

2002

# How Much Does Legal Status Matter? Adoptions by Kin Caregivers

Margaret F. Brinig

*Notre Dame Law School*, [mbrinig@nd.edu](mailto:mbrinig@nd.edu)

Steven L. Nock

Follow this and additional works at: [https://scholarship.law.nd.edu/law\\_faculty\\_scholarship](https://scholarship.law.nd.edu/law_faculty_scholarship)



Part of the [Family Law Commons](#)

---

## Recommended Citation

Margaret F. Brinig & Steven L. Nock, *How Much Does Legal Status Matter? Adoptions by Kin Caregivers*, 36 *Fam. L.Q.* 449 (2002-2003).  
Available at: [https://scholarship.law.nd.edu/law\\_faculty\\_scholarship/486](https://scholarship.law.nd.edu/law_faculty_scholarship/486)

This Article is brought to you for free and open access by the Publications at NDLScholarship. It has been accepted for inclusion in Journal Articles by an authorized administrator of NDLScholarship. For more information, please contact [lawdr@nd.edu](mailto:lawdr@nd.edu).

# How Much Does Legal Status Matter? Adoptions by Kin Caregivers

---

MARGARET F. BRINIG\* AND STEVEN L. NOCK\*\*

Virtually all the legislation dealing with families that include children begins with a “best interests of the child” premise.<sup>1</sup> Most, if not all, of the litigated results at least seem to maximize the outcomes for adults.<sup>2</sup> This discrepancy should not be surprising, for both substantive and procedural reasons.

\* Margaret F. Brinig is the Edward A. Howry Distinguished Professor at the University of Iowa. The author expresses her gratitude for assistance with this article to her research assistant Nick Keppel and Professors Christine Jolls and Barbara Woodhouse. In addition, she acknowledges contributions from workshops at the University of Florida, the Economics Department of Washington University in St. Louis, the International Society for Family Law, and the American Law and Economics Association.

\*\* Steven L. Nock is Professor of Sociology, University of Virginia.

1. All state statutes, regardless of what they require substantively, contain language that sets the child’s “best interests” as most important. AMERICAN LAW INSTITUTE, PRINCIPLES OF FAMILY DISSOLUTION § 2.02 (Tent. Draft No. 3, Part I, March 20, 1998), unsurprisingly, states that the “primary objective of Chapter 2 is to serve the child’s best interests.” The differences, then, lie in the procedural and substantive ways that “best interests” are reached. Of course, dissolution of parental relationships rarely advances the interests of the child. PAUL A. AMATO & ALAN BOOTH, A GENERATION AT RISK: GROWING UP IN AN ERA OF FAMILY UPHEAVAL (1997) (suggesting that children are only better off if their parents had a highly conflictive marriage before divorce, a case that occurs only about 30% of the time). Some writers have suggested a “least detrimental alternative” standard as being closer to matching what actually goes on. JOSEPH GOLDSTEIN, ET AL., BEYOND THE BEST INTERESTS OF THE CHILD 52 (1973).

2. *May v. Anderson*, 345 U.S. 528 (1953), refers to custody as a personal right no less important than property rights, which might be thought of as promoting a “parent first” attitude. See Mary Ann Glendon, *Family Law Reform in the 1980s*, 44 LA. L. REV. 1553, 1559 (1984); Judith T. Younger, *Marriage, Divorce, and the Family: A Cautionary Tale*, 21 HOFSTRA L. REV. 1367, 1380 (1993); and Amitai Etzioni, *Give Couples Tools To Make Marriages Last*, USA TODAY, Nov. 18, 1996, at 25A for financial interests. For a debate about the wisdom of keeping troubled marriages together, see Elizabeth S. Scott, *Rational Decisionmaking in Marriage and Divorce*, 76 VA. L. REV. 9 (1990); Linda J. Lacey, *Mandatory Marriage “For the Sake of the Children”: A Feminist Reply to Elizabeth Scott*, 66 TUL. L. REV. 1435, 1440-42 (1990); see also Katherine T. Spaht, *For the Sake of the Children: Recapturing the Meaning of Marriage*, 73 NOTRE DAME L. REV. 1547 (1998).

The substantive reason, as even the Supreme Court has noted, is that most of the time, what is good for parents will also be good for children.<sup>3</sup> Moreover, having parents who possess many “rights” allow them to better exercise their parental responsibilities.<sup>4</sup> From a procedural perspective, adults are usually the named parties in suits involving children.<sup>5</sup> Children are not themselves legally capable of bringing most actions;<sup>6</sup> lawyers and guardians are expensive<sup>7</sup> and therefore beyond the means of nearly all children; children may not know what “rights” they do have;<sup>8</sup> and all these “mouthpieces” replicate the child’s voice, as in a “telephone game,” imperfectly.<sup>9</sup> Because adults usually bring lawsuits, it is not surprising that the adult perspective is foremost.<sup>10</sup>

---

In *Michael H. v. Gerald D.*, 491 U.S. 110, 127 (1989), the plurality’s holding that the birth father had no protectable liberty interest in his relationship with the child was limited to the liberty interest as the “substantive parental rights [of] the natural father of a child conceived within, and born into, an extant marital union that wishes to embrace the child.”

3. *Troxel v. Granville*, 530 U.S. 57 (2000); *Michael H. v. Gerald D.*, 491 U.S. 110 (1989); *Santosky v. Kramer*, 455 U.S. 745 (1982); *Parham v. J.R.*, 442 U.S. 584 (1979); Gary Crippen, *Stumbling Beyond the Best Interests of the Child: Reexamining Child Custody Standard-Setting in the Wake of Minnesota’s Four Year Experiment with the Primary Caretaker Preference*, 75 MINN. L. REV. 427 (1990).

4. Margaret F. Brinig, *Troxel and the Limits of Community*, 32 RUTGERS L.J. 733, 778 (2001); Elizabeth S. Scott & Robert E. Scott, *Parents as Fiduciaries*, 81 VA. L. REV. 2401 (1995).

5. See, e.g., *Burnette v. Wahl*, 588 P.2d 1105, 1107 (Ore. 1978) (“Plaintiffs are five minor children aged two to eight who, through their guardian, are bringing actions against their mothers for emotional and psychological injury caused by failure of defendant-mothers to perform their parental duties to plaintiffs.”).

6. See, e.g., *Gonzales v. Gonzalez ex rel. Reno*, 86 F. Supp.2d 1167 (S.D. Fla. 2000) (The Elian Gonzales case):

Similarly, in Florida, children do not have capacity to sue at age six. Under Florida law, a “minor” is any person under age eighteen. See FLA. STAT. ANN. § 1.01(13) (West 1999). As a general rule, minors are bound by a statutory “disability of nonage,” see, e.g., FLA. STAT. ANN. § 743.07(1) (West 2000), which curtails certain rights. See 25 FL. JUR.2d FAM. L. § 254 (1992). One result of this disability is incapacity to sue.

See also *Kingsley v. Kingsley*, 623 So. 2d 780 (Fla. App. 1993) (holding that lower court erroneously allowed eleven year old child to bring an action terminating his parents’ rights).

7. For a comparison of costs in mediated and litigated child custody disputes, see Jessica A. Pearson, *Family Mediation*, in NATIONAL SYMPOSIUM ON COURT-CONNECTED DISPUTE RESOLUTION RESEARCH: A REPORT ON CURRENT RESEARCH FINDINGS—IMPLICATIONS FOR COURTS AND FUTURE RESEARCH NEEDS 75 (Susan Keilitz ed., 1993).

8. See, e.g., Barbara Bennett Woodhouse, *Who Owns the Child? Meyers and Pierce and The Child as Property*, 33 WM. & MARY L. REV. 995 (1992); Carol Sanger & Eleanor Willemssen, *Minor Changes: Emancipating Children in Modern Times*, 25 U. MICH. J.L. REFORM 239 (1992); Wendy A. Fitzgerald, *Maturity, Difference and Mystery: Children’s Perspectives and the Law*, 36 ARIZ. L. REV. 11, 40 (1994); MARTHA MINOW, *MAKING ALL THE DIFFERENCE: INCLUSION, EXCLUSION, AND AMERICAN LAW* (1990).

9. Sometimes children cannot themselves speak without causing damage. Michael Wald, *State Intervention on Behalf of “Neglected” Children: A Search for Realistic Standards*, 27 STAN. L. REV. 985, 1025 (1975) (“any intervention, insofar as it requires a child to tell his or her

story to the police, welfare workers, and court, may cause more trauma than parental behavior.”).

Guardians or attorneys for the child may sometimes face nearly insuperable conflicts. *See, e.g., In re Lindsey C.*, 473 S.E.2d 110, 130 (W. Va. 1995). Part I B-2 of the STANDARDS OF PRACTICE FOR LAWYERS WHO REPRESENT CHILDREN IN ABUSE AND NEGLECT CASES, adopted by the American Bar Association in February 1996, provides guidance on this issue and provides as follows:

Conflict Situations.

(1) If a lawyer appointed as guardian ad litem determines that there is a conflict caused by performing both roles of guardian ad litem and child's attorney, the lawyer should continue to perform as child's attorney and withdraw as guardian ad litem. The lawyer should request appointment of a guardian ad litem without revealing the basis for the request.

(2) If a lawyer is appointed as a “child's attorney” for siblings, there may also be a conflict which could require that the lawyer decline representation or withdraw from representing all of the children.

Comment – The primary conflict that arises between the two roles is when the child's expressed preferences differ from what the lawyer deems to be in the child's best interests. As a practical matter, when the lawyer has established a trusting relationship with the child, most conflicts can be avoided. While the lawyer should be careful not to apply undue pressure to a child, the lawyer's advice and guidance can often persuade the child to change an imprudent position or to identify alternative choices if the child's first choice is denied by the court. The lawyer-client role involves a confidential relationship with privileged communications, while a guardian ad litem-client role may not be confidential. Compare Alaska Bar Assoc. Ethics Op. # 854 (1985) (lawyer-client privilege does not apply when the lawyer is appointed to be child's guardian ad litem) with *Bentley v. Bentley*, [86 A.D.2d 926] 448 N.Y.S.2d 559 (App. Div.1982) (communication between minor children and guardian ad litem in divorce custody case is entitled to lawyer-client privilege). Because the child has a right to confidentiality and advocacy of his or her position, the child's attorney can never abandon this role. Once a lawyer has a lawyer-client relationship with a minor, he or she cannot and should not assume any other role for the child, especially as guardian ad litem. When the roles cannot be reconciled, another person must assume the guardian ad litem role. *See Arizona State Bar Committee on Rules of Professional Conduct*, Op. No. 86-13 (1986).

