



FOSTER CHILDREN, RIGHTS AND THE LAW

BEST INTEREST, NORMALCY AND THE WELFARE SYSTEM

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The Child Welfare System—A Complex World

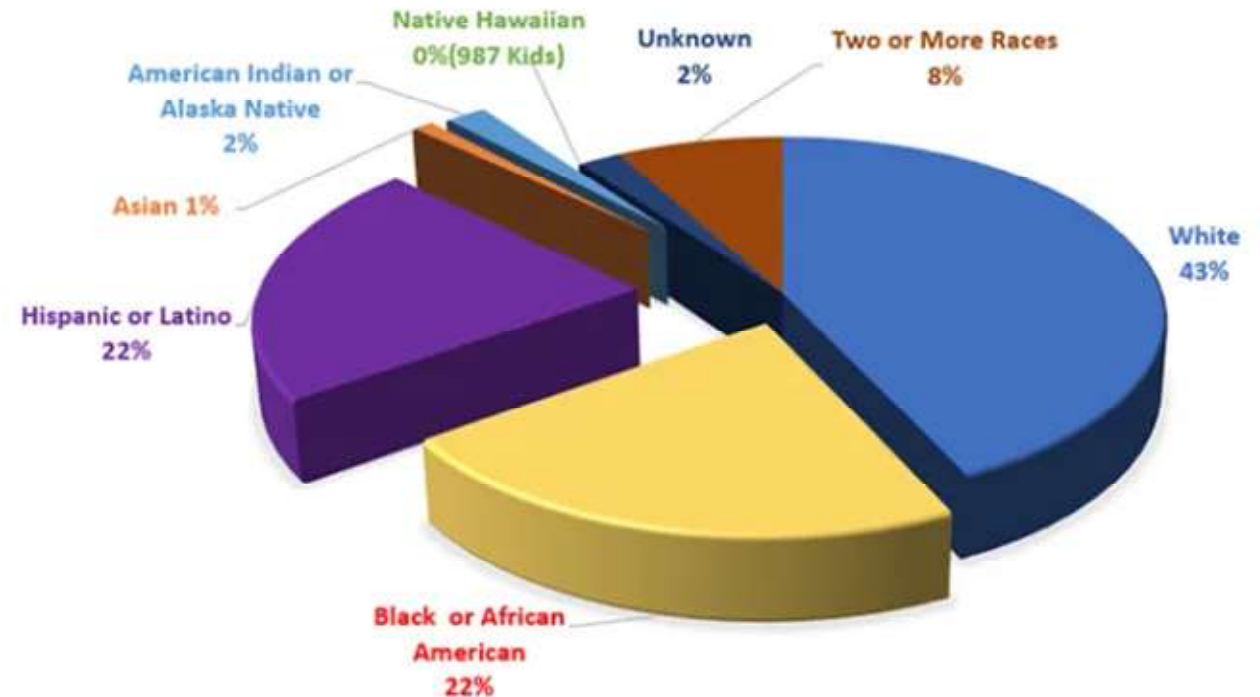
- “Best interest of the child” as universal, but undefined standard
- Multiple actors: attorneys, caseworkers, foster parents, advocates, court staff, judges, etc.
- Decision-making often subjective, inconsistent



Foster Children—Scope and Demographics

- 3 million children in US child welfare system annually;
~600,000 in foster care
(2021 data)
- High rates of CPS investigation: 37% of all US children, >50% of Black children
- Typical foster child: ~8 years old; 31% are under 3 years old

Racial Composition of Foster Kids in the US





Disparity and Special Populations

- Overrepresentation: Black, Hispanic, Indigenous, and Roma children, both in US & internationally
- Children with disabilities: 44% of US foster children have health or behavioral needs

WHY A CHILD ENTERS OUT OF HOME CARE:



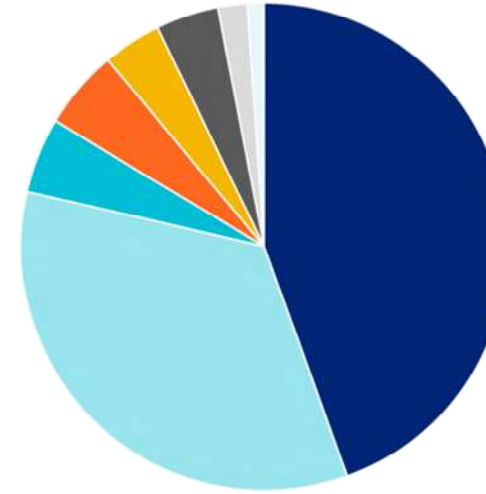
These categories are not mutually exclusive, so percentages will total more than 100% and counts will be more than the total number of entries.

SOURCE: The AFCARS (Adoption and Foster Care Analysis and Reporting System) Report for 2020

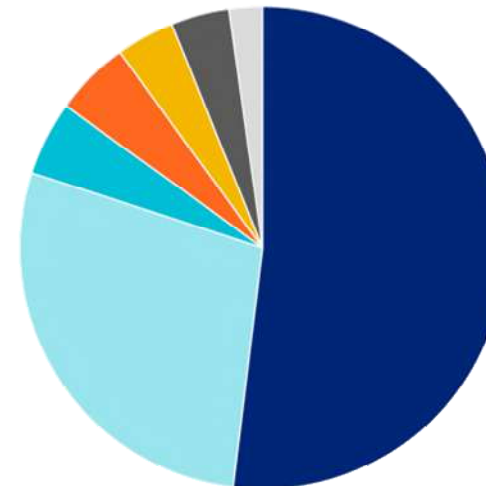


Legal and Process Overview

- Steps: Report → CPS investigation → Emergency removal → Court process
- Court actors: Judges, CPS, attorneys, guardians ad litem, CASA volunteers
- Sample timeline (Texas & Pennsylvania):
Emergency hearing within days,
permanency planning within months,
final hearings within a year
- Possible exits: Reunification (≈50%), adoption, guardianship, emancipation



