

HOW THE *LIBERATI* SABOTAGED CHILD WELFARE

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On November 14, 2004, police found two children—who had been reported to Child Protective Services (CPS)—dead of dehydration and malnutrition while their drunken mother slept nearby in their bedroom.¹ The sixteen-month-old and six-week-old boys' living conditions had been reported to CPS on multiple occasions, resulting in diversion to Alternative Response Services (ARS); however, CPS failed to pursue reports that the mother, a victim of domestic violence, was drinking, and her children were reportedly covered in urine and feces.² A CPS worker neglected to pursue reports that the mother had left the children unsupervised for lengthy periods, had crashed her car in a ditch, and did not follow up a pediatrician's report stating that one of the boys showed evidence of failure to thrive.³ After a CPS intake worker rated a report on the family as "5," the highest risk category, the intake worker's supervisor downgraded it to "2" on the basis that ARS was involved in the case.⁴ CPS workers did not take action when the mother refused to sign a plan that specified sobriety.⁵ Due to their Native American heritage, the family was entitled to protection under the Indian Child Welfare Act,⁶ a status that caseworkers neglected to pursue.⁷ Implausibly, a letter dated two days *after* police had found the boys dead indicated that the most recent report of maltreatment was unfounded.⁸

INTRODUCTION

A century after its inception, child welfare in America is in disarray; the liberal promise of putting professional expertise to public benefit through the state has

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¹ MARG MEINIG & PATRICK DOWD, JUSTICE AND RAIDER ROBINSON FATALITIES REVIEW: REPORT OF THE OFFICE OF THE FAMILY & CHILDREN'S OMBUDSMAN 1–13 (2005), http://www.digitalarchives.wa.gov/GovernorGregoire/ofco/reports/ofco_20050412.pdf [<http://perma.cc/EVF4-36VH>].

² *Id.* at 1, 3, 5, 13.

³ *Id.* at 4, 5, 16.

⁴ *Id.* at 7–8.

⁵ *Id.* at 6–7.

⁶ 25 U.S.C. § 1901 (2012).

⁷ MEINIG & DOWD, *supra* note 1, at 3.

⁸ *The Allegation of Abuse or Neglect Is Unfounded or Inconclusive*, KOMONEWS.COM (Aug. 31, 2006), <http://www.komonews.com/archive/the-allegation-of-abuse-or-neglect-is-unfounded-or-inconclusive> [<http://perma.cc/KL2T-ZNWR>].

squandered on professional monopoly, inept practice, and lack of accountability. Social work has been central to this institutional failure by maintaining a professional monopoly on child welfare training, credentialing weak students, minimizing the import of research, and embracing postmodernism, an ersatz philosophy that derogated empiricism. Instead of establishing a sound foundation for identifying maltreated children and intervening on their behalf, the nation's child welfare infrastructure verges on collapse. Reform of child welfare has been frustrated by an entrenched *liberati* benefiting from the status quo. Recent collaborations between conservative and liberal organizations augur well for child welfare reform.

I. HISTORY

Prior to the advent of the welfare state, private voluntary agencies assumed responsibility for the welfare of children. Charles Loring Brace, founder of the New York Children's Aid Society, investigated poor immigrant children in the city's slums and transported thousands of children to farm families in the Midwest.⁹ Somewhat later, Jane Addams introduced a different strategy by organizing a kindergarten for poor immigrant children in Chicago.¹⁰ Disparate interventions notwithstanding, progressives relied on state-of-the-art research to describe the circumstances of the destitute poor and propose solutions. During the first decade of the twentieth century, Paul Kellogg surveyed living conditions in Pittsburgh, which prompted the Russell Sage Foundation to sponsor studies of other cities.¹¹ Commensurately, the first schools of social work were established in New York, Boston, and Chicago.¹² Meanwhile, reformers lobbied for the establishment of a federal agency to focus on children, leading President Theodore Roosevelt to convene a White House Conference on Children, momentum from which resulted in the creation of the U.S. Children's Bureau in 1912.¹³

Hoping to make a claim on professional status, early social reformers invited Abraham Flexner, who insisted that the scientific method be the basis for medical knowledge, to speak on the professionalization of social work at a conference in 1915; however, Flexner concluded that social work lacked practices based on science and more resembled journalism.¹⁴ Redoubling their efforts, social workers were

⁹ See Rebecca S. Trammell, *Orphan Train Myths and Legal Reality*, 5 MOD. AM. 3, 3 (2009); see also CHARLES LORING BRACE, *THE DANGEROUS CLASSES OF NEW YORK AND TWENTY YEARS' WORK AMONG THEM* (New York, Wynkoop and Hallenback 1872).

¹⁰ See JANE ADDAMS, *TWENTY YEARS AT HULL-HOUSE* (1910).

¹¹ *Women Working, 1800–1930: The Russell Sage Foundation and the Pittsburgh Survey*, HARV. U. LIBR. OPEN COLLECTIONS PROGRAM (2015), <http://ocp.hul.harvard.edu/ww/rsf.html> [<http://perma.cc/SH64-77SC>].

¹² ROY LUBOVE, *THE PROFESSIONAL ALTRUIST* 140–41 (1965).

¹³ WALTER I. TRATTNER, *FROM POOR LAW TO WELFARE STATE: A HISTORY OF SOCIAL WELFARE IN AMERICA* 202–04 (3d ed. 1984).

¹⁴ Abraham Flexner, *Is Social Work a Profession?*, in *PROCEEDINGS OF THE NAT'L CONFERENCE OF CHARITIES AND CORRECTIONS* 576, 581 (1915).

determined to found their methods on science. In 1917, Mary Richmond, a doyenne of the Charity Organization Society movement, published *Social Diagnosis*, an exhaustive taxonomy of the difficulties and dysfunctions for the nation's immigrant poor.¹⁵ Subsequently, leaders of major social service agencies published a 1923 manifesto underscoring the importance of science for developing social work knowledge:

The future growth of social case work is in large measure dependent upon its developing a scientific character. Its scientific character will be the result in part of a scientific attitude in social case workers towards their own problems and in part of increasingly scientific adaptations from the subject matter of other sciences¹⁶

Within the network of voluntary agencies that emerged during the early decades of the 20th century, basing social work interventions on science was a consistent objective.

