

University of Redlands

Racial Bias in the United States Foster Care System

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**‘NINE-YEAR-OLD, GABRIEL FERNANDEZ WAS MURDERED BY HIS MOTHER AND HER BOYFRIEND.’** You may recall seeing similar news headlines splashed across every news outlet in 2013. Gabriel Fernandez was tortured to death by his mother and her boyfriend on May 24, 2013. I became aware of this case in the summer of 2020 due to the Netflix documentary, *The Trials of Gabriel Fernandez*. Watching this documentary, I was exposed to just how severe and extensive the problems within the child welfare system go. The documentary made me angry as these helpless children are suffering. As a young college student, one way I can help is to expose the horrendous conditions, policies, and treatment within the child welfare system as a whole. These children deserve justice and should not ever have to suffer not only abuse, but further abuse due to the government’s negligence.

Gabriel’s case is not unique, the documentary ends with another little boy around Gabriel’s age who was also murdered by his parents under similar conditions. The second case also could have been prevented if CPS had stepped in and removed the little boy, but him and Gabriel were not able to be protected. The case of Gabriel Fernandez revolved around the family preservation unit, who did not want or was not willing to place Gabriel and his siblings in care. The lack of staff to supervise and under trained staff in the field made conditions worse and could have prevented this situation if corrected. The conditions Gabriel was suffering, repetitively, should have been grounds for an emergency removal, but one never came. Not only did the Gabriel Fernandez case bring out a passion within me, it gave me the drive to dig deeper and expand the scope of issues within the system, from the past to the present. As I began

researching the child welfare system, removal rates, family preservation, a trend of racial bias towards Black children and families became clear. The more I dug, the more prominent the issue became, in every facet of the system, I could not ignore this additional issue. The Gabriel Fernandez case opened the door to the topic of the child welfare system and with research, I narrowed in on the bias Black families face within the welfare system. Black families have been negatively impacted by the welfare system since the beginning and the treatment is still not equal. The more I dug into the topic of racial bias of Black families within the foster care system, the more there was to uncover.

The United States Child Protective Services (CPS) and foster care system are designed to help protect children from maltreatment. There are many facets and resources available to protect children ranging from foster care, adoption, in-house services, mandated reporters, family preservation units, wrap around services, referrals, reunification services, and this just covers some general areas of service. However, with so many safety-nets in place for these children, many are still suffering like Gabriel Fernandez. In particular, the Black community is impacted by the CPS system due to racial biases which results in lack of services, high removal rates, and parental rights terminated. The impact of the CPS systems' racial bias has affected Black children and families across the United States, extending outside of the system. The racial bias towards Black families reverberates throughout the entire CPS system; influencing social worker's behaviors, the resources provided, placements, the courts, how policies are implemented and enforced, which first led to refusal of service before the shift to the Hyper-removal of Black children we see today across the United States.

### **History of the United States Foster Care System**

The history of the foster care system dates to the 1700s. If parents could not afford to take care of their children, they would become indentured servants for another family (Harris 92; Nunn & Cleary 5). These original ‘foster homes’ consisted of children being placed with families to work for their keep. They would typically stay until they were eighteen (Harris 94). At this time there was no type of monetary support or background checks on the families, rather the child was just taken into a stranger’s home. When orphanages first began to open in the 1800s, slavery was still in full force, especially in Southern states. Black children were excluded from receiving any form of help or staying at orphanages. In the prominent slave states, most Black children were still deemed property by slave owners, and if they wanted to get rid of the child, they would sell them for profit. In the areas of the free states, segregation was still common. This practice prevented Black individuals from sharing the same facilities or even interacting with White individuals, including orphanages. Harris has said that slavery was a Black child’s orphanage in the United States until 1865 (93). It was not until 1836 that an orphanage for Black children opened in New York to keep them safe if they could not be cared for by their families (Harris 92). The first orphanages to open for Black children were located in free states. The first West Coast Orphan Asylum opened in San Francisco in 1851 (Nunn & Cleary 4). The few orphanages that did exist were deplorable and overcrowded (Roberts 22). By 1923, there was a total of 35 orphanages throughout Northern states that accepted Black children (Roberts 22). In comparison, there were 1,070 orphanages throughout the same area for White children. During the early years of having a foster care system, resources were extremely limited, and help often resulted from individuals or private organizations offering help. Over a century after the foster care system began appearing across the United States, many states still had not recognized the crisis needy children were facing and the lack of resources available.

California created and passed its first state-based adoption law in 1870 to prevent children from becoming indentured servants (Nunn & Cleary 5). The passage of an adoption law created guidelines and bureaucratic channels for parents to go through. A movement began on the East coast to push for child protection laws and resources. This movement reached California in 1874 with the creation of the Boys and Girls Aid Society in San Francisco (Nunn & Cleary 5). Termed ‘the society’ for short, it cared for neglected children, while working to educate and promote the current and future legislation on child protection (Nunn & Cleary 5). One of the first prevention organizations was the Society for the Prevention of Cruelty to Children (SPCC). It was created by Elbridge Gerry and Henry Bergh in 1874 as an addition to the Society for the Prevention of Cruelty to Animals (SPCA) (Nunn & Cleary 5). The SPCC was able to grow quickly and had applicable knowledge from the work with the SPCA. With the help of the SPCC and similar organizations, California finally passed statutes to protect children.