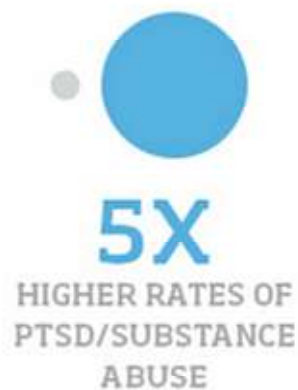
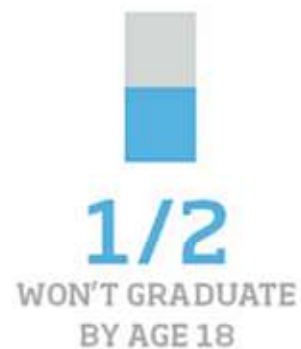
Most recent placement settings:
44% Foster family home (non-relative)
34% Foster family home (relative)
5% Pre-adoptive home
5% Institution
4% Trial home
4% Group home
2% Supervised independent living
1% Runaway



Case plan goals:
52% Reunify with parents
28% Adoption
5% Emancipation
5% Case plan not yet established
4% Live with other relatives
4% Guardianship
2% Long-term foster care



Outcomes for Former Foster Youth



- Poorer health outcomes and increased pregnancies among female foster care alumni
- Complex causality: Hard to separate pre-existing adversity from system-induced harm



The System and the Child's Voice



- Foster youth interact with multiple agencies simultaneously
- Many adults making decisions supposedly “in the best interest” of the child
- Emphasis on the need to include the child’s own voice and vision for a normal life



Best Interest



What Does "Best Interest" Mean?

- Central, but undefined, standard in child welfare decisions
- Used in court and agency decisions: placement, services, parental rights, etc.
- Definitions vary by state, case, and professional role



Legal Definitions and Variations

- No single US definition; states use their own factors and laws
- Examples: Oregon (emotional ties), Alabama (family reunification), Texas (child's desires, age, open-ended factors)
- Agency guidelines, statutes, and case law further complicate meaning



Texas Best Interest

Holley Factors

Per *Holley V. Adams*, the following are frequently considered best interest factors:

- the desires of the child
- the emotional and physical needs of the child now and in the future
- the emotional and physical danger (of one parent) to the child now and in the future
- the parental abilities of the individuals seeking custody
- the programs available to assist the parents
- the plans for the child by these individuals
- the stability of both parties' homes and any acts or omissions of a parent which may indicate that the existing parent-child relationship is not a proper one
- any excuse for the acts or omissions of a parent.



Broader Uses of "Best Interest"

- Applies in education (ESSA: school placement decisions)
- Used in immigration for juvenile asylum (Special Immigrant Juvenile Status)
- Extended to pediatric medical ethics and overriding parental/child objections for treatment



U.S. Immigration and
Customs Enforcement





International Law and "Best Interest"



- United Nations Convention on the Rights of the Child (CRC): "Best interest of the child shall be a primary consideration"
- Included in global and regional treaties (Africa, South Asia, EU)
- Applied, but undefined, in international and national courts

Best Interest in Practice—A Century of Change

- Origin in 1800s Anglo-American law
- Spread worldwide with the CRC and rise of children's rights discourse
- Today: best interests influenced by local laws, culture, and politics





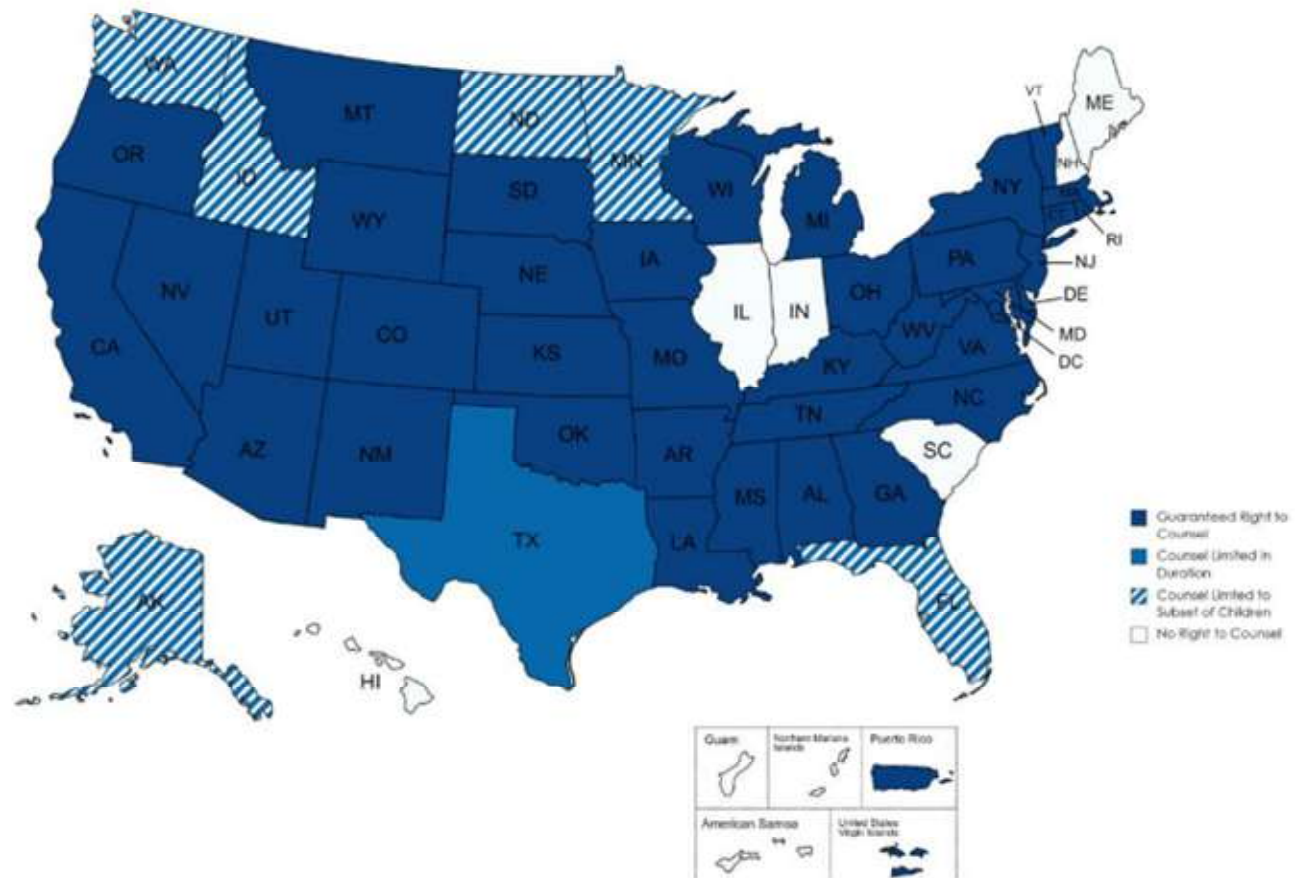
How Courts & Professionals Interpret Best Interest

