

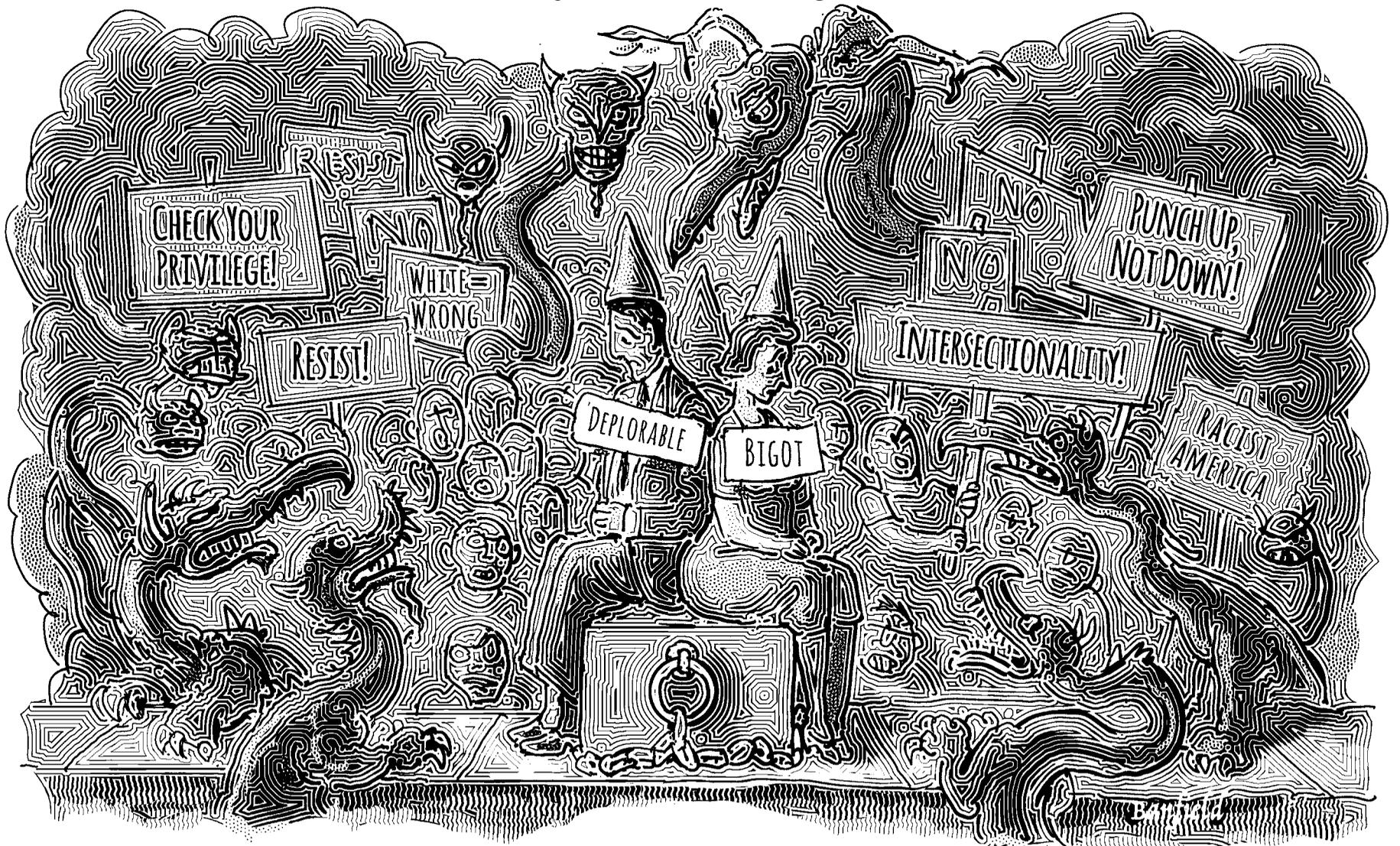
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Book Review by Naomi Schaefer Riley

BLACK LIVES MATTER

Liberal Child Welfare Policy and Its Destruction of Black Lives, by James G. Dwyer.
Routledge, 272 pages, \$160 (cloth), \$48.95 (paper)



THERE ARE OVER 435,000 KIDS IN FOSTER care in the United States and, after a period of several years in which that number seemed to be stable, it has started to rise again. This increase, many speculate, is the result of the opioid epidemic. There is clear evidence now (perhaps not surprisingly) that areas with higher rates of overdoses are seeing a rise in the number of kids taken into care.

