

# REMEDYING CONSTITUTIONAL VIOLATIONS BY GOVERNMENT INSTITUTIONS: A CASE STUDY OF U.S. COURTS AND CHILD WELFARE POLICY

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## ABSTRACT

*In this article the impact and implementation of remedial law in the United States is examined. A case study method is employed with a focus placed on a single state in the substantive policy area of child welfare. A review of remedial law literature is presented, followed by an overview of the theoretical framework. Next, the state-vs-child welfare case is described followed by data analysis. The analysis identifies a group of variables that contributes to implementation failure and compares implementation of judicial policy between the private and public sector.*

**Keywords:** Child welfare, violations by Government Institutions, Board of Education, judicial intervention

## INTRODUCTION

The last half of the 20th century witnessed numerous developments in public administration and law. Most notably was the advent of public law litigation, which supplied the courts with a mechanism to reform public institutions. Public law litigation, also known as remedial law, began in the United States with the 1954 landmark case *Brown v. Board of Education* (Wood & Vose 1990). However, it did not emerge as a distinct form of litigation until the 1970s (Chayes 1976). It is defined as

The continuing judicial intervention in the direct management and reform of executive department and agencies ...it entails deliberate, comprehensive, and often complex court efforts to change the organizational behavior of school systems, prisons, mental hospitals, and public housing authorities judged to violate individual rights (Wood & Vose 1990: ix).

The objective of remedial law is to remedy constitutional violations by public institutions and administrative systems. At stake is “how to reconcile the judicial value of equity with the organisational values of effectiveness and efficiency” (Wood & Vose 1990: ix-x). The courts have four mechanisms with which to supervise public administration reforms: monitoring, court review, consent decrees, and receivership (Wood and Vose 1990). Unlike traditional litigation, which seeks monetary damages or other specific relief, remedial law seeks to institute on-going public reforms, which involve entire administrative operations and communities (Rosenbloom & O’Leary 1997). Accordingly, remedial law “seeks to adjust future behavior, not to compensate for past wrongs” (Chayes 1976: 1298).

This article examines the impact and implementation of remedial law in the United States. It employs the case study methodology focusing on a single state in the substantive policy area of child welfare. First, the remedial law literature is reviewed followed by an overview of the theoretical framework. Next, the methodology and state child welfare case are described followed by data analysis. The analysis identifies a group of variables that contribute to implementation failure and compares implementation of judicial policy between the private and public sector.

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## REMEDIAL LAW

The remedial law literature is comprised of two debates. The initial debate focuses on the appropriateness of judicial intervention (Cooper 1988) and asks the question “should judges be involved in reforming public institutions?” It addresses assumptions about the judicial role (Chayes 1976; Diver 1979; Gilmour 1982), and judicial capacity in reforming public institutions (Cramton 1976; Horowitz 1977). As remedial law became more prevalent in the United States, the debate moved away from the appropriate role of the court and evolved into a discussion on the impact of remedial law in reforming public institutions. The current debate relies largely on empirical evidence and asks the critical question: “what impacts do courts have on reforming public institutions? and why?” In terms of the courts’ effectiveness in reforming public institutions, the earlier literature (1970s and 1980s) focused on the limitations of the court. Baum (1976; 1981), Horowitz (1977), Johnson and Canon (1984), Rosenberg (1991), Scheingold (1974) and Wood and Vose (1990) argue that remedial law is ineffective in reforming public institutions. Specifically, courts have weak implementation powers (Baum 1976; 1981; Horowitz 1977; Johnson & Canon 1984; Rosenberg 1991; Scheingold 1974; Wood 1982; Wood & Vose 1990); courts focus on rights and duties neglecting broader social issues (Horowitz 1977; Rosenberg 1991); judges lack the necessary expertise (Cramton 1976; Horowitz 1983; & Melnick 1983; Wood 1982) and lose neutrality when they become invested in litigation outcomes (Cramton 1976; Horowitz 1983), which often results in bad policies – at least in the area of social services (Glazer 1978) and the environment (Melnick 1983). Furthermore, court supervision can result in unintended consequences (Horowitz 1977) and unanticipated costs (Hale 1979; Horowitz 1977).

Whereas the more recent literature argues that the courts have been effective (though generally imperfect) in reforming public institutions. Specifically, there is empirical evidence that public law litigation has had a significant impact in improving public prisons (Cooper 1988; DiIulio 1990), housing authorities (Cooper 1988), mental health facilities (Cooper 1988; Rothman and Rothman 1984; Yarbrough 1981), schools (Cooper 1988; Morgan v. Kerrigan, 1975; O’Leary & Wise, 1991; Wise & O’Leary, 2003), and policing (Cooper 1988). In assessing the empirical evidence, Rosenbloom and O’Leary (1997), argue that the courts do produce change. “Their decisions have affected core administrative matters – decision-making, authority, organisation, personnel, budgets, program definition and responsibility, feedback and intergovernmental relations” (Rosenbloom & O’Leary 1997: 319). Rosenbloom and O’Leary (1997) go on to argue that public facilities have been constitutionalized.

The administration of public mental health facilities, prisons, and jails has been thoroughly constitutionalized. This includes changes in their day-to day operations as mandated by the courts. The Eighth Amendment now applies to conditions in prisons, and affords a constitutional right to adequate medical care. Prisoners have also gained procedural due process protections and some substantive constitutional rights. Those confined to public mental health facilities now have constitutional rights to treatment or training (Rosenbloom & O’Leary 1997: 304).

In sum, the remedial law literature evolved over time. Initial findings focused on the limitations of the courts and argue that the courts are ineffective at reforming public institutions. Whereas the more current literature argues that the courts are capable of achieving effective (though imperfect) reforms in policy areas such as public prisons, jails, housing, mental health and schools.

The divergence in the literature suggests that over time judges learned how to use public law litigation more efficaciously. Furthermore, there may have been different degrees of success depending on the type of institution. The Court has complete control over clients who reside in “total” institutions which include public prisons, jails, and mental health institutions. In contrast, the Court has minimal to no control over clients in public schools in which parents can move to a new neighborhood and different school district. Arguably, the Courts would be more effective in reforming “total” institutions.

A close review of the public administration literature finds no completed studies on the impact or implementation of remedial law in the substantive policy area of child welfare. Despite the fact that over 30 lawsuits have been filed or are pending against public child welfare agencies (Child Welfare League of America, 2005; National Center for Youth Law, 2000) this substantive policy area remains largely unexplored.

