

# A Short History of Child Protection in America

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## I. Introduction

The history of child protection in America is divisible into three eras.<sup>1</sup> The first era extends from colonial times to 1875 and may be referred to as the era before organized child protection. The second era spans 1875 to 1962 and witnessed the creation and growth of organized child protection through nongovernmental child protection societies. The year 1962 marks the beginning of the third or modern era: the era of government-sponsored child protective services.

## II. Child Protection Prior to 1875

It was not until 1875 that the world's first organization devoted entirely to child protection came into existence—the New York Society for the Prevention of Cruelty to Children. Prior to 1875, many children went without protection, although there has never been a time when children were completely bereft of assistance. Criminal prosecution has long been used to punish egregious abuse. In 1809, for example, a New York shopkeeper was convicted of sadistically assaulting his slave and her three-

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1. For those interested in in-depth treatment of the history of child protection, I have written three overlapping books on the subject: *CHILD PROTECTION IN AMERICA: PAST, PRESENT AND FUTURE* (2006); *A HISTORY OF CHILD PROTECTION IN AMERICA* (2004) [hereinafter *A HISTORY*]; and *CHILD PROTECTION IN AMERICA: A HISTORY* (manuscript available from the author; jmyers@pacific.edu).

See also Marvin Ventrell, *The History of Child Welfare Law*, in *CHILD WELFARE LAW AND PRACTICE: REPRESENTING CHILDREN, PARENTS, AND STATE AGENCIES IN ABUSE, NEGLECT, AND DEPENDENCY CASES* 113–42 (Marvin Ventrell & Donald N. Duquette eds., 2005).

year-old daughter.<sup>2</sup> In 1810, a woman was prosecuted in Schenectady for murdering her newborn child.<sup>3</sup> Although the woman admitted to several people that she killed the baby, the jury found her not guilty, probably because she was insane. In 1869, an Illinois father was prosecuted for confining his blind son in a cold cellar in the middle of winter.<sup>4</sup> Defense counsel argued that parents have the right to raise their children as they see fit, but the Illinois Supreme Court disagreed, writing that parental “authority must be exercised within the bounds of reason and humanity. If the parent commits wanton and needless cruelty upon his child, either by imprisonment of this character or by inhuman beating, the law will punish him.”<sup>5</sup> In 1856, the first rape conviction in California history reached the state supreme court.<sup>6</sup> The victim was thirteen years old. From 1856 to 1940, the majority of rape appeals in California involved child victims.<sup>7</sup>

Prosecution was not the only remedy before 1875. As early as 1642, Massachusetts had a law that gave magistrates the authority to remove children from parents who did not “train up” their children properly. In 1735, an orphan girl in Georgia was rescued from a home where she was sexually abused.<sup>8</sup> In 1866, Massachusetts passed a law authorizing judges to intervene in the family when “by reason of orphanage or of the neglect, crime, drunkenness or other vice of parents,” a child was “growing up without education or salutary control, and in circumstances exposing said child to an idle and dissolute life.”<sup>9</sup> Whether or not a statute authorized intervention, judges had inherent authority to stop abuse. Justice Joseph

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2. The case against the shopkeeper was sold to the public as a pamphlet. See HENRY C. SOUTHWICK, *THE TRIAL OF AMOS BROAD AND HIS WIFE, ON THREE SEVERAL INDICTMENTS FOR ASSAULTING AND BEATING BETTY, A SLAVE, AND HER LITTLE FEMALE CHILD SARAH, AGED THREE YEARS* (1809), reprinted in *FREE BLACKS, SLAVES, AND SLAVE OWNERS IN CIVIL AND CRIMINAL COURTS: THE PAMPHLET LITERATURE*, at 179–209 (Paul Finkelman ed., 1988) [hereinafter *FREE BLACKS, SLAVES, AND SLAVEOWNERS*]. The original pamphlet was published in 1809 in New York and covered pages 1–31. For details of this case of horrendous physical abuse, see *A HISTORY*, *supra* note 1, at 126–27.

3. This was another pamphlet. See RYER SCHERMERORN, *REPORT OF THE TRIAL OF SUSANNA* (1810), reprinted in *FREE BLACKS, SLAVES, AND SLAVEOWNERS*, *supra* note 2, at 211–60. The original pamphlet was published in 1810 in Troy, N.Y., and covered pages 1–50.

