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INTRODUCTION: EARLY CHILDHOOD SYMPOSIUM

EARLY CHILDHOOD MATTERS

Nancy E. Dowd and Teresa Drake***

A core value of American law, enshrined in our Constitution, is equality.¹ Families and children are similarly valued, as the foundation for our democracy.² Families are the critical ecology of children’s development, and we pride ourselves on family diversity.³ Children are our future; their well-being and evolution toward adulthood is the basis of social welfare for all. Yet the reality of childhood for many American children is that they are differentiated from their peers and lack developmental support. These hierarchies begin to emerge early, long before children enter school and even preschool.⁴ Once children enter school, their differences are often exacerbated—gaps in achievement, incidents of discipline, rates of suspension and exclusion, even funneling from school to juvenile justice in the school to prison pipeline, exacerbate the differences among children that present themselves at the schoolhouse door.⁵

Early childhood is a critical time in development when equality can be sustained, or inequality can take root. As a developmental period, it is marked by rapid neurological development, and thus the period from birth to three is a foundation for all future development.⁶ Development is critically impacted by the ecology of the child.⁷ Family is most important, but each child’s family functions within neighborhood, community, and interlocking layers of policies that impact on the developmental inputs of the child. Other adults that strongly influence each child’s development outside of the family are healthcare professionals, caregivers or child care providers, teachers, and other public authorities, such as police officers

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1. U.S. CONST. amend. XIV.

2. *See, e.g., Troxel v. Granville*, 530 U.S. 57 (2000).

3. *See Moore v. City of East Cleveland*, 431 U.S. 494, 494 (1977).

4. NANCY E. DOWD, *REIMAGINING EQUALITY: A NEW DEAL FOR CHILDREN OF COLOR* 9–53 (NYU Press 2018).

5. *Id.*

6. Nancy E. Dowd, *Straight Out of Compton: Developmental Equality and a Critique of the Compton School Litigation*, 45 CAP. U. L. REV. 199, 229–37 (2017); *Five Numbers to Remember About Early Childhood Development*, CTR. ON DEVELOPING CHILD HARV. U., <http://46y5eh11fhgw3ve3ytpwxt9r.wpengine.netdnacdn.com/wp-content/uploads/2015/06/Five-Numbers-to-Remember-About-EarlyChildhood-Development.pdf> [https://perma.cc/4MQ8-3BTD] [hereinafter *Five Numbers to Remember*].

7. *Five Numbers to Remember*, *supra* note 6.

and government officials, and private individuals, such as neighbors and shopkeepers. This description mirrors the ecological model of Urie Bronfenbrenner, which reminds us to pay attention to the institutions and policies that affect families.⁸

In early childhood, children's critical need is developmental support through nurturing and responsive interactions in everyday activities and routines. Differences commonly emerge linked to the differences in children's immediate ecologies. As the contributions to this symposium underscore, one of the major impacts on ecologies is income inequality, and in particular, poverty. The high rate of the childhood poverty in the U.S., roughly twenty percent, translates into a developmental challenge of enormous consequence.⁹ While it is not the only factor contributing to early inequalities among children, it is certainly a major one.

In addition, some children are subject to various traumas in their early years that create additional developmental hurdles. The Adverse Childhood Experiences (ACEs) framework identifies traumas that can have lifelong implications when they occur from birth to age 18.¹⁰ Moreover, other traumas, not included in the ACEs framework, can have both short and long term implications for children. The daily microaggressions of racism, for example, impact early childhood and the full arc of development. This does not mean that some traumas may not be mitigated with resilience training, but unaddressed, they have significant implications. Some traumas are clearly linked to state action. Two examples are the toxic water supply in Flint, Michigan, which arose due to government policy and decision making;¹¹ and the separation of immigrant children from their parents at the border, or the internment of those children with their families in prison-like camps.¹²

8. URIE BRONFENBRENNER, *THE ECOLOGY OF HUMAN DEVELOPMENT: EXPERIMENTS BY NATURE AND DESIGN* 3–19 (1979).

9. The National Center for Children in Poverty puts the child poverty rate at twenty-one percent, 15 million children, and notes the metric for measuring poverty underestimates. See *Child Poverty*, NAT'L CTR. FOR CHILD. POVERTY, <http://www.nccp.org/topics/childpoverty.html> [https://perma.cc/Z6K8-RJX2].

