

## *Original Paper*

# Revisiting the Adoption Assistance and Child Welfare Act of 1980: Analysis, Critique, and Recommendations

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### **Abstract**

*During the 1970s, record rates of families intersected with the US foster care system. An estimated 500,000 children resided in foster care and despite services provided, those children suffered longer stays in foster care, increased re-entry into foster care, and reduced family reunification. The foster care system actually promoted family instability and in response, the Adoption Assistance and Child Welfare Act [AACWA] passed. AACWA intended to promote family strength and increased service provision through the restructuring and reorganization of the child welfare system. A variety of opinions regarding the overall approach to solving this problem ultimately led to severe programmatic cuts that are still felt today, more than 30 years later. Revisiting the AACWA and providing a renewed critique yields pragmatic, feasible, and necessary policy recommendations to guide governmental bodies worldwide on behalf of the families and children they serve.*

### **Keywords**

*adoption, child welfare analysis, child welfare policy, foster care, youth*

### **1. Introduction**

During the 1970s lawmakers and child welfare advocates began to notice several harrowing trends specific to children in state protective custody. One such trend was the “mushrooming” of the number of children in state care (Barbell & Freundlich, 2001, p. 13) with about 500,000 children in custody by the late 1970s (National Coalition for Child Protection Reform, 2010; Pelton, 1989). In addition to striking numbers of children in care, those children were staying much longer in care as well as returning to foster care at increased rates (Argys & Ducan, 2013; Barbell & Freundlich, 2001; Bremmer, 1974). Children were not placed in adoptive homes nor were they returning home to their biological families of origin, which lead to the term “foster care drift” (Guggenheim, 1999; Gray, 2010; Barbell & Freundlich, 2001). This term represented the growing complexity of the child welfare service system, as evidenced by the instability and detrimental effects associated with out of home foster

placement. Overall, it seemed as though children who entered the system were stuck there with little hope of returning home or gaining stability outside the home.

It was these three main factors: the increased amount of children in care, the increased time spent in care, and the reduced chances of adoption or reunification that lead to the passage of the Adoption Assistance and Child Welfare Act in 1980 (Argys & Ducan, 2013). It is worthy to note that many important pieces of child welfare legislation have been passed since the AACWA, however this singular piece of legislation is now retrospectively understood as formative in promoting communication between various parties regarding the difficulty associated with parenting, the expense associated with parenting, the need for interdisciplinary dialogue, as well as the sheer importance of child maltreatment prevention. These factors possibly were not all considered prior to this era or if considered did not have the support necessary to initiate legislative action.

It is thus the intent here to discuss the act in terms of both problem analysis and policy analysis with the hope of reigniting the same passion for vulnerable children and families that sparked the law over two decades ago. The first section on problem analysis covers how the problem is defined, the etiology of the problem, and alternative explanations to the problem. The second section on policy analysis describes the minutiae of the AACWA along with how the policy approaches problem resolution. Additionally, the second section will discuss the expected results and unintended outcomes of the policy followed by a critique that presents alternative etiologies on the topic. Pragmatically, the concluding section hopes to build on what has been learned and what legislation has been passed since 1980 to provide a modernized policy framework intended to further improve the child welfare service system process for all involved parties.

## **2. Problem Analysis**

### *2.1 History: 1880s to 1960s*

The history of Child Protection began in the late 1880s with the foundation of private orphanages dedicated to the care of parentless children (Barbell & Freundlich, 2001; Litzelfelner & Petr, 1997). Later in 1916 the first child labor laws were developed through the support of animal welfare advocates (Myers, 2006). The genesis of child welfare within the systems of animal welfare has left a mark on child welfare policy with children often seen as belongings or items (Litzelfelner & Petr, 1997; Myers, 2006). It was not until the Social Security Act of 1935 (University of Oregon, n.d) that children and their struggling parents were recognized within policy as deserving attention. At that time, Aid to Dependent Children (ADC) passed and funding was provided to help families that were unable to meet their basic needs. Despite being recognized as important, the care and difficulty of child rearing was not officially realized until the 1960s when the Social Security Act expanded to provide federal funding for foster care and adoptive placements. This was due in part to “the growth of public social welfare services and a new consciousness about the plight of African-American, mixed-race, older, native,

developmentally delayed, physically disabled, and other hard-to-place children” (University of Oregon, n.d., p. 2).

Prior to this time, there was little distinction between foster and adoptive homes. Traditionally, foster care parents were often from the community and rarely wealthy; children who were disabled or racial minorities were overwhelmingly placed in resource limited, non-adoptive homes. Conversely, adoptive parents tended to be more affluent and powerful. As a result, these families were able to be more demanding with respect to the children in their home. Inevitably, adoptive families received infants who matched their own ethnicity and who, with no further contact with biological parents, were legally free for adoption. Coincidentally this era is associated with the Civil Rights Movement as national attention was given to the struggles of racial and ethnic minorities nationwide. Simultaneously, additional attention highlighted the extreme vulnerability for minority children when involved in the child welfare system, spearheading new policies aimed at addressing such needs.

Take for example the events in 1960s Louisiana when the state ruled that children whose mothers gave birth out of wedlock were automatically expunged from welfare. In that first year alone, over 23,000 children were taken off of public aid, with most ending up in state productive custody. The Department of Health Education and Welfare Secretary at that time, Arthur Flemming, responded by ruling that states could not outright ignore the needs of children, resulting in what is now known as the “Flemming Rule.” This rule required that states either “(1) provide appropriate services to make the home suitable, or (2) move the child to a suitable placement while continuing to provide financial support on behalf of the child” (Murray & Gesiriech, n.d., p. 2). The “Louisiana Incident” as it is referred to (Murray & Gesiriech, n.d., p. 2) clearly demonstrated the ease with which children were dismissed in many social welfare programs. Most notably, the Incident is thought to be a mechanism intentionally denying minority parents access to state and federal welfare monies (Litzelfelner & Petr, 1997; Murray & Gesiriech, n.d.). Once recognized, this disparity prompted the passage of amendments to the Social Security Act in 1962 that, in part, mandated court oversight for child welfare involved families. This court mandated oversight provided the needed support to formally enact the Flemming Rule into law (Murray & Gesiriech, n.d.). The Louisiana Incident also provided a rationale for enacting the first adoptive subsidy provision in 1965, with foster care mandates following two years later (Murray & Gesiriech, n.d.).