On March 30, 1878 the legislature passed “An Act for the protection of children, and to prevent and punish certain wrongs to children” and “An Act relating to children” (Nunn & Cleary 6). The first bill ‘for the protection’ stated that it was now a misdemeanor for a child under the age of sixteen to be in a saloon or dance-houses unless with a parent (Nunn & Cleary 6). Under this bill, the courts now had the authority to remove children from parental custody and place them in orphan asylums. If a child was found begging, wandering with no place to go, had an incarcerated parent, was thieving, or engaging in prostitution, they could be removed from the caregiver and sent to live in an orphan asylum (Nunn & Cleary 6). Lastly, the bill stated that children under the age of sixteen could not be imprisoned as a form of punishment (Nunn & Cleary 6). The second bill ‘An Act relating to children’ now made it a crime to allow your child to perform the acts listed in the ‘for your protection’ bill.

The San Francisco Industrial School had been in existence since 1858 to “detain, manage, reform, educate, and maintain the children committed to its care” (Nunn & Cleary 6). However, with the passage of the two child protection laws, the school became an increasingly popular means of placement. The Industrial school provided care for children instead of orphanages and as a substitute for prison. Two additional schools were approved by the Senate and Assembly on March 11, 1889, the Preston School of Industry, and a State Reform School (Nunn & Cleary 8). During this time, reform schools were the primary placement for children if they crossed paths with the judicial system.

### **Children and the Courts: The Case of California**

During the 1890s, there was only one form of court and everyone had to filter through it, adults, and children alike. Judge Ben Lindsey played a significant role by starting the first informal juvenile court (Nunn & Cleary 11). In 1903 legislation passed which formally introduced juvenile courts to California (Nunn & Cleary 12). Juvenile court law was defined as serving children under the age of sixteen, who were not under the care of reform schools, penitentiaries, or private institutions (Nunn & Cleary 12). In the beginning, juvenile courts consisted of a single judge in each county who was designated to hear and rule on juvenile matters (Nunn & Cleary 13). While starting out small, this allowed children to be seen by a specialist, who knew how to better recommend care for children. During this time, the role of a social worker as we know it today was performed by probation officers. Under court orders, probation officers were to investigate in the interest of the child, provide information, and “take charge” of the child during the case (Nunn & Cleary 13). In the California Supreme Court case *Nicholl v. Koster*, the Court stated that the goal of juvenile court was to prevent children from becoming criminals (Nunn & Cleary 15). The Court determined that there was no legal

difference between dependent and delinquent children and therefore the law can and should treat them the same (Nunn & Cleary 15). Additionally, the Juvenile courts had been developed with the mindset of preventing children from becoming criminals, not protecting them.

By the early 1900s, Black children had already begun to receive the label of ‘delinquent.’ Black children were receiving this label more often than White children (Harris 22). As a result, orphaned or needy Black children were placed in prison or industrial schools at a high rate. This allowed space in orphanages for White children while simultaneously training Black children how to be efficient laborers. As Industrial schools could produce trained laborers and kept free space, the Juvenile Courts had little interest in truly protecting needy children, especially those who were Black. When children entered the Juvenile Court system, they often did not receive the help they desperately needed. The Juvenile Courts saw the children as the problem, especially Black children, and did not investigate further into the homelife or parents. During the 1900s, the children received no real services to help cope with the neglect and the parents did not face any repercussions for the neglect they caused.

By the 1950s problems within the California juvenile courts began to be more apparent. Most notably, appellate Judges were fearful about the direction of the courts. The fear resulted from the Judges not having clear directions detailing their role as a Judge in the Juvenile Court system. In addition, there were inconsistent, repetitive, overlapping, and outdated laws which furthered the confusion. Policymakers and advocates filled complaints also as cases were heard too quickly, that many children were being detained as a result, and that the media had full access to private information (Nunn & Cleary 23). With each passing day, it was becoming more evident that changes needed to be made to the Juvenile Court system of California.

The courts conducted three separate California Juvenile Court system study commissions and committees from 1949 to 1960 to reform the juvenile courts. The first two studies had similar findings, recommending a total reorganization of the courts. However, there was pushback about revamping the entire court system. At the time, the Governor of California, California Supreme Court Chief Justice, and the chair of the judicial council did not want to make any changes, so the findings of these commission studies were dismissed. In 1957, Governor Goodwin J. Knight and Edmund (Pat) Brown pushed for the third and final commission to study problems with the juvenile court system. This time it was successful.

One of the findings recommended splitting the juvenile court system into three separate areas: dependent/ neglect/ abandonment, delinquent children, children who violate the law. The senate voted on the changes and on July 14, 1961, the Arnold-Kennick Juvenile Court Law was signed by the Governor. It officially took effect September 15, 1961 (Nunn & Cleary 15). The Arnold-Kennick Juvenile Court Law changed the relationship among juvenile courts, probation, police, and public defenders ((Nunn & Cleary 25). Under the law, children now had rights and could have representation. The courts were required to prioritize ‘the best interest of the child’, keep records of proceedings, and not share a child’s private information with the press ((Nunn & Cleary 25-26). The passage of the Arnold-Kennick Juvenile Court Law was the final major adjustment to the juvenile court system, creating a system similar to what we have today.

