



AMERICAN **BAR** ASSOCIATION

Center on Children
and the Law

How Poverty Became Neglect: *A 1961 Magic Trick*

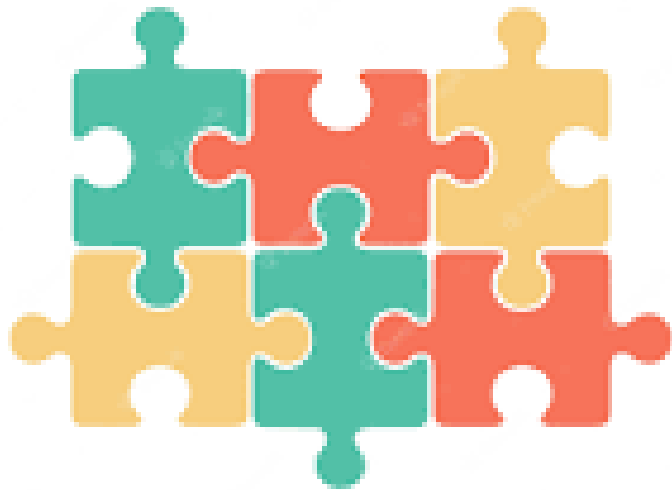
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Today's Presentation Goals



Deepen

Deepen understanding of origins of federal and state child welfare law and policy

Connect

Provide examples of how these origins connect with historical social, economic, and legal developments related to race, parental fitness, and funding.

Challenge

Challenge audience to think about how to untangle it all.

Before we begin

A little
about me

- ✓ Nonprofit director
- ✓ Attorney (government)
- ✓ Mom



ABA Center on Children and the Law

Staff: 20-person team of attorneys and core staff

Mission: To promote access to justice for children, parents and families

Approach:

- Individual communities
- National level
- Central resource

Commission: 28 volunteer members appointed by the ABA president

Role: Set the ABA's national policy agenda on child and youth law

Substance: Legal representation, court/legal system partnerships, and intersections with other public sector fields in health, education, immigration, kin caregiving.

[Learn more: www.americanbar.org/child](http://www.americanbar.org/child)

ABA Center on Children and the Law

A little
about you

- ☐ Public policy
- ☐ Legal
- ☐ Social work
- ☐ Child welfare
- ☐ Juvenile Justice
- ☐ Education
- ☐ Health

- ☐ Sister/Brother
- ☐ Niece/Nephew
- ☐ Cousin
- ☐ Aunt/Uncle
- ☐ Grandparent
- ☐ Godparent
- ☐ Mom/Dad
- ☐ Child

Who likes magic tricks?



How poverty became neglect

Sleight of
Hand:

Stay focused on

- Race
- Parental fitness
- Funding



Race

Before 1960

Very few Black children were in anything formally recognized as foster care.

Today

--

53% of all Black children in America will experience a child welfare investigation by age 18

--

12% (1 of 8) of all Black children in America will experience time in foster care

→ How did this change come about?

Parental Fitness

Before 1960

Families rarely appeared before juvenile courts on neglect charges.

Today, the primary causes for foster care entry

Neglect – 55%

Caretaker drug use – 32%

Caretaker inability to cope – 14%

Physical abuse – 13%

Homelessness or Inadequate Housing – 13%

Parental incarceration – 6%

Parental alcohol use – 6%

Abandonment – 5%

Sexual abuse or trafficking – 4%

→ How did this change come about?

Financing

Before 1960

There was \$0 of federal funding allocated for foster care.

Today

More than \$11 Billion is spent from the federal government solely on programs dedicated to child welfare, with approximately **\$9.7 Billion** through Title IV-E.

→ How did this change come about?

After 1961...

- The country experienced a transformation in the **racial identity** of children in foster care.
&
- **Neglect** became a primary basis for removing a child from her **unfit** parents.
&
- The federal government grew its **financial investment** in foster care by a massive margin

→ What happened in 1961?

Race + Parental Fitness + Funding

How poverty became neglect



To understand what happened in 1961, we cannot start in 1961.

To understand the influence of race on public policies and laws that produced an acute impact on Black children, parents and families,

We must go all the way back...

