

BOOK REVIEW
Chaotic Childhoods

Stephanos Bibas*

* * *

Troubled: A Memoir of Foster Care, Family, and Social Class
Rob Henderson, Gallery Books, 2024, 336 pages.

Introduction

Life at the bottom is troubled. Charles Dickens, Victor Hugo, and many others have long shown us that. To understand criminal justice, education, and family law, we lawyers typically look to social scientists, and their external expertise does teach us much. But we often neglect lived experience. Occasionally, we should toggle from the dry regressions and clinical detachment of social science to the internal perspective and expertise of those who live through family breakup, foster care, disrupted schooling, drugs, and crime. And that is what Rob Henderson's breakout memoir, *Troubled*, gives us: a window on troubled youth.¹

Henderson, a brilliant young psychologist, illumines how harmful childhood instability is by reflecting on his own experience. He never knew his father, was abandoned by his drug-addicted mother, and bounced around foster care. After squandering much of his early education and drowning his rage in alcohol, drugs, fights, and vandalism, he managed to make his way through the Air Force to Yale and now Cambridge. But few of his friends escaped the wounds from their childhoods; many wound up unemployed, in prison, or dead. His eye is as keen as his intellect, recalling and reporting how adults in his life kept abandoning him and his fellow foster children and how they in turn acted out. As an outsider to the elites who dominate the Ivies, he also turns his critical eye on the groupthink and victimhood culture that is strongest among the most privileged. And building on literary historian Paul Fussell's work, Henderson develops his own critique of

* Stephanos Bibas is a judge on the U.S. Court of Appeals for the Third Circuit and a senior fellow at the University of Pennsylvania Law School. He thanks Brynne Follman and Joseph Graziano for their help.

¹ ROB HENDERSON, *TROUBLED: A MEMOIR OF FOSTER CARE, FAMILY, AND SOCIAL CLASS* (forthcoming 2024) (on file with publisher). All further citations to this work are by page number in parentheses in the text.

the shibboleths that educated American elites use to set themselves—ourselves—apart while ignoring the harm to the rest of society.²

Henderson has much to teach us lawyers and legal scholars. He shows us how much we miss by focusing public policy on educational attainment and cost-benefit analysis, overlooking what is priceless: love and emotional attachment. The most important things in life can't be quantified; at best, outcomes are mere proxies for them. We are more than our résumés! His account undermines our persistent habit of viewing humans as fully informed rational actors—a habit that makes much more sense in corporate law than in criminal law and the like. He showcases how poorly used adult autonomy harms children, leading to broken homes, drug addiction, numbness, and rage.

Lastly, Henderson critiques “luxury beliefs,” the term he coins for sociological opinions that are popular only among those who need not worry about their own survival. These beliefs are status signals to the educated elite who are not harmed by the fallout from any cultural shifts they might cause. But these beliefs corrode the social structures that children need to develop. (He could do more to develop the causal nexus to social harm, but his claims are still powerful.)

In short, Henderson's memoir powerfully challenges prevalent views of education, family policy, and class. It shows how we hyperfocus on educational outcomes and other quantifiable goals at the expense of softer emotional goods. And it does it all in a plainspoken, understated voice that illustrates his points from his own lived experience and that of his buddies. Many will disagree with Henderson's conclusions, of course, but scholars should grapple with his challenge.

Part I of this Review summarizes Henderson's long journey from foster care to Yale. Part II canvasses his argument that adult instability breeds chaotic childhoods, leaving neglected kids to raise themselves in Hobbesian competition, impulsive indulgence, or reckless rage. Part III then develops Henderson's signature concept of luxury beliefs and how nonjudgmentalism backfires on those at the bottom. Though one can quibble with some of his causal claims, his thrust is compelling. Finally, Part IV considers how Henderson's account suggests reorienting some criminal justice, education, and family law reforms toward children's need for stable structures to guide them.

² See generally PAUL FUSSELL, *CLASS: A GUIDE THROUGH THE AMERICAN STATUS SYSTEM* (1983).