- Research: Judges, attorneys, social workers, and foster parents apply different factors
- Application is highly individualized, with wide discretion for professionals



Representation Models and the Child's Voice

- Legal community debates: professionals' training poorly suited for "best interest" decision-making
- Most legal scholars/professional boards favor direct representation (child's wishes prioritized)





The Core Critiques of Best Interest

- **Indeterminacy:** Vague, inconsistent, highly dependent on individual decision-maker
- **Discretion & Inconsistency:** No rules, wide judicial latitude and unpredictable from case to case
- **Bias:** Race, class, disability, and cultural beliefs shape outcomes, often against marginalized groups
- **Conflicting Rights:** Parental vs. child rights, children vs. children (e.g., siblings), "general" vs. individual interests

Weights?



STABILITY



The best interests of the child – A dialogue between theory and practice



2021 UNHCR BEST INTERESTS PROCEDURE GUIDELINES: **ASSESSING AND DETERMINING THE BEST INTERESTS OF THE CHILD**



EASO Practical guide on the best interests of the child in asylum procedures

EASO Practical Guides Series



Normalcy

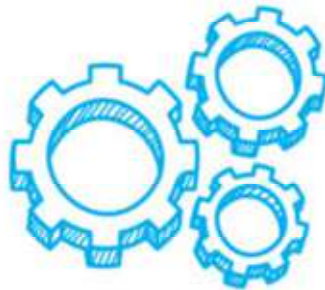


What is "Normalcy" for Foster Youth?

- Aim: Foster youth should experience typical activities, freedoms, and milestones of childhood/adolescence



PRACTICE
AUTONOMY,
DECISION MAKING,
& HEALTHY RISK-
TAKING



ENGAGE IN
SELF-EXPLORATION



EXPLORE SKILLS
& INTERESTS



BUILD & MAINTAIN
SUPPORTIVE
RELATIONSHIPS



OBTAINING
A DRIVERS
LICENSE



WORKING AN
AFTER SCHOOL
JOB



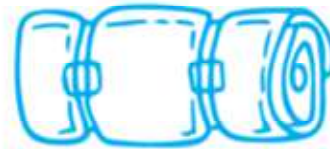
ATTENDING
PROM



HAVING A CELL
PHONE OR USING
INTERNET



PRACTICING IMPORTANT
LIFE SKILLS SUCH AS
COOKING, DOING LAUNDRY,
& MANAGING MONEY
THROUGH A
BANK ACCOUNT



HAVING
SLEEP OVERS &
HANGING OUT
WITH FRIENDS



PARTICIPATING
IN SPORTS OR
EXTRACURRICULAR
ACTIVITIES



Lived Reality—Barriers to Normalcy

- Instability, multiple placements = fewer opportunities
- Youth in group homes/RTCs usually denied “normal” experiences (can’t leave, isolated from peers)
- Requests for normalcy sometimes result in foster placement disruption



Origins & Legal Framework



- First appeared in early 2000s with California law; expanded in Florida with “Let Kids Be Kids” (2013)
- Led to adoption of “reasonable prudent parent standard” to guide caregivers’ decisions without excessive agency permission
- Federal adoption: Preventing Sex Trafficking and Strengthening Families Act (PSTSFA, 2014) — mandates reasonable decision-making and liability protections



Implementation Across States



- States differ in: specific activities permitted, caregiver authority, extent of required CPS approval





Why Normalcy Matters

- Normalcy = essential for identity, social/emotional skills, and life skills development
- Linked to brain development, healing trauma, preparing youth for adulthood
- Normalcy as a basic human right





Normalcy: Youth-Defined

- Foster youth organizations (NEYC, National Council, Pennsylvania Board) drafted their own “Normalcy Bill of Rights”
- Core themes: agency, family contact, peer connections, independent choices, rights to self-expression and participation
- Youth stress the importance of being heard and allowed “developmentally appropriate freedoms”

NEYC Bill of Rights



1. Shall have regular visits with their families and siblings regardless of “good” behavior. (see: Sibling Bill of Rights)
2. Shall be educated on the components of healthy romantic relationships through guidance from a supportive adult.
3. Shall be able to participate in activities that build a supportive social network, and have a curfew that allows for such activities.
4. Shall be allowed to build relationships with peers regardless of gender or sex.
5. Shall have opportunities to build relationships within their home and school communities equal to their peers not in care.
6. Shall be taught how to use tools such as personal e-mail, social media, and cell phones in a safe and healthy way that promotes an inclusivity with their communities, peers, and family.
7. Shall be able to express their identity as they choose, with guidance from supportive adults, because all people have the right to safety regardless of their circumstances.
8. Shall not be restricted in practicing religious or cultural customs, listening to their choice of music, wearing their preferred style of clothing etc.
9. Shall be showed respect for their religious and cultural beliefs and shall be able to participate in any activities associated with their religious beliefs.
10. Shall be allowed to discover and express their gender and sexual identity regardless of placement, and shall not be subjected to discrimination or fear for their safety because of their gender or sexual identity.
11. Shall be supported to reach age-related milestones including but not limited to obtaining a driver’s license, opening a bank account, celebrating birthdays, graduations, etc.



