

WELFARE QUEENS REDUX: CRIMINALIZING BLACK MOTHERS IN THE AGE OF NEOLIBERALISM

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I. INTRODUCTION

The recent outcry that has accompanied the killing of black men and boys has had the effect of shedding light on the ways in which black people are vilified in order to justify the fear and loathing of others. Historically, the high proportion of arrests and prosecutions of African American men also has shaped the discourse of crime itself, conflating criminality with blackness in the public imagination and, more specifically, rendering black criminality as *male*.¹ This phenomenon has been used to justify aggressive policing in black communities.² By bringing to the surface implicit biases and stereotypes that allow for routine abuse against black male bodies,³ activists hope to get some measure of accountability for unjustifiable treatment. This particular narrative—however true and well-intentioned—provides an incomplete understanding of the nature of state subordination that criminalizes low-income communities of color. Such a gendered framework obscures the complex nature of state intervention experienced by black *women*. This Article seeks to broaden the discourse and set forth the following three-part paradigm of how poor African American women are criminalized by the neoliberal state.

A. MULTI-SYSTEM SUBORDINATION

Punitive administrative structures govern the lives of low-income communities across most systems with which they interact. Criminal

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¹ See generally KHALIL GIBRAN MUHAMMAD, *THE CONDEMNATION OF BLACKNESS: RACE, CRIME, AND THE MAKING OF MODERN URBAN AMERICA* (2010). Historian Khalil Gibran Muhammad posits that the idea of black criminality was crucial to the making of modern urban America, expertly relying on early 20th century studies to “shed light on the production of modern ideas about black criminality . . .”

² See *id.* at 4.

³ Young black men are “21 times more likely to be killed by police than their white counterparts,” according to an analysis of federally collected data on fatal police shootings. Ryan Gabrielson et al., *Deadly Force, in Black and White*, PRO PUBLICA (Oct. 10, 2014, 10:07 AM), <http://www.propublica.org/article/deadly-force-in-black-and-white>.

justice is not simply the sum of its enabling apparatus—prisons, criminal courts, police, parole, and probation agencies. The criminal justice system does not operate as a closed site of oppression. Rather, as scholar Kaaryn Gustafson insightfully notes, “[c]riminalization includes state policies and practices that involve the stigmatization, surveillance, and regulation of the poor; that assume a latent criminality among the poor; and that reflect the creep of criminal law and the logics of crime control into other areas of law, including the welfare and immigration systems.”⁴ Thus, it is insufficient to understand the incursion of mass criminalization into the lives of poor black women without analyzing the interplay of the criminal justice system and other state systems. These systems include welfare offices, public schools, child welfare agencies, public housing, and the family courts, to name just a few.⁵ The link between criminalization and government subordination of poor women and their families is real, but in the civil arena it is often obscured by non-criminal edifices. Similarly, focusing on criminal courts obscures the effects of regulatory barriers to obtaining employment, housing, public benefits, and other critical areas of need. These “invisible punishments”⁶ inhibit upward mobility (and sometimes basic survival) not just for defendants but also for entire families. They are often triggered without warning after a conviction or plea agreement is entered. Thus, criminal justice is a system of regulation that stymies poor people through the operation of overlapping civil law systems.

B. THE TRIUMPH OF NEOLIBERALISM

These criminalizing trends affecting low-income black communities have manifested in the era of a triumphant neoliberal state. Neoliberalism is the defining backdrop of what many now agree is a bloated and punitive criminal justice state.⁷ In the political arena, advocates for neoliberalism

⁴ See generally Kaaryn Gustafson, *Degradation Ceremonies and the Criminalization of Low-Income Women*, 3 U.C. IRVINE L. REV. 297, 300 (2013).

⁵ See Elizabeth L. MacDowell, *Reimagining Access to Justice in Poor People’s Courts*, 22 GEO. J. POV. L. & POL’Y 473, 477 (2015) (arguing that poor people’s courts are “sites of coercive state power, where individuals already vulnerable to punitive state interventions may encounter additional, unwanted interventions into their lives and families”); see also Brito, Pate & Wong, “*I Do For My Kids*”: *Negotiating Race And Racial Inequality In Family Court*, 83 FORDHAM L. REV. 3027, 3028 (2015) (examining how legal actors and low-income litigants negotiate race and racial inequality in family court).