I. From Foster Care to Yale

Robert Kim Henderson bears three names, each from an adult who abandoned him: his birth father, his birth mother, and his adoptive father (pp. xi–xii). His childhood was rough. He never met his birth father, who left his birth mother shortly after she conceived him. All he knows from a DNA test is that his father was Latino, with Mexican and Spanish ancestry (p. 3).

His birth mother came from new money in South Korea to study at a U.S. college. She dropped out, took drugs, and had three sons by three different men. Henderson was the third (pp. 2–3). As a baby, he and his mother lived in a car for about a year. Once they moved into a slum apartment in Los Angeles, she would tie him to a chair so she could take drugs in the next room. She evidently hit him, leaving bruises and marks on his face (p. 3). Neighbors overheard his persistent screams, saw men coming and going at all hours (allegedly trading drugs for sex), and eventually called the police (pp. 3–4). Only then did her bad decisions catch up with her. His earliest memories are of clinging to his mother as police arrested her (p. 2). She was deported to South Korea, and he never saw her again (p. 4).

At age three, Henderson entered foster care. The next five years seemed endless as he bounced around seven foster homes (p. 5). Henderson's first foster home crammed seven kids into a small duplex. The biggest boy controlled the television and threatened violence if anyone refused to submit (p. 5). Other foster homes were smaller; sometimes Henderson was the only foster child (p. 13). But when there were others, they would try to swipe his food. To guard against that, Henderson learned to wolf it down and use his shirt as a napkin (p. 33). His experience echoes *Lord of the Flies*.

At age eight, a family decided to adopt him, moving him from Los Angeles to Red Bluff, a small, poor town in far Northern California (pp. 31–42). But after a year, his adoptive mother decided to divorce his father, who retaliated by cutting off contact with him (pp. 49, 54). His mother formed a relationship with another woman, giving Henderson the most stable five years of his childhood (p. 62). But he and the boys he hung out with had no fathers or stable father figures in their lives (pp. 153, 213). They were anxious and ashamed, feeling abandoned and unwanted. Starting at age nine, they numbed their rage and sadness in drink and drugs (pp. 54–56, 66–67). In a few years, they progressed to heavy drinking, harder drugs, vandalism, petty crime, pointless fistfights, and dangerous pastimes (like setting fires, choking games, or playing chicken on railroad tracks as trains approached) (pp. 20, 22, 59–61, 67–68, 81–83, 105–08, 121–22, 125,

131, 135, 138–40, 145–46, 154–59). And once they started driving, they often drove drunk (pp. 140–41).

A financial calamity led his mother and her partner to move south, leaving Henderson to live with a friend (pp. 128–32). So he not only did more of the same, but also squandered his education. Even though he enjoyed reading and got A's on his tests whenever he needed to avoid failing, he earned mostly C's and D's in high school because he chose not to do homework (pp. 42–43, 65–66, 109). Friends did the same; one threw away a football scholarship and his hope of college by not doing the basic work he needed to do to keep his grades high enough by getting a B in one class (pp. 146–50, 301).

Henderson's way out was through the military. While many of his friends went to prison, cycled in and out of low-wage jobs, and fathered kids out of wedlock, Henderson joined the Air Force and aced its standardized test (pp. 163–64, 303–04). Military structure and discipline kept him out of trouble, and eventually he got therapy to handle his depression and drinking problem stemming from his troubled youth (pp. 170–72, 206–17). Having confronted his past, he used the G.I. Bill to attend college at Yale (p. 238).