Logically, the question emerges: “is child welfare distinctively different than other previous studied policies?” From an organisational perspective child welfare is distinctly different. According to Wood and Vose (1990) public institutions are composed of two types of organisations: site-specific and field organisations/headquarters. Field organizations are where “Personnel work at stated times in stated places, and their clients usually come to their offices, do their business, and depart. Their behavior is governed by rules, regulations, and directives formulated at headquarters with the expectations of uniform responses in the field” (Wood & Vose 1990: 16). Examples of field organisations include public schools, housing authorities, and welfare offices. Examples of site-specific organisations include jails, prisons, and public mental health facilities. Unlike other substantive policy areas, child welfare is comprised of both types of organisations, site-specific and field, creating a hybrid organisation. The child welfare system is comprised of child abuse and neglect investigations, which are conducted during the day in a field organisation; foster care services, which range from completing paper work in a field organisation to providing 24-hour care in a group home in a site-specific organisation to relying on private citizens to ensure the safety and care of children in their homes; to adoption services, which are provided from a field organisation but also rely on private citizens to provide for the care and safety of children. The value of studying remedial law in a child welfare context lies in its organisation type and the fact that little is known about implementing public law litigation in this substantive policy area.

## IMPLEMENTATION

Judges make policy, but they do not implement policies. Canon and Johnson (1984: 2) claim that “different from legislative actions and executive orders in their origin, judicial policies are also public policies: they too must be implemented before disputes or problems are resolved”. The success or failure of a given policy, regardless of its origination, is determined by one aspect of the policy process, the implementation process. Implementation is defined as “the stage of policymaking between the establishment of a policy – such as the passage of a legislative act, the issuing of an executive order, the handing down of a judicial decision, or the promulgation of a regulatory rule – and the consequences of the policy for the people whom it effects” (Edwards 1980: 1). Once considered the “missing link” (Hargrove 1975; Mazmanian & Sabatier 1981), implementation includes a number of actions:

Issuing and enforcing directives, disbursing funds, making loans, awarding grants, signing contracts, collecting data, disseminating information, analyzing problems, assigning and hiring personnel, creating organisational units, proposing alternatives, planning for the future, and negotiating with private citizens, businesses, interest groups, legislative committees, bureaucratic units, and even other countries (Edwards 1980: 2).

By assessing the implementation process, one can determine if policy outcomes meet policy goals and if there are unintended consequences. Because implementation partly determines if policy outcomes are achieved and why policies succeed or fail, implementation provides the overarching theoretical framework. However, a close read of the literature reveals that the complex nature of implementation makes it difficult to reduce implementation studies into a simple, standard framework. The “wicked problems” inherent in social policy (Rittel & Webber 1973), the diversity of policy types, the variations within organisations and individual

subunits (Radin 2002), and the “impossible jobs” factor (Glidewell & Hargrove, 1990) point to the complexity of implementation. This complexity is further clarified by O’Toole (1986) who documents the difficulty in attempting to standardize implementation studies and to make them more scientific. Condensing the implementation frameworks, processes and case studies together in a meta-analysis, O’Toole (1986) evaluates the literature in terms of theory, emerging patterns, and recommendations. After evaluating approximately 100 studies and identifying over 300 variables, he concludes that the implementation process is highly complex, which often leads to contrary findings among scholars. As such, there is no consensus in the field on a general theory of implementation. At present there are at least 12 identified implementation frameworks. Given the lack of consensus in the field on an implementation framework, this research relies on the common themes gleaned from the implementation literature.

A review of the policy implementation literature indicates that implementation will be more difficult the less adequate the resources (Davies & Mason 1982; Edwards 1980; Mazmanian & Sabatier 1983; Mead 1977; Pressman & Wildavsky 1984; Rein and Rabinovitz 1978; Van Meter & Van Horn 1975), the greater the behavior change required (Edwards 1980; Mazmanian & Sabatier 1981; Montjoy & O’Toole 1979), the greater the complexity of joint action (Pressman & Wildavsky 1984), the less adequate the causal theory (Pressman and Wildavsky 1984), the more sequential the implementation structure (O’Toole & Montjoy 1984), the less clear, consistent or persistent the communication (Van Meter & Van Horn 1975), the less vertical (or hierarchical) integration (Bardach 1977; Berman 1978; Pressman & Wildavsky 1973), the more intractable the problem (Mazmanian & Sabatier 1989), the less committed the leaders are to the policy (Mazmanian & Sabatier 1989; Van Meter & Van Horn 1975), the more top-down rather than bottom-up the conceptualization of implementation (Barrett & Fudge 1981; Elmore 1985; Hjern & Hull 1982), the less credible the threat of noncompliance (Montjoy & O’Toole 1979; Van Meter & Van Horn 1975), or the more controversial the policy (Van Meter & Van Horn 1975). Applying these themes to the intersection of judicial policy and child welfare the following implementation propositions are tested: remedies that are not dependent upon the successful compliance of other remedies will be implemented first; remedies that do not require additional funding to implement (eg caseload reductions, personnel, direct services, information systems) will be implemented first; remedies that are clearly defined will be implemented before remedies that are ambiguous; remedies not involving complexity of joint action will be implemented first. Before testing these propositions, an overview of the substantive policy area is provided.

## CHILD WELFARE

Each year in the United States over three million children are reported as abused or neglected and approximately 1 400 children are killed as a result of such abuse (U.S. Department of Health and Human Services 2004). In addition, half a million children have been placed in foster care (U.S. Department of Health and Human Services 2002). Since 1974, when Congress passed the Child Abuse Prevention and Treatment Act, states have been responsible for investigating reports of child abuse and neglect. Subsequent federal legislation has mandated states to provide foster care and adoption services. In fiscal year 2002, the U.S. Department of Health and Human Services (DHHS) provided approximately \$7 billion in grants to operate child welfare systems, which include child protective services, foster care, and adoption (U.S. General Accountability Office 2003). Despite federal funding and legislation designed to protect children, state and local child welfare systems have failed to safeguard some of our most vulnerable citizens. The system is plagued with high caseloads, poor training, and inadequate resources (Alliance for Children and Families *et al* 2001; American Public Human Services Association 2001; U.S. General Accountability Office 1995; 2003), which has resulted in a child welfare crisis (U.S. General Accountability Office 1995).

Consequently, some children who are rescued from abusive parents are placed into a child welfare system that perpetuates abuse and or neglect. National scandals in child protective services, foster care and adoption in conjunction with violating the statutory and constitutional rights of children have led to numerous lawsuits being filed against state and local governments across the country. Currently, there are 26 states operating under settlement agreements and seven pending litigation (National Center for Youth Law 2006). But have any of these attempts to reform child welfare systems made a difference? What impact has remedial law had on reforming child welfare agencies?

## METHODOLOGY

Consistent with previous research in public law litigation, a single case study is utilized to evaluate the impact of judicial intervention in child welfare policy. According to Cooper, case studies are “particularly useful for understanding remedial decree suits because of the complex nature, multiple parties, and lengthy procedures associated with this type of litigation” (Cooper 1988: 6; see also Yin 1994). Case selection was based on two criteria. First, only legal cases that exited court supervision were considered for selection. Second, only lawsuits in which state level government agencies were identified as defendants were considered. Based on the above selection criteria, the Kansas court case *Sheila A. v. Whiteman* (1989) was chosen. It is a state level court case, which offers a better test of judicial capacity to design implementation because it avoids issues of federalism and the judge is closer to the budget realities of the state. Relying on compliance data, government documents, and interviews, this article evaluates the implementation of the Kansas case which resulted in judicial intervention by a state court.

