

UNDER-INTERVENTION VERSUS OVER-INTERVENTION

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I agree with a lot of what Professor Guggenheim just said. I am now going to try to focus on some of the things that I think he and I, and many of us *disagree* about. Overall, I want to talk about the issue of under-intervention as compared to over-intervention. There is a huge debate as to whether our system, our state, or our fifty states, are intervening too much or too little; either taking kids away too readily from their parents, or not intervening early enough, and actively enough, to protect children.

I want to start by describing the degree to which I think our country stands in contrast to the rest of the world in a broad sense in terms of intervention. While intervention can mean taking children away, it can also mean supporting families early on. A point that many of us agree on is that our state should be more supportive of families. As for myself, I take the position that our state should be more interventionist, both in the sense of supporting families early on, and in the sense of intervening to protect children when families are in serious trouble.

If we look at other countries, we find something called the United Nations Convention on the Rights of the Child, which virtually every country in the world, except for the United States, has signed. One interesting aspect about the Convention, and part of why we have not signed it, is that the Convention states that the government of each nation that has signed it is ultimately responsible for taking care of its nation's children. In other words, the government of each signing nation should function as the true *parens patriae*, or parent, of the children of that country, and the government has direct responsibility for taking care of children, and protecting them against abuse and neglect. Our country stands out in the world as the country that is most committed to the idea of individual autonomy, and parental autonomy. We put parents in the position of taking care of their children with very little support from the state.

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From the beginning of family formation in this country, and then also later, to the degree that families fall into trouble, and parents are unable to care lovingly for children, our government is enormously reluctant, I argue, to step in to protect children from abuse and neglect. If you look at South Africa, a country with one of the most recent constitutions in the world, you see a constitution that reflects a variety of progressive human rights developments. It is also a constitution that provides extraordinary protection for children, imposing a duty on the state to serve the interests of children, and protect them against abuse and neglect. This is something that we do not have in this country.

My own position is—and here's where I agree a lot with Marty Guggenheim—that we do not do nearly enough in our society to prevent children from being thrown into that river he talks of; that we need a society that addresses the issues of social injustice and racial injustice that result in so many children from minority race groups being in the foster care population. The statistic in New York City that we were given this morning is that ninety-seven percent of the kids in foster care are of minority races. Obviously, this is an incredibly shocking statistic. I totally believe that the amount of abuse and neglect we have in our society is the result of historic and current social injustice, and that addressing such injustice is the priority. The best child abuse program would be one that would effectively address that injustice. However, unlike Marty Guggenheim, I think it is simultaneously enormously important to lift the kids out of the river, and to take much more active care of those children that are suffering extreme forms of abuse and neglect than we do currently.

Now, for an example of the kind of more interventionist state that I advocate for, I'll discuss the area of drugs. It is estimated that somewhere between seventy percent and ninety percent of the parents of kids at risk for serious abuse and neglect are parents that are heavily involved in substance abuse, alcohol abuse or a combination of both. I think that this is an overwhelming problem, and I have advocated in my book, *Nobody's Children*,¹ a proposal that seemed draconian to some degree, even to myself at the time I wrote it. I think that we should intervene at birth, in the sense that we should test kids for both alcohol and illegal drugs that their parents might have been using during conception and pregnancy. Testing today makes it easy to identify the kids whose par-

¹ ELIZABETH BARTHOLET, *NOBODY'S CHILDREN: ABUSE AND NEGLECT, FOSTER DRIFT, AND THE ADOPTION ALTERNATIVE* (1999).

ents have been using illegal drugs. I think we should have Child Protection Services intervention at birth, at least to investigate the situation of the families. I also think that we should institute on a nationwide basis the Family Drug Court system. There are already many such systems in states throughout the country. I advocate for a version of such systems that would mean that once a child is seriously abused and neglected by parents who are addicted to drugs and alcohol, or identified at birth as at serious risk—as having suffered the results of drug abuse during pregnancy—we should give the parents one year to get it together. We should give them priority access to drug treatment and we should be prepared to say that at the end of a year, if those parents cannot get off drugs, then they lose their parental rights. I know from my work with the Legal Action Center—which I founded, and which is committed to helping people with histories of drug and alcohol abuse—it will be difficult for people heavily into drugs to get off within a year. But I think we owe it to the children to tell parents that they don't have longer than a year. I do not think kids have longer than a year to wait for their parents to get it together if the kids are to have a fair chance at a decent life. That is the type of active intervention once families are in trouble that I propose.