Without question, the effects of the Louisiana Incident and the Civil Rights Movement concurrently matched the research findings on child abuse at that time, particularly those of Dr. Henry Kempe. Drawing large scale public concern with his book, *The Battered Child Syndrome*, Kemp vividly described abused children as prone to permanent injury or premature death, suggesting that medical personnel investigate the entire family situation and create service plans as well as engage in court action (Barbell & Freundlich 2001; Kempe et al. 1962; Kemp, 1965). Such a harrowing account of child abuse inspired new research and encouraged states to start implementing formal child welfare

legislation: all 50 states enacted child abuse reporting laws by 1966, just four years after the book was first published (Barbell & Freundlich, 2001).

Showing promise as both a vehicle for knowledge and policy generation, this initial research on child abuse risk factors was in its infancy and the common ecological model used today was not yet developed. Without a full understanding of the issue and etiology of the problem, systems remained strained, services for families insufficient, and increasing numbers of vulnerable children placed in state care. Systems were seemingly unable to keep up with the increasingly complex and numerous needs of the families involved in the system (Barbell & Freundlich, 2001). It was apparent that action was needed and it needed to be done at a large, federal level (Litzelfelner & Petr, 1997).

## *2.2 The 1970s: Movement forward and CAPTA*

In 1974 the Child Abuse Prevention and Treatment Act (CAPTA) passed as the first federal law that outlined reporting procedures and investigation protocol for child protection agencies (Barbell & Freundlich, 2001; Landsverk & Garland, 1999). CAPTA serves as the federal basis for such state activity today and continues to inform modern child welfare policy, practice, and research. As well, concerned with preserving the culture of Native American Children in state custody, the Indian Child Welfare Act (ICWA) was passed in 1978, mandating protections on behalf of the culture, child, and the family (Barbell & Freundlich, 2001; Landsverk & Garland, 1999). These two noteworthy laws are of crucial importance in the history of child welfare and too are motivated by the political movements of the decade before. While noteworthy and well published, both CAPTA and ICWA gave little formal attention to adoption of children and long term stability of those adoptive parents that were making the lifelong adjustment and commitment to caring for and bonding to those children. Needless to say, support for adoptive families was needed if children were to have a path to long-term sustainable homes. This support became explicit when the Adoption Assistance and Child Welfare Act [AACWA] passed on June 17<sup>th</sup>, 1980.

AACWA, or Public Law 96-272, was the first of its kind to determine what the role of the state was in regard to service provision, quality, and timeframe requirements for out of home placement (Argys & Ducan, 2013; United States Social Security Administration, 1980). Several landmark programmatic and systemic reforms were implemented after the law was passed and by increasing overall funding for child welfare services, states were incentivized to restructure their agencies to be more effective in their service provision ((Argys & Ducan, 2013; Pine, 1986). Responsibility for the quality and type of state services was created via financial incentives, which further pushed local governments to promote stability and health for child welfare involved children. This resulted in larger prevention efforts, expanded program eligibility standards, support for finding adoptive homes, increased availability of placements for special needs and minority populations, increased kin and family foster placements, as well as additional regulations for child welfare workers in documentation and time frame standards. Such aforementioned reforms are crucial to understanding the problem, analyzing the policy, and providing suggestions for the future of child welfare policy.

### 2.3 Defining the Problem

According to Pine (1986) there are five core areas to consider when examining child welfare policy and potential areas for reform: “defining the policy problem, publicizing it, getting the problem on the political agenda, articulating the goal for service intervention, and finally the design or redesign of the policy vehicle ...” (p. 340). These core areas have been supported through other policy analysis models (Moroney & Krysik, 1998; Myers 2006; Pelton, 1989) and provide the outline for a critical yet productive way of examining the AACWA, its permanent placement in child welfare policy rhetoric, and the future of child welfare policy efforts.

First and foremost, readers should understand that using the term “problem” is wrought with ethical and ideological concerns beyond the scope of this paper. Calling an issue a “problem” adds stigma and a negative connotation to the issue, but is not the intent presently; the use of the term “problem” is purely for convenience and should be understood in context to the overall issue of children within the foster care system. Here, “problem” refers to the social, collective, community, economic, political, familial, and individual contributions that are inherently involved in a topic such as children and child protection. Also take “problem” to include the method of analysis and troubleshooting that involves many different parties each with their own justified viewpoint. With the expanded understanding of the way that this word is used here, the problem tackled in AACWA was essentially that too many children were in foster care, were staying too long, and were not returning home to their parents.

That being said, one could frame the problem in two main ways: that of deficit and that of solution. Is this problem due to a lack of social services or Lack of prevention efforts? Is it due to lack of knowledge regarding children and risks for abuse? Or rather, is this problem due to unexplored and underutilized solutions that incorporate more perspectives? These questions have plagued researchers over the years as different parties have defined them according to their own partisan perspective (Guggenheim, 1999; Murray & Gesiriech, n.d.). Guggenheim (1999) captured this ambiguity in his article entitled, *the foster care dilemma and what to do about it: Is the problem that too many children are not being adopted out of foster care or that that too many children are entering foster care?* The thesis of this paper was simply: (1) do states over use foster care as an intervention or (2) is foster care seen as an incorrect solution to increased children in need of care? Both of these elements are further explored below for the reader.

