

The Racial Disproportionality of the Foster Care System

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Abstract

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Racial disproportionality has been a factor in the foster care system since 1950 when the American foster system began accepting children of color. Since then children of color have been significantly overrepresented. This disproportionality is primarily seen in African American children. In 2019 the total percentage of African American children in the United States was 14%, however the total percentage of African American children in the foster care system was 23%. No other ethnic group comes close to matching this amount of overrepresentation. This research will examine the primary causes and factors associated with this racial disproportionality. These causes include: the unconscious racial biases and prejudices that have been systematically embedded in the foster care system, systemic racism, the high rates of poverty and single-parent households among African American communities and the locality of these communities, and the effects of abuse, maltreatment, and racism in the removal of children from their homes. This research shows how each of these factors contributes to the overall problem of overrepresentation and it examines how the history of foster care contributed to this racial disproportionality.

Introduction

When future historians look back at the year 2020, they will find many different defining events. 2020 was the year of the Covid-19 pandemic; it was the year of quarantine and lockdown; it was a year of wildfires and murder hornets. Despite the fear and tension caused by all of these disasters, the most unsettling event in 2020 was the realization made by many Americans that the United States is far from being truly free of racism. This discovery led to a spike in the popularity of the Black Lives Matter Movement. This movement made many people step back and realize how deeply systemic racism has been lodged into the very foundations of our society. This foundation of racism can be seen in many different places in our society, one of which is the foster care system. The United States founded its first official foster care system in 1853. African American children were not allowed in the foster care system until 1950. Since then we have seen an extreme overrepresentation of African American children in the American foster care system. According to data from the *Adoption and Foster Care Analysis and Reporting System*, in 2019 the total percentage of African American children in the United States was 14%, however the total percentage of African American children in the foster care system was 23%. No other ethnic group comes close to that much overrepresentation. In fact, white children make up 50% of the total population of children in the US, but they are only 44% percent of children in foster care. Additionally, African American children tend to be kept in foster care nine months longer than white children. African American children are more likely to be moved from home to home and they are more likely to age out of the system having never been adopted or placed in a permanent home. This serious issue is called the Racial Disproportionality of the Foster Care system.

There are over 100,000 African American children in the foster care system. That is 100,000 individuals who deal with systemic racism on a daily basis. The homes children are placed in affect every aspect of these children's lives: who raises them, where they go to school, their socioeconomic status, where they live, and so much more. This issue not only affects their entire lives, but it also affects the lives of every person connected to these children. They will grow into voting, taxpaying, working members of our society and will contribute to the economy and the workforce. They will grow up and have families and children of their own. How these children are raised will affect their contributions to our society and in turn affect the outcomes of the next generation. Before we can begin discussing potential solutions to this problem, we have to understand why this disproportionality exists. The racial disproportionality of the foster care system is created because of the systemic racism that has been ingrained in our foster care system since its beginning. Systemic racism combined with high rates of poverty, single parent households, and higher rates of abuse among African American children work together to create a system that is divided by race rather than united by family.

The History of the Foster Care System

“No one feels sorry for me because I've lost my family. Each of us has a sad tale; we wouldn't be here otherwise. The general feeling is that it's best not to talk about the past, that the quickest relief will come in forgetting.” This quote is from the book *Orphan Train* by Christian Baker Klein (2013). *Orphan Train* is a book based on the true events of a little girl named Niamh. Niamh was a young girl when her family moved from Ireland to New York. Shortly after their arrival in New York Niamh's home was burned to the ground, both Niamh's Father and Brother were killed. After the accident Niamh's mother was committed to a mental institution

and Niamh was taken into the care of the state. The book then goes on to tell about the little girl's struggle on the Orphan Train. The Orphan Train was the earliest form of foster care.