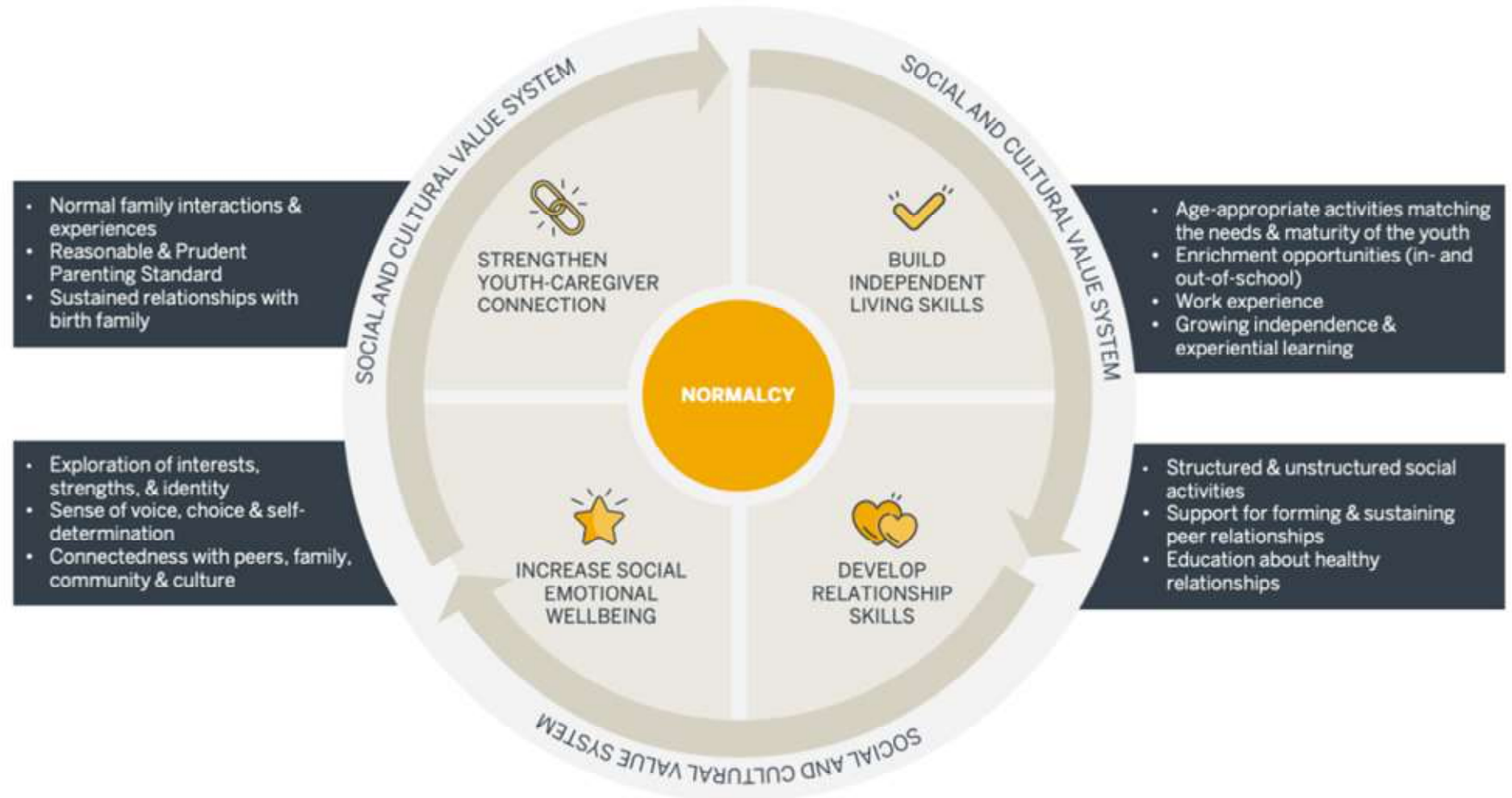
Major Barriers to Normalcy

- Safety/liability fears of agencies and caregivers (even after liability shields exist)
- Lack of funding and transportation
- Placement rules (especially in group care)
- Discrimination and exclusion of LGBTQ youth, youth with disabilities, and those with “challenging” behaviors



Research on Normalcy

- Texas Youth Permanency Study: normalcy (and relationships), not just legal “permanency,” linked closely to youth well-being





International Context

- While "normalcy" is a US term, similar concepts exist globally
- UK, Canada, Australia, NZ, EU: support for "age-appropriate risk," participation, cultural/identity rights
- United Nations CRC Article 31: right to play, rest, leisure, community/cultural life (not foster-care specific)



