NOTES

A Place to Call Home: The Link Between Residential Segregation and the Disproportionate Representation of African American Children in Foster Care

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INTRODUCTION

Segregation and its secondary effects are visible in neighborhoods across America. During the twentieth century, government actors encouraged and enabled segregation in ways that shaped the structure of the country.[1] As white families largely moved out to the suburbs and built generational wealth with the help of government-subsidized mortgages, Black families were often pushed into urban areas that lacked resources and opportunity.[2] A series of explicit and informal policies widened the wealth gap, and today, residential segregation persists between Black and white families.[3] Residential segregation affects where we all live, and it has secondary and tertiary effects on where children live.

This paper will argue that residential segregation, and the poverty and racism that it fosters, is one reason why children of color are disproportionately represented in the foster care system. Although dismantling the system that led to our modern-day segregation would require long-term buy-in from multiple institutional actors, child welfare workers face urgent decisions every day, such as removing a child from their home. While society works to address the structural factors causing the disproportionate representation of Black children in foster care, the child welfare system can and should immediately act in a way that is more sensitive to the realities of racial segregation and its effects.

This paper will focus primarily on state actions that caused the current state of residential segregation, as the catalog of the millions of private actions that created residential segregation could fill many papers of its own. Additionally, because state action determines the process for removing children from their homes, state and general public action is necessary to change the way that state actors determine which children must become involved in the foster care system – another focus of this paper. Part I will present background information on residential segregation from the beginning of the twentieth century through today. Part II will focus on the development of the child welfare system to try to illuminate how we have arrived at a racially disproportionate foster care population. After describing the background for both topics, Part III will argue that residential segregation is one of the driving forces of the disproportionate representation in the foster care system because it created the wealth gap and concentrated poverty into disadvantaged neighborhoods. Finally,

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    1. *See generally* DOUGLAS MASSEY & NANCY DENTON, AMERICAN APARTHEID: SEGREGATION AND THE MAKING OF THE UNDERCLASS (1993).
    2. SHERYLL CASHIN, THE FAILURES OF INTEGRATION: HOW RACE AND CLASS ARE UNDERMINING THE AMERICAN DREAM 113 (2004).
    3. *See* BRUCE MITCHELL & JUAN FRANCO, HOLC "REDLINING" MAPS: THE PERSISTENT STRUCTURE OF SEGREGATION AND ECONOMIC INEQUALITY 18 (National Community Reinvestment Coalition 2018), https://ncrc.org/wp-content/uploads/dlm_uploads/2018/02/NCRC-Research-HOLC-10.pdf

Part IV will argue that the child welfare system must confront the effects of residential segregation on child welfare, analyze a selection of efforts by the child welfare system to act in a more race-conscious way, and provide recommendations on how to move forward.

I. Background on Residential Segregation

The story of residential segregation in America can be traced all the way back to the end of slavery.[4] For brevity's sake, this paper will focus on residential segregation in the twentieth and twenty-first centuries. Multiple different New Deal era agencies openly discriminated against African Americans until the Fair Housing Act outlawed blatant racism in housing.[5] Government agencies developed "race neutral" policies in the decades following the passage of the Fair Housing Act; in reality, these policies reinforced residential segregation.[6] The effects of both explicitly discriminatory and "race neutral" actions are still felt in today's residential segregation.[7]

A. Formal Policies and Public Action: 1930-1968

As the federal government became more involved in the lives of everyday Americans during the New Deal, racist government housing policies shaped the country's modern development.[8] In 1933, the Home Owners' Loan Corporation (HOLC) was established to help homeowners during the Great Depression by stabilizing the nation's mortgage lending system.[9] In the late 1930s, the HOLC conducted a City Survey Program, which deployed local examiners around the country to assess the level of risk in giving loans to different areas.[10] These examiners graded different areas using a combination of factors such as "age and condition of housing, transportation access, closeness to amenities such as parks or disamenities like polluting industries, the economic class and employment status of residents, and their ethnic and racial composition."[11] Neighborhoods were color-coded by their status, with red indicating a "hazardous" neighborhood.[12] These maps later gave rise to the term "redlining," as predominantly Black communities were outlined in red to indicate that they were ineligible for loans.[13] A few years later, the Federal Housing Administration (FHA) built on the work of the HOLC and began offering

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4. *See generally* Massey & Denton, *supra* note 1.

5. Mitchell & Franco, *supra* note 3, at 5-7.

6. Solomon Greene, Margery Austin Turner & Ruth Gourevitch, Racial Residential Segregation and Neighborhood Disparities 2 (U.S. Partnership on Mobility from Poverty 2017), https://www.mobilitypartnership.org/publications/racial-residential-segregation-and-neighborhood-disparities

7. Douglas S. Massey, *The Legacy of the 1968 Fair Housing Act,* 30 Socio. Forum 571, 578-581 (2015).

8. *See generally* Mitchell & Franco, *supra* note 3.

9. *Id.* at 6.

10. *Id.* at 5.

11. *Id.*

12. *Id.*

13. Patrick Sharkey, Stuck in Place: Urban Neighborhoods and the End of Progress toward Racial Equality 59 (2013).

long-term, low-interest financing for purchasing homes.[14] In seeking to maintain stable property values and lower the risk of default, the FHA was very selective in the way it underwrote home purchases.[15] The FHA looked to the HOLC redlining maps for guidance, and instructed their appraisers in the underwriting manual to predict "the probability of the location being invaded by. . .incompatible racial and social groups."[16] In order to preserve the solidly white racial composition of the neighborhoods they were underwriting, the appraisers were urged to use racially-restrictive covenants, which barred the later sale of the home to any Black potential buyers.[17] This FHA policy influenced the private sector as well. The FHA explicitly recommended that the real estate industry use such racially restrictive covenants and practices, and often would not underwrite a loan for a house unless it included a racially restrictive covenant in its deed.[18] This practice continued unabated until the Supreme Court's 1948 decision in *Shelley v. Kraemer*, which held that it was unconstitutional for state courts to enforce racially-restrictive covenants.[19] By the time the Supreme Court handed down its ruling, decades of government policy had deliberately created a racially segregated white America and a Black America. This segregation is not benign. The neighborhoods where children grow up "have substantial causal effects on children's long-term outcomes at a granular level,"[20] as place impacts educational opportunities,[21] healthcare access,[22] and long-term upward mobility.[23] Part of today's economic inequality is expressly driven by differences in home ownership; the National Community Reinvestment Coalition found that the median white family has 41 times more wealth than the median Black family, much of which can be attributed to differences in home ownership.[24]

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14. CASHIN, *supra* note 2, at 111.