## KANSAS CASE

In 1989, a Topeka attorney filed a lawsuit against the State of Kansas, Department of Social and Rehabilitation Services (SRS) in Shawnee County District Court, *Sheila A. v. Barton* (1989). In 1990, the petition was amended and joined by the American Civil Liberties Union (ACLU) and the plaintiffs were granted class action status. The lawsuit alleged that the state agency had violated the constitutional rights and federal and state statutory rights of children in the care and custody of the state child welfare agency. Citing the Child Abuse and Prevention Act of 1974, the Adoption Assistance and Child Welfare Act of 1980, the due process clause of the 14th Amendment to the United States Constitution, and the Kansas Code for Care of Children, plaintiffs brought suit under section 1983 title 42 of the United States Code. Specifically, plaintiffs allege that

Investigations into allegations of abuse and neglect are cursory and in many instances never are initiated; to save money, SRS leaves children in dangerous homes even though SRS knows the children have been abused or neglected; regular foster homes are overcrowded and homes for children with special needs are virtually non-existent; children are denied necessary medical treatment; children often are returned home when little or nothing has been done to resolve the problems that warranted their initial removal, creating a situation in which children are traumatized and severely damaged by frequent removals and returns; and children for whom adoption is appropriate often languish in SRS custody for long periods of time, thereby reducing or eliminating any chance of their being adopted (*Sheila A. v. Barton*, Plaintiffs Amended Petition, 20 February 1990: 3).

After four years of protracted litigation the court ordered both parties into mediation. Through the mediation process the state child welfare agency and the ACLU reached a settlement agreement in May of 1993, which the court approved in June of 1993. The goal of the judicial policy was to institute comprehensive reforms in the state operated child welfare system. The 31 page settlement agreement stated two overarching goals: reduce the number of children in its care; and reduce reliance on out of home placements [foster care]. The two goals were to be achieved by requiring the state child welfare agency to implement 153 remedies across 11 categories



including: 1) protective services, 2) preventive services, 3) case planning and reviews, 4) placements, 5) visitations, 6) services, 7) adoption, 8) staffing, 9) training, 10) information systems, and 11) budgeting. The state agency was given a deadline of December 31, 1997, to implement the 153 remedies. In sum, the settlement agreement addressed every component of the state child welfare system and called for a complete overhaul of the system.

## DATA

Compliance data, which have been historically difficult to obtain (Edwards 1980), are analyzed to evaluate the impact of judicial policy on a public child welfare agency. This is significant because compliance data allows for the tracing of processes over time (Van Evera 1997). The compliance data used for this article are based on fifteen monitoring reports published by the Kansas Division of Legislative Post Audit (LPA), which the court designated as the external monitor for the case. The LPA functions are similar to those of the U.S. Government Accounting Office and follow similar standards. During implementation of the settlement agreement, monitoring was set up in six-month increments with a report being issued at the end of each monitoring period. The monitoring reports cover the time period January 1, 1994 to June 30, 2001. In total, 153 remedies are tracked over seven and half years (7.5 years X 2 semi-annual reports = 15 reports). For purposes of this article, compliance is defined as when a remedy is no longer monitored by LPA as a result of implementation. In order to achieve compliance, the agency was required to meet auditing standards two consecutive reporting periods in a row (one year). The definitions for noncompliance and removal are straightforward. Noncompliance means the agency did not implement the remedy, and removal is defined as a remedy being removed from the consent decree as agreed by both parties. "Disagree" is defined as remedies that were in the process of being negotiated due to disagreement between the two parties. Each of the 153 remedies was coded based on function, which is a common classification (Kauffman 1973). These functions include: administration, named plaintiffs, information systems, monitoring, and direct services. The first function, administration, includes those remedies implemented by staff in administrative positions and are further broken down into five areas, which include: assessments and studies, budgets, caseloads/staffing, policies, and training. The second function, named plaintiffs, involves the assessment of children's cases specifically named in the lawsuit. The third function, information systems, pertains to remedies relating to databases and information collection. The fourth function, monitoring, addresses the monitoring, compliance and termination of the settlement agreement. And last, direct services include tasks directly related to clients and implemented by social workers, which include child abuse and neglect investigations, and management of foster care and adoption cases.

Compliance data are divided into two phases. Phase I captures implementation under the public operated system, January 1, 1994, to December 31, 1996, and Phase II encapsulates implementation under the new privatized managed care system, January 1, 1997, to June 30, 2001.

## PHASE I

Phase I captures the first three years of implementation under the public operated child welfare system. As illustrated in Table 1, a total of 138 elements were monitored over a period of three years. Of the 138 remedies monitored, the state child welfare agency was in compliance with 35.5 percent (49) of the remedies and out of compliance with 50.7 percent (70). The remaining 13.8 percent (19) remedies categorized as "disagree" were delayed due to disagreement between the parties and were in the process of being negotiated or assessed. There were no remedies removed during Phase I. In terms of compliance, it is important to note that the agency successfully implemented 100 percent (2) of the plaintiffs' cases, 100 percent (2) of monitoring

remedies, and 66 percent (41) of the administrative functions. Except for functions with minimal remedies (monitoring and plaintiffs cases) the agency achieved the greatest success implementing administrative functions. Specifically, the agency implemented 100 percent (4) of budget remedies, 90 percent (18) of the required staff training, 58 percent (11) of policies, 50 percent (6) of the required assessments, and roughly 29 percent (2) of the staff caseload evaluations. In terms of noncompliance, the agency failed to implement 89 percent (62) of the direct service remedies and 57 percent (4) of the information systems remedies. Specifically, the agency had great difficulty implementing direct services. The agency failed to implement 100 percent (11) of the adoption remedies, 100 percent (39) of the foster care remedies, and 80 percent (12) of the child abuse and neglect remedies. In sum, at the end of Phase I the agency had failed to implement over half of the required remedies.

**Table 1**      **Phase I: January 1, 1994 to December 31, 1996**

Function	Remedy	Compliant	Noncompliant	Remove	Disagree	Totals
<b>PHASE I</b>						
<b>Admin.</b>						100%
<i>Assessments</i>	12	6 (50%)	0 (0%)	0 (0%)	6(50%)	100%
<i>Budgets</i>	4	4 (100%)	0 (0%)	0 (0%)	0 (0%)	100%
<i>Caseloads</i>	7	2 (28.6%)	1 (14.3%)	0 (0%)	4(57%)	100%
<i>Policies</i>	19	11 (58%)	1 (5%)	0 (0%)	7(37%)	100%
<i>Training</i>	20	18 (90%)	2 (10%)	0 (0%)	0 (0%)	100%
<b>Subtotal</b>	62	41 (66.1%)	4 (6.5%)	0 (0%)	17(27.4%)	<b>100%</b>
<b>Plaintiffs</b>	2	2 (100%)	0 (0%)	0 (0%)	0 (0%)	<b>100%</b>
<b>Information Systems</b>	7	2 (28.6%)	4 (57.1%)	0 (0%)	1 (14.3%)	<b>100%</b>
<b>Monitoring</b>	2	2 (100%)	0 (0%)	0 (0%)	0 (0%)	<b>100%</b>
<b>Direct Services</b>						
<i>Adoption</i>	11	0 (0%)	11 (100%)	0 (0%)	0 (0%)	100%
<i>Foster Care</i>	39	0 (0%)	39 (100%)	0 (0%)	0 (0%)	100%
<i>Child Abuse Neglect</i>	15	2 (13.3%)	12 (80%)	0 (0%)	1(6.7%)	100%
<b>Subtotal</b>	65	2 (3.1%)	62 (95.4%)	0 (0%)	1 (1.5%)	<b>100%</b>
<b>Phase I Totals</b>	<b>138</b>	<b>49 (35.5%)</b>	<b>70 (50.7%)</b>	<b>0 (0%)</b>	<b>19(13.8%)</b>	<b>100%</b>