*See generally Marvin Ventrell, Foster Care & Adoption Reform Legislation: Implementing The Adoption And Safe Families Act Of 1997*, 14 ST. JOHN'S J. LEGAL COMMENT, 433, 435 (1997):

Remarkable lawyers can do a good job for children under the current system. Average to poor lawyers cannot, and we need to build a model in which success is likely, not unlikely. In order to do that, we need to understand what the problem is, and there are many problems involved in the representation of children. The primary culprit is role confusion.

Unlike any other area of practice, children's lawyers do not have a clear articulation or model of their role. They do not even agree oftentimes on the fundamental duties for which they are appointed to represent the child, and that's a system doomed to failure.

*See also Michael D. Casasanto, Guardians Ad Litem: A Proposal to Better Protect the Interests of Children of Divorce*, 20 N.H. L.J. 35, 47 (1978); Robert I. Berdon, *A Child's Right to Counsel in Contested Custody Proceeding Resulting from a Termination of the Marriage*, 50 CONN. B.J. 150 (1976); Donald N. Bersoff, *Representation for Children in Custody Decisions: All that Glitters is Not Gault*, 15 J. FAM. L. 27 (1976-1977); James R. Devine, *A Child's Right to Independent Counsel in Custody Proceedings: Providing Effective 'Best Interests' Determination Through the Use of a Legal Advocate*, 6 SETON HALL L. REV. 303 (1975); Edward M. Ginsburg, *In the Interest of Children—A View from the Bench*, 1979 B.L.J. 21-24; Max Kargman, *A Court Appointed Child Advocate (Guardian Ad Litem) Reports on her Role in Contested Child Custody Cases and Looks to the Future*, 3 J. OF DIVORCE 77-90 (1979); Hon. Marshall A. Levin, *Guardian Ad*

Because the adult perspective gets the most attention, makers of social policy may fail to consider serious implications for children's well-being. We argue here that a single change in an adult's legal status—from kin caregiver to adoptive parent—may have large effects on children's welfare, particularly for groups lacking traditions of resorting to extended families in times of trouble.

We anticipate that the case we make here may be just a beginning. Other situations where legal status may be equally important include marriage (as opposed to cohabitation),<sup>11</sup> post-divorce parenting (as opposed to visiting),<sup>12</sup> and perhaps civil union (as opposed to same-sex cohabitation with some government benefits).<sup>13</sup> For the outcomes we examine here,

---

*Litem in a Family Court*, 34 MD. L. REV. 341–81 (1974); Paul K. Milmed, *Due Process for Children: A Right to Counsel in Custody Proceedings*, 4 N.Y.U. REV. L. & SOC. CHANGE 177 (1974); Wallace J. Mlyniec, *The Child Advocate in Private Custody Disputes: A Role in Search of a Standard*, 16 J. FAM. L. 1 (1977); Norman J. Singer & Edward S. Shipper, Jr., *The Child's Right to Independent Counsel in Divorce Custody Hearings*, 5 L. & PSYCHOLOGY REV. 50 (1979); Maurice K.C. Wilcox, *A Child's Due Process Right to Counsel in Divorce Custody Proceedings*, 27 HASTINGS L.J. 917 (1976); Kim J. Landsman & Martha L. Minow, Note, *Lawyering for the Child: Principles of Representation in Custody and Visitation Disputes Arising from Divorce*, 87 YALE L.J. 1126 (1978); The National Association of Counsel for Children/The Florida Association of Counsel for Children, IN THE INTEREST OF CHILDREN: QUALITY CHILD ADVOCACY, 7-1 to 7-7 (1983) (describing the guardian ad litem's role as investigator, protector, spokesperson, reporter and monitor); Arizona Council of Attorneys for Children, Inc., REPRESENTING CHILDREN IN DOMESTIC RELATIONS CASES (1982); CUYAHOGA COUNTY BAR ASSOCIATION, MANUAL FOR GUARDIAN AD LITEM REPRESENTING CHILDREN IN CUSTODY LITIGATION (1982); CONNECTICUT BAR ASSOCIATION, FAMILY LAW SECTION, COUNSEL FOR CHILDREN: GUIDELINES FOR COURTS AND COUNSEL IN CIVIL CUSTODY CASES (1982); Wallace, *When the Child Becomes the Prize—That Child Needs a Lawyer*, 9 BARRISTER 16 (1982).

For a recent case involving appointment of a guardian in a termination proceeding, see *In re Clark*, 749 N.E.2d 833 (Ohio Ct. App. 2001).

10. This is not universally so in the literature, however. For a good example, see Martha Minow, *Rights for the Next Generation: A Feminist Approach to Children's Rights*, 9 HARV. WOMENS' L.J. 1, 3, 18 (1986). See also Scott Altman, *Should Child Custody Rules Be Fair?*, 35 U. LOUISVILLE J. FAM. L. 325, 350–51 (1996/1997) (“Children become property not when laws consider other interests, but when they fail to treat children's needs with the same seriousness as those of other persons.”).

11. Steven L. Nock, *A Comparison of Marriages and Cohabiting Relationships*, J. FAM. ISSUES 16: 53–76; Steven L. Nock & Margaret F. Brinig, *Weak Men and Disorderly Women*, THE LAW AND ECONOMICS OF MARRIAGE AND DIVORCE (Robert Rowthorn & Anthony W. Dnes eds., 2002); Margaret F. Brinig & Steven L. Nock, *I Only Want Trust: Norms, Trust and Autonomy* (visited Nov. 17, 2002) forthcoming, 32 J. SOCIO-ECONOMICS—(2003) [hereinafter “Trust Paper”].

12. Brinig & Kock, *Trust Paper*, *supra* note 11.

13. Cf. David Orgon Coolidge, *Marriage and Belonging: Reflections on Baker v. Vermont*, in REVITALIZING THE INSTITUTION OF MARRIAGE FOR THE TWENTY-FIRST CENTURY: AN AGENDA FOR STRENGTHENING MARRIAGE 145, 151 (Alan J. Hawkins, et al. eds., 2002) (“Baker reaffirms the important social functions played by marriage, rather than treating marriage just as a bundle of benefits to be redistributed on an equal basis”); Ryan Goodman, *Beyond the Enforcement Principle: Sodomy Laws, Social Norms, and Social Panoptics*, 89 CAL L. REV. 643 (2001) (change in how gay and lesbians felt and were treated because of abolition of sodomy laws in South Africa).

legitimacy does not seem to be one of those situations (see Table 2, Mother Never Married). The parents' legal relationship at a child's birth used to be full of normative connotations that have steadily eroded over the past several hundred years.<sup>14</sup>

One territory intimately connected with social policy in general and receiving substantial attention over the last decade<sup>15</sup> is referred to "in the trade" as child welfare, or by those less in the know as foster care. Foster care is sometimes a type of way station between the biological family and the adoptive family.<sup>16</sup> It may also be a temporary haven for a family in distress.<sup>17</sup> As an institution in itself that is a strange amalgam of contract,

---

14. SARA MCLANAHAN & BARRY SANDEFER, *GROWING UP WITH A SINGLE PARENT: WHAT HURTS? WHAT HELPS?* (1994) (finding significant negative effects of growing up with a single parent; however, it made no difference whether the parent was single through divorce or because never married).

15. For examples of the statutes, see the Personal Responsibility and Work Opportunity Act, Pub. L. No. 104-193, 110 Stat. 2105 (Aug. 22, 1996), establishing the Temporary Assistance for Needy Families Program. See also Adoption and Safe Families Act, Pub. L. No. 105-89, 111 Stat. 2115, codified as amended, 42 U.S.C. §§ 671, 675, 673A, 1320a-9, 629a (2000), discussed in CARL E. SCHNEIDER & MARGARET F. BRINIG, *AN INVITATION TO FAMILY LAW 1004-1006* (2d ed. 2000); Multiethnic Placement Act, Pub. L. No. 103-382, § 551, 108 Stat. 4056 (1994), later amended in H.R. Rep. 3448, § 1808, to strengthen the prohibitions against racial matching; Joan Hollinger, *A Guide to The Multiethnic Placement Act of 1994 As Amended by the Interethnic Adoption Provisions of 1996* (1998) <<http://www.acf.dhhs.gov/programs/cb/publications/mepa94/index.htm>>.

16. Marcia Lowery, Comment, *Foster Care & Adoption Reform Legislation: Implementing the Adoption and Safe Families Act of 1997*, 14 ST. JOHN'S J.L. 451-52 (1997):

The basic premise that should have been operative in the system was that government should not raise kids. Government should not be a child's parent. The child ought to be raised by its own parents, if possible; that is the best choice if it could work. If not, children should have new parents and that decision should be made within a reasonable period of time so that it is meaningful for the child.

See also Marsha Garrison, *Parents' Rights vs. Children's Interests: The Case of the Foster Child*, 22 N.Y.U. REV. L. & SOC. CHANGE 371, 375 (1996) (hereinafter "Parents' Rights"):

Any study of foster care in the United States over the past twenty years unavoidably must grapple with a paradox: the national foster care population gained its greatest increase in the decade immediately following the most dramatic overhaul of federal foster care laws and policy in history, even though those changes were the result of a consensus that too many children were being removed from their families.

*Id.* at 138. In the 1960s and 1970s, roughly one-third to one-half of foster kids returned home soon after the initial removal, despite fewer state reunification efforts.