#### 2.3.1 Entry into Foster Care

The first way of looking at this problem is in terms of entry into foster care. Lawmakers were concerned that it was much too easy for children to enter the foster care system stating that this was due to a lack of governmental oversight monitoring such needless entries. Guggenheim (1999) posited this exact question regarding ease of entry into foster care, with scholars Mnookin (1973) and Wald (1976) agreeing that a “high threshold of harm to children” should be established before the state intervened (Guggenheim, 1999, p. 141). This concept of states over using foster care, argues that children should be removed from their family if there is no other option, as a last resort.

The argument finds that over use of foster care can be understood when looking at the actions of states directly after Congress provided money for out of home placement. These placement funds were used by state agencies to remove more children before abuse or neglect was substantiated; such acts of primary intervention are often thought to be short-sighted, premature, and motivated by the prospect of later additional agency monies (Guggenheim 1999): “federal money was available to States exclusively through the Aid to Families with Dependent Children [AFDC]...which required child protection officials to remove children from their families in order to qualify for precious federal funding ... the federal foster care program provided unlimited federal reimbursement only for out-of-home placement, while offering limited funds for preventing such placements of reuniting families” (Guggenheim, 1999, p. 142). Due to these financial incentives, most states responded to the legislation by removing children and immediately placing them in foster care.

### 2.3.2 Exit from Foster Care

A second way of defining this problem is through the examination of not what brings children into foster care but rather what keeps them ‘stuck’ in foster care without being adopted or reunified with family members. This is the approach of the federal government as shown in a 1989 report from the U.S. Department of Health and Human Services describing the role of the federal government in foster care. The primary federal concern here was related to permanency of children: those children who were “needlessly and inappropriately languishing in foster care and that often the rights of these children and their parents were being overlooked” (Ensign, 1989, p. 14). Lawmakers on this side of the debate felt that “inadequate efforts were made to either reunify them [the children] with their biological families or place them with adoptive families” (Murray & Gesiriech, n.d., p. 3). The lack of reunification and permanency planning efforts in this regard was backed by the belief at that time that it was best to move children from placement to placement frequently as to avoid strong bonding which would make family reunification more challenging (Fanshel, 1978). The actual recorded minutes from the Administration for Children, Youth, and Families Hearings (issued in August 1982) stated clearly the concerns with the child welfare system and its ability to provide for vulnerable children:

“The impetus behind the passage of Pub L. 96-272 was the belief of Congress and most state child welfare administrators, supported by extensive research, that the public child welfare system was responsible for serving dependent and neglected children, youth, and families had become a receiving or holding system or children living away from parents” (Ensign, 1989, p 2).

Concerns over lack of governmental oversight were again expressed, but now from the opposite perspective of exiting not entering foster care. As AACWA passed, the federal government began to take a centralized role in foster care by providing funding while outlining required components for programs at the state level specifically that any erroneous out of home placement was avoided, that children in foster care receive adequate service provision, and that permanent, appropriate homes were included in any service plan (Ensign, 1989).

Clearly, the federal government felt that children were staying in foster care too long and touted reunification efforts with families as a legislative priority. The federal government was also troubled by the lack of placements for children with disabilities and found that these children were one of the groups to stay in foster care the longest (Rosenau, 2000). Additional foster care payments were authorized with the intent again of trying to reduce the time that children spent in the foster care system. Now armed with funding and structure, the state child welfare agencies began to provide services that attempted to target both the immediate problem as well as trying to prevent future problems. Despite its legislative and agency support, AACWA was so new that it was left open to changes in congressional membership and presidential preferences. This was the case in 1980 with the transition from the Carter Administration to the Reagan Administration, which deeply effected AACWA. As such, alterations are important to discuss when critiquing and recommending updates to the policy (Ensign, 1989).

### **3. Policy Analysis**

#### *3.1 The Policy*

One of the last major initiatives passed under the Carter administrations family policy platform was AACWA. Initially, the act promised increased family preservation services, increased services to children, and support in restructuring the foster care system with the hope that children would not stay in foster care without a strong rationale and concern for their health and safety (Adoption Policy Resource Center, 2001; National Coalition for Child Protection Reform, 2010; United State Social Security Administration, 1980). In response, Congress drafted AACWA to help families stay together while also providing alternative yet permanent placements for children who could not be reunified. Once passed in 1980, states were provided with the basic infrastructure of “financial assistance and technical consultation” necessary to change the existing Child Welfare Service systems (United States Department of Health and Human Services, 1982, p. 2).

Tangibly, this required states to set annual goals aimed at reducing the amount of children in foster care placements longer than 2 years (Adoption Policy Resource Center 2001; Child Welfare Information Gateway, n.d.; United States Congress, 1980). Agencies were required to monitor out of home timeframes as well as investigate alternative ways to return children to their families as soon as possible (Adoption Policy Resource Center, 2001; Child Welfare Information Gateway, n.d.; United States Congress, 1980). Additionally, state agencies were directed to create case plans that were appropriate to the specific needs of the child (Child Welfare Information Gateway n.d.; United States Congress, 1980). In addition, these plans were required to be reviewed on a regular basis with a child welfare supervisor (Adoption Policy Resource Center, 2001; Child Welfare Information Gateway, n.d.; United States Congress, 1980). It is not surprising as well that AACWA outlined a role for the court system within child welfare by incorporating a biannual judicial review hearing intended to “determine what was in the child’s best interest—whether the child should return home, be adopted, or continue in foster care within 18 months after initial placement” (Gray, 2010, p. 2). These attempts at system

reform approached child welfare from a diverse and interdisciplinary lens and was one of the first laws of its kind to approach vulnerable families in this manner.