4. See *Fletcher v. People*, 52 Ill. 395 (1869).

5. *Id.* at 395.

6. See *People v. Benson*, 6 Cal. 221 (1856). The *Benson* case is discussed in detail in *A HISTORY*, *supra* note 1, at 126–27.

7. I read every reported rape case in the California Supreme Court and the California Courts of Appeal from 1856 to 1940. Most victims were children, not adult women.

8. Clyde E. Buckingham, *Early American Orphanages: Ebenezer and Bethesda*, 26 *SOC. FORCES* 311, 311–21 (1948).

9. An Act Concerning the Care and Education of Neglected Children, 1866 Mass. Acts ch. 283.

Story wrote in 1886:

For although in general parents are intrusted with the custody of the persons and the education of their children, yet this is done upon the natural presumption that the children will be properly taken care of . . . . But whenever this presumption is removed, whenever (for example) it is found that a father is guilty of gross ill treatment or cruelty towards his infant children, . . . in every such case the Court of Chancery will interfere and deprive him of the custody of his children . . . .<sup>10</sup>

Before the spread of nongovernmental child-protection societies beginning in 1875, intervention to protect children was sporadic, but intervention occurred. Children were not protected on the scale they are today, but adults were aware of maltreatment and tried to help.

### III. Child Protection from 1875 to 1962

Organized child protection emerged from the rescue in 1874 of nine-year-old Mary Ellen Wilson, who lived with her guardians in one of New York City's worst tenements, Hell's Kitchen.<sup>11</sup> Mary Ellen was routinely beaten and neglected. A religious missionary to the poor named Etta Wheeler learned of the child's plight and determined to rescue her. Wheeler consulted the police, but they declined to investigate. Next, Wheeler sought assistance from child helping charities, but they lacked authority to intervene in the family. At that time, of course, there was no such thing as child protective services, and the juvenile court did not come into existence for a quarter century. Eventually, Wheeler sought advice from Henry Bergh, the influential founder of the American Society for the Prevention of Cruelty to Animals. Bergh asked his lawyer, Elbridge Gerry, to find a legal mechanism to rescue the child. Gerry employed a variant of the writ of habeas corpus to remove Mary Ellen from her guardians.<sup>12</sup>

Following the rescue of Mary Ellen, animal protection advocate Henry Bergh and his attorney Elbridge Gerry lamented the fact that no government agency or nongovernmental organization was responsible for child

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10. JOSEPH STORY, COMMENTARIES ON EQUITY JURISPRUDENCE AS ADMINISTERED IN ENGLAND AND AMERICA § 1341 (13th ed. 1886).

11. The case of Mary Ellen is discussed at length in my books on the history of child protection. *See supra* note 1.

12. Mary Ellen's father died in the Civil War, and her mother disappeared. After the judge removed Mary Ellen from her guardians' custody, Etta Wheeler asked the judge to allow the child to live with Wheeler's own mother in upstate New York. The judge agreed, and Mary Ellen was sent to live with Wheeler's mother. Wheeler's mother died soon after Mary Ellen arrived, but one of Wheeler's sisters stepped in and raised Mary Ellen as a daughter. At the age of twenty-four, Mary Ellen married. She had two daughters of her own, both of whom went to college and became teachers. Mary Ellen lived well into the twentieth century.

protection. Bergh and Gerry decided to create a nongovernmental charitable society devoted to child protection, and thus was born the New York Society for the Prevention of Cruelty to Children (NYSPCC), the world's first entity devoted entirely to child protection. Gerry became president of NYSPCC and served in that capacity into the twentieth century.

News of the NYSPCC spread and by 1922, some 300 nongovernmental child protection societies were scattered across America. Although 300 is an impressive number, for much of the twentieth century, many cities and nearly all rural areas had little or no access to formal child-protective services. For most abused and neglected children help came—if it came—from family and neighbors willing to get involved, from police, and from courts.

As nongovernmental child-protection societies popped up across the country, another important innovation appeared: the juvenile court. The world's first juvenile court was established at Chicago in 1899. Juvenile courts spread quickly, and by 1919, all states but three had juvenile courts. Before long, the remaining states fell in line. Although the reformers who created the juvenile court were concerned primarily with delinquent children, juvenile courts from the outset had jurisdiction to intervene in cases of abuse and neglect. Today, of course, the juvenile court is a central player in the child protection system.