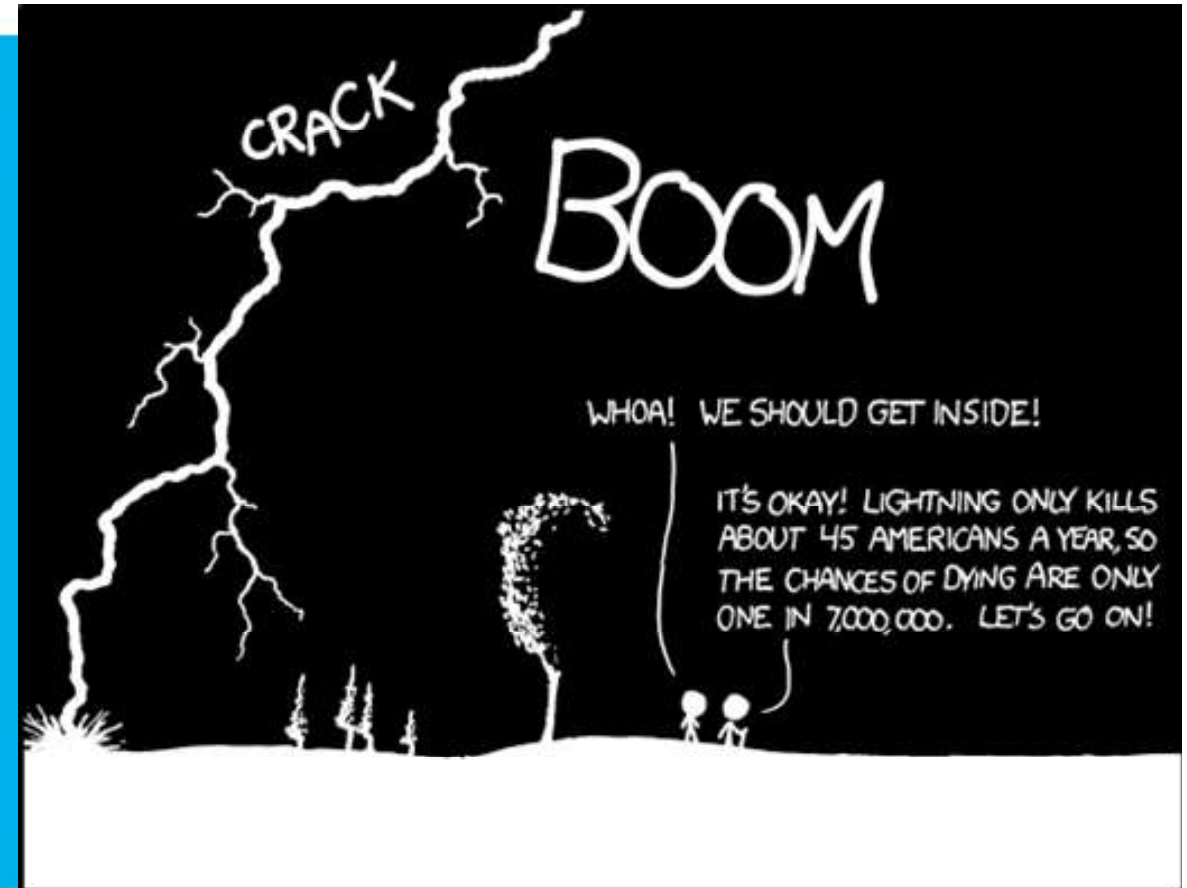


Critiques and Subjectivity

- Some critique: “normal” is subjective—risk of imposing mainstream, white/middle-class standards
- Elevated awareness now of cultural, identity, and disability inclusion
- The universality at the heart of normalcy: all youth deserve agency, freedom, and experiences typical for peers



Risk, Best Interest and Normalcy



THE ANNUAL DEATH RATE AMONG PEOPLE
WHO KNOW THAT STATISTIC IS ONE IN SIX.



Best Interest vs. Normalcy—Contrasting Philosophies

- Both aim for child stability and wellbeing
- Best interest: safety-oriented, risk-averse, often undefined
- Normalcy: child freedom, participation, and opportunity for typical life experiences



The Problem of Risk Aversion

- Best interest standard fosters a risk-averse culture in child welfare (“safety first” mindset)
- Risk aversion often trumps children’s participation, freedom, and wellbeing
- Example: Children denied normal activities for fear of harm, placement disruptions





Institutionalizing Risk Aversion — The Reasonable Prudent Parent Standard (RPPS)

- Normalcy statutes allow caregivers to make everyday decisions
- RPPS defined federally: “careful and sensible parental decisions that maintain the health, safety, and best interests...while encouraging growth”
- BUT: “Best interest” language embedded in RPPS and normalcy guidance keeps risk aversion central
- Primarily aims to limit caregiver legal liability



Examples of RPPS in Practice

Low Risk

Discretion of Caregiver, Inform Clinical Social Worker

Going to a supervised function (i.e. school dance, local field trip)
Going to a supervised outing (i.e. restaurant with a friend's family)
Going on an unsupervised outing (i.e. going to the movies with a friend)
Dating, Scouting, ROTC

Medium Risk

Discretion of Caregiver, Consult Clinical Social Worker

Participating in school sponsored sports (i.e. football, basketball)
Participating in unsupervised recreational activities (i.e. ice skating)
Participating in physical lessons/activities (i.e. karate, wrestling)
Going out of state with supervision (i.e. out-of-state field trip)

High Risk

Clinical Social Worker Informs County Worker, May Need Court Authorization

Life altering events (i.e. getting married, joining the military)
Foreign travel (i.e. becoming a foreign exchange student)
Extreme activities (i.e. hunting, mountain climbing, sky diving)

- Liability waived for foster caregivers acting under RPPS in most states (e.g., KY, AZ)
- CPS decision-making guides emphasize health, safety, and “best interest” when approving activities
- Outcome: Caregivers still default to safety first, limiting youth opportunities



Risk Aversion—A Societal and Institutional Trend



- Culturally, childhood is increasingly viewed through the lens of risk and protection
- Laws now criminalize “normal” independence (walking to school, staying home alone)
- Increased supervision → less independence, linked to more anxiety, depression, fewer life skills



The High Cost of Risk Aversion

- Children need independence and risk for healthy development (physical, social, mental)
- Lack of opportunity = poor outcomes: more anxiety/depression, worse integration as adults
- “Children as safe as necessary, **not** as safe as possible” (Canadian Pediatric Society)



Wellbeing vs. Safety – Competing Metrics

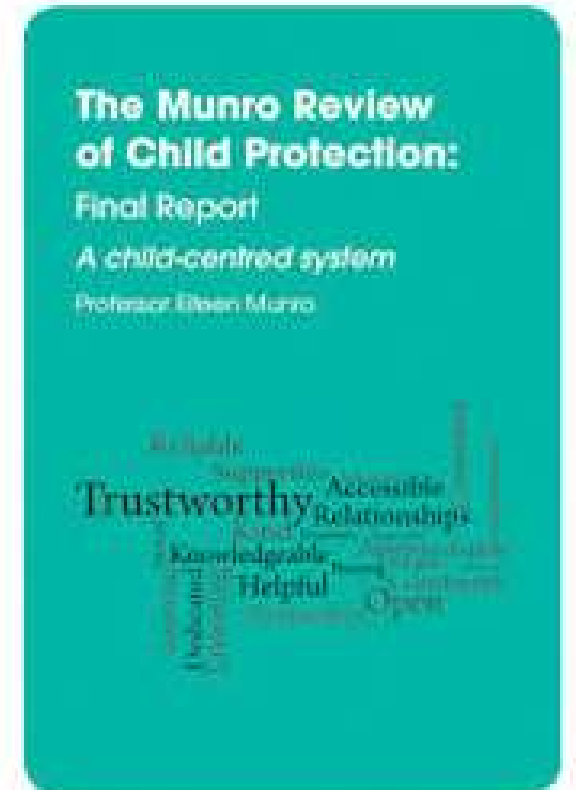


- “Best interest”
predominantly about protection; “normalcy”
about holistic wellbeing
- UNICEF and CRC: Wellbeing
= realization of full child
rights, not just physical
protection



Risk Aversion in CPS Practice

- CPS decisions (removal, placement, reunification, activity approval) default to “better safe than sorry”
- Risk assessment tools/algorithms: limited validation, often reinforce bias, ignore protective family factors
- Defensive, blame-oriented workplace culture leads to over-investigation and procedural rigidity





Consequences of a Risk-Averse System



- Higher removal/investigation rates, disproportionately affecting marginalized families
- Front-line CPS workers feel ethical stress, lack power, and fear mistakes - “culture of blame”
- Children in group care or with behavior challenges especially likely to be denied normalcy