A part of the child specific case plan mandated the least restrictive placement for a child as a priority: that the child was required to be as close to kin and family as possible (United States Department of Health and Human Services, 1982). If a child had special needs or developmental disabilities, additional financial aid would be provided to the placement families that were certified to care for such children (Rosenau, 2000; United States Department of Health and Human Services, 1982; 1997; 2005). Foster care and adoption subsidies were also outlined in the act and, while voluntary, if states wanted to receive matching federal funds, they were required to comply with AACWA regulations (United States Department of Health and Human Services, 1982; 2005). It seemed that for the first time the federal government was acknowledging and supporting the difficulty associated not just with parenting but also with the parenting that accompanies a non-biological child.

In addition to specific changes to foster care and adoption procedure, AACWA also provided much needed structure to the child welfare agencies themselves. Specifically, the term “reasonable efforts” was instituted and to this day remains a commonly used term at Child Protective Services offices nationwide (United States Department of Health and Human Services, 1982; 1997; 2005). These “reasonable efforts” concerned not only the quality and delivery of services to the family, but also documentation integrity and accuracy with respect to the progress or decline within the family. The child welfare worker was responsible for utilizing all available supports and resources possible to “prevent the removal of a child from the home or to return the child as soon as possible after a removal” while also documenting the details of such action as to avoid duplication of services or error in overall service provision (Gray, 2010, p. 62). Each state was also required to complete a formal inventory of all children in foster care twice a year, to determine if case plans and placements were developmentally appropriate (United States Department of Health and Human Services, 1982; 1997; 2005). Further, this sense of accountability and focus on service outcomes accompanied the review of case plans by an independent body called the Foster Care Review Board [FCRB] (Barth & Berry, 1987; Byrnes, 2001). The role of the FCRB was to ensure reasonable efforts were being met in a developmentally appropriate and timely manner (Barth & Berry, 1987; Byrnes, 2001).

Furthermore, the state agencies were required to create a separate and distinct unit within the Child Welfare system dedicated to finding permanent placements for foster children while striving towards family reunification as a concurrent case plan goal (Ensign, 1989). AACWA represented an ideological and philosophical shift within child welfare services: moving towards a model of family preservation and family reunification and looking to foster care as a last resort. Perceived as in the best interests of the child, AACWA helped to push the debate away from the provision of short term services and instead towards a model of long term preservation and prevention for the family and the children that was centralized and regulated at a federal level (Litzelfelner & Petr, 1997; United States Department of Health and Human Services, 1982; 1997). This notion of permanence had two primary objectives and



tried to balance the push/pull elements associated with foster care entry, reentry, and exit by: (1) attempting to keep children in the home when at all possible while also (2) trying to move them through the foster care system as quickly as possible towards stability and permanence (Adoption Policy Resource Center, 2001; Litzelfelner & Petr, 1997).

AACWA sought to approach these two aforementioned objectives through multiple pathways aimed at the services before entry into foster care, services while in foster care, services upon exit from foster care as well as prevention and preservation based services for the family (Adoption Policy Resource Center, 2001; United States Congress, 1980; United States Social Security Administration, 1980). Additionally, a defined structure was infused into the child welfare service system for the first time as agencies were provided with a framework for practice and service delivery. It is often speculated today that the AACWA paved the road for the modern child welfare laws incorporating the complex need of diverse groups through community and strengths based interdisciplinary teams of specialized professionals concerned with the care and welfare of young children at risk. One of the major reforms of this law, which subsequently was applied to other child welfare legislation, was the connection between financial incentives and mandatory state action. Agencies and states provided with incentives received earmarked federal matching dollars if they were in compliance with the law. As is the norm with widespread federal legislation, there were expected as well as unintended consequences that can now be used to develop additional child welfare policy presently. The results of the AACWA are covered in more detail below.

### *3.2 Expected Results*

It is not surprising that the number of children in foster care and their overall length of stay in foster care decreased dramatically after the passage of the AACWA (Adoption Policy Resource Center, 2001; Litzelfelner & Petr, 1997). Within the first few years, the overall amount of children in the foster care system was cut in half with early results demonstrating decreased rates of re-report and re-entry as well (Barbell & Freundlich, 2001). Provided with enhanced funding, states began to implement basic services and started to view, monitor, and track the most at risk children, which was an early attempt at maltreatment prevention (Barbell & Freundlich, 2001). A primary purpose of AACWA was the subsidization of adoptions to promote long-term stable placement for children (Barbell & Freundlich, 2001; Litzelfelner & Petr, 1997). Indeed, the number of children adopted increased, yet some scholars have found that societal biases regarding which children were worthy enough for adoption were a significant part of those adoptive homes (Rosenau, 2000; Pine, 1986). Specifically, biases regarding children who needed specialized care were the most prominent: “[s]ubsidies exposed the cruelty of market forces by offering economic incentives to adopt children for whom there was little or no demand” (University of Oregon, n.d., p. 3). The combination of financial incentives and child welfare placement once again highlighted the difficulty of parenting and the tough job that child welfare work entails (Barbell & Freundlich, 2001).

Another expected result of this legislation regarding academic and advocacy research was there was now a legislative protocol in place that back continued scientific investigation into child welfare justice issues (Barbell & Freundlich, 2001). There was a lack of placements for children who were not deemed adoptable (primarily children who were disabled and/or who were ethnic minorities) and research supported AACWA in the systemic change that mandated all children live in stable and long term placements (Barbell & Freundlich, 2001; Pelton, 1986; Rosenau, 2000).