10. *About the CDC-Kaiser ACE Study*, CTRS. FOR DISEASE CONTROL & PREVENTION (June 14, 2016), <https://www.cdc.gov/violenceprevention/childabuseandneglect/acestudy/about.html> [https://perma.cc/W7EU-2ZS7].

11. Ryan Felton, *'It's Affected Everybody': Flint Children on the Frontline of the Water Crisis*, GUARDIAN (Mar. 24, 2016, 3:01 PM), <https://www.theguardian.com/usnews/2016/mar/24/flint-children-water-crisis-lack-of-data-lead> [https://perma.cc/B9JVMQCR].

12. Dara Lind, *The Trump Administration's Separation of Families at the Border, Explained*, VOX (Aug. 14, 2018), <https://www.vox.com/2018/6/11/17443198/children-immigrant-families-separated-parents> [https://perma.cc/E42H-S695]; Denise-Marie Ordway, *Family Separation: How Does it Affect Children?*, JOURNALIST'S RESOURCE (June 27, 2018), <https://journalistsresource.org/studies/society/public-health/family-separation-child-health-research> [https://perma.cc/NTC9-ZLAT].

Ecological and trauma differences raise critical policy issues: what policies or structures contribute to the creation or exacerbation of these differences, and what policies or structures are needed to provide affirmative developmental support for children? In addition, what strategies are most effective, and particularly will be attentive to family diversity? How can policies or structures be responsive to family needs rather than intrusive or even worse, subordinating?

Differences may also exist among children based not on ecological or traumatic factors, but rather, due to simply the presence of developmental issues at birth, or which emerge in early childhood.¹³ Children with disabilities require equity, a fair ability to develop with accommodation to their specific needs, as well as respect and dignity.¹⁴ The disabilities framework provides some of the strongest models for fairness for all children, and possible pathways to equality for every child.

This symposium is an effort to break ground on these critical issues. Early childhood has been an area largely neglected by law. Here, we start the conversation about the role of law, as well as the intersecting roles of other disciplines, in developing new policies, whether designed to remove barriers and stumbling blocks, or to embrace a level of support and insure its provision to every child. The contributions by legal scholars as well as medical, public health, and early education scholars, demonstrate the broad questions that must be addressed—they provide a starting point that we hope others will follow.

The symposium arose out of a workshop on early childhood, *Early Childhood: Critical Legal Issues and Strategies*, held April 5–6, 2018, at the University of Florida Levin College of Law, co-sponsored by the Anita Zucker Center for Excellence in Early Childhood Studies.¹⁵ The workshop followed a 2017 national summit on early childhood organized by the UF colleges of education, medicine, public health and law, under the leadership of Dr. Patricia Snyder and Dr. Maureen Conroy, the director and co-director of the Anita Zucker Center.¹⁶ The national summit fostered cross-disciplinary dialogue to identify issues and policy directions in the critical area of early childhood. Building on that model, the College of Law workshop was designed to allow legal scholars who participated in the summit and several others to refocus on the particular role of law as a discipline in this policy area, while sustaining interdisciplinary dialogue by inviting colleagues from other disciplines to challenge, question and inform the legal scholars to delve more deeply

13. Susan Nittrouer, *infra* note 37.

14. Patricia Snyder and Maureen Conroy, *infra* note 27.

15. UF ANITA ZUCKER CTR. FOR EXCELLENCE IN EARLY CHILDHOOD STUD., <https://ceecs.education.ufl.edu/> (last visited Feb. 18, 2019).

16. *Early Childhood National Summit*, UF ANITA ZUCKER CTR. FOR EXCELLENCE IN EARLY CHILDHOOD STUD., <https://ceecs.education.ufl.edu/national-summit/> (last visited Feb. 18, 2019).

into the specific contribution of law.

