



Separating coercion from provision in child welfare

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Preventive supports should be accessible without conditions attached

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In a liberal-democratic society that respects individual rights and highly values the family and its autonomy, child removal is one of the gravest and most intrusive actions that government can take. Yet there is general consensus that a humane society has the obligation to protect its members from harm, especially those who cannot protect themselves, and may, on occasion, have to resort to child removal in its attempts to do so. There is less agreement on where exactly the limits on

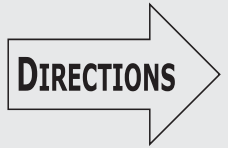
such action and other coercive intrusions into the lives of children and their families should be set.

I shall contend here that state coercion (in the form of removal) should be considered only when narrow standards concerning child harm, sexual exploitation, and endangerment thereof are not met, and that services (except for the medical treatment of children) should not be coercively imposed upon parents. We should, instead, seek to protect children and promote

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their well-being by expanding preventive supports that can be voluntarily accessed without condition or threat.

In his classic article published in 1975, law professor Michael Wald proposed that coercive intervention should be allowed to be considered, in the form of child removal, or even to force parents to accept supervision and services, only if the child has suffered or is at imminent risk of suffering severe bodily harm (defined as death, disfigurement, or impairment of bodily functioning), inflicted on him by other than accidental means, or as a result of conditions created by the parents, or the failure of the parents to provide adequate supervision. Coercive intervention would also be allowed if the parents are unwilling to provide or permit medical treatment to treat or prevent such physical injury, or serious emotional damage, or if the child has been sexually abused. Wald also contended that coercive state intervention should be authorized only if it is the least detrimental way of protecting the child, taking into account the known detrimental aspects of foster care placement. Child removal should not be permitted if the child can be protected while remaining in the home.

In proposing similarly narrow standards in his seminal 1973 article, law professor Robert Mnookin reasoned that child removal decisions should be based on standards that can be applied in a consistent and fair manner. Thus such standards cannot be “vague and open-ended,” requiring “highly subjective determinations,” but must be specific and focused on “an immediate and substantial danger” to the child. Narrow standards are meant to protect families and children from arbitrary and overzealous coercive state intervention that can do more harm than good.

Wald, in his 1975 article, decried the common child welfare policies and practices (still

common today) of categorizing as “neglect,” for the purpose of coercive intervention by child protective services (CPS) agencies, cases involving supposed “inadequate parenting” that nonetheless do not violate his proposed standards concerning severe harm. Such cases, according to Wald, often involve very poor families experiencing multiple problems, including inadequate medical care, poor nutritional practices, dirty and run-down homes, and parental drug or drinking problems as well as mental health or cognitive deficiency issues. Yet even if the proposed standards were to be more closely adhered to, there remains the question of what government should do to promote the well-being of children who are not in the dire danger as defined by these standards. Wald has addressed this question in his recent publications, and I will address it here.

Coercion Beyond CPS: Conditional Cash Transfers

One response to “inadequate parenting” (without CPS involvement), ostensibly designed to promote family and child well-being among impoverished families, has been the development of conditional cash transfer programs. Such programs are currently in vogue internationally, having been touted by the World Bank and other international organizations, and implemented in dozens of countries in Latin America, Africa, and Asia, among others.

As described in the articles in the “Directions” section of the March 2014 issue of this journal, such programs impose behavioral conditions on the receipt of cash assistance, pertaining to health, education, and nutrition. Work requirements may also be attached. We learn of programs in which cash benefits have been tied to parents’ keeping their children

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