Exposed by an increasing body of research, tension around this issue of “adoptable” children perhaps was best demonstrated by debates surrounding long term foster care versus adoption, especially for special needs children, medically fragile children, as well as children with juvenile criminal records (Rosenau, 2000). As a result, part of AACWA included special categories of foster care homes for such children by increasing additional types of other non-family foster care placements available, most notably group homes and residential treatment centers (Barbell & Freundlich, 2001; Rosenau, 2000). These initial positive results from the implementation of the act were short lived due to macro changes both in the makeup of the American family as well as in the composition of the United States government.

### *3.3 Unintended Consequences*

#### *3.3.1 Changing Etiology of Foster Care Placement*

As the 1960s and 1970s progressed, so did the complexity of factors affecting individuals, their families and their communities. In the 1970s the introduction of recreational drugs into many urban and suburban communities ushered in a new host of health complications and addictive behaviors that often interrupted or hindered parenting ability (Barbell & Freundlich, 2001). This was especially true as crack cocaine was brought into the African American community in the late 1970s, which caused prenatal drug use to skyrocket; estimates found that over 220,000 women were using recreational drugs and more than 750,000 were using alcohol during pregnancy each year during that time (Barbell & Freundlich, 2001). A 1988 study examining the sudden increase in prenatal drug use during the 1970s (Streissguth & Giunta) noted that 7600 infants were born with Fetal Alcohol Syndrome yearly and that a Substance Exposed Newborn was born every 90 seconds (National Clearinghouse for Alcohol and Drug use 1995). Prenatal substance and alcohol use has since been found to co-occur (Ensign, 1989) with family domestic violence as well as decreased long term psychological and mental functioning in affected children (Barbell & Freundlich, 2001; National Clearinghouse for Alcohol and Drug Use, 1995; Streissguth et al., 1986). Additionally, if children were exposed prenatally to substances, they were significantly more likely to show developmental delays that made placement and permanency in the foster care system increasingly difficult (Barbell & Freundlich, 2001). Consequently, the association between the length of stay in foster care and substance use is strong: a vulnerable child cannot return home if the parent places them at an increased risk via repeated drug and/or alcohol consumption (Barbell & Freundlich, 2001).

In addition to substance use, health epidemics occurred during the 1970s and 1980s, most notably the presence of HIV/AIDS, which made child welfare service provision that much more complicated. Despite increasing transmission of HIV, many children born to HIV positive mothers did not contract the disease themselves yet ended up still being effected by the illness by the premature death of one (or sometimes both) of their parents (Barbell & Freundlich, 2001; Merkel-Holguin, 1996). This burgeoning epidemic alongside the increase in drug/alcohol use, were both relatively unseen and as a result unplanned for in the AACWA legislation. As a result, the prevention efforts and mandated services in the act could not meet the ever increasing demand of parentless, neglected, and often homeless children entering into child welfare system.

New health problems and increased substance use further aggravated the fact that the family composition was changing during this time as well. Larger amounts of adolescents were having children and in addition to an increase in mothers who were unmarried, single parents. Studies have shown that when a child has an adolescent mother, she/he is twice as likely to be a victim of child abuse or neglect primarily due to neglect or inability to meet/access basic resources pertinent to the care and welfare of a young, small child (Barbell & Freundlich, 2001; Goerge & Lee, 1996). Poverty and homelessness represent risk factors that also changed the ways by which the child welfare service system operated. Poverty in the United States and the disproportionate effect on minorities and single headed households drastically impacts the ability to provide for a child (Barbell & Freundlich, 2001). Poverty too, is related to poor health and malnutrition and places resource deficient families at an increased risk for contact with child protective services and the foster care system (Barbell & Freundlich, 2001). Parental substance abuse, poverty, and health epidemics affect the chances of a family homelessness, which is likely to reduce the chances for family reunification while further introducing more vulnerable children into long term foster care homes.

These risk factors are quite complex resulting in children who stay longer in foster care with more overall contact with the child welfare system and increased rates of reentry into foster care their peers without such adverse characteristics. Increased amounts of children in long term foster care lead to children who actually live in foster care until the age of adulthood. At the point of legal adulthood, typically 18 with an optional extension to continue services to 21, the state has no obligation to provide for these children who “age out” of the system. Shortly after AACWA was passed, over 20,000 children aged out of foster care with nowhere to go. Strikingly, it was not until 16 years later that increased efforts for aged out youth through adoption, and concurrent permanency planning were developed at a federal level. (University of Oregon, n.d.; Pine, 1986; Pelton, 1986) Was this phenomenon of ‘aging out’ avoidable? Was the AACWA too myopic or was this just a natural and inevitable event? It is argued here, that a large part of the intent of the AACWA was reduced when the presidential administrations changed hands in 1980. The severe cuts that Ronald Reagan’s cabinet made to child welfare policy continue to reverberate and while one could defend any political argument

as to why this occurred, the fact that some children were still not cared for after the passage of AACWA must be examined and accounted for in future policy reform efforts.

### *3.4 Political Action Post-Carter*

As President Carter's incumbency ended and Ronald Reagan was ushered in, a 360 degree shift occurred in the funding and functioning of national child welfare policy. Initially, AACWA demonstrated successes and within the first few years, the foster care roster was cut by more than 50%: from over 500,000 to 240,000 (Pelton, 1986; Pine, 1986). Ronald Reagan, who argued for decentralized federal power and a residual welfare state model, saw the AACWA as unnecessary federal oversight with too much central governmental control. Reagan's administration, on a platform of Neoliberal economics focusing on cost containment and incrementalization, retracted all of the policies from the AACWA and states were forced to return to child welfare status quo pre-1980 protocol. Such overarching action, "[sent] a signal to states: You can go back to business as usual. Since the financial incentives were never changed, business as usual – placing more and more children in foster care- is the easier course of action" (NCCPR, 2010, p. 1). Now removed of most federal structure, the states resorted to a triage model and the reasonable efforts mandate was ignored. Foster care roles increased and did not stop until nearly 20 years later.