As noted above, in the nineteenth and early twentieth centuries, child protection agencies were nongovernmental. The first few decades of the twentieth century witnessed increasing calls to shift child protection from nongovernmental Societies for the Prevention of Cruelty to Children (SPCCs) to government agencies. Douglas Falconer wrote in 1935:

For many years responsibility for child protection was left almost entirely to private agencies . . . . Great sections of child population were untouched by them and in many other places the service rendered was perfunctory and of poor standard . . . . The belief has become increasingly accepted that if children are to be protected from neglect the service must be performed by public agencies.<sup>13</sup>

The call for government child protection coincided with the increasing role of state and federal governments in social services. Prior to the twentieth century, there were relatively few state-level departments of social services. What government services there were were the province of local government. During the early twentieth century, states created or strengthened state departments of welfare, social services, health, and labor.

As for the federal government, prior to 1935, Washington, D.C., played

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13. Douglas P. Falconer, *Child and Youth Protection*, in 3 SOCIAL WORK YEARBOOK 63, 65 (Fred S. Hall ed., 1935).

an insignificant role in child welfare policy and funding. Creation of the federal Children's Bureau in 1912 broke the ice, followed by the Sheppard-Towner Act, which provided federal money from 1921 to 1929 for health services for mothers and babies. It was the Great Depression of the 1930s, however, that stimulated the sea change in the federal government's role in social welfare. In 1935, as part of President Roosevelt's New Deal to save the nation from economic ruin, Congress passed the Social Security Act. In addition to old-age pensions, unemployment insurance, and vocational services, the Social Security Act created Aid to Dependent Children, which provided millions of dollars to states to support poor families. Tucked away in the Social Security Act was an obscure provision that authorized the Children's Bureau "to cooperate with state public-welfare agencies in establishing, extending, and strengthening, especially in predominantly rural areas, [child welfare services] for the protection and care of homeless, dependent, and neglected children, and children in danger of becoming delinquent."<sup>14</sup> This provision was an important shot in the arm for the nascent social work specialty of child welfare, and a modest step toward what in the 1970s became a central role for the federal government in efforts to protect children from abuse and neglect.

The Great Depression of the 1930s hastened the demise of nongovernmental SPCCs. The charitable contributions that were the lifeblood of SPCCs withered with the economy, and only the heartiest SPCCs weathered the economic drought. In the 1930s and 1940s, many SPCCs merged with other organizations or closed. In some communities, child protection was assumed by the juvenile court or the police, whereas in other communities, organized protective work ceased.

In 1956, Vincent De Francis, director of the Children's Division of the American Humane Association, conducted a national inventory of child protective services.<sup>15</sup> De Francis found eighty-four nongovernmental SPCCs, down from the high of 300 early in the century. Thirty-two states had no nongovernmental child-protective services. In these states, and in states with SPCCs, government agencies were slowly assuming responsibility. At midcentury, many communities had no agency clearly in charge of this vital service.

A decade after his 1956 survey, De Francis again took the pulse of child protection.<sup>16</sup> By 1967, the number of nongovernmental SPCCs was

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14. Social Security Act of 1935, § 521, 49 Stat. 620, 633.

15. See VINCENT DE FRANCIS, *CHILD PROTECTIVE SERVICES IN THE UNITED STATES: REPORTING A NATIONWIDE SURVEY* (1956).

16. See VINCENT DE FRANCIS, *CHILDREN'S DIV., AM. HUMANE ASS'N, CHILD PROTECTIVE SERVICES: A NATIONAL SURVEY* (1967).

down to ten. De Francis wrote, "Responsibility for provision of Child Protective Services under voluntary auspices, like the old soldier it is, is slowly fading away."<sup>17</sup> By 1967, nearly all states had laws placing responsibility for child protection in government hands. Yet, De Francis complained, "No state and no community has developed a Child Protective Service program adequate in size to meet the service needs of all reported cases of child neglect, abuse and exploitation."<sup>18</sup> A few years earlier, Elizabeth Glover and Joseph Reid wrote in a similar vein: "In hundreds of counties in the United States, there is no protective service for children, other than police services, and in many of the nation's largest cities, the only protective service is provided by voluntary agencies that are not sufficiently financed to give total community coverage."<sup>19</sup> In 1965, California had no county system of child protective services. In most states, protective services were not available statewide. Most communities lacked twenty-four hour coverage. Thus, for the first six decades of the twentieth century, protective services in most communities were inadequate and in some places nonexistent.