### **Federal Policies to Address Child Maltreatment**

Private organizations protected and housed maltreated children until roughly the 1930s when the federal government took over. The government was now responsible for child welfare with the help of the courts, juvenile protective associations, and family welfare societies (Schene



27). This transition allowed for a national entity and set of policies to guide protection of children. In addition, federal management allowed for policies to be created and to be enforced more easily.

With the federal government in charge of child welfare and the juvenile courts restructured, advocates for child safety began to realize there was a greater need for national laws and policies to keep our children safe. Over the years different policies have been put in place by different presidential administrations, and federal and state legislatures to help protect the children in the United States. One of the first federal policies geared towards assisting with child welfare was The Social Security Act of 1935 (Schene 27). This policy had an additional program attached to it called Aid to Dependent Children. This program provided ‘poor, single mothers’ cash to help support their children as an alternative to CPS removing the children from the home (Schene 27). The Child Abuse Prevention and Treatment Act of 1974 was the first federal child welfare law to provide guidance for social workers to use to determine child abuse (Harris 2). Most states had their own definition and requirements needed to classify child abuse, however, under this act, each state must have a definition to receive federal funding. This incentive helped close the gap and ensure that every state has an active definition of child abuse.

In 1975, the Title XX of the Social Security Act passed, providing funding to address child maltreatment. However, after only ten years, in 1985, the priority shifted to fund the foster care system rather than being split evenly or focus on family preservation services (Schene 29). The government decided early on to prioritize funding the removal services, rather than offering families services in their home. In-home services can reduce or limit the abuse in the home while educating and providing any other needed services to parents and the child, all without the removal of the child. The Adoption Assistance and Child Welfare Act of 1980 was designed to

shorten the length of time children spent in the foster care system and to facilitate adoption (Harris 6). The Title IV-E Foster Care program was introduced to provide “unlimited reimbursement for foster care placements and limited funding for family preservation programs” (Simon 359). This was a clause under the 1994 amendment to the Social Security Act. The Personal Responsibility and Work Opportunity Reconciliation Act of 1996, the federal law passed to reform the welfare systems under the Clinton Administration, was promoted as a law that would help children and families live a better life without welfare assistance. However, many critics of the legislation have argued that the primary goal was welfare cost reduction (Harris 9). In reality, the law made it harder to receive government benefits due to time limits and other restrictions on the receipt of welfare assistance. With the lack of assistance, more families suffered due to not being able to obtain the much-needed Welfare assistance. Not only did families need Welfare assistance to survive, but for some families it was required by social workers. Without meeting the requirements, by no fault of their own, parents could potentially lose their children as a result.

The passage of Adoption and Safe Families Act of 1997 (ASFA) is an additional policy that has impacted Black families significantly. The ASFA states that parents will lose their parental rights if their child has been in the system for fifteen out of the past twenty-two months (Harris 12). Children in kinship care are exempt for this timeline as they are placed with family (Allen and Bissell 53). An important clause in this policy states: an allocation of additional funding to states whenever they surpass the yearly baseline adoptions. When this occurs, for every adoption over the baseline, the state receives \$4,000 (Allen and Bissell 54). Since this policy was put in place, every year, all eligible states have exceeded the baseline and received additional funding (Allen and Bissell 54). This is extremely important. If children are already in

the system, social workers are going to lean towards the additional funding path, which results in parents having their rights terminated. Parental rights may be terminated only for a child to sit in foster care and wait for adoption. With a short window to get children back into parental custody, if the parent(s) are incarcerated or in rehab, the program may exceed the given time-frame. When this occurs, parental rights are terminated forever, and in some cases, parents may finish their program before their child has been adopted. Defeating the goal of getting children out of foster care faster.

There has been legislation passed with the aim of improving the foster care system. For example, the Fostering Connections to Success and Increasing Adoptions Act of 2008 was created to make the system a better experience, especially in places that are lacking resources like kinship care, transition, and exiting resources (Harris 14-15). The Child and Family Services Improvement and Innovation Act of 2011 dictates that states must create a plan and monitor children that are under the use of psychotropic drugs (Harris 16). Social workers are also required in all 50 states to visit their cases or children in the foster/kinship home once a month (Harris 18). The goal of this policy is to strengthen families and keep the children safe at home or in their placement (Harris 17). However, even with multiple federal acts and laws in place, the foster care system has major flaws. Some of the flaws are due to the laws themselves, how they are written, or how they are implemented, especially when judgement is clouded by implicit biases.

### **An Underfunded and Overwhelmed System**

When federal and state governments took over child welfare, the system was overwhelmed to begin with and has been playing ‘catch-up’ ever since. The federal government

did not have a federal foster care program until 1961, when the Aid to Families with Dependent Children Foster Care Program was passed (Allen and Bissell 50). As mentioned above, the government took over the multiple private child welfare institutions, creating one universal place to go for help. This was beneficial for many reasons. Most importantly, now that child welfare was controlled by the government or CPS, services could not be denied due to race. Having governmental regulation also helped with creating child welfare and protection laws as mentioned above.