How poverty became neglect

ABA Resolution 606 (2022) calls on all legal professionals to learn about

606

ADOPTED

AMERICAN BAR ASSOCIATION

COMMISSION ON YOUTH AT RISK

SECTION OF LITIGATION

COALITION ON RACIAL AND ETHNIC JUSTICE

CRIMINAL JUSTICE SECTION

JUDICIAL DIVISION

SECTION OF CIVIL RIGHTS AND SOCIAL JUSTICE

SOLO, SMALL FIRM AND GENERAL PRACTICE DIVISION

COMMISSION ON DISABILITY RIGHTS

COMMISSION ON DOMESTIC & SEXUAL VIOLENCE

COMMISSION ON LAW AND AGING

REPORT TO THE HOUSE OF DELEGATES

RESOLUTION

1 RESOLVED, That the American Bar Association urges all federal state, local, territorial,
2 and tribal Bar Associations to educate attorneys and other legal professionals about anti-
3 Black systemic racism within the child welfare system, stemming from the history of
4 slavery in the United States and perpetuated by over-surveillance of and under-
5 investment in Black families in America, which is pervasive, ongoing, and a root cause of
6 the disproportionate involvement of Black parents and children within the system; and
7

8 FURTHER RESOLVED, That the American Bar Association urges federal, state, local,
9 territorial, and tribal governments and courts, as well as attorneys, judges, legislatures,
10 governmental agencies, and policymakers to:

- 11
- 12 (1) Recognize implicit and explicit bias and acknowledge collective responsibility for
13 challenging laws, policies, and practices that devalue Black families and normalize
14 systemic racism and family separation;
15
- 16 (2) Ensure all legal decisions, policies, and practices regarding children's wellbeing
17 respect the value of Black children and families' racial, cultural, and ethnic
18 identities and the connections, needs, and strengths that arise from those
19 identities; and
20
- 21 (3) Consult, listen to, and be led by Black parents, children, and kin with lived
22 experience in child welfare to learn how to support constructive steps to end the
23 legacy of Black family separation under the law.

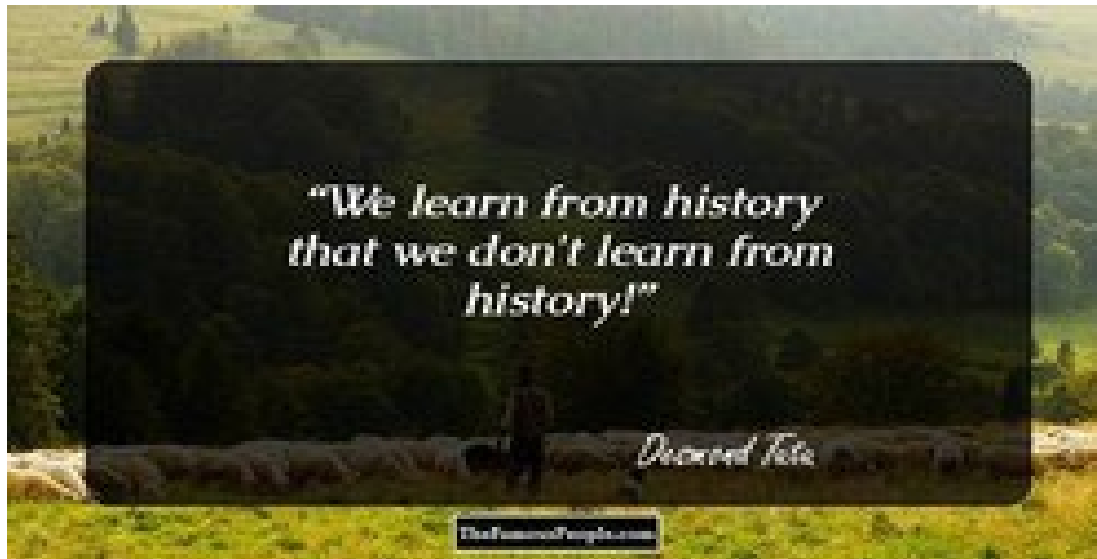
Family separation stemming from the history of slavery and perpetuated by over-surveillance of and underinvestment in Black families in America, which is pervasive, ongoing, and a root cause of the disproportionate involvement of Black parents and children within the system;

Both **oversurveillance** and **underinvestment** categories have shaped current child welfare laws and practices.

