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Community-Based Child Care in Ethiopia vs. the Individual Centered Model in the United States: A Closer Examination of Family Group Decision Making in Child Placement

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Community-Based Child Care in Ethiopia vs. the Individual Centered Model in the United States: A Closer Examination of Family Group Decision Making in Child Placement

By Amy Gilbert[*]

I. Introduction

The Federal Democratic Republic of Ethiopia is the oldest independent country in Africa, rich with history and cultural tradition.[1] Although Ethiopia is the second most populous nation and one of the fastest growing non-oil economies on the African continent, it still remains one of the poorest and most primitive countries in the world.[2] Throughout its history, Ethiopia's diverse geo-climate and socio-economic disasters have caused devastating floods, droughts, landslides, and widespread human and animal disease epidemics.[3] Thus, tribal communities play a vital role in Ethiopia, where extended family networks developed as instrumental and functional mechanisms to help relatives and friends during times

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[1] *See Ethiopia Profile*, BBC NEWS, http://www.bbc.co.uk/news/world-africa-13349398 (last updated Dec. 19, 2012) (describing Ethiopia's unique cultural heritage as the home of the Ethiopian Orthodox Church and serving as a symbol of African independence as the only African country that has never been colonized); *see also* UNICEF: MINISTRY OF FIN. & ECON. DEV. & THE UNITED NATIONS IN ETH., INVESTING IN BOYS AND GIRLS IN ETHIOPIA: PAST, PRESENT AND FUTURE 5 (Edmasu Nebebe & Roger Pearson eds., 2012) [hereinafter INVESTING IN BOYS AND GIRLS IN ETHIOPIA] (describing the over eighty ethnic groups of the country).

[2] SABINA ALKIRE & MARIA EMMA SANTOS, OXFORD POVERTY & HUMAN DEV. INITIATIVE, MULTIDIMENSIONAL POVERTY INDEX 1, 8 (2010), http://www.ophi.org.uk/wp-content/uploads/OPHI-MPI-Brief.pdf (ranking Ethiopia as the second poorest developing nation in the world); *Ethiopia Profile*, *supra* note 1.

[3] INVESTING IN BOYS AND GIRLS IN ETHIOPIA, *supra* note 1, at 10.

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of illness, famine, and war.[4] For this reason, the care of orphaned[5] and other vulnerable children is innately seen as the duty of the extended family system and ethnic groups of the country.[6]

This Article examines culturally sensitive practices to community-based care, and compares the role of kinship care as the norm among the various ethnic groups of Ethiopia[7] to the emergence of the child welfare system in the United States, based on a standard of parental care.[8] Part II provides a brief analysis of the situation for orphaned children in Ethiopia and the development of their tribal system of care, with child welfare services supplementing the traditional practices among the various ethnic groups of the country.[9] Part III examines the advent of the U.S. child welfare system, its laws and practices, and the tendency to focus on the individual rather than the community in these forums.[10] Part IV analyzes the experiences of American Indian and Alaska Native children in the U.S. child welfare system, and their cultural tendency to rely on internal tribal

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[4] Tatek Abebe & Asbjorn Aase, *Children, AIDS and the Politics of Orphan Care in Ethiopia: The Extended Family Revisited*, 64 SOC. SCI. & MED. 2058, 2059 (2007).

[5] In Ethiopia, the term 'orphan' is defined as a child less than eighteen years of age who has lost both parents, regardless of how they died. ROSE SMART, POLICIES FOR ORPHANS AND VULNERABLE CHILDREN: A FRAMEWORK FOR MOVING AHEAD 1, 3 (2003).

[6] FHI, IMPROVING CARE OPTIONS FOR CHILDREN IN ETHIOPIA THROUGH UNDERSTANDING INSTITUTIONAL CHILD CARE AND FACTORS DRIVING INSTITUTIONALIZATION 1, 23 (2010) [hereinafter IMPROVING CARE OPTIONS FOR CHILDREN IN ETHIOPIA], http://www.crin.org/docs/Ethiopia%20Child%20Care%20Institution%20Study%20 report-FHI-Jun'10.pdf.

[7] *Id.*

[8] For purposes of this article, "standard of parental care" is defined by each state in the U.S. as the minimum requirements of alternative care when the parents are unavailable or unable to provide for their children. CHILD WELFARE INFO. GATEWAY, DETERMINING THE BEST INTERESTS OF THE CHILD: SUMMARY OF STATE LAWS 1, 4 (2010) [hereinafter DETERMINING THE BEST INTERESTS OF THE CHILD], https://www.childwelfare.gov/systemwide/laws_policies/statutes/best_interest.pdf.

[9] IMPROVING CARE OPTIONS FOR CHILDREN IN ETHIOPIA, *supra* note 6, at 23.

[10] This paper will not focus extensively on the history and emergence of the U.S. child welfare system, but rather on the tendency to overlook the family and community responsibilities.

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communities for the support and care of orphaned children. Part V
concludes by recommending widespread implementation of the
Family Group Decision Making ("FGDM") model as a more
culturally sensitive and community based practice to empower
families and communities to work together and care for their
children.

II. Overview of Tribal Care to Orphaned Children in Africa

Sub-Saharan Africa has the highest percentage of people
living in absolute poverty.[11] In such resource-poor environments, the
extended family has traditionally performed the role of caretaker for
children in need.[12] This relationship consists of multiple and
reciprocal care giving and care receiving practices, benefitting both
the child and the adult.[13] The extended family structure is likewise
important in Ethiopia, a country that accounts for one of the largest
orphan populations in the world.[14] Moreover, due to Ethiopia's
unique socio-political structure and civil society, the extended family
has come to play an even greater role in the care for needy children.[15]

A. Tribal communities and families in Africa

In understanding the significance of culture and community-
based child welfare practices in Ethiopia, it is important to first
examine the general role and importance of family in Africa. The
African family unit has persisted for many years as the central human
social unit, performing the many different forms and functions of a

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[11] MARK NAPIER, INFORMAL SETTLEMENT INTEGRATION, THE ENVIRONMENT AND
SUSTAINABLE LIVELIHOODS IN SUB-SAHARAN AFRICA 1, 2 (2000),
http://schant.socialdev.net/data/women%20tenure/napier.PDF (citing UNITED
NATIONS CTR. FOR HUMAN SETTLEMENTS (HABITAT), CITIES IN A GLOBALIZING
WORLD: GLOBAL REPORT ON HUMAN SETTLEMENTS 2001, at 15 (2001)).
[12] Abebe & Aase, *supra* note 4, at 2058; Steven L. Varnis, *Promoting Child
Protection Through Community Resources: Care Arrangements for Ethiopian
AIDS Orphans*, 8 NORTHEAST AFR. STUD., no. 1, 2001 at 143, 149.
[13] Abebe & Aase, *supra* note 4, at 2058-59.
[14] Varnis, *supra* note 12, at 144.
[15] *See generally* Abebe & Aase, *supra* note 4, at 2062, 2065, 2067 (discussing the
capacity and sustainability of the extended family in Ethiopia).