#### IV. The Modern Era of Child Protection

##### A. 1962 to the Present

The first two sections of this article describe child protection before 1962. The next section discusses the post-1962 development of the child protection system. By the late 1970s, government-sponsored child protective services spanned the nation, settling into urban and rural areas alike.

##### B. Child Abuse Becomes a National Issue

The 1960s witnessed an explosion of interest in child abuse, and physicians played a key role in this awakening. Prior to the 1960s, medical schools provided little or no training on child abuse, and medical texts were largely silent on the issue. Even pediatricians were largely uninformed. The spark that eventually ignited medical interest in abuse was an article published in 1946 by pediatric radiologist John Caffey.<sup>20</sup> Caffey described six young children with subdural hematoma and fractures of the legs or arms. Although Caffey did not state that any of the children were

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17. *Id.* at 11.

18. *Id.*

19. E. Elizabeth Glover & Joseph H. Reid, *Unmet and Future Needs*, 355 ANNALS AM. ACAD. POL. & SOC. SCI. 9, 14 (1964).

20. See John Caffey, *Multiple Fractures in the Long Bones of Infants Suffering from Chronic Subdural Hematoma*, 56 AM. J. ROENTGENOLOGY 163 (1946).

abused, he hinted at it. Following Caffey's classic paper, a small but steady stream of physicians drew attention to the abusive origin of some childhood injuries. This trend culminated in the 1962 publication of the blockbuster article *The Battered Child Syndrome* by pediatrician Henry Kempe and his colleagues.<sup>21</sup> Kempe played a leading role in bringing child abuse to national attention during the 1960s and 1970s.

As the medical profession became interested in child abuse, so did the media. Local media had always covered noteworthy cases, as when a child was beaten to death, but coverage by national media was uncommon prior to the 1960s. Following publication of *The Battered Child Syndrome*, national news outlets like *Newsweek*, *Saturday Evening Post*, *Parents Magazine*, *Time*, *Good Housekeeping*, and *Life* published emotional stories of abuse, often citing *The Battered Child Syndrome* and Henry Kempe. A *Newsweek* story from April 1962, for example, was titled *When They're Angry*<sup>22</sup> and quoted Kempe:

One day last November, we had four battered children in our pediatrics ward. Two died in the hospital and one died at home four weeks later. For every child who enters the hospital this badly beaten, there must be hundreds treated by unsuspecting doctors. The battered child syndrome isn't a reportable disease, but it damn well ought to be.<sup>23</sup>

Prior to 1962, there was little professional research and writing about abuse. Elizabeth Elmer noted, "The amount of systematic research on the problem of abuse and neglect is conspicuously scant."<sup>24</sup> Following publication of *The Battered Child Syndrome*, a trickle of writing became a torrent that continues to this day.

News stories and journal articles captured public and professional attention. Behind the scenes, Congress placed new emphasis on child protection with amendments to the Social Security Act in 1962.<sup>25</sup> Vincent De Francis remarked that the 1962 amendments "for the first time, identified Child Protective Services as part of all public child welfare."<sup>26</sup> In addition to sharpening the focus on child protection, the 1962 amendments required states to pledge that by July 1, 1975, they would make child welfare services available statewide. This requirement fueled expansion of government child-welfare services, including protective services.

The year 1962 was momentous not only for publication of *The Battered*

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21. See C. Henry Kempe et al., *The Battered-Child Syndrome*, 181 J. AM. MED. ASS'N 17 (1962).

22. *When They're Angry*, NEWSWEEK, Apr. 16, 1962, at 74.

23. *Id.* (quoting Kempe et al., *supra* note 21).

24. Elizabeth Elmer, *Identification of Abused Children*, 10 CHILD. 180, 180 (1963).

25. Public Welfare Amendments of 1962, Pub. L. No. 87-543, § 528, 76 Stat. 172, 172.

26. DE FRANCIS, *supra* note 16, at 4.

*Child Syndrome* and amendments to the Social Security Act. In the same year, the federal Children's Bureau convened two meetings to determine how the Bureau could more effectively help states respond to child abuse. Attendees at the meetings, including Henry Kempe and Vincent De Francis, recommended state legislation requiring doctors to report suspicions of abuse to police or child welfare. These meetings were the genesis of child abuse reporting laws, the first four of which were enacted in 1963. By 1967, all states had reporting laws.

