sup> *Id.*

<sup>152</sup> See, e.g., Dwyer *supra* note 5, at 596–97 (claiming that being a parent is not a fundamental interest).

<sup>153</sup> Stoesz, Panel on Social and Political Science Background, *supra* note 75.

reprehensible abdication of governmental responsibility to protect children from abuse. There is an in-between, but the cage is so small that the two parties more easily fall into fighting than thinking a way out together.

The shared goal among the liberal child protectionists and the liberal family preservationist is what Bartholet alluded to: “a true war on poverty.”<sup>154</sup> There is a central place for the leading thinkers in child welfare on that battlefield.

All public systems must orient themselves around child abuse prevention, as child abuse is the most clear example of the child trauma scourge that is wreaking deleterious health outcomes on the population at large.<sup>155</sup> To help orient those systems around the goal of preventing child abuse, the aforementioned predictive analytics may be key.<sup>156</sup>

With ever-increasing clarity, the field is able to identify the children at the highest risk of being abused.<sup>157</sup> Beyond the Orwellian overtones of using data analytics to predict child abuse, the day is fast approaching when it will be impossible to disregard what the data tell us.

As the computers grow stronger in identifying the children and families that need the most help, an opportunity to make child abuse prevention a guiding principle for public and private social welfare services will appear. The question is what will the field do with such an opportunity.

Will the child protectionists argue for more coercive power without family supports? Will the family preservationists argue for more voluntary services coupled with weakened enforcement?

Or will both use the opportunity to create a system that immediately protects children, but also, in the name of children, creates long and sustained structural changes that will actually help adults be better parents?

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<sup>154</sup> Bartholet, *Thoughts on the Liberal Dilemma*, *supra* note 2, at 732.

<sup>155</sup> See generally Vincent J. Felitti et al., *Relationship of Childhood Abuse and Household Dysfunction to Many of the Leading Causes of Death in Adults: The Adverse Childhood Experiences (ACE) Study*, 14 AM. J. PREVENTIVE MED. 245 (1998).

<sup>156</sup> See *supra* notes 132–36 and accompanying text.

<sup>157</sup> Heimpel, *Preventive Analytics*, *supra* note 134.