The Great Depression not only overwhelmed such voluntary efforts but also provided liberals the opportunity to establish the American welfare state. Subsequently, the 1935 Social Security Act addressed children through Title IV, which provided cash benefits to poor families through Aid to Dependent Children (ADC).¹⁷ ADC's structure as a state-administered program that benefited from federal funding was likely intended to placate southern members of Congress who feared control by the federal government. Under ADC, later renamed Aid to Families with Dependent Children (AFDC), once a parent was included in the grant, caseworkers visited families in order to assure that financial assistance was used prudently, as well as monitor the care of children.¹⁸ Ultimately, Title IV would include a set of programs that came to define child welfare:

- Part A, initially AFDC, provided cash grants to poor households and became Temporary Assistance for Needy Families (TANF) in 1996;¹⁹
- Part B provided funds to states for child welfare services generally;²⁰
- Part D assisted mothers in securing child support in order to minimize public welfare expenditures,²¹ and

¹⁵ See generally MARY RICHMOND, *SOCIAL DIAGNOSIS* (1917).

¹⁶ AM. ASS'N OF SOC. WORKERS, *SOCIAL CASE WORK: GENERIC AND SPECIFIC, A REPORT OF THE MILFORD CONFERENCE 27* (reprint 1974) (1929).

¹⁷ Social Security Act of 1935, Pub. L. No. 74-271, 49 Stat. 620 (1935) (codified as amended at 42 U.S.C. §§ 301-1397 (2012)).

¹⁸ Linda Gordon & Felice Batlan, *The Legal History of the Aid to Dependent Children Program*, SOC. WELFARE HIST. PROJECT (2011), http://www.socialwelfarehistory.com/public_welfare/aid-to-dependent-children-the-legal-history/ [<http://perma.cc/X94S-4V59>].

¹⁹ See Social Security Act, 42 U.S.C. §§ 601-619 (2012); Stephen B. Page & Mary B. Lerner, *Introduction to the AFDC Program*, 7 WELFARE TO WORK 20, 20 (1997).

²⁰ 42 U.S.C. §§ 620-629.

²¹ *Id.* §§ 651-669.

- Part E funded foster care and adoption services, which also included funding for training foster parents as well as social workers.²²

Because compliance with these components brought states sizable federal revenues, the federal Department of Health and Human Services assumed significant influence over states, which enjoyed considerable discretion in providing services to children.²³

Government child welfare, then, relied on state caseworkers to assure the welfare of children, complementing voluntary sector agencies in the community. Typically, states deployed welfare departments organized into two divisions: (1) income maintenance, including AFDC/TANF, food stamps/Supplemental Nutrition Assistance Program (SNAP), Medicaid, and supplemental security income, and (2) social services, including child protection, foster care, adoption, and adult protective services.²⁴ Child welfare workers, comprising the bulk of Social Services, had responsibility for investigating reports of abuse and neglect, sometimes placing maltreated children in foster care and, less frequently, arranging their adoptions.²⁵ Since states varied with respect to child and family law, there was little consistency in child welfare. Schools of social work, which frequently used Departments of Social Services for student internships, attempted to establish professional standards in child welfare practice;²⁶ however, federalism exacerbated disparities in child welfare as wealthier states were obviously able to provide superior services compared to those in poorer states.

State-managed child welfare, inherently fragmented and often inadequate, contributed to a cascade of federal initiatives designed to rectify systemic problems:

- In response to the “battered child syndrome” popularized by pediatrician C. Henry Kempe, the 1974 Child Abuse Prevention and Treatment Act (CAPTA) encouraged states to develop a standard definition of maltreatment, required mandatory reporting of abuse and neglect while assuring immunity to reporters, and established the National Center for Child Abuse and Neglect to accumulate data on child maltreatment.²⁷

²² *Id.* §§ 670–679.

²³ STAFF OF H. COMM. ON WAYS AND MEANS, 108TH CONG., GREEN BOOK §§ 7, 8, 11 (Comm. Print 2004).

²⁴ *See, e.g., Division of Family Development*, N.J. DEP’T HUM. SERVICES, <http://www.state.nj.us/humanservices/dfd/home/> [<http://perma.cc/QS75-9DTU>] (last updated Aug. 25, 2015) (“Among the programs within this agency are . . . the two programs that make up the state’s welfare program[:] NJ SNAP (formerly Food Stamps); Child Support services and Child Care services.”).

²⁵ NAT’L ASS’N OF SOC. WORKERS, NASW STANDARDS FOR SOCIAL WORK PRACTICE IN CHILD WELFARE 5–9 (2013), <http://www.socialworkers.org/practice/standards/childwelfarestandards2012.pdf> [<http://perma.cc/HPZ6-8D4H>].

²⁶ *See, e.g., Chanitta Deloatch, Agencies, Students Benefit from Social Work Internships*, U.N.C. SCH. SOC. WORK, http://ssw.unc.edu/programs/masters/winston/agencies_students_benefit_from_internships [<http://perma.cc/AQ6X-D2TD>].

²⁷ Child Abuse Prevention and Treatment Act of 1974, Pub. L. No. 93-247, 88 Stat. 4 (1974) (codified as amended at 42 U.S.C. §§ 5101–5106, 5116 (2012)).