Reagan's actions represented not just a change to existing policy but a new way of defining the problem that was heavily focused on the individual and private sector in both determining problem cause as well as in brainstorming potential problem solving approaches. Families were seen as independent of the federal government and were not part of the purview of federal policy. The fact that the Reagan Administration was able to slash funding with such ease presents the central flaw of this legislation: the impermanence of child welfare policy. Such policy, like the AACWA, is frequently subject to changes as Congresses and presidential administrations are dually influenced by economic fluctuations. The National Coalition for Child Protection Reform (2010, p. 1) concisely stated that this law within an individual context: "... does nothing to change the way child welfare services are financed. [And] Far less is available to prevent foster [entry or reentry] are, and those funds are 'capped.'"

This capping and cutting of child welfare funds still occurs presently. As social services become further entrenched with budgetary deficits and subject to the whim of partisan political rhetoric, there is an increasing reliance on transient and unstable state level special funds and tax generated allowances to fund child welfare intervention and prevention programming. This approach is patchwork at best and provides an unsustainable foundation for long term prevention and intervention policy in the child welfare arena.

### *3.5 Long Term Unintended Effects*

The majority of the critique surrounding this legislation came from judges who saw the effects firsthand on the family and children. One such judge, the Honorable Ernestine S. Gray, wrote an article in 2010 that legally examined the 1980 AACWA and the 1997 Adoption and Safe Families Act

(ASFA). Gray stated that it was the intent of the later ASFA to try and fix some of the flaws inherent in the AACWA, namely clarifying “reasonable efforts” guidelines and further formalizing prevention efforts and communication streams (Child Welfare League of America, n.d.; Gray, 2010). Most notably AACWA paved the way for ASFA in requiring stricter timeframes for children with respect to how long they could remain in foster care (Gray, 2010). There was a judicial concern that these timeframes were not sufficient for parents to complete their required case plan services and that the reduced timeframes may have actually added to the number of children who spent their whole childhoods in foster care by terminating parental rights at an accelerated and potentially premature pace (Gray, 2010). It was also noted that there was a general lack of clarity with regard to case documentation and an increasing overrepresentation of minority children being placed in the foster care system (Gray, 2010). Injurious effects such as these were the complete antithesis of AACWA and the effects of which are still observable in today’s child welfare foster care system (Gray, 2010). Perhaps if the AACWA was more inclusive of forecasted demographic and public health trends and was allowed to be implemented in full throughout the years, later post hoc attempts at policy improvement would not have been necessary. It is possible that the argument over funding and implementation took center stage instead of prioritizing the needs of the families and children who are served by the child welfare system. Such unintended consequences seem to have started with the change in etiology around foster care, which was undoubtedly influenced by political pandering. As a result, a focused critique and alternative etiology framework is warranted.

#### **4. Alternative Etiologies: A Focused Critique**

After presenting the policy in terms of problem definition, analysis, and outcomes, it is only appropriate then to offer a critique with an alternative and external etiology. Each source that was consulted (including academic, advocacy, and governmental) presented a different etiology of the problem concerning increased rates of and increased time in foster care. Some academics find that children enter the system too easily; the federal government states that children get stuck in the system once they are there; and advocates find that there are not the necessary services or prevention efforts in place to actually solve the problem neither at the system nor the community level. Each party also champions some but not all of the risk factors associated with child maltreatment, dependent on their perspective, biases, and preferred solution. Combine all of those perspectives with the foundational changes to society, constant fluctuations to the economy, waxing and waning public awareness campaigns and policy makers are left with a vast grey spectrum of problem solving approaches and constituents in search of action.

Thus merely defining the problem positivistically in terms of an entry into or exit from foster care is insufficient (James Bell Associates Inc. 1993). It is appropriate to create a hybrid model whereby academic research, political climate, and economic trends are considered within the context of societal forces. Additionally, as amount and speed of information regarding the number of affected people

increases and as technology use also increases, the actual amount of knowledge is then predicted to increase. If a problem is not researched then is it really a problem? Discovery implores action and as more is discovered, more action will be needed. This “problem” of foster care placement is much larger than originally thought and is further complicated by some politicians who do not value such local and domestic concerns, instead running campaigns based on overseas development and defense strategies. Thus, cuts to funding, workforce development, community programming, advocacy efforts, and prevention work may be very low on the list of legislative priorities in a challenging global market. In other words, this is a “perfect storm” where so many different facets of society converge, each espousing a different solution to a different pressing problem.

As funding has come and gone over the years so have the services that have been provided. Until the system is able to regularly assess and treat the problem from all angles, including culturally diverse perspectives, the problem may never actually improve. To target the root of the problem it is suggested here that a different paradigm is necessary which includes increased research, directed political advocacy, and a consistently solid funding stream. Each of these areas are intended to be starting points for additional dialogue, critique, and action and are explored below in further detail.