As reporting laws went into affect, the prevalence of child abuse and neglect came into focus. By 1974, some 60,000 cases were reported. In 1980, the number exceeded one million. By 1990, reports topped two million, and in 2000, reports hovered around three million. In the early twenty-first century, reports declined but remained high.

Turning from reporting laws to another critical component of child protection, foster care, during the nineteenth century, children who could not live safely at home ended up in orphanages or almshouses. Nineteenth century reformers like Charles Loring Brace struggled to remove children from institutions and place them in foster homes. Debate over the merits of foster care versus orphanage care raged from the 1850s to the early decades of the twentieth century. Eventually, proponents of foster care prevailed, and almshouses and orphanages disappeared.

In the early days, foster care was viewed as a major advance and as the best solution for many dependent children. In the last quarter of the twentieth century, however, some came to view foster care as a problem rather than as a solution. Critics lamented that nearly half a million children are in foster care at any point in time and that too many children get "stuck" in out-of-home care. What's more, children of color, particularly African-American children, are sadly overrepresented among foster children.<sup>27</sup> Yet, despite problems, foster care remains a safe haven for many abused and neglected children.

## **V. The Federal Government Assumes a Leadership Role**

Prior to 1974, the federal government played a useful but minor role in child protection. The Children's Bureau was founded in 1912, but the Bureau paid little attention to maltreatment until the 1960s. The Social Security Act of 1935, as amended in 1962, provided money to expand child welfare services. Yet, as late as 1973, U.S. Senator Walter Mondale wrote, "Nowhere in the Federal Government could we find one official

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27. See generally U.S. GOV'T ACCOUNTABILITY OFFICE, GAO 07-816, AFRICAN AMERICAN CHILDREN IN FOSTER CARE: ADDITIONAL HHS ASSISTANCE NEEDED TO HELP STATES REDUCE THE PROPORTION IN CARE (2007).

assigned full time to the prevention, identification and treatment of child abuse and neglect.”<sup>28</sup>

Due in substantial measure to Mondale’s efforts, Congress assumed a leadership role with passage of the Child Abuse Prevention and Treatment Act of 1974 (CAPTA).<sup>29</sup> CAPTA authorized federal funds to improve the state response to physical abuse, neglect, and sexual abuse. CAPTA focused particular attention on improved investigation and reporting. In addition, CAPTA provided funds for training, for regional multidisciplinary centers focused on child abuse and neglect, and for demonstration projects. Responsibility for administering CAPTA was placed in a new agency, the National Center on Child Abuse and Neglect. The Center funded important research on maltreatment. CAPTA played a major role in shaping the nationwide system of governmental child protective services in place today. In addition, CAPTA marked the final passing of privately funded, nongovernmental child protection societies. Congress periodically renewed CAPTA, and this important legislation remains in force today.

Prior to 1978, as many as twenty-five to thirty-five percent of Native American children were removed from their parents for alleged neglect or abuse. The majority of these children were placed in non-Indian foster homes, adoptive homes, and institutions. In 1978, Congress enacted the Indian Child Welfare Act (ICWA)<sup>30</sup> to reduce the number of Native American children removed from their homes. Congress recognized, “There is no resource that is more vital to the continued existence and integrity of Indian tribes than their children,” and “that an alarmingly high percentage of Indian families are broken up by the removal, often unwarranted, of their children from them by nontribal public and private agencies.”<sup>31</sup> To reduce inappropriate removal of Indian children from their homes, ICWA provides that only tribal courts can decide abuse and neglect cases involving children whose permanent residence is a reservation. For Indian children who do not live on a reservation, state juvenile courts can make decisions about removal, but the child’s tribe must be notified, and the tribe has the right to intervene in the case.

Before the civil rights movement of the 1960s, interracial adoption was uncommon. Several states, including Louisiana and Texas, had outright bans on interracial adoption. Social workers generally believed it was

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28. Letter of Transmittal from Walter F. Mondale to Harrison A. Williams (Mar. 15, 1974), in *Questions and Answers on Children and Youth of the Committee on Labor and Public Welfare, Child Abuse Prevention and Treatment Act*, S. 1191, 93rd Cong. pt. VII (1974).