- In light of the frequency with which Native American children were placed with Anglo families, the Indian Child Welfare Act (ICWA) of 1978 required states to instruct child welfare workers to prefer relevant tribes in making out-of-home placements.²⁸
- The high number of foster children shuttled from home to home, “foster care drift,” resulted in the Adoption Assistance and Child Welfare Act of 1980, which established “permanency planning” as an objective in child welfare.²⁹
- Increasing numbers of maltreated children removed from their homes, associated with open-ended federal funding for Foster Care, prompted passage of the Family Preservation and Support Services Provision of the Omnibus Budget Reconciliation Act of 1993, which established “family preservation” as a child welfare objective.³⁰
- Returning maltreated children to unstable homes exposed them to risk of serious harm, resulting in injury and death and contributing to passage of the Adoption and Safe Families Act of 1997, which required termination of parental rights if a child had been in care for 15 of the previous 22 months, and eligible for adoption.³¹
- The failure to use family networks as an alternative to out-of-home placement resulted in the Fostering Connections to Success and Increasing Adoptions Act of 2008, establishing custodial rights for members of a child’s extended family and making them eligible for cash benefits.³²

However well-intentioned, these child welfare reforms further encumbered an already strained institution. Dependent on convoluted streams of federal revenues, state child welfare officials struggled to provide mandated services while reconciling disparate objectives, such as child safety versus family preservation.³³ Eight decades after its establishment with the Social Security Act, public child welfare had evolved into an incoherent system of care for maltreated children, despite annual revenues approximating \$25 billion.³⁴

²⁸ Indian Child Welfare Act of 1978, Pub. L. No. 95-608, 92 Stat. 3069 (1978) (codified as 25 U.S.C. § 1901 (2012)).

²⁹ Adoption Assistance and Child Welfare Act of 1980, Pub. L. No. 96-272, 94 Stat. 500 (1980).

³⁰ Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66, 107 Stat. 649 (1993).

³¹ Adoption and Safe Families Act of 1997, Pub. L. No. 105-89, 111 Stat. 2115 (1997).

³² Fostering Connections to Success and Increasing Adoptions Act of 2008, Pub. L. No. 110-351, 122 Stat. 3949 (2008).

³³ ANN E.P. DILL, *MANAGING TO CARE: CASE MANAGEMENT AND SERVICE SYSTEM REFORM* 131–34 (2001).

³⁴ *Child Welfare Laws and Legislation: State Child Welfare Policies*, NAT’L CONF. ST. LEGISLATURES, <http://www.ncsl.org/research/human-services/child-welfare.aspx> [http://perma.cc/4FP5-SU6B].

II. THE *LIBERATI*

The establishment of the Children's Bureau, followed by Title IV of the Social Security Act, bode well for child welfare, and Flexner's address underscored the import of science as the knowledge base for the modern professions.³⁵ Even though social work leaders pledged fealty to science, the profession would drift toward unscientific models of practice. Initial interest in empiricism was frustrated by social work's enthusiasm for Freudian theory, an early postmodern formulation whose fundamental concepts—id, ego, and superego—defied empirical validation.³⁶ Psychoanalytic social workers embraced Freudianism, attracted to the notion that neurosis was due to repressed childhood trauma.³⁷ While psychoanalytic theory became popular among the verbally affluent, it presented less relevance for the uneducated poor, yet, clinical social workers were so enraptured with Freud's method, they lost interest in empirical research. Indeed, one of the primary issues presented with the creation of the Council on Social Work Education (CSWE) in 1952 was reconciling the curricula of the graduate schools of social work, which had been established at private universities and focused in clinical, often Freudian, methods, with the curricula of the undergraduate social work programs that have evolved at public universities in order to staff public welfare departments that included child welfare.³⁸ Ultimately, these quite different objectives were papered over, and CSWE promised to advance a formal research agenda, à la Flexner, although this would be given short shrift.³⁹

Social work's ambivalence towards the value of empirical research deepened with the advent of postmodernism during the 1970s. Fundamentally, postmodernism represented an assault on the Enlightenment, contending that modernism served the self-interest of history's winners to the exclusion of its victims; postmodernists thus "encouraged a vigorous rejection of the entire Western intellectual 'canon' as long defined and privileged by a more or less exclusively male, white, European elite. Received truths concerning 'man,' 'reason,' 'civilization,' and 'progress' are indicted as intellectually and morally bankrupt."⁴⁰ In postmodernism, "theory" served as shorthand for a list of grievances by disaffected groups. Skeptical of established institutions, their agents, and explanations of how the world worked, postmodernism offered

³⁵ See Flexner, *supra* note 14, at 576–90.

³⁶ See Saul McLeod, *Id, Ego and Superego*, SIMPLY PSYCHOL. (2008), <http://www.simplypsychology.org/psyche.html>.

³⁷ See *Neurosis*, ENCYCLOPAEDIA BRITANNICA, <http://www.britannica.com/science/neurosis> [<http://perma.cc/L2VB-C7V7>] (last updated Oct. 1, 2015).

³⁸ See *The Road to 1952: AASSW and NASSA*, COUNCIL ON SOC. WORK EDUC., <http://www.cswe.org/About/57763/57765.aspx> [<http://perma.cc/64Z7-P2TW>]; see also *Early Accreditation: U.S. Master's, U.S. Bachelor's, and Canadian Programs*, COUNCIL ON SOC. WORK EDUC., <http://www.cswe.org/cms/57773.aspx> [<http://perma.cc/897J-NLKT>].

³⁹ See COUNCIL ON SOC. WORK EDUC., *THE RESEARCH AGENDA: IMPLEMENTING THE CSWE MISSION* (2005).

⁴⁰ See RICHARD TARNAS, *THE PASSION OF THE WESTERN MIND* 400 (1991).

the disenfranchised license to invent their own versions of events in order to legitimize their experiences, the authenticity of their “narratives” empowering indigenous representatives and their communities.⁴¹

A signal feature of postmodernism was American intellectuals’ inferiority complex, leaving them susceptible to European philosophical imports, whether German or French. By the 1970s, postmodernists’ skepticism about the benefits of science complemented social work’s alliance with social justice movements advancing the cause of African Americans, women, and the poor.⁴² 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: men over women, whites over minorities of color, heterosexuals over LGBTQ communities, and the Global North over the Global South. Postmodernists favored authentic narratives of marginalized people over the truth of established authorities. As one adherent put it, “there is no final narrative to which everything is reducible, but a variety of perspectives on the world, none of which can be privileged.”⁴³

CSWE, responsible for accrediting the nation’s social work programs, would itself reflect the identity politics emergent in the 1970s.⁴⁴ Well beyond the usual anti-discrimination disclaimers, CSWE required over-representation by underrepresented groups: women, African Americans, Asian Americans, Pacific Islanders, Hispanics and Puerto Ricans, the disabled, and LGBTQ. Indeed, CSWE’s by-laws “specify that a minimum of 50% of the board must be representatives of these under-represented groups.”⁴⁵ Mediated by CSWE’s many committees, this aggressive interpretation of affirmative action introduced mischief into accreditation when occupants of those elected to positions of responsibility evidenced low levels of scholarship.⁴⁶

Postmodernists singled out the professions for criticism, alleging the modern professions emerged to enforce social norms, “reproduced and legitimized through the practices of teachers, social workers, doctors, judges, policemen and administrators” who acted primarily as agents of “social control.”⁴⁷ Social work’s role was depicted as especially invasive: “[P]rior to social work, political surveillance was more

⁴¹ See *id.* at 401; see also *Gr: Grand Narrative*, MIA: ENCYCLOPEDIA OF MARXISM, <http://www.marxists.org/glossary/terms/g/r.htm> [<http://perma.cc/9M7G-J8XG>].