⁶ INVISIBLE PUNISHMENT: THE COLLATERAL CONSEQUENCES OF MASS IMPRISONMENT (Marc Mauer & Meda Chesney-Lind eds., 2002) (leading scholars and advocates in criminal justice explore the far-reaching consequences of thirty years of “get tough” policies on prisoners, on ex-felons, and on families and communities who have committed no crimes, including “invisible punishments” from disenfranchisement, employment, disqualification from public housing, welfare benefits, and a host of other civil barriers); see also Ann Cammett, *Shadow Citizens: Felony Disenfranchisement and the Criminalization of Debt*, 117 PENN. ST. L. REV. 349 (2012) (discussing criminal justice-related—or “carceral”—debt as a barrier to successful reintegration)[hereinafter *Shadow Citizens*].

⁷ THE GROWTH OF INCARCERATION IN THE UNITED STATES: EXPLORING CAUSES AND CONSEQUENCES 4–5 (Jeremy Travis and Bruce Western eds., 2014) (“[t]he unprecedented rise in incarceration rates can be attributed to an increasingly punitive political climate surrounding criminal justice policy formed in a period of rising crime and rapid social change . . . The incremental deterrent effect of increases in lengthy prison sentences is modest at best. Because recidivism rates decline markedly with age, lengthy prison sentences, unless they specifically target very high-rate or extremely dangerous offenders, are an inefficient approach to preventing crime by incapacitation.”).

support extensive economic deregulation, free trade, and reductions in government spending to enhance the role of the private sector in the economy.⁸ They also favor privatization of core functions of the social safety net including pensions, education, health care, and childcare; not coincidentally, they also seek to privatize prisons.⁹ The robust criminal justice system buttresses the economic regulations favored by neoliberals in both practical and symbolic ways. As a practical matter, mass incarceration serves as a warehousing mechanism for an entire cohort of low-income or no-income people without education, skills, or hope, as well as those with addictions and untreated mental illness. For these residents the financial landscape in the post-industrial economy is bleak, in part due to the disappearance of previously available blue-collar jobs from the neighborhoods they inhabit.¹⁰ The remaining low-wage service industry jobs often are populated in large numbers by poor women and do not generate enough income to maintain a sustainable life for their families.

However, the criminal justice state serves a symbolic purpose as well. As Gustafson points out, occupation of poor communities and police stops of men of color serve as “degradation ceremonies.”¹¹ She notes that “[t]hey give the public the impression that law enforcement officers are engaged in managing crime. At the same time, they reinforce stereotypes.”¹² Serving ostensibly as the harbinger of safe streets for a fearful electorate,¹³ the criminal justice system becomes a rationale for its own existence at a time when a growing chorus of critics calls into question the wisdom of mass incarceration.¹⁴ Thus, the criminal justice system and our increasingly privatized economic system are mutually reinforcing.

8 See, e.g., DAVID HARVEY, *A BRIEF HISTORY OF NEOLIBERALISM* (2005) (describing the political-economic history of neoliberalization and how it has proliferated on the world stage); NOAM CHOMSKY, *PROFIT OVER PEOPLE: NEOLIBERALISM & GLOBAL ORDER* (1999) (posits that neoliberal ideology is the belief in the supremacy of free markets to drive and govern human affairs that has obliterated the public’s voice in public discourse); NAOMI KLEIN, *THE SHOCK DOCTRINE: THE RISE OF DISASTER CAPITALISM* (2007) (describing the confluence of cultural forces and economic restructuring that results in the drift from American democracy to government control by competing, often shadowy, economic actors).

9 See, e.g., HARVEY, *supra* note 8, at 159–61; KLEIN, *supra* note 8, at 288.

10 See generally WILLIAM JULIUS WILSON, *WHEN WORK DISAPPEARS: THE WORLD OF THE NEW URBAN POOR* (1996) (arguing that the disappearance of work and the consequences of that disappearance for social and cultural life are the central problems in the inner cities).

11 See Gustafson, *supra* note 4, at 303.

12 *Id.*

13 See Jonathan Simon, *Governing Through Crime Metaphors*, 67 *BROOK. L. REV.* 1035, 1042 (2001) (“[i]f the citizen is a victim, then the task of government is to fight crime. The nation is territorialized as a street in which crime takes place. The ideal forms of the state become the police officer and the prison where the substantive rationality of punishing crime is allowed to have its full sway.”).