The response to this crisis from child welfare workers (both government and nonprofit), academics, and the media has been almost uniform. As JooYeun Chang, the managing director of public policy at Casey Family Programs (the largest philanthropy working in this field), told an audience at the Brookings Institution recently, we “traumatized kids by

removing them from the only families and communities, schools that they have known... place them, at best, in family settings, far too often we place them in multiple family settings, and at worst we place them in congregate care settings that...are no better than some of the jails and prisons that their uncles, and fathers, and mothers are in.” And the reason we remove so many kids, particularly minority kids, she continued, is that “our system has been built on centuries of racism, classism, and xenophobia.” We rely on this idea of “rescuing children from what we consider to be bad people...instead of treating the underlying poverty, addiction, or mental illness.”

From the *New York Times*, which has referred to the policy of removing black kids from their homes as “Jane Crow,” to a Bronx

public defender who told the *New Yorker* last year, “We are members of this system which we all strongly believe is racist and classist and doing harm to the families it claims to serve,” it’s not hard to see where all this is going.

IN HIS NEW BOOK, *LIBERAL CHILD WELFARE Policy and Its Destruction of Black Lives*, William and Mary law professor James Dwyer takes on both the diagnosis that our foster care system is racist, as well as the prescription that to help these kids we need to leave them in their homes and focus on fixing their parents.

Liberals, he argues, feel guilty about the ways that the state has worked to tear apart the black family, from slavery onward. But Dwyer, a self-described liberal, believes it is



time to stop excusing the antisocial behavior of poor black adults and waiting for an influx of money to be spent on anti-poverty programs, and instead save the children who are there now. (He is not unlike school voucher proponents who would be happy to see inner-city public schools improve, but would like to find some way to help kids who are stuck in them today.)

Dwyer says it is time to focus our attention on the one in five black Americans who “are not only poor themselves but also living in neighborhoods where they are surrounded by other poor people.” From high rates of incarceration, single motherhood, and evictions to mental illness and drug use, the deck is stacked against the children in these neighborhoods and that there are no policies in the pipeline, suggests Dwyer, likely to fix these problems anytime soon.

TO BEGIN WITH, INFANT MORTALITY rates among blacks are twice as high as among whites. And the risks continue throughout childhood. Research shows that “one fifth of all black children becom[e] victims of substantiated maltreatment at some point in their childhood.” And that this “is likely only half or one third of the black children who actually suffer maltreatment.” Dwyer quotes one observer who says “black children are about as likely to have a confirmed report of maltreatment during childhood as they are to complete college.” And “maltreatment” means abuse or severe neglect—not that a home hadn’t been vacuumed recently.

It is neglect not abuse that is more closely correlated with child fatalities. Small children who are not being watched drown in bathtubs or play with stoves. They may be malnourished, or suffer from illnesses that parents don’t have treated by doctors. Parents who repeatedly have electricity and heat turned off in their homes despite offers of help from social services demonstrate a kind of mental instability that makes leaving kids in their care potentially dangerous.

Dwyer adds: “[T]he great majority of parents in unsafe neighborhoods (76 percent) say neighbors do not help each other, and that they feel socially isolated, so families or unsupervised children are on their own in trying to avoid the dangers present in their buildings and on the streets. Struggling parents find little assistance or support within the community, because everyone else is also struggling to survive, and there is also little help from outsiders.” In a previous era or another community, children who were being neglected by their own parents might have found a stable loving home with relatives or

friends. But for these children those options are not available.

DWYER MAKES CLEAR THAT THIS IS not a book about all black children but about those at the very bottom. The “children born into these communities are irremediably damaged in the first few years of life and, as a more or less inevitable consequence, become dysfunctional adolescents and adults whom we cannot fix no matter how much we spend, and who in turn damage the next generation.... [T]his happens now because of laws and policies that liberals promote and defend.”