In 1853 orphanages were overflowing with children to the extent that thousands of children were turned out onto the streets. In an attempt to rectify this terrible situation, Rev. Charles Brace, the founder of the Children's Aid Society (CAS), began the Orphan Train. The Orphan Train was the process of taking children off of the streets, loading them onto a train, traveling around the country, and placing them into the custody of whoever would take them. These children were frequently treated like farm hands and free labor. A worker from the CAS was supposed to come and check on the child once or twice a year, but these check-ins rarely occurred. This was the United States' first attempt at mass out of home placement for orphaned children. Before the Orphan Train began individual children would sometimes be placed in the care of a non-relative, but that was fairly unusual. One of the many problems with the Orphan Train was that it only allowed white children. Many speculate that Charles Brace did not allow African American children on the Orphan Train out of fear of the resemblance to slavery. Regardless of the reason, Children of color were not allowed on the Orphan Train. Minority children were allowed in some orphanages. However, orphanages were overcrowded, unsanitary, and many children in orphanages died from hunger and sickness. Despite the failings of orphanages to take care of the children, orphanages were not the worst fate for a child. When orphanages were too full, children of color would be kicked out onto the streets. These children were forced to fend entirely for themselves and many starved or froze to death.

In 1935 the United States Federal Government passed the Social Security Act. This act stopped the Orphan Train and made it illegal to place a child in a home that had not been approved and inspected by the state. This law created a system that resembles our modern-day

foster care system (Jones, 2020). By 1950 there were more children in foster care than in orphanages, so the federal government decided to make foster care a government-funded program. Shortly after it became fully funded by the government African American children were allowed to be a part of foster care. Since then various laws and policies have been implemented in foster care. These regulations have in many ways been very helpful to the wellbeing of children but have also helped the racial disproportionality grow.

Policies and Systemic Racism

Systemic racism is one of the main contributors to the racial disproportionality in the foster care system. According to the Cambridge Dictionary, systemic racism is, “Policies and practices that exist throughout a whole society or organization, and that result in and support a continued unfair advantage to some people and unfair or harmful treatment of others based on race.” (2020) Although these legislations were not intended to cause discrimination, many of these policies have helped to create the racial disproportionality.

The first of these policies was called the Child Abuse Prevention and Treatment Act of 1974 (CAPTA). This act created standardized procedures for Child Protect Services (CPS). Dr. Marian Harris, a highly accomplished social work researcher and a specialist in the racial disproportionality of foster care, defines this regulation as being, “The first major child welfare law to establish federal guidelines for states to use in passing child abuse and neglect reporting laws; each state is responsible for defining child abuse and neglect based on the minimum standards stipulated by CAPTA” (2014). The process of CPS reporting and the removal of children from their homes is a major aspect of the racial disproportionality which will be discussed later in more detail.

Another important change to the foster care system is called the Multiethnic Placement Act of 1994. This act was established to prevent children of color being forced to wait until a foster family of the same race was found. Before this legislation African American children and other minority children would be held in foster care without a placement because a family of the same race could not be found. This delay for minority children's placement was part of the reason why the disproportionality began. White children would be moved through the system at a much faster rate because it was much easier to find a placement for a white child with a white family than to find an African American family for an African American child. This is due to the fact that there are more white families in the United States than African American families. It is also influenced by the fact that African American families are more likely to live in poverty and have single parent households (Badger, 2015). This makes these families less able to afford to foster or adopt a child. Poor African American families also tend to have less support from their neighborhood and government agencies. According to the *Washington Post* (Badger, 2015):

The poverty that poor African Americans experience is often different from the poverty of poor whites. It's more isolating and concentrated. It extends out the door of a family's home and occupies the entire neighborhood around it, touching the streets, the schools, the grocery stores. A poor black family, in short, is much more likely than a poor white one to live in a neighborhood where many other families are poor, too, creating what sociologists call the "double burden" of poverty

This makes poverty even more difficult for African American families and makes them less able to take in another child.