14 Julie Hirschfeld Davis & Gardiber Harris, *Obama Commutes Sentences for 46 Drug Offenders*, *N.Y. TIMES* (July 13, 2015), <http://www.nytimes.com/2015/07/14/us/obama-commutes-sentences-for-46-drug-offenders.html> (“[o]verhauling the criminal justice system has become a bipartisan venture. Like Mr. Obama, Republicans running for president are calling for systemic changes. Lawmakers from both parties are collaborating on legislation. And the United States Sentencing Commission has revised guidelines for drug offenses, retroactively reducing sentences for more than 9,500 inmates, nearly three-quarters of them black or Hispanic”); see also Dan Roberts, *Eric Holder Unveils New Reforms Aimed at Curbing US Prison Population*, *THE GUARDIAN* (Aug. 12, 2013), <http://www.theguardian.com/world/2013/aug/12/eric-holder-smart-crime-reform-us-prisons> (Holder referring to mass incarceration as “ineffective and unsustainable”).

C. THE ENDURING LEGACY OF THE WELFARE QUEEN

Finally, this project seeks to clarify the conceptual framework that results in the regulation and policing of poor black women, which occur in myriad ways. For instance, although black men have historically been objectified as dangerous and criminal, black women have also been disproportionately abused and killed, but the lack of discussion about black women reflects a curious invisibility in the prevailing discourse of police brutality.¹⁵ A corollary of the #BlackLivesMatter movement has sprung up to highlight this very omission. A 2015 report from the African American Policy Forum entitled *Say Her Name: Resisting Police Brutality Against Black Women* serves to force recitation of the names of black female and transgender victims of police brutality that are often missing from the discourse surrounding the killing of black men.¹⁶ Moreover, it is also now well established that women have been the fastest growing cohort of prisoners, suffering as much as an 800 percent increase in incarceration rates over the past three decades.¹⁷ The broad application of punitive drug laws has had an outsized impact on women, particularly black women.¹⁸ As a result of this expansion, a whopping one-third of the entire world's incarcerated women are locked up in the United States.¹⁹ Similarly, black girls are suspended from school more often than their white female peers and are subject to high levels of sexual victimization; these experiences later channel them towards criminal justice involvement.²⁰ As shocking as

15 See Kristen West Savali, *Black Women Are Killed by Police, Too*, SALON (Aug. 23, 2014), http://www.salon.com/2014/08/24/black_women_are_killed_by_police_too_partner/, (“[e]ven when we are front and center it is usually to prove our fidelity to Black men and their unique struggles. Very seldom is the violence inflicted upon Black, female bodies by law enforcement positioned as pivotal to justice movements; rather our lived experiences as victims of the state tend to be peripheral and anecdotal.”); see also Claudia Rankine, *Poet Claudia Rankine: ‘The invisibility of black women is astounding’*, GUARDIAN (June 29, 2015), http://www.theguardian.com/lifeandstyle/2015/jun/29/poet-claudia-rankine-invisibility-black-women-everyday-racism-citizen?CMP=share_btn_fb, (noting that “[m]ovements such as Black Lives Matter have been grappling with this issue of whether those black lives also equal black female lives, and why the media doesn’t focus on the loss of black female lives as much as it focuses on the loss of black men”).

16 AFRICAN AMERICAN POLICY INSTITUTE, *SAY HER NAME: RESISTING POLICE BRUTALITY AGAINST BLACK WOMEN 3* (2015) (noting “[n]either these killings of Black women, nor the lack of accountability for them, have been widely lifted up as exemplars of the systemic police brutality that is currently the focal point of mass protest and policy reform”).

17 Women’s Prison Ass’n, *Quick Facts: Women & Criminal Justice—2009*, WPAONLINE.ORG (2009), http://www.wpaonline.org/wpaassets/Quick_Facts_Women_and_CJ_2009_rebrand.pdf.

18 Michele Goodwin, *Invisible Women: Mass Incarceration’s Forgotten Casualties*, TEXAS L. REV. (forthcoming 2015–16) (“Nearly a third of the world’s women inmates are incarcerated in the U.S. . . . One in 111 white women stands a likelihood of imprisonment in her lifetime. However, Latinas can expect that within their demographic, 1 in 45 will be imprisoned at some point in her lifetime; for African American women the numbers are worse: 1 in 18 will likely experience incarceration.”).