⁴² See Priscilla Ann Gibson, *Extending the Ally Model of Social Justice to Social Work Pedagogy*, 34 J. TEACHING SOC. WORK 199, 199 (2014).

⁴³ CHRIS ROHMANN, *THE WORLD OF IDEAS* 310 (1999).

⁴⁴ See *About CSWE*, COUNCIL ON SOC. WORK EDUC., <http://www.cswe.org/About.aspx> [<http://perma.cc/4US9-K7CU>].

⁴⁵ JESSICA HOLMES & SEOL HAN, COUNCIL ON SOC. WORK EDUC., *AFFIRMATIVE ACTION REPORT* (2011), <http://www.cswe.org/File.aspx?id=62915> [<http://perma.cc/HU4X-SLCE>].

⁴⁶ See David Stoesz, *Social Work Agonistes*, 21 ACAD. QUESTIONS 164, 171–76 (2008).

⁴⁷ MADAN SARUP, *AN INTRODUCTORY GUIDE TO POST-STRUCTURALISM AND POST-MODERNISM* 72, 80 (2d ed. 1993).

or less restricted to public domains—streets, businesses, schools. With social work, however, it became possible to keep track of marginal and common people in their homes as they pursued the most personal activities.”⁴⁸

By the early 1990s, postmodernism was advocated by the editor-in-chief of the profession’s flagship journal, *Social Work*.⁴⁹ Ann Hartman challenged “the privileging of the methods of science and unitary knowledges [that] have led to the subjugation of previously established erudite knowledge and of local, popular, indigenous knowledge located at the margins of society.”⁵⁰ Perforce, elevating “subjugated knowledge” required rejecting expertise: “First, in research and practice we must abandon the role of expert, we must abandon the notion that we are objective observers and our clients are passive subjects to be described and defined,” she continued.⁵¹ “We must enter into a collaborative search for meaning with our clients and listen to their voices, their narratives, and their constructions of reality.”⁵² An article in the *Journal of Social Work Education* echoed the theme: “[Social work] education will be enriched by the inclusion of different experiences, perspectives, and truths,” observed the author.⁵³ “[T]hose reflecting a European perspective are neither universal nor the only standard.”⁵⁴

Another editor of *Social Work* cited postmodernism in arguing that empirically based research should *not* be taught in professional education,⁵⁵ a contention that related to writing as well: “Interest in alternative forms of writing coincides with the emergence of the postmodern critique of Western enlightenment thinking,” he proposed.⁵⁶ “Previously unassailable notions such as progress, objectivity, and rationality have all been subject to critique—‘unpacked’ and reassembled as historical and cultural expressions.”⁵⁷

Embedded in social work schools during the 1990s, postmodernism would have a perverse influence with respect to momentum building to reform welfare. With federal welfare waivers requiring field experiments to evaluate welfare-to-work programs, social work was not only unequipped to conduct the research, but also vilified welfare reform as a diabolical conservative plot, effectively forfeiting tens of millions of dollars in federal funds that went to commercial research firms, such as the Manpower Demonstration Research Corporation (MDRC) and Mathematica Policy

⁴⁸ LESLIE MARGOLIN, UNDER THE COVER OF KINDNESS: THE INVENTIONS OF SOCIAL WORK 2 (1997) (footnote omitted).

⁴⁹ See Ann Hartman, *In Search of Subjugated Knowledge*, 37 SOC. WORK 483 (1992).

⁵⁰ *Id.*

⁵¹ *Id.* at 484.

⁵² *Id.*

⁵³ Dorothy Van Soest, *Multiculturalism and Social Work Education: The Non-Debate About Competing Perspectives*, 31 J. SOC. WORK EDUC. 55, 60 (1995).

⁵⁴ *Id.*

⁵⁵ See Stanley L. Witkin, *Should Empirically-Based Practice Be Taught in BSW and MSW Programs? No!*, 28 J. SOC. WORK EDUC. 265, 265 (1992).

⁵⁶ Stanley L. Witkin, *Writing Social Work*, 45 SOC. WORK 389, 390 (2000).

⁵⁷ *Id.*

Research, instead.⁵⁸ Empirical research on child welfare was similarly neglected. In a colossal admission, five leading child welfare researchers observed in 2005, “there is not a single intervention that has generated a published peer-review article based on a study in which they accepted referrals from a child welfare agency, randomly assigned them to a treatment condition, and evaluated the outcome.”⁵⁹

Postmodernism, while of dubious philosophical value, would become a subversive influence in child welfare. Especially pernicious was the replacement of the professional relationship between female caseworkers and client mothers with a sensibility that was decidedly maternal. The dean of an established school of social work advocated replacing the “male voice” of science with a “female voice” of caretaking.⁶⁰

What became well-credentialed common sense would be later described as “naive intervention;” however, iatrogenic outcomes made it anything but benign.⁶¹ Indeed, the “school-to-prison pipeline,” in which child welfare loomed large since many youth encountering juvenile justice had been in foster care, induced serious damage not only to minority students but also to their communities when sizable numbers of young people were incarcerated, an outcome that precluded for all practical purposes employment post-release.⁶² In one of the few critical assessments of professional pedagogy, Eileen Gambrill, a social work professor at the University of California–Berkeley School of Social Welfare, characterized the indoctrination of students as nothing less than “propaganda.”⁶³ Regardless, state licensing requirements for civil service employment abetted by union collective bargaining agreements, reinforced the authority of child welfare workers even as the quality of their professional knowledge degraded.