Those who oppose the Multiethnic Placement act argue that it is emotionally harmful for a child to be raised in a transracial home. They assert that child raised in transracial homes may

not have the opportunity to be exposed to their racial heritage and other aspects of their cultural background (Harris, 2014). There is little proof either way on the cost/benefit of being raised in a family of a different race, but most, including the United States Government in lieu of the Multiethnic Placement Act, consider that having a family of a different race to be better than being left without a family in the foster care system. Overall, this act has been beneficial to minority children in foster care.

The presence of welfare has played a role in the foster care system for a long time. Prior to 1996 the welfare system was the primary income for many of the children and families in welfare. In 1996 the Temporary Assistance for a Needy Family (TANF) replaced the previous welfare system. This new system reduced the amount of money given to needy families and caused the number of children in foster care to rise. Additionally, it was harmful to African American families in several ways. One way is that foster care tends to prefer to place African American children with other relatives rather than place them in a nonrelative household (Harris, 2014) This is not always the case, but it is a very common occurrence that we do not see nearly as frequently with white children. African American children also tend to more frequently be placed in households of older relatives. These relatives are frequently single and live in a lower socioeconomic status (SES) bracket; They also tend to have less education. This tendency can frequently be seen in the foster care system, but it does not always happen this way.

The TANF act allows that if a relative is not able to financially provide for the child they will give assistance to that family. TANF gives \$200-300 less per month to related guardians than to non-related guardians. Related guardians typically get around \$200 per month, whereas non-related guardians typically get between \$400-500 per month. This means that African American children are disproportionately placed in lower SES households and are given less

money by welfare. African American children are also adversely affected by TANF because a large percentage of African American children enter foster care due to drug use of one or both birth parents. According to the 4th Nation Incidence Study, a congress mandated study that reports the levels of abuse and maltreatment of children, which said that “Black children differed significantly from children in the other racial/ethnic groups in their overall risk of Endangerment Standard Maltreatment. Endangerment Standard Maltreatment affected 49.6 per 1,000 Black children, versus 28.6 per 1,000 White children.” (Sedlak, et al, 2010). Removal due to alcohol or drug use would fall within this category. These astonishingly high rates among African American children are extra problematic because people who have been convicted due to drug use, buying or selling drugs, or drug possession are given a lifelong ban which prevents them from receiving TANF aid or food stamps. For people who have been convicted due to illegal substances there is no path back to receiving aid. This is harmful to the children of drug users, because if the child was removed from the home due to drugs, even if the parents go through rehab and are able to regain custody of their child, they are still given no aid and no way to get back to a place where they can receive government aid. This is especially harmful to the African American children because they are disproportionately represented in this category who are forbidden from receiving government aid.

The final legislation change that needs to be discussed is the Adoption and Safe Family Act of 1997. This act mandated that child health and safety was the primary concern in regards to foster care placement. This was a good thing because it aided the multiethnic placement act, but this act also added new time limitations to help reduce the time children spent without a permanent home (Harris, 2014). This legislation also means that birthparents lose parental rights fifteen months after a child is removed from the household. That is an unrealistic amount of time

for parents who are on drugs or alcohol to be able to go through all of the proper steps to regain custody of their child. As previously mentioned, this will give African American children a reduced chance of being able to reunite with the parents due to the large number of children who are removed due to drugs. This issue affects all children, but disproportionately affects African American children.

The Role of Abuse

One of the most recent changes in the racial disproportionality is the role of abuse. Every few years Congress mandates that a National Incidents Study is performed to record the rates of abuse and maltreatment among children. Prior to 2010 the National Incident Study had always reported that the rates of neglect and maltreatment were higher among African American families, but that the rates of physical abuse between racial groups had been very similar. Physical abuse rates had never been significant enough to be believed to contribute to the disproportionality. After the 2010 National Incidence Study (NIS-4), for the first time every form of abuse was rated significantly higher among African American children than other racial groups (Sedlak, et al, 2010). It is important to note that the NIS-4 is correlational, and that the data from the NIS-4 is unable to prove that one factor causes the other factor or vice versa. It is unclear whether this shift has occurred because of bias or fault in the manner in which the study was conducted, or whether there tends to be more abuse in African American homes. It is also possible that poverty plays a factor in abuse levels between racial groups. As previously stated, African American families are more likely to live in poverty, so it is possible that poverty is contributing to the abuse rates more than race. Regardless of the primary cause of the abuse rates it is important to notice this difference of abuse rates between races when considering the rest of this topic.