Professor Margaret Beale Spencer, the Marshall Field IV Professor of Urban Education at the University of Chicago, “set the table” for us; her plenary talk opens this symposium.¹⁷ A leading developmental psychologist who has critiqued mainstream developmental models, Professor Spencer reminds us that children of color, and other children at the bottom of children’s hierarchies, face an unequal and unfair developmental path. Dr. Spencer is the author of the phenomenological variant of ecological systems theory model (PVEST).¹⁸ The model combines Bronfenbrenner’s ecological approach with phenomenological perspective, that is, the study of the development of human consciousness and awareness. Her model like Bronfenbrenner’s puts the child at the center of the ecology, capturing the impact of the environment on the child and the dynamic interaction of various aspects of the environment with individual aspects of the child. Spencer’s critical modification and the hallmark of her approach is to take account of the impact of the identities of minority children, especially race, gender and class, in subordinating their development due to racial identity in particular. Normal developmental stages are exacerbated by identity. That pattern exists not because of children’s identity, but because of the way they are seen, and therefore treated, by people and institutions that they interact with in childhood. They experience unique challenges and roadblocks. As Spencer says, comparing risk and resilience, “Risk [is due to]...an exacerbation of normative challenges and competencies due to larger sociopolitical processes...and/or lack of resources; [while] resilience is successful coping with these exacerbated challenges.”¹⁹ Dr. Spencer reminded us that the reasons why early childhood is a time of hierarchies rather than a time of equal development is complicated. The reasons are systemic and cultural; they require complex solutions. And yet, it’s simple: the goal must be to achieve the equality of all children, implementing the radical shift demanded by *Brown*.²⁰

The challenge, inspiration and complication of Dr. Spencer’s plenary

17. Margaret Beale Spencer, *Developmental and Intersectional Insights About Diverse Children’s Identity*, 71(1) FLA. L. REV. F. 12 (2019).

18. See Margaret Beale Spencer et al., *Understanding Hypermasculinity in Context: A Theory-Driven Analysis of Urban Adolescent Males’ Coping Responses*, 1 RES. HUM. DEV. 229, 231 (2004) [hereinafter *Understanding Hypermasculinity*]; Margaret Beale Spencer et al., *A Theoretical and Empirical Examination of Identity as Coping: Linking Coping Resources to the Self Processes of African American Youth*, 7 APPLIED DEV. SCI. 181, 182 (2003); see also Margaret Beale Spencer et al., *African American Adolescents: Adaptational Processes and Socioeconomic Diversity in Behavioural Outcomes*, 11 J. ADOLESCENCE 117, 134 (1988); Margaret Beale Spencer & Carol Markstrom-Adams, *Identity Processes Among Racial and Ethnic Minority Children in America*, 61 CHILD DEV. 290, 299 (1990).

19. *Understanding Hypermasculinity*, supra note 18, at 230.

20. *Brown v. Bd. of Educ.*, 347 U.S. 483 (1954).

are evident in the essays that follow. The symposium provides a rich set of suggestions, challenges, and policies to consider with the goal of strong developmental support for all children. Most fundamentally, all concur about the importance of early childhood for children. Secondly, all concur on the significance of policy in early childhood to children's equality. This is grounded on evidence of inequality among children under existing policy or due to the lack of policy that exacerbates differences in circumstances at birth and before birth, what one author calls "the ovarian lottery."²¹

What this suggests is the broad range of perspectives, policies, strategies, and systems involved, and the importance to hold all of this complex interconnection in view when thinking through the role of law in early childhood policy. No doubt we have left things out. The effort here is not to be comprehensive but rather to stimulate broad debate and concrete policy options richly conceived with interdisciplinary knowledge that is essential to achieve the goal of children's equality, equity and dignity.

The essays can be organized in terms of several frameworks, and many essays belong in several of these frameworks: *evaluating the macrosystem* of ideas, concepts, and principles that govern early childhood policy; focusing on *vulnerable populations of children* as a reminder of differences among children and the current hierarchies among children; and *critical analysis of systems* both in isolation and in interaction with each other, including health care, childcare, preschool education as well as elementary education, housing, and foster care. Many of the essays consider specific solutions, such as community schools, medical-legal partnerships, proactive evaluation and support of literacy/language development, and comprehensive trauma assessment and resiliency support. These solutions suggest the importance of strategically thinking within existing frameworks in addition to creating new ones, and consideration of whether solutions are best conceived from the bottom up or the top down, or some combination of approaches.

The following brief overview provides perspective on the rich contributions to this symposium.