17. Department of Human Resources, State of Minnesota, Fact Sheets: Foster Care: Caring for Children in Out-of-Home Placement In Minnesota, July 30, 2001, suggests that at least eleven percent of the children entering the child welfare system in that state did so because of family difficulties or financial hardship. <<http://www.dhs.state.mn.us/newsroom/facts/FosterCare.htm>>. Another forty-five percent did so for a variety of other parent-related reasons such as abuse and neglect, parents' death, illness, disability, incarceration, and substance abuse. *Id.* Jill Duer Berrick, *When Children Cannot Remain Home: Foster Family Care and Kinship Care*, in 8 THE FUTURE OF CHILDREN: PROTECTING CHILDREN FROM ABUSE AND NEGLECT 72, 81 (1998); Douglas J. Besharov, *Children Deserve Chance To Live; The System Won't Accept The*

regulation, and family, foster care is well worth studying.<sup>18</sup> More than 500,000 children in the United States are currently in foster care,<sup>19</sup> and the foster care system represents the largest part of many states' social services budgets.<sup>20</sup> Yet there are curiously few recent studies of foster care (other than those reporting the basics of the number of children, the length of their stay, the reason for state involvement and the eventual outcome of each case).<sup>21</sup> What studies there have been over the years<sup>22</sup> strongly

---

*Uncomfortable Truth: Some Parents Are Beyond The Help of Treatment Programs*, ORLANDO SENTINEL, December 22, 1996, at G1; Douglas J. Besharov, *The Children of Crack: Will We Protect Them?*, 46 PUBLIC WELFARE 7-11 (1989).

18. For one such attempt, see MARGARET F. BRINIG, FROM CONTRACT TO COVENANT: BEYOND THE LAW AND ECONOMICS OF THE FAMILY 49-57 (2000) (comparing to other principal-agent situations).

19. The AFCARS Report 2001(6), located at <<http://www.acf.dhhs.gov/programs/cb/publications/afcars/june2001.htm>>, reporting on figures from September 30, 1999; lists 581,000 children, of whom 127,000 were waiting to be adopted. Forty-two percent of these were Black, Non-Hispanic; thirty-two percent White, non-Hispanic, and fifteen percent Hispanic. See, e.g., Martin Guggenheim, *The Foster Care Dilemma And What To Do About It: Is The Problem That Too Many Children Are Not Being Adopted Out Of Foster Care Or That Too Many Children Are Entering Foster Care*, 2 U. PA. J. CONST. L. 141, 143 (1999):

Congress believed that these changes would correct the problems of foster care in the 1970s. Any study of foster care in the United States over the past twenty-five years, however, must unavoidably grapple with a paradox: the national foster care population increased by several hundred thousand children in the same decade that Congress passed sweeping legislation explicitly designed to reduce states' use of out-of-home care for children from troubled families. "According to figures reported by the American Public Welfare Association, the number of children in foster care increased from 280,000 in 1987 to more than 460,000 in 1992.

See also Pete du Pont, *A Chance to Fix Foster Care*, TAMPA TRIB., Oct. 29, 1997, at 15. Approximately 650,000 children spend at least some time in foster care each year. A study by the Institute for Children found that at the end of fiscal year 1996, 526,000 children were in state-run substitute care. *Id.*

20. Lowery, *supra* note 16, at 452 (citing Richard Whitmire, *American Trends Child Foster Care Becoming Permanent Solution*, GANNETT NEWS SERVICE, Nov. 11, 1993, at 794) (discussing amount spent on each child, and claiming a total of \$8 billion per year)). See also Cahn, *infra* note 39, at 1213-14: The federal government allocates less than five percent of its child protective services budget to family preservation, while the remainder is spent on foster care. [FN140] Although both the AACWA and ASFA mandate intensive pre-placement services, federal funding for child welfare remains grossly skewed in favor of subsidizing foster care rather than preventive programs. While the number of children in foster care has remained constant, the number of children receiving in-home services declined from 1,244,400 in 1977 to 497,000 in 1994.

21. *Id.* For foster care in general, see Kathleen Welty, *North American Council on Adoptable Children, Achieving Permanency for Every Child: A Guide for Limiting the Use of Long-Term Foster Care as a Permanent Plan* (1997) <[http://www.nacac.org/exec\\_summaries/long\\_term\\_foster\\_care.html](http://www.nacac.org/exec_summaries/long_term_foster_care.html)> (last visited Oct. 4, 2001) (noting that "[l]ong-term foster care is by far the most costly permanency planning option. Studies show that placing more children into adoptive or guardianship homes rather than with long-term foster families saves money, even when those placements are subsidized."). See also, The National Conference of State Legislatures, Executive Summary, *A Place to Call Home: Adoption and Guardianship for Children in Foster Care*

suggest that foster care placement, while it may be the best temporary solution to intractable family problems, is far from ideal.<sup>23</sup>

Beginning in the mid-1970s, family intervention decisions moved from a rather quick and streamlined separation of children from biological parents, with an eye towards swift adoption, to a much slower and more process-oriented focus, with twin goals of rehabilitating parents and

---

(2001) (last visited Dec. 20, 2002) <<http://www.ncsl.org/programs/pubs/BKFSTR2.HTM>>. Foster care is costly in social as well as in fiscal terms. Child welfare experts generally agree that prolonged stays in foster care and frequent moves from one foster home to another are not conducive to a child's healthy development. Children who grow up in foster care often exhibit emotional and behavioral problems that contribute to expensive social problems such as school failure, teen pregnancy, homelessness, unemployment, criminal activity, incarceration and welfare dependency. In addition to these indirect costs, states and the federal government spend approximately \$7 billion on out-of-home placement every year, which exceeds the amount spent on all other child welfare services combined, including child abuse prevention, child protection, family support and adoption services.

For kinship care in particular, see Charlene Ingram, *Kinship Care: From Last Resort to First Choice*, 75 CHILD WELFARE 550-66 (1996); The U.S. Department of Health and Human Services, Children's Bureau, Part I, Research Review at vi (1999) (hereinafter "Research Review"), indicates that in 1997, approximately 20,000 children, or twenty-nine percent of all foster children, were in public kinship care. Children in kinship care are also less likely to reunify with their birth parents than those in foster family care. Berrick, *supra* note 17, at 81. African American children in kinship homes supported by a foster care subsidy remain in care approximately twice as long as all other children. *Id.* at 82. See also Howard Dubowitz & Susan Feigelman, *A Profile of Kinship Care*, 72 CHILD WELFARE 153-70 (1993).

22. Robert H. Mnookin, *Foster Care: In Whose Best Interest?*, 43 HARV. EDUC. REV. 4 (1973); John E.B. Myers, *The Legal Response to Child Abuse: In the Best Interest of Children?*, 24 J. FAM. L. 149 (1985-86); Marsha Garrison, *Child Welfare Decisionmaking: In Search of the Least Drastic Alternative*, 75 GEO. L.J. 1745 (1987).

23. See, e.g., National Council on State Legislatures, *A Place to Call Home: Adoption and Guardianship for Children in Foster Care*, Executive Summary (2001):

Foster care is costly in social as well as in fiscal terms. Child welfare experts generally agree that prolonged stays in foster care and frequent moves from one foster home to another are not conducive to a child's healthy development. Children who grow up in foster care often exhibit emotional and behavioral problems that contribute to expensive social problems such as school failure, teen pregnancy, homelessness, unemployment, criminal activity, incarceration and welfare dependency. In addition to these indirect costs, states and the federal government spend approximately \$7 billion on out-of-home placement every year, which exceeds the amount spent on all other child welfare services combined, including child abuse prevention, child protection, family support and adoption services.

JUNE THOBURN ET AL., PERMANENT FAMILY PLACEMENT FOR CHILDREN OF MINORITY ETHNIC ORIGIN (2000) ("[T]emporary, and often repeated, placements are least beneficial to children of color, against whom the deck is often already stacked."). For one account of the innovative Casey program, see DAVID FANSEL ET AL., FOSTER CHILDREN IN A LIFE COURSE PERSPECTIVE 77, Figure 5.2, 94 (1990) (describing the outcomes of this expensive program and explaining that those who were less in troubled while entering care did better with their substitute caretakers); ELIZABETH BARTHOLET, NOBODY'S CHILDREN: ABUSE AND NEGLECT, FOSTER DRIFT, AND THE ADOPTION ALTERNATIVE 81 (1999) ("If left in foster or institutional care, studies indicate that most of them will do better than children who are returned to their parents but less well than children who are adopted, or children in the general population."). Bartholet writes:



reunifying families.<sup>24</sup> For a number of reasons, including the growing number of fragile families and the increasing cost (with slim returns) of providing family stabilizing services, the emphasis shifted again in the mid-1990s.<sup>25</sup> Since then the child's safety has taken precedence over family preservation.<sup>26</sup> Congress has gone so far as to threaten transfer payment funding for states that do not improve their record of adoptions from

---

The advantages of foster care over the homes of origin would clearly be more dramatic if foster care were better designed to give foster children certainty and predictability in their lives, as opposed to the current system in which so many children drift without any understanding of their future, and are subject to repeated attempts to reunify them with deeply troubled birth parents. Adoption studies consistently show that the earlier children are placed in adoptive homes the better they will do.

*Id.* at 97. See also, Lowery, *supra* note 16, at 448. Her organization, Children's Rights, Inc., brought a challenge to the whole foster care system in the City of New York called *Marisol A. v. Giuliani*, 126 F.3d 372 (2d Cir. 1997). *Id.* See also Rebecca McDowell, *Retrospective: David C. V. Leavitt: Utah's Foster Care System and Children at Risk*, 2 J. L. & FAM. STUD. 71, 74 (2000)(discussing Utah suit):

Despite these improvements, the Utah system still had serious problems. Children in DCFS custody were largely not receiving the health care they should, reports of abuse and neglect were not investigated, and the recidivism rate was increasing, indicating poor decision making on the part of caseworkers when returning a child to their family. It seemed to NCYL that there was no external reason for these deficiencies.

24. See Institute of Judicial Administration and American Bar Association's *Juvenile Justice Standards Project, Standards Relating to Abuse and Neglect*, 6.6 (D); See also JOHN T. PARDECK, *THE FORGOTTEN CHILDREN: A STUDY OF THE STABILITY AND CONTINUITY OF FOSTER CARE* (University Press 1982). For a relatively recent history of foster care, see Tim Hacsí, *From Indenture to Family Foster Care: A Brief History of Child Placing*, 74 *CHILD WELFARE* 162 (1995). The rationale appears in Celeste Pagano, *Recent Legislation Adoption And Foster Care*, 36 *HARV. J. ON LEGIS.* 230, 243 (1999), as follows:

The 1980 Act was based on the premise that the removal of a child from his or her home was so harmful to his or her psyche that it was virtually never in the child's best interests to be removed. Accordingly, the Act mandated that "reasonable efforts" be made "to prevent or eliminate the need for removal of the child from his home" and "to make it possible for the child to return to his home."