## DISCUSSION OF PHASE I

Four key trends emerge from Phase I of implementation. First, the agency complied with administrative remedies, which include training staff, developing policies, and documenting budget outputs. This finding was expected given that administrative functions were not in large part dependent upon the successful completion of other requirements, did not require additional funding, and required the least amount of behavior change by personnel. The agency had the resources (funding and personnel) in place to successfully implement administrative requirements. Structurally, the state agency complied with remedies that were directly controlled by the top level of administration. Street-level bureaucrats, social workers in this case, who have a lot of discretion in their jobs (Lipsky 1980), and whose jobs demanded the most behavior change were not involved in implementing administrative requirements. This factor made implementation easier in that the tasks administrators' were required to implement were a part of their

current job responsibilities and did not require supervising front-line staff, minimizing the number of actors involved. Administrative functions required the least change and the fewest actors and were therefore the easiest to implement.

Second, direct service remedies were the most difficult for the agency to implement. The agency failed to implement 95 percent of the direct service remedies including child abuse and neglect investigations and foster care and adoption services. There were several impediments to implementing direct service remedies. The biggest obstacle was the lack of funding. As part of the settlement agreement the agency was not required to seek additional funding and the state legislature was not required to appropriate additional funding. The agency was only required to maintain current funding levels, which made implementing direct service remedies near impossible since service delivery was dependent on staff caseloads, which was dependent on hiring additional social workers. In other words, response deadlines and case requirements had to be met with no additional staff. Because implementation required additional resources and demanded a high level of behavior change from social workers, there were long-term delays. Consequently, the agency failed to implement direct service remedies within the designated time frame. Noncompliance in this area is alarming because the child welfare agency failed to implement remedies that have the greatest impact on the safety and well-being of children; it potentially places children at risk of further harm. Moreover noncompliance is detrimental to achieving institutional reforms. Direct services are the bedrock of the child welfare system and the reason the lawsuit was initially filed.

Third, similar to direct services, implementing information system remedies proved arduous for the agency. Two factors accounted for failed implementation. The agency lacked funding to hire staff and could not agree on a sampling monitoring methodology (operationalization). The purpose of information systems is to collect data on families and children in the child welfare system and take a sample of the data to determine if it is accurate and reliable. In other words the data on families and children would be monitored over time. Although there were only a few remedies (7) in the area of information systems (compared to direct services), failure to implement these is significant because without accurate and reliable data agency outcomes cannot be tracked over time, which makes it difficult to determine if the agency achieved the desired policy goals outlined in the settlement agreement.

And last, of the remedies that were delayed due to disagreement there was no clear guidance or detailed information in terms of numbers, definitions, and intent. Remedies that were ambiguous or subject to interpretation did not get implemented. After three years of implementation the two parties were still negotiating over how to operationalize key requirements, which led to prolonged implementation.

In sum, at the end of Phase I the state child welfare agency failed to implement the settlement agreement within the required time frame. In order to comply with the agreement, the child welfare agency had to be in full compliance with all 138 remedies for at least one year before the agreement was scheduled to terminate on December 31, 1997. Unfortunately, at the end of December 1996, the agency was substantially out of compliance. It failed to implement half of the agreement. Based on compliance data, direct services and information systems proved to be the biggest challenges for the agency. The three impediments to implementation include lack of funding, ambiguous requirements, and disagreement on operationalization. In addition, it is important to note that not only had the agency failed to successfully implement the agreement, but that the court failed to adequately monitor agency implementation. The judge, who was reassigned to a criminal administrative judgeship during Phase I of implementation, assumed that the agency was implementing the agreement and did not read the monitoring reports submitted to the court except for the last one (Sheila A. v. Whiteman 1989: 39-40) when it was too late to intervene. Monitoring



slippage as described here is fairly common with judicial policies because of insufficient resources to monitor compliance (Edwards 1980). In this case, a new judge was not assigned to supervise the case in the absence of the previous judge. Moreover, there were no sanctions imposed on the agency for not complying with the settlement agreement. As articulated in the agreement, the agency was to be granted an extension if unable to comply by the stated deadline. These five factors contributed to implementation failure during Phase I.

## **PRIVATIZATION OF CHILD WELFARE SERVICES**

The agency's failure to implement the settlement agreement was further complicated by the privatization of core child welfare services. By the end of Phase I (December 31, 1996), the political winds had changed creating a shift in the sociopolitical environment. On January 9, 1995, Republican Bill Graves was inaugurated as the Governor of Kansas. As a result, the state had a new republican governor and a republican majority in the state legislature, creating a mandate. And with the mandate came the rapid privatization of state services and functions, including the area of social services (Klingner, Nalbandian & Romzek 2002; Romzek & Johnston 2000). The new administration was focused on cost savings and reducing the size of government, including child welfare services. The state legislature recommended privatizing foster care in early 1995 and the new Republican Governor directed the agency director to develop a privatization plan in October 1995. The government agency began privatizing child welfare services in early 1996 (Freundlich & Gerstenzang 2002). The first request for proposal (RFP) was released in January of 1996 and the first contract, the Family Preservation Program, became effective July 1, 1996. The contract for the adoption program became effective in October 1996. The contract for the foster care program followed in March 1997. The only core function not privatized was child abuse and neglect investigations. Privatization of child welfare programs is significant because it shifted the agency focus from the judicial policy to the privatization initiative potentially undermining it. Equally important it transferred the burden of implementing direct service remedies (foster care and adoption) from the public child welfare system to the new private system, which is captured in Phase II of implementation.

## **PHASE II**

Due to the state child welfare agency's failure to implement the judicial policy the court approved two extensions as agreed upon by both parties. Thus Phase II covers the time period January 1, 1997 to June 30, 2002. The compliance data for Phase II captures the last four and a half years of implementation (January 1997 to June 2001). It does not include the last year (2002) due to LPA terminating its monitoring function, which ended the tracking of compliance data. (LPA ended its monitoring role because the agency had not made significant progress in implementing the few remaining remedies.) During the final year, the agency relied on a combination of internal monitoring and contracted monitoring. As previously mentioned Phase II was administered by the public child welfare agency while direct services (except child abuse and neglect investigations) were delivered by a privatized managed care system. However, the public child welfare agency remained accountable to the court for implementing the settlement agreement.

