

2008

Missing Parents

Clare Huntington
Columbia Law School, ch104@columbia.edu

Follow this and additional works at: https://scholarship.law.columbia.edu/faculty_scholarship



Part of the [Family Law Commons](#)

Recommended Citation

Clare Huntington, *Missing Parents*, 42 FAM. L. Q. 131 (2008).

Available at: https://scholarship.law.columbia.edu/faculty_scholarship/4227

This Article is brought to you for free and open access by the Faculty Publications at Scholarship Archive. It has been accepted for inclusion in Faculty Scholarship by an authorized administrator of Scholarship Archive. For more information, please contact scholarshiparchive@law.columbia.edu.

Missing Parents

CLARE HUNTINGTON*

In an effort to protect children from abuse and neglect, the child welfare system focuses on parents, both as potential wrongdoers and as the locus for rehabilitation. This attention informs the discourse surrounding state intervention: parents' rights are balanced against children's rights, and family autonomy is understood as an overriding value. But the child welfare system centers parents in the wrong way, leading to academic debates that miss the mark and methods of intervention that are often counterproductive.

An effective child welfare system would be built upon the understanding that, in general, the state can best support children by supporting their parents. Currently, the state largely ignores parents until a crisis occurs in a family and then overrides parents afterwards. As a result of missing parents in this way, the system is also missing the well-being of children. The present orientation fails to recognize that, in many cases, there is an alignment of interests between parents, children, and the state.

To be sure, the current system ostensibly helps parents. The state is supposed to preserve families when possible and reunite children with parents if it is safe to do so. But the state support provided to these ends falls far short of the mark. The state does far too little to prevent child abuse and neglect, and when it does occur, the state provides little meaningful help for parents to address the issues underlying the abuse and neglect. Moreover, in both efforts, the state rarely engages with parents as partners.

In this essay, I set forth a vision for a different child welfare system that would both prevent child abuse and neglect as much as possible and, for cases that do occur, attempt to solve the underlying problems. In this re-imagined child welfare system, parents are necessary partners with the state. If the state truly seeks to prevent child abuse and neglect, it must engage with parents. And if the state truly seeks to solve the problems fac-

* Associate Professor, University of Colorado Law School.

ing families in the child welfare system, it also must engage with parents. In this essay, I describe this parent-centered vision, drawing on earlier arguments I have made for improving the child welfare system.¹ In this re-imagined system, parents, missing no longer, are key to the safety and well-being of children.

I. Present but Not Accounted For

The purpose of the child welfare system is to protect children believed to be abused or neglected by their families and to strengthen families where children are at risk for abuse and neglect.² States work toward this goal by using the *parens patriae* authority to intervene in families to offer “child protective services.”³ These interventions range from support to keep a family together to removing a child from a biological family and placing the child in foster care, which sometimes leads to the termination of parental rights and the adoption of the child.

In one sense, the child welfare system pays great attention to parents. Child welfare authorities do not begin a case on behalf of a child simply because the state believes another parent would do a marginally better job raising the child. Rather, the state intervenes when a parent fails to meet minimum standards of care and the child is at risk. This determination necessarily turns on an assessment of the parent’s treatment of the child. Similarly, once the child welfare system has begun a case, the final outcome depends on parental conduct. If a parent satisfies the requirements of the case plan and convinces the state she is able to parent adequately again, she likely will regain custody of the child. Conversely, if this is not so, the state may move to terminate the parent’s rights to the child and place the child for adoption.

In this way, parents are at the center of the state’s involvement in the family. The state intervenes only if a parent is not providing a minimally adequate level of care, and the state will cease its intervention if the parent establishes that she is again able to provide that minimum standard of care.

Despite this seeming attention to parents, the reality of the child welfare system is that *meaningful* attention to parents is sorely missing. The

1. See generally Clare Huntington, *Mutual Dependency in Child Welfare*, 82 NOTRE DAME L. REV. 1485 (2007) [hereinafter Huntington, *Mutual Dependency*]; Clare Huntington, *Rights Myopia in Child Welfare*, 53 UCLA L. REV. 637 (2006) [hereinafter Huntington, *Rights Myopia*].