## **5. Lessons Learned and Implications**

Since the passage of the Adoption Assistance and Child Welfare Act in 1980 much has shifted in what is known, what is done, and what can be done in the scope of child welfare service provision. Constraints regarding what are feasible, effective, and efficient provide natural boundaries within the child welfare system by which to provide effective and consistent service provision. As such, the recommendations that follow may be viewed by some as idealistic and overzealous however all of the policy recommendations were constructed from a grounded, well-researched, and pragmatic view that incorporates both short term and long term changes under the direction of three specific evaluative criteria. The first of these criteria used in the formation of such recommendations stems from the overarching perspective that the best way to work with child welfare systems is largely from a centralized federal level. While the states are dually involved and provide their input, the main directives must come from a larger national level. The second criterion states that while the directives and funding should come from a federal level, policies are best implemented in small communities and localities where services can be closely monitored. The third and final criterion guiding the following policy reform recommendations concerns prevention: should all of the below recommendations be implemented, prevention services are a natural result and that intervention without prevention is only half of the work. The six recommendations for current and future child welfare policy that follow are rooted in the lessons learned from the passage and subsequent analysis of the AACWA. Such lessons include the following: 1) clarifying and redefining the role of child welfare as well as frequently used and misunderstood child welfare terms via increased communication streams; 2) taking a centralized role in policy formation and implementation with increased input from states and localities; 3) better

training opportunities for child welfare workers to increase legitimacy and skill; 4) increased interdisciplinary research support to promote the development of holistic policy that employs interagency-university partnerships to assist the government in both creating and disseminating information; 5) increasing community awareness and outreach efforts about foster involved youth; and 6) a renewed focus on prevention of child maltreatment. The child welfare system is not as a siloed entity but rather an ever changing and dynamic field with the duty of promoting the health and wellbeing of the next generation and thus these recommendations serve as points to reengage those in conversation and dialogue now and into the future.

### *5.1 Federal Level Clarification and Guidelines*

This first recommendation regards reforming both the AACWA itself as well as future child welfare policy and primarily includes clarifying the actual role of and terms used in child protection from a federal level. Currently, each state differs in its purpose and aim with some employing “family focused” services while others utilize “child-focused” services. These terms are often used interchangeably by state legislatures and agencies to create and implement prevention and preservation programming and as such child protection can vary from county to county and even region to region. The federal government, as was done initially albeit vaguely in the AACWA, must determine a national discourse, communicate that discourse to states, and set the order of priorities for child protective agencies accordingly. This may be done through federal briefs, reports, trainings, webinars, and regional colloquia intended to increase knowledge and skills while decreasing misinformed myth at the same time.

Through the development of this national discourse, it is also necessary then to qualify terms including but not limited to “permanency”, “prevention”, and “child’s best interests” in definitively concrete ways via input from multiple faculties including academics, advocates, parents, the community, child welfare workers, and past/current foster children. How can the federal government know what services to mandate and how much money to allocate when there are vast differences in what child protection actually comprises? Solidifying a detailed and uniform language of child protection enables for increased comparative research and is thought to produce better outcomes for children when they move placements by ensuring the congruency and continued access to needed supportive services.

### *5.2 Centralization of Child Welfare*

The second point of recommendation is based in the notion of a hybrid centralized model of child welfare service provision, suggesting that the federal government outline the roles, funding, expectations, and procedures of state agencies with demographic input on strengths and barriers to success from the states themselves. In this matter, the federal government can be viewed as a partner of the state and local agencies (both private and public) charged with providing a high level of quality care to children in the foster care system. It is key that states have the freedom to conduct their own needs assessments and create their own specialized programming per the characteristics of their

location while agreeing to provide the results of such data collection to the federal entities for assistance with data analysis, budgeting, and programmatic evaluation and improvement.

Such a regulated but mixed methods approach to child welfare policy would likely encourage communication between different states with similar population makeups as well as increase the bidirectionality between the state and federal government. In a time when cost effectiveness is as much of a concern as providing services for families, it is imperative that communication is promoted and that a general framework developed: "Since the passage of PL 96-272 the debate surrounding foster care issues has focused on the quality of the existing system, and the appropriate level of Federal involvement in the provision of this care" (United States Department of Health and Human Services, 1989, p. 17). Presently, unlicensed kinship placements may not receive any sort of subsidy when agreeing to care for children involved in allegations of maltreatment (Argys & Ducan, 2013). Such ignorance of the difficulty and expense associated with parenting appears to be a step back to the times before the AACWA was passed. In this manner, the federal governments' centralization of child welfare rhetoric can help to revitalize the seemingly lackluster support for long-term foster and adoptive homes. Naturally there may be resistance from the states but any tension between parties serves as a barrier to service provision and prevention and further may be encouraging de-professionalization and fracturing of child welfare service professionals along with the decline in quality services provided to vulnerable children and families.

### *5.3 Workforce, Training, and Professionalization*

In attempting to address the improvement of child welfare policies, one cannot help but next discuss workforce training and education opportunities for those with an interest in a child welfare profession. Through the improvement of a national discourse and a clear centralized framework, educating and training child welfare professionals to understand the AACWA and other laws like it, is crucial to reform and continued advocacy. Often times, child welfare jobs are seen as entry level positions when in reality the work requires a defined skill set and honed sense of family functioning, child development, and service provision (Ellett & Leighninger, 2005; Scannapieco, Hegar, & Connell-Carrick, 2012). Reframing this as a specialty within social services mandates then that universities, colleges, and state agencies improve their education and workforce development programs to truly prepare their workers to understand the laws, their limitations, and ways in which they can utilize every resource necessary for the families they serve.

Previous efforts to increase training, mainly through Title IV-E, was intended to support and train child welfare workers and coincidently was created in 1980, the same year as the AACWA (Bagdasaryan, 2012). Not fully recognized until the late 1980s, Title IV-E comes with limitations that may be worth reconsidering and accounting for in future policy work. Namely, the Title IV-E monies need to be expanded to include all areas of child welfare and not only concerned with out of home placement as it stands currently (Zlotnik, 2003). Additionally, it has been argued that the method of funding now whereby states and trainers receive reimbursement for services may hold back actual initiation of



knowledge and subsequent skills development (Zlotnik, 2003). As a result, it may be better to raise the reimbursement rate or initially provide more training capital upfront to those invested in the training of child welfare workers (Drabble et al., 2013). Primarily, Title IV-E needs reexamination as it may be instrumental in the encouragement of providing research funding as well as in the support of interagency-university partnerships aimed at child welfare policy reform (Drabble et al., 2013).