19 Zac Cheney Rice, *One-Third of the World’s Women in Prison Have One Striking Thing in Common*, IDENTITIES.MIC (Sept. 28, 2014), http://mic.com/articles/99852/one-third-of-the-world-s-women-in-prison-have-one-striking-thing-in-common?utm_campaign=naytev&utm_content=54fc6a46e4b060511ab529d, (“Not only are a significant percentage of women pregnant when imprisoned, more than 70% are also the primary caregivers of at least two minors. This spells disaster for many families, as children of the incarcerated are systematically dumped into the notoriously problematic foster care system, or ‘other [similarly] unstable situations.’”).

20 See KIMBERLÉ CRENSHAW, PRISCILLA OCEN & JYOTI NANDA, *BLACK GIRLS MATTER: PUSHED OUT, OVERPOLICED AND UNDERPROTECTED* (2015), http://www.atlanticphilanthropies.org/sites/default/files/uploads/BlackGirlsMatter_Report.pdf; see also

these statistics are, they do not tell the entire story of black women's neoliberal dilemma. For example, often it is black mothers' *perceived parenting deficiencies* that make them vulnerable to criminal justice intervention.

In my article entitled *Deadbeat Dads and Welfare Queens: How Metaphor Shapes Poverty Law*, I expose how politicians cynically deploy manufactured cultural attributes about welfare recipients—to stoke white resentment, trigger implicit bias, and short-circuit empathy for poor black women and their families—despite the existence of economic insecurity across all racial groups.²¹ Such is the power of a well-crafted racialized metaphor, reiterated over time. The regulation of poor black women did not arise simply to challenge the welfare state, but rather can be traced as far back as the antebellum period. As noted scholars Dorothy Roberts, Ange-Marie Hancock, and others have observed, tropes that demonize black mothers are a part of an historical narrative that has shifted over time to “suit the political circumstances,” but tends to focus on irresponsible childbearing and poor parenting.²² In the modern era, the most stigmatizing construct of black mothering remains the “Welfare Queen,” bandied about on the campaign trail by former President Ronald Reagan in the 1980s to cultivate white identification with his rhetoric.²³ Not coincidentally, this approach was regularly deployed by Reagan on his way to becoming the standard bearer for free trade and privatization policies that firmly ensconced economic policies in the neoliberal state.²⁴ The Welfare Queen trope has powerful resilience because it is an ostensibly race-neutral frame that nevertheless confirms many people's implicit biases about black women's poor mothering, inherent sexual excesses, and overall laziness.²⁵ All of these purported attributes are tropes that have been carefully cultivated to make villains out of these women—who are portrayed as overindulgent users of public resources—and further identify them as the

BETH E. RICHIE, *ARRESTED JUSTICE: BLACK WOMEN, VIOLENCE, AND AMERICA'S PRISON NATION* 27 (2012) (“Black adolescent girls appear to be especially vulnerable to premarital abuse”).

²¹ Ann Cammett, *Deadbeat Dads and Welfare Queens: How Metaphor Shapes Poverty Law*, 34 *B.C. J.L. & SOC. JUST.* 233 (2014) [hereinafter *How Metaphor Shapes Poverty Law*].

²² See Julianne Hing, *Jezebels, Welfare Queens—And Now, Criminally Bad Moms*, *COLORLINES* (Aug. 8, 2011), http://colorlines.com/archives/2011/08/the_criminal_justice_systems_hit_and_run_of_black_moms_in_the_us.html (interviewing scholar Dorothy Roberts); see also DOROTHY E. ROBERTS, *SHATTERED BONDS: THE COLOR OF CHILD WELFARE* 66–67 (2002) (discussing the child welfare system's devaluation of black motherhood); Gustafson, *supra* note 4, at 304.

²³ See, e.g., ANGE-MARIE HANCOCK, *THE POLITICS OF DISGUST: THE PUBLIC IDENTITY OF THE WELFARE QUEEN* (2004). Hancock uses a broad array of methods, including historical analysis, qualitative and quantitative content analysis, and in-depth interviewing to explore the discourse of the welfare reform debate.