2. See, e.g., MINN. STAT. § 626.556 (West 2004); GA. CODE ANN. § 19-7-5 (West 2004); N.J. STAT. ANN. § 30:4C-1(a) (West 2005).

3. In this article, I use the term “child welfare system” and “child protective services” interchangeably to refer to the entire system designed to respond to the abuse and neglect of children.

state does far too little to prevent child abuse and neglect, so that when the state does intervene, it is typically at a point of crisis in the family—after child abuse or neglect has occurred or when it is imminent. By this time, children have been hurt in numerous ways.⁴ Further, the relationship between the parent and the state has been damaged, with the state in the position of threatening removal of the child and the parent typically trying to resist this removal. At this point of conflict, there is a fundamentally adversarial relationship between the state and parent, which hinders the possibility of cooperation and highlights the power imbalance between the state and families.

Not only is the timing of state intervention off, but also the type of intervention the state does offer typically fails to meet the real needs of families. The support the state provides to help a parent reunite with her child is often woefully inadequate, with nothing more than boilerplate requirements and little assistance in satisfying these requirements.⁵ Further, although child abuse and neglect are serious and no child should ever have to experience them, the removal of a child from her home and placement in foster care have their own attendant risks.⁶ If the state truly wanted to help children, it would intervene in a substantially different manner. The next two parts describe such a child welfare system.

II. Parents as Partners in Prevention

It is possible to prevent much child abuse and neglect. Both general antipoverty programs and targeted prevention programs are effective means for reducing rates of child abuse and neglect.⁷ For example, the Nurse–Family Partnership program has been very successful both in preventing child abuse and neglect and serving the needs of parents and children.⁸ In this program, a public health nurse visits a low-income, first-time parent during pregnancy and the first two years of a child’s life.⁹ The nurse works closely with the mother on improving prenatal health, helping parents provide more competent care to the child, and assisting with the family’s economic stability by helping parents develop and accom-

4. See Huntington, *Mutual Dependency*, *supra* note 1, at 1487 n.3 (describing long-term detrimental effects of child abuse and neglect for the child).

5. See Annette R. Appell, *Protecting Children or Punishing Mothers: Gender, Race, and Class in the Child Protection System*, 48 S.C. L. REV. 577, 583 (1997); see also DOROTHY ROBERTS, *SHATTERED BONDS: THE COLOR OF CHILD WELFARE* 79 (2002).

6. See Huntington, *Rights Myopia*, *supra* note 1, at 660–62 (describing these risks).

7. See Huntington, *Mutual Dependency*, *supra* note 1, at 1492–97, 1531–34.

8. For a discussion of the cost-effectiveness of the visiting nurse and early childhood education programs, see *id.* at 1532–34.

9. See U.S. Dep’t of Justice, Office of Juvenile Justice & Delinquency Prevention, *Nurse–Family Partnership*, OJJDP MODEL PROGRAMS GUIDE 1 (2006).

plish goals related to staying in school and finding work, as well as helping parents plan subsequent pregnancies.¹⁰ The results of the program are striking. Families receiving this kind of support have an eighty percent lower incidence rate of child abuse and neglect than similarly situated families,¹¹ as well as numerous other benefits.¹²

Early childhood education programs also are associated with reduced rates of child abuse and neglect, at least when the program offers services to the family in addition to the child.¹³ For example, the Chicago School District's Child-Parent Center provides early childhood education to children beginning in preschool and either ending at kindergarten or continuing until third grade.¹⁴ The program provides services to children, including health screening and free meals, and to parents, including home visits and referrals to social service agencies.¹⁵ The program also teaches parents in separate classrooms with different teachers.¹⁶ A study of the program found that the rate of child abuse and neglect among children in the preschool program was fifty-two percent lower than the rate in the

10. See Judith Glazner et al., *Final Report to the Administration for Children and Families, Effect of the Nurse-Family Partnership on Government Expenditures for Vulnerable First-Time Mothers and their Children in Elmira, New York, Memphis, Tennessee, and Denver, Colorado*, 1 (2004); see also *Nurse-Family Partnership*, supra note 9, at 1 (describing program).