Yale was disorienting. Drug use and heavy drinking were rampant, but far less destructive on campus because students had the wealth and familial support to survive it (p. 240, 268–69). A classmate or two casually stereotyped Henderson as a privileged Asian-American simply because his birth mom was Korean (pp. 246–47). On getting an email from a professor about offensive Halloween costumes, students anguished over the “[d]anger and harm and pain” and “trauma” they felt at confronting uncomfortable or offensive ideas (pp. 245–47, emphasis in original; see also pp. 250–51). They tried to one-up one another, “exploiting whatever commonalities they had with historically mistreated groups” and “accentuating their supposed marginalization” (pp. 248, 274). They were “ideologically rigid,” narrowing the range of acceptable discourse (p. 252). And they did a remarkable amount of groupthink, parroting approved views of events rather than thinking for themselves (p. 255). Most notably, they repeated fashionable ideas even when they ran counter to how they were raised and planned to build their own families—like denigrating monogamy or sneering at investment banks (even as they secretly interviewed at them) (pp. 251, 261, 270–71).

Henderson went on to win a Gates Scholarship to Cambridge, where he earned his Ph.D. in psychology in 2022 (pp. 285–86, 307). He now leads a far more structured life and studies and writes about the social psychology of class, status competition, and the like (pp. xx–xxi). He is the unusual insider-outsider: someone with an elite education

who knows life both at the top and at the bottom. That gives him a powerful perspective to critique conventional views on class and social policy.

II. Unstable Adults, Chaotic Childhoods

Legal scholars tend to focus on rights and freedoms, slighting duties. And we default to treating people as fully informed rational actors. Indeed, that is the *modus operandi* of classical law and economics. This approach works for sophisticated parties in private law fields, like corporate general counsel. But it doesn't work in criminal or in family law. In other scholarship, I have critiqued how criminal procedure assumes informed rationality, explaining how warped plea bargaining is in practice.³

Henderson highlights the flip side of these freedoms. The negative externalities, the harms to innocent children, are immense. And his account reminds us that children are far from autonomous, fully informed rational actors. When parents use drugs or move out, they neglect their duties to their children. The children experience that neglect not as freedom, but as abandonment (pp. 133, 145, 212–13). They are lonely, angry, and emotionally scarred. They lack needed structure and caring. And to numb their pain, they spiral into patterns of self-destructive behavior (pp. 161, 170–72). They know that drinking, using drugs, and skipping school is bad for them, but just don't care. Adults have let them down repeatedly, so they don't care to live up to adult standards (pp. xvii, 65). Far from growing autonomous, they wind up addicted, imprisoned, or dead.

Henderson and the lost boys he hung out with lacked structure. Foster care was especially unstructured, leaving kids to raise themselves with little oversight. Foster homes, he notes, shuffle children around every year or so.⁴ The hope is that their biological families can return to care for them. But Henderson critiques the

³ See generally, e.g., Stephanos Bibas, *Plea Bargaining Outside the Shadow of Trial*, 117 HARV. L. REV. 2463 (2004); Stephanos Bibas, *The Myth of the Fully Informed Rational Actor*, 31 ST. LOUIS U. PUB. L. REV. 79 (2011).

⁴ See *Children in Foster Care with More Than Two Placements in United States*, ANNIE E. CASEY FOUND. (Apr. 2023), <https://perma.cc/DRH8-L7PE> (finding that roughly a third of foster children had more than two placements); see also THE AFCARS REPORT, U.S. DEP'T OF HEALTH & HUM. SERVS., ADMIN. FOR CHILD. & FAMS., ADMIN. ON CHILD., YOUTH & FAMS., CHILD.'S BUREAU (2022) (reporting that foster children spend a median of 14.9 months in foster care and a mean of 21.7 months); NAT'L CONF. OF STATE LEGISLATURES, FOSTER PARENT RETENTION 1 (2022) (explaining that 30% to 50% of foster parents turn over each year).

cruelty of these frequent moves, because they deprive kids of the stability they crave (p. 5). In response, he and other foster children shut off their emotions, refusing to care and be hurt yet again. They are wounded, simmering with lonely rage (pp. 65, 145, 154–58, 160).