25. The Adoption and Safe Families Act, Pub. L. No. 105-89, 111 Stat. 2115, codified as amended, 42 U.S.C. §§ 671, 675, 673A, 1320a-9, 629a (2000). Cases like *In re Welfare of J.M.*, 574 N.W.2d 717 (Minn. 1998), illustrate this point.

26. Pub. L. No. 105-89, 1997 H.R. 867, Sec. 2(a)(ii), (II) that the "reasonable efforts" to reunify the family will not be necessary where the child has been subjected to aggravated circumstances, as defined by state law, and including abandonment, torture, chronic abuse and sexual abuse, or where the parental rights with respect to a sibling have been terminated involuntarily. States must initiate or join proceedings to terminate parental rights when children under ten have been in foster care for eighteen months of the most recent twenty-four months, unless the child is being cared for by a relative or the state documents a compelling reason for determining that filing a termination petition would not be in the best interests of the child, or the state has failed to provide to the child's family such services as the state deems appropriate. *Id.* at Sec. 3. See also TEX. HUM. RES. CODE § 40.001(5) (Vernon 2001), which recognizes the authority of parents to direct the education and upbringing of their children, but states that this recognition "does not include the provision of state social services for the rehabilitation of parents convicted of abusing or neglecting their children." See also Ventrell, *supra* note 9, at 433:

foster care.<sup>27</sup>

The poor and those belonging to minority groups see this changing policy as yet another encumbrance on their lives: at a time when public assistance payments are shrinking and impermanent, financial problems may cause them to permanently lose their children.<sup>28</sup>

Since about the same time as the family preservation movement reached its apex, a small, vocal, focused, and deeply interested group, the National Association of Black Social Workers (NABSW), virtually closed off one method of getting children out of foster care.<sup>29</sup> In 1972 (and continuing to the end of the twentieth century), the group's official position was that

---

It is founded on the principle that, unlike the old system in which too much attention to family preservation and reunification was paid, the new system will pay attention to and place priority on the safety and health of a child. That is the permanency movement. Do not err on the side of family preservation; err on the side of safety and health for the child.

27. See William J. Clinton, Proclamation 7048 (November 3, 1997) (announcing initiatives to double the number of adoptions from foster care by 2002, and stressing department policies that would advance that goal). Congress, in Pub. L. No. 105-89, sec. 201, provided for adoption incentive payments in 42 U.S.C. § 673b (2000). For a description, see Pagano, *supra* note 24, at 247-48:

First, the Act created an incentive program by which states will receive \$4,000 to \$6,000 per child for any increase in the annual number of adoptions over a "baseline" year. Second, the ASFA required states to provide for health insurance coverage for children with special medical or mental health needs under a provision that creates, in effect, an adoption assistance agreement between the state and the adoptive parents of such special needs children. Third, Congress took steps toward increasing the available pool of potential adoptive families for children in foster care.

28. Madeleine L. Kurtz, *The Purchase of Families into Foster Care: Two Case Studies and the Lessons They Teach*, 26 CONN. L. REV. 1453 (1994); BETTY R. MANDELL, *WHERE ARE THE CHILDREN? A CLASS ANALYSIS OF FOSTER CARE AND ADOPTION* (Lexington Books 1973); RICHARD KAGAN & SHIRLEY SCHLOSBERG, *FAMILIES IN PERPETUAL CRISIS* (Norton 1989); See Dorothy Roberts, *Is There Justice in Children's Rights?: The Critique of Federal Family Preservation Policy*, 2 U. PA. J. CONST. L. 84 (1999). See also Guggenheim, *supra* note 19, at 485, stating:

At a minimum, the startling number of poor children in the child welfare system proves what public policy officials have long known: that children raised in severe poverty plainly need the beneficence of state aid. Unfortunately, the United States appears to be on a deliberate course to reduce financial support systems for poor families. Severe cuts in early intervention programs and preventive services are forcing poor families to look to the coercive process of child protection as their primary source of much needed assistance. The almost certain trend for the future is an increased use of foster care because it continues as the only remaining source of government largesse—a "benefits" program imposed through a coercive, adversarial system that threatens a family's integrity and a child's opportunity to be raised by his or her birth family.

29. For an extensive discussion, see Margaret F. Brinig, *Moving Toward a First-Best World: Minnesota's Position on Multiethnic Adoptions*, 28 WM. MITCHELL. L. REV. 553 (2001).

transracial adoption was to be a very last resort for children of color.<sup>30</sup> Black children raised in primarily middle class white families would not develop the coping skills necessary to live as independent adults in a racist society.<sup>31</sup> Further, white parents raising them could not adequately pass along black culture.<sup>32</sup> This concern raised a specter of cultural genocide,<sup>33</sup>

---

30. Leslie Doty Hollingsworth, *Symbolic Interactionism, African-American Families, and the Transracial Adoption Controversy*, 44 SOC. WORK 443 (1999) (quoting National Association of Black Social Workers, Position Statement: Preserving African American Families (Detroit 1994)):

In its current position, it places priority on family preservation and reunification with birth families, alternative care by biological relatives, and adoption by same-race nonrelatives, recognizing the importance of providing permanent homes for all children. Transracial adoption is seen as a last resort. Children should not be removed from their birth families when economic resource limitations or institutional barriers are the sources of the problem.

31. Perry calls this transmission "survival skills." Twila L. Perry, *The Transracial Adoption Controversy: An Analysis of Discourse and Subordination*, 21 N.Y.U. REV. OF L. & SOC. CHANGE 33, 64 (1994) (referring to "complex skills for dealing with the subtle racism in our society"). In addition, some have pointed to the possibility of cultural genocide for African-Americans, as the children adopted by white parents "become white." See Elizabeth Bartholet, *Where Do Black Children Belong? The Politics of Race Matching in Adoption*, 139 U. PA. L. REV. 1163, 1220 (1991) (quoting the NABSW: "[i]t is [White people's] aim to raise Black children with White minds.... We are on the right side of the transracial adoption issue. Our children are our future."); Ruth-Arlene W. Howe, *Transracial Adoption (TRA): Old Prejudices and Discrimination Float Under a New Halo*, 6 B.U. PUB. INT. L.J. 409, 471 (1997) (stating, "[w]hat some scholars and policy makers seem to miss in their advocacy of TRA is that it is a form of 'cultural genocide'."). See also Valerie Phillips Hermann, *Transracial Adoption: "Child-Saving" Or "Child-Snatching,"* 13 Nat'l Black L. J. 147, 160 (1993) (stating "most supporters of the NABSW viewed transracial adoption as a conspiracy to destroy the Black race"). Hermann suggests that the Black social worker community is divided on this issue since otherwise many Black children would spend much of their childhood in foster care, and "a White home is better than no home." *Id.* (quoting ELIZABETH BARTHOLET, *NOBODY'S CHILDREN: ABUSE AND NEGLECT, FOSTER DRIFT, AND THE ADOPTION ALTERNATIVE* 133 (1999)). Hermann herself suggests that "when there are enough Black families volunteering to adopt all homeless Black children, there will no longer be a need for White adoptive parents to do so. We should strive to find the best possible home for Black foster children, not just a Black home." *Id.* at 164; see also David L. Wheeler, *Black Children, White Parents: the Difficult Issue of Transracial Adoption*, THE CHRON. OF HIGHER EDUC., at A9 (Sept. 15, 1993) (quoting Anita Allen as saying "the empirical research Professor Bartholet cited does not invalidate the concerns of black nationalists who argue that the adoption of black children by white parents erodes the economic, political, and cultural bases of black social life.... Black nationalism demands more of children of African-American descent... than that they look black, feel subjectively happy, do well in school, and find success in the workplace. Blacks reared by whites will, some fear, learn to think 'white' and to prefer the companionship of whites."); see also U.N.: Convention on the Rights of the Child, art. 20, G.A. Res. 44/25, U.N. Doc. A/RES/44/25 (1989) (stating, "3. Such [temporary or permanent] care could include, inter alia, foster placement, kafalah of Islamic law, adoption or if necessary placement in suitable institutions for the care of children. When considering solutions, due regard shall be paid to the desirability of continuity in a child's upbringing and to the child's ethnic, religious, cultural and linguistic background.").

32. See, e.g., Catherine M. Brooks, *We Belong To "Nobody's Children"—We Are The "They"*

at least on a small scale. The NABSW's position became practice in all relevant states and legislation in others.<sup>34</sup> The number of transracial adoptions dropped precipitously in the 1970s<sup>35</sup> and remained low,<sup>36</sup> despite the growing percentage of minority children in foster care, until quite recently. (In some states it is still very low.)<sup>37</sup>

When the NABSW articulated its position, it promulgated an alternative: so-called kinship care. And kinship care, which will be described in a moment, remains the option of choice for many children in many states. As the name implies, kinship care involves living with relatives in a situation ranging from completely informal sharing of care to permanent and

---

*Who Must Change*, 28 CAP. U. L. REV. 91, 92 (1999):

So now I understand the village's relationship with the child quite differently. It is the mutuality of that belonging that is the source of the child's sense of self. As the village shapes the child, so the child shapes the village. As the community supports, raises, and is responsible for its children, so too the child is responsible to the community and its next generation. The village cannot shake off the role it plays in creating the child's identity; the child's future is the village's identity. When the child is without a village, a community, a group of people holding him or her as an integral member, the child is bereft of more than his or her parents. The identity of the child and the village are subject to loss.

33. *See id.*, at 94:

The National Association of Black Social Workers (NABSW) did talk of trans-racial adoptive placement as a risk to Black culture and identity, even a form of genocide. Let us not dismiss the charge lightly. At the time of that call to action in 1972, the NABSW had good cause to fear for the future of Black children in white homes. At that time, the federal government could not bring itself to ratify the 1948 United Nations Convention on the Prevention and Punishment of Genocide, knowing its own history with the children of Native Americans and the specific governmental goal of the previous century of doing whatever necessary to erase the "Indianness" out of the Indian children.

34. *See* Rita J. Simon, *Transracial Adoptions: Does The Law Matter?*, AM. EXPERIMENT Q. 85, 90 (Fall 1999).