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social system.[16] Smaller individual family groups form a larger "clan," where membership is based on lineage of a shared founding ancestor.[17] An additional element of the kinship group is land, as each member in a family or clan is ensured sufficient land to meet his or her own production and survival needs.[18] These clans are structured as a type of unlimited co-responsibility, with the well being of each member a priority for all.[19] Within this context, one common understanding of a family is "a network of persons who share resources, residences, emotional bonds and obligations, and support each other in the joint tasks of rearing children in environments sometimes characterized by social and economic adversity."[20] For this reason, the family unit serves not only to organize behavior and economy, but also to preserve culture and monitor the provision of services to its members.[21]

All families and larger clans who share a common ancestor have their own shared norms, values, and customs, and comprise their own ethnic sub-group.[22] Clans often embrace unique rituals and practices, giving them a sense of unity and distinctiveness from others.[23] There is also a customary law[24] of collaboration and self

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[16] Christopher P. Ekpe, *Social Welfare and Family Support: The Nigerian Experience*, 10 J. SOC. & SOC. WELFARE 484, 484 (1983); IMPROVING CARE OPTIONS FOR CHILDREN IN ETHIOPIA, *supra* note 6, at 23.

[17] *See Culture of Ethiopia*, EVERYCULTURE.COM, http://www.everyculture.com/Cr-Ga/Ethiopia.html#b (last visited May 29, 2013) (defining "clan" as clusters of kin who claim a single common ancestry but can rarely, if ever, trace the actual links of descent).

[18] Ekpe, *supra* note 16, at 486.

[19] *Id.* at 485 (noting "the wealth of the family is shared among its members with manifest fairness and equity").

[20] Stephanie Brown et al., *African American Extended Families and Kinship Care: How Relevant Is the Foster Care Model for Kinship Care?*, 24 CHILD. & YOUTH SERVS. REV. 55, 74 (2002), http://www.edgewood.org/assets/research-center-pdfs/african-american-extended.pdf.

[21] Ekpe, *supra* note 16, at 484.

[22] *Id.* at 485.

[23] *Culture of Ethiopia*, *supra* note 17.

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help among members of the same clan.[25] In this way, an extended family clan combines resources and responsibilities to provide for one another while maintaining a functional and self-sustaining system.[26] Furthermore, there is an expectation that a variety of clan members will support in each child's growth and development.[27]

A common theme among sub-Saharan African countries is that children are the responsibility of the community, and in the event that primary caregivers are not available, the community creates a system to care for the child.[28] Thus, kinship[29] provides a sense of security and obligation, giving each individual allegiance, status, and position in society.[30] Before there were governmental agencies to deal with social problems, these responsibilities and obligations traditionally fell exclusively on the extended clan family, supporting its members and caring for the elderly, sick, orphaned, and destitute.[31] Accordingly, not only does the extended clan provide its

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[24] 'Customary law' is commonly understood as a body of unwritten rules recognized by communities. C. M. N. White, *African Customary Law: The Problem of Concept and Definition*, 9 J. AFR. L. 86, 87 (1965).

[25] *See* Ekpe, *supra* note 16, at 487 (explaining each family is supervised by the patriarch who assumes custody of the goods of the family, and along with 'family counselors,' settles problems between members and makes decisions affecting the welfare of the family).

[26] Brown et al., *supra* note 20, at 70.

[27] *Id.*; *see also* Varnis, *supra* note 12, at 149 ("Over time, others in the family and community play an increasingly important role in the care of the child, particularly in terms of socializing and teaching the child through direct instruction and modeling [sic].").

[28] JUDITH L. EVANS, THE CONSULTATIVE GRP. ON EARLY CHILDHOOD CARE & DEV., CHILDREARING PRACTICES IN SUB-SAHARAN AFRICA: AN INTRODUCTION TO THE STUDIES 1, 7 (1994), http://www.ecdgroup.com/download/cc115bca.pdf (looking specifically at practices, patterns, and beliefs in Mali, Nigeria, Namibia, Zambia, and Malawi).

[29] Kinship is a system of social relations understood as "pure-relational," depending on how people understand or conceptualize the relatedness. F.K. Lehman, *The Place of Kinship in the Social System: A Formal-and-Functional Consideration with an Appendix on Descent and Alliance*, 6 STRUCTURE & DYNAMICS: E JOURNAL ANTHROPOLOGICAL & RELATED SCI., no. 1, 2013 at 1, 6.

[30] Ekpe, *supra* note 18 at 485.

[31] *Id.* at 487.

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members with material needs such as land, shelter, and food, but it also ensures each member has adequate psychological support.[32] Likewise, the African family unit is a central and important group in Ethiopia, a country with a long history of social and biological orphan hood.[33]

B. Tribal communities in Ethiopia

Ethiopia, a country of over 73 million, is made up of 260 ethnic groups or sub-groups, speaking over 200 languages or dialects.[34] As in most traditional societies, provision of care to orphaned, abandoned, and vulnerable children has long been seen as the duty of the extended family system within most of the ethnic groups in the country.[35] Under Ethiopia's diverse and eclectic cultural setting, orphans have been well looked after and integrated into extended family households,[36] with each ethnic group preserving its own unique customs and traditions. Thus, the overall survival of the extended family and larger ethnic clan depends on each individual's livelihood and productivity.[37]

One theory pertaining to the capacity and sustainability of extended family households in Ethiopia argues that even in the

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[32] *Id.*

[33] Tatek Abebe, Ethiopian Childhoods: A Case Study of the Lives of Orphans and Working Children 1, 5 (Jan. 2008) [hereinafter Abebe, Ethiopian Childhoods] (unpublished Ph.D thesis, Norwegian University of Science and Technology) (on file with author). Biological orphans refer to the biological status of a parent, compared with social orphans who have been abandoned, mainly due to poverty. *See* Tatek Abebe, *Orphanhood, Poverty and the Care Dilemma: Review of Global Policy Trends*, 7 SOC. WORK & SOC'Y INT'L ONLINE J., no. 1, 2009, http://www.socwork.net/sws/article/view/46/348.

[34] INVESTING IN BOYS & GIRLS IN ETHIOPIA, *supra* note 1, at 5; SAVE THE CHILDREN, CHILD SITUATION ANALYSIS FOR ETHIOPIA 4 (2004) [hereinafter CHILD SITUATION ANALYSIS FOR ETHIOPIA], *available at* http://www.docstoc.com/docs/49719441/CHILD-SITUATION-ANALYSIS-FOR-ETHIOPIA.

[35] IMPROVING CARE OPTIONS FOR CHILDREN IN ETHIOPIA, *supra* note 6, at 23.

[36] Abebe, Ethiopian Childhoods, *supra* note 33, at 8.

[37] *See generally* Abebe & Aase, *supra* note 4, at 2066 (describing the cause-and-effect roles of contributing children who actively participate in household production and reproduction activities).

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context of poverty, the presence of support networks within extended families has an enormous impact on an orphan's wellbeing.[38] In Ethiopia, the practical role of the State in the care of orphans and other vulnerable children is minimal.[39] Similar to most African countries, Ethiopia lacks a comprehensive government-operated child protection system, and there are few forums in which children's rights are recognized.[40] Thus, Ethiopia has a long tradition of informal community-based organizations that operate at the local level, offering socio-economic support to their members.[41]

With a population of around five million orphans, Ethiopia accounts for one of the largest orphan populations in the world.[42] During the past three decades, the "advent of urbanization, recurrent drought, famine, and HIV/AIDS" has claimed a heavy toll on human life in Ethiopia.[43] The large number of parentless youth threatens a drain on resources, loss of manpower and labor, and can lead to exploitation.[44] Moreover, it is estimated that 30 percent of Ethiopia's orphans have lost one or both parents due to the HIV/AIDS epidemic.[45] In addition to their material deprivations, these children face stigma and discrimination due to their parent's HIV status.[46]

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[38] Abebe, Ethiopian Childhoods, *supra* note 33; *see also* Abebe & Aase, *supra* note 4, at 2060 (describing the important role of extended family networks in "absorbing orphans and helping them to cope with the distress of parental death").