Even after he left foster care and moved to Red Bluff, the lost boys there had no one to oversee them and curb the boys' reckless youthful impulses (p. 133). They mostly had absent fathers, drug-addicted mothers, and a succession of their mothers' transient boyfriends who at best ignored the boys, at worst molested them (pp. 9, 55, 98, 107–08, 146). Rather than treating their underlying ailments, the adults gave them too many psychiatric medications, merely salving their symptoms of neglect (see pp. 298–99). Our understanding of autonomous freedom treats an unencumbered, frictionless life as maximizing our ability to pursue our own goods. But these kids were not ready for such freedom (p. 232). The military was Henderson's way out of self-destruction because its structures "would present maximal friction if [he] felt the urge to do something stupid" (p. 161). Without that friction and without strong boundaries, the boys careened toward destruction.

Left to fend for themselves, the lost boys reinforced one another's stupidity. They acted out with dangerous pranks and carelessness, ranging from setting a fire at a friend's house to setting off fireworks in another boy's bedroom (pp. 67–68, 135). They drank far too much and shared cigarettes and drugs. They risked their lives and others' by driving drunk (pp. 140–41). They discouraged one another from trying hard in school, delighting in staying up very late, skipping homework, taking the easiest classes, and sleeping through them. (e.g., pp. 111–13, 117–18, 133–34). They knew these choices were stupid, but just didn't care (p. xvii).

In this maelstrom, teachers could do little. Teachers and therapists repeatedly tried to help Henderson and encourage him (pp. xiv, 18–19, 68–69, 71–75, 80, 110, 152–53). But so many adults had failed him that he could not trust them. And even when teachers warned him that his grades had plunged, no adult offset his peers' influence and made him study and do his homework, day after day (pp. 109, 111–13). Chaotic home lives seem to swamp teachers' contributions.

Police don't appear much in this book. Henderson and his buddies commit plenty of vandalism, assaults, drunk driving, and other misdemeanors and are on the road to felonies, all to vent their rage and sorrows. Yet Henderson does not portray them just as victims. They know their acts are wrong, self-destructive, and harmful to others (pp. 145–46, 154–58). And they need to be stopped, for their

own good and that of others. But they are rarely caught and even more rarely punished, letting them stay on their self-destructive path (pp. 68, 123, 156–57).

The few adults in these kids' lives are largely hands-off (p. 133). Letting boys be boys may seem nice. But Henderson shows us that this apathy is the antithesis of love. The consequences for the boys are often ruinous. At best, they spin their wheels in loneliness, cycling in and out of low-wage jobs and unstable couplings. At worst, they progress to harder drugs, worse crimes, depression, alcoholism, torturing animals, and even prison, homicide, or suicide (pp. 11–12, 151, 155, 184, 213, 303–04). Youths need structure and “maximal friction,” as Henderson puts it, to impede their recklessness and short-sightedness and delay gratification (pp. 161, 170–72, 175).

Fathers, who could provide this friction, are conspicuously absent. Henderson and most of the boys he grew up with craved a dad or at least another stable father figure in their lives (p. 54). He wanted a positive masculine role model to teach him how to become a man (pp. 91, 98, 153). His adoptive mom and her female partner were caring, but not the same. He blames the instability he experienced on “[m]arital discord [and] missing parents” (p. 292). Though elites have moved away from using “negative social judgments” to flag “actions and choices [that] are actually in and of themselves undesirable,” Henderson notes that this social nonjudgmentalism leads to broken families (pp. 278–79). And the law reflects these social changes. For example, states have abolished most restrictions on, or even speed bumps before, divorce. When Henderson's adoptive parents separated, he suffered the consequences. They surely felt liberated. But their liberation shattered his first real hope of stability. In the end, like so many others in society, his parents' divorce robbed Henderson of his dad.

Overall, what these children are missing is not so much money as love. Henderson and his friends are hungry for attention, structure, and camaraderie. They crave human bonds. Bonds may seem to make us less free, but they also make us more human. The boys' loneliness, their thirst for love, haunts my mind long after I turned the last page.

III. Luxury Beliefs, Groupthink, and Class

Henderson's ascent from the underclass to the educated class was dizzying. He is struck by how Ivy League students are blind to their own status. You would think that those of us blessed with top educations would find happiness in that privilege. Yet he sees constant status anxiety and insecurity, as the educated elite incessantly compare themselves to their peers in competing for status (p. 264).