11. See David L. Olds, *Prenatal and Infancy Home Visiting by Nurses: From Randomized Trials to Community Replication*, 3 PREVENTION SCI. 153, 161 (2002); see also *id.* at 161-63 (discussing this finding in greater detail, including evidence that reductions in child abuse and neglect persisted over a fifteen-year period, despite an initial up-tick following the end of the program; further finding that the participating families who did not experience lower rates of child abuse or neglect were families with domestic violence); *Nurse-Family Partnership*, supra note 9, at 1.

12. Studies documenting the positive benefits of the program for both parents and children abound, but to give just one example, children in the visited homes had lower rates of involvement in the criminal justice system. See David Olds et al., *Long-term Effects of Nurse Home Visitation on Children's Criminal and Antisocial Behavior: 15-Year Follow-up of a Randomized Controlled Trial*, 280 JAMA 1238, 1241 (1998).

13. See A.J. Reynolds & D.L. Robertson, *School-Based Early Intervention and Later Child Maltreatment in the Chicago Longitudinal Study*, 74 CHILD. DEV. 3 (2003); A.J. Reynolds et al., *School-Based Early Intervention and Child Well-Being in the Chicago Longitudinal Study*, 82 CHILD WELFARE 633 (2003).

14. See *id.*

15. See *id.*

16. See FIGHT CRIME: INVEST IN KIDS, NEW HOPE FOR PREVENTING CHILD ABUSE AND NEGLECT 14 (2003) ("The parents have their own teachers and classrooms. The program also conducts home visits and offers many opportunities for parents to join in field trips or other activities with their children. All of this is aimed at helping parents to learn and practice better child-raising skills and to get them actively involved in their children's education."). See generally JANET M. CURRIE, *THE INVISIBLE SAFETY NET* (2006) (describing the importance of such programs and arguing that the support in-kind programs provide is even more important than cash welfare programs).

control group.¹⁷ The results were even better for those children who stayed in the program for at least four years. For these children, the child abuse and neglect rate was forty-eight percent lower than the rate for children in the program for one to four years.¹⁸

Despite the potential for prevention, however, the state has been slow to make the necessary investments. The failure fully to embrace a prevention-oriented approach to child welfare is the product of numerous forces, but one important barrier is the dominant conception of family autonomy. Legally and culturally, the United States venerates freedom from state intervention. Family autonomy as “freedom from” is the idea that families stand apart from the state and that the state may not intervene in the life of a family absent exigent circumstances, such as abuse and neglect.¹⁹

To be sure, family autonomy serves important interests. Family autonomy protects family integrity by ensuring that the state will not remove a child simply because the state believes another parent would provide a superior environment for the child. Additionally, family autonomy protects parental decision-making authority, thus promoting pluralism by ensuring a wide-range of values is cultivated in families.²⁰

For families at risk of involvement in the child welfare system, however, the prevailing “freedom from” conception of family autonomy jeopardizes both family integrity and parental decision-making authority by absolving the state of affirmative responsibility for the well-being of families. There is no role for the state until the family fails. And once the state does intervene, it largely supplants parental decision making.

To elaborate, the “freedom from” conception assumes that all families can and should operate without state support and that “dependency” is

17. See A.J. Reynolds & D.L. Robertson, *School-Based Early Intervention*, *supra* note 13, at 3.

18. See *id.*

19. See Barbara Bennett Woodhouse, *Ecogenerism: An Environmentalist Approach to Protecting Endangered Children*, 12 VA. J. SOC. POL'Y & L. 409, 423 (2005) (“The intact and functioning family is proudly autonomous. Provision of services and support is the exception to the rule of autonomy, and generally must be tied to some finding or admission of family failure and dysfunction. . . . Thus, the model depends on parental fault as a predicate for state engagement in the life of a child.”).