²⁴ See generally MICHAEL B. KATZ, *THE UNDESERVING POOR: AMERICA'S ENDURING CONFRONTATION WITH POVERTY* 167 (2013); see also Elizabeth Stoker, *The Right's Despicable Class War: Why They Paint The Poor as Anti-American*, *SALON* (June 13, 2014, 4:44 AM), http://www.salon.com/2014/06/13/the_rights_despicable_class_war_why_they_paint_the_poor_as_anti_american/ (“[t]he net effect of the insistence of the right wing on the usage of these metaphors [targeting the poor] was to make punitive cuts to assistance programs appear urgent and necessary by cementing an image of their beneficiaries as morally corrupt, perverse and malevolent”).

²⁵ See HANCOCK, *supra* note 23 (examining the public identity of the so-called welfare queen and its role in hindering democratic deliberation and showing how stereotypes and politically motivated misperceptions about race, class, and gender were effectively used to instigate a “politics of disgust”).

source of “working” Americans’ economic anxieties.²⁶ Moreover, this stereotype also supports conservative theories that point to an inherent “culture of poverty” as the cause of hardship in black families headed by women, in lieu of recognizing persistent structural inequalities as the primary source of such hardship.²⁷ This theory, and its concomitant rhetorical narrative, has had enormous resiliency: first as a site of resistance to the Great Society programs of the 1960s that sought to alleviate overall poverty, and then as a marker of the purported illegitimacy attributed to black family structures. By tying these two concepts together, well-funded conservative think tanks have continued to reinforce the notion of black family dysfunction while simultaneously pressing for broader economic policies that serve to disempower *all* working and middle-class families.²⁸

The strategy of shifting the discourse of growing structural inequality in our neoliberal state to the “character defects” of poor black women was remarkably successful. It persuaded the electorate to accept the implementation of a political agenda of retrenchment. This neoliberal paradigm has ushered in the demise of many of the institutions that formed a bulwark of protection against exploitation for the middle class: public benefits, collective bargaining, laws restraining the unlimited influence of corporations in political life, and last but not least, the unprecedented transfer of wealth from working Americans to the richest 1 percent and their corporate allies.²⁹ It is possible that no one has felt the repercussions of this historical power shift more than low-wage workers, including many black women. After all, many women who would have formerly been welfare recipients constitute a huge subset of the most marginal workers of today.³⁰

To illustrate, the following stories of working mothers have set off a firestorm of controversy. They have revealed fault lines surrounding expectations of acceptable mothering, work obligations, criminal culpability, and police overreach in an era of increasingly severe

²⁶ *Id.*

²⁷ Patricia Cohen, “*Culture of Poverty*” *Makes a Comeback*, N.Y. TIMES (Oct. 17, 2010), http://www.nytimes.com/2010/10/18/us/18poverty.html?_r=0; *but see* WILSON, *supra* note 10 (rejecting the idea that inner-city residents have a “culture of poverty” or damaged personalities, but rather argues that problems endemic to America’s inner cities—from fatherless households to drugs and violent crime—stem directly from the disappearance of blue-collar jobs in the wake of a globalized economy).

²⁸ *Welfare and Welfare Spending*, THE HERITAGE FOUNDATION, <http://www.heritage.org/issues/welfare> (last visited Nov. 7, 2015) (“Despite spending more than enough to pull everyone out of poverty, the War on Poverty has failed to reduce the causes of poverty and has hurt many of the people it intended to help. The welfare reform of 1996 successfully transformed one welfare program. But today that reform is in jeopardy and some 70 other federal means-tested programs are in need of similar reform.”).

²⁹ *See* HARVEY, *supra* note 8, at 171, 190–92.

³⁰ *See* JANE L. COLLINS & VICTORIA MAYER, BOTH HANDS TIED: WELFARE REFORM AND THE RACE TO THE BOTTOM IN THE LOW-WAGE LABOR MARKET (2010) (studies the working poor in the U.S., focusing in particular on the relationship between welfare and low-wage earnings among working mothers and the struggle to balance child care and wage-earning in poorly paying and often state-funded jobs with inflexible schedules); *see also* Peggie R. Smith, *Aging and Caring in the Home: Regulating Paid Domesticity in the Twenty-First Century*, 92 IOWA L. REV. 1837 (2007) (“[a]lthough the demand for home care is staggering, workers are poorly paid and have access to few benefits. With a workforce overwhelmingly dominated by women, home care prompts comparisons to domestic service.”).

restrictions on reproductive autonomy. Their experiences in the post-industrial economy illustrate how the criminal justice system has trumped the erstwhile functions of the social safety net while reflexively blaming poor black mothers for their difficult circumstances when they are acting as workers and caregivers with limited options. In this way, the Welfare Queen construct continues to be deployed to frame perceptions of black mothers, even those in the work force and aspiring to work. These alarming vignettes illuminate the danger of welfare reform's unchecked stigmatizing discourse for all of us.