During Phase II, a total of 104 remedies were monitored, of which 89 were carried over from Phase I (70 noncompliant and 19 disagree remedies) and 15 new remedies were phased-in. As illustrated in Table 2, of the 104 remedies monitored, the public child welfare agency was in compliance with 51.9 percent (54) of the remedies, out of compliance with 20.2 percent (21), successfully negotiated the removal of 18.3 percent (19) remedies, and disagreed on 9.6 percent (10) of the remaining remedies. In terms of compliance, the agency successfully

implemented 62 percent (39) of the direct service remedies and 60 percent (15) of the administrative remedies. Similar to Phase I of implementation, the agency was successful in implementing administrative functions. Specifically, the agency implemented 60 percent (6) of the remaining assessments, 60 percent (3) of the staff caseload evaluations, roughly 63 percent (5) of policies and 50 percent (1) of the training remedies. Unlike Phase I, the majority of direct service remedies were successfully implemented. Specifically, contractors implemented 100 percent (11) of adoption remedies and approximately 51 percent (20) of foster care remedies while the public agency implemented roughly 62 percent (8) of child abuse and neglect investigation remedies. Although full compliance was not achieved in two of the service areas it is a marked improvement over Phase I in which the public agency implemented 2 (3 percent) out of a total of 65 direct service remedies.

In terms of noncompliance, the agency failed to implement 40 percent (6) of the information systems. Equally important the agency was able to successfully negotiate the removal of 12 percent (19) of remedies, which means the agency did not have to implement these remedies. Specifically, 10 foster care, 7 administrative, and 2 information system remedies were eliminated from the settlement agreement. And last, the two parties could not come to agreement on how to implement 10 of the remedies. These included 2 needs assessments, 7 information systems, and 1 monitoring remedy. Despite the removal of 19 remedies, by the end of Phase II the agency had made substantial improvement in implementing the settlement agreement.

**Table 2      Kansas Consent Decree, Phase II: January 1, 1997 to June 30, 2001**

Function	Remedy	Compliant	Noncompliant	Remove	Disagree	Totals
<b>PHASE II</b>						
<b>Admin.</b>						
<i>Assessments</i>	10	6 (60%)	0 (0%)	2 (20%)	2 (20%)	100%
<i>Budgets</i>	0	0 (0%)	0 (0%)	0 (0%)	0 (0%)	100%
<i>Caseloads</i>	5	3 (60%)	0 (0%)	2 (40%)	0 (0%)	100%
<i>Policies</i>	8	5 (62.5%)	0 (0%)	3 (37.5%)	0 (0%)	100%
<i>Training</i>	2	1 (50%)	1 (50%)	0 (0%)	0 (0%)	100%
<b>Subtotal</b>	25	15 (60%)	1 (4%)	7 (28%)	2 (8%)	100%
<b>Plaintiffs Total</b>	0	0 (0%)	0 (0%)	0 (0%)	0 (0%)	100%
<b>Information Systems Total</b>	15	0 (0%)	6 (40%)	2 (13.3%)	7(46.7%)	100%
<b>Monitoring Total</b>	1	0 (0%)	0 (0%)	0 (0%)	1 (100%)	100%
<b>Direct Services</b>						
<i>Adoption</i>	11	11 (100%)	0 (0%)	0 (0%)	0 (0%)	100%
<i>Foster Care</i>	39	20 (51.3%)	9 (23.1%)	10 (25.6%)	0 (0%)	100%
<i>Child Abuse Neglect</i>	13	8 (61.5%)	5 (38.5%)	0 (0%)	0 (0%)	100%
<b>Subtotal</b>	<b>63</b>	<b>39 (61.9%)</b>	<b>14 (22.2%)</b>	<b>10(15.9%)</b>	<b>0 (0%)</b>	<b>100%</b>
<b>Phase II Totals</b>	<b>104</b>	<b>54 (51.9%)</b>	<b>21 (20.2%)</b>	<b>19(18.3%)</b>	<b>10 (9.6%)</b>	<b>100%</b>

## DISCUSSION OF PHASE II

Several trends emerge from Phase II of implementation. First, unlike Phase I, which the agency predominantly achieved compliance in administrative remedies, during Phase II the agency achieved substantial compliance in implementing direct service remedies, including adoption, foster care and child abuse and neglect. The agency mainly complied with service remedies that were privatized. This is noteworthy because privatization, which involved multiple layers of contractors, added more actors to the process and increased the complexity of joint action. Based on the literature it should have led to ongoing delays in direct services. What factor(s) led to the successful implementation of direct services during Phase II? One factor that may have played a substantial role was the sizeable budget increase. During Phase II, the state legislature appropriated additional funding for private contractors to hire staff and deliver services. Between the first year of contracting (fiscal year 97) and the third year of contracting (fiscal year 99) annual expenditures for the child welfare budget increased from \$85.2 million to \$168 million, a 97 percent increase. Compared to Phase I, annual agency expenditures averaged \$70.7 million. Funding for staff and services more than doubled during Phase II removing a major obstacle to implementation. The legislature believed the private sector could provide more efficient services than the public sector. As a result, privatization facilitated a substantial increase in the agency budget, which allowed contractors to hire the necessary staff to deliver services, making implementation achievable. Equally important, although contracting out for services added more actors and complexity of joint action to the implementation process this potential impediment appears to have been offset by the sizable budget increase.

Second, the agency continued to comply with administrative remedies during Phase II by successfully implementing staff caseload studies, policies and training remedies. Again, this finding was expected given that most administrative functions did not require additional funding or behavior change in staff. Third, similar to Phase I, implementation of information system remedies continued to prove difficult. The agency was required to implement a total of 15 information remedies and failed to comply with all 15. Noncompliance was due to two key factors: 1) lack of funding, and 2) the development of a new data system rendering seven of the remedies irrelevant. Unfortunately, the agency did not maintain the old data system while developing the new data system which means there are periods of missing data. As previously mentioned, failure to comply with information system requirements is problematic in achieving institutional reforms because the data system tracks the necessary information to evaluate policy outcomes. Without accurate and complete data it is impossible to determine if the policy goals were met. Fourth, unlike Phase I in which no remedies were removed, the agency was able to successfully negotiate the removal of 19 remedies indicating that bargaining, which continued throughout the implementation process, is a very powerful tool. Of the seven administrative remedies that were removed from the agreement, two focused on staff caseloads in which the parties could not agree on definitions or intent, two involved contracting out with universities for statewide assessments, two focused on policies that provided adequate services in which parties could not reach an agreement on definitions, and one addressed a policy placing children in the least restrictive environment. These remedies were either not clearly defined or the parties could not reach an agreement on how to implement them. In lieu of continuing to negotiate over definitions and operationalization methods the two remaining parties decided to remove the remedies from the agreement, freeing the agency from implementation. Despite the removal of remedies, in general, the child welfare agency in conjunction with private contractors made significant progress in implementing the settlement agreement. At the end of phase II, approximately two-thirds of the agreement had been implemented.