15. *Id.*

16. *Id.*

17. *Id.*

18. *Id.* at 112.

19. *Id.*

20. Raj Chetty, John N. Friedman, Nathaniel Hendren, Maggie R. Jones, & Sonya R. Porter, *The Opportunity Atlas: Mapping the Childhood Roots of Social Mobility*, 44 (Nat'l Bureau of Econ. Rsch., Working Paper No. 25147, 2018), https://www.nber.org/papers/w25147

21. *See, e.g.*, Kimberly Quick & Richard D. Kahlenberg, *Attacking the Black–White Opportunity Gap That Comes from Residential Segregation*, THE CENTURY FOUND. (June 25, 2019), https://tcf.org/content/report/attacking-black-white-opportunity-gap-comes-residential-segregation/ ("This inability of most students to attend schools beyond their neighborhood is troubling, because low-income students who are given the chance to attend socioeconomically integrated schools are shown to achieve at much higher levels than do low-income students in high-poverty schools.").

22. Jamila Taylor, *Racism, Inequality, and Health Care for African Americans*, THE CENTURY FOUND. (December 19, 2019), https://tcf.org/content/report/racism-inequality-health-care-african-americans/ ("Due to residential segregation, majority African-American and Hispanic areas are more likely to lack hospitals and other health care providers.").

23. Chetty et al., *supra* note 20.

24. Dedrick Asante-Muhammad & Jamie Buell, *Racial Wealth Snapshot: African Americans And The Racial Wealth Divide*, NATIONAL COMMUNITY REINVESTMENT COALITION (Feb. 21, 2020), https://ncrc.org/racial-wealth-snapshot-african-americans-and-the-racial-wealth-divide/.

The legacy of these and other racist practices can be seen not only at the neighbor-hood level, but often at the metropolitan area level. The FHA primarily valued underwriting mortgages for "detached, single-family homes, almost exclusively in white suburban neighborhoods."[25] While incentivizing white families to move out to the suburbs, the FHA drastically limited the options for Black families by declining to insure loans in areas that were racially diverse or predominantly Black.[26] Throughout the mid-twentieth century, other government policies solidified this divide between white and Black and urban and suburban. The interstate highway system divided cities by race, razed many historically Black neighborhoods, and enabled white suburbs to extend further away from the city.[27] Exclusionary zoning policies allowed localities to enforce a wealth divide by only allowing single-family homes on large lots.[28] Whether the racial discrimination was explicit or veiled, agen-cies at all levels of government acted affirmatively to separate white and Black America, at the great expense of the latter.

B. The 1968 Fair Housing Act and Its Aftermath: 1968-Today

Explicit racial discrimination in government housing policy theoretically ended with the Fair Housing Act, but the legislation did not end "race neutral" discrimina-tory policies. Federal legislation to address blatant racial discrimination in housing proved difficult to pass.[29] Provisions related to housing discrimination had been left out of major civil rights legislation in the early 1960s, despite President Lyndon Johnson's calls for fair housing legislation.[30] Ultimately, it took the findings of the Kerner Commission and the public outcry after the assassination of Dr. Martin Luther King, Jr. to drive the passage of the Fair Housing Act of 1968.[31] The Fair Housing Act outlawed the refusal to rent to a tenant because of their race, and pro-hibited racial discrimination in advertising or the terms and conditions of a lease or sale.[32] In response, the market switched to "race-neutral" policies in the latter half of the 20th century that still barred Black renters and homeowners from opportunity.[33] Those policies outside the Fair Housing Act perpetuate a segregated housing market today.[34] For example, exclusionary zoning policies bar lower income residents from

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25. *Id.* at 113.

26. CASHIN, *supra* note 2, at 113.

27. *Id.* at 113-114; *see also, e.g.*, Erin Blakemore, *Interstate highways were touted as modern marvels. Racial injustice was part of the plan*, WASH. POST (August 17, 2021), https://www.washingtonpost.com/history/2021/08/16/interstate-highways-were-touted-modern-marvels-racial-injustice-was-part-plan/ ("Between 1957 and 1977, the U.S. Transportation Department estimates, more than 475,000 households were forced out for the highways' construction. A majority of those lived in urban communities with low incomes and high concentrations of people of color.").

28. CASHIN, *supra* note 2, at 113; *see also* Elliott Anne Rigsby, *Understanding Exclusionary Zoning and Its Impact on Concentrated Poverty*, THE CENTURY FOUND. (June 23, 2016), https://tcf.org/content/facts/understanding-exclusionary-zoning-impact-concentrated-poverty/.

29. Massey, *supra* note 7, at 574.

30. *Id.*

31. *Id.* at 575.

32. *Id.* at 575-576.

33. GREENE ET AL., *supra* note 6, at 2.

34. Massey, *supra* note 7, at 576.

moving to different areas, subsidized housing programs exacerbate segregation by building low-income housing in distressed neighborhoods, and people of color are still told about fewer and different housing opportunities than white people.[35] As shown by litigation and housing studies in the last ten years, these policies are pernicious and many (usually white) Americans have been unwilling to uproot them.[36]

C. The Modern Era: Impact of Housing Policy on Black Wealth and Outcomes

Decades of racial residential segregation has left America with a persistent and undeniable divide between Black and white Americans.[37] African Americans are "more highly segregated than any other racial or ethnic group in the US."[38] According to Cashin, "[t]he average non-Hispanic white person in metropolitan America resides in a neighborhood that is 75 percent white. The average African American person lives in a neighborhood that is only 35 percent white."[39] Many Americans live in racially-homogenous neighborhoods. Their race, a socially constructed attribute, plays a role in treading the poverty and economics of the area around them: "Only about 30 percent of black and Latino families reside in neighborhoods where less than half of the people are poor. . .Meanwhile, more than 60 percent of white and Asian families live in environs where most of their neighbors are not poor."[40] Research has shown that if neighborhoods were distributed based purely on their economics and without taking race or ethnicity into account, "levels of black-white segregation would significantly decrease."[41] People of color, particularly Black Americans, are overrepresented in high-poverty census tracts.[42] This inequality stems from centuries of discrimination, although part of the wealth gap can be directly traced back to the subsidization of housing in the New Deal.[43] According to one study, there is a "high degree of correspondence between HOLC high-risk grading and both economic disadvantage and majority-minority presence in neighborhoods to show a persistent pattern of economic inequality and segregation."[44] Residential segregation undoubtedly shaped the American landscape by creating white neighborhoods and Black neighborhoods. Those geographic and spatial

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35. GREENE ET AL., *supra* note 6, at 2.