He is astonished by the students' victimhood culture. Students simultaneously talked about their oppression and how special they were for overcoming it, "spawn[ing] a potent blend of victimhood and superiority" (p. 248). "[I]ronically, the most well-off are also the most capable of accentuating their supposed marginalization. They can communicate their hardships in a language that other well-to-do people can understand" (p. 274). Educated elites are blind to their own privilege. To an abandoned kid who had to borrow or scrounge for change between couch cushions when he needed to buy gas for a trip, the victimhood culture and inflated claims of "trauma" are astonishing (pp. 88–89, 142–43, 247).

Equally astonishing to Henderson is the generalized concept of white privilege. Henderson, a biracial Latino–Asian American abandoned by his drug-addicted mother, spent five years in Los Angeles foster care with mostly Latino and Black foster siblings. In Red Bluff, the lost boys he hung out with were mostly poor whites, with some Latinos. He sees no racial differences among them (pp. 5, 39–40). He grew up with lots of poor white kids and can't understand how those children of drug addiction and broken homes can automatically be privileged by their skin (pp. 246, 267–68).

Along his journey, Henderson spent a lot of time watching television shows like *Mad Men*, *The Sopranos*, and *The West Wing*, and gleaning how different social strata view and talk about wealth and class (pp. 186–87, 231–35). A turning point in his intellectual journey was reading Fussell's *Class* and learning that different people view class as turning on different things. To the lower classes, class is about money: the more money, the more class (p. 225). The middle classes add education to that mix: you can rise only so far socially without a college degree, and the college's prestige matters a lot (pp. 225, 259–61). Being a wealthy advertising executive, car dealer, or even Mafia boss is not enough (p. 187). But the ruling classes have long set themselves apart with status symbols. At the turn of the twentieth century, economist Thorstein Veblen showed how the leisure classes used conspicuous consumption—restrictive clothing like tuxedos or evening gowns, time-consuming activities like golf, and paid butlers—to set themselves apart (p. 265).⁵

Henderson explains these phenomena by updating Fussell and Veblen for the twenty-first century. Now, he argues that his Yale classmates (at least subconsciously) use their rarefied beliefs and social habits the way they use their expensive Canada Goose jackets:

⁵ See generally THORSTEIN VEBLEN, *THE THEORY OF THE LEISURE CLASS: AN ECONOMIC STUDY OF INSTITUTIONS* (1899).

to flaunt their refinement and upper-class education (pp. 265–66). Some of that is reflected in the bewildering, ever-changing approved vocabulary for social phenomena, like *cultural appropriation* or *heteronormativity* (p. 266). These neologisms do not reform the world; their function is to distinguish the bien-pensants from the unenlightened. The terminological treadmill helps not those at the bottom, who do not have time to learn this “strange vocabulary,” but only those at the top who do.

Especially bewildering to Henderson are “luxury beliefs.” He coined the term to describe beliefs that mark the believer as holding the approved opinion while harming those less privileged. Take, for instance, legalizing drugs. Henderson and his friends had plenty of firsthand experience with alcohol, drugs, and the wreckage they caused. His birth mother’s drugs harmed not only herself, but also him. He sees the externalities they caused for his foster siblings, all of whose parents were addicted or were mentally ill (often triggered by drugs). As with family structure, for Henderson the issue is personal: “[I]f all drugs had been legal and easily accessible when I was fifteen, you wouldn’t be reading this book” (p. 268). The well-off are better able to experiment with drugs and recover. By contrast, those from harsh or unstable environments are more likely to grow addicted, especially if drugs or alcohol are readily available (pp. 216–17). Thus, less-educated Americans oppose legalizing drugs, while a majority of those with bachelor’s degrees or above favor it (p. 269).