29. Pub. L. No. 93-247, 88 Stat. 4 (1974); see also SANFORD N. KATZ, *FAMILY LAW IN AMERICA* 139-47 (2003).

30. Pub. L. No. 95-608, 92 Stat. 3069 (1978).

31. *Id.* at § 2(3)-(4).

important to place children with adoptive parents of the same ethnic background. During the 1960s, however, courts struck down laws against interracial adoption, and increasing numbers of white parents adopted children of color.

During the 1970s, critics of interracial adoption mounted a spirited campaign against the practice, led by the National Association of Black Social Workers. In 1972, the association issued a position paper stating:

Black children should be placed only with Black families in foster care or for adoption. Black children belong, physically, psychologically and culturally in Black families in order that they receive the total sense of themselves and develop a sound projection of their future. Human beings are products of their environment and develop their sense of values, attitudes and self concept within their family structures. Black children in white homes are cut off from their healthy development of themselves as Black people.<sup>32</sup>

Elizabeth Bartholet wrote that the association's position "found a receptive audience. The establishment forces readily conceded that the black and Native American communities had a right to hold onto 'their own.' . . . The new orthodoxy was quickly established, making the 1960s period of transracial placements seem a brief anomaly in the larger picture."<sup>33</sup> Cynthia Hawkins-Leon and Carla Bradley added, "In an attempt to adhere to the tenets of the [association's] position paper, adoption agencies began to enact and enforce same-race placement policies. As a result, the number of transracial adoptions dropped drastically nationwide."<sup>34</sup>

Unfortunately, as mentioned above, children of color, particularly African-American children, are overrepresented in foster care, and African-American foster children tend to wait longer for adoption than white children. The antagonism of the 1970s toward interracial adoption exacerbated the problem by dissuading whites from adopting African-American children. During the 1980s and 1990s, pressure mounted to lower racial barriers to adoption, and in 1994, Congress passed the Multiethnic Placement Act (MEPA).<sup>35</sup> The 1994 MEPA prohibited child welfare agencies from delaying or denying adoptive placements on the basis of race. Yet, MEPA allowed race as a factor in placement decisions. Critics argued that allowing race as a factor perpetuated the status quo

32. Nat'l Ass'n of Black Social Workers, Position Paper (Apr. 4-9, 1972) (on file with author). The position paper was developed at a conference of the National Association of Black Social Workers in Nashville, Tennessee, on April 4-9, 1972.

33. ELIZABETH BARTHOLET, *NOBODY'S CHILDREN: ABUSE AND NEGLECT, FOSTER DRIFT, AND THE ADOPTION ALTERNATIVE* 124-25 (1999).

34. Cynthia G. Hawkins-Leon & Carla Bradley, *Race and Transracial Adoption: The Answer Is Neither Simply Black or White nor Right or Wrong*, 51 CATH. U. L. REV. 1227, 1239 (2002).

35. 42 U.S.C. §§ 671(18), 1996b (2006).

against interracial adoption. In 1996, Congress amended MEPA to narrow the circumstances in which race may be considered. Under the 1996 amendment, a child's race must normally be considered irrelevant in determining the best placement for the child. Only in narrow circumstances where the needs of a specific child make race important can social workers consider race as a factor.

Child abuse reporting laws and enhanced awareness of child abuse produced an increase in intervention. By the late 1970s, the rising number of children in long-term foster care set off alarm bells in Congress, resulting in passage of the Adoption Assistance and Child Welfare Act of 1980 (AACWA).<sup>36</sup> AACWA required states to make "reasonable efforts" to avoid removing children from maltreating parents. When removal was necessary, reasonable efforts were required to reunite families. Every child in foster care had to have a "permanency plan" to return the child home or move toward termination of parental rights. For children who could not go home, Congress provided financial incentives for adoption. Finally, AACWA provided financial support for adoptive parents who adopted children with special needs.