At certain points, they have also converged.

How poverty became neglect

Why focus on historical roots?



"What do you choose to read? What do you choose to think about? What do you choose to know?"

- Deb Haaland

Race: Black Family Surveillance and Separation

Many laws have facilitated Black family separation through surveillance and control

Slavery – family separation of child and parent was *integral not incidental*.

- The threat of family separation furthered **compliance**.
- The violent acts of forced pregnancy and taking children from their families served **economic interests**, especially after 1808.

“I consider a woman who brings a child every two years as more profitable than the best man on the farm.” - Thomas Jefferson, 1820

Legacy note – Legal for 250 years > Illegal for only 159 years.

Race: Black Family Surveillance and Separation

During **Reconstruction (1863-1877)**, separations under law continued with regularity.

- **Vagrancy laws** - criminalized unemployed adults often parents and returned them to plantation labor.
- **Apprenticeship laws** – “hiring out” youth to former slaveholders
 - Courts and landowners rationalized that it served the “**child’s best interests**” because their families were so poor.

Legacy Note: Abolitionist support for emancipation did not mean equality for free African Americans. Key to understanding underinvestment.

Race + Parental Fitness: Deliberate Underinvestment

1909

Poverty is not neglect



White House convening on Care of **Dependent** Children

“Children should not be deprived of [home life] except for urgent and compelling reasons.

No child should be deprived of his family by reason of poverty alone.”

Legacy Note: in 1909, the National Association for the Advancement of Colored People was founded to advance justice for African Americans.

Race + Parental Fitness: Deliberate Underinvestment



Mothers Pensions begin (1910) – States support needy children with mothers (widows) who maintain a “**suitable home.**”

- Child welfare courts evaluated worthiness for support for those referred by a caseworker.
- If a judge found a parent did not maintain required standards the parent would be forced to “**concede unfit**” and forfeit public aid.

Who was “unfit” to receive public assistance altogether?

- Unmarried mothers were not supported.
- Non-white mothers were rarely supported. (45 years – abolition was not equality)
- By 1931 – 96% of recipients were white; 3% Black; 1% other.

Race + Parental Fitness: Deliberate Underinvestment



- When the **Second New Deal** passed in 1935 the federal government established Aid to Dependent Children (ADC) – Title IV of the Social Security Act.
- Designed to be non-discriminatory and much more accessible than mothers' pensions.
- The program included provisions for supporting **casework services** as well as **cash stipends** for mothers.

Idea = support that was not stigmatizing.

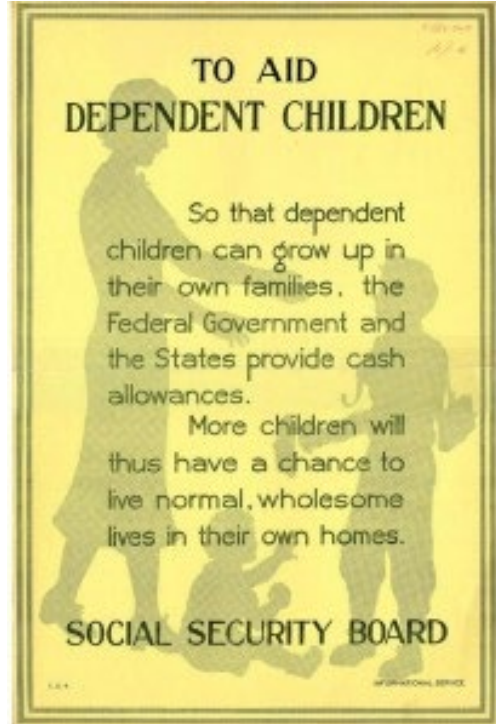
Race + Parental Fitness: Deliberate Underinvestment

Before enacting ADC, Congress made several changes that altered the intent and outcomes for children and parents by



1. Eliminating federal oversight, key to equal treatment.
2. Transferring from Children's Bureau to Social Security Administration.
3. Reducing appropriation from **\$120M to \$25M** annually.
4. Allowing states to limit eligibility "**suitable homes**" as they deemed appropriate. (caseworker as gatekeeper)
5. Removing requirement to pay "subsistence compatible with decency and health".