36. *See, e.g.,* Texas Dept. of Housing and Community Affairs v. Inclusive Communities Project, Inc., 135 S.Ct. 2507 (2015); Gershon Harrell, *Gainesville residents take over city meeting to protest elimination of exclusionary zoning*, THE GAINESVILLE SUN (August 4, 2022), https://www.gainesville.com/story/news/2022/08/04/gainesville-residents-protest-city-plans-remove-exclusionary-zoning/10233676002/; *see generally* MARGERY AUSTIN TURNER, ROB SANTOS, DIANE K. LEVY, DOUG WISSOKER, CLAUDIA ARANDA, ROB PITINGOLO & THE URBAN INSTITUTE, HOUSING DISCRIMINATION AGAINST RACIAL AND ETHNIC MINORITIES 2012 (U.S. Department of Housing and Urban Development 2013), https://www.huduser.gov/portal/publications/fairhsg/hsg_discrimination_2012.html.

37. *See generally* GREENE ET AL., *supra* note 6.

38. *Id.* at 2.

39. SHERYLL CASHIN, PLACE, NOT RACE: A NEW VISION OF OPPORTUNITY IN AMERICA 22 (2014).

40. *Id.* at 23.

41. GREENE ET AL., *supra* note 6, at 3.

42. *Id.* at 1.

43. MITCHELL & FRANCO, *supra* note 3, at 18.

44. *Id.*

differences contributed to an unconscionable wealth gap between the people in those neighborhoods.

Children, particularly poor children, are even more segregated than their parents. Levels of residential segregation from whites are higher for children of all minority groups than they are for adults.[45] Children are even more economically segregated than adults.[46] Even when only considering children who live below the federal poverty line, "segregation indices for all major racial/ethnic groups, relative to poor white children, are extremely high," even higher than the overall segregation indices for children of all incomes.[47] Segregation is a problem for all ages, but this research shows that children may be bearing the brunt of it.

The impact of living in a segregated neighborhood extends far beyond the residents at any one time. Social Scientist Patrick Sharkey calls attention to the generational impact of being in an economically depressed and segregated area. He writes, "African Americans have been attached to places where discrimination has remained prevalent despite the advances in civil rights made in the 1960s; where political decisions and social policies have led to severe disinvestment and persistent, rigid segregation. . ."[48] Sharkey shows that growing up in such disadvantaged places means growing up surrounded by environmental stressors with limited economic and educational opportunities.[49] For each successive generation raised in those places, the disadvantages can be amplified, "reinforced by the consistency of disadvantage as experienced over generations of a family."[50] He highlights three reasons why these disadvantages are compounded from generation to generation: families currently living in an impoverished neighborhood are "overwhelmingly likely" to have lived in similar neighborhoods for multiple generations, disadvantage experienced during childhood impacts individuals into adulthood, and the effect of living in disadvantaged neighborhoods accumulates over generations.[51] For children currently residing in segregated neighborhoods, the neighborhoods of their parents and grandparents may be exacerbating some of their obstacles. Children residing in generationally segregated neighborhoods have amplified obstacles or barriers to overcome in life, whether that is social, economic, psychological, or even their involvement in the child welfare system.

II. BACKGROUND ON THE CHILD WELFARE SYSTEM

America's child welfare system slowly evolved out of a combination of traditions from slavery, indentured servitude, and a popular conception of mother's work.[52]

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45. NANCY MCARDLE & DOLORES ACEVEDO-GARCIA, CONSEQUENCES OF SEGREGATION FOR CHILDREN'S OPPORTUNITY AND WELLBEING 2 (Harvard U. 2017), https://www.jchs.harvard.edu/sites/default/files/a_shared_future_consequences_of_segregation_for_children.pdf.

46. *Id.*

47. MCARDLE & ACEVEDO-GARCIA, *supra* note 41, at 2.

48. SHARKEY, *supra* note 13, at 5.

49. *Id.* at 6.

50. *Id.*

51. *Id.* at 6-7.

52. *See generally* CATHERINE RYMPH, RAISING GOVERNMENT CHILDREN: A HISTORY OF FOSTER CARE AND THE AMERICAN WELFARE STATE (2017).

From the system's inception, it treated Black families and white families differently.[53] Completely ignored until the latter half of the twentieth century, Black families were seen as damaged when Black children came to the attention of public child welfare services as white families were diverted to private, segregated child welfare services.[54] As ideas about the social safety net and poverty changed, assumptions about the kids and families entering foster care became harsher and more punitive.[55] This stigmatization of both poor families and Black families has shaped the system we see today, one where Black children are overrepresented in foster care.[56]

A. Origins of the Child Welfare System: Slavery and the Pre-Industrial Age

The child welfare system has treated children of different races differently since its inception. To consider the relationship between Black families and the child welfare system, one must consider the impact of slavery. During slavery, enslaved parents had no rights to their children, who could be taken from them and sold to far away slave-owners.[57] But even when children and parents remained on the same estate, family systems could be more complex than just biological parents and children.[58] Because enslaved mothers were valued for their labor and were often not given the option to care for their children at home, older, weaker, or ill women were given the task of caring for children who could not yet work.[59] A variety of adults and older children cared for the younger children, creating networks that were crucial for ensuring adequate childcare in the time of slavery.[60] According to author and historian Catherine Rymph, "[t]his reality, coupled with the more expansive notions of kinship that West Africans brought with them to America, led to a more expansive notion of kin, as well as a tradition of 'othermothering' and mutual obligation."[61] Rymph draws the through-line from this expansive notion of family borne out of slavery and tradition to today's child welfare system:

> We see the effects of this history not only in the deep distrust many black families have toward the predominantly white child welfare system, that holds the power to break up black families but also in the difficulty that white child welfare workers have sometimes had in seeing the contours and strengths of black families that operated within boundaries less familiar to European Americans.[62]

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53. *See generally id.*

54. *Id.* at 119; *see generally* David Rosner & Gerald Markowitz, *Race, Foster Care, and the Politics of Abandonment in New York City*, 87 Am. J. of Pub. Health 1844, 1844-49 (1997).