I. EVALUATING THE MACROSYSTEM

The focus of these contributions is an exploration of the overarching ideas that either facilitate or undermine the development of systems of support for early childhood. Barbara Woodhouse identifies the core goal of early childhood as ensuring to each child a fair start: "An equal opportunity to develop their minds and bodies and to realize their own potential should be the birth right of all children, especially in the club of

21. Nittrouer, *infra* note 37.

affluent developed nations.”²² Comparative law is a particularly rich resource to give content to the notion of fairness, and to provide models of comprehensive early childhood support, as well as data revealing the value of such support. Woodhouse identifies the OECD countries as our best comparators. Just as importantly, she points to the biggest factor that stands in the way of the U.S. following these models: our fundamental principle that children are a private responsibility, or what she calls “extreme individualism.” She argues that perhaps a way to overcome this foundational perspective is the idea of national pride because U.S. children are so far behind.

Laura Rosenbury identifies the interaction of parental rights and family privacy doctrines as problematic in a different way, not only because they subsume children under their parents and families, but also because those doctrines conceptualize children almost exclusively through the lens of dependency.²³ Building upon earlier work reconceptualizing child law,²⁴ she argues that it is essential to frame children as having broader interests. “Instead of exclusively focusing on children’s dependency or future autonomy, law may focus on young children’s unique strengths and capacities as well as the special vulnerabilities that distinguish human experience in this early stage of life. In other words, law may focus on children’s lives in the here and now, considering young children’s broader interests.”²⁵ In recognition of those additional interests, she explores in early childhood children’s relational ties, shared public/private responsibility for children, and recognition of children’s affirmative rights.

Maxine Eichner suggests another overarching perspective on macrosystemic change, comparing what she calls free market approaches to pro-family policy approaches to providing for children’s needs, with a particular focus on early childhood care.²⁶ Free market approaches prioritize private responsibility for care, which pro-family policies see a role for government to assist and support families. Eichner argues that during the first year of a child’s life, they are best served by parental care at home. For American parents, this is difficult or impossible for most parents, because they do not have sufficient income to permit one parent to stay out of the labor market. She compares this approach to that of Finland, where paid parental leave supports the ability of parents to be at

22. Barbara Bennett Woodhouse, *Advocating for Every Child’s Right to a Fair Start: The Key Roles of Comparative and International Law*, 71(1) FLA. L. REV. F. 26 (2019).

23. Laura A. Rosenbury, *Toward a New Law of Early Childhood?*, 71(1) FLA. L. REV. F. 37 (2019).

24. See Anne E. Dailey and Laura A. Rosenbury, *The New Law of the Child*, 127 YALE L.J. 1448 (2018).

25. Rosenbury, *supra* note 23, at 39.

26. Maxine Eichner, *The Free-Market Family and Children’s Caretaking*, 71(1) FLA. L. REV. F. 45 (2019).

home, and is complemented as well by high quality care and preschool that is available to all.

Patricia Snyder and Maureen Conroy suggest a set of core principles that are necessary for a well-functioning early childhood structure.²⁷ These principles would be part of the structure of a range of systems, but they function at the level of the macrosystem. Although their essay is geared to principles essential to children with disabilities, the principles are applicable to all children. They include: (1) inclusion; (2) equality and equity; (3) family engagement and trusting family-professional partnerships; (4) family capacity building; (5) cultural competence and responsiveness; (6) accountability; and (7) dignity. They carefully define each of these core concepts, and emphasize that consensus is crucial to the ability to build systems that not only link existing statutes and programs, but to build new ones. This suggests both intradisciplinary and interdisciplinary conversation is critical.

Clare Huntington reminds us that within law, particularly family law, early childhood has been largely invisible, mirroring the piecemeal, inadequate structures to support children and families in early childhood.²⁸ To remedy this, she argues for a recasting of family law to include a subdiscipline that focuses on early childhood, much like the evolution of similar subfields in juvenile justice and intimate partner violence. She also calls for law and lawyers to join the disciplines that are active nationally to provide expertise and input on early childhood policy. The interdisciplinary workshop that was the setting from which this symposium arose, and the prior interdisciplinary national summit that preceded it, mirror that model.