The effort to preserve families—called family preservation—was a key component of AACWA, and the dominant paradigm of child protection in the 1980s. In the 1990s, however, critics argued that over-reliance on family preservation sometimes led to tragedy. One of the most forceful critics of family preservation was Richard Gelles, who challenged the effectiveness of family preservation in his 1996 book, *The Book of David: How Preserving Families Can Cost Children's Lives*.<sup>37</sup> Gelles wrote:

The essential first step in creating a safe world for children is to abandon the fantasy that child welfare agencies can balance the goals of protecting children and preserving families, adopting instead a child-centered policy of family services. This is not a new policy, but rather a return to the policy of the early 1960s that established child safety as the overriding goal of the child protection system. It is time to abandon the myth that "the best foster family is not as good as a marginal biological family." The ability to make a baby does not ensure that a couple have, or ever will have, the ability to be adequate parents. The policy of family reunification and family preservation fails because it assumes that *all* biological parents can become fit and acceptable parents if only appropriate and sufficient support is provided.<sup>38</sup>

Although AACWA, with its emphasis on keeping families together, helped many children and parents, the number of children living in foster

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36. Pub. L. No. 96-272, 94 Stat. 500 (1980).

37. RICHARD J. GELLES, *THE BOOK OF DAVID: HOW PRESERVING FAMILIES CAN COST CHILDREN'S LIVES* (1996).

38. *Id.* at 148–50.

care did not decline. Moreover, Richard Gelles and others charged that reasonable efforts and family preservation caused social workers and judges to leave children in dangerous homes. Congress responded in 1997 with the Adoption and Safe Families Act (ASFA).<sup>39</sup> Although ASFA did not abandon family preservation, it made child safety the top priority. When children are placed in foster care, ASFA establishes strict time lines for returning them to their parents or terminating parental rights to free the children for adoption. In cases of sexual abuse and chronic physical abuse, ASFA authorizes states to dispense with efforts to reunify the family, and to move directly to termination of parental rights.

## VI. Child Sexual Abuse Takes Center Stage

Prior to the late 1970s, many sexually abused children were protected. Yet, recognition of sexual abuse lagged behind recognition of physical abuse. In 1969, Vincent De Francis wrote that social work “literature seems devoid of reference to or content on this subject.”<sup>40</sup> In 1975, David Walters wrote, “Virtually no literature exists on the sexual abuse of children.”<sup>41</sup> Also in 1975, Suzanne Sgroi wrote, “Although the pioneering efforts of many distinguished professionals and dedicated lay people over the past decade have made child abuse a national issue, the problem of sexual molestation of children remains a taboo topic in many areas.”<sup>42</sup> In 1977, Henry Kempe gave a lecture in which he described “sexual abuse of children and adolescents as another hidden pediatric problem and a neglected area.”<sup>43</sup>

In the early 1970s, sexual abuse was still largely invisible, but that was about to change. Two related factors launched sexual abuse onto the national stage. First, the child protection system—including reporting laws—expanded significantly in the 1970s. Second, new research shed light on the prevalence and harmful effects of sexual abuse.

By the end of the 1970s, the United States enjoyed for the first time a nationwide system of government-sponsored child protection. The influential CAPTA included sexual abuse in its definition of maltreatment. By

39. Pub. L. No. 105-89, 111 Stat. 2115 (1997).

40. VINCENT DE FRANCIS, *PROTECTING THE CHILD VICTIM OF SEX CRIMES COMMITTED BY ADULTS* 5 (1969).

41. DAVID R. WALTERS, *PHYSICAL AND SEXUAL ABUSE OF CHILDREN: CAUSES AND TREATMENT* (1975).

42. Suzanne M. Sgroi, *Molestation of Children: The Last Frontier in Child Abuse*, *CHILD TODAY*, May–June 1975, at 18.

43. C. Henry Kempe, *Sexual Abuse, Another Hidden Pediatric Problem: The 1977 C. Anderson Aldrich Lecture*, 62 *PEDIATRICS* 382, 382 (1978). Kempe wrote, “Often, pediatricians will simply not even consider the diagnosis of incest in making an assessment of an emotionally disturbed child or adolescent of either sex.” *Id.* at 383.

1976, all states had reporting laws requiring professionals to report sexual abuse. The expanded child protection system, particularly the reporting laws, wrenched sexual abuse from obscurity.