55. *Id.*

56. U.S. Gov't Accountability Off., GAO-07-816, African American Children in Foster Care: Additional HHS Assistance Needed to Help States Reduce the Proportion in Care 4 (2007), https://www.gao.gov/new.items/d07816.pdf.

57. Rymph, *supra* note 52, at 34.

58. *Id.* at 34-35.

59. *Id.* at 35.

60. *Id.*

61. *Id.*

62. *Id.*

As in many areas of law and society,[63] the power differential that began with slavery would persist through to modern-day child welfare policies and programs.

The modern American idea of foster care began as a system for white children. In colonial times, when Black children were largely enslaved, white children who needed support could become indentured servants to other families.[64] By the early nineteenth century, urbanization had given rise to higher concentrations of poverty and a larger number of children who needed out-of-home care.[65] Orphanages arose as a more humane alternative to housing needy children in jails or almshouses, but the vast majority were private operations and therefore able to selectively choose children by religion, race, or other factors.[66] Public options began to arise for orphans and other children in need of out-of-home care beginning in the latter half of the nineteenth century.[67] In the North, private institutions could still choose which children to take in, which meant that many Black children in need of a home ended up in public institutions.[68] In the South, even many of those public institutions served white children only.[69] Systems akin to today's foster care emerged in private practices of "boarding," where poor families would pay poor mothers to watch over their children until the family was in a position to reunite with their children.[70]

B. *Formal Organization and the Early Twentieth Century*

Child welfare evolved into a more professional field throughout the early twentieth century, and assumptions about the reasons that children came into the care system changed as well. Public attention first turned to child welfare during the Progressive Era, a time when reformers pushed for services for the poorest members of society, culminating in a conference at the White House with President Theodore Roosevelt in 1909.[71] The conference focused on the need for government intervention on behalf of white and European immigrant children, with no attention paid to the needs of Black and other minority children.[72] Although the conference attendees clarified that "poverty should not break up families,"[73] they also "maintained distinctions among the poor, suggesting that the noble or 'moral' poor differed from the 'immoral' poor in terms of their right to keep their own families together. There

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63. Juliana Menasce Horowitz, *Most Americans say the legacy of slavery still affects black people in the U.S. today*, Pew Research Ctr. (June 17, 2019), https://www.pewresearch.org/short-reads/2019/06/17/most-americans-say-the-legacy-of-slavery-still-affects-black-people-in-the-u-s-today/; *see, e.g.*, Bryan Stevenson, *Slavery gave America a fear of black people and a taste for violent punishment. Both still define our criminal-justice system*, N. Y. Times (August 14, 2019), https://www.nytimes.com/interactive/2019/08/14/magazine/prison-industrial-complex-slavery-racism.html.

64. Rymph, *supra* note 52, at 18.

65. *Id.* at 19.

66. *Id.*

67. *Id.* at 20.

68. *Id.*

69. *Id.*

70. *Id.* at 24.

71. *Id.* at 28.

72. *Id.* at 28-29.

73. *Id.* at 29.

would always be families that were not worthy of preserving."[74] The supposed "morality" of the poor has deep roots in racist tropes dating back to the time of slavery.[75] Black Americans in poverty are cast by some policymakers and members of the public as undeserving of public assistance or simply not working hard enough, while white Americans in poverty are cast as just needing a helping hand.[76] This idea was widespread during the Progressive Era and informed the design and implementation of programs designed to help children and families.[77] Throughout the early twentieth century, child welfare became an increasingly sophisticated field, as seen in the development of national organizations such as the federal U.S. Children's Bureau.[78]

Despite child welfare being an increasingly well-organized and national profession, there was very little focus on Black children. Partially because of the tradition of larger kin networks taking care of children within the Black community, Black children were perceived as being taken care of by their communities.[79] This tradition of kinship care, coupled with racist assumptions, meant public child welfare services saw foster care as unnecessary for Black children. It was rare that Black children came to the attention of child welfare agencies at all. There was also a pervasive sense that Black children could be supported on less money, or that living conditions that were unacceptable for white children were acceptable for Black children.[80] Some child welfare agencies were explicitly segregated and refused Black children, even when those children came to their attention.[81] As the number of poor Black children in cities grew after World War II, it became more difficult to ignore the lack of foster care for those in need.[82] Dependent Black children ended up in hospitals, shelters, inadequate homes, or the juvenile delinquency system because there was nowhere else for the children to go.[83] New York City provides an illustrative example of the child welfare system reacting to the changing landscape of housing segregation in the post-war years.[84] As white families moved out to the suburbs and enjoyed growing affluence, white children were less likely to need the services designed for dependent and neglected children.[85] Accordingly, private child welfare agencies that had previously catered to white children began to move out to the suburbs and rebrand themselves as mental health facilities, continuing to work with almost exclusively white

74. *Id.*
75. Ann Cammett, *Deadbeat Dads* & Welfare Queens: How Metaphor Shapes Poverty Law, 34 B.C. J. OF L. & SOC. JUST. 233, 235 (2014).
76. *Id.*
77. *Id.* at 251-52.
78. RYMPH, *supra* note 52, at 31.
79. *Id.* at 35-36.
80. *Id.* at 124
81. Rosner & Markowitz, *supra* note 54, at 1844-49.
82. RYMPH, *supra* note 52, at 125 ("In the urban North, dependency among black children became more visible after the war, as ongoing migration of African Americans coincided with growing affluence for white Americans.").
83. *Id.* at 125-26.
84. *See generally* Rosner & Markowitz, *supra* note 54.
85. Rosner & Markowitz, *supra* note 54, at 1847.