20. See Emily Buss, *Allocating Developmental Control Among Parent, Child and the State*, 2004 U. CHI. LEGAL F. 27, 27. This idea was part of the reasoning that led the Supreme Court in *Pierce v. Society of Sisters* to hold that a parent has a constitutionally protected right to select a school of her choice for her child and, therefore, is not required to send the child to public school. See 268 U.S. 510, 535 (1925) (“The fundamental theory of liberty upon which all governments in this Union repose excludes any general power of the state to standardize its children The child is not the mere creature of the state; those who nurture him and direct his destiny have the right, coupled with the high duty, to recognize and prepare him for additional obligations.”).

deviant. As I and others have explored at length, the belief that any family exists independent of the state is simply untrue.²¹ The state both determines which groups of individuals constitute a family and supports families in essential ways.²²

Families who are economically stable benefit from state rules governing marriage and divorce, inheritance rights, and parental authority vis-à-vis third parties,²³ as well as supports including public education and the availability of child-care tax credits. Low-income families also need the state, although their specific needs may differ, and may include such items as subsidized housing and child care.

Despite this universal reliance on state support, the perception that some families are independent persists. This is due, at least in part, to the phenomenon of background and foreground noise. Some forms of state support, such as public education, are so familiar, they are not perceived as state support, but rather simply the state of the world—background noise. By contrast, a new form of state support—say, widely available subsidized child care—changes the status quo and thus is perceived as an aid to families. This support is foreground noise.

Drawing upon the misperception that some families operate independent of the state, the “freedom from” conception of family autonomy feeds the belief that the state need not assist families before the point of crisis. This has pernicious effects.

For low-income families, the “freedom from” conception of family autonomy means that the benefits of the conception—protection for family integrity and a diversity of decision making—are compromised. “Freedom from” means the state assumes no affirmative responsibility for a family until the family “fails.” But without state support, a family is more likely to fail, increasing the possibility that the state will remove the children and place them in foster care, threatening both family integrity and parental decision-making authority.

To change the legal and cultural environment and allow a prevention-oriented approach to child welfare to flourish, we must reconfigure our dominant conception of family autonomy. To that end, I have proposed a revised understanding of the relationship between families and the state—that of mutual dependency.

Mutual dependency understands that all families need the state in many ways, including those outlined above. But just as families need the state,

21. See Huntington, *Mutual Dependency*, *supra* note 1, at 1512–15.

22. See *id.*

23. A major exception is for economically stable families with same-sex parents. In a majority of states, same-sex parents do not enjoy the same protections as opposite-sex married parents.

the state also needs families. The state has an interest in the existence of a citizenry capable of participating in a deliberative democracy.²⁴ Families play an important role in this “formative project,” as Linda McClain terms it.²⁵ But some families need social and economic supports to function better and thus be able to undertake the formative project, ensuring as many individuals as possible are able to participate in our democratic society.

Additionally, the state has an interest in families functioning well enough that they produce contributing members of society. Families play a key role here as well, given the overwhelming evidence that chronic poverty poses serious risks to the emotional, cognitive, and physical development of children,²⁶ regardless of whether the family is involved in the child welfare system. If the state provided appropriate social and economic supports, families likely would function better and thus be able to do the important work of raising children.

In these ways, mutual dependency frame acknowledges that all families need the state to some degree and that the state has a keen self-interest in meeting those needs. If we recognize this interdependence, a more accurate and productive understanding of the relationship between families and the state can begin to take root, creating an environment where the state can support families long before the moment of crisis, thus preventing as many cases of child abuse and neglect as possible.

With this frame firmly in place, it is time to return to the theme of this essay—missing parents. The “freedom from” conception of family autonomy fails to account for the complete needs of parents. Although parents do need protection for family integrity and decision making authority, parents also need support from the state, and indeed that support is crucial for protecting family integrity and parental decision-making authority.

The current child welfare system misses parents by assuming that parents can care for their families without state support. When parents fail to do so, the state takes over in a largely punitive, adversarial fashion. In so doing, the child welfare system is missing an important opportunity to prevent child abuse and neglect.