35. Judith K. McKenzie, *Adoption of Children with Special Needs*, in 3 THE FUTURE OF CHILDREN: ADOPTION 62, 65 (1993); Christine A. Bachrach et al., *Advance Data: Adoption in the United States. Advanced Data from Vital and Health Statistics No. 181* (Hyattsville, MD: National Center for Health Statistics) (1989) (showing 1% interracial adoptions by white mothers, including international adoptions), available at <http://www.cdc.gov/nchs/data/ad/ad181.pdf>.

36. National Council for Adoption, *ADOPTION FACTBOOK III* (1999) [hereinafter "*Adoption Factbook III*"]. Such payments are made to parents adopting "special needs" children.

37. *See, e.g.*, Steven L. Belton, *No More Race-Based Adoption: Barriers To Transracial Placements Will Fall Unequally After Jan. 1*, STAR-TRIBUNE (Minneapolis), December 13, 1996:

You see, the new law is not intended to break up the monopoly power whites hold over the adoption of white children. Rather, the law is supposed to eliminate a primary obstacle to getting a black child that white people face when there are not enough white children for them to adopt or because the cost of adopting a "healthy white infant" has become prohibitively high for all except those whose net worth is—well, rosy.

somewhat supervised arrangements.<sup>38</sup> Unlike adoption, with kinship care the ties to the birth family need not be severed, and some birth parents continue to visit and have close relationships with the children in question.<sup>39</sup> Further, the kin caregivers receive subsidies paid to foster parents (almost always substantially higher than public assistance, and ongoing rather than temporary).<sup>40</sup> Even though since 1996 Congress has forbidden explicit racial matching in child custody placement and adoption,<sup>41</sup> an exception has been made for kinship care,<sup>42</sup> which is recognized as a viable permanent alternative for children (though not one preferred to reunification or adoption).<sup>43</sup> Studies of kinship care were mandated by

---

38. The American Bar Association defines kinship care as "any form of residential caregiving provided to children by kin, whether full-time or part-time, temporary or permanent, and whether initiated by private family agreement or under custodial supervision of a state child welfare agency." MARIANNE TAKAS, *KINSHIP CARE AND FAMILY PRESERVATION: OPTIONS FOR STATES IN LEGAL AND POLICY DEVELOPMENT* 3 (Final rev. ed. 1994).

39. Arguably, this is a good thing since it allows the child meaningful relationships with his or her past and heritage. See Naomi Cahn, *Children's Interests in a Familial Context: Poverty, Foster Care, and Adoption*, 60 OHIO ST. L.J. 1189, 1189 (1999):

In regards to abused and neglected children, federal policy has shifted its emphasis away from efforts to preserve the family unit, and towards efforts to create new families for these children. This policy shift is reflected in the Adoption and Safe Families Act of 1997, which allows for simultaneous efforts to reunite the child with his or her family along with efforts to place the child up for adoption. Professor Cahn argues that placing such an emphasis on adoption will create situations in which otherwise strong familial bonds are disrupted, resulting in severe damage to the child. The author argues that it is unwise to pursue adoption while at the same time pursuing reunification. Rather, each child should be cared for with family reunification as the primary goal.

40. For example, a child-only grant from MFIP-S (Minnesota Family Investment Plan, formerly AFDC), which does not require an order of custody, gives \$351/month. Center for Advanced Studies in Child Welfare, School of Social Work, University of Minnesota, Kinship Care, Practice Notes No. 3, at 2 (April, 1998). A child with health problems or severe physical or mental impairment receiving SSI (Supplemental Security Income) receives \$494/month. *Id.* A licensed foster care provider (relative or not), received \$430-550/month based on the child's age, and could receive more based upon difficulty of care. *Id.* An adoption assistance grant is available when the child has "special needs" and is also available to "a relative who, through a court order, will have physical custody of the child." *Id.* "In 1996, California paid \$345 per child per month for foster care provided to children up to age four, \$375 for children aged five to eight, and \$484 for youths aged 15 or more. So, for example, if siblings ages 8 and 16 were in foster care, their caregiver would receive \$859 per month. In contrast, California's AFDC payment for one child was \$293 per month, and only \$479 for two children." Berrick, *supra* note 17, at 75. While even these subsidies are not overly generous and may not meet the actual expenses for the child, they do have the benefit of not being included in gross income for federal tax purposes. I.R.C. § 131A.

41. Multiethnic Placement Act, Pub. L. No. 103-432, Title II § 203(b), 108 Stat. 4456 (1994), amended by Pub. L. No. 104-188 (Aug. 22, 1996) (codified as amended at 42 U.S.C. § 671(18)(A), (B)).

42. 42 U.S.C. § 675(E)(i).

43. 42 U.S.C. § 671(18) (2000). The benefits of kinship care are listed by Megan M.

federal statute,<sup>44</sup> but are consistently descriptive: Who are the children in kinship care and who are their caregivers?<sup>45</sup> How long do children remain in kinship care? How often are children returned to biological parents and how often are they adopted? When comparisons are made, they are made between third-party (unrelated) foster care and kinship care. They consistently report that although kinship care providers do not seek services as frequently as do third-party foster parents (and hence the program is somewhat less expensive),<sup>46</sup> children in kinship care do about as well as do children in other foster care settings.<sup>47</sup> The caregivers are reportedly

---

O'Laughlin, Note, *A Theory Of Relativity: Kinship Foster Care May Be The Key To Stopping The Pendulum Of Terminations vs. Reunification*, 51 VAND. L. REV. 1427, 1451 (1998):

First, children placed in kinship care usually do not experience multiple placements, unlike their counter-parts in traditional foster care. Second, kinship foster parents can more likely provide a home for all of the children in a family, thus preventing the division of siblings. Third, because children generally have relationships with their kinship foster parents before placement, such a placement often lessens the trauma typically involved when the state takes custody of the child. Many children who are in kinship foster care arrangements may also avoid the stigma associated with foster care. Instead, the child remains a part of the family he or she has known and continues the relationships that define him or her: sister, brother, grandchild, cousin, nephew, niece. Further, these children are also more likely to remain in contact with their biological parents. These psychological benefits of kinship foster care contrast with many of the psychological dangers associated with termination of parental rights.

44. 42 U.S.C. § 1320a-9(c).

45. FAITH JOHNSON BONECUTTER & JAMES P. GLEESON, *ACHIEVING PERMANENCY FOR CHILDREN IN KINSHIP FOSTER CARE: A TRAINING MANUAL* (University of Illinois: Chicago 1999); Howard Dubowitz & Susan Feigelman, *A Profile of Kinship Care*, 72 CHILD WELFARE 153 (1993); Ariel Sokol The Urban Institute, *Kinship Care: An Explanation*, at <http://www.amherst.edu/~aesokol/kinship.htm> (last visited Oct. 8, 2001); Berrick, *supra* note 17, at 78 & Table 2; Susan J. Wells & Jean M. Agathen, *Evaluating the Quality of Kinship Foster Care: Final Report* (Child and Fam. Res. Center, Sch. of Soc. Work: U. Ill. at Urbana-Champaign, 1999).

46. Wells, *supra* note 45.

47. However, non-kin foster parents were twice as likely as licensed kinship foster parents to have confirmed reports of maltreatment. Berrick, *supra* note 17, at 79. "While the data is recent and researchers are unsure about its veracity, studies indicate that there are no significant differences in education and behavioral performance between relative and non-relative placed children. However... a greater higher percentage of traditional foster care children have more serious mental health problems than do those children placed in kinship care." Sokol, *supra* note 45. In Minnesota, "[t]he most common reason for removal among kinship cases in Hennepin County was parental substance abuse, followed by child neglect." Sandra Beemen, et al., *Kinship Foster Care in Minnesota: A Study of Three Counties*, Final Report to the Minnesota Department of Human Services iii (Center for Advanced Studies in Child Welfare, University of Minnesota School of Social Work, 1996); see Berrick, *supra* note 17, at 73 (concluding "that despite their relatively disadvantaged status in terms of age and income, kin caregivers typically offer children a safe and nurturing environment."). A majority of professionals felt that "children placed in kinship foster homes seem to demonstrate a stronger sense of belonging in the foster family than do children who are in nonkinship foster homes." Beeman, et al., *supra*, at

older, more apt to be working and less apt to be affluent than their third-party counterparts. They, and therefore the children they care for, are much more likely to be African-American than are third-party foster parents or the pool of foster children in general.<sup>48</sup>

This project has looked not only at how the movement began, but also why it has flourished despite a changing Congressional climate. We examine whether there remain good reasons to make exceptions for kinship care in a system otherwise preferring adoption. While we began by comparing kinship care to transracial adoption, data limitations (the small number of black children adopted by white parents) in our sample<sup>49</sup> have moved us instead to compare kin care and foster care with adoption, for all children, and for black children and black parents who care for them. During the time-frame for the study, the National Longitudinal Study of Adolescent Health, done at the Center for Population Studies of University of North Carolina,<sup>50</sup> many of the black children who were in foster care, at least half of them nationally, were being cared for by kin.<sup>51</sup> For all children, then, we compare kinship care, adoption, and foster care.

To anticipate our detailed presentation of findings, we found that foster care does not compare favorably with adoption for any children, regard-

82, Table 5-23. The percentage increased to more than eighty percent for respondents of color. "Children in kinship care appear to have significantly higher well-being than children in non-kin foster care." U.S. Department of Health and Human Services, Children's Bureau, Part I, Research Review at 38 (1999) (hereinafter "Research Review").

48. For citations, see Brinig, *Multiethnic supra* note 29, at 578-79 & nn. 82-91.

49. Of the more than 20,000 children surveyed, only four African-American children had been adopted by white families.

50. Richard Udry & Peter Bearman, *The National Survey of Adolescent Health*, from the Carolina Population Center, UNC. 1994-95. The description, found on their website, reads as follows:

Add Health is a school-based study of the health-related behaviors of adolescents in grades 7-12. It has been designed to explore the causes of these behaviors, with an emphasis on the influence of social context.

That is, Add Health postulates that families, friends, schools and communities play roles in the lives of adolescents that may encourage healthy choices of activities or may lead to unhealthy, self-destructive behaviors. Data to support or refute this theory were collected in surveys of students, parents, and school administrators.