children.[86] Black children, meanwhile, became more concentrated in the city and were continually denied services by the private institutions that remained, shuttled instead to hospitals or detention facilities.[87]

The child welfare system took notice of the rising number of Black children in need of services around the 1950s, but a new problem awaited them. Standard practice called for Black children to be placed with Black families, but Black foster families were difficult to find.[88] Part of the difficulty in recruiting Black families was systemic: at a time when Black Americans were effectively shut out from most of the economic opportunities open to white Americans, the child welfare system resisted foster care families who used the payment afforded to them as a primary way to make ends meet.[89] Child welfare workers listed low economic status, insufficient housing, and the number of women working outside the home as reasons for the shortage of acceptable Black foster homes.[90] Residential segregation exasperated this; neighborhoods that were predominantly inhabited by people of color were seen as part of the problem, as "African American families. . .often lived in parts of town that agencies found undesirable and where homes were not up to Child Welfare League standards."[91] While increasing the financial support to foster families could have ameliorated some of these problems, child welfare workers were unwilling to address the income issues that were preventing some families from fostering.[92] The prevailing idea among child welfare systems at the time was that foster care should not be a source of income for families, and that if they needed the income they were a poor candidate for fostering *by definition*.[93] By economically limiting the pool of possible foster parents, the child welfare system restricted the number of Black families who could apply. Instead of placing Black foster children with white foster families, some agencies placed children in shelters, hospitals, or detention facilities to wait for a more "suitable placement."[94] Further exacerbating the shortage, agencies also had to contend with distrust on the part of Black families and racism from white child welfare workers.[95]

C. Poverty and the Child Welfare System

Concurrently in the 1950s, the prevailing theory about why a child would be entering foster care was shifting. Beginning after World War II, the development of the social safety net changed the assumptions about children entering foster care from benevolent assumptions about poverty to harmful assumptions about family pathology. The massive shift in the American economy, beginning with the New

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86. *Id.*
87. *Id.* at 1847-48.
88. RYMPH, *supra* note 52, at 126.
89. *Id.*
90. *Id.*
91. *Id.* at 128.
92. *Id.* at 126.
93. *Id.*
94. *Id.* at 125.
95. *Id.* at 129.

Deal and persisting throughout the War, brought family security programs that ame-liorated some of the issues that previously brought children into foster care.[96] For example, the Social Security Act and Aid to Dependent Children Program both pro-vided financial support to families who might have previously sunk further into pov-erty prior to these programs.[97]

The New Deal programs made child welfare workers believe that poverty would no longer be a reason that children had to go into foster care, so any children entering foster care were perceived as damaged in some way.[98] However, Black families were often intentionally written out of New Deal programs by being overrepresented in occupations exempt from social insurance and being subject to "suitable home provi-sions" in Aid to Dependent Children qualifications.[99] As mentioned above, they were also left out of the wealth-building opportunities offered by the opportunity to buy homes.[100] Whether or not child welfare workers knew who really benefited from the social safety net, Black children were being labeled as "pathological" because they were still entering foster care.[101] As Rymph puts it, ". . .certainly the individual 'path-ologies' and 'disorganization' that child welfare workers saw in these families were deeply entwined with the broader structural challenges of poverty, lack of support for single parenthood, and racism."[102] As white families gained access to the social safety net, they no longer needed to rely on the child welfare system. This shifted attention to Black families, who still had no meaningful social safety net to fall back on.[103]

It took a nationwide sociological study in 1959 to upend the assumptions that children were no longer coming into foster care because of economic want and that everyone who needed public assistance was actually receiving it.[104] Throughout the late 1960s and 1970s, Black activists highlighted the ways that the child welfare sys-tem was making harmful assumptions about Black children and called attention to the problem of Black children being overrepresented in foster care.[105] National organizations took note of the criticisms and engaged in efforts to make the field less harmful to Black children.[106] However, the structural barriers went far beyond the scope of the child welfare system. Beginning in the 1960s, conservative messaging ex-plicitly tied racist ideas about Black families to the welfare programs focused on chil-dren and families as a way to decrease support for welfare-spending in their largely white electorate.[107] Even though Black families had been explicitly left out of many

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96. *Id.* at 133.
97. *Id.*
98. *Id.* at 114.
99. *Id.* at 133-134.
100. *See infra*, part I.A.
101. Rymph, *supra* note 52, at 119.
102. *Id.*
103. *Id.* at 131.
104. *Id.* at 160.
105. *Id.* at 174.
106. *Id.* at 175.
107. Cammett, *supra* note 75, at 235.

New Deal social safety net programs, conservatives weaponized racist tropes to tie welfare to Blackness and further, paint Black people as "undeserving" recipients.[108] Rymph ties the evolution of the child welfare system in the latter half of the twentieth century to the racist ideas of welfare around the same time frame, writing, "[l]ike other welfare programs, as foster care became more accessible to African-Americans, it also became more punitive and more disparaged."[109] Today, we see children of color disproportionately represented in the foster care system[110] – a reversal from the system's origins as a service for white children.

III. Current Disproportionate Representation

Today, Black children are overrepresented in the foster care system. This overrepresentation is not benign; being in the foster care system is associated with lower educational attainment, lower employment rates, and a higher rate of mental health problems compared to the general population.[111] People who spent time in foster care have a greater chance of abusing alcohol or drugs and becoming involved in the criminal justice system.[112] Even when compared to children who grew up in low-income families that may lack resources or support, children who spent time in foster care consistently had more difficulties.[113] This is not to say foster care is absolutely negative; foster care may be the right choice for children suffering from abuse and neglect at home whereas increased kinship care, support for other family caregivers outside of the foster care system, and increased services could ameliorate family disruption and strengthen Black communities. While the reasons why Black children are overrepresented is complicated, one major reason is the impact of poverty largely stemming from segregation in housing and the consequent wealth gap between white and Black Americans.

A. Racial Makeup of the Foster Care System

Even as society has changed in the last several decades, Black children have been disproportionately represented in the foster care system for at least 40 years.[114] The issue has been acknowledged and discussed all the way up to the federal level: a 2007 report from the Government Accountability Office (GAO) focused on the nationally high rate of African American children in foster care.[115] Although other minority groups are also overrepresented in areas around the country, notably Native

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108. *Id.* at 235, 237.