The Role of Implicit Bias

Systemic racism does not just refer to policies that inadvertently give one racial group an advantage over the others. Another major aspect of systemic racism are the implicit biases of the people involved in every aspect of the foster care system. Kacie Bergdorf defines implicit bias as:

An implicit bias is any unconsciously-held set of associations about a social group. Implicit biases can result in the attribution of particular qualities to all individuals from that group, also known as stereotyping. Implicit biases are the product of learned associations and social conditioning. They often begin at a young age, and most people are unaware that they hold them. Importantly, these biases do not necessarily align with personal identity. It's possible to unconsciously associate positive or negative traits with one's own race, gender, or background.

The unconscious nature of implicit biases makes them almost impossible to identify in ourselves, but they do impact the way we interact in the world. Implicit biases have snuck in and affected every major decision point in child welfare and foster care. According to Dr. Harris there are several major decision points in foster care that have been affected by racism. She states that these points are, "1) reporting child abuse and neglect; 2) referring the report for investigation; 3) investigating the referral; 4) removing the child from the home, including the court process;". (2014) Each of these decision points involves a person making a decision about the wellbeing of the child and these decisions are influenced by implicit biases

Making the decision to call Child Protective Services (CPS) and report that you believe a child is in danger or is being abused is a difficult decision. People generally do not like to get

involved in other people's business, because they do not know the full story of the situation. Additionally, there could be social repercussions for reporting a child who is not experiencing abuse or neglect. Keeping that in mind, it will not be surprising to note that most people who report children to CPS are mandatory reporters. This is because there are even worse repercussions for mandatory reporters who fail to report a child being mistreated. Children are surrounded by mandatory reporters on a daily basis (teachers, nurses, law enforcement officers, etc.). There are some guidelines for mandatory reporters to follow, but much of what they must decide is subjective. This subjectivity leaves the door open for stereotypes, prejudice, and implicit biases. According to Dr. Harris "The preponderance of evidence demonstrates that cases involving children of color are reported, investigated, and substantiated and result in the ultimate placement of these children in out-of-home care at higher rates than in cases involving white children." (2014) Additionally, the more a child is exposed to mandatory reports the greater the likelihood that they are going to be reported. African American children are more likely to live in poverty which means they are also more likely to be exposed to greater numbers of mandatory reporters through reliance on TANF and other welfare programs. This need for assistance makes it impossible to maintain the same level of privacy that other wealthier families are able to maintain. The lack of privacy makes all of the families' issues a public matter (Cahn & Harris, 2005). All of these factors work together so that disproportionately children of color tend to be more frequently reported to CPS compare to white children.

The neighborhood a family lives in also affects the likelihood of their children being reported to CPS. Families that live in poor neighborhoods are more heavily monitored by CPS and other government agencies than families from wealthier neighborhoods. Because African American families are more likely to live in poverty, which means African American families

are more frequently monitored than other racial groups by government agencies. In a study conducted by Dorothy E. Roberts (2008), she sought to better understand the role of locality on the racial disproportionality. The study was conducted by interviewing twenty-five African American women from a predominantly African American neighborhood in Chicago. The women all agreed that there was intense child welfare agency involvement in their neighborhood. The women were also asked to describe the effects of that involvement on the personal dynamics of their neighborhood. The researchers concluded from their data that the extreme involvement of CPS in the neighborhood made the families more wary of their neighbors and others who walked through their neighborhood. These families lived in constant fear that they would be reported and their children would be taken away from them. The women also reported that due to their financial situation and the neighborhood in which they lived, CPS would not be as thorough in finding evidence to remove children, but would make assumptions based on less than substantial evidence that the child should be removed. The residents of the neighborhood believed that CPS was primarily making their decisions based on preconceived views of the neighborhood. This study helps to illustrate how families in poverty (specifically African American families) are judged based on the locality and income of their homes more than on the safety of their children.