[39] Abebe & Aase, *supra* note 4, at 2059.

[40] Varnis, *supra* note 12, at 145; *see also infra* Section C (explaining the role of civil society in Ethiopia and a recent law limiting the outreach capacities of nongovernmental organizations engaged in child welfare services). Given the "staggering numbers of orphans in Africa and Ethiopia," and the lack of an operational governmental framework, "the responsibility for the protection and care of orphan children has fallen largely on private organizations." Varnis, *supra* note 12, at 145-46.

[41] THE INT'L CTR. FOR NOT-FOR-PROFIT LAW, NGO LAW MONITOR: ETHIOPIA (2013) [hereinafter NGO LAW MONITOR],
http://www.icnl.org/research/monitor/ethiopia.pdf.

[42] Varnis, *supra* note 12, at 144.

[43] IMPROVING CARE OPTIONS FOR CHILDREN IN ETHIOPIA, *supra* note 6, at 24.

[44] Varnis, *supra* note 12, at 144.

[45] Abebe & Aase, *supra* note 4, at 2058; UNICEF, AFRICA'S ORPHANED AND VULNERABLE GENERATIONS: CHILDREN AFFECTED BY AIDS 1, 9 (2006),

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In Ethiopia, where over half of all the children under eighteen years of age live on less than one dollar a day, kinship support is seen as a culturally appropriate form of family life, with children benefitting both socially and psychologically from the extended family network.[47] These children rely on the support, guidance, and supervision of their community, while also contributing economically to the livelihood of the clan. In its 1998 policy on HIV/AIDS, the Ethiopian government authorized that parents "ensure clear arrangements of suitable options to be made among extended family or community support for their children" in the event of death.[48] Although mandated by policy, this acceptance of children into the extended family can also be attributed to the closeness of the community.[49] Adults who had a past social relationship with the children's deceased parents often open their homes to these orphaned children, fulfilling a promise they made to the dying parent.[50] These informal arrangements of care also adequately address children's

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http://www.unicef.org/publications/files/Africas_Orphaned_and_Vulnerable_Generations_Children_Affected_by_AIDS.pdf.

[46] Abebe & Aase, *supra* note 4, at 2059; *see also Ethiopia: Introduction – HIV/AIDS*, UNICEF, http://www.unicef.org/ethiopia/hiv_aids.html (last visited May, 29, 2013) (stating that misconceptions and low risk perception about orphans whose parents have died from HIV/AIDS can lead to stigma and discrimination of these children, which sometimes means they are shunned and left with no place to go); Lynne C. Messer et al., *Prevalence and Predictors of HIV-Related Stigma Among Institutional- and Community-Based Caregivers of Orphans and Vulnerable Children Living in Five Less-Wealthy Countries*, 10 BMC PUB. HEALTH 504, 505 (2010), http://www.ncbi.nlm.nih.gov/pmc/articles/PMC2936424/pdf/1471-2458-10-504.pdf (explaining that orphaned and abandoned children already face stigma as a result of their orphaned or abandoned status; the addition of HIV-related stigma, which can manifest through hostility, violence, or differential resource allocation, represents a double burden for these children) ("Research suggests that stigma, and the resultant discrimination, can exacerbate the material and psychological problems children already face in the context of the HIV/AIDS pandemic.") (footnotes omitted).

[47] Abebe & Aase, *supra* note 4, at 2060, 2067.

[48] Varnis, *supra* note 12, at 145.

[49] Abebe & Aase, *supra* note 4, at 2066.

[50] *Id.*

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needs, including a sense of belonging to a community, self-reliance, and voluntary relationships.[51] Thus, the extended family network allows for the continued productivity of able-bodied children and adults, and provides a shared community of resources for each family member.

In Ethiopia, the extended family structure is the central element of social reproduction,[52] where most of the work is accomplished within this unit.[53] Thus, the extended clan contributes to increase overall productivity and to preserve the strength of culturally appropriate traditional family responsibilities.[54] Orphaned children in Ethiopia fulfill their social obligations as vital contributors of labor and income, actively participating in household production and social reproduction activities.[55] Adult members of the community rely on the children's toil and economic involvement toward the households' survival.[56] Such productive roles of contributing children are dependent upon age and gender, and ensure social stability and the efficient use of crucial resources.[57] The fluidity of this extended family structure is also a culturally appropriate form of orphan care in Ethiopia, with each tribal community instilling shared values and cultural norms in its members.[58] As a result of this mutually beneficial traditional kinship system, orphaned children in Ethiopia who have been taken in by extended family members do not even consider themselves

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[51] Varnis, *supra* note 12, at 147.

[52] Social reproduction refers to the transmission and perpetuation of social structures that are both the conditions and consequences of social interaction. Bo Edvardsson et al., *Expanding Understanding of Service Exchange and Value Co-Creation: A Social Construction Approach*, 39 J. ACAD. MARKETING SCI. 327, 332 (2010).

[53] Abebe, Ethiopian Childhoods, *supra* note 33, at 16.

[54] Abebe & Aase, *supra* note 4, at 2060.

[55] Abebe, Ethiopian Childhoods, *supra* note 33, at 1; Abebe & Aase, *supra* note 4, at 2066.

[56] Abebe & Aase, *supra* note 4, at 2066.

[57] *Id.* at 2061, 2066.

[58] *Id.* at 2067.

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orphans.[59] Although the extended family system represents a
culturally appropriate and productive form of kinship care, it is also
important to understand the legislative framework for orphaned
children in Ethiopia.

C. Civil society in Ethiopia

In light of Ethiopia's resource-poor environment,
governmental attempts to provide for the large number of
unaccompanied children have failed, which has thus expanded the
role and importance of the extended family system.[60] In Ethiopia,
formal civil society[61] was slow to develop, as it was greatly impeded
during an adverse military regime in the twentieth century.[62] It was
not until the 1930s that faith-based groups began to function as
modern civil society organizations, and not until the 1950s did larger
institutions, such as the Red Cross, launch a presence in Ethiopia.[63]
Furthermore, Ethiopia's severe drought and famine in 1984 and 1985
is recognized as the "catalyst for the proliferation of institutional
care."[64] With the growing number of unaccompanied children,

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[59] Abebe, Ethiopian Childhoods, *supra* note 33, at 6.

[60] Abebe & Aase, *supra* note 4, at 2059; *see* NGO LAW MONITOR: ETHIOPIA, *supra* note 41, at 1 (describing Ethiopia's long tradition of informal community-based organizations due to the slow development of civil society and restrictive laws and regulations).

[61] *See* MICHAEL BRATTON, CIVIL SOCIETY AND POLITICAL TRANSITION IN AFRICA 2 (1994), http://worlded.org/docs/Publications/idr/pdf/11-6.pdf (defining "civil society" as a theoretical concept of "a sphere of social interaction between the household and the state which is manifest in norms of community cooperation, structures of voluntary association, and networks of public communication").

[62] NGO LAW MONITOR: ETHIOPIA, *supra* note 41, at 1. *See generally* Sandra Fullerton Joireman, *Opposition Politics and Ethnicity in Ethiopia: We Will All Go Down Together*, 35 J. MODERN AFR. STUD. 387 (1997) (explaining that development and progress in Ethiopia were greatly inhibited during the centrist policies of the Imperial regime and the communist Derg regime. Citizens were prohibited from enjoying basic rights, liberties, and political expression. The Derg was eventually overthrown in 1991 during the "second revolution" by the Ethiopian People's Revolutionary Democratic Front (EPRDF)).