## DATA SUMMARY

After seven and half years of implementation the child welfare agency made substantial progress in executing the agreement. As illustrated in the bottom line on Table 3, the agency successfully implemented 103 out of 153 total remedies (67 percent), failed to implement 21 remedies (14 percent), was able to negotiate the removal of 19 remedies (12 percent) and remained in disagreement on 10 remedies (7 percent). The agency had the most success implementing plaintiffs' cases (100 percent), administrative functions (84.8 percent), monitoring (66.7 percent), and direct services (63 percent). The agency had the greatest difficulty implementing information system requirements (11.8 percent). SRS made considerable improvement in complying with the ACLU Foster Care Settlement Agreement. As a result the two remaining parties agreed that SRS was in substantial compliance with the settlement agreement. The child welfare agency exited the agreement on June 30, 2002.

**Table 3 Data Summary: January 1, 1994 to June 30, 2001**

Function	Remedy	Compliant	Noncompliant	Remove	Disagree
Administration	66	56 (84.8%)	1(1.5%)	7 (10.6%)	2 (3%)
Plaintiffs	2	2 (100%)	0 (0%)	0 (0%)	0 (0%)
Information Systems	17	2 (11.8%)	6 (35.3%)	2 (11.8%)	7 (41.2%)
Monitoring	3	2 (66.7%)	0 (0%)	0 (0%)	1 (3.7%)
Direct Services	65	41 (63%)	14 (21.5%)	10 (15.4%)	0 (0%)
<b>TOTALS</b>	<b>153</b>	<b>103 (67.3%)</b>	<b>21 (13.7%)</b>	<b>19 (12.4%)</b>	<b>10 (6.5%)</b>

## Implementation Propositions

In terms of testing the implementation propositions four of the predictions were realized. Remedies that were not dependent upon the successful compliance of other remedies were implemented first. During Phase I, 41 non-interdependent administrative requirements including policy development, budget documentation, and staff training were implemented. In addition, the named plaintiff cases were also implemented during Phase I. Similarly, remedies that did not require additional funding to implement were implemented first. Again, this included administrative requirements, which did not require additional resources such as hiring additional staff or acquiring additional funding. In contrast, remedies that required additional funding and were sequential in nature either did not get implemented or were delayed. During Phase II, 39 direct service remedies were implemented as a result of the state legislature appropriating additional funds to hire staff and deliver services. In contrast during Phase I, only 3 direct service requirements were implemented due to lack of funding. Furthermore, remedies that were clearly defined were implemented before remedies that were ambiguous. Ambiguous remedies include: caseload studies, developing and implementing a statewide plan for adequate preventive services, placements for foster children in the least restrictive environment; and service plan for children in SRS custody; and maintain sufficient staff. In the end, the two statewide plans for services were removed from the agreement along with providing access to adequate preventive services, maintaining sufficient staff and equitable distribution of work. The parties never reached agreement on definitions or operationalization. Findings for the last proposition are mixed. It was proposed that remedies not involving complexity of joint action would be implemented first. In theory, an increase in the number of actors and organizations involved in implementation should delay the process. When the agency privatized core child welfare services this should have delayed

implementation potentially undermining the settlement agreement. Unexpectedly, privatization resulted in a substantial budget increase and facilitated the implementation process. With new funding, contractors were able to hire the necessary staff to reduce caseloads and provide services. During Phase II, 39 direct service requirements were successfully complied with. Yet two remedies involving contracts with universities to conduct needs assessments, which involved additional actors, were not implemented. This finding suggests that complexity of joint action, which usually leads to delays, can be counterbalanced by substantial increases in funding. In sum, four of the five propositions were affirmed.

## **Delays**

Implementation delays are attributed to six key factors: 1) lack of valid causal theory; 2) inadequate monitoring; 3) lack of sanctions; 4) biased judge; 5) lack of funding; and 6) ambiguous requirements. These are discussed below.

Although the settlement agreement provided the much needed goal saliency that is often missing in public policy (Berman 1978; Cleaves 1980; Rein & Rabinovitz 1978), the policy lacks a valid causal theory (Mazmanian and Sabatier 1981, 1983; Pressman & Wildavsky 1979). The settlement agreement stated two clear goals that are not linked to a valid causal theory. In the state of Kansas, judges determine whether children are placed in state custody, not the state child welfare agency. Yet, the policy does not address the role of juvenile/family judges in the settlement agreement, only SRS. In this case, there is a single agent that is responsible for implementing the policy and that agent does not have the legal authority to decrease the number of children in custody. As such, the policy goal does not meet one of two requirements identified for an adequate causal theory, which states “that the officials responsible for implementing the program have jurisdiction over a sufficient number of the critical linkages to actually attain the linkages” (Mazmanian & Sabatier 1989: 26). Moreover, there are larger social issues, such as, drug addiction, poverty, unemployment, incarceration, and domestic violence that determine whether or not children will need to be removed from their parents’ custody and placed in state custody. These issues are labeled “wicked” problems because they are not solvable (Rittel & Webber 1973). The child welfare agency does not control social problems or judicial decisions, rendering the causal theory invalid.

Second, there was monitoring slippage through out the settlement agreement, which delayed implementation. During Phase I, the judge did not read the initial five monitoring reports, illustrating that the level of judicial involvement varies greatly across judges (Cooper 1988). In addition, the judge took on another position without a replacement judge being assigned to the case illustrating the slippage that occurs in monitoring as a result of insufficient resources (Edwards 1980). In addition, LPA terminated its role of external monitor after seven and half years of monitoring, leaving SRS to monitor internally and rely on contractual monitoring.

Third, because the policy lacked sanctions, which are critical to holding agencies accountable (Edwards 1980; Nakamura & Smallwood 1980), implementation was delayed. The judicial policy only provided for two courses of action: 1) extend the agreement, or 2) file a motion to re-open the case. Because the agreement had already been extended twice, the only other option was to re-open the case, and without adequate reimbursement for attorney fees, plaintiffs’ attorneys could not afford to re-open the case. Fourth, the judge’s bias or lack of neutrality played a role in plaintiffs’ attorneys not getting fully reimbursed for attorney fees, which influenced plaintiffs’ attorney’s decision to not re-open the case. If the attorneys were able to collect market value for billable hours they may have re-opened the case. The judge was eventually removed from the case illustrating the lack of neutrality of the courts in implementing policy (Cramton 1976; Horowitz 1983).



Fifth, initially there was lack of funding. During Phase I, the agency did not have the necessary funds to hire additional staff to implement direct service requirements. This impediment delayed implementation. Without the necessary funding it was highly unlikely the agency could comply with the agreement. And last, ambiguous requirements led to delays. Without clear direction and definitions the parties could not come to agreement on how to operationalize requirements. These six factors impeded policy implementation. In the end, it took the agency four and half years longer than anticipated to implement the agreement.