Conveniently, postmodernism rejected accountability with respect to child welfare. Having repudiated the professional-client relationship as authoritarian, social work averred to commiserate with parents on their level, even if they were suspected of having maltreated their children. Entitlement benefits for foster care and adoption complemented the professional sensibility; regardless of outcome, benefits would continue. Nowhere was this more evident than Title IV-E training funding directed to schools of social work, which followed placements of abused and neglected children into foster care.⁶⁴ Since the 1970s, millions of dollars have been diverted to train social

⁵⁸ See DAVID S. STOESZ, *A POVERTY OF IMAGINATION: BOOTSTRAP CAPITALISM, SEQUEL TO WELFARE REFORM* 42–43 (2000) [hereinafter *STOESZ, A POVERTY OF IMAGINATION*] (detailing how graduate social work programs only evaluated a “handful” of welfare reform efforts).

⁵⁹ FRED WULCZYN ET AL., *BEYOND COMMON SENSE: CHILD WELFARE, CHILD WELL-BEING, AND THE EVIDENCE FOR POLICY REFORM* 155 (2005).

⁶⁰ Ann Weick, *Hidden Voices*, 45 *SOC. WORK* 395, 397–98 (2000).

⁶¹ See NASSIM NICHOLAS TALIB, *ANTIFRAGILE: THINGS THAT GAIN FROM DISORDER* 111–12 (2012) (describing iatrogenic outcomes).

⁶² DAVID STOESZ, *THE DYNAMIC WELFARE STATE* (forthcoming 2016) (manuscript at 22–30) (on file with author).

⁶³ Eileen Gambrill, *Social Work Education and Avoidable Ignorance*, 50 *J. SOC. WORK EDUC.* 391, 400–01 (2014).

⁶⁴ See *Fact Sheet: Title IV-E Child Welfare Training Program*, NASW (2004), <http://www.socialworkers.org/advocacy/updates/2003/081204a.asp> [<http://perma.cc/FP33-A98W>].

workers for child welfare, yet there has been neither an accounting of these funds nor an assessment of their efficacy.⁶⁵

Having determined that authenticity was the bedrock of professional practice, schools of social work determined that good intentions, via an applicant's personal statement, were sufficient for admission to graduate school as opposed to formal assessments, such as the Graduate Record Examination (GRE).⁶⁶ Though numerous graduate disciplines consider the GRE to be a standard test to assess language and math proficiency, schools of social work often make the GRE optional, suspecting that it is discriminatory.⁶⁷ Regardless, of those applicants to MSW programs, the combined 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.⁶⁸

The social work curriculum bore the imprint of postmodernism as well. Subjective approaches moved to the fore; the "strengths perspective" replaced diagnostic criteria such as the Diagnostic and Statistical Manual of Mental Disorders (DSM), which implied client deficits.⁶⁹ "Empowerment practice" encouraged clients to escape the confines of clienthood in mental health, criminal justice, and public assistance programs.⁷⁰ The elevation of client status was often accompanied by disparaging social services professionals who were identified with "oppressive practice." In place

⁶⁵ A recent example of the social work education monopoly on child welfare training is the National Child Welfare Workforce Institute, which directs grants to accredited schools of social work even though the source of funds for this initiative, Section 426 of the Social Security Act, makes no mention of social work. See 42 U.S.C. § 426 (2012); see also *Child Welfare Training: The National Child Welfare Workforce Institute*, U.S. DEP'T HEALTH & HUM. SERVICES, https://www.acf.hhs.gov/hhsgrantsforecast/index.cfm?switch=grant.view&gff_grants_forecastInfoID=64799 [<http://perma.cc/FL38-VZUD>] (last updated May 6, 2013, 11:17 AM) (explaining that funding opportunities provided by the National Child Welfare Workforce Institute are under "Income Security and Social Services").

⁶⁶ See, e.g., *Master of Social Work*, N.Y.U. SILVER SCH. SOC. WORK (2015), <http://socialwork.nyu.edu/admissions/msw.html> [<http://perma.cc/76W9-R28X>] (detailing that the GRE is optional for admission to New York University's Master of Social Work but that "[d]emonstrated concern and commitment to the values underlying professional social work" is a requirement for admission to the program).

⁶⁷ See Marlene Milner et al., *The GRE: A Question of Validity in Predicting Performance in Professional Schools of Social Work*, 44 EDUC. & PSYCHOL. MEASUREMENT 945, 945–50 (1984) (detailing from the research of scholars at the graduate school of social work at the University of Texas at Arlington, that the GRE is not a valid predictor of success in social work graduate programs and may be discriminatory).

⁶⁸ DAVID STOESZ, HOWARD JACOB KARGER & TERRY CARRILIO, A DREAM DEFERRED: HOW SOCIAL WORK EDUCATION LOST ITS WAY AND WHAT CAN BE DONE 72–75 (2010).

⁶⁹ DAVID STOESZ, QUIXOTE'S GHOST: THE RIGHT, THE LIBERATI, AND THE FUTURE OF SOCIAL POLICY 112–13 (2005); see also Carlos P. Zalaquett et al., *Reframing the DSM-IV-TR from a Multicultural/Social Justice Perspective*, 86 J. COUNSELING & DEV. 364, 364 (2008) ("DSM-IV-TR . . . emphasizes the client's deficits . . .").