[63] NGO LAW MONITOR: ETHIOPIA, *supra* note 41, at 1.

[64] IMPROVING CARE OPTIONS FOR CHILDREN IN ETHIOPIA, *supra* note 6, at 24; NGO LAW MONITOR: ETHIOPIA, *supra* note 41, at 1.

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institutional care was seen as a quick alternative to family based care, and 31 percent of the institutions in operation today began during the years of the drought and famine.[65] Nevertheless, one of the most detrimental effects of institutional care is the lack of a stable, long-term relationship between a child and a caregiver.[66] Moreover, in Ethiopia, where important cultural languages, practices, and values are passed through one's family, removing a child from his or her community could be even more detrimental. Therefore, there is still a strong preference for extended family or community-based care in Ethiopia because it connects children with their cultural traditions and values, passing them on to future generations.[67] Given Ethiopia's strong sense of cultural and tribal identity, many Ethiopians view institutional care only as a last resort.[68]

During the 1980s, Ethiopia attempted to develop a social welfare program based on the Western model for disadvantaged social groups.[69] However, due to a lack of resources, debt, and increased spending associated with the military and natural disasters, child welfare organizations received limited funds from the government.[70] Consequently, charitable nongovernmental organizations ("NGOs") and institutions emerged as alternative actors in the child welfare sector to supplement the failed role of the

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[65] IMPROVING CARE OPTIONS FOR CHILDREN IN ETHIOPIA, *supra* note 6, at 24 ("Many child care institutions were established by both governmental and nongovernmental organizations in response to the drought.").

[66] *Id.* at 26. The lack of a stable and responsible caregiver, among other factors, has been associated with delays in physical, behavioral, cognitive, and socio-emotional development of children in institutional care. Amanda R. Tarullo & Megan R. Gunnar, *Institutional Rearing and Deficits in Social Relatedness: Possible Mechanisms and Processes*, 9 COGNITION, BRAIN, BEHAV. 329, 330 (2005), http://www.bu.edu/beelab/files/2012/05/Tarullo-Gunnar-2005.pdf.

[67] Varnis, *supra* note 12, at 149 (noting the preference for extended family placements that support traditional identities despite a lack of studies into how such arrangements function).

[68] *Id.* at 147.

[69] Abebe & Aase, *supra* note 4, at 2059.

[70] *Id.*

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state.[71] Regardless, child welfare NGOs in Ethiopia have minimal outreach capacities and limited funding, and do not reach the poorest communities,[72] as 85 percent of the population lives in rural areas and are often alienated from the central government.[73] In addition to limited organizational support, the Ethiopian government has not made a concerted effort to assist in the care of orphaned children.

   In January 2009, the Ethiopian parliament passed its first comprehensive law governing the registration and regulation of NGOs, entitled the Charities and Societies Proclamation No. 621/2009 ("CSP").[74] This Proclamation, one of the most controversial NGO laws in the world, prohibits NGOs from engaging in essentially all humanitarian rights and advocacy activities.[75] Specifically, this law restricts Ethiopian Charities or Societies[76] from participating in activities that "advance human and democratic rights."[77] Organizations that do so, including those that "promote the rights of disabled and children's rights," are prohibited from receiving more than ten percent of their funding from foreign sources.[78] This is especially concerning in Ethiopia, where domestic funding is limited and NGOs are often dependent on foreign funding.[79]

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[71] *Id.*

[72] *Id.*

[73] CHILD SITUATION ANALYSIS FOR ETHIOPIA, *supra* note 34, at 4.

[74] AMNESTY INT'L, STIFLING HUMAN RIGHTS WORK: THE IMPACT OF CIVIL SOCIETY LEGISLATION IN ETHIOPIA 5 (2012) [hereinafter STIFLING HUMAN RIGHTS WORK], http://www.amnesty.org/fr/library/asset/AFR25/002/2012/en/3b0adc69-f0fd-4b43-9ff8-635073d60f44/afr250022012en.pdf; NGO LAW MONITOR: ETHIOPIA, *supra* note 41, at 1.

[75] STIFLING HUMAN RIGHTS WORK, *supra* note 74, at 5.

[76] NGO LAW MONITOR: ETHIOPIA, *supra* note 41, at 5 (describing the organizational forms for registered, not-for-profit organizations).

[77] *Id.*

[78] *Id.*; Proclamation to Provide for the Registration and Regulation of Charities and Societies, Proclamation No. 621/2009 (Feb. 13, 2009), http://www.unhcr.org/refworld/pdfid/4ba7a0cb2.pdf.

[79] NGO LAW MONITOR: ETHIOPIA, *supra* note 41, at 5; *see also* STIFLING HUMAN RIGHTS WORK, *supra* note 74, at 12 (explaining that collecting funding from local sources is not realistic, as "[a] tradition of philanthropy does not exist in Ethiopia,

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This Proclamation has had a devastating effect in Ethiopia.[80] Many in-country NGOs have been forced to abandon or severely limit their work, while others have closed due to the major impact of the funding restrictions.[81] Accordingly, the extended family network has come to play an even stronger role in Ethiopia. Orphans and other vulnerable children may be unable to turn to NGOs and other child welfare organizations for support,[82] reaffirming the extended family role and community support for these children as a cultural duty. This view of a crisis-led system of kinship care is quite different from the evolution of the child welfare system in the United States.

III. The Emergence and Role of Kinship Care in the U.S.

In contrast to Ethiopia's focus on the extended family and clan as a whole, in Western and mainstream American judicial traditions child welfare laws and practices are based on the major social unit of the individual.[83] In this sense, the placement of a child is not necessarily a reflection of the needs of the community, but rather the individual needs of the child. This theme can be traced back to the origins of our child welfare system, premised on the substitution of inadequate care.[84] In the U.S., kinship care did not

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partly because a large proportion of the population lacks disposable income to make donations to charities").

[80] STIFLING HUMAN RIGHTS WORK, *supra* note 74, at 12.

[81] *Id.*; *see also* NGO LAW MONITOR: ETHIOPIA, *supra* note 41, at 9 (citing headlines such as, "German NGO Pulls out of Ethiopia" (Nov. 2012), "Amnesty International Report Highlights Charities and Societies Proclamation's Stranglehold on NGOs" (Mar. 2012)).

[82] *See* NGO LAW MONITOR: ETHIOPIA, *supra* note 41, at 2 (discussing the restrictions on NGO resources, potentially forcing the closures of many organizations involved in child welfare work).

[83] JESSICA LEE & LARRY LEE, THE COAL. FOR ASIAN AM. CHILDREN & FAMILIES, CROSSING THE DIVIDE: ASIAN AMERICAN FAMILIES AND THE CHILD WELFARE SYSTEM 1, 3 (2001), www.cacf.org/documents/Crossing_the_Divide.pdf.