A more structured and cohesive system, however, also produced unanticipated numbers of child maltreatment reports. When there were just a few private institutions, people were not sure how to get help, who to contact, and there were no universal policies in place to determine maltreatment. By the late 1970s, multiple federal child abuse policies had been established. As a result, from 1976 to 1993, the number of child abuse reports increased 347% (Schene 29). Officials in the newly created system did their best to review the reports and provide resources as needed. Due to lack of funding for CPS, however, there were not enough social workers or foster care placements (Schene 29). During this same time frame, the public began to notice how many children were being removed from their families and being placed into foster care, the extended lengths of time these children spent in care, and that the children were not being returned to their parents or being adopted ((Schene 29). Scholars were also noticing the discrepancies within the foster care system. Academic scholars performed studies on lengths of stays children were experiencing during foster care placements. They found that “many children ‘languished’ in foster care, and the foster care system had moved away from its original intention of being a temporary solution for children and families” (Rolock and Perez 197). This led to the movement of permanency planning, which focused on lowering the number of children in foster care and

getting them adopted at faster rates (Rolock and Perez 197). The Adoption Assistance and Child Welfare Act of 1980 and the Adoption and Safe Families Act of 1997 (ASFA) were beneficial and addressed problems raised by the permanency planning movement. From the founding of CPS system, workers and resources were stretched thin. Although those who ran the child welfare system gained experience, funding, and resources over time, many of the problems were not solved and underfunding was consistent.

### **Internal Problems within the Foster Care System**

One of the many issues within the foster care system is that social workers are under-trained and understaffed. The lack of training is a serious issue and can lead to many different problems. Roberts reports that less than 33% of social workers come into the job with any form of social work training (80). The decision to remove a child is a life-altering one, which often relies on the social worker's intuition. If a social worker is not educated in their own state's removal and child abuse laws, it can prevent families from getting help or being wrongfully targeted. For example, a social worker will often have to use objective or subjective criteria to determine if maltreatment is occurring. Objective criteria are straightforward, looking for bruises, welts, marks, or other visible injuries. On the other hand, subjective criteria are more subtle and difficult to spot. Things to look for are delaying medical attention, isolation, verbal, or mental abuse (Harris 38). Not only are subjective criteria more difficult to determine, it has often led to stereotyping, racial bias, false assumptions, prejudice, and misconceptions, all of which can impact the report and decision-making process. The issue of training is just one hurdle social workers must overcome while doing their job.

Social workers as mentioned above are significantly understaffed. Brown and Bailey-Etta reported that there is a “lack of adequate agency staff and resources, sporadic staff training, and unclear and sometimes contradictory policy mandates” (68; Simon 361). It has been reported that 90% of the states had trouble hiring and retaining social workers (Brown and Bailey-Etta 69). As this occurs at such high rates, social workers are given extra cases on a regular basis. The combination of lack of staff and the constant high number of children in the system, leaves the social workers with unmanageable caseloads. The recommended caseload for a social worker is about fifteen, however, the actual average caseload is twenty-four to thirty-one cases (Simon 361). It is not uncommon for children and cases to slip through the cracks and social workers to face burnout at this pace.

Not only can the cases not be monitored as well, the children already placed in foster care stay for longer periods of time. Due to such large caseloads, social workers only spend about 30 minutes with each case per month (Roberts 80). Additionally, when a child has been placed into foster care housing, their case gets put on the backburner. Social workers may choose to do this for two reasons, they know they have removed the child from the initial threat and can now focus on other children in their caseload. For some social workers, delay may be used to run down the parental rights termination clock. As noted above, under the Adoption and Safe Families Act of 1997 (ASFA) law, if a child is in foster care for 15 out of 22 months, the parental rights will be terminated. Having more children eligible for adoption, after parental rights have been terminated, allows for a greater chance of additional funding.

Other internal problems within the CPS system include bias and prejudice when it comes to Black families in particular. Some social workers use unethical tactics, whether they realize biases are influencing them or not. Racial bias can be seen when looking at how social workers

treat Black children compared to children of other races or ethnicities. Social workers are more likely to remove a Black child and keep other children with their parents. This stands true even if the comparative family has the same or even worse conditions as the family of the Black child (Simon 353; Roberts). This demonstrates that CPS social workers may have some biases that are impairing their judgment. Black children are “overrepresented and under-served as compared to white children: they are more likely to be reported to agencies as suspected victims of maltreatment, more likely to be investigated, and more often forcibly removed from their homes...receive worse placements, remain for longer and are less likely to be reunified with parents” (Brown and Bailey-Etta 74; Harris 43; Roberts 2; Simon 348). Black children and families are being negatively impacted by social worker’s racial biases. Whether the social worker realizes it or not, their implicit biases are harming the children; the same children they stepped in to ‘save.’