The final two steps in the decision-making process of foster care are referring the report for investigation and investigating the referral. Referring the report for investigation involves the CPS worker determining whether the report is substantial enough to investigate further and decide how thoroughly the report is going to be investigated. Investigating the referral is the process of following through with what the caseworker decided in the previous step. These two steps leave a lot of room for personal prejudice and implicit biases to influence the decisions of

CPS workers. CPS cases that involve children of color are more frequently opened and investigated substantially more than CPS cases involving white children (Harris, 2014). Osterling, D'andrade, & Austin conducted a study by examining the rates of children reported verses the number of cases that were actually investigated. They found that in these five states African American children's cases were investigated fully 90% of the time, whereas white children's cases were only fully investigated 68% of the time (2008). Some argue that this is due to higher rates of physical abuse among African American children. This could be part of the problem; however, African American children are more frequently reported to CPS than white children. The disproportionality of children being reported should help to balance out the percentages of investigation if the only factor was the higher abuse rates. But it is not the only factor involved in a person's decision making. We cannot ignore that this extreme difference in percentages could be influenced by implicit biases and racial stereotypes.

One of the most important decisions in the foster care process is the decision to remove a child from their home. This includes several steps, but the primary step is the court process and the judge's decision on where a child should be placed. According to W. G. Jones (2006):

The initial hearing is the most critical stage in the child abuse and neglect court process.

The main purpose of the initial hearing is to determine whether the child should be placed in substitutive care or remain with or be returned to the parents pending further proceedings. The critical issue is whether in-home services or other measures can be put in place to ensure the child's safety. At the disposition hearing, the court decides whether the child needs help from the court and, if so, what services will be ordered. Placement is the key issue at a dispositional hearing.

Deciding the placement of a child is what makes the dispositional hearing so important. Judges have some guidelines for how to make placement decisions, but every family's situation is different. It is impossible for the law to have a clear course of action for every case that is brought before a judge. This makes the primary decision fall on the discernment of the judge. But this also leaves room for implicit biases and racial discrimination to affect the judge's decision. Most judges are not trying to be racist; they are trying to make a decision that is best for the child. But judges are human and are equally susceptible to implicit bias influencing their decisions. One of the ways this can be seen is in the way judges treat African American fathers. According to Johnson and Bryant, "I find among African American fathers, even if they have a criminal record that is even fifteen years old, judges will shut it down. Whereas if the man (father) is white, the court will likely to overlook the criminal record, look at his family as well, and think about the resource the father could be." (2004). It is not that most of these judges are trying to keep African American fathers away from their children, but the judges are stricter with African American fathers than with White fathers. This is true for not only the fathers, but every member of the family.

Conclusion

The racial disproportionality in the foster care system is a serious issue that needs to be addressed. There are a number of ways to address this problem, but before we can begin the stages of rectifying the situation, we must first be able to identify the primary causes of the disproportionality. The two primary causes of the racial disproportionality are systemic racism and implicit bias. These are the primary factors because until we can help reduce the systemic racism and implicit bias that are prevalent in our welfare system it will be impossible to help the rates of poverty and abuse. Our current welfare system is not doing its job. Welfare is supposed

to be helping families of all races and single parents face problems such as poverty and substance abuse. Instead our system is in many cases giving less money to the neediest people and implementing time restrictions and legislation that makes it more difficult for families to get the help and support they need. Our system is full of temporary fixes and solutions, but it does not focus on the long-term wellbeing of the children and families involved in foster care. Our society needs to become more aware of its own down fallings in regard to race. Awareness is the first step towards creating a society that is truly equal. We must also recognize the problems in our foster care system so that we can work together to create a system that is no longer divided by race but instead a system that is united by family.

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