⁷⁰ *Id.* at 113.

of superior roles between professional and client, collaboration through authentic narratives was advanced. In the interest of equality, the roles of professional and client were erased and replaced by authenticity. Meanwhile, quantitative research methods lapsed, unsurprising as few graduate students were sufficiently numerate to comprehend descriptive statistics let alone more sophisticated formulations. Succumbing to postmodernists' anti-empirical agenda, CSWE's accreditation standards failed to keep pace with the evidence-based practices congruent with a data-driven society. A half century after CSWE's creation, accreditation standards continue to minimize research in professional education by failing to require MSW programs to offer a research thesis as an option for more math proficient students, let alone a requirement for all graduate students, which has become standard for graduate programs in public health.⁷¹

The postmodern sensibility complemented ersatz innovations in child welfare, emphasizing the strengths of troubled families and their need for simplistic, affirming interventions. Child welfare practice, absent grounding in empirical evidence, fell to ideological fashion, vacillating between keeping children with their biological families (family preservation) or expediting termination of parental rights to move toward adoption (child safety). All too often, factors aside from the well-being of children dictated which strategy to pursue. When children died after being returned to families, "foster care panic" ensued with large numbers of children placed in foster care,⁷² and their status was reversed once the cost of out-of-home placement dictated reconsideration of family preservation. Exasperated by the inability of child welfare professionals to determine what was in the best interests of children removed from their homes, policymakers contrived an artificial benchmark: a child who had been in care for fifteen of the past twenty-two months would have parental rights terminated in order to move them toward adoption.⁷³

Although the "15/22 rule" had exceptions,⁷⁴ the determination of the time frame was not based in the actual circumstances of children as determined by age, precipitating problem, or prospective outcome justified by research but from the frustration of legislators.

The interaction of these developments would pose profound problems for improving child welfare. Having admitted innumerate applicants and graduated research-deficient professionals for decades, schools of social work produced child welfare workers who knew little about research and were unable to produce knowledge. The infatuation with postmodernism contributed to an anti-empirical norm that diminished

⁷¹ See, e.g., *Master of Public Health: Thesis*, VAND. U. SCH. MED., <https://medschool.vanderbilt.edu/mph/thesis> [<http://perma.cc/4QKT-WW6G>] ("A thesis is required for all students completing the Vanderbilt [Master of Public Health] Program.")

⁷² NAT'L COAL. FOR CHILD PROT. REFORM, FOSTER CARE PANICS, <http://www.nccpr.org/reports/02PANICS.pdf> [<http://perma.cc/WKC2-8CP4>] (last updated Sept. 7, 2015).

⁷³ 42 U.S.C. § 675(5)(E) (2012).

⁷⁴ *Id.*

research. A half century of graduating professionals who were research-inept would degrade not only social services in general but child welfare in particular. When poorly substantiated innovations, such as family preservation or differential response, were introduced, child welfare professionals followed along meekly, unable to rigorously assess the efficacy of such initiatives. While social work's sister professions, nursing and public health, embraced empirical research and benefitted professionally,⁷⁵ child welfare workers populated an infrastructure that verged on collapse.

Lack of accountability would further stigmatize already tarnished child welfare agencies, making them unattractive places of employment. When "differential response" was rolled out as a method to divert low-risk cases of maltreatment to a family-friendly array of voluntary supportive services choreographed by nurturing caseworkers, subsequent child fatalities were attributed to child welfare workers, who then bore the brunt of public ire.⁷⁶ Absent from differential response was a significant track record of research indicating the conditions under which it would be indicated.⁷⁷

Evidence of its implosion distinguished child welfare from most public professional activities; only public education fared as poorly. In 2008, the Administration for Children and Families (ACF) conducted an evaluation of child welfare programs nationwide, the Child and Family Service Reviews (CFSRs).⁷⁸ Assessed according to seven essential criteria, not one state passed on any of the criteria.⁷⁹ Two years later, despite the advent of program improvement plans, many states evidenced continuing inadequacy of child welfare.⁸⁰ Established after a multigenerational tragedy in child welfare documented in *The Lost Children of Wilder*,⁸¹ an organization called

⁷⁵ See, e.g., *Master of Public Health: Thesis*, *supra* note 71.

⁷⁶ See Elizabeth Bartholet & Daniel Heimpel, Opinion, *Through the Cracks*, BOS. GLOBE (Dec. 24, 2013), <https://www.bostonglobe.com/opinion/2013/12/24/saving-children-from-our-child-welfare-system/euxaDvobzhfhY7zpm1CYmO/story.html> (describing a child welfare case in Massachusetts in which the social worker was deemed responsible for the child's feared death).

⁷⁷ *Id.* (stating that "[t]he research . . . seems to rely on advocacy rather than true social science").

⁷⁸ ADMIN. FOR CHILDREN & FAMILIES, U.S. DEP'T OF HEALTH & HUMAN SERVS., RESULTS OF THE 2007 AND 2008 CHILD AND FAMILY SERVICES REVIEWS (2008), http://www.acf.hhs.gov/sites/default/files/cb/agencies_courts.pdf [<http://perma.cc/VDH3-LTFE>] (indicating states that had CFSRs in 2008).

⁷⁹ See JOHN R. SCHUERMAN & BARBARA NEEDELL, THE CHILD AND FAMILY SERVICES REVIEW COMPOSITE SCORES: A CRITIQUE OF METHOD 1 (2009), http://www.chapinhall.org/sites/default/files/Final%20Issue_Brief_12_15_09.pdf [<http://perma.cc/TS7X-PJCK>] (noting that "no state [had] 'passed' the CFSR at the initial stage" as of December 2009).

⁸⁰ See ADMIN. FOR CHILDREN & FAMILIES, CHILD AND FAMILY SERVICES REVIEWS FACT SHEET FOR COURTS (2009), http://www.acf.hhs.gov/sites/default/files/cb/cfsr_general_fact_sheet.pdf [<http://perma.cc/6Z9M-NTGL>] (noting that "[a]ll 50 states . . . completed . . . their second [CFSR] review by 2010. After each review cycle . . . no state was found to be in substantial conformity in all of the . . . outcome areas and . . . systematic factors").

⁸¹ See generally NINA BERNSTEIN, THE LOST CHILDREN OF WILDER: THE EPIC STRUGGLE TO CHANGE FOSTER CARE (2001).