By working closely and collaboratively with parents, the state could both

24. See *Prince v. Massachusetts*, 321 U.S. 158, 168 (1944) (“A democratic society rests, for its continuance, upon the healthy, well-rounded growth of young people into full maturity as citizens, with all that implies.”).

25. See LINDA C. MCCLAIN, *THE PLACE OF FAMILIES: FOSTERING CAPACITY, EQUALITY, AND RESPONSIBILITY* 3, 17 (2006) (describing the role of families “in the project of forming persons into capable, responsible, self-governing citizens” and arguing that such “[a] formative project aims at fostering persons’ capacities for democratic . . . self-government”; “Democratic self-government connotes what democratic theorists refer to as ‘deliberative democracy’ and implicates a person’s capacity to deliberate about his or her conception of justice”).

26. See Huntington, *Mutual Dependency*, *supra* note 1, at 1518.

decrease child abuse and neglect and improve child well-being. Crucial to the mutual dependency approach to child welfare is the recognition that the state has a strong interest in the well-being of children, but it is difficult for the state to reach children, especially very young children, without engaging parents. Similarly, parents have a strong interest in the well-being of their children, but they may not be able to realize that interest without support from the state. In the mutual dependency approach, parents are the key actors in a system that truly serves the interests of children.

Parents are essential because very young children are predominantly with their families—not in schools or other public institutions—during the vitally important zero-to-three stage of development. To support very young children, the state could make direct investments in children, for example, through the provision of health care. But the point that is so often missed is that the state must also invest in children *indirectly* by attending to the needs of parents. To protect these children, the state should support parents, enabling them to care well for their children.

In providing this support, it is essential not to undermine family integrity and parental decision-making authority. For example, mutual dependency would not lower the standard for state intervention through the child welfare system. Rather, mutual dependency is the basis for an argument in favor of additional support of families, for example, through visiting nurse and early childhood education programs. Through less intrusive early intervention, the state would help obviate the need for later, more adversarial and far-reaching intervention.

Of course a family could always refuse the support, and the state could not necessarily require a family to, for example, receive a visiting nurse into the home. But by allowing an element of volition (and therefore not, say, condition the receipt of some other needed benefit, such as Medicaid, on the visit), the state has a better chance of establishing a supportive, non-adversarial relationship with a parent. Early support through voluntary programs helps create a fundamentally different relationship between parents and the state.²⁷

This kind of support would help ensure the state does not supplant parental decision-making. Although not easy, it is possible to protect both the interest of parents in making decisions and the interest of the state in ensuring its support is used for the stated purpose.²⁸

27. This would help avoid the tension in the current child welfare system, with the child protective agencies acting both as investigators and sources of much-needed material support. See Dorothy E. Roberts, *Child Welfare's Paradox*, 49 WM. & MARY L. REV. 881, 886–88 (2007) (describing this “paradox”).

28. See Huntington, *Mutual Dependency*, *supra* note 1, at 1524–31 (discussing this balance).

In sum, the state can *react* to child abuse and neglect without addressing the needs of parents. Indeed, this is a fairly accurate description of our current approach. But to *prevent* child abuse and neglect, the state must engage with parents. The proposed mutual dependency model of family-state relations would go a long way toward recognizing the key role parents play in the well-being of children and the well-being of society.

III. Parents as Partners in Problem-Solving

Although it is not possible to prevent all instances of child abuse and neglect, it is possible to respond differently to the majority of cases in the system. There is a widespread misconception that the state intervenes in a family only when a parent severely abuses or neglects a child. In reality, only ten percent of all cases in the child welfare system warrant criminal charges.²⁹ By contrast, approximately fifty percent of all cases stem from poverty-related neglect, which typically involves substance abuse, inadequate housing, or inappropriate child-care arrangements.³⁰

Without minimizing the real problems that flow from such issues, the question is how the state will address these issues. Federal law requires the state to make reasonable efforts to reunite a family in most circumstances,³¹ therefore, the challenge is to make those efforts both meaningful and effective. Unlike most commentators, who favor an emphasis on parents' rights or children's rights,³² I have argued that a myopic focus on rights risks obscuring the larger issues affecting families in the child welfare system, in turn doing a considerable disservice to both parents and children.