The same is true for policing and crime. The rich are most likely to favor defunding the police, but the poor are least supportive (p. 269). For them, it’s personal: Though most criminals are poor, so are most of their victims. They are far more likely to be raped, robbed, or assaulted (pp. 269–70). Looting is more likely to destroy the stores where the poor need to shop (compare p. 266).

Another example is traditional family structures. Yalies and other elite students profess polyamory, not monogamy (pp. 261, 270–71). Most Yalies have been raised by both parents and plan to go on to monogamous marriages (pp. 242–43, 261). Yet some went out of their way to “insist[] that traditional families are old-fashioned” and “marriage shouldn’t have to be for everyone” (p. 261). Their motives are doubtless kind, but the fallout is not. Affluent people have the money and social support to manage the fallout from novel relationships. And with an odd brew of nonjudgmental hypocrisy, most of them do get married and stay married (p. 272). But since this belief has oozed out of the universities and into the mainstream culture, those at the bottom increasingly do not. And their children suffer, growing up with one parent or none at all (p. 271).

Henderson makes causal claims in passing that call for further investigation. Luxury beliefs may well create cultural memes and permission structures that let self-destructive behaviors spread. That's plausible. Or they may lead to loosening legal restrictions or subsidizing behavior. But proving those causal hypotheses requires rigorous social science, which he does not purport to do. Even so, he does highlight the hypocrisy of luxury beliefs and how they could license or encourage destructive behaviors. There's a familiar tension between wanting to be forgiving *ex post* and licensing or encouraging harmful behaviors *ex ante*. Henderson favors reinforcing stable rules for life and rejecting those that unsettle the structures kids need.

Henderson is frustrated by Ivy League students' unwillingness to entertain different viewpoints. He recounts the tale of a refugee who studied at Columbia and decried its "monolithic culture" as reminiscent of her home country, North Korea. Commentators were scathing, telling her to go back to her home country—something they'd never suggest to other refugees (p. 252). Far from shielding students from uncomfortable ideas, Henderson and social psychologist Jonathan Haidt argue, colleges must train them to search for the truth by evaluating competing viewpoints (pp. 244, 252–53). That's especially important because college students' moral intuitions are often idiosyncratic, like being willing to license incest or to murder their own mothers to save five strangers (pp. 253–54). These views are welcome at elite schools (and only there). But though viewpoint experimentation is welcome, entertaining the challenging views of others is not. Instead of assuming that everyone else must be wrong, Henderson suggests, students must learn to consider why others might be right.

Finally, Henderson notices his classmates absorbing and parroting approved views. Rather than learning specific details of events before forming opinions, "it was more critical to know what to *think* about the event by reading the opinions of others" (p. 255, emphasis in original). They copy fashionable opinions to win social acceptance. But that is groupthink.

IV. Lessons for the Law

We lawyers and legal scholars are privileged. We take for granted the stable families and safe environments that helped us get where we are. But occasionally, we need to be reminded that many fellow Americans live in a different world. That was the value of journalist Jacob Riis's *How the Other Half Lives*, novelist George Orwell's *Down and Out in Paris and London*, and cultural theorist

Theodore Dalrymple's *Life at the Bottom*.⁶ Henderson updates this genre for the twenty-first century and perceptively contrasts life at the bottom with life at the top. He reminds us that emotional poverty can be far worse than material poverty. And he challenges fashionable social ideas by contrasting them with his own lived experiences and their consequences for those with whom he grew up.

To put Henderson's insights into practice, scholars and policymakers would have to reorient their priorities. Their priority, he argues, should be creating stable families to nurture children. Parents often cycle in and out of children's lives as they get on and off drugs or in and out of prison (pp. 4–5, 9, 297–98). But that disrupts children's lives and their need for security. Children need swifter adoptions, he argues, even if that means cutting off addicted or incarcerated parents' rights sooner. And while they await adoption or return to their parents, children should not be shuffled among foster homes, so they can build better bonds with their foster parents and siblings (pp. 4–5, 9, 296–98). The best interests of the child, he argues, require stability and permanence.