*Washington Post* reporter, Vedantum, writing on the implicit bias test developed by Yale psychologist Mazarhin Banaji, stated that “implicit biases are a powerful predictor of how [people] actually behave.” Implicit bias plays a major role in the racial bias seen in the foster care system. The U.S Department of Health and Human Services Administration for Children and Families ran a study in 1994 which found, “African American children are more likely to be in foster care placement, even when they have the same problems and characteristics as white children” (Simon 353). Additionally, Harris states that there is significant evidence that suggests minority children are being “reported, investigated, and substantiated” leading to the removal of these children more often than white children (37). Professor Lane and Colleagues reported that there are 10.6 cases of substantiated child maltreatment for every 1,000 White children. For Black children, the rate is 25.2 for every 1,000 children (1603). In a Philadelphia hospital,

minority families were more likely to get additional tests to determine if the injury was due to abuse and be investigated compared to white families (Lane et al. 1605). There was a large disparity, 65% of minority children had additional tests performed and 52.9% had CPS reports filed. In comparison, for White children, 41% had additional tests and 22.5% had CPS reports filed (Lane et al. 1605). If parents did not have insurance or were on government insurance like Medical/Medicaid, they were more likely to be investigated than parents with private insurance (Lane et al. 1605). Additional studies have demonstrated that hospitals in particular are more likely to report minority children for maltreatment, while excluding White children from reports (Lane et al. 1603). It is important to note that Black children are not abused more often than other children, however, they have higher rates of investigation and removal due to implicit and racial biases.

When reports of abuse come in, Black children have an investigation rate of 90% compared to White children of 68 % (Harris 38). When Black children are investigated for abuse, there is a greater chance they will wind up in the system. Furthermore, it has been found that in addition to Black children having higher chances of being removed from their parents, they also are the least likely to be returned home or adopted out (Roberts 30). Placement bias is not something often talked about; however it has a significant impact on the system and the children. There is a discrepancy between Black and White children's age upon removal, the amount of time spent in foster care, the contact they can have with their parents, and in the stability and quality of their placement (Yi and Wildeman 43). Social workers have been known to put little effort into keeping contact with Black children. This includes talking and visiting with parents, reduced contact with between the social worker and the child, limited access to services, and a decreased chance they will return home to their parents (Roberts 39). Once in



contact with the system, Black children in families are looked at with magnifying glasses until the children have been removed from the home. Once the children are removed, the system ignores them and offers little to no support.

When Black families are being looked at under magnifying glasses, often social workers further justify behaviors on stereotypes. Stereotypes of Black individuals and their behaviors have been commonly used to justify taking away their children. Social workers rely on unconfirmed stereotypes and parents fitting the idealistic family model that fits a Eurocentric model (Hall 600). Often social workers have an ideal family model, based upon the two-parent (White family) dynamic. Social workers may misconstrue Black individual's cultural traditions, demeanor and a more laid back, informal way of parenting as maltreatment (Roberts 84). Anything outside of 'White typical family' model is seen as strange, unusual, or even cause for further investigation.

It was found that social workers often associated Black mothers and families with negative stereotypes which influenced their assessment (Robert 1485). Some common stereotypes that Black families have experienced by social workers include, Black women being "welfare queens" and the fathers being uninvolved with the mother raising the children as a single parent (Simon 352). Additionally, social workers have reported these following labels with no context nor justification; "hostile, aggressive, angry, loud, cognitively delayed" (Roberts 1486). Each of these labels were from a different social worker on a separate case. Social workers also assumed that Black parents had substance use/abuse issues with no cause or reasoning (Roberts 1486). Many social workers assumed Black individuals were abusing substances, especially during the 'crack-epidemic' of the 1980s and 1990s. Social workers let their own biases and stereotypes influence their reports, so much so that they justified these

attributes as reasonings to remove children. Often times when reports were heavily influenced by bias, there was a lack of evidence to support the allegations of child abuse, but the children were removed anyway. The lack of supporting evidence has resulted in so many Black children removed from their home unnecessarily.

Sometimes the biases come into play before the social workers are even in the picture. Anyone can report cases or suspected cases of child abuse; however, a collection of professions requires employees to be a mandated reporter. A mandated reporter is often an individual who has a profession that has close contact with children, and such the law requires the individual to report any suspected case of child maltreatment (Zeman 67). Some professions may be in education, healthcare, mental health, police, or social work. All 50 states have their own definition of who is considered a mandated reporter, the criteria, and the process to file a report. In some cases, reporting laws may differ by counties in each state, adding further confusion (Zeman 67). Mandated reporters have expectations and guidelines to follow, reporting any and all suspected case of abuse, neglect, or maltreatment. Mandated reporting was designed to help catch suspected maltreated children that would have slipped through the cracks otherwise. While this process was designed for the greater good, some children get reported as a result of the mandated reporter's implicit biases. Mandated reporters are required to report the smallest suspicion of maltreatment, however if the maltreatment is not visible marks, mandated reporters have to use subjective criteria. As defined earlier, subjective criteria are based upon looking for delayed medical attention, isolation, verbal, or mental abuse (Harris 38). Subjective criteria are not only extremely difficult to spot, but implicit biases can easily influence decision making. In fact, it has often led to stereotyping, racial bias, false assumptions, prejudice, and misconceptions, often revolving around race.

As the children continue through the foster care process, the stereotypes and biases also continue. Many social workers and Judges have predetermined notions about Black families. Commonly they are seen and stereotyped as “less reform-able than White parents, less willing, and less able to respond to the treatment child protection agencies prescribe” (Roberts 2-3). However, Black families are known for receiving significantly fewer resources and treatment than any other race. For example, when Aid to Dependent Children in 1935 began providing monetary support to families to prevent children from being removed, the support went almost solely to White mothers (Roberts 33). While there was nothing explicitly stating that Black mothers could not receive the funding, the government just made it extremely difficult for them to access it, along with any other resource. The impact of stereotyping Black families got progressively worse as the ‘Crack Epidemic’ hit. Now more than ever social workers assume and labeled Black parents drug users solely because of race.