109. Rymph, *supra* note 52, at 175.

110. Shani King, *The Family Law Canon in a (Post) Racial Era*, 72 Ohio St. L. J. 575 (2011).

111. Laura Gypan, Johan Vanderfaeillie, Skrallan De Meayer, Laurence Belenger & Frank Van Holen, *Outcomes of children who grew up in foster care: Systematic-review*, 76 Child. and Youth Serv. Rev. 74, 80 (2017).

112. *Id.*

113. *Id.*

114. Alan J. Dettlaff, *The Evolving Understanding of Disproportionality and Disparities in Child Welfare, in* Handbook of Child Maltreatment 149 (J.E. Korbin and R.D. Krugman eds., 2014) https://www.researchgate.net/publication/285117121_The_Evolving_Understanding_of_Disproportionality_and_Disparities_in_Child_Welfare.

115. U.S. Gov't Accountability Off., *supra* note 56, at 1.

American children, "a significantly greater proportion of African American children enter and remain in foster care than children of other races and ethnicities."[116] The GAO identified higher rates of poverty, difficulties accessing services, racial bias, and difficulties in finding permanent homes as the driving forces behind this disparity.[117] Despite attention from the federal government, the Adoption and Foster Care Analysis and Reporting System (AFCARS) report from the US Children's Bureau showed that 21% of the children entering foster care in Fiscal Year 2018 were Black,[118] while the US Census estimates that only 12.7% of the US population in 2018 was Black or African American alone.[119]

B. Impact of Poverty on Who Ends Up in Foster Care

The same economic and societal disadvantages created and reinforced by segregation serve as risk factors for children to become involved in the child welfare system. Residential segregation created disproportionate poverty,[120] but the impact extends far beyond economics. Additionally, "reports of maltreatment are positively associated with community level factors such as poverty and racial segregation."[121] One study, analyzing the impact of neighborhood poverty and population density, found higher rates of child maltreatment in low-socioeconomic status areas.[122] However, research based on reports of child maltreatment incorporates the inherent bias present in the reporting. According to the Children's Bureau, "[v]ague definitions of maltreatment and insufficient cultural responsiveness and cultural humility training for caseworkers allow subjectivity and bias to enter into case decision-making."[123] This problem does not only affect reports of child maltreatment; another study found that children are more likely to be removed from their homes when their neighborhood shows signs of "disorder."[124] The disorder that makes removal more likely is the same kind of disorder highlighted in the broken windows theory of policing: visual cues of urban decay such as graffiti, literal broken windows, litter, etc.[125] Policing intersects with child welfare system in more overt ways: in 2021, the highest percentage of child abuse and neglect reports by a single group of reporters came

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116. *Id.*

117. *Id.* at 4.

118. U.S. DEP'T OF HEALTH AND HUMAN SERV. CHILD.'S BUREAU, THE AFCARS REPORT 2 (2019), https://www.acf.hhs.gov/sites/default/files/cb/afcarsreport26.pdf.

119. *2018: ACS 1-Year Estimates Data Profiles*, United States Census Bureau, https://data.census.gov/table?q=2018+population (last visited Apr. 2, 2023). Both the AFCARS report and the census count people with "two or more races" separately, so both populations theoretically are only counting people who identify as only Black or African American.

120. *See generally* GREENE ET AL., *supra* note 6.

121. Nancy Rolock, Ian Jantz & Kristin Abner, *Community Perceptions and Foster Care Placement: A Multi-Level Analysis*, 48 CHILD. AND YOUTH SERV. REV. 186 (2015).

122. Kathryn Maguire-Jack, Paul Lanier, Michelle Johnson-Motoyama, Hannah Welch & Michael Dineen, *Geographic Variation in Racial Disparities in Child Maltreatment: The Influence of County Poverty and Population Density*, 47 CHILD ABUSE AND NEGLECT 1, 1-13 (2015).

123. CHILD.'S BUREAU, CHILD WELFARE PRACTICE TO ADDRESS RACIAL DISPROPORTIONALITY AND DISPARITY 6 (U.S. Dep't of Health and Human Serv. 2021)

124. Rolock, et al., *supra* note 121, at 186.

125. *Id.*

from legal and law enforcement professionals.[126] The full nature of the over-policing of communities of color is outside the scope of this paper. However, it is important to note that increased contact with the police increases the opportunities for someone to report suspicions of maltreatment, which can stem from highly subjective factors informed by someone's personal background, beliefs, and culture. Higher *reports* of maltreatment do not equate to higher incidence.[127]

While allegations of physical abuse can be provable, allegations of neglect are based on finding an absence of adequate care, which can be a more arbitrary decision for child welfare workers. These workers may, consciously or unconsciously, rely on these signals of disorder, or racial biases, when making the decision to remove children from their homes.[128] While the system is still built around an assumption that no child should be removed from their home purely because of their income level, these findings show that child welfare workers are doing exactly that by making decisions differently depending on the neighborhood of the child.[129] Unsurprisingly, the same study found that the race or ethnicity of the child is a strong predictor of whether or not the child would be placed into foster care, with African American children placed at a higher rate than white children or Hispanic children.[130] Even controlling for levels of community disorder, Black children are removed from their homes more often than white children.[131] Once placed, Black children may remain in the limbo of foster care far longer than other children; the 2007 GAO report found that Black children were in foster care for an average of 9 months longer than white children.[132]

There is also concern that racial bias is built into the system in other more systemic ways. Child welfare professionals may code different kinship systems or lifestyles as "less than" and feel that there is a "right way" to raise a child.[133] One example is kinship care, where a child is sent to live with a relative or other kin.[134] Kinship care can help children maintain ties to the family and community, providing stability as the

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126. CHILD.'S BUREAU, CHILD MALTREATMENT 2021, xi (U.S. Dep't of Health & Human Servs. 2023), https://www.acf.hhs.gov/cb/data-research/child-maltreatment.