The Add Health study was funded by the National Institute of Child Health and Human Development (NICHD) and 17 other federal agencies. Fieldwork was conducted by the National Opinion Research Center of the University of Chicago.

A description of the research design can be found at <http://www.cpc.unc.edu/projects/addhealth/sdesign.htm>. The URL for the study is <http://www.cpc.unc.edu/projects/addhealth/datasets.html>.

51. "Informal kinship care—live-in, daily care provided by relatives outside of the child welfare system—is provided to about 1.8 million children in the United States today, or 2.2% of the child population." Berrick, *supra* note 17, at 80. Characteristics of Kinship Foster Parents and Nonkin Foster Parents; Berrick, *supra* note 17, at 76, Table 2

less of race. Adopted children, regardless of race, perform about as well as children remaining with biological families. As we will show, there are very small effects associated with adoption, most notably for Native Americans and children of “other” races. Overall, however, adoption has very small, and generally insignificant effects in our analyses. But foster children do worse on both internal (depression and expectation of early death) and external (substance abuse and juvenile delinquency) problem measures. Kinship care, likewise, is generally associated with considerably higher depression, delinquency, and drug use. The differences between living with at least one biological parent, and living in foster or kinship care are statistically significant and the coefficients are large.<sup>52</sup> Interestingly, the effects associated with kinship care are found for children of all racial groups *except* African-American. For these groups, kinship care resembles foster care. For African-American children, kinship care

	Kinship Parents	Foster Parents	Significant Difference
Largest number sampled	246	354	
<i>Household characteristics</i>			
One adult in the home	52%	24%	p < 0.001
Owens home	53%	85%	p < 0.001
Number of foster children	2.5	2.8	no difference
Household income (including foster care payments)	\$32,424	\$51,320	p < 0.001
<i>Female caregiver characteristics</i>			
Formal education			p < 0.001
High school or less	47%	33%	
Some college or trade school	49%	46%	
College graduate or more	4%	21%	
Employed outside home	48%	37%	p < 0.001
Ethnicity			p < 0.001
African-American	43%	22%	
Caucasian	34%	63%	
Hispanic	17%	9%	
Other	6%	4%	
Age 48 years 46 years			p < 0.05
Health			p < 0.001
Excellent	31%	46%	
Good	49%	47%	
Fair or poor	20%	7%	

Source: Berrick, J.D., Barth, R.P., and Needell, B. A comparison of kinship foster homes and foster family homes: Implications for kinship foster care as family preservation. CHILDREN AND YOUTH SERVICES REVIEW (1994) 16,1/2:33-63.

52. We are aware that we may be comparing two distinct populations, since adopted children are more likely to be placed at birth than are foster children, and foster children (kin foster children excepted) are more likely to have experienced abusive backgrounds and more placements. Our point is, though, that for the Black children (likely to be in kinship care) as well as white children (likely to be in third party care), the results of comparing the adopted and foster children are not encouraging.



resembles living with one's biological parent.

We focused on four indicators of well-being. First, we used a standard nineteen-item depression scale (mean = 13.4, sd = 5.9).<sup>53</sup> Second, we assessed monthly use of cigarettes, alcohol, and marijuana by counting the number of times in the past month the child estimated he/she had used each. Our measure simply adds monthly use of these various substances (mean = 1.55, sd = 3.45). Third, we computed an index of juvenile delinquency developed by the researchers who designed the survey. This consisted of fifteen questions, each asking the adolescent how often he/she had committed a particular act in the past year (mean = 5.22, sd = 6.83).<sup>54</sup> Finally, we combined two questions designed to gauge a young person's fatalism—the adolescent's estimate of his or her chances of living to 35 or being killed by age 21.<sup>55</sup>

Table 2 reports the results of multiple regressions designed to investigate the differences among adopted, kinship care, and fostered children, while holding constant aspects of the child's living arrangement (dad only, mom only), age, race, sex, mother's marital status, education, income, race and divorce history. Admittedly, there are probably many other differences between adopted and fostered children, though these

---

53. The wording in this section was as follows: How often was each of the following things true during the last week? 1) You were bothered by things that usually don't bother you, 2) You didn't feel like eating, your appetite was poor, 3) You felt that you could not shake off the blues, even with help from your family and your friends, 4) You felt that you were just as good as other people 5) You had trouble keeping your mind on what you were doing, 6) You felt depressed, 7) You felt that you were too tired to do things, 8) You felt hopeful about the future, 9) You thought your life had been a failure, 10) You felt fearful, 11) You were happy, 12) You talked less than usual, 13) You felt lonely, 14) People were unfriendly to you, 15) You enjoyed life, 16) You felt sad, 17) You felt that people disliked you, 18) It was hard to get started doing things, 19) You felt life was not worth living.

54. The questions were recorded and played for the respondent over a headset. The adolescent answered the questions on a laptop computer provided to assure greater confidentiality: 1) In the past 12 months, how often did you paint graffiti or signs on someone else's property or in a public place, 2) In the past 12 months, how often did you deliberately damage property that didn't belong to you 3) In the past 12 months, how often did you lie to your parents or guardians about where you had been or whom you were with? 4) How often did you take something from a store without paying for it? 5) How often did you get into a serious physical fight? 6) How often did you hurt someone badly enough to need bandages or care from a doctor or nurse? 7) How often did you run away from home? 8) How often did you drive a car without the owner's permission? 9) In the past 12 months, how often did you steal something worth more than \$50? 10) How often did you go into a house or building to steal something? 11) How often did you use or threaten to use a weapon to get something from someone? 12) How often did you sell marijuana or other drugs? 13) How often did you steal something worth less than \$50? 14) In the past 12 months, how often did you take part in a fight where a group of your friends was against another group? 15) How often were you loud or unruly in a public place?

55. Two questions were used. "What do you think are the chances that you will live to age 35?" and "What are the chances that you will be killed by age 21?" The first was scored in reverse so the two sets of answers tapped the probability of dying young.

seem adequate to capture the most obvious and important.

Each child who mentioned that he/she shared a residence with an adult variously referred to as “mother,” “mom,” “father,” “dad,” or any other designation implying a parent was included in these equations. We then determined the relationship between the child and the adult(s) mentioned. Children who mentioned no biological, foster, or adopted parent were asked if anyone in the household acted in that role. Grandparents and aunts were the overwhelming choices in such circumstances. We have designated all 472 such situations as “kinship care.”

Though there are many factors that have consequences for the outcomes we studied, only one appears strongly related to all four—whether the child is fostered. Kinship care is also negatively related to three of the four outcomes. Consider the coefficient for “Child Fostered” in column 1 of Table 2. This value (3.24) implies that children who are identical on all elements in this table, except that one is in foster care and the other lives with at least one biological parent, differ by about 3.24 points, on average, in depression (with the fostered child more depressed). Given the standard deviation for this variable (5.97), the effect is actually rather large—more than half a standard deviation in magnitude. Foster children, in short, are considerably more depressed, even when matched on a wide range of racial, socioeconomic, and household characteristics. In a similar pattern, fostered children also display greater use of drugs, higher rates of delinquency, and a firmer conviction that they will not live to adulthood.

Children in kinship care also appear more depressed, more likely to use drugs, and more likely to engage in delinquent behaviors, though these effects are only a third to half the magnitude of those found for foster care. As we will show, the effects associated with kinship care also vary by race.

To further investigate the potentially differing consequences of foster care, kinship care, and adoption by race, we performed analysis designed to isolate the effects separately for each of the major racial groupings available. We produced equations similar to those in Table 2 for children of each racial group separately. The results of these twenty equations (4 outcomes x 5 racial groups) clearly illustrate the differing responses of children to adoption, foster care, and kinship care. These results are shown in Table 3.

The first value in that table (0.466) indicates that white children in an adopted home score only .466 points higher on the measure of depression than do comparable white children living with at least one biological parent. (All comparisons use this as the comparison reference.) This value (.466) is annotated with a “ns.” to indicate that the effect found is *not* statistically *significant*. Essentially, this means that the statistical evidence is inadequate to conclude that adopted white children differ from white children

living with at least one biological parent on this measure of depression (i.e., the difference between them is zero). And, in general, the results of this table replicate those of Table 2 in showing trivial and generally non-significant effects of adoption for children of various races. The only significant effects of adoption are those for Native Americans and children of "Other" races in regards to minimally higher drug use.

Foster placement, however, is associated with a number of significant effects, all of which are negative. For example, black children and children of other races who are in foster placement are notably more depressed than comparable children. Asian and Other race children in foster homes are more likely to be involved in various types of delinquency. Black and Asian foster children are also more likely to think they will die (or be killed) young. White children are more likely to use drugs.

The results for kinship care show clearly that white and "Other" race children in such situations are more depressed. Whereas Asian children in kinship care admit to more drug use and are more fatalistic, White, Asian, and Native American children in kinship care engage in more delinquent behavior. In short, kinship care is associated with significant negative effects for all but African-American children.

The statistical technique that we have applied attempts to make children identical in all ways except their foster, adopted, or kinship care status. That foster care, and to a lesser extent kinship care, has such consistent and negative effects, even after the imposition of such controls, suggests that there is a story to be told about the lives of children in these living arrangements that may explain their diminished expectations, higher depression, and other negative experiences. Part of that explanation, in all likelihood, is the distinction among the statuses as they are incorporated into our cultural belief systems. Quite simply, adoption is a recognized and understood social (and legal) status. Foster care, and especially kinship care, are much less so.

When asked whether they would adopt the children in their care, kin caregivers are reluctant for at least two reasons: First, they do not want to insult the child's parents or otherwise interfere with ongoing family rela-

---

56. Berrick, *supra* note 17, at 82.

57. For the majority of kin foster parents (and proportionately more than for "stranger" foster parents), there are no "special needs" other than race that would suggest payment of adoption subsidies. For non-kin, adopting a child with whom the parent already has formed bonds will more often incur no financial penalty. For the disproportionately less affluent kin caretaker, most adoptions come at a very high price. The AFCARS Report noted that 88 percent of the children adopted received an adoption subsidy, while 16 percent of the children adopted had been relatives (while "[r]elatives who were also foster parents were counted as relatives."). AFCARS, *supra* note 19. This suggestion seems to agree with Thornton & Taylor's statement that "[s]ubsidized adoptions are another means that would help agencies increase the pool of

tionships.<sup>56</sup> Second, they maintain that they cannot afford adoption.<sup>57</sup>

Kinship care remains the preferred method for dealing with African-American children who are free for adoption. Our results suggest that black children do no worse (or better) in kinship care than when adopted, at least on a limited range of outcomes, even when this is decidedly not the case for children of other races. The caregivers in kinship care are better off because they continue to receive subsidies<sup>58</sup> that would evaporate, at least in some states,<sup>59</sup> upon the child's adoption. The parents are also not put in the difficult position of having to "cut ties" with their relatives (usually their child or niece). From the agency's perspective, there is a permanent solution for the child. Funding for social services depends on caseload,<sup>60</sup> and these children cost less though they remain on the caseload. In addition, kinship care meets the concerns of the NASBW.