### **Impact Evaluation**

In addition to implementing 153 remedies, the settlement agreement articulated two goals: 1) reduce the number of children in SRS custody, and 2) reduce reliance on out of home placements. The data for both of these outcomes was to be provided by the agency information systems, which as discussed in Phase I and Phase II the agency failed to implement. Thus, data limitations prevent a conclusive evaluation. In terms of the number of children in state custody, uniform data are not available making it impossible to compare Phase I and Phase II periods. Between 1995 and 1997, children in SRS custody and in out of home placements included both children in need of care (CINCs) and juvenile offenders (JOs). However, between 1998 and 2002 only CINCs remained in the custody of the child welfare agency. On June 30, 1998, the juvenile offender population (2 137) was transferred from the custody of the child welfare agency to a new state agency that specialized in juvenile offenders. Because the two time periods do not have comparable data, it is difficult to determine whether or not SRS achieved the desired policy outcome.

Similarly, it is difficult to determine whether or not implementation of the policy reduced the number of children in out of home placements (OHP). There are two limitations with OHP data. First, the data are not comparable. Similar to data on the number of children in SRS custody, juvenile offenders were transferred to a new agency, leaving only CINCs in SRS custody from FY98 to FY02, which resulted in non-uniform data. Second, there is missing data. Data are not available from fiscal year 95-97 and fiscal year 99-00 making analysis impossible. As previously stated the agency did not maintain the old data system while developing the new data system resulting in missing data. In summation, it is impossible to determine whether or not the child welfare agency achieved the policy goals of reducing the number of children in custody and the number of children in out of home placements. This finding points to the importance of adequately funding information systems, ensuring that information systems are properly maintained, and that policy goals are tracked over time in combination with specific remedies. The LPA monitoring reports tracked 153 remedies over a period of seven and a half years by providing 6 month progress reports. However, the two policy goals were not included in the monitoring plan or court documents creating disconnect between goals and steps required to achieve goals. The implementation process largely focused on processes and not policy goals. It was assumed that if the 153 remedies were implemented the policy goals would take care of themselves.

Since the overarching goal of judicial intervention is to ensure that the constitutional rights of children in state custody are upheld one could arguably analyze the number of agency child deaths. If children are better off as a result of implementing the policy, then there should be fewer child deaths. Similar to other outcomes, child death data on children in SRS custody are not available during Phase I and II, rendering it impossible to determine if the policy had a positive or negative impact on the number of children killed while in government custody. Although child deaths are rare children were killed before, after and during implementation of the judicial policy. Prior to the agreement, Douglas Brumley, age 4 was killed in October 1992 by a blow to the stomach (Shields 1993). He was adopted by foster parents Alberta and Delmar Brumley and beaten to

death by the Brumley's biological daughter Kimberlee Lee who pleaded guilty to second-degree murder. She was sentenced to 26 years to life (Rizzo 1994). During policy implementation, two-year old Niccol Haywood of Wichita was beaten to death while staying in a "relative" foster home. The toddler was killed by blunt force and according to the autopsy report she suffered from internal bleeding and abdominal injury (Potter & Comes 2000). And at least one death was reported after the judicial policy was fully implemented. Nine-year old Brian Edgar was killed by his adopted parents and babysitter on December 29, 2002. The child was restrained with duct tape from head to toe and a sock was stuffed in his mouth. He suffocated on his vomit (Rizzo 2003). As illustrated by these examples, children were killed before, during and after implementation of the settlement agreement. However, the judicial policy did not address child deaths or the selection, screening, and approval of adoptive and foster parents. This demonstrates the importance of a strong causal theory and points to the limitations of institutional reforms.

### Public versus Private Comparison

As previously noted, two core child welfare services were privatized during Phase II. This event provides a unique comparison between public and private performance. As illustrated by Table 4, which captures the comparison between the public and private sectors, the privatized sector complied with 100 percent of the adoption remedies and roughly half of the foster care requirements in Phase II whereas the public sector failed to comply with any of the adoption and foster care remedies during Phase I. In sum, the agency failed to implement all 50 remedies during Phase I while the private system complied with 31 or 62 percent of the remedies during Phase II, a marked improvement from Phase I. Although the numbers in the cells are too small to test for statistical significance this finding is substantively significant.

**Table 4**      **Public Private Comparison**

	Remedy	Compliant	Noncompliant	Remove
<b>PHASE I</b>				
<i>Adoption</i>	11	0	11 (100%)	0
<i>Foster Care</i>	39	0	39 (100%)	0
<b>Subtotal</b>	50	0	50 (100%)	0
<b>PHASE II</b>				
<i>Adoption</i>	11	11 (100%)	0	0
<i>Foster Care</i>	39	20 (51.3%)	9 (23.1%)	10 (25.6%)
<b>Subtotal</b>	50	31(61.9%)	9 (18%)	10 (20%)

The private sector achieved greater success than the public sector. Several factors may have contributed to the differences in the two sectors performance. First, there were initial start up costs incurred by the agency during Phase I that were absent during Phase II. A monitoring plan had to be created and approved by all the parties in the litigation. Second, as previously mentioned the child welfare funding increased by 97 percent during Phase II removing a key impediment to implementation. With approximately twice the funding and an additional year of time the private sector was able to make significant progress in implementing direct service requirements. Of course it remains unknown whether or not the public sector could have achieved equal or greater results if it would have received equivalent funding during Phase I. Third, there were dissipation effects. Over time, interest in the settlement agreement diminished. After five years of litigation and seven and a half years of implementation (a total of 11 years) it was difficult to sustain interest. In sum, these three factors may have played a role in the performance of the two sectors.

## CONCLUSION

The Kansas case, *Sheila A. vs. Whiteman* (1989) was a major judicial intervention in state child welfare policy within the United States. Public administrators within the child welfare agency took the settlement agreement seriously and implemented two-thirds of the remedies over a period of seven and a half years. Impediments to implementation include: lack of valid causal theory; inadequate monitoring; lack of sanctions; biased judge; lack of funding; and ambiguous requirements. Consistent with the implementation literature the agency successfully implemented remedies that required the least amount of behavior change, were clearly defined, and did not require additional resources. The state agency was most successful in implementing administrative functions, including policies, budgets, training, and assessments, which did not require additional funds or personnel. Conversely, remedies that required additional funding and the greatest amount of behavior change were the most difficult for the agency to implement. These include information system requirements and direct services, such as foster care, adoption, and child abuse and neglect. Once adequate funding was appropriated the agency, in partnership with private contractors, made substantial progress in implementing direct service requirements. However, the agency was not able to overcome the lack of resources to successfully comply with the information system requirements. This failure resulted in missing data that made it impossible to determine whether or not the agency achieved the stated policy goals. Despite this indetermination, the parties in the case agreed that the child welfare agency was in substantial compliance with the agreement and the agency exited court supervision June 30, 2002.