II. NEOLIBERALISM: THE CRIMINALIZATION OF WORKING MOTHERS

Debra Harrell is a black working mother living in North Augusta, South Carolina.³¹ On June 30, 2014, she was arrested and charged with unlawful neglect of a child for leaving her nine-year-old daughter in a nearby park while she worked as a shift manager at a neighborhood McDonalds restaurant.³² Her daughter had previously spent time with Harrell at the job playing with a laptop computer, but it had been stolen in a recent burglary of their home.³³ Without a computer to occupy her daughter, Harrell elected to let her spend the day in the park instead.³⁴ The park was the site of an active breakfast and lunch program, lots of children, and other adults.³⁵ A local passerby spoke to the child, inquiring about her mother's whereabouts.³⁶ She told the woman that Harrell was at work and also mentioned that she was given a cell phone in order to reach her mother in the event of an emergency.³⁷ Nevertheless, the woman called the police, reporting that the child had been playing in the park all day with no adult supervision—a call that led to Harrell's arrest for a charge punishable by up to ten years in prison.³⁸ At the time of Harrell's arrest her daughter was removed from her care and spent seventeen days in a group home at the South Carolina Department of Social Services.³⁹

The plethora of visible and unseen problems faced by Debra Harrell speaks volumes about the contemporary challenges for low-wage single mothers, many of whom have transitioned from welfare to the contemporary workforce. The much-lauded 1996 Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA)—also known as welfare reform—eradicated a half-century of federally guaranteed

31 Kelly Wallace, *Mom Arrested for Leaving 9-Year-Old Alone at Park*, CNN (Jul. 21, 2014, 4:41 PM), <http://www.cnn.com/2014/07/21/living/mom-arrested-left-girl-park-parents/>.

32 *Id.*

33 *Id.*

34 *Id.*

35 *Id.*

36 *S.C. Mom's Arrest Over Daughter Alone in Park Sparks Debate*, CBS NEWS (Jul. 28, 2014, 8:01 PM), <http://www.cbsnews.com/news/south-carolina-moms-arrest-over-daughter-alone-in-park-sparks-debate/>.

37 *See id.*

38 *Id.*

39 *Id.*

subsistence income by promising a new paradigm that would include support for the “dignity” of work.⁴⁰ President William J. Clinton noted upon signing the legislation that it was “an historic opportunity to end welfare as we know it and transform our broken welfare system by promoting the fundamental values of work, responsibility, and family.”⁴¹ Rick Santorum, then a U.S. senator, thought the welfare reform law was “a source of spiritual rejuvenation.”⁴² Representative Paul D. Ryan of Wisconsin, the top House Republican on budget issues, later called the vastly reduced welfare program “an unprecedented success.”⁴³ If you gauge the success of the reform efforts by the vast reduction of cash assistance to poor families it, indeed, stands as an unmitigated success. Those numbers declined even after the recession hit.⁴⁴ However, child poverty rates skyrocketed, especially among black children, and they continue to hover at about 38 percent.⁴⁵ Moreover, work options for many mothers became severely limited as they were removed from limited-benefit programs. After the recession hit in 2008, unemployment numbers rose even more sharply.⁴⁶ Among the critical issues faced by mothers who were able to obtain full-time employment was the dearth of affordable childcare options to make raising a family the halcyon experience that Clinton predicted.⁴⁷

Harrell’s dilemma highlights some of the economic realignments since welfare reform that have plagued parents who are relying exclusively on income from the low-wage workforce.⁴⁸ Welfare reform eliminated direct federal cash assistance to poor families and was replaced by time-limited state block grants with even stingier stipends. However, it might be more accurate to suggest that welfare was not reformed at all; rather benefits were transferred to subsidize corporate interests. Public benefits increasingly serve as a safety net for full-time workers—especially when low-wage workers are employed in large corporations. According to one study, fast food workers earning a full-time salary still needed nearly \$7 billion in public assistance between 2007 and 2011 to make ends meet.⁴⁹

40 Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, 110 Stat. 2105 (1996).

41 William J. Clinton, Statement on Signing the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, 2 PUB. PAPERS 1328 (Aug. 22, 1996).