Generally, we prefer arrangements that are socially and legally recognized. Even though kinship care does not appear to adversely affect African American children, it is clearly detrimental to children of other races. So how might we reconcile the differing interests and concerns of professionals, parents, and the state, as well as the differing consequences

---

eligible black parents." Robert Joseph Taylor & Michael C. Thornton, *Child Welfare and Transracial Adoption*, 22 J. BLACK PSYCHOL. 282, 288 (1996). See also The National Conference of State Legislatures, Executive Summary, A Place to Call Home: Adoption and Guardianship for Children in Foster Care (2001), available at <<http://www.ncsl.org/programs/pubs/BKFSTR2.HTM>> (last visited Dec. 20, 2002):

Although most children adopted out of foster care are adopted by their foster parents, some foster families that are caring for children with exceptional care needs face a reduction in financial assistance if they choose to adopt. Many foster families cannot afford the cost of changing from foster care to adoption. Studies show that adoption subsidies positively affect the rates of special needs adoptions. Adoption subsidies are cost-effective, primarily because of savings in administrative costs associated with foster care and court review of foster care cases. Between 1983 and 1987, state and federal governments saved \$1.6 billion in administrative costs alone on the 40,700 children adopted out of foster care during that period.

58. These are authorized, even in cases where a child's ethnic background makes him or her difficult to place, by 42 U.S.C. § 673(c)(2).

59. ADOPTION FACTBOOK III, *supra* note 36, at 127. The three states are Minnesota, Montana and Colorado.

60. A group of readings and commentaries written for law students is Maxwell Stearn's PUBLIC CHOICE AND PUBLIC LAW: READINGS AND COMMENTARY (1997). See particularly Peter H. Aranson et al., *A Theory of Legislative Delegation*, 68 CORNELL L. REV. 1, 47-51 (1982); and particularly at 51: "Budget maximizing, jurisdictional expansion, and output maximizing in their various manifestations may increase private payoffs to agency personnel. These payoffs take the form of prestige or job satisfaction, if not the form of higher salaries or greater perquisites. The beneficiaries of regulation may provide additional payoffs through political support of the agency's mission. Agencies thus enjoy positive incentives to seek out new regulatory avenues for allocating private goods to those whom they serve and to develop new clients."

for children of alternative placement arrangements?

One simple solution is to make racial distinctions in issues of kinship and foster care. Whether for historical/cultural reasons,<sup>61</sup> or because of contemporary marriage and living arrangement patterns,<sup>62</sup> African-American children (and presumably their caretakers) experience kinship care differently than do those of other races.

An alternative that would favor adoption also exists. States are allowed to make or continue payments to foster parents for children who present "special needs" and are therefore at risk of not being adopted.<sup>63</sup> In all but three states, race is one of the "special needs" criteria that can be used. So even without changing state statutes, related parents of color could adopt their grandchildren, nieces, or nephews without worrying too much about the financial cost. This will not help the social workers if they are really trying to maximize budgets,<sup>64</sup> except that movement of children out of foster care is a financial goal for the Department of Health and Human Services that even more than the number of children in care threatens budgets.<sup>65</sup>

It may well be in the children's best interests to live with a family member who is also a member of their ethnic group. (In fact, to the extent we can say anything about transracial adoption, those children seem to be more depressed than adopted children generally.) And there is little in our evidence to suggest that African-American children do worse in kinship care than with biological parents. Still, children living with kin foster parents under state supervision are not "a family already," despite what some foster parents claim.<sup>66</sup> We believe there is a difference between being a foster

61. See, e.g., Dorothy H. Roberts, *Kinship Care and the Price of State Support for Children*, 76 CHI-KENT L. REV. 1619, 1621-22 (2001).

62. See, e.g., Ken Bryson & Lynn M. Casper, *Coresident Grandparents and Grandchildren*, P-23-187, Department of the Census, at 6 (1999) (showing 30 percent of all children living with their grandparents are Black, compared to 12.5 percent of Blacks in the population), available at <http://www.census.gov/prod/99pubs/p23-198.pdf> (last visited Nov. 17, 2002).

63. They are in fact encouraged to do so by federal subsidies under 42 U.S.C. § 673(c)(2).

64. See Perry, *supra* note 31, at 85. "A second reason why some Black children stayed in foster care for such long periods was the financial structure of foster care agencies. It was sometimes more advantageous, from a funding perspective, for agencies to keep children in foster care than to release them for adoption." *Id.*

65. See Clinton, *supra*, note 27.

66. This may be contrary to the argument of Nancy Goldhill, *Ties That Bind: The Impact of Psychological and Legal Debates on the Child Welfare System*, 22 N.Y.U. REV. L. & SOC. CHANGE 295, 303 (1996). "Placing children up for adoption who cannot quickly return home improperly "measure(s) permanency by the legal label attached to their situation." *Id.*

67. As the House Committee on Ways and Means Report, H.R. Rep. No. 105-77, at 8 (1997), explained:

There seems to be almost universal agreement that adoption is preferable to foster care and that the nation's children would be well served by a policy that increases

child and being an adopted child, even with the very same adult in charge.<sup>67</sup>

We have argued elsewhere that “a piece of paper” does make a difference,<sup>68</sup> at least in the context of marriage.<sup>69</sup> Thus, cohabitation, even when it is a marriage substitute, is not the same as marriage. There are two basic reasons. First, we believe that the difference comes from a lack of trust by participants that the relationship will continue, and therefore the relationship generates a quality of exchange instead of unconditional love.<sup>70</sup> Steinberg and Hall’s book on transracial adoption<sup>71</sup> suggests to adoptive parents the custom of having adopted children celebrate a special day other than their birthdays “to commemorate their [parents’] entrustment of their precious child to you.”<sup>72</sup> Children who live in permanent kinship care arrangements, no matter how loved by their caretakers, never get a

---

adoption rates. [T]here seems to be a growing belief that federal statutes, the social work profession, and the courts sometimes err on the side of protecting the rights of parents.

We therefore disagree to some extent with Naomi Cahn, *supra* note 39, at 1205:

A related danger of this provision is that financially-needy states will move too quickly to make children available for adoption in order to receive the incentive bonus. There is no corresponding incentive for successful family reunification. In addition, adoption is not always preferable to foster care. As the legislation recognizes, when children are placed in kinship care, there need be no rush to adoption. For older children, foster care may provide an appropriate balance between safety and connection to their families of origin. Where foster care provides support for reunification, then adoption is certainly not the best solution.

68. There is certainly some evidence that it makes a difference in adoptions as well, though these were non-kin adoptions, and clearly adopted children are in a more stable situation than many foster children. RICHARD P. BARTH & MARIANNE BERRY, *ADOPTION AND DISRUPTION: RATES, RISKS AND RESPONSES* 23–41 (1988) (collecting evidence that children do better in adoption than in foster care).

69. Margaret F. Brinig, *Domestic Partnerships: Missing the Target*, 4 J. L. & FAM. STUD. 19 (2001); Margaret F. Brinig & Steven L. Nock, *Norms, Trust, Autonomy and Community*, forthcoming J. SOCIO-ECONOMICS (2003).

70. See Steven L. Nock, *Commitment and Dependency in Marriage and Cohabitation*, 57 J. MARRIAGE & FAM. 503 (1995); Andrew J. Cherlin, *Toward a New Home Socioeconomics of Union Formation*, in *THE TIES THAT BIND, PERSPECTIVES ON MARRIAGE AND COHABITATION* 236, 136–37 (Linda Waite ed. 2000).

71. GAIL STEINBERG & BETH HALL, *INSIDE TRANSRACIAL ADOPTION* 126–27 (2000) (discussing Adoption Day rituals).

72. *Id.* at 126.

73. See the discussion on long-term foster parenting where the foster parents become fully involved with the child in their care, in JOSEPH GOLDSTEIN ET AL., *BEYOND THE BEST INTERESTS OF THE CHILD* 14–15 (1974):

As the child responds to their emotional involvement and feels truly wanted, her foster parents become her psychological parents as well. Though they may be precluded from officially adopting her, they have become her parents as if by ‘common law adoption’—a status that, we argue, deserves legal recognition.

sense through such a ritual that they formally belong, that a new bond has formed.<sup>73</sup> They remain different from any biological children who may live in the same household. They have no legitimate sense of closure,<sup>74</sup> especially since, unlike families with final adoptions, social services will continue to be involved in their lives.<sup>75</sup>

The second reason that a recognized status has beneficial effects is that others recognize and respond to the obligations and expectations associated with it and embodied in our cultural heritage. The legal (i.e., adoptive) relationship between parent and child has rules that originate outside any particular union of parents and children.<sup>76</sup> These rules, or norms, establish boundaries around the relationship that influence not only the way parents and others interact, but also the expectations of parents.<sup>77</sup> The legal and social norms that define parenthood distinguish such parents in important ways from others. Such parents and their children have something that others lack: they are heirs to a vast system of understood principles that help organize and sustain their lives.<sup>78</sup> Indeed, even step-parents struggle to define their position vis-à-vis their children and others. Furstenberg and Spanier found that stepparents often felt they should play only a peripheral role in the lives of their spouse's children, and biological parents agreed.<sup>79</sup> The same ambiguity appears in cohabiting relationships where few social or legal norms are available to guide behavior or belief.<sup>80</sup>

---

74. See Adoption 2002: The President's Initiative on Adoption and Foster Care—Guidelines for Public Policy and State Legislation Governing Permanence for Children (1999), at <<http://www.acf.dhhs.gov/programs/cb/publications/adopt02/02adpt2.htm#intro>>: "The emphasis on legally secure permanent placement is meant to provide the child psychological stability and a sense of belonging...."