II. VULNERABLE POPULATIONS OF CHILDREN

While all children are vulnerable as children, certain groups of children are more vulnerable for various reasons. Children, while born relatively equal, nevertheless quickly can be sorted into hierarchies either because of particular characteristics or differences in their capabilities, and/or due to trauma they have experienced, or because they are sorted out by state systems in ways that make them more vulnerable.²⁹ Thus early childhood does not function on an undifferentiated canvas nor are

27. Patricia Snyder & Maureen Conroy, *Core Concepts in Federal Statutes for Young Children With or At Risk for Disabilities and their Families: Implications for Comprehensive Early Childhood Policies and Systems*, 71(1) FLA. L. REV. F. 61 (2019).

28. Clare Huntington, *A Promising Start for Early Childhood Development and the Law*, 71(1) FLA. L. REV. F. 70 (2019).

29. This relative cognitive equality should not obscure the importance and impact traumas before they are born, such as intimate partner violence directed at the mother that affects the developing child. See Brittany K. Lannert et al., *Relational Trauma in the Context of Intimate Partner Violence*, 38 CHILD ABUSE & NEGLECT, 1966–75 (2014).

children interchangeable.

Nancy Dowd focuses on one aspect of childhood, the frequency with which children experience trauma, as measured by the Adverse Childhood Experiences (ACEs) framework.³⁰ While some trauma is commonplace, multiple trauma, at the level of toxic trauma, undermines the developmental process, and is particularly a point of vulnerability in early childhood. Dowd argues for using this knowledge in a proactive rather than reactive way, to identify structural sources of trauma and the need for structural reform, rather than simply to count ACEs or use them solely reactively, to support resilience for children who have experienced trauma.

Shani King identifies another group of vulnerable children, those who have an incarcerated parent.³¹ Given the importance of family engagement and family environment to children's development, the impact of incarceration has significant implications. King focuses on a subset of those parents, teenagers who are incarcerated in the juvenile justice system who are the fathers of young children. Supporting their relationship with their children sustains early development, as well as solidifying the evolution of the teenage fathers into responsible adult fathers.

Just as juvenile justice intersects with a vulnerable population, so too does the foster care system, a focus of the essay of Dan Hatcher.³² Hatcher identifies some of the key problems faced by foster children, including posttraumatic stress, a lack of education, reduced employment, mental health issues, homelessness, and incarceration. Those problems are exacerbated, Hatcher argues, by the practice of agencies taking the resources of foster care children from them. In particular, children with disabilities and children with deceased parents qualify for benefits, but sometimes they never receive them as the agencies intervene to collect the money. Not only does Hatcher indict the failed system of foster care, but the litany of developmental issues begin in early childhood, and the resource stealing is nothing less than retraumatizing kids in care by the state that put them there.

III. CRITICAL ANALYSIS OF SYSTEMS

Early childhood involves interconnected systems (or the lack thereof). The final set of contributions to the symposium focus on particular systems and children's needs in early childhood. Several of the essays

30. Nancy E. Dowd, *Radical ACEs: Building Resilience and Triggering Structural Change*, 71(1) FLA. L. REV. F. 80 (2019).

31. Shani M. King et al., *The Intersection of Juvenile Justice and Early Childhood: How to Maximize Family Engagement*, 71(1) FLA. L. REV. F. 88 (2019).

32. Daniel L. Hatcher, *Stop Foster Care Agencies From Taking Children's Resources*, 71(1) FLA. L. REV. F. 104 (2019).

focus on the health care system, beginning with the contribution of Scott Rivkees, who reminds us of the importance of the first 1000 days of a child's life, as well as the preceding 280 days on average during pregnancy.³³ "During these biologically complex and vital times, considerable social, medical, economic, and policy support are needed, which if lacking, will be accompanied by unfortunate consequences."³⁴ Rivkees identifies what is needed: nutrition, healthcare, literacy, and prenatal care.

Joanna Grossman reinforces Rivkee's point about prenatal care, and the importance of thinking broadly about the forces operating in this period.³⁵

[W]e need to train our lens to earlier points in time as well in order to understand the inequality, racism, and poverty that cements different life trajectories for children before they even start kindergarten. Even the hospital nursery is not a level playing field. Pre-birth inequalities are not natural or inevitable. Rather, we create and cement policy choices that reduce access to adult healthcare, restrict accessible contraception, impede access to abortion, and deny prenatal care.³⁶

Her argument for focusing on the conditions in which pregnancy occurs is critical to a fair start.