42 Jason DeParle, *Welfare Limits Left Poor Adrift as Recession Hit*, N.Y. TIMES (Apr. 7, 2012), http://www.nytimes.com/2012/04/08/us/welfare-limits-left-poor-adrift-as-recession-hit.html?_r=0.

43 *See id.*

44 *See id.*

45 Eileen Patten & Jens Manuel Krogstad, *Black Child Poverty Rate Holds Steady, Even as Other Groups See Declines*, PEW RESEARCH CENTER (July 14, 2015), <http://www.pewresearch.org/fact-tank/2015/07/14/black-child-poverty-rate-holds-steady-even-as-other-groups-see-declines/> (“[b]lack children were almost four times as likely as white children to be living in poverty in 2013 . . . the latest evidence that the economic recovery is leaving behind some of the United States’ most vulnerable citizens”).

46 Louis Uchitelle, *Jobless Rate Hits 7.2%, a 16-Year High*, N.Y. TIMES (Jan. 9, 2009), <http://www.nytimes.com/2009/01/10/business/economy/10jobs.html>.

47 William J. Clinton, Statement on Signing the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, *supra* note 41.

48 *See generally* COLLINS & MAYER, *supra* note 30.

49 SYLVIA A. ALLEGRETTO ET AL., UC BERKELEY LABOR CTR., *FAST FOOD, POVERTY WAGES: THE PUBLIC COST OF LOW-WAGE JOBS IN THE FAST-FOOD INDUSTRY* (2013), http://laborcenter.berkeley.edu/pdf/2013/fast_food_poverty_wages.pdf.

The need for assistance is so prevalent that McDonald's has a "McResource" line that helps employees and their families enroll in various state and local assistance programs, and the corporation has advocated that full-time employees sign up for food stamps and welfare because they are not paid a living wage.⁵⁰ Similarly, Wal-Mart, the nation's largest private sector employer, is the biggest consumer of taxpayer-supported aid.⁵¹ According to Florida Congressman Alan Grayson, in many states Wal-Mart employees are the largest group of Medicaid recipients and the single biggest group of food stamp recipients.⁵² Walmart's employees are so underpaid, said Grayson, that they receive \$1000 on average in public assistance per year.⁵³ It is important to note that the practice of paying full-time workers so little that they are eligible for public assistance is deplorable, but not illegal. It is a burgeoning feature of neoliberal economics and remains a practice that Congress has not attempted to regulate by requiring that corporations pay workers a living wage.⁵⁴

Low wages for parents in Harrell's position make it nearly impossible to afford consistent private childcare. Thus, her work obligations likely force her to make many difficult choices about daily care. While "helicopter parenting"⁵⁵ seems to represent an emerging cultural norm for some, few working parents have the time to hover over any given child and still make ends meet. Nevertheless, the persistent cultural anxieties about what constitutes being a good mother lead to negative judgments that attach to parents whose children are latchkey kids. According to a report that analyzes family wellbeing, the high cost of quality childcare is the greatest threat to many families' security, and in many places across the country the cost of childcare threatens a second parent's ability to work and increase family income.⁵⁶ In most families with two or more young children, childcare is the family's largest expense.⁵⁷ Therefore, the high cost of childcare has pushed many single parents to desperate lengths to balance their children's needs with the need to maintain employment. Welfare reform legislation provided some limited childcare options, but they are sporadic in their availability, and not available at all to women who are not

⁵⁰ Barry Ritholz, *How McDonalds and Walmart Became Welfare Queens*, BLOOMBERG VIEW (Nov. 13, 2015), <http://www.bloombergview.com/articles/2013-11-13/how-mcdonald-s-and-wal-mart-became-welfare-queens>.

⁵¹ *Id.*

⁵² *See id.*

⁵³ *See id.*

⁵⁴ Workers themselves are taking to the streets to demand a livable wage. *See* John Bacon, *Fast-Food Workers Strike, Protest for Higher Pay*, USA TODAY (Dec. 5, 2013), <http://www.usatoday.com/story/money/business/2013/12/05/fast-food-strike-wages/3877023/> ("One-day labor walkouts were planned at fast-food restaurants in 100 cities . . . with protests in scores more cities and towns across the nation. Organizers . . . are pressing for an increase in the federal minimum wage, higher wages in the industry, and the right to unionize without management reprisals.").