### **Impact of the ‘Crack Epidemic’ on the Foster Care System**

During the ‘crack epidemic’, starting in 1980, which primarily affected the Black community, foster care rates soared. By 1985, the number of children being placed into foster care increased by 47%, however, the number of foster families available decreased by 27% (Brown and Bailey-Etta 70). At this time, welfare assistance took a nosedive along with other governmental resources, due to neo-liberal policies supported by the Regan, Bush, and Clinton Administrations, and in turn, drugs became more readily available. The mixture of the two exacerbated the prison boom as some parents turned to drugs to cope and punishment for low-level drug crimes increased (Yi and Wildeman 41). During this time, immediately after a baby was born, they were often tested for drugs (Roberts 88). The rate of substance abuse during pregnancy was similar among White and Black women, however, the media portrayed Black

women as the sole abusers (Roberts 87). Many Black mothers were also arrested for minor drug possession and incarcerated as states passed stringent anti-drug laws with mandatory minimum sentences. Often times they were single mothers, leading to their child or children being placed into foster care. During the so-called “crack epidemic,” the media portrayed Black women as drug addicts who deserved to have their babies taken away (Roberts 87). The ‘crack epidemic’ plagued the entire Black community, hitting it hard, resulting in lasting impacts that we are still seeing to this day.

In LA county, one of the hardest-hit locations due to the ‘crack epidemic’, CPS launched a family preservation unit. During the 1980s, CPS’s goal was to help families inside their homes and try to keep them together (“Death has got him by the Hand”). While the preservation unit was created to provide help inside the home, social workers had more drive to remove children. Social workers received more funding to remove a child than to provide services inside the home. However, the implementation of in-home services and the family preservation unit were largely motivated by racial and implicit biases. For example, a Black family could not leave their child in their apartment to run downstairs to a payphone without a credible fear of CPS knocking on their door and performing an emergency removal. White families on the other hand could have their young child playing alone at the playground before school with no consequence (Roberts 56). For the White family often, CPS would never even be called, however if they were, in-home services would be offered to educate the parents of safety and possibly parenting classes. Never the removal of the child. The family preservation unit’s actions depict clear bias between the treatment of Black families and non-Black families.

The ‘crack epidemic’ in combination with a decrease in available foster families resulted in the foster care system turning to kinship care placements. Kinship care has been defined as

“the full-time nurturing and protection of children who must be separated from their parents by relatives...” (Wilhelmus 118). There are two categories of kinship care, kinship caregivers who are not a formal part of the foster care system, and kinship foster parents who are a part of the system (Wilhelmus 118). Living with family may be less traumatic for children, however kinship care was not always seen as a good placement option.

During the mid-20th century, kinship placement was not favored, however, when it was used, it was commonly used for Black children. During this time, social workers believed “the apple does not fall far from the tree” and children should not be placed with relatives when being removed from their home for maltreatment (Judge Edwards 57). If one family member had an unsafe home, why would their sibling be any safer, and with that logic, kinship care was rarely used. When there were limited foster care placements due to overcrowding, CPS would turn to kinship care. Social worker and scholar Wilhelmus described the average kinship parent as middle age or older African American women who stepped in to raise children that have lost their parents (118). There were mixed opinions on the positives and negatives of kinship care. On the positive side, the children are placed with family members, some of whom they might already know. Since they are placed with family, they are less likely to be moved to other placements, which saves the children from further trauma (Yi and Wildeman 47). Being placed with family increases the chances of preserving cultural ties and siblings staying together (Judge Edwards 57). Some of the negatives can be that they receive fewer services while placed with family, including contact with the social worker. Social workers often assume that if a child is placed with another family, then they have been spared any trauma and do not need any additional support. Social Work professor Marian Harris reported that the median length of kinship placement for Black children was 854 days compared to their White counterparts of only

546 days (44). Since 2008, with the passage of Fostering Connections to Success and Increasing Adoptions Act, kinship placement is required to be the first choice. However, relative foster parents receive less monetary support than non-relative foster parents. Furthermore, these children still have been taken away from their homes for extensive periods of time and do not necessarily know where their parents are, and some may already have trauma pre-removal. Thus, kinship care is not a panacea solution.

### **Poverty within the Foster Care System**

The foster care system originated with the motive to help needy and unwanted children. Child welfare consultant Schene writes, “child protection arose out of philanthropic and child-saving motivations of private individuals and organizations, which often focused on poor families” (29). Yet this original system often denied Black children help and it did not help poor or immigrant families. Children were removed from their homes if there was not enough supervision, it was deemed unsafe, or if the family was not “economically viable” (Schene 25). The last condition was used to remove children from their families for solely economic reason. While the foster care system switched from private organizations to the federal government, these historical biases were passed along.

In line with historical precedent, poverty is the most significant indicator for a child to be removed from their home, not the severity of abuse. It also impacts the type of placement and the child’s length of stay (Roberts 47). While a child cannot be removed only because they are poor, if a social worker believes that living conditions are not up to standard or neglectful, they can be removed. Some social workers may blur the lines between poverty and neglect, and while there

can be a correlation, there is not causation. In other words, not every family that is poor is neglectful to their child and not every neglectful parent is poor.