127. CHILD.'S BUREAU, *supra* note 126, at 5 ("Professionals in the child welfare field have also posited that poverty and other vulnerabilities experienced by families of diverse racial and ethnic backgrounds may amplify their exposure to social services systems (e.g., financial or housing assistance), which may further increase their visibility to mandated reporters—a phenomenon often referred to as surveillance bias."). The overrepresentation of Black children is also accompanied by an underrepresentation of other population groups. The Children's Bureau notes that Asian, Hispanic, and white children are underrepresented in the child welfare system, *id.* at 3 ("It is unclear whether underrepresentation is due to a lower occurrence of child maltreatment among these populations, or if it is caused by underreporting driven by either cultural norms or cultural perceptions that others (e.g., mandatory reporters) have about these groups.").

128. Rolock et al., *supra* note 121, at 190.

129. *Id.*

130. *Id.* at 190.

131. *Id.* at 186.

132. U.S. GOV'T ACCOUNTABILITY OFF., *supra* note 56, at 4.

133. RYMPH, *supra* note 52, at 35.

134. CHILD.'S BUREAU, RACIAL DISPROPORTIONALITY AND DISPARITY IN CHILD WELFARE 12 (U.S. Dep't of Health and Human Servs. 2016), https://www.childwelfare.gov/pubPDFs/racial_disproportionality. pdf#page=1&view=Introduction.

child is removed from their home.[135] Informal kinship care outside of the child welfare system is a longstanding practice in many Black communities.[136] In many jurisdictions, informal kinship families do not receive the kind of support or subsidies that formal foster care families do.[137] Instead of playing on the strengths of informal kinship families and ensuring that they are supported in caring for children, the child welfare system tends to only support traditional foster care, requiring children to enter the system and kinship families to meet the certification standards of other foster care families.[138] Practices like informal kinship care have led to disagreements in the child welfare community since the latter half of the twentieth century, as Rymph notes: "When faced with lower income black families – whose cultural practices and conception of family and kin were often not those of middle-class whites – too many social workers, critics suggested, saw neglect or family pathology because they did not understand or appreciate the strengths of black families."[139]

IV. Possible Solutions and Moving Forward

By failing to adequately consider the role that residential segregation has played in creating the kind of poverty and neighborhood disorder that is correlated with a higher incidence of child maltreatment reports, the foster care system perpetuates this overrepresentation of Black children. However, the kind of societal change required to redress residential segregation remains outside the mandate of child welfare systems. In the absence of immediate structural change, the child welfare system must approach their work in a race-conscious way and work to support the housing situations of families, and this section will consider some efforts to do so.

A. The Importance of a More Race-Conscious Child Welfare System

Family law must act in a race-conscious manner in order to avoid exacerbating the intergenerational effects of state-initiated and enduring housing segregation. As Sharkey explains in his book, the way that many poor African Americans are trapped in low-opportunity zones has compounding effects throughout generations.[140] The damage that poor educational outcomes, poverty, and a lack of resource investment has on people from generation to generation leads to poorer outcomes for children.[141] Rather than working to change the intergenerational effects of poverty and racism stemming from decades of residential segregation, the child welfare profession's mandate is to deal with immediate harms to children. Undoubtedly, children in truly neglectful or abusive situations should be removed, as the wellbeing of the child should always be of paramount importance. But by failing to acknowledge the racialized lens through which child welfare operates, the profession is losing a chance

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135. *Id.*
136. *Id.*
137. *Id.*
138. *Id.*
139. Rymph, *supra* note 52, at 174-175.
140. Sharkey, *supra* note 13.
141. *See generally* Sharkey, *supra* note 13.

to intervene further upstream and support the entire family, thereby avoiding a sce-
nario where a child must be taken away from their parents because of a lack of
resources.[142]

Academics and practitioners can help force this shift by advocating for a more
race-conscious lens to family law and child welfare in particular. Professor Shani
King offers a view of family law in what he calls the "(post?) racial" era, co-opting the
name some pundits gave the years following the election of President Barack
Obama.[143] He advocates for shifting the frame of reference for family law practi-
tioners from one of race-neutrality or colorblindness to one of race-consciousness
that considers the impact of structural racism on African American families.[144] He
calls out "family law's failure to provide African-Americans the same degree of
autonomy to organize or structure their families as it provides to whites."[145] In his
words, "the law intentionally discriminates against African-American families to the
extent that the poor were reconceptualized as undeserving and black."[146] Low socioe-
conomic status is a risk factor for child maltreatment, but even when controlling for
income levels, research shows that Black children are still more likely to be removed
from their homes than children of other races.[147]

Professor King finds that family law lacks focus on child welfare generally, and
when the law does consider race in child welfare, it's through the lens of transracial
adoption and the Indian Child Welfare Act (ICWA).[148] He argues that this failure to
consider race in a larger way perpetuates racist systems. A colorblind child welfare
system allows practitioners to equate poverty and Blackness with a need for drastic
state interventions in the life of the family.[149] Residential segregation has reinforced
that assumption about the relationship between Blackness and poverty. In order to
begin to address the systemic racism in the child welfare system, and avoid needlessly
ripping apart Black families, practitioners and theorists must begin to consider the
impact of race much more consciously.

B. Concrete Examples of Race-Conscious Child Welfare Efforts

Although residential segregation must be addressed by multiple institutional actors
if we want to have a more equitable society, child welfare workers have a duty to keep
children and families safe every day, and therefore play a pivotal role. While advocat-
ing for structural change to break the cycle of segregation and poverty, child welfare
workers and agencies can take steps to act in a more race-conscious way and address
the ways that residential segregation has impacted their work. To consider possible

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142. *See* Emily Putnam-Hornstein, Barbara Needell, Bryn King & Michelle Johnson-Motoyama, *Racial and ethnic disparities: A population-based examination of risk factors for involvement with child protective services*, 37 CHILD ABUSE & NEGLECT 33, 44 (2013).

143. Shani King, *The Family Law Canon in a (Post) Racial Era*, 72 OHIO ST. L. J. 575 (2011).

144. *Id.*

145. *Id.* at 591.

146. *Id.* at 601.

147. *Id.* at 611.

148. *Id.* at 615.

149. *Id.* at 639.

actionable steps for child welfare systems to act in a more race-conscious way, this section will consider two methods of addressing the problem: addressing the lack of resources in low-opportunity neighborhoods through supportive housing, and training child welfare workers to conduct their work in a more race-conscious way.