[84] *See generally* Brenda G. McGowan, *Historical Evolution of Child Welfare Services*, *in* CHILD WELFARE FOR THE TWENTY-FIRST CENTURY: A HANDBOOK OF

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emerge as an issue in the child welfare system until the 1980s, and
has only since become a part of the formalized system of out-of-
home placement.[85]

A. The concept of the child welfare system in the U.S.

The U.S. child welfare system emerged from a need to protect
poor children from desolate and abusive living conditions.[86] During
the early nineteenth century, the dramatic increase in the number of
orphanages in the U.S. was attributed, in part, to the growing number
of felons and the poor, leaving "the education and morals of the
children of paupers . . . most wholly neglected."[87] Moreover, it was
not until the latter part of the nineteenth century that states mandated
separate orphanage care facilities for children apart from adults.[88]

The origins of the U.S. foster care system date back to 1853
when Charles Loring Brace, the founder of the Children's Aid
Society of New York, decided that the best way "to save poor
children from the evils of urban life was to place them in Christian
homes in the country, where they would receive a solid moral
training and learn good work habits."[89] These children paid for their
bread and board through their labor, and many of these dependent
children were subjected to poor treatment.[90] Over time, concern

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PRACTICES, POLICIES, AND PROGRAMS 10, 13 (Gerald P. Mallon and Peg McCartt
Hess eds., 2005) (describing the increase in the number of facilities established to
"care for children whose parents were unable to provide *adequately* for them, as
well as for true orphans" (emphasis added)).

[85] Maria Scannapieco & Rebecca L. Hegar, *Kinship Care Providers: Designing an
Array of Supportive Services*, 19 CHILD & ADOLESCENT SOC. WORK. J. 315, 316
(2002) [hereinafter Scannapieco & Hegar, *Kinship Care Providers*].

[86] McGowan, *supra* note 84, at 11.

[87] *Id.* at 13.

[88] *Id.* at 13-14.

[89] *Id.* at 14. This philosophy is distinguished from the rise of delinquent youth in
the early 19th century who needed to be punished and sent away from their
families. *See id.* at 15.

[90] *Id.* at 14. These "confused and often frightened children lost contact with their
families back in their hometowns" and were even "encouraged to make a complete
break with their past." Many of the children were also viewed only as "cheap
labor" and experienced abuse in their new homes. Angelique Brown, *Orphan
Trains (1854-1929)*, SOC. WELFARE HIST. PROJECT,

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increased regarding the religious instruction these foster children received in their foster homes.[91] Roman Catholic leaders, in particular, opposed this "foster care movement" on the grounds that children were likely to lose their religious faith by being primarily placed in Protestant homes.[92] By the 1960s however, the number of children in the American child welfare system outweighed the available resources.[93] Public agencies struggled to provide minimum levels of care, and services focused primarily on placement, with concepts of community control and client's rights essentially nonexistent.[94] Therefore, in an attempt to maintain an effective structure, the emerging U.S. child welfare system disregarded each child's cultural values and greatly overlooked the importance of such beliefs within the community.[95] As a result, kinship care was not seen as a priority in the consideration of each child's placement.

B. Family structures and kinship care in the U.S.

Within European and American traditions, relatives had a "socially mandated role in child rearing when parents were absent or incapable."[96] Kinship care, in its broadest sense, is "any living arrangement in which children do not live with either of their parents and are instead cared for by a relative or someone with whom they

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http://www.socialwelfarehistory.com/programs/orphan-trains/ (last visited May 2, 2013).

[91] McGowan, *supra* note 84, at 14.

[92] *Id.* The foster care movement encompasses the efforts of the Children's Aid Society, which by 1879 had sent 40,000 homeless or destitute children to homes in the country, and the newly established Children's Home Society, designed to provide free foster homes for dependent children. *Id.*

[93] *See id.* at 29 (referring to the political and economic change during the two decades prior to the 1960s that eventually ushered in an era of tremendous social change and the expansion of the Civil Rights movement).

[94] *Id.* at 30.

[95] *See generally id.* (detailing the evolution of the child welfare program to increasingly emphasize fiscal and program accountability at the expense of ethnic and other cultural considerations).

[96] Rebecca L. Hegar & Maria Scannapieco, *Grandma's Babies: The Problem of Welfare Eligibility for Children Raised by Relatives*, 27 J. Soc. & Soc. Welfare 153, 155 (2000) [hereinafter Hegar & Scannapieco, *Grandma's Babies*].

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have had a prior relationship."[97] While states differ on their definitions of what qualifies as "kin," kinship care is traditionally described as either "formal" or "informal," depending on whether the caregiving arrangements occurred with the involvement of a child welfare agency.[98]

　　In the past, most kin who acted as foster parents received financial assistance through the welfare system, which was considerably less than foster care payments.[99] It was not until 1979 that the Supreme Court determined kin could be included in the definition of foster parents, and under some conditions, *may* be eligible for foster care benefits.[100] Nevertheless, states are free to deny board rate to kinship foster care parents when federal monies are not involved.[101] Furthermore, there is often a discrepancy in state policies and practices regarding the qualification and monitoring of kinship caregivers.[102]

　　Over time, child welfare professionals have witnessed a rapid increase in the number of children placed in kinship care.[103] The primary incentive for this growth was the persistent shortage of foster care homes, in addition to a push in federal policy to treat kin as appropriate caregivers.[104] In 1980, Congress passed the Federal Child

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[97] Rob Geen, *The Evolution of Kinship Care Policy and Practice*, THE FUTURE OF CHILD.: CHILD., FAMILIES, & FOSTER CARE, Winter 2004, at 131, 132 (defining kinship care to include any familial bond, whether by blood, marriage, or prior history with the family).

[98] *Id.* at 132-33.

[99] *Id.* at 137.

[100] Miller v. Youakim, 440 U.S. 125, 145-46 (1979).

[101] Hegar & Scannapieco, *Grandma's Babies*, *supra* note 96, at 164. The Federal Government provides funds to states to administer child welfare programs. State grant programs have their own matching requirements and allocations, and all require that funds go to and be administered by state child welfare agencies. *Foster Care Funding and Federal Programs*, FINDLAW, http://family.findlaw.com/foster-care/foster-care-funding-and-federal-programs.html (last visited Apr. 17, 2013).

[102] Marc A. Winokur et al., *Matched Comparison of Children in Kinship Care and Foster Care on Child Welfare Outcomes*, 89 FAMILIES IN SOC'Y: J. CONTEMP. SOC. SERVICES 338, 339 (2008).

[103] *Id.* at 338.

[104] *Id.*

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Welfare Legislation Adoption Assistance and Child Welfare Act ("AACWA"), seeking to strengthen and improve the program of federal support for the care of needy and dependent children.[105] This legislation was an effort to adequately look after and support children in foster care, as well as move toward permanency.[106] However, the concept of permanency was merely insinuated and was not adequately defined in the Act.[107] In 1997, the passage of the Adoption and Safe Families Act ("ASFA") sought to promote stable and permanent environments for children in the child welfare system and to increase the attention child welfare agencies gave to identifying and recruiting kinship placements for children.[108]

Licensing kin to act as foster parents varies greatly from state to state, as does the frequency with which state foster care agencies pursue voluntary kinship arrangements.[109] Available data indicates that kinship caregivers tend to receive less supervision and fewer services than non-kin caregivers.[110] Additionally, kinship foster parents tend to be older and have lower incomes, are in poorer health, and are less educated than non-kin foster parents.[111] In some cases where kin are identified as potential caregivers, they may not be required to complete licensing standards or other requirements.[112] Although licensing requirements for kinship caregivers in most states are less stringent than requirements for non-kin caregivers, the majority of states will not offer payments to kin who are licensed

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[105] Adoption Assistance and Child Welfare Act of 1980, Pub. L. No. 96-272, 94 Stat. 500.

[106] John E.B. Myers, *A Short History of Child Protection in America*, 42 FAM. L.Q. 449, 459 (2008).

[107] *See* Adoption Assistance and Child Welfare Act of 1980, Pub. L. No. 96-272, 94 Stat. 500.

[108] Geen, *supra* note 97, at 137; Myers, *supra* note 106, at 460.

[109] Geen, *supra* note 97, at 138.