This research addresses gaps in the literature. First, the early literature neglected the role of court settlement agreements in reforming public institutions, thus little is known about the impact and implementation of settlement agreements in reforming public agencies. Second, relying on compliance data and interviews this article provides a rich descriptive analysis of the implementation of a judicial policy in a substantive policy previously neglected in the literature. It has contributed to our understanding by testing a set of propositions in the area of public law litigation and child welfare, which resulted in the identification of a group of implementation variables that had not previously been tested in this policy area. Third, by using two distinct implementation phases, this research provides a comparison between public and private performance adding to our knowledge in this area. A key finding is that the private sector achieved greater success implementing foster care and adoption requirements, but at an additional cost. The child welfare budget doubled during Phase II providing for additional personnel and enhanced service delivery. The most visible outcome of the case is the substantial increase in the budget, which doubled during Phase II.

Public administrators can glean several lessons from this research. First, when crafting judicial policy it is important that individual remedies are directly linked to policy goals and policy goals are based on causal theory. For institutional reforms to be successful the targeted agent or public organization must have the authority to implement change. Without it, policy goals are likely to remain unrealized. Equally important there needs to be a balance on both policy goals and individual remedies. If the sole focus is placed on implementing individual remedies, the attention becomes centered on processes ignoring larger policy goals. Second, contracting may equate to complexity of joint action because of the number of actors added to the process, but it can be mitigated by additional funding. In an era of widespread administrative privatization, partnering with private sector organizations may increase funding. Third, if child deaths are to be eliminated or reduced, judicial policy must be crafted to specifically address the selection, screening and monitoring of foster and adoptive parents. Children in government custody are not killed by social workers or case workers; children are killed by foster parents and adoptive parents. And last, a key lesson is not to use a settlement agreement as the mechanism for institutional reforms. Both a consent decree and receivership offer a higher level of supervision

for institutional reforms than monitoring, court review, and settlement agreements. Judicial sanctions, which were lacking in this case, contributed to implementation delays and lack of policy evaluation.

### Next Steps

At the end of this research two insights are offered. First, the field needs to develop a conceptual framework that combines policy implementation and remedial law. As it stands now, the implementation frameworks focus on legislative policy or statutes with a tendency to ignore the distinct characteristics of judicial policy, such as the variation in judicial involvement (Cooper 1988), lack of neutrality among judges (Cramton 1976; Horowitz 1983), focus on rights, and turnover of judges. In conceptual frameworks that do address the Courts, the role of the Courts is viewed from the handing down of judicial decisions (Edwards 1980), not from the perspective of the Courts implementing institutional reforms. Legislative oversight, which relies on monitoring, evaluations, and auditing (Rein & Rabinovitz 1978), is inherently different than remedial law, which relies on supervision, court orders, and receiverships to monitor policy compliance (Rosenbloom & O'Leary 1997; Wood & Vose 1990). The Court can dictate and micromanage agencies to a much greater extent than legislative bodies via a special master or receivership legislators are not involved in policy implementation. Once a bill becomes a law, it is up to the government agency to implement the statute. According to Ingram and Schneider (1990: 67), "In the United States, the organization and political dynamics in Congress tend to produce weak statutes with vague goals and inconsistent signals, which some have argued, thwart effective implementation". This distinction makes it essential to develop a conceptual framework that accounts for implementing institutional reforms. Furthermore, there are no remedial law frameworks that tackle the complexity of implementation. Cooper's decree litigation model (1988) does not focus on implementation of judicial policy. The model is composed of four stages: trigger, liability, remedy, and post decree. The benefit of the model is that it provides a perspective of the consent decree process from the judge's standpoint, but it stops short of providing an implementation framework.

Second, if the Court, attorneys, and child advocates are serious about achieving comprehensive institutional reforms in the area of child welfare, then policy must be linked to causal theory. The policy goals must be directly linked to the remedies. As a society, if we are to reform child welfare agencies, we need to implement remedies that address the child welfare crisis, which includes staff turnover, foster parent shortage, and information systems. As previously stated, maintaining up to date and accurate information systems is essential to solid policy planning, child tracking, and policy changes. Without it, the U.S. child welfare will not meet its maximum effectiveness.

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## Book Review

By Prof CVR Wait

MULGAN, Geoff. 2013. *The Locust and the Bee: Predators and creators in capitalism's future*. Princeton; Princeton University Press. Pages 335, including index. ISBN 978 0 691 14696 6

The author is currently chief executive of the UK's National Endowment for Science, Technology and the Arts.

The writing of the book is inspired by what the author refers to as a simple message. "Capitalism at its best rewards creators, makers, and providers: the people and firms that create valuable things for others like imaginative technologies and good food, cars and healthcare which, at their best, delight and satisfy. Its moral claim is to provide an alternative to the predatory, locust-like tendencies of states and feudal rulers...But capitalism also rewards takers and predators, the people and firms who extract value from others without contributing much in return...The critics of capitalism are blind to its creativity, while its complacent advocates resist any suggestion that the system might sometimes reward predation, or that the creation of value for some might destroy it for others."

Against this background, as sketched in Chapter 1, the author writes another eleven chapters which he structures as follows:

Chapter 2 is used to describe the crisis that unfolded in the late 2000s with its origins in what the author calls the edges of capitalism namely the household sector and land.

Chapter 3 goes further back in history and describes the origins of capitalism. He ascribes the origin of capitalism to an idea "the relentless pursuit of exchangeable value". From its origins capitalist communities have developed to being "... impure hybrids, mongrels mixed with other strains."

Chapter 4 explains the reasons for the title of the book. The bee in capitalism is productive, creating better products and services. The locust in capitalism is a predator taking value from people or nature and giving little or nothing back.

Chapter 5 explores the criticisms that have been made of capitalism, but also presents a counter-argument.

Chapter 6 is devoted to utopian thinking about alternatives but concludes that utopias promise much and deliver very little, also in an inability to indicate how society can be moved from the present situation to the utopia as envisaged.

Chapter 7 turns to the future of capitalism with a theoretical foundation for future development.

Chapter 8 goes further with a future view and investigates whether it is realistic to assume that the future of the system will be built on more and more sophisticated technology.

Chapter 9 sheds light on another future aspect. The emphasis on tangible things is likely to make room for a more personal touch in the form of health care, care in general, education, green industries and jobs.

Chapter 10 explores capitalism's own ideas which contain all the potential for its own radical transformation – "radical transcendence" as the author calls it. The theoretical underpinning is not drawn from utopians, Marxists or liberalists but from the inherent capabilities of capitalism itself.

In Chapter 11 the theoretical underpinnings sketched in Chapter 10 are turned into practice by considering how the transition will come about, built on experiences of the past.

The author concludes in Chapter 12 with attempts to find solutions for the paradoxes in which people find themselves; "...more than enough to live on, but struggling to find enough to live for,

and with more than enough means but not enough meaning.” These paradoxes can be resolved in a capitalism that “...is better oriented to life, creativity, and cooperation, and reconnects its representations of value to the lived value that underpins them.”

This book is highly acclaimed by commentators from, amongst others, Georgetown University, Princeton University and the London School of Economics.