#### *5.4 Interdisciplinary Research and Interagency Partnerships*

In addition to the scope of child welfare work, a fourth recommendation to move forward aims to increase research support for child welfare policy reform efforts. In the past decade such concepts including family dysfunction, poverty, substance use, and mental health are being seen as amorphous and complex societal forces that require assistance and support from multiple parties to clearly understand. Encouraging research on these complex areas, it is thought, will allow for policy efforts that are better suited to the needs of the population. One of the major shortcomings on the AACWA was that it did not account for a looming public health tidal wave in the 1970s and 80s. "Finally, the administration should re-think the current child welfare system. In the long run children and families might be better served by a system in which juvenile justice, mental health, developmental disabilities, and educational sub-systems work in tandem and not in isolation. The administration should consider making this a long term evolutionary goal of the child welfare state" (United States Department of Health and Human Services, 1989, p. 33). By incorporating research activities into child welfare work and institutionalizing such positions, these economic and health trends may be better understood and as a result the child welfare workforce may be better able to prepare to help their clients in advance. Initially Title IV-E (Drabble et al., 2013) was passed in 1980 which indeed attempted to bring together varied parties from multiple fields to research child maltreatment, however that funding stream can be limited at times and the majority of which is dedicated to training workers and not funding prevention/intervention research or policy reform efforts (Drabble et al., 2013; Zlotnik, 2003).

This proactive approach does not blame parents for elements that are out of their control (like economic recession and persistent unemployment for example) and instead approaches problem solving from a longitudinal and holistic perspective aimed at the overall health and wellness of the family (Proctor et al., 2011). The AACWA was one of the first pieces of child welfare legislation which actually incorporated the judicial system into its formation; it is suggested here that this interdisciplinary perspective be utilized to further refine the law and that now, it is crucial for the community to become involved.

#### *5.5 Outreach and Community*

The final recommendation stemming from the lessons learned in the AACWA relates to the role of the community in outreach and reform work. The community, which often provides in-kind assistance, temporary shelter placement, and much needed social support, is not always involved in policy formation and reformation and is something that needs additional focus both in the reforming of the AACWA as well as in the creation of future policy. In the late 1990s and early 2000s, a national

initiative spearheaded by the Annie E. Casey Foundation recommended that children, upon removal, be placed as close as possible to their home so as to remain in the same school and same location that they were accustomed in order to mitigate some of the mental and physical health adversities associated with out of home placement (The Annie E. Casey Foundation, 2014). This recommendation, supported by rigorous research and armed with federal changes to the Social Security Act to provide funding, enabled states to pilot programs encouraging community action (Moye & Rinker, 2002). These efforts were further institutionalized by the signing of the Adoption and Safe Families Act (ASFA) into law in 1997 (D'Andrade & Berrick, 2006; The Annie E. Casey Foundation, 2014). Such work showed promise, however may have implicated the community without involving them in the details and actual implementation guidelines of the law. The community must be involved in the actual planning and creation of laws moving forward and outreach efforts by child welfare professions, through community fairs and increased presence at local events, are one of the best ways to start building these necessary relationships now and into the future.

### *5.6 The Importance of Prevention*

It is dually important to intervene in child maltreatment as much as it is to prevent child maltreatment from ever starting. Imaginably AACWA was the first act of its kind to address issues related to prevention and stability as well as halting the re-entry back into protective care (Fang, Brown, Florence, & Mercy, 2012). This focus on prevention has waxed and waned over the decades since and perhaps one of the best lessons learned from the AACWA is in fact instead a reminder to push forth in developing and funding wide scale primary, secondary, and tertiary prevention efforts nationwide. Prevention is not only important to the upbringing of children and health of society but as well is financially and economically wise.

In 2010 dollars, the cost of preventing a nonfatal child abuse case amounts to about \$210,000 of which \$32,648 concerns child healthcare, \$10,530 concerns adult healthcare, \$144,360 is directly tied to lost productivity, \$7,728 in child welfare expenses, \$6,747 in criminal justice expenses, and \$7,999 in special education expenses (Fang, Brown, Florence, & Mercy, 2012). Such figures pale in comparison to the cost associated with preventing a child maltreatment fatality: the lifetime cost of one child fatality results in over \$1.3 million in productivity losses and about \$14,000 in medical care costs (Fang, Brown, Florence, & Mercy, 2012). In 2008 it was estimated that the total economic lifetime cost of child maltreatment was about \$585 billion dollars (Fang, Brown, Florence, & Mercy, 2012). With the deleterious and multigenerational effects of child maltreatment being continuously discussed and the massive economic impact that child maltreatment has on the U.S. the argument against prevention suddenly becomes indefensible. It behooves advocates and policy makers alike to remember the AACWA and learn from it now and into the future.

## 6. Conclusion

In reexamining the AACWA, its implementation and the subsequent lessons learned, one may start to notice several trends among these recommendations: the improvement of relations between the larger government, local government, and community bodies as well as clearer expectations and a streamlined process for information sharing and program improvement. It is hypothesized that improved communication may lead to increased service quality, better service outcomes, and reduced overall cost. Reducing such expenses and improving outcomes both include incorporating kin systems into prevention and preservation efforts, looking at full family histories of risk factors, and ensuring that the workforce is fully equipped to provide the families with the best care possible.

Perhaps the best lesson learned from this law was directly indicative of the difficulty associated with raising children in general. Parenting and family dynamics are very complex aspects of society and cannot be treated with one a onetime service but rather with coordinated and collaborative service providers who understand the legislation and can fight to improve it through knowledge and experience. Through the reformation of AACWA and in the creation of future policy, the goals of safer children, stronger families, and resilient communities are not just possible, they are probable for this current generation of children.

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