1. Supportive Housing

For an idea of how to better support families involved in the child welfare system, we can examine the Partnerships to Demonstrate the Effectiveness of Supportive Housing for Families in the Child Welfare System program, which was evaluated by the Urban Institute in 2019. In 2012, the Children's Bureau, housed in the US Department of Health and Human Services' Administration for Children and Families, funded this project to provide supportive housing for low-income families involved in the child welfare system.[150] A plurality of the families in the study (forty-five percent) were Black.[151] The families that participated in the program were considered the "treatment group," and would later be compared to the control group: similarly-situated families involved in the child welfare system who did not participate in the program. The Children's Bureau invested twenty-five million dollars across five sites, running the gamut from urban to rural, in Florida, Iowa, Connecticut, Tennessee, and California.[152] The location and type of housing provided to program participants varied because each site was required to leverage existing community housing resources to provide housing for the families, using vouchers or raised private capital to pay for housing.[153] The families in the treatment group were placed in supportive housing, defined as "an intervention that combines affordable housing with intensive wraparound services."[154] This housing support included assistance to obtain subsidies, move-in support, and assistance with the housing search.[155] The grant also funded other supportive services for the families in the study, including mental health resources for children, parenting resources, transportation, child care, and other services and interventions.[156]

Supportive housing had a complicated impact on both housing outcomes and child welfare outcomes.[157] Families who received the services around supportive housing reported greater housing stability and higher rates of leasing their own home or apartment than the control group.[158] However, the study found "no significant differences in neighborhood quality, any crime victimization experienced in the past

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150. Michael Pergamit, Mary Cunningham, Devlin Hanson & Alexandra Stanczyk, Does Supportive Housing Keep Families Together? Supportive Housing for Child Welfare Families Research Partnership VI (The Urban Institute 2019), https://www.urban.org/sites/default/files/publication/100289/does_supportive_housing_keep_families_together_1.pdf

151. *Id.* at 15.

152. *Id.* at VI.

153. *Id.*

154. *Id.* at 3.

155. *Id.*

156. *Id.* at VII.

157. *Id.* at VIII.

158. *Id.*

six months, and reported overall neighborhood satisfaction."[159] This finding points to the fact that, while increased stability is an important immediate need, families receiving supportive housing may remain in the same segregated low-opportunity neighborhoods as the control group. This can be contrasted with the results of the Moving to Opportunity experiment, where children who moved to lower-poverty neighborhoods saw improved educational and employment outcomes, which persisted into future generations.[160] Perhaps future initiatives could combine the supportive housing services needed to address immediate needs with vouchers and assistance in moving to lower-poverty neighborhoods for long-term benefits.

The child welfare outcomes were similarly complicated. The families in the treatment group had higher rates of reunification, meaning children were returned to their parents after spending time in out-of-home care more frequently than the children in the control group.[161] However, overall the treatment families saw "no significant reduction in the removal of children. . .nor an increase in time to removal."[162] Supportive housing also did not decrease the number of new substantiated allegations of abuse or neglect, though the authors of the study speculate that part of this may be because the treatment families were around a higher number of mandatory reporters than the control families.[163]

2. Race-Conscious Child Welfare

Another way to tackle the problems created by housing segregation is to train child welfare workers to do their work in a more race-conscious way. The Center for the Study of Social Policy (CSSP) developed a series of materials in conjunction with the Kirwan Institute for the Study of Race and Ethnicity at the Ohio State University as part of the Alliance for Racial Equity in Child Welfare.[164] This curriculum is called inSIGHT: A Workshop on Implicit Racial Bias for Child Protection for Child Welfare Workers. After participating in the inSIGHT pilot program, participants felt that they were able to recognize their implicit biases and avoid using coded language.[165] However, further research is needed to show if the inSIGHT program produces meaningful change in the way that child welfare workers do their jobs, or if it is merely a short-term exercise in calling attention to bias.

Additionally, as a part of this series, CSSP developed an Institutional Analysis toolkit to highlight the disconnect between the needs of a child or family and the

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159. *Id.*

160. Justin Wolfers, *Why the New Research on Mobility Matters: An Economist's View,* N.Y. TIMES (May 4, 2015), https://www.nytimes.com/2015/05/05/upshot/why-the-new-research-on-mobility-matters-an-economists-view.html.

161. PERGAMIT ET AL., *supra* note 150, at VIII.

162. *Id.*

163. *Id.* at IX.

164. *Alliance for Racial Equity in Child Welfare*, CTR. FOR THE STUDY OF SOC. POL'Y, https://cssp.org/our-work/project/alliance-for-racial-equity-in-child-welfare/ (last visited May 12, 2020).

165. *inSight: A Workshop on Implicit Bias for Child Protection Workers*, CTR. FOR THE STUDY OF SOC. POL'Y, https://cssp.org/wp-content/uploads/2019/07/inSIGHT-ParticipantFeedback.pdf (last visited May 12, 2020).

structural assumptions of child welfare institutions.[166] The Institutional Analysis framework has been deployed in large jurisdictions around the country; in Los Angeles, the process identified county and office policies that contributed to poor outcomes for African American children in three area counties.[167] These materials provide a model for other institutions and practitioners who want to educate themselves about how to practice in a way that is more sensitive to the systemic racism that affects their families.

Conclusion

Decades of residential segregation has contributed to a society with generations of Black families trapped in low-opportunity neighborhoods. Concurrently, the child welfare system developed around the idea that poverty should not be the reason that any child has to enter foster care and pathologized the reality of poverty and its secondary effects. As Black families have been disproportionately represented in low-opportunity areas, so too have Black children been disproportionately represented in the foster care system. The factors that make it more likely that a child will be removed from their home – neighborhood disorder, poverty, etc. – are unevenly distributed in our society because of residential segregation. Continuing to carry out child welfare work in a way that does not actively understand and use that information will condemn us to repeating our mistakes. By shifting our understanding of family law to include investing in disadvantaged communities, prioritizing mobility to higher opportunity places, and acting in a race-conscious way when making child welfare decisions, we may begin to create a brighter future for the Black foster children of America.

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166. *Id.*
167. *Institutional Analysis*, Ctr. for the Study of Soc. Pol'y, https://cssp.org/our-work/project/institutional-analysis#outcomes (last visited May 12, 2020).