Race + Parental Fitness: Deliberate Underinvestment



With ADC, state/local officials had wide discretion to:

- ✓ Set eligibility criteria
- ✓ Define “**suitable homes**” based on **caseworker evaluations of fitness** to receive support
- ✓ Exclude potential recipients by category of work (field and domestic workers – 70 years after abolition)
- ✓ Cancel periods of coverage during seasons when low-wage labor was short.



Race + Parental Fitness: Deliberate Underinvestment

→ Who was **unfit** to receive ADC benefits and why?

“The number of Negro cases is few due to the unanimous feeling on the part of the staff and board that there are more work opportunities for Negro women and to their intense desire not to interfere with local labor conditions.... no reason why the employable Negro mother should not continue her usually sketchy seasonal labor or indefinite domestic service rather than receive a public assistance grant.” **1939 Proceedings on the National Conference of Social Work**

Louisiana’s state agency in 1943 “adopted a policy requiring all applicants or recipients of ADC to be refused assistance so long as they were needed in the cotton fields. In one parish the policy extended to children as young as 7 years of age.” **Winifred Bell, Aid to Dependent Children, 1965**

Race + Parental Fitness: Deliberate Underinvestment

Were these benefit exclusions challenged?

Yes!

Part of the expansion of social supports during World War II
&

The beginning of Civil Rights Movement during the late 1940s and early 1950s involved local pushes for greater access for children.

Between 1942-48, the proportion of nonwhite families in the caseload across 16 states rose to 31%.

Race + Parental Fitness: Deliberate Underinvestment



Watershed Moment

Brown vs. Board of Education of Topeka, 1954

➤ *“in the field of public education the doctrine of ‘separate but equal’ has no place”*

Race + Parental Fitness: Deliberate Underinvestment

Wait, what does *Brown* have to do with ADC or Child Welfare?

A lot!

In the late 1950's, as school desegregation began throughout the country, states passed new "suitability" laws designed to push Black families out of the community to limit school enrollment.

These laws eliminated public support for parents by excluding any family found "**unsuitable**" or any parent found "**unfit**" for public benefits.

1954 Mississippi legislator explained the legislation explicitly "when the cutting starts, they will head to Chicago."

In Louisiana, for example, a new "suitable home" rule cut 23,000 "**illegitimate**" children from welfare the year Ruby Bridges integrated the public schools, 95% of the children cut were non-white.



Race + Parental Fitness: Deliberate Underinvestment

Resistance to *Brown* meant resistance to family

The impact was extraordinary.

In Louisiana, Michigan, Georgia, Virginia, Mississippi, and Texas, hundreds of thousands of children were cut from public aid, almost all of them Black and Indigenous because their parents were “**unfit**” to receive support.

Laws in Florida and Tennessee went further and trained **caseworkers** to ask “**unfit**” mothers to **voluntarily release** children to a relative or risk referral to juvenile court for “**child neglect.**”

Most families withdrew their applications for support altogether and moved, which state governors and legislators celebrated as a fiscal and societal win.

Race + Parental Fitness: Deliberate Underinvestment

Resistance to *Brown* meant resistance to family

By 1960, 23 states had a suitable home requirement limiting eligibility for public support.

Do you see your state listed?

Arkansas, Connecticut, Florida, Georgia, Illinois, Iowa, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, New Jersey, New York, Ohio, Oregon, South Dakota, Tennessee, Texas, Vermont, Virginia and Wisconsin

Race + Parental Fitness: Deliberate Underinvestment

Is this legal?

- In 1960, federal officials reviewing the Louisiana state plan challenged application of the law in Louisiana on equal protection grounds.
- Louisiana countered - there wasn't enough money, so the suitable home provisions prevented expenditure of public funds on behalf of "undeserving" families.
- Public response - Children rarely removed from these homes. If the home is truly not suitable for money, why should it be suitable for children?
- Federal officials - ultimately signed off on the state plan because they had no oversight role they could really hold to, but they weren't finished...