The current rights-based model of child welfare is both practically and conceptually flawed. As implemented, the rights-based model of child welfare fails to protect against racially and politically driven decision-

29. See JANE WALDFOGEL, *THE FUTURE OF CHILD PROTECTION: HOW TO BREAK THE CYCLE OF ABUSE AND NEGLECT* 124–25 (1998).

30. See *id.* at 125; Huntington, *Rights Myopia*, *supra* note 1, at 666–67; see also WALDFOGEL, *supra* note 29, at 125 (noting that the remaining forty percent of cases fall somewhere in between, involving abuse or neglect that is not considered severe and does not require intervention by the criminal justice system but still rises above the level of poverty-related neglect). If the mutual dependency approach to child welfare is adopted, and thus many cases of child abuse and neglect are prevented, it may well be that the poverty-related category of cases substantially decreases. In such a fortuitous circumstance, the problem-solving model of child welfare described in this Part would be less relevant.

31. See 42 U.S.C. §§ 671(a)(15)(B), 672(a)(1). There are some exceptions. See *id.* § 671(a)(15)(D)(i)–(iii) (providing for the immediate removal of a child if the parent has subjected the child to aggravating circumstances, including abandonment, torture, chronic abuse, and sexual abuse; the parent has murdered another child; or the parent's rights have been involuntarily terminated with respect to another child).

32. See Huntington, *Rights Myopia*, *supra* note 1, at 643–52.

making, has not led to effective procedural safeguards and reliable court adjudications, and comes at a high cost to the well-being of children.³³

The rights-based model is flawed conceptually because, like the system's orientation to prevention, it is based on the "freedom from" conception of autonomy. However, most parents in the child welfare system need tangible assistance rather than a simplistic notion of autonomy.³⁴ In this way, rights obscure the role of poverty in child abuse and particularly child neglect. Additionally, rights create a win/lose mentality that fuels the adversarial process and helps create an antagonistic relationship between parents and the state. This mindset is antithetical to the collaboration needed between parents and the state to address the difficult issues facing families.³⁵

In lieu of a rights-based model of child welfare, I have proposed a problem-solving model.³⁶ The problem-solving model would acknowledge a parent's need for assistance and would foster collaboration between the state and families. The basic interests underlying rights—that the state should not remove a child absent a showing of parental unfitness, and that children should be safe in their homes—are retained, but these interests are protected by focusing on the issues underlying the abuse and neglect.

In the problem-solving model, the first step is to differentiate among cases. The problem-solving model is particularly apt for the fifty percent of cases that fall into the category of poverty-related neglect. The state could focus its limited investigative and adjudicative resources on the remaining cases, and in particular on the ten percent of egregious cases. This filtering would lead to a better allocation of the limited resources in the child welfare system.

Turning to the poverty-related neglect cases, the goal of the problem-solving model is to meet the needs of the child by, at least in part, supporting the parents. The model does not assume a conflict between parents' rights and children's rights. Instead, the model widens the lens to determine who has a role in creating the problem and who can help resolve it. In this way, the model moderates one of the conceptual shortcomings of rights—it does not generate an adversarial process and antagonistic relationships. To address the concern that the rights-based model privileges autonomy while undervaluing assistance, thus failing to account for the

33. *See id.* at 656–63.

34. This is not an argument that the parents' rights doctrine should be abrogated. Rather, the point is that parents in the child welfare system need social and economic supports from the state so that they can enjoy the same autonomy in decision making afforded more economically stable parents.

35. *See* Huntington, *Rights Myopia*, *supra* note 1, at 663–72.

36. *See id.* at 672–95.

important role poverty plays in child abuse and neglect cases, the problem-solving model assumes that with adequate support, parents likely will be able to care for their children.

The assistive approach of the problem-solving model is more protective of parents than the rights-based model. Offering meaningful assistance to parents, such as job training, drug treatment, or subsidized housing, does far more to vindicate the parental rights recognized by the Supreme Court than a five-minute court hearing with overwhelmed counsel that comes after children have been removed from the home.