Children growing up in homes where addiction and abuse are present rarely come from extended families where these are not also issues. This does not mean that multi-generational dysfunction affects everyone but it certainly is hard to escape. When black children are found to be the victims of abuse or severe neglect (usually reported by teachers, doctors, or neighbors, and investigated by child welfare workers who are, more likely than not, racial minorities) the plan first is to offer “services” to keep them with their parents. Then it is to find relatives who might be able to take them in. And only as a last desperate resort are they taken into state custody and placed with a foster family or in a group home.

Over the years, we have passed laws that attempt to protect these most vulnerable children from poor treatment at the hands of their parents and family. For example, there is a federal statute requiring that babies who are born drug-exposed be reported to Child Protective Services (CPS). This statute is more often than not ignored by hospitals around the country, perhaps because doctors are concerned that mothers won’t seek prenatal care if they think their children may be taken away, or because doctors think CPS is unnecessarily snatching children from mothers who don’t deserve to lose their children and don’t want to give the social workers a heads up. Either way, a mother who is high when she gives birth can go home with her baby a few days later.

Another law passed to help children in these situations was the Adoptions and Safe Families Act (1997), which attempted to reduce the amount of time that children could spend in foster care. If a child has been in state custody for 15 of the past 22 months, parental rights are supposed to be terminated in order to make the child available for adoption. But this is another law that is flagrantly ignored. Some judges decide it doesn’t count if the child was with family members during those

months. In other instances parents claim that they have not gotten adequate services to help them prepare to take their children back and, as a result, they should be given more time.

DWYER ACKNOWLEDGES THAT IN many cases we have not provided adults with all the tools they need to get their children back. They are not placed into addiction treatment programs or parenting classes quickly or efficiently. But he observes that “even the best treatment programs, with all the facilities and services and encouragement experts typically recommend, have a success rate less than 20 percent.”

“CPS directors and case workers often express what I call the ‘One Percent Philosophy,’” Dwyer laments, “that unless they can say with certainty parent X will not reunify, then they should continue to try to rehabilitate that parent, provide more services, give more time, for as long as the law permits. If there is any chance, even one percent, they will persist.” Having spent years researching and interacting with these CPS workers, he believes “[t]he mentality arises partly from social work training, partly from blind faith in the power of human redemption, and partly from aversion to passing judgment on people.”

But this desire to give adults in certain communities the benefit of the doubt, to explain the way they treat their children as the result of poverty, systemic racism, or a history of discrimination makes things worse for the kids. Dwyer observes that “children’s rights, and indeed children themselves, fade from view in liberal social policy. Liberals (and conservatives) need to confront the gross disparity between the robust rights they defend for adults and the cramped rights they begrudgingly allow children.” The notion of “children’s rights” is often associated (at least among conservatives) with the idea that children should be treated like adults, entitled to make decisions about sexual matters for themselves, say whatever they like in high school, etc. But in this context, children’s rights mean the right to live in safe conditions, cared for by responsible adults.

One reason why liberals worry about expanding children’s rights—especially with regard to infants—is that it might imply something about the rights of unborn children. Does a woman using heroin while pregnant tell us something about her fitness as a mother? Should we do more to monitor the way that pregnant women treat their unborn children? Such rhetoric raises flags among abortion-rights proponents.

Dwyer offers some solutions to the current crisis. First, he believes that many children—



especially children up to three years old—should be removed from their families sooner rather than later. In fact, he rightly notes that the longer a child remains with parents who are incapable of caring for him, the worse things become. Not only are the early years of a child's life the most important for developing attachments and forming normal relationships and behaviors, but after those years are over it becomes less likely that other families would choose to adopt him. He advocates shorter timelines for removal and severing parental rights. He also suggests that things like using drugs during pregnancy be counted as proof of a parent's unfitness. He wants to expand a program by which states would be able to tell if a parent had been charged with abuse or neglect in another state and use that to determine whether he or she could keep custody. Finally, he suggests that the most dangerous neighborhoods in America be labeled "child-free zones" and residents instructed to, and given the means to, move elsewhere when they have children.