Race + Parental Fitness + Funding:

What happened in 1961?

The Flemming Rule

Arthur Flemming, the head of HEW/HHS under President Eisenhower issued a ruling in January 1961

Poll – who has heard of the Flemming Rule?

Race + Parental Fitness + Financing

Three Key Parts of the Flemming Rule

1. Rule:

A State plan . . . may not impose an eligibility condition that would deny assistance with respect to a needy child on the basis that the home conditions in which the child lives are unsuitable while the child continues to reside in the home...

2. Exceptions: If the home is deemed unsuitable public assistance should either

- ✓ *Be made to improve the home conditions or*
- ✓ *Make arrangements for the child to live elsewhere.*

3. Federal Funding for Flemming:

Congress provided funding, on a temporary basis, so that dependent children could receive ADC assistance when placed in **family foster homes** due to their parent's "**immoral or negligent**" behavior.

Race + Parental Fitness + Financing:

1961 Architecture of Modern Day Foster Care

Flemming + Title IV Foster Care Funds = Backfire

- Rather than eliminating discriminatory suitable home limitations, Congress incentivized the “**other arrangements**” exception. Solved the wrong problem.
- In one swift regulatory and Congressional action, **fitness to receive public aid** turned into **fitness to parent**.
- **Underinvestment** and **oversurveillance** converged.
- Federal foster care became a massive federal investment in resistance to integration of public schools, facilities, and public aid.



Evidence of Impact

The racial identity of children in foster care transformed and ADC referrals became a pipeline for entry into care.

Before 1960, very few Black children were in foster care, and less than 1% of children receiving ADC experienced juvenile court based on parental neglect.

The total number of children in foster care nationally increased by more than 100,000, or roughly **67% in a year**, from 163,000 in 1961 to 272,000 in 1962.

By the mid 1960s about **two thirds of all foster care entries** were children from families on ADC public assistance, referred because their parents were “unfit” based on being unmarried or living in “broken homes.”

Tens of thousands of **Black parents** lost their children and **Black children** lost their parents, kin and communities.

That
can't
be.

Did you watch the balls carefully?

Race + Parental Fitness + Federal Funding



“Poverty was not neglect”...until 1961.

Rather than removing children from poverty through public aid, we designed a legal and financing system that removed Black children from their impoverished families and named it “**parental neglect.**”

In 1961, poverty, Black poverty in particular, became parental neglect under law.

No evidence base. No research said children whose parents were deemed unfit for public aid should be removed from their homes.

Counter to 1909 White House directive.

Wait a second...If the numbers went up so much, why haven't we studied this before?

Poll – who has heard of or read the “Battered Child Syndrome” by Dr. Henry Kempe?

What Happened in 1962? (The traditional story)

Dr. Henry Kempe published “The Battered Child Syndrome” in the Journal of the American Medical Association, credited with leading to a huge increase in foster care entries in the early 1960s based on parental abuse of children.

- *“Kempe was the first to characterize child abuse as a clinical condition and to spur government action on the protection of children’s rights.”*

Fact Checker:

- The number of children in foster care increased dramatically before the publication of Dr. Kempe’s article.
- Several other doctors and Dr. Kempe himself had been publishing similar ideas for decades but credited with sudden traction in 1962.
- By the mid 1960s about 2/3 of all entries were from neglect referrals of families on ADC public assistance, not allegations of child abuse by parents.

Race + Parental Fitness + Federal Funding



In 1962, in response to the surge in removals from Flemming and funding, CWLA and other organizations suggested **judicial oversight** should be required to

“Ensure that rogue caseworkers would not remove children from their homes simply to punish poor mothers for applying for [public benefits] in the first place.”

- Catherine Rymph “Raising Government Children: A History of Foster Care and the American Welfare State”

Race + Parental Fitness + Federal Funding

In coordination with the Kennedy Administration, Congress amended the law
42 U.S.C. § 608(a)(1):

States could seek maintenance payment reimbursement **after removing a child** from a home that was **judicially determined** to be so **unsuitable** as to "**be contrary to the welfare** of such child."

→ Did judicial oversight work?