### **Impact of Trauma**

Trauma is often overlooked and forgotten about when children are placed into foster care. Many children coming into the foster care system are already suffering from trauma. In fact, there are often links between poverty, crime, mental and physical health, and addictions and childhood traumas, especially those that are not treated (Beyerlein and Bloch 10). Scholars Beyerlein and Bloch reported that the majority of children entering the foster care system already have one caregiver-related trauma, with the majority having experienced multiple traumas (8). The act of being in the foster care system can make a child's already existing trauma worsen (Parker et al. 108). As a result, children in foster care have been found to have a rate of 2.5 times more likely to need mental health services than non-foster care children (Beyerlein and Bloch 12). Common mental health issues for children in the system are anxiety, depression, suicidal tendencies, substance, and alcohol use. Black children are at a higher risk of being placed into foster care, resulting in a greater frequency of mental health needs (Yi and Wildeman 49; Simon 363). However, Black children are the least likely to receive resources mental health resources.

A child suffering through untreated trauma may experience fear, insomnia, nightmares, bed-wetting, stomach aches, and hardships with focusing (Beyerlein and Bloch 10). Additionally, when children have been exposed to trauma during their critical developmental stages, the trauma can create life altering consequences (Beyerlein and Bloch 10). Children affected by trauma do not always understand what is happening, what emotions they are feeling, or how to process and verbalize what has happened. Often these children are not given any type of outlet

after traumatic events, resulting in the feelings building up. This can lead to placements failing due to their behaviors when in reality they do not know any better.

Many children in foster homes can be accused of being difficult, the placement not being a good match based on their behaviors, but in reality, they are just suffering from trauma. As a result, the child will often move placements, causing further instability and worsening the trauma (Beyerlein and Bloch 13). A child's attitude and behavior during their foster care placement can affect their length in care, but also the likelihood that a placement will be disrupted and add time before they are reunified or adopted (Parker et al. 108-109). When children are moved around in foster care, often their mental health or trauma goes unnoticed, partly due to the frequent movement but also the lack of training to spot the issue (Beyerlein and Bloch 11). Additionally, social workers will try to make the child look as good as possible on paper so they can be placed faster, however, they will typically leave off mental health, behavioral, and health issues, causing a placement mismatch (Beyerlein and Bloch 14). The social workers are sufficiently aware of the children's issues to know which ones to remove, but still they deny the child needed services while in care. This can make their situation worse if they have to be moved to another placement due to behavioral issues linked to trauma and mental health.

Trauma-informed care is defined as "a practice in which everyone involved within an agency or service system develops and maintains an awareness of the impact of traumatic experiences on children, caregivers, and service providers, leading to the application of appropriate responses, training, practices, and policies" (Beyerlein and Bloch 9). Having social workers trained in trauma-informed care can be extremely beneficial. Social workers would be better equipped to screen for trauma, provide information regarding treatment options, the impact of trauma, and more (Beyerlein and Bloch 9). Not only can it help to better understand their



clients, but more importantly for the children so they can receive help. If social workers could be trained in trauma-informed care, they may realize that children's actions are a result of trauma and not something to be punished for (Beyerlein and Bloch 10). Another tool that can be beneficial in the foster care system is the Pediatric symptom checklist (PSC). The PSC is a 35 or 17 questionnaire used to screen children for emotional and behavioral disorders (Parker et al. 109). The PSC can be given to children ages 5-17, and it is broad enough to cover both internal and external problems. The PSC is particularly useful if the child gets a score of 15 or greater, which indicates to the social worker and parents that the child has clinical level of symptoms and should seek treatment (Parker et al, 109). If the trauma goes untreated and the child ages out of care, they may end up being just another statistic in the foster care system.

### **Child Removal**

A common duty in social work is removing children from their home, however, there are a few ways this can happen. Before a child is removed from their parents, the social worker is required by law to get a Judge's approval. In some circumstances, a social workers may deem the child is in such grave danger, the pre-Judicial approval is waved. When this situation occurs, the social worker will perform an emergency removal. For a child to be removed under an emergency removal order there has to be imminent harm or danger, however, different states define it differently. Under California state law, Rule 5.728 adheres to the emergency removal by the Department of Social Services or associated agencies. Under the rule, the removal occurs "immediately due to risk of physical or emotional harm" (Rule 5.728 Emergency removal). The alternative to an emergency removal is a proposed removal. In the instance, the social worker will have a hearing with the Judge to get approval before the children are removed. The main

difference between the emergency and proposed removal law is the amount of danger the child is in and how quickly they are removed from their caregiver.

When an emergency removal is performed, the social worker will go to court to meet with the Judge post-removal. The post-removal hearing is used to determine if the child would face imminent danger if returned home and an additional hearing scheduled for a later date as the case progresses (Simon 367). During the post-removal hearings, the judge is not likely to go against the social worker as the child has already been removed. Many Judges do not want to send the child back into a potentially abusive situation, nor do they want to second guess the social worker's judgment.