The Tension—Best Interest vs. Normalcy

- “Best interest” (as practiced): enables risk aversion, professional cover for limiting youth autonomy
- “Normalcy”: calls for accepting reasonable risk, respecting youth voice, prioritizing developmental needs
- Legal language and systems still favor risk aversion as normalcy is not the dominant paradigm



Decision Making



Decision Making—The Heart of Child Welfare

- From removal to reunification, every stage involves critical decisions
- Judges, CPS, foster parents, CASA, and others all play roles
- All decisions filtered through a “best interest” legal framework



Decision Context—Uncertainty and Complexity



- Caseworkers and courts rarely have full information
- Outcomes (positive/negative) are uncertain and often subjective
- Most decisions are not binary and many possible options, each with risks



Key Decisions in the System

- Screening/intake (which cases to investigate)
- Substantiation (was maltreatment found? what kind?)
- Removal (should a child leave home or not?)
- Termination (should parental rights end permanently?)
- Reunification/permanency (return or new permanent family)

Screening and Investigation



- Only ~50% of reports are screened in; accuracy is variable
- Factors for investigation: referral source (professionals), injury, young age, parent disability or substance use
- Agency/worker beliefs and office culture influence outcomes

Substantiation and Removal—Key Influences



- Substantiation tied to type of abuse, who reported, domestic violence/substance use
- Racial, income, and geographic disparities exist and are debated
- Worker risk tolerance, supervisor support, and resource availability shape removal choices

Judicial Decision-Making



- Termination mainly a judicial act, but influenced by caseworker recommendations
- Judges' experience and biases affect final outcomes (e.g., risk perceptions, compliance focus)
- Laws and statutory factors guide, but do not standardize, decisions



What Factors Matter Most?

- Case factors: child's age, health/behavior, type of maltreatment, parental issues
- Caseworker factors: experience, personal beliefs, risk tolerance, orientation (safety vs. family preservation)
- Agency factors: supervisor and peer support, community service availability, office culture/policy
- External: poverty, community demographics, resources



Bias and Heuristics

- Racial/class bias appears at every decision point
- Cognitive shortcuts, confirmation bias, selective attention common
- Errors/consistency: Same case → different decisions depending on worker, agency, locale



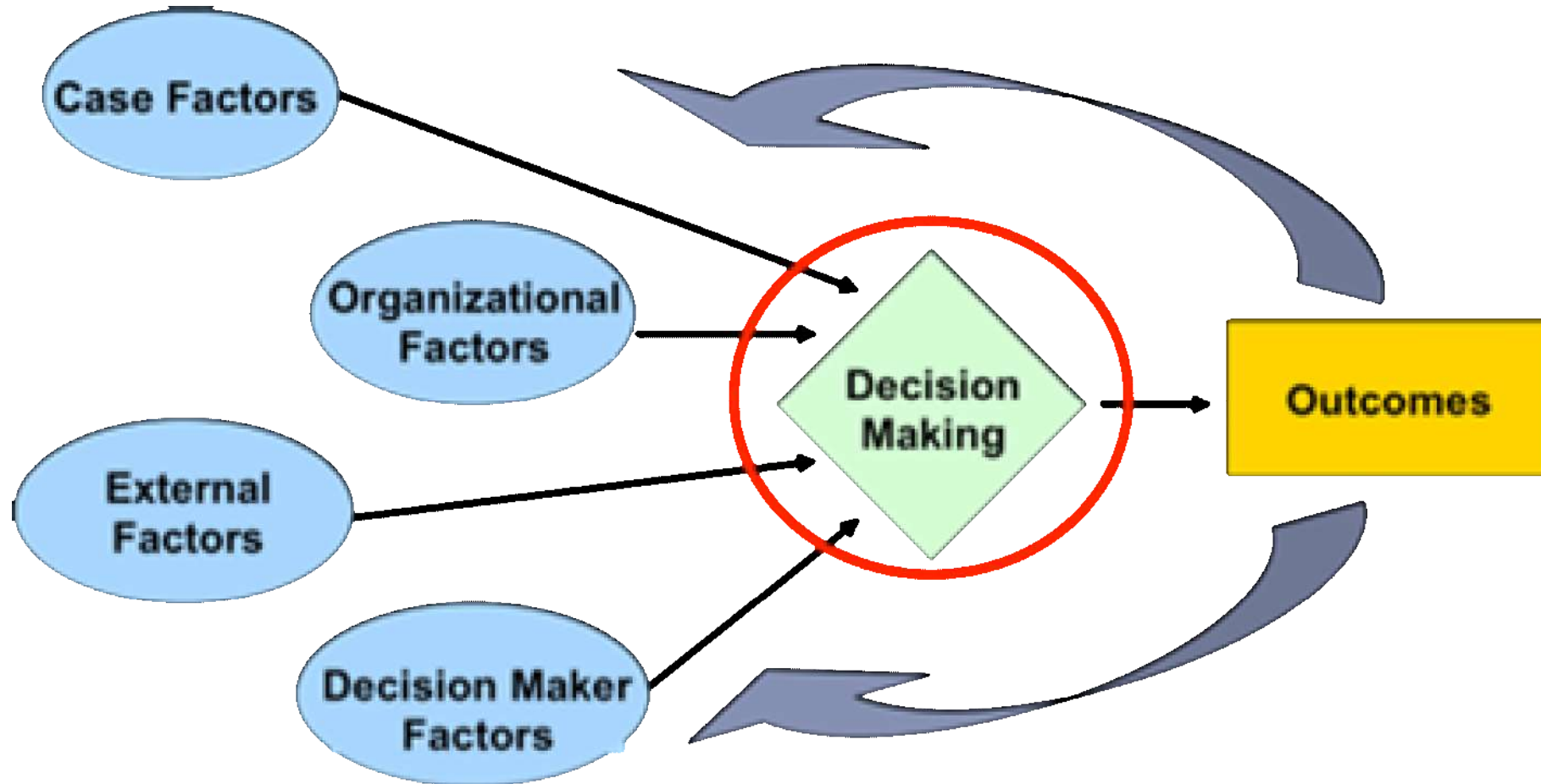


Group & Ecological Models of Decision Making

- Team Decision Making (TDM): collaborative meetings to promote consensus, can reduce removals/placements
- Family Group Decision Making (FGDM): mixed evidence on measurable outcomes but improves information sharing
- Decision Making Ecology (DME): recognizes multilevel influences—case, organization, external, individual



DME



The Decision River—Why Outcomes Vary



- Every case is affected by hundreds of daily “micro-decisions” (services, placements, timing, etc.)
- Small choices ripple into larger outcomes (child stability, permanency, family unity)
- **Conclusion:** Systemic complexity means that outcomes for similar families may differ wildly due to decision-makers and context



Children's Rights

What Do We Mean by Children's Rights?