Children's Rights began litigating consent decrees in states chronically failing to serve maltreated children.⁸² By 2015, sixteen states were in receivership to federal courts.⁸³ Illinois, blessed by three world-class universities, an array of social work programs, a Democratic legislature, and a unionized civil service system, had all the ingredients for an adequate child welfare system, yet, by early 2015, the Illinois State Department of Children and Family Services had had seven directors during the previous three years, was operating under nine consent decrees, and had been under investigation by state legislative committees for the deaths of children under agency care.⁸⁴

The culmination of postmodernism in child welfare would have disastrous consequences for poor, minority children. During the 1980s, New York City became a laboratory of identity politics when child welfare agencies led by African Americans and Hispanics received preferential treatment and favorable contracts in the tens of millions of dollars. Under the presumption that agencies headed by whites had been unable to understand the cultural patterns related to family disorder and child punishment, agencies led by minorities avoided oversight as they received additional governmental funding.⁸⁵ Two decades later, this experiment on minority children exploded as journalists reported city investigations revealing doctored case files, forged signatures, phantom home visits, and millions of dollars in unaccounted expenditures.⁸⁶ Eventually, a formal evaluation “reflected problems across more than a dozen measures—from the levels of abuse in foster homes to adoption rates to how well the agencies kept track of whether children were being fed and clothed, attending school and receiving medical care.”⁸⁷

By the end of the twentieth century, many social work professors had rejected science and advanced narratives voiced by the victims of social injustice—accounts that repudiated standardization, hence replication. During the welfare reform debate of the late 1980s, Lawrence Mead reflected on the irrelevance of the Left:

The best known radicals in social policy have . . . lost authority because they are no longer doing much research. [Leftists] have collected no fresh data about the welfare problem, and in an age when most social-policy analysis is highly quantitative, that is

⁸² See, e.g., *Kenny A. v. Perdue*, 356 F. Supp. 2d 1353 (N.D. Ga. 2005).

⁸³ See Jim Moye, *Don't Tread on Me to Help Me: Does the District of Columbia Family Court Act of 2001 Violate Due Process by Extolling the "One Family, One Judge" Theory?*, 57 SMU L. REV. 1521, 1521–22 (2004) (discussing historical federal receivership of states in the 1980s and 1990s in regards to child welfare).

⁸⁴ See Duaa Eldeib, *DCFS Late in Probing More Than 300 Child Abuse, Neglect Claims: Audit*, CHI. TRIB. (Apr. 2, 2015, 2:54 PM), <http://www.chicagotribune.com/news/local/breaking/ct-dcfs-audit-met-20150402-story.html> [<http://perma.cc/YFY9-R259>].

⁸⁵ Leslie Kaufman & Benjamin Weiser, *In Foster Care Reckoning, Vows of Help and Vigilance*, N.Y. TIMES, Nov. 7, 2007, at A1.

⁸⁶ *Id.*

⁸⁷ *Id.* at A24.

disqualifying. A purely literary Left can no longer claim the influence it once did on issues of social policy.⁸⁸

Welfare reform and child welfare were conflated in social work pedagogy, which understood both as amenable to postmodern analysis, coinciding with the profession's romance with liberationist movements. These events converged to produce the *liberati*.

Ultimately, postmodernism and its confederates, identity politics and political correctness, created a vicious circle that justified the rejection of science, the denigration of data, and the celebration of new approaches that defied replication. As a consequence, bogus methods, under the name of improving child welfare, systematically damaged children. However well-credentialed, the arrangement was intellectually corrupt and financially fraudulent; maltreated children would have fared far better had the *liberati* not gained control of child welfare during the latter decades of the twentieth century.

III. DISRUPTIVE INNOVATION

Any serious reform agenda must acknowledge the structural insularity that maintains the child welfare status quo. For a century, stakeholders have become embedded in child welfare, sustaining a dysfunctional system that benefits them at the expense of vulnerable children. Self-regulating professional associations that accredit schools of social work in self-regulating universities conspire to subordinate the welfare of children to the interests of caseworkers and professors. Simply put, substandard child welfare will continue without disruptive innovation.

- Remove confidentiality protection when a child under authority of a public child welfare agency dies. Current practice, which assures confidentiality regardless of agency culpability in a child fatality, effectively shields public agencies from public accountability.⁸⁹ Unless there are compelling reasons to protect the privacy of surviving family members, the default should be full and immediate disclosure of agency failure. Accordingly, a model law removing confidentiality when a child dies should be drafted and submitted to state legislatures.
- A long-term strategy for rebuilding child welfare staff should be undertaken replicating Teach For America (TFA), the nonprofit that has

⁸⁸ Lawrence M. Mead, *The New Welfare Debate*, COMMENTARY, Mar. 1, 1988, at 46.

⁸⁹ JUDICIAL COUNCIL OF CAL., SHARING INFORMATION ABOUT CHILDREN IN FOSTER CARE: CHILD WELFARE AGENCY FILES 4 (2014), http://www.courts.ca.gov/documents/CFCC_Brief_CWAFILES.pdf [<http://perma.cc/ZCL6-8N5Q>].

spawned educational innovation nationwide.⁹⁰ Recruiting recent undergraduates committed to public service from the best colleges in the country, TFA has inspired a generation of leaders who have begun radical reform of public education, evident in Michelle Rhee's appointment as Chancellor of Washington, D.C.'s public schools as well as Mike Feinberg and Dave Levin founding the Knowledge is Power Program, now a nationwide network of charter schools in poor communities.⁹¹ Notably, TFA has demonstrated that several weeks of intensive teacher instruction produce results comparable to, if not better than, years of preparation through conventional teacher training programs.⁹² As TFA has inspired a generation of educational reformers, a similar effort can produce reform in child welfare.

- Establish evidence-based children's authorities at the community level. Two models have shown how localities can evolve child welfare services that are accountable: the Chatham/Savannah Youth Futures Authority and the Harlem Children's Zone. Since its creation as a state-legislated authority, the Chatham/Savannah Youth Futures Authority has reported annual outcomes on a continuum of services to children including child welfare.⁹³ Begun as a one-block experiment in the 1990s, the Harlem Children's Zone (HCZ) today encompasses a 97-block service area in Harlem, providing a continuum of children's services from prenatal care to college preparation.⁹⁴ Evaluated by Mathematica Policy Research, which showed that HCZ programs brought black children up to par with their white counterparts in New York City, HCZ served as the model for the Obama Administration's Promise Neighborhoods initiative.⁹⁵

⁹⁰ See MELISSA A. CLARK ET AL., IMPACTS OF THE TEACH FOR AMERICA INVESTING IN INNOVATION SCALE-UP, MATHEMATICA POL'Y RES. xi (2015), https://www.mathematica-mpr.com/~media/publications/pdfs/education/tfa_investing_innovation.pdf [<http://perma.cc/SS2F-WLFM>].