[110] *Id.* at 131.

[111] *Id.*

[112] *Id.* at 137.

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based on a lower standard.[113] In other cases, kinship foster parents are not mentally or physically prepared for their new roles, and view their expanding familial responsibilities as a burden.[114]

The debate surrounding kinship care policies is controversial and complex, particularly related to whether these family members should receive equal services, resources, and support, as compared to their non-kin counterparts.[115] Additionally, there is some concern that the emotional ties between kin caregivers and birth parents can complicate efforts to meet the needs of these children.[116] Tensions between families could interfere in a child developing a healthy bond with a foster parent, while families that are too close may fail to adequately supervise or protect the child.[117] Thus, even if there is a preference for family members when placing a child in out-of-home care, kinship care in the U.S. has come to be seen as a compulsory responsibility of the extended family.[118]

A common theme supported by past literature suggests that "the nuclear family is idealized in American culture," as many people

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[113] *Id.* at 137-38. The federal legislation requires the *same* standards for licensure in order for the state to receive federal monies, so when a state chooses to waive some of the stringency in licensure for kin care, they are waiving financial support as well. *Id.*; *see also* Scannapieco & Hegar, *Kinship Care Providers*, *supra* note 85, at 321 (explaining that if a kinship "family is not licensed, but the child is eligible for federal welfare assistance, they may receive limited assistance under The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWOR) . . . [but] states have considerable latitude in how to implement . . . [this Act], so relatives raising children are not eligible for the same financial help in all states" (citation omitted)).

[114] Geen, *supra* note 97, at 136.

[115] *See, e.g.*, Winokur et al., *supra* note 102, at 339 (discussing the "controversial issues" of kinship care).

[116] Geen, *supra* note 97, at 144.

[117] *Id.*

[118] Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, 110 Stat. 2105; *see also* Ronald C. Hughes et al., *Issues in Differential Response*, RES. ON SOC. WORK PRAC. (forthcoming) (manuscript at 2) (on file with author) (noting that even when community-based, family-centered care practices are preferred, they are not always systematically or effectively implemented by child welfare organizations).

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assume it is the most practical, common, and healthy family form.[119] From this viewpoint, extended kinship family care may seem chaotic because it does not imitate the idealized family structure.[120] In reality, however, the extended family structure provides children with attachment and stability, which offers a greater degree of flexibility and adaptability.[121] In this way, the extended family serves as a strong foundation amid any chaos or disruption in the immediate family.[122] In the U.S., preference for kinship care emerged not as a cultural norm, but as a way to relieve congestion in an overcrowded child welfare system.[123] The complex issues surrounding kinship care imply an obligation on kin to take in extended family members' children when their parents are unable to provide for them. Such an obligation denotes an imposed duty, whether morally or legally bound, to care for an orphaned child.

This notion functions in stark contrast to the voluntary sense of communal responsibility manifest in the family and clan systems of Ethiopia. Similar to the situation in Ethiopia, one ethnic group in the United States that has continued to rely on their traditional tribal family structures in the care of orphaned children is the American Indian and Alaska Native population. As a result, community cohesion serves an important role in tribal identity and ethnicity.

IV. American Indian and Alaska Native Experiences in the U.S. Child Welfare System

Akin to Ethiopian culture,[124] tribal community-based care is a central aspect of American Indian and Alaska Native culture.[125]

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[119] Brown et al., *supra* note 20, at 57.

[120] *Id.*

[121] *Id.*

[122] *Id.*

[123] *See* McGowan, *supra* note 84, at 13 (describing the "large number of children" living in poorhouses, leading to the rise of the institutionalization of orphans).

[124] The term "Ethiopian culture" will be used as a blanket term to describe generally the cultural traditions found among the many tribes in Ethiopia, rather than to represent a singular culture in Ethiopia.

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"American Indian or Alaska Native" refers to the racial group of persons having origins in any of the indigenous peoples of North, South, and Central America who maintain tribal affiliation or community attachment.[126] American Indian and Alaska Native peoples are typically part of an extended family structure, reliant on one another for economic and social survival.[127] Historically, "the extended family and the clan system provided whatever substitute family care might be needed" for deprived and dependent children.[128] In this sense, the clan structure is a fundamental source of support, as members are expected to share the resources they have and take care of one another.[129]

Beginning in the 1800s, the U.S. government attempted to assimilate American Indian and Alaska Native children by "snatching" them from their reservation and placing them in non-native foster homes or institutions.[130] As a result of this practice, the

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[125] *See* Charles Horejsi et al., *Reactions by Native American Parents to Child Protection Agencies: Cultural and Community Factors*, 71 CHILD WELFARE 329, 333-35 (1992) (describing cultural differences between the U.S. child welfare system and Native American culture, and explaining that "[h]istorically, the extended family and the clan system provided whatever substitute family care might be needed"); *see also* Hilary N. Weaver & Barry J. White, *The Native American Family Circle: Roots of Resiliency*, 2 J. FAM. SOC. WORK, no. 1, 1997 at 67, 77 (noting that "[m]ost Native Nations have traditionally been organized around the concept of extended family").

[126] TINA NORRIS ET AL., U.S. CENSUS BUREAU, THE AMERICAN INDIAN AND ALASKA NATIVE POPULATION: 2010, at 1, 2 (2012), http://www.census.gov/prod/cen2010/briefs/c2010br-10.pdf.

[127] Horejsi et al., *supra* note 125, at 338.

[128] *Id.* at 335; *see also* Weaver & White, *supra* note 125, at 72 (noting that the norm is for "[c]hildren [to be] cared for by relatives or non-relatives from the same community").

[129] Horejsi et al., *supra* note 125, at 338; *see also* Weaver & White, *supra* note 125, at 69 (explaining "[g]enerosity, sharing, and giving are highly valued" and "[e]ven families in extreme poverty are known to express generosity through giving away possessions" as a way to "[gain] the assurance that they will be taken care of in their time of need").

[130] The U.S. government forced Native American people to assimilate into the "world of the white man" by "snatching" Indian children and sending them to

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U.S. government eventually passed the Indian Child Welfare Act of 1978 ("ICWA"),[131] recognizing a predominately tribal jurisdiction over tribal child welfare cases.[132] The Act mandates that state courts act to preserve the integrity and unity of American Indian and Alaska Native families, and promotes permanency for these children within their tribal communities.[133] ICWA established that whenever possible, a Native American child should remain in the Native American community, where preference should be given first and foremost to placements with extended family, then to Native American foster homes.[134] In testimony before a House subcommittee hearing, a tribal chief testified: "[c]ulturally, the chances of Indian survival are significantly reduced if our children, the only real means for the transmission of the tribal heritage, are to be raised in non-Indian homes and denied exposure to the ways of their People."[135] Essentially, courts view ICWA as a policy to maintain tribal heritage and protect the integrity of American Indian and Alaska Native families.[136]

Thus, in the American Indian and Alaska Native culture, strong preference is given to the extended family and community to

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boarding schools "where they would be civilized." Horejsi et al., *supra* note 125, at 338.

[131] Hegar & Scannapieco, *Grandma's Babies*, *supra* note 96, at 156.

[132] Jeanne Louise Carriere, *Representing the Native American: Culture, Jurisdiction, and the Indian Child Welfare Act*, 79 Iowa L. Rev. 585, 589 (1994).

[133] James K. Whittaker & Anthony N. Maluccio, *Rethinking "Child Placement": A Reflective Essay*, 76 Soc. Serv. Rev. 108, 119 (2002); McGowan, *supra* note 84, at 36.