Henderson also stresses that we often conflate poverty with instability. Poverty alone, researchers find, makes kids no more likely to commit crimes or behave in risky ways (p. 302).⁷ By contrast, childhood instability powerfully predicts crime and other harmful or destructive behaviors (pp. xviii, 296–97).⁸ If material resources are not the cause of these problems, they are unlikely to be the main solution. We need to focus not on poor kids per se, but on those who lack stable families, like children in foster care.

The favored policy solution to deprivation is education. Policymakers often emphasize elementary and secondary teachers as

⁶ See generally JACOB RIIS, *HOW THE OTHER HALF LIVES: STUDIES AMONG THE TENEMENTS OF NEW YORK* (1890); GEORGE ORWELL, *DOWN AND OUT IN PARIS AND LONDON* (1933); THEODORE DALRYMPLE, *LIFE AT THE BOTTOM* (2001).

⁷ But see generally Amir Sariaslan, Henrik Larsson, Brian D'Onofrio, Niklas Långström & Paul Lichtenstein, *Childhood Family Income, Adolescent Violent Criminality and Substance Misuse: Quasi-Experimental Total Population Study*, 205 *BRIT. J. PSYCH.* 286 (2014) (finding some correlation between crime and poverty but noting that uncontrolled family factors could account for the correlation).

⁸ Jeffrey A. Simpson, Vladas Griskevicius, Sally I-Chun Kuo, Sooyeon Sung & W. Andrew Collins, *Evolution, Stress, and Sensitive Periods: The Influence of Unpredictability in Early Versus Late Childhood on Sex and Risky Behavior*, 48 *DEVELOPMENTAL PSYCH.* 674, 681–84 (2012).

the keys to helping troubled youth. Better education often seems like a silver bullet, a way to offset childhood disadvantage. Affirmative action looks like the pathway to college and success. And in fairness, education may seem to be the only public policy lever that we have.

Yet education, Henderson argues, matters less than we think and family matters far more (pp. xi, 292–95). As his experience shows, even dedicated teachers’ influence is often slight or modest (e.g., p. 110). And most of his buddies were nowhere near going to and graduating from a four-year college (p. 111). Henderson and his foster siblings needed help in their earliest years, from their parents or stable substitutes for them, before they could think about finishing high school and going to college.

In Henderson’s critique, affirmative action is a band-aid, a “trickle-down meritocracy” (p. 267). It helps the chosen few by “strip-min[ing] talented people out of their communities” (p. 267). But they rarely go back to help their old, struggling neighborhoods. That makes sense for the lucky few but is no substitute for “helping the downtrodden” more directly (p. 267). To his mind, affirmative action distracts us from the root problem. Stable families do more to help the poor and promote social mobility than colleges can.

That doesn’t mean that policymakers should cut educational funding. But our expectations must be realistic. And perhaps we should emphasize college less and early education more, not for material reasons but to give kids the emotional stability they need early on.

Crime policy, too, might look different. Far from favoring police abolition, Henderson suggests that police would have helped him by catching him sooner and punishing him to teach him lessons—not to mention the poor victims of his thefts, assaults, vandalism, and drunk driving (pp. 123, 157–58, 170–72).

As Henderson notes, 60% of boys in foster care are later incarcerated (p. xiv).⁹ A stable upbringing would be a good anti-crime policy. But so too is vigorous drug policing. Troubled youths can slip deep into drug crime and addiction before they feel the potential costs to themselves or others (pp. 123, 172). Swift, proportionate law enforcement could teach some of these boys lessons sooner, preventing

⁹ See CATHERINE R. WHITE, KIRK O’BRIEN, PETER J. PECORA, RONALD C. KESSLER, NANCY SAMPSON & IRVING HWANG, TEXAS FOSTER CARE ALUMNI STUDY TECHNICAL REPORT: OUTCOMES AT AGE 23 AND 24, at 38 (2012) (reporting incarceration rates from three studies of 44.9%, 59.1%, and 62.3% of males formerly in foster care).

them from falling into worse trouble. Even though we will never “win” the War on Drugs, making drugs more expensive and less freely available makes it harder for troubled youths to grow addicted and harm themselves and others (see p. 268).