Parents and children **lacked counsel** to challenge such decisions, and after court review judges typically confirmed the original removal.

Race + Parental Fitness + Federal Funding

Federal Law today in May 2025:

42 U.S.C. 672

Each State with a **plan approved** under this part shall make **foster care maintenance payments** on behalf of each child who has been **removed from the home of a relative** ... into foster care if—

- ☐ the child, while in the home, would have met the **AFDC eligibility requirement**
and
- ☐ the removal and foster care placement are in accordance with—
 - ☐ a **voluntary placement** agreement entered into by a parent or legal guardian of the child ...
Or
 - ☐ a **judicial determination** to the effect that continuation in the home from which removed would be **contrary to the welfare** of the child and that **reasonable efforts** have been made.

Race + Parental Fitness + Federal Financing

Through the subsequent Social Security Act Amendments of 1962, Congress:

- Made temporary foster care **funding permanent** funding as part of ADC.
- Changed the authorized annual appropriation from \$25 million to **\$30 million** for FY62.
- Extended funding to support maintenance costs of children in foster care who resided with a family *and* in an “**institutional setting**,” which included group homes and detention facilities.
- Required states receiving ADC to develop “**child welfare state plans**” that demonstrated how they were making child welfare services available to all children who need them.



Do any of these terms still sound familiar in practice?

“Best interests”

“Compliance”

“Dependent children”

“Casework Services”

“Suitable Homes”

“Fit/Unfit parents”

“Voluntary release”

“Child neglect”

“Child welfare state plan”

“Immoral or negligent parent”

“Institutional settings”

“Contrary to the welfare”

Understanding the Foundation is critical to understanding what came next and where we are today + ○



After 1961...

Foster Care Financing Snowball



1968, Supreme Court issued *King v. Smith*: reaffirming the goals of Flemming and explaining states cannot use ADC to discriminate against parents based on morality.

That year, Congress authorized \$25M more for foster care (5x the original infusion in 1961).

In 1972, Howard and UCLA professors published “Children of the Storm: Black Children and American Child Welfare” calling for an end to family surveillance and separations.

In 1974, Congress passed CAPTA instead, requiring mandated reporting on both **neglect** and **abuse** by almost all professionals who work with children.

By 1977, 502,000 children were in foster care. A more than 300% increase from 1961, and 28% of all children in foster care were Black at this time.

By 1978, 75% of federal funds through AFDC were being used toward foster care versus benefits for families. The Children’s Defense Fund publicly denounced AFDC-Foster Care funding patterns for “encourage[ing] the break-up for families.”