[134] McGowan, *supra* note 84, at 36.

[135] Douglas E. Abrams & Sarah H. Ramsey, Children and the Law: Doctrine, Policy and Practice 421 (3d ed. 2007).

[136] *Id.* at 423. The effects of the practice of "snatching" Native children during the 'boarding-school era' resulted in what some refer to as "'Split Feather Syndrome' – the damage caused by loss of tribal identity and growing up 'different' in an inhospitable world." Researchers have also referred to this as "Lost Bird" syndrome. Stephanie Woodard, *Native Americans Expose the Adoption Era and Repair its Devastation*, Indian Country Today Media Network Dec. 6, 2011), http://indiancountrytodaymedianetwork.com/article/native-americans-expose-the-adoption-era-and-repair-its-devastation-65966.

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raise a child when the biological parent is unavailable.[137] Rather than being an obligation, this duty is inherent in the community's cultural values and traditions.[138] In these ethnic groups, where culture and familial traditions play such a vital role in the care of each child,[139] the extended family and community have an invested interest in maintaining the care and custody of their children. Similarly, given Ethiopia's diverse ethnic groups, keeping each child within his or her community allows ethnic minorities to pass their cultural heritage, traditions, language, religious practices, and values to future generations. By keeping their children with extended family members, or at least within the community, the children maintain some form of continuity and stability in their lives.[140]

Although permanency is a central aspect to the goals of the child welfare system in the U.S., this important element is often overlooked, with less emphasis on culture and more weight accorded to available placement. Thus, incorporating a child welfare model that focuses on a child's culture and family values may assist in each child's positive development and sense of identity.

V. The Family Group Decision Making Model

In contrast to the Ethiopian, American Indian, and Alaska Native extended family networks of care, emphasis on the larger community is often overlooked in the U.S. child welfare system. In an attempt to counter this de-emphasis on community identity, the

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[137] Horejsi et al., *supra* note 125, at 338.

[138] *See supra* Part III (discussing the difference between a perception of imposed obligation and an inherent sense of responsibility); *see also* Weaver & White, *supra* note 125, at 77 (noting Native families "are seldom expected to make all decisions about their children by themselves" and instead "can expect to get as much help as they need with child care from community members").

[139] *See* Varnis, *supra* note 12, at 149 (noting the preference for extended family placements that support traditional identities); Weaver & White, *supra* note 125, at 69 (describing the Native values deeply rooted in family ties).

[140] In determining the best interests of the child, at least ten states factor in the child's continuity of care and caretakers. DETERMINING THE BEST INTERESTS OF THE CHILD, *supra* note 8.

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metaphor of a "salad bowl" has been suggested to replace the common "melting pot" notion of the U.S., acknowledging that people co-exist as separate parts, but add up to a whole.[141] This conception of a cultural identity is in direct conflict with our own child welfare system, premised on the substitution of inadequate care with those caregivers who are better suited to raise and provide for children, regardless of the child's preexisting community ties.[142] The current structure of the child welfare system overlooks the importance of culture, tradition, and family values passed from one generation to the next. By focusing primarily on the individual resources and abilities of the caregivers, the needs of the child and greater community are often disregarded.

Although ASFA required child welfare agencies to increase their attention on actively searching for kin caregivers,[143] it remains important for states to emphasize policies encouraging kin placements and to provide resources to kinship foster families similar to those of their non-kin counterparts. In addition to these efforts, child welfare systems must expand their implementation of community-based and customized responses to reports of child abuse and neglect or parentless children. One such effort involves Family Group Decision Making ("FGDM"), a client-centered practice model incorporating the immediate and extended families directly in the decision-making process.[144] Family involvement interventions have

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[141] Gerda Lerner, *Reconceptualizing Differences Among Women*, 1 J. WOMEN'S HIST. 106, 107-08 (1990).

[142] *See supra* Part III (discussing the emergence of the child welfare system in the U.S. and the tendency to focus on the individual rather than the community as a whole).

[143] Adoption and Safe Families Act of 1997, Pub. L. No. 105-89, 111 Stat. 2115; Geen, *supra* note 97, at 137.

[144] Janess Sheets et al., *Evidence-Based Practice in Family Group Decision-Making for Anglo, African American and Hispanic Families*, 31 CHILD. & YOUTH SERVS. REV. 1187, 1187 (2009); NW. INST. FOR CHILDREN & FAMILIES, CONNECTED AND CARED FOR: USING FAMILY GROUP CONFERENCING FOR CHILDREN IN GROUP CARE 1, 3 (2002) [hereinafter CONNECTED AND CARED FOR], http://site.americanhumane.org/site/DocServer/pc_fgdm_research_NWinstitute.pdf?docID=1202.

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proven to be a useful way of incorporating additional community resources into the child welfare system.[145]

Similar to the tribal practices found in Ethiopian, American Indian, and Alaskan Native familial structures, the FGDM model was adapted from the native Maori people in New Zealand.[146] FGDM was implemented in response to the European-driven models that overlooked families and indigenous tribal groups.[147] The Maori's unique approach to social problem solving brings together the extended family and friends of parents who have neglected or abused their children to develop a plan to protect these children.[148] Noting its success within the Maori people, in 1989, the New Zealand legislature mandated that all families involved in the child welfare system implement this model, with a number of American courts soon incorporating this strength-based, family-centered, and child-focused approach as well.[149] Family Group-Conferencing is intended to confront the inherent imbalances between child welfare agencies and the minority populations they serve.[150] For this reason, the use of

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[145] David Stuart Crampton, *Family Involvement Interventions in Child Protection: Learning from Contextual Integrated Strategies*, 31 J. SOC. & SOC. WELFARE 175, 195 (2004).

[146] *See* Judge Steven D. Robinson et al., *Family Conferencing: A Success for Our Children*, 53 JUV. & FAM. CT. J. 43, 43 (2002).

[147] *Id.*; Joan Pennell & Gale Burford, *Family Group Decision Making: Protecting Children and Women*, 79 CHILD WELFARE 131, 137 (2000), http://empower-daphne.psy.unipd.it/userfiles/file/pdf/Pennell%20J_%20-%202000.pdf.

[148] Robinson et al., *supra* note 146, at 43.

[149] *Id.*; REENTRY PRACTICES FOR TRIBAL YOUTH: FAMILY GROUP DECISION MAKING CONFERENCING 1, 2 [hereinafter REENTRY PRACTICES FOR TRIBAL YOUTH], http://www.tribalreentry.org/sites/tribalreentry.org/files/FCDMC_Brief.pdf. The number of communities in the United States using FGDM grew from five in 1995 to over one hundred in 2000. Crampton, *supra* note 145, at 175.

[150] AM. HUMANE ASS'N, CHILD WELFARE POLICY BRIEFING: FAMILY GROUP DECISION MAKING 4 (Patty Chavez & John Sciamanna contributing eds., 2010) [hereinafter CHILD WELFARE POLICY BRIEFING], http://www.americanhumane.org/assets/pdfs/children/advocacy/111th-fgdm.pdf.