DWYER RECOGNIZES THAT THESE SUGGESTIONS—especially the last one—will be controversial. Isn't this an infringement on the rights of parents to choose what they want for their own children? If he thought there were enough money to solve the problems of inner-city poverty and dysfunction he would be happy to do it tomorrow. But because there isn't, he says it is time to come up with a Plan B. "The only way for a liberal to stomach that, I think, is to keep the eye focused on the newborn child and never forget that we are responsible for what happens next to him or her, in the world as it is."

Given Dwyer's no-nonsense attitude about white guilt, disparate impact, and the ability of dysfunctional parents to change their ways, it is not surprising that he has made some enemies among liberals. But maybe it is less obvious why he also rankles some conservatives.

For anyone who has been paying attention to debates recently about "mass incarceration" or (relatedly) drug legalization, the new liberal-libertarian alliance will not come as a surprise. At least on these issues, the two sides agree that the government is too involved in

our lives and its actions are unfairly affecting racial minorities and those on the lower end of the economic spectrum. Lost, generally, is any notion that racial disparities can result from anything other than "systemic racism."

Now this narrative has moved to the realm of child welfare and it has picked up any number of other supporters. Liberal academics, who are normally big believers in the idea that government intervention will improve the lives of families—isn't that what the Great Society was built on?—now believe the government needs to take a more hands off approach. So, too, government-employed social workers, who have been trained to think they are only part of a racially biased system and have little or no power to stop its dreadful march.

There is also a certain population of religious folks, many of whom choose to homeschool their children, who have been ringing the alarm about government overreach for years when it comes to education and now worry about the government nosing around too much in children's health and well-being. The case of Alfie Evans (and before that, Charlie Gard), the terminally ill boy in London whose parents were prevented by the British government from seeking medical care for him elsewhere, has heightened such fears. If the government is the ultimate guarantor of a child's well-being, where does that leave parents who want to save their son's life?

And then there is an army of upper-class mothers who have become activists. From the more sensible "free-rangers," who think that child protective services regularly snatches kids away from parents for letting them walk to school alone, to the lunatic anti-vaxxers, who worry that CPS is part of a conspiracy to give their children autism and is going to take their kids away if their measles vaccine is delayed, there is a complete lack of awareness of exactly who is caught up in the child welfare system and why.

CONSERVATIVES WILL BRISTLE AT THE kind of paternalism that Dwyer is recommending. And reasonably so. But when it comes to handling the problems of society's most vulnerable children, conservatives should consider what they have already

learned from their experience with inner-city education. All of the high-performing charter schools conservatives have embraced are built on the philosophy that certain kids need to have as much of their time micromanaged and monitored as possible if they are to escape the poverty and dysfunction that characterize their existence at home. The more hours and days they spend in school, the more structured their lives will be, the more likely they will be to complete high school, go to college, and become productive members of society. Programs like the Harlem Children's Zone are in fact all-encompassing experience meant to surround children with every possible service and program in order to make sure that they stay on the right track.

Indeed, David Whitman's *Sweating the Small Stuff: Inner-city Schools and the New Paternalism* (2008) makes exactly this case. More broadly, Lawrence Mead's *The New Paternalism: Supervisory Approaches to Poverty* (1997) suggests that the government needs to get much more involved in the lives of both children and adults from poor and dysfunctional homes.

But the kids who are being educated by Success Academies and KIPP (Knowledge is Power Program) schools at least have the benefit of having parents who know they want something better for their kids. The kids who are in the foster care system have no such advantage. Dwyer's reforms may be extreme but they are worth considering. If the government is not going to do anything about the lives of these children, exactly who is?

If you spend some time with mothers in Appalachia who used heroin while they were pregnant or teachers on Indian reservations who have seen widespread physical and sexual abuse among their students, or parents (both white and black) who have adopted poor black kids abused by their biological relatives, you would start to understand why James Dwyer has taken the radical approach he has. And you might wonder whether the rest of us should do the same.

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