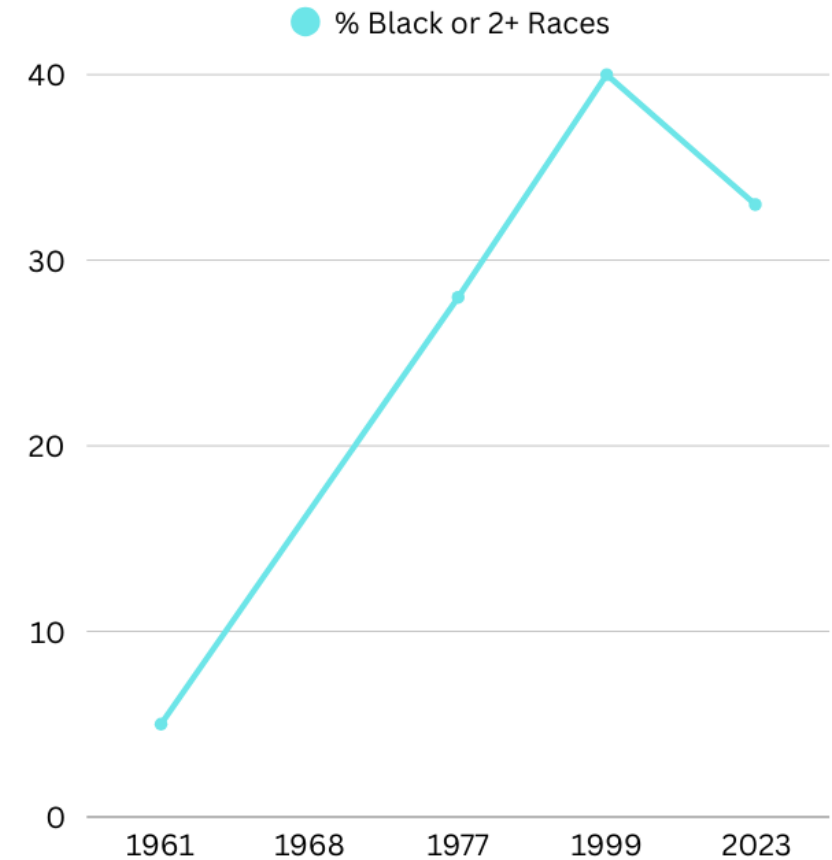
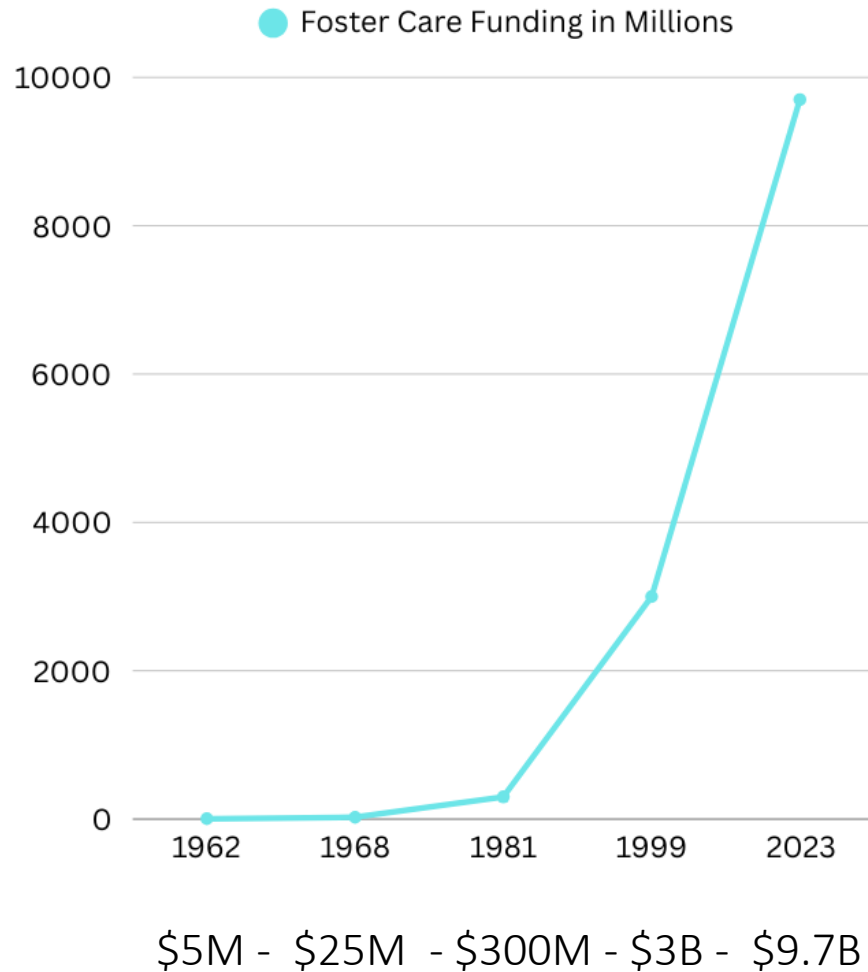
By 1981, the federal government spent \$300 Million on foster care.

By 1999, more than 567,000 children were in foster care nationally. Close to 40% were Black.

The federal government spent \$3 Billion on foster care.

Today: Black children have a 53% chance of experiencing a child welfare investigation, when combined with 2+ races represent 33% of all children in foster care, neglect is the primary basis for entry and we spend over \$9B on Title IV-E foster care.

Race + Parental Fitness + Federal Funding



* Note: Prepared as general visual aid and not prepared by a statistician and should not be reused as representative of complete data analysis.

Race + Parental Fitness + Federal Financing

The Convergence Continues: Oversurveillance and Underinvestment

California longitudinal study shows ongoing correlation between public aid and foster care referral.