Too often, we try to deter crime by raising sentences. On an economic model, rational actors commit crimes only if their expected value is greater than the expected punishment discounted by the chance of being caught and the delay in punishment.¹⁰ But I’ve never met a criminal defendant who was a fully informed rational actor. And the kids whom Henderson chronicles certainly are not. They are reckless risk-takers and hardly think about getting caught—because they get away with crime after crime before facing consequences. Swift and certainty of punishment would loom much larger than far-off severity.¹¹ Raising the chance of catching them through video cameras and better policing, and imposing swifter, surer, but modest sentences, would do much more to teach them lessons before they get stuck in a rut of crime.¹² So too would offering more of them a pathway out of juvenile detention through military-like service, with the structure and discipline they need.

At bottom, though, we focus too much on measurable outcomes. We maximize what we measure, but those metrics are at best proxies for the most basic human needs. Henderson’s most important point is that what kids need most is not education or nutrition, but love (pp. 301–04). “A safe and loving childhood is a good in itself” (p. 303). Law can do only so much to give them that. What we can do is invest in the children around us, paying forward what we’ve already been blessed to receive. Social programs and laws can help, but they’re no substitute for stable families. That calls for more humility about the

¹⁰ E.g., Daniel S. Nagin & Greg Pogarsky, *Time and Punishment: Delayed Consequences and Criminal Behavior*, 20 J. QUANTITATIVE CRIMINOLOGY 295, 297 (2004).

¹¹ Mark A.R. Kleiman & Kelsey R. Hollander, *Reducing Crime by Shrinking the Prison Headcount*, 9 OHIO ST. J. CRIM. L. 89, 92–93 (2011).

¹² See, e.g., Beau Kilmer, Nancy Nicosia, Paul Heaton & Greg Midgette, *Efficacy of Frequent Monitoring with Swift, Certain, and Modest Sanctions for Violations: Insights from South Dakota’s 24/7 Sobriety Project*, 103 AM. J. PUB. HEALTH e37–e43 (2013) (finding that minimal punishment that is swift, certain, and fair disproportionately improves recidivism rates); Beau Kilmer & Greg Midgette, *Criminal Deterrence: Evidence from an Individual-Level Analysis of 24/7 Sobriety*, 39 J. POL’Y ANALYSIS & MGMT. 801, 822–24 (2020) (same).

limits of social engineering and more compassion in how we treat the children in our lives.

Conclusion

Quantitative methods have added much to legal scholarship and policy. But to complement them, lawyers need qualitative work as well, sometimes at a human level. We also need to make a point of seeking out and listening to those from very different backgrounds. Rob Henderson's *Troubled* reflects the value of doing so, and of critiquing our luxury beliefs from the outside.

Henderson also does a terrific job of highlighting, firsthand, the crucial importance of social structure and stability, especially for the most vulnerable among us: children. Though the troubled youths he depicts have many material needs, even more they need love. We cannot take comfort in Henderson's exceptional ascent from his troubled youth when we face the many others who are left behind.

Law cannot socially engineer all manner of socially desirable outcomes. But as Henderson suggests, law and policy can do more to limit the harms children suffer. *Troubled* implies many possible roles for law. Crime policy is one theme: we could focus more on good policing, shifting our emphasis from severe sentences to swifter, more certain arrests. Keeping drugs illegal and out of minors' hands is another important component. Family law and policy matter too, as Henderson's experience suggests, especially accelerating adoptions, limiting the duration and churn of foster care, doing more to reunify families, and perhaps delaying divorce and other traumas that sever families. The law cannot force people to create loving homes. But it can protect them, to keep kids safe, secure, and loved.

* * *

Stephanos Bibas is a judge on the U.S. Court of Appeals for the Third Circuit and a senior fellow at the University of Pennsylvania Law School.