The emergency removal process has become overly abused over time. Almost half of all removals in the United States being classified as emergency removals (Simon 348). Furthermore, emergency removals target Black children and families significantly more than any other race or ethnicity. This is another area where implicit and/or racial bias can come into play and affect decision making. It has been found that many children removed under the emergency removal order did not meet the definition or level of risk needed for removal (Simon 346). In a Citizen Review Panel in Washington D.C from 2006-2010, they found that not only were many children wrongly removed under the emergency order but alternatives to being put into foster care were not looked at before the removal (Simon 357-358). It is important to acknowledge that emergency removals are not all horrible or unnecessary. There have been and will continue to be children who are in imminent danger and need to be rescued from their situation. Emergency removals have simultaneously provided a loophole for social workers to disproportionately remove Black children who were not in imminent harm.

**Conclusion**

The United States Child Protective Services CPS and foster care system should be in the spotlight for keeping and saving our children. However more often than not, the headlines are filled with tragedies that have occurred while children are in CPS' care. Many of which could have been avoided. There are many facets to both CPS and foster care, not all of which are rooted in evil nor have evil intentions. With so many areas of service, all designated to help and protect children in different ways, too many children are still slipping through the cracks. In particular, the Black community is impacted by the CPS and foster care system due to racial and implicit biases. Black children and families often face a lack of services, high removal rates, and parental rights terminated. The impact of the CPS systems' racial bias has affected Black children and families across the United States, since the system began. The racial bias towards Black families reverberates throughout the entire CPS system; influencing social worker's behaviors, the resources provided, placements, the courts, how policies are implemented and enforced, which first led to refusal of service before the shift to the Hyper-removal of Black children we see today across the United States.

### Work Cited

- Allen, MaryLee, and Mary Bissell. "Safety and stability for foster children: The policy context." *The Future of Children* (2004): 49-73.
- Beyerlein, Brittany A., and Ellin Bloch. "Need for trauma-informed care within the foster care system: A policy issue." *Child Welfare* 93.3 (2014): 7-21.
- Brown, Annie Woodley, and Barbara Bailey-Etta. "An out-of-home care system in crisis: Implications for African American children in the child welfare system." *CHILD WELFARE-NEW YORK*- 76 (1997): 65-84.
- Edwards, Leonard. "Relative Placement: The Best Answer for Our Foster Care System." *Juvenile and Family Court Journal* 69.3 (2018): 55-64.
- Font, Sarah A., Kierra MP Sattler, and Elizabeth Gershoff. "When home is still unsafe: From family reunification to foster care reentry." *Journal of marriage and family* 80.5 (2018): 1333-1343.
- Hall, Ronald E. "Environmental Singularity as Conduit of Foster Care Disparities: White Canadian/US Social Workers Placing Children of Color." *Journal of Comparative Family Studies* 43.4 (2012): 599-608.
- Harris, Marian S. *Racial disproportionality in child welfare*. Columbia University Press, 2014.
- Knappenberger, Brian, creator. *The Trials of Gabriel Fernandez*. Luminant Media Production, 2020. Netflix, <https://www.netflix.com/title/80220207>.
- Nunn, Diane, and Christine Cleary. "From the Mexican California Frontier to Arnold Kennick: Highlights of the Evolution of the California Juvenile Court." *Journal of the Center for Families, Children, and the Courts* (2004): 3-34.
- Parker, Elizabeth M., et al. "Identifying psychosocial problems among children and youth in the

- child welfare system using the PSC-17: exploring convergent and discriminant validity with multiple informants." *Child Psychiatry & Human Development* 50.1 (2019): 108-120.
- Roberts, Dorothy. "Prison, foster care, and the systemic punishment of black mothers. Symposium: Overpoliced and underprotected: women, race, and criminalization." *UCLA Law Review* 59 (2011): 1474-1501.
- Roberts, Dorothy. *Shattered bonds: The color of child welfare*. Civitas Books, 2009.
- Rolock, Nancy, and Alfred G. Pérez. "Three sides to a foster care story: An examination of the lived experiences of young adults, their foster care case record, and the space in between." *Qualitative Social Work* 17.2 (2018): 195-215.
- Schene, Patricia A. "Past, present, and future roles of child protective services." *The Future of Children* (1998): 23-38.
- Simon, Kathleen B. "Catalyzing the separation of black families: A critique of foster care placements without prior judicial review." *Colum. JL & Soc. Probs.* 51 (2017): 347-389.
- 2020 California Rules of Court. Rule 5.728. Emergency removal (§ 366.26(n)). Judicial Council of California. 1 Jan. 2019, [https://www.courts.ca.gov/cms/rules/index.cfm?title=five&linkid=rule5\\_728](https://www.courts.ca.gov/cms/rules/index.cfm?title=five&linkid=rule5_728). Accessed 11 Oct. 2020.
- Vedantam, Shankar. "See No Bias." *Washington Post*, 23 Jan. 2005, <https://www.washingtonpost.com/archive/lifestyle/magazine/2005/01/23/see-no-bias/a548dee4-4047-4397-a253-f7f780fae575/>.
- Wilhelmus, Maria. "Mediation in kinship care: Another step in the provision of culturally relevant child welfare services." *Social Work* 43.2 (1998): 117-126.

Yi, Youngmin, and Christopher Wildeman. "Can foster care interventions diminish justice system inequality?." *The Future of Children* 28.1 (2018): 37-58.

Zeman, Laura Dreuth. "Hotline tip to probable cause: Filling the gap between suspicion and physical abuse findings for mandated reporters." *Care Management Journals* 6.2 (2005): 66.