This recognition of the need to assist parents better acknowledges the role of poverty and creates a more accurate framework for the issues facing families in the child welfare system. Changing the framework could help reorient society's views of abuse and neglect away from the idea that abuse and neglect are products of parental pathology. Instead, a new understanding would be based upon social responsibility, in which a larger group—both the immediate community and the state—claims responsibility for the broader circumstances that led to the abuse or neglect.

A number of processes could satisfy the problem-solving model, although one process in particular—family group conferencing—has proven particularly effective.³⁷ A form of restorative justice, family group conferencing is a legal process for resolving child welfare cases without relying on a family court judge as the decision maker. After a report of child abuse or neglect has been substantiated, the state convenes a conference with immediate and extended family members, and other important people in the child's life, such as teachers or religious leaders, to decide how to protect the child and support the parents. Professionals representing the state organize the meeting and share information, but only the family and community members devise the plan for protecting the child and addressing the issues facing the parents that led to the abuse and neglect. The participants of the family group conference and the state then work together to provide support to the family and also to ensure the child remains safe.

There are five animating principles in family group conferencing: First, children are raised best in their own families. Second, families have the primary responsibility for caring for their children, and these families should be supported, protected, and respected. Third, families are able to make reliable, safe decisions for their children, and families have strengths and are capable of changing the problems in their lives. Fourth, families are their own experts with knowledge and insight into which

37. For a lengthier description of family group conferencing and the initial research on its effectiveness, *see id.* at 673–87.

solutions will work best for them. Finally, to achieve family empowerment, families must have the freedom to make their own decisions and choices.³⁸

Although there are a number of variants to the practice of family group conferencing, four hallmarks stand out (and reflect the principles set forth above). First, the process is intended to find and build on a family's strengths, rather than place blame.³⁹ One method for achieving this is to focus on the problem, rather than the person, and to concentrate on healing.⁴⁰ Although the current system is supposed to preserve families, in practice social workers often do not look for the strengths in a family and instead focus on the dysfunctional elements. Thus, family group conferencing facilitates a strengths-based practice because it requires the family and community to look within to find solutions.⁴² Second, the process respects and values important cultural practices of the relevant community.⁴³ Third, the process involves the extended family and community—those individuals with information to share, individuals who love the child, and individuals with a stake in the outcome are all included in the conference.⁴⁴ Finally, the process views the community as a resource for the family.⁴⁵

By focusing on underlying problems, family group conferencing both addresses the root causes of abuse and neglect and fosters collaboration

38. Donald N. Duquette, *Non-adversarial Case Resolution*, in *CHILD WELFARE LAW AND PRACTICE: REPRESENTING CHILDREN, PARENTS, AND STATE AGENCIES IN ABUSE, NEGLECT, AND DEPENDENCY CASES* 354 (Marvin Ventrell & Donald N. Duquette eds., 2005).

39. See Linda Richardson, *Family Group Decision Making: Transforming the Child Welfare System by Empowering Families and Communities*, in AM. HUMANE ASS'N, *FAMILY GROUP DECISION MAKING ROUNDTABLE PROCEEDINGS* 39–40 (1999).

40. See Kay Pranis, *Conferencing and the Community*, in *FAMILY GROUP CONFERENCING: NEW DIRECTIONS IN COMMUNITY-CENTERED CHILD AND FAMILY PRACTICE* 42–44 (Gale Burford & Joe Hudson eds., 2000).

41. See, e.g., BAZELON CTR. FOR MENTAL HEALTH LAW, *MAKING CHILD WELFARE WORK: HOW THE R.C. LAWSUIT FORGED NEW PARTNERSHIPS TO PROTECT CHILDREN AND SUSTAIN FAMILIES* 5 (1998) (describing class action lawsuit in Alabama brought by biological parents and challenging that state's child welfare practices because the state did not do enough to help families); see *id.* at 51 (describing the consent decree in case, which required the state to provide services based on the strengths of children and parents). See also *id.* (noting that one of the major barriers to this change was overcoming the views of the social workers, who were used to perceiving deficits, not strengths, in biological families).