Susan Nittrouer concurs with this call for policies to deal with avoidable harms that impact whether children are born with disabilities, as well as calling for attention to deal with unavoidable genetic disabilities.³⁷ She uses Warren Buffet's idea of an "ovarian lottery": the idea of a random ticket at birth. Her claim is that the lottery is not random; rather, it is fixed, by policies and the lack of policies particularly with respect to socioeconomic factors that translate into the presence or absence of developmental supports. Her particular example is the importance of parental interactions and language, as important developmental ecology for children that is affected by systems including healthcare as well as family support policies. Her call is to end the ovarian lottery to the extent it is rigged by race, gender, and place of birth.

A final contribution on the health care system is the article by Jodi Seigel, Chelsea Dunn, Carolyn Carter, and Rachel Coleman, imagining collaboration between the healthcare system and lawyers for the benefit

33. Scott A. Rivkees, *Protecting the First 1000 Days of Life and the 280 Days Before*, 71(1) FLA. L. REV. F. 113 (2019).

34. *Id.* at 113.

35. Joanna L. Grossman, *The Seeds of Early Childhood*, 71(1) FLA. L. REV. F. 117 (2019).

36. *Id.* at 117.

37. Susan Nittrouer, *Ending the Lottery*, 71(1) FLA. L. REV. F. 132 (2019).

of young families, in the form of a medical-legal partnership.³⁸ This article imagines the healthcare system, especially pediatric visits, as a potential setting to deliver other services to families, based on the interface between health problems and other systems—housing, employment, and health benefits. This article is driven by the framework of the social determinants of health, including health-harming legal needs, that is, health harms that could be solved or mitigated by the use of available legal tools. Rather than expect families to find these tools, the medical legal partnership makes them available where the families are most likely to find them, at their doctor’s office. This article identifies a specific proposal to establish a medical-legal partnership centered on the pediatric asthma clinic at the University of Florida.

Kate Silbaugh takes a broader view of housing, and place-based solutions or approaches to early childhood.³⁹ She focuses on the physical environment, and the potential for collective approaches: community schools, centers, and most ambitious, community housing. Her essay includes fascinating history about intentional communities, and common themes in those communities of collectivizing the daily tasks of childcare, booking and housework, especially laundry, to lessen the burden of women, as this was historically conceptualized as solely women’s work. Silbaugh also notes the impact of housing policies that separate home from work. Her particular strategy described in this essay is community schools, meaning schools becoming a center for families to access services. She also advocates for a reexamination of housing policy especially with respect to affordable housing. Much like Coleman et al., her focus on a network of resources focuses on the places where families already are, rather than requiring them to seek out services elsewhere.

Finally, June Carbone focuses on education, chronicling the history of evolving support for universal pre-kindergarten compared to historical support for public education.⁴⁰ Linked with Eichner’s earlier examination of childcare, and Snyder and Conroy’s principles for children with disabilities in early childhood education, this essay presents an important view on the emergence of early childhood not as a time exclusively of parental care, but as a time for child development as an educational goal. In addition, the connected policies of early childhood require attention to the earliest time frame, lest the inequalities take root that become a challenge at age 3 and 4, exacerbated if early childhood education is not of high quality and geared to equality, equity, and dignity for all children

38. Jodi Seigel, Chelsea Dunn, Carolyn Carter & Rachel Coleman, *Benefits of Pediatric Medical-Legal Partnerships*, 71(1) FLA. L. REV. F. 145 (2019).

39. Katherine Silbaugh, *Environmental Determinism: Functional Egalitarian Spaces Promote Functional Egalitarian Practices*, 71(1) FLA. L. REV. F. 154 (2019).

40. June Carbone, *The Fight to Expand Education—Two Centuries Apart*, 71(1) FLA. L. REV. F. 164 (2019).

and their families.



This symposium is a critical examination of the relationship of law to early childhood, ever mindful of the other disciplines critical to public policy. It is a starting point, and the hope is to generate debate, discussion, and further strategies and policy suggestions. It cannot come too soon, as the clock of early childhood is ticking every day for the children born each day.