Between 1999-2017, children whose births were covered by public insurance were twice as likely to experience a CPS investigation during childhood.

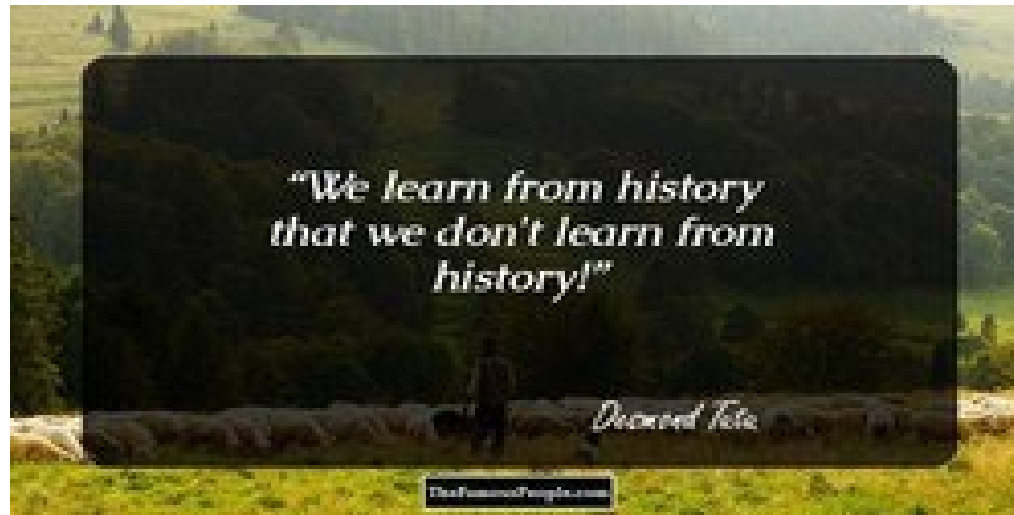
These disparities undoubtedly

“reflect root causes associated with higher rates of childhood adversities....

However, an exclusive focus on poverty and associated risk factors ignores the extent to which official child protection records reflect...

A system designed—through regulations, statutes, and policies—to do exactly what the numbers reflect: surveil and investigate large numbers of children and families.”

How poverty became neglect



But we also have a chance to break that cycle...

→ Messages to Consider Carefully Based on this History

Concrete and economic supports reduce maltreatment and foster care entry

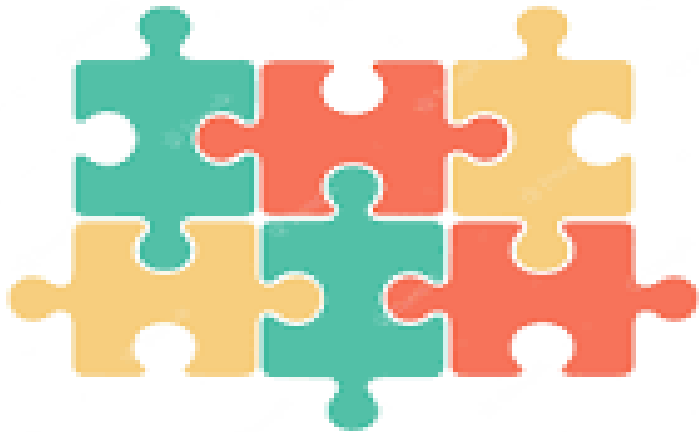
- Irony is that federal foster care was largely created to bypass providing concrete and economic supports to certain parents. Listen.
- When we couch economic support as a prevention for “maltreatment” we risk pathologizing parenting while poor; we may also minimize occurrences of real harm.

Poverty is not neglect

- Federal foster care funding was built to hold parents accountable for poverty by labeling unfitness to receive public support as “parental negligence” under law.
- Maybe poverty is neglect – by our larger social contract?

“What do you choose to read? What do you choose to think about? What do you choose to know?”

Today we covered



Deepen

Deepened understanding of origins of federal and state child welfare law

Connect

Provided examples of how these origins connect with historical social, economic, and legal developments related to race, parental fitness, and financing.

Challenge

Challenged audience to think about how to untangle it all.



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