42. See Robert Victor Wolf, *Promoting Permanency: Family Group Conferencing at the Manhattan Family Treatment Court*, 4 J. CENTER FOR FAMILIES, CHILD. & CTS. 133, 134 (2003).

43. See Rupert Ross, *Searching for the Roots of Conferencing*, in *FAMILY GROUP CONFERENCING*, *supra* note 40, at 5.

44. See Susan M. Chandler & Marilou Giovannucci, *Family Group Conferences: Transforming Traditional Child Welfare and Policy Practice*, 42 FAM. CT. REV. 216, 219 (2004).

45. See *id.*

between parents and the state. It is also a legal framework that draws on the "family systems" theory of treatment, which posits that the most effective intervention for a child occurs when the whole family is treated.⁴⁶

In short, children need a process that recognizes the complexity of family problems, the importance of original families, and the value of assistance in addressing underlying social and economic issues, while simultaneously ensuring the safety of the children. Family group conferencing, as a manifestation of the problem-solving model of child welfare, is one such process.

Returning again to the theme of missing parents, the problem-solving model is precisely the kind of attention parents in the child welfare system need, at least in the fifty percent of poverty-related neglect cases. Rather than the adversarial approach of the rights-based model of child welfare, with its ineffective attempts to address the issues underlying abuse and neglect, the problem-solving model places parents squarely in the center of the state's approach to child well-being.

The problem-solving model is built upon the understanding that helping parents will typically translate into helping children, so long as the assistance provided is meaningful and effective. A family group conference is an excellent means for doing so because it assumes that parents, and those around them, are experts in their own lives and thus are well-positioned to devise a solution for the problems facing a family. As one advocate of family group conferencing has explained:

[t]he relationships between all the parties, and out of which the problems have arisen, are so numerous and ever-changing, and so interconnected that it is folly to believe that *outsiders to those relationships* could ever "know" them in a way that permits either accurate prediction or predictable intervention. The only ones who might have a chance at that are the parties themselves. For that reason it is *they* who must pool their perceptions of the relationships, of the problems arising within them, then search together for ways in which each of them, according to their own skills and inclinations, can make different and better contributions.⁴⁷

In the problem-solving model, the parent is not a passive recipient of state aid, nor is she a "bad" parent who must prove to the state that she has rehabilitated herself. Instead, the parent, surely a part of the problem, is also an essential part of the solution. This approach to child welfare—

46. Susan Brooks has described the five attributes of a legal framework that would reflect family systems theory: (1) identifying the members of the family system, (2) considering the mutual interests of all the members, (3) maintaining family ties and continuity, (4) emphasizing the present and future, rather than past misdeeds, and (5) focusing on a family's strengths. See Susan L. Brooks, *A Family Systems Paradigm for Legal Decision Making Affecting Child Custody*, 6 CORNELL J.L. & PUB. POL'Y 1, 14-20 (1996).

47. Ross, *supra* note 43, at 13.

focusing on problems, viewing parents as key actors and agents of change, and understanding that the state and community have an important role to play in supporting a family—would lead to far better outcomes for everyone involved.

IV. Conclusion

To ensure the well-being of children, the child welfare system needs to focus on parents in a different manner than it currently does. The state should engage with parents long before a crisis by providing the kind of support that will best prevent child abuse and neglect. In this effort, the state largely cannot help children without working through parents, and thus must view parents as essential partners. For cases of abuse and neglect that do occur, and particularly for the fifty percent of cases that involve poverty-related neglect, the state will better protect children by engaging with parents. By viewing parents as resources and necessary collaborators, the state can work with a family to address the issues underlying the abuse and neglect.

A re-imagined child welfare system would be framed by an understanding of the mutual dependency of families. This would help create the legal and cultural environment where a prevention-oriented approach to child well-being could take root. For cases of child abuse and neglect that do occur, the re-imagined system would work to solve the problems underlying the abuse. In both endeavors, parents are essential partners and are missing no longer.