- Children's rights: entitlements in law, ethics, and practice
- Types: protection, provision, participation ("3 Ps" from the UN Convention on the Rights of the Child/CRC)
- Fundamental tension: Children's agency vs. adult protection; parent rights vs. child rights



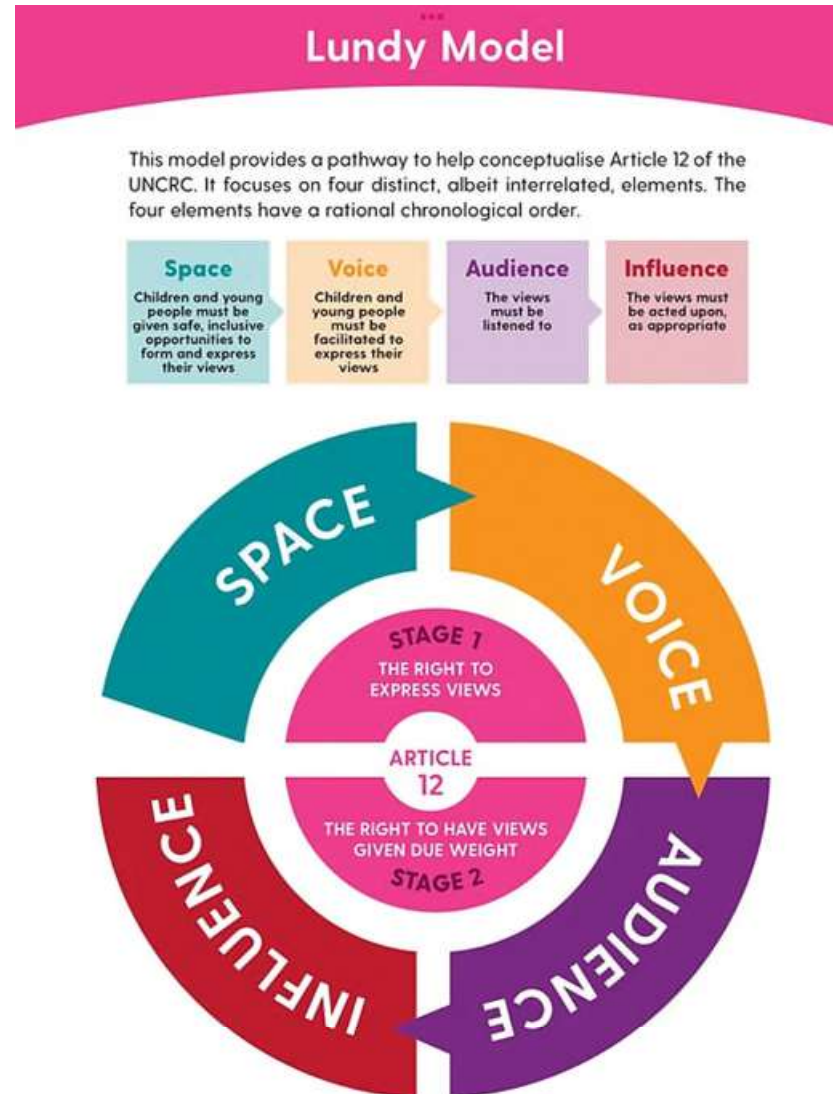
Legal & Philosophical Foundations



- Legal definitions of “child” vary by age, place, and context
- Philosophical debates:
 - *Interest Theory*: Rights protect vital interests even if children lack full autonomy
 - *Will Theory*: Rights tied to capacity and choice (not all children possess this equally)
 - *Protectionist vs. Liberationist*: Rights as defense for children vs. equal rights with adults
- “Open future” concept: Adults hold many rights “in trust” for children



Participation—The Right to Be Heard



- CRC Article 12: “Right to express their views freely in all matters... given due weight in accordance with age/maturity”
- The Lundy Model: Space, Voice, Audience, Influence—meaningful participation requires more than just being present
- Practice: Participation can be token, age-graded, or overridden by “best interest” and risk aversion



Barriers to Real Participation

- Adults, agencies, and legal systems often prioritize “protection” over “participation”
- Caseworkers & judges vary in how much weight they give children’s preferences
- Practical challenges: time, training, agency policy, and risk aversion
- Participation most likely in specialty courts or with high-quality legal counsel

Children's Voices & Experiences



- Most foster youth want more information, more say, more trust, and real influence
- Participation builds trust, self-worth, and better outcomes; lack of voice leads to frustration, acting out, and poor outcomes
- Rights awareness: foster youth often unaware of their rights or how to enforce them



Moving Forward—Strengthening Rights



- Lawsuits (class actions) have forced some changes, especially regarding safety and services
- True change requires enforceable rights, not just aspirational lists
- Continued need: shift from “what’s best for children” (decided by adults) to “what do children want and need?” (decided with children)