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family group-conferencing has had success around the world,[151] and the number of communities implementing FGDM in the U.S. continues to increase.[152]

Although there are various practice models of FGDM, all include the shared philosophy that families function better in a broad-based cultural system that can support and assist families as compared to traditional agency-driven practices focusing solely on the parents and children.[153] FGDM compels public welfare agencies to turn first to the family and community for handling problems of abuse and neglect, and limits state involvement.[154] An important aspect of the FGDM model promotes collaborative responsibility and reinforces accountability.[155] The main goal of FGDM is to keep the family, including the child, at the center of the dialogue and to implement a plan within the child's cultural practice.[156] This goal is achieved through numerous conferences attended by the immediate and extended family, close friends and supporters, and other members in the community involved in the child and family's

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[151] *See generally Responding Restoratively to Vulnerable Victims, Youths, and Families*, 24 PROTECTING CHILD., no. 4, 2009 (describing the success of family-based approaches in positive restorative justice outcomes). The FGDM reform effort has been adopted in over 35 states and 22 countries. Lisa Merkel-Holguin, *Family Group Decision Making: An Innovation in Need of Court Partnership?*, CASA (July 2011), http://www.casaforchildren.org/site/c.mtJSJ7MPIsE/b.7522083/k.C820/JP12_Merk elHolguin.htm.

[152] The number of communities in the United States using FGDM grew from five in 1995 to over one hundred in 2000. Crampton, *supra* note 145, at 175. A 2004 web-based survey of FGC received 225 responses from 17 countries. PAUL NIXON ET AL., A SURVEY OF INTERNATIONAL PRACTICES, POLICY & RESEARCH ON FAMILY GROUP CONFERENCING AND RELATED PRACTICES 1, 5 (2005), http://www.americanhumane.org/assets/pdfs/children/fgdm/pc-fgdm-practices-survey.pdf.

[153] Sheets et al., *supra* note 144, at 1188.

[154] REENTRY PRACTICES FOR TRIBAL YOUTH, *supra* note 149, at 2.

[155] Crampton, *supra* note 145, at 183.

[156] Pennell & Burford, *supra* note 147, at 141.

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situation.[157] Additionally, a well-trained facilitator leads each conference, which is also attended by attorneys, social workers, psychologists, and other agency workers involved in the child's life.[158]

Within this group conference setting, the family, community, and staff attempt to develop a plan for the child, taking into account his or her individual and cultural needs.[159] This mutual decision making and information sharing can be especially important in helping families and communities feel a stronger attachment to the child, as well as to feel empowered in the decision making process.[160] Through the conference, the community develops a sense of duty and responsibility for the care of each child.[161] Additionally, a unique bond forms between the families, communities, and the social welfare staff, facilitating a more positive relationship built on trust and understanding.[162] Furthermore, FGDM connects families with accessible resources in their own communities.[163] In this way, FGDM breeds a similar mentality to the one inherently found in American Indian, Alaskan Native, and Ethiopian tribal clans, where the success and well being of each individual is reflected in the community as a whole. Therefore, the ideals and structure of FGDM are an effective way to increase extended family and community care of orphaned and vulnerable children.

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[157] *See id.* at 139 (describing the conference as a way to "bring together agencies around a family's needs" including: referrals, conferences, a family's development of a plan and agency's approval, coordination of the plan to match budgetary restrictions, and implementation).

[158] Robinson et al., *supra* note 146, at 44.

[159] REENTRY PRACTICES FOR TRIBAL YOUTH, *supra* note 149, at 2. New Zealand legislation, as well as a majority of other programs implementing FGDM, stipulates for private time for the family to develop a plan for the child, and then invite the coordinator back to review the plan "to ensure that it [is] clear and comprehensive and include[s] mechanisms for monitoring and evaluation." Pennell & Burford, *supra* note 147, at 140.

[160] Crampton, *supra* note 145, at 191, 193.

[161] *Id.* at 183.

[162] Robinson et al., *supra* note 146, at 44.

[163] CONNECTED AND CARED FOR, *supra* note 144, at 6.

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Family Group-Conferencing has the potential to enhance family ties as well as strengthen connections within the community while supporting the child.[164] In a survey comparing the effects of FGDM with traditional services, relatives engaged in FGDM services indicated a greater sense of empowerment that was shared by the children, who showed less anxiety than when exposed to traditional services.[165] Furthermore, available data from FGDM implementation indicates that relative placements increase directly following a FGDM conference.[166] Even in cases in which permanency is not achieved, however, the establishment of familial connections can be beneficial for a child's future.[167] Emotional connections with parents or family members can have the greatest impact on a youth's ability to navigate the difficult transition into adulthood.[168] Subsequently, the experience of an FGDM conference, as well as the placement that follows, positively impacts a child's adjustment to his or her new living arrangement.[169]

Accordingly, the FGDM model would be an effective and successful method to increase the reliance and participation of extended family and community members in the U.S. when parents are unable to care for their child. By bringing in the extended family to help and offer a more supportive environment, the FGDM model actively increases family unity. Furthermore, in many states where kinship foster parents do not receive an abundance of resources, an

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[164] *Id.* at 3.

[165] In survey data from 200 FGDM conferences, parents felt more empowered, had a better sense of what was expected of them, and were better able to identify issues in the family plan of service as a result of having participated in an FGDM conference, when compared to survey data from 194 Permanency Planning Team meetings. Sheets et al., *supra* note 144, at 1191. Traditional services, such as counseling, seek to reduce the risk and address the effects of maltreatment. *See* DIANE DEPANFILIS, U.S. DEP'T OF HEALTH & HUMAN SERVS., CHILD NEGLECT: A GUIDE FOR PREVENTION, ASSESSMENT, AND INTERVENTION 91 (2006), https://www.childwelfare.gov/pubs/usermanuals/neglect/neglect.pdf.

[166] Sheets et al., *supra* note 144, at 1191; Robinson et al., *supra* note 146, at 44.

[167] CHILD WELFARE POLICY BRIEFING, *supra* note 150, at 3.

[168] CONNECTED AND CARED FOR, *supra* note 144, at 4.

[169] Sheets et al., *supra* note 144 at 1189.

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FGDM approach could increase the caregiver's sense of responsibility and commitment to his or her extended family, despite the lack of financial incentives.

Similar to tribal identity inspiring cohesive families and clans in Ethiopia, the FGDM model takes into account the importance of family and culture and uses the strengths within the community itself to benefit each child. Although there is still more research to be done to better understand the effects of FGDM and how it can more successfully be adapted in specific communities, it is a novel and optimistic approach seeking to enhance the cohesiveness of our own communities. Additionally, implementing the FGDM model would require extensive supervision, increased time, and the interest of the extended family and community. However, by strengthening these communal bonds and mutual accountability, we shift attention away from the individual as the primary social unit and toward the community and family as a whole. This community-based approach to care is similarly what has allowed American Indian and Alaskan Native cultures to maintain their own sense of family and tradition within the United States.

VI. Conclusion

Both Ethiopian tribes and Native American and Alaskan Indian communities value their culture and heritage, and rely on traditional systems of kinship care to preserve their familial history. In the U.S., this concept can often get lost in the notion of a "melting pot," where the culture and heritage of each individual child are often overlooked in the child welfare system. Thus, an FGDM approach to child welfare would be an effective way to involve and empower the extended family network, as well as increase kinship placements. The FGDM model recognizes and empowers the family as a legitimate and superior unit for caring for an orphaned child, in contrast to the common perception in the U.S. of kinship care as an imposed duty. Additionally, strengthening communities and family cohesiveness will improve each child's sense of belonging, culture, and values. This approach is precisely the perspective taken by Ethiopian tribal

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family clans, where caring for orphaned children as part of an extended family community is a welcome responsibility, not an imposed obligation. By keeping each child within his or her own familiar community and maintaining some type of stability, there is a higher likelihood that these children will pass on similar traditions to their own kin. Therefore, it is time for our own advanced society to consider an ancient tribal way of community-based care and strengthen our own families and children from within.

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