Prior to the 1970s, there was a paucity of research on the prevalence and effects of sexual abuse.<sup>44</sup> Vincent De Francis was one of the first to break new ground. In 1969, De Francis published the results of his study of 250 sexual abuse cases from Brooklyn.<sup>45</sup> De Francis wrote, "The problem of sexual abuse of children is of unknown national dimensions, but the findings strongly point to the probability of an enormous national incidence many times larger than the reported incidence of physical abuse of children."<sup>46</sup> Two thirds of the children in De Francis's study were emotionally damaged by the abuse. De Francis concluded, "Child victims of adult sex offenders are a community's least protected children. Frequent victims of parental neglect, they are, almost always, also neglected by the community which has consistently failed to recognize the existence of this as a substantial problem."<sup>47</sup>

A decade after De Francis's groundbreaking research, David Finkelhor published *Sexually Victimized Children*.<sup>48</sup> Much had changed since 1969, when De Francis complained that society ignored sexual abuse. In 1979, Finkelhor wrote:

Child protection workers from all over the country say they are inundated with cases of sexual abuse . . . . Public outrage, which has for several years focused on stories of bruised and tortured children, is shifting to a concern with sexual exploitation. Between 1977 and 1978 almost every national magazine had run a story highlighting the horrors of children's sexual abuse.<sup>49</sup>

Finkelhor surveyed 796 college students and found that "19.2 percent of the women and 8.6 percent of the men had been sexually victimized as children."<sup>50</sup> Most of the sexual abuse was committed by someone the child knew, and most was not reported.

As Finkelhor was finishing his research, Diana Russell was working toward similar findings.<sup>51</sup> Russell studied 930 women and found that 16%

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44. What writing there was prior to the 1970s tended to be highly skeptical of women and children who claimed to have been sexually assaulted. For analysis of the pre-1970s literature, see generally *A HISTORY*, *supra* note 1.

45. See DE FRANCIS, *PROTECTING THE CHILD VICTIM*, *supra* note 40.

46. *Id.* at vii.

47. *Id.* at 1.

48. DAVID FINKELHOR, *SEXUALLY VICTIMIZED CHILDREN* (1979).

49. *Id.* at 1.

50. *Id.* at 53.

51. Diana E.H. Russell, *Incidence and Prevalence of Intrafamilial and Extrafamilial Sexual Abuse of Female Children*, 7 *CHILD ABUSE & NEGLECT* (SPECIAL ISSUE) 2, 133-46 (1983).

were sexually abused during childhood by a family member.<sup>52</sup> Thirty-one percent of the women reported sexual abuse by a nonrelative.<sup>53</sup> The path-finding research of Vincent De Francis, David Finkelhor, Diana Russell, and others exploded any idea that sexual abuse was rare or benign.

## VII. Summary of Post-1962 Developments

Remarkable progress has been made in the period after 1962. For the first time, child protective services were available across the country—in small towns, rural areas, and cities. The growth of child protection was a boon to thousands of children. Ironically, however, the expansion of the child protection system, particularly the rapid deployment of laws requiring professionals to report suspected abuse and neglect, carried the seeds of crisis. The reporting laws unleashed a flood of cases that overwhelmed the child protection system, and by the 1980s, the system was struggling to keep its head above water.

## VIII. Conclusion

Forty years ago, child protection pioneer Vincent De Francis lamented, “No state and no community has developed a Child Protective Service program adequate in size to meet the service needs of all reported cases of child neglect, abuse and exploitation.”<sup>54</sup> What would De Francis say today? I believe he would say that although today’s child protection system has many problems, the contemporary system is a vast improvement over the incomplete patchwork that existed in the 1960s. Today, child protective services are available across America, billions of dollars are devoted to child welfare, and thousands of professionals do their best to help struggling parents and vulnerable children.

The child protection system protects children every hour of the day. Unfortunately, the public seldom hears about child protection’s successes. Indeed, the only time child protection makes the front page or the evening news is when something goes terribly wrong: social workers fail to remove an endangered child who ends up dead, or social workers remove children when they should not. Both scenarios—over- and under-intervention—are inevitable in the difficult work of child protection. Yet, the fact that the public hears only about child protection’s failings undermines confidence in the system. The truth is that the system saves lives and futures. As you read this sentence, a social worker somewhere is making a decision that will protect a child. As we look back across history, it

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52. *See id.*

53. *See id.*

54. DE FRANCIS, *supra* note 16, at 11.

is clear that the effort to protect children is not a story of failure, but a story of progress and hope. The child protection system is far from perfect, and much remains to be done, but, at the same time, much has been accomplished.