The Loss of Normalcy – A Universal & Foster Youth Experience



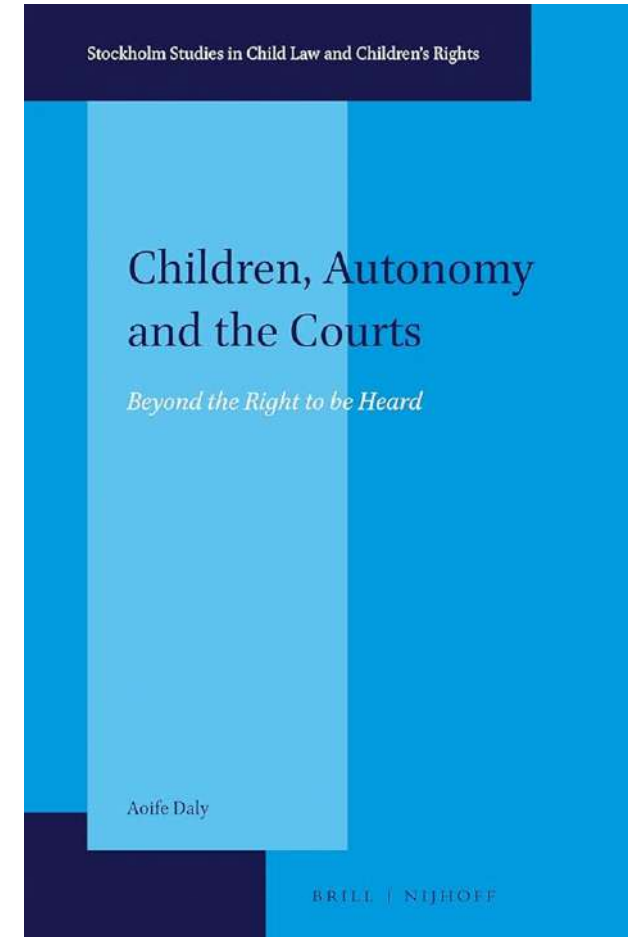
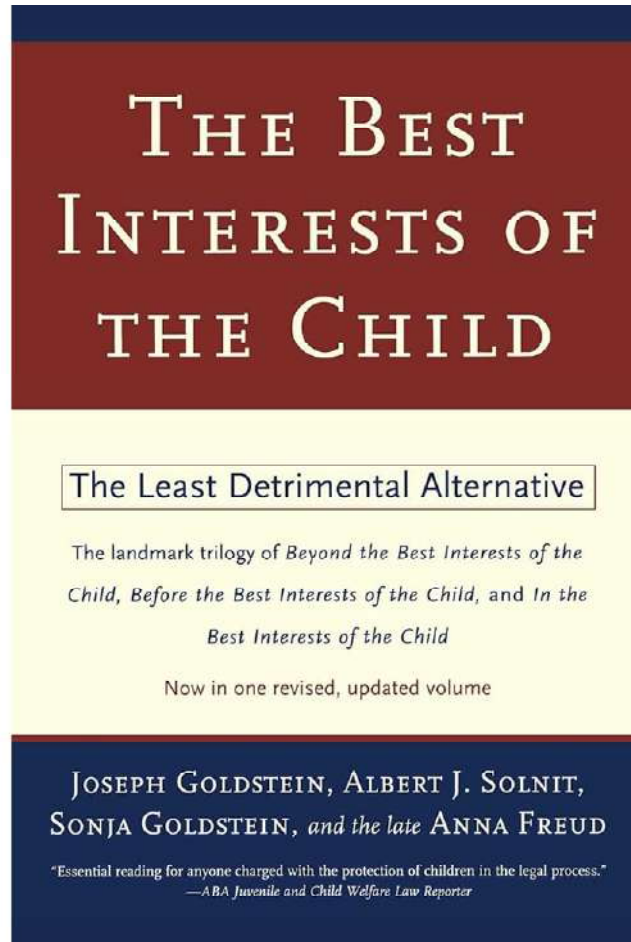


Why Best Interest Fails (Recap)

- Best interest: subjectivity, inconsistency, risk aversion, bias
- Too easily manipulated to justify nearly any adult decision
- Often strips away rather than upholds children's autonomy and rights



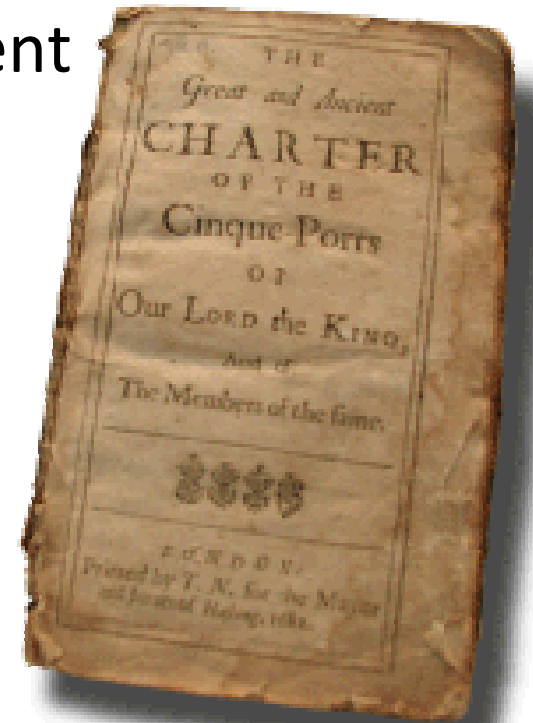
Existing Alternatives in Policy & Theory





The Normalcy Charter – Core Elements

- **Clearly defined, enforceable rights** (not just aspirations)
- **Direct attorney representation** throughout dependency process
- Best interest replaced (except for rare substitute judgment situations)
- **Risk tolerance** is structurally built in





What Rights Should Foster Children Have?

- Right to normalcy (see NEYC Bill of Rights)
- Right to least restrictive, family-like placement
- Right to direct legal counsel
- Right to participate in hearings, planning, and services (Lundy Model: Space, Voice, Audience, Influence)
- Right to bodily/medical autonomy, education in regular schools, sibling/family contact
- Right to appeal, to privacy, to belongings, to be protected from discrimination



How These Rights Would Work

- All rights are **enforceable in court**; violations have remedy
- No best interest override except imminent safety/harm
- Youth and alumni must help draft, revise, and oversee these rights



Embracing Risk Tolerance for Growth

- Childhood = healthy risk, opportunity to make mistakes, agency in daily life
- Rights-based approach removes the default to risk aversion
- Benefits both foster youth and workforce (less blame/culture of fear)



A Call for Systemic Change

- Normalcy, enforceable rights, and direct counsel can shift culture away from “protecting the system” to “serving the child”
- Systemic reform must be child-centered at all decision points - including the “small deals” (activities, communication, relationships)
- International frameworks like the CRC useful, but alone insufficient- care-experienced youth must shape policy



Convention on the
Rights of the Child



FOSTER

VERSION

2.0



Final Vision: A Better Way Forward

- Crisis and reform cycles have failed; best interest maintains status quo
- Rights, participation, and normalcy offer real possibility for dignity and agency
- True child-centered system = one led by their lived experience, legal protection, and normal freedoms