⁹¹ See generally JAY MATHEWS, WORK HARD. BE NICE. (2009). When the Center for the Study of Social Policy, a Washington, D.C. agency that evaluated the progress of troubled child welfare agencies, convened a group to consider this strategy, representatives of established professional groups nixed it on the basis that it was "unprofessional." *Id.*

⁹² CLARK ET AL., *supra* note 90, at xi.

⁹³ *About Us*, CHATHAM-SAVANNAH YOUTH FUTURES AUTHORITY, <http://www.youthfutures.com/about-us/> [<http://perma.cc/5QRU-KTP2>]; see also *Kids Matter! 2010–2011*, CHATHAM-SAVANNAH YOUTH FUTURES AUTHORITY, http://www.youthfutures.com/report/kids_matter_2010-2011 [<http://perma.cc/DH93-J49S>].

⁹⁴ See *History: The Beginning of the Children's Zone*, HARLEM CHILD. ZONE, <http://hcz.org/about-us/history/> [<http://perma.cc/YAV4-SX5G>].

⁹⁵ *Promise Neighborhoods Grant Winners Announced*, HARLEM CHILD. ZONE (Jan. 1, 2012), <http://www.hcz.org/news/promise-neighborhoods-grant-winners-announced/> [<http://perma.cc/JK75-HV74>] (stating Promise Neighborhoods was "[i]nspired by the Harlem Children's Zone model").

- Insist that Randomized Controlled Trials (RCTs) be mounted in order to determine the most effective interventions for maltreated children. Evidence-based policy has gained momentum since the application of field experiments in the 1990s to evaluate various welfare-to-work strategies,⁹⁶ with the Obama Administration promoting RCTs in social services.⁹⁷ As the inventory of evidence-based interventions maintained by the Washington State Institute for Public Policy shows, RCTs can produce valuable information on client outcomes as well as cost-benefit.⁹⁸ Logically, demonstrating the efficacy of superior programs provides the rationale for defunding those services that damage children.
- Support child welfare training that is superior to social work education. Since the 1970s, social work has enjoyed a set-aside for training through Title IV-E, which has provided subsidies for schools of social work. Funding through this entitlement has never been accounted for nor has the effectiveness of IV-E stipends been evaluated. Social work's de facto monopoly on child welfare training could be broken by funding alternative training, such as Child Advocacy Studies (CAST) evolving through a network of public universities without social work programs.⁹⁹ Integrating facsimiles of a family residence, court, and agency, CAST hires actors to replicate actual experiences that child welfare workers encounter dealing with troubled parents and serving vulnerable children, an intensive training congruent with recent training innovations.¹⁰⁰ Permitting CAST to access IV-E training funds would establish a competitor for social work education.
- Commission Davis Guggenheim to produce a documentary on child welfare comparable to his film *Waiting for Superman*.¹⁰¹ A documentary of the nation's failure to protect maltreated children could catalyze reforms, an apropos method for a media-oriented culture.

⁹⁶ STOESZ, A POVERTY OF IMAGINATION, *supra* note 58, at 90–94.

⁹⁷ RON HASKINS & GREG MARGOLIS, SHOW ME THE EVIDENCE 225 (2015).

⁹⁸ See, e.g., WASH. STATE INST. FOR PUB. POLICY, UPDATED INVENTORY OF EVIDENCE-BASED, RESEARCH-BASED, AND PROMISING PRACTICES (2015), http://www.wsipp.wa.gov/ReportFile/1609/wsipp_Updated_Inventory_of_Evidence_based_Research_based_and_Promising_Practices_For_Prevention_and_Intervention_Services_for_Children_and_Juveniles_in_the_Child_Welfare_Juvenile_Justice_and_mental_health_Systems_Report.pdf [<http://perma.cc/EXM3-F7KH>] (determining promising social services based on a benefit-cost model).

⁹⁹ See, e.g., *Child Advocacy Studies*, WINONA ST. U., <http://www.winona.edu/cast/> [<http://perma.cc/9T8Z-G7PT>] (outlining a CAST program at Winona State University).

¹⁰⁰ See generally KEVIN CAREY, THE END OF COLLEGE: CREATING THE FUTURE OF LEARNING AND THE UNIVERSITY OF EVERYWHERE (2015) (outlining recent innovations in higher education).

¹⁰¹ *About the Film*, TAKE PART, <http://www.takepart.com/waiting-for-superman> [<http://perma.cc/M9AJ-XHDB>].

CONCLUSION

Despite the promise attendant with the creation of the U.S. Children's Bureau over a century ago, the promise of enhancing the well-being of maltreated children has been squandered. During the twentieth century, a series of well-intentioned policies have been enacted to advance child welfare, yet the result has been layer upon layer of poorly designed programming devoid of state-of-the-art research. The *liberati* have engineered child welfare so that this vital institution not only forsakes vulnerable children but also attracts substandard staff and alienates the public. Given the insularity assured by self-governance in higher education and professional associations, the only plausible source of change is through disruptive innovation involving the establishment of a parallel system of intervention.

Fortunately, the prospects of evolving child welfare congruent with the twenty-first century are improving. In early 2015, the Coalition for Public Safety was cobbled together to reform one of the most obdurate of public institutions—prisons.¹⁰² Including the most unlikely of bed partners—the Koch brothers, the American Civil Liberties Union, the Center for American Progress, and Americans for Tax Reform—the initiative transcends the ideological divide.¹⁰³ If America's prisons, arguably the most expensive and damaging of public institutions, can attract such bipartisan interest, surely child welfare can as well.

¹⁰² Carl Hulse, *On Criminal Justice, the Right and the Left Meet in the Center*, N.Y. TIMES, Feb. 19, 2015, at A1.

¹⁰³ *Id.*

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