In terms of early intervention, a program that I have advocated—and that has shown wonderful results, as demonstrated in social science research—is intensive early home visitation. This kind of program would provide home visitation during pregnancy and in the first couple of years of a child's infancy to try to help support the parents. If parents are seriously isolated, home visitors try to get them connected with community support services, as we know that child abuse and neglect is largely a problem of seriously isolated parents. I think we need to connect the parents in these fragile families to support services that often already exist in their communities and thereby give them a better chance at getting employed and at avoiding the future pregnancies that exacerbate the risk of child maltreatment. The research on early home visitation programs is that they work enormously well in terms of enabling parents in these types of families to succeed and to avoid future child abuse and neglect.

We need to confront the correlation between child maltreatment and race and poverty. It is overwhelming. The statistics indicate that families with fifteen thousand dollars or less in annual income, have twenty-two times the rates of child abuse and neglect, as compared to

families with thirty-five thousand dollars and more in income. I believe, probably the opposite of what Dorothy Roberts will say, that these are real rates of child abuse and neglect. I do not think that the fact that we have disproportionate numbers of poor and minority children in foster care is a product solely of the racism in the system. I also think that this correlation is no surprise. When people are incredibly beaten down by historic and current social injustice, they do get into things like drugs, and they do have much more serious problems in terms of raising their children. I also think that we have to recognize that the child maltreatment problem that is serious for children, is one that includes neglect and not just abuse. Many—like Professor Guggenheim—like to write off the neglect part of the picture as if it's a "mere poverty" problem. I do not believe it. I think in today's world, most of the kids who are being removed from their homes for something we call neglect have suffered forms of maltreatment that put them at serious risk in the future. First of all, they are often children in situations where abuse is suspected but hard to prove. Secondly, they are overwhelmingly the children of parents who are seriously into drug abuse, and many of these cases involve children who are simply not being raised. Children identified as having suffered neglect are children who die at rates equivalent to the rates at which children die from physical abuse. Social scientists tell us that the long-term problems endured by children who are victims of what is categorized as neglect, are similar to the long term problems of children identified as victims of physical abuse.

I want finally to talk very briefly about the impact of a more actively interventionist state on children. Many make the claim that such a state would make things worse, that we do harm to kids by taking them from their families and putting them in foster care, and that the state makes a terrible parent, etc. I think all the best social science studies show that if you look at kids who are victimized by abuse and neglect, and examine three populations—(1) those kids that you keep in or return to their birth families, (2) those kids in foster care, and, (3) those kids who are moved on to adoption—kids do the worst in their biological families. Kids do second worst in foster care, but even then, still much better than they do in their original families. Kids do the best, by far, in adoptive families. They would do even better if we moved them on from their biological families more expeditiously.

Again, people slam the foster care system, but if you look at the actual rates of abuse and neglect in foster care, they are said, by good

studies, to be less than one percent. If you look at what happens to the kids who are taken from foster care, and returned to their biological homes, one-third of those kids, thirty-three percent, are identified as subjected again to serious abuse and neglect, and have to be removed again from their biological homes. If you look at statistics on kids in adoptive homes, there is a lower rate of abuse and neglect in adoptive homes than in the regular, so-called normal population.

I think that we do need to address the problems of historic and current racial and social injustice. I think we need to stop throwing all those kids into the beginning of the river. But I also think we need to address the problems of injustice suffered by kids who are victims of serious abuse and neglect. For their sake and for the sake of the next generation, we cannot afford to let those kids grow up either in biological homes in which they will suffer abuse and neglect, or in foster care. Although the abuse statistics look pretty good in foster care, it is not nearly as good for kids as permanent and nurturing adoptive homes.