75. For a discussion of what the continued involvement means in the context of noncustodial fathers, see Brinig & Nock, *supra* note 69. This does not mean that there could be no contact with birth relatives, since Minnesota already allows this. MINN. STAT. ANN. § 259.58 (Supp. 1997) (stating where the parties agree upon post-adoption contact and failures in post-adoption contact will not invalidate the adoption or any relinquishments).

76. For a discussion of how becoming a parent changes individuals as a result of others' expectations and demands, see generally RALPH LA ROSSA & MAUREEN M. LA ROSSA, *TRANSITION TO PARENTHOOD: HOW INFANTS CHANGE FAMILIES* (Sage Publications 1981); as these changes influence women, see SHARON HAYS, *THE CULTURAL CONTRADICTIONS OF MOTHERHOOD* (1996).

77. For a discussion of the importance of social norms in defining relationships, see STEVEN L. NOCK, *MARRIAGE IN MEN'S LIVES*, ch. 2 (Oxford U. Press 1998).

78. See Nock, *supra* note 75.

79. FRANK F. FURSTENBERG, JR. & GRAHAM. B. SPANIER, *RECYCLING THE FAMILY: REMARRIAGE AFTER DIVORCE*.

80. For a discussion of the lack of norms in cohabiting relationships, see Steven L. Nock, *A Comparison of Marriages and Cohabiting Relationships*, 16 J. FAMILY ISSUES 53-76 (1995).

Foster and even kinship care always function as a solution that is far from ideal, at least for the large majority of children.<sup>81</sup> We know that foster children almost by definition will begin with more problems than children adopted at birth. They may have more difficulty trusting adults. They may have been abused or neglected, sometimes by their parents, sometimes by past foster parents. Because young healthy children will be taken first by prospective adoptive parents, the foster children are almost by definition less desirable.

We argue here that the congressional push out of foster care may have quite positive consequences for the children involved. We suggest that kinship care, the alternative to adoption given by current legislation, be further studied;<sup>82</sup> but unless racial distinctions are made, kinship care

---

81. The foster parents have concerns as well. *See* *Smith v. Offer*, 431 U.S. 816 (1977).

82. Such a study might compare African-American children living informally with kin, with kin under formal foster care arrangements, or adopted by kin. We could not tell from our study whether kinship care worked as well for Hispanic children, who also sometimes have cultural traditions that feature informal kin caregiving.



should not generally be viewed as a viable option to adoption by the kin caregiver. Legal status in family law matters a great deal. Particularly when children's interests are involved, society should choose the status that will make children's lives as happy and healthy as possible.

**Table 1: Descriptive Statistics**

<b>Descriptive Statistics</b>	<b>Mean</b>	<b>Standard Deviation</b>	<b>N in Equations</b>
19-item Depression Scale	13.3566	5.9787	15,315
Monthly use of cig, alcohol or marijuana	1.55	3.45	15,024
Delinquency Scale, # last month (of 15)	5.22	6.83	15,177
Estimated Probability of dying < 35 or being killed < 21	0.13	0.15	15,271
Child Lives with Mother Only	.2759	.4470	15,315
Child Lives with Dad Only	.0001	.0114	15,315
Child's Age	16.0201	1.7146	15,315
Child's Sex	1.5149	.988	15,315
Household Income (000)	45.8461	49.7273	15,315
Mother's Age	41.8328	6.5310	15,315
Mother Never Married	.0572	.2322	15,315
Mother is Married	.7198	.4491	15,315
Mother is Widowed	.0333	.1796	15,315
Mother Divorced-Separated	.1875	.3903	15,315
Mother's Prior Relationship Ended in Divorce	.2297	.4207	15,315
Mother's Yrs Schooling	12.9383	2.3667	15,315
Mother Hispanic	.0026	.0510	15,315
Mother Black	.2075	.4055	15,315
Mother Asian	.0553	.2286	15,315
Mother Native American	.0129	.1130	15,315
Mother Other Race	.0556	.2292	15,315
Child in Kin-Care	.0219	.1500	15,315
Child Adopted, lives with Adopted Parent(s)	.0346	.1828	15,315
Child fostered, lives with foster Parent(s)	.0027	.0517	15,315

**Table 2: Determinants of Adolescent Problems (Coefficient/Standard Error)**

All Mothers Variable	Depression R2=.047** (N=15,315)	Drug Use R2=.071** (N=15,024)	Delinquency R2=.031** (N=15,177)	Morbidity R2=.038** (N=15,271)
Constant	6.645 (1.197)**	-2.113 (0.710)**	8.262 (1.378)**	.0068 (.030)*
Child Lives with Mother Only	.621 (0.177)**	.532 (0.102)**	.670 (0.204)**	.008 (.004) ns
Child Lives with Dad Only	1.305 (4.137) ns	2.615 (2.357) ns	1.343 (4.759) ns	.009 (.105) ns
Child's Age	.417 (0.029)**	.342 (0.016)**	.065 (.033)*	.006 (.001)**
Child's Sex 1=m, 2=f	1.224 (0.095)**	-.215 (.055)**	-1.869 (.110)**	-.002 (.002) ns
Household Income (000)	-.003 (0.001)**	-0.0008 (.001) ns	.0005 (.001) ns	-.00008 (.0001)*
Mother's Age	-.018 (0.008) *	-0.013 (.005)*	-0.024 (.010) *	.0001 (.0001) ns
Mother Never Married	1.005 (1.054) ns	-.364 (.630) ns	-.249 (1.213) ns	.015 (.027) ns
Mother is Married	.541 (1.038) ns	-.175 (0.621) ns	-.478 (1.194) ns	.006 (.026) ns
Mother is Widowed	.752 (1.069) ns	-0.082 (.638) ns	-.185 (1.231) ns	.017 (.027) ns
Mother Divorced/ Separated	.697 (1.042) ns	-.147 (.623) ns	.088 (1.199) ns	.012 (.026) ns
Mother ever Divorced?	.313 (.131)**	.302 (0.075)**	.187 (0.152) ns	-.001 (.003) ns
Mother's Years of Schooling	-.172 (0.021)**	-0.037 (.012)**	-.020 (.025) ns	-.005 (.001)**
Mother is Hispanic	1.613 (0.932) ns	-.076 (.538) ns	2.223 (1.072)*	.041 (.024)
Mother is Black	-.113 (.359) ns	-0.890 (.208)**	-.803 (.415)*	.018 (.009)*
Mother is Asian	.865 (0.433)*	-.334 (.247) ns	-.025 (.497) ns	.001 (.011) ns
Mother is Native American	.371 (0.478) ns	-.563 (0.278)*	.712 (.551) ns	.031 (.012)*
Mother Other Race	.502 (0.261)*	-.451 (0.150)**	-.212 (.302) ns	.009 (.007) ns
Child in Kin-Care	1.257 (0.355)**	0.460 (0.205)*	1.631 (0.409)**	.013 (.009) ns
Child Adopted	.732 (0.263)*	0.010 (.150) ns	.597 (.303)*	.011 (.007) ns
Child Fostered	3.244 (.916)**	1.164 (0.542)*	2.175 (1.066)*	.069 (.030)*
Child Hispanic	.378 (1.763) ns	-1.004 (0.962) ns	1.998 (1.942) ns	-.002 (.043) ns
Child Black	.807 (0.361)*	-.712 (.210)**	.365 (.418) ns	.024 (.009)*
Child Asian	.493 (0.446) ns	-.683 (.255)*	.318 (.511) ns	.022 (.011)*
Child Native American	.891 (0.428)*	.0001 (.246) ns	2.055 (.499)**	.050 (.011)**
Child Other Race	.344 (0.226) ns	-.628 (.130)**	1.311 (.261)**	.024 (.006)**

Source: Original analysis of National Longitudinal Study of Adolescent Health.

\* = Indicates that coefficient is significant at  $p \leq .05$ ;

\*\* = Indicates that coefficient is significant at  $p \leq .01$

ns = Indicates that coefficient is not statistically significantly different from zero.

A total of 403 children were adopted by both parents, of whom 78 were black.

A total of 61 children were foster children, of whom 22 were black.

**Table 3: Effects of Adoption, Foster Placement, and Kin Care by Race**

Effect by Race	Depression	Drug Use (#/ month)	Juvenile Delinquency	Perceived Chance of Dying
<b>Adopted Child:</b>				
- White	0.466 ns	-0.013 ns	0.640 ns	0.012 ns
- Black	1.434 ns	-0.163 ns	0.671 ns	0.003 ns
- Asian	2.874*	-0.578 ns	0.660 ns	-0.005 ns
- Native Am	N/A	2.217*	0.252 ns	N/A
- Other race	0.625 ns	2.095*	0.616 ns	0.021 ns
<b>Fostered Child:</b>				
- White	0.196 ns	2.884**	-0.682 ns	0.011 ns
- Black	5.251**	-0.578 ns	0.086 ns	0.107*
- Asian	5.585 ns	N/A	5.682**	0.363*
- Native Am	N/A	-2.034 ns	3.214 ns	N/A
- Other race	6.461*	2.055 ns	6.500*	0.024 ns
<b>Kin-Care Child</b>				
- White	1.464*	0.467 ns	2.340**	0.017 ns
- Black	0.164 ns	-0.097 ns	0.247 ns	-0.011 ns
- Asian	3.092 ns	1.488*	4.003*	0.102*
- Native Am	N/A	1.315 ns	5.474*	N/A
- Other race	3.236*	0.327 ns	2.128 ns	0.017 ns
<b>R<sup>2</sup> / N</b>				
- White	.042**/9905	.057**/9745	.032**/9825	.023**/9882
- Black	.048**/3135	.035**/3045	.028** /3090	.019** /3113
- Asian	.068**/793	.050**/781	.086**/794	.049**/797
- Native Am	.075ns/253	.144**/248	.106*/248	N/A
- Other race	.062**/1213	.056**/1188	.043**/1203	.036*/1213

Note: All equations control for household structure, child's gender, household income, mother's age, mother's current and previous marital status, mother's education, and mother's race.

\*\* = Statistical significance is .01 or less

\* = Statistical significance is .05 or less

ns = Not statistically significantly different from zero

N/A = Insufficient number of cases or insignificant equation