⁵⁵ A parent who takes an overprotective or obsessive interest in the life of their child or children. *Helicopter Parent*, OXFORD DICTIONARIES, http://www.oxforddictionaries.com/us/definition/american_english/helicopter-parent.

⁵⁶ WIDER OPPORTUNITIES FOR WOMEN, THE BASIC ECONOMIC SECURITY TABLES FOR THE UNITED STATES (2010), <http://www.wowonline.org/documents/BESTIndexforTheUnitedStates2010.pdf>.

⁵⁷ *Id.*

transitioning out of the program. Harrell's childcare problem is systemic and pervasive.

Unlike European countries that offer generous government subsidies and support for early childhood care,⁵⁸ the U.S. has no national childcare program. The failure of any broad-based strategy for national childcare services has created a "system" that is essentially privatized. As a country we had an opportunity to enact a national program in 1971—the Comprehensive Child Development Act—which was approved by Congress on a bipartisan vote.⁵⁹ It was then vetoed by President Richard M. Nixon, who warned that it would "commit the vast moral authority of the National Government to the side of communal approaches to child rearing over the family-centered approach."⁶⁰ Stated differently, he was concerned about socialist approaches to family care, not to mention the costs of such a plan. His privatized vision of care survives as official childcare policy to this day. Privatized care privileges families that include a full-time caretaker and disadvantages less affluent working mothers who, like Harrell, cannot afford to outsource childcare to a nanny or regular babysitter. As Ann Alsott argues in *Neoliberalism in Family Law: Negative Liberty and Laissez-Faire Markets in the Minimal State*, the government maintains a policy preference for neoliberal private ordering in family law, which makes it difficult to claim any positive rights and distribution from the state.⁶¹ Ultimately we are left with a framework that is insufficient for creating any broad-based program of childcare options for mothers in Harrell's position. Despite the promise that welfare reform would deliver the "dignity of work," government does very little to foster a sustainable work life for mothers who have few ancillary resources.

Because this problem is so widespread, Harrell received a fair amount of support from some members of the public who were sympathetic to her situation.⁶² Many people were upset about the state intervening to criminalize her for parenting decisions that are essentially hers to make.⁶³ People also responded to the intense public shaming of Harrell by news reporters when the story of her arrest broke, including the leaking of her humiliating police interrogation (featuring the arresting officer taking her to

58 See ABOUT THE RECOMMENDATION FOR INVESTING IN CHILDREN, EUROPEAN UNION: EUROPEAN PLATFORM FOR INVESTING IN CHILDREN, http://europa.eu/epic/practices-that-work/recommendation-pillars/index_en.htm (last visited Nov. 7, 2015) (noting that the "[r]ecommendation provides guidance for European Union (EU) Member States on how to tackle child poverty and social exclusion through measures such as family support and benefits, quality childcare and early-childhood education").

59 Nancy L. Cohen, *Why America Never Had Universal Child Care*, NEW REPUBLIC (Apr. 24, 2013), <http://www.newrepublic.com/article/113009/child-care-america-was-very-close-universal-day-care>; see also Gail Collins, *The State of 4-Year-Olds*, N.Y. TIMES (Feb. 13, 2013), http://www.nytimes.com/2013/02/14/opinion/collins-the-state-of-the-4-year-olds.html?_r=0 (lamenting the delay in procuring affordable national childcare after the demise of the proposed 1971 Act).

60 Veto of the Economic Opportunity Amendments of 1971, 1 PUB. PAPERS 1174 (Dec. 9, 1971); see also 117 CONG. REC. 46057 (daily ed. Dec. 10, 1971) (Text of President Nixon's veto message regarding the Child Development Act of 1971).

61 Ann Alsott, *Neoliberalism in U.S. Family Law: Negative Liberty and Laissez-Faire Markets in the Minimal State*, 77 LAW & CONTEMP. PROBS. 25, 26 (2015).

62 See Wallace, *supra* note 31.

63 See *id.*

task about not being a “responsible” parent to her child), and the publishing of her Social Security number on the internet.⁶⁴ All of this served as another example of an ongoing public degradation ceremony.⁶⁵ Harrell’s supporters in turn set up an online funding site to defray her legal costs.⁶⁶ Even some conservative commentators jumped on the bandwagon to protest her arrest, though selectively so.⁶⁷ Angry about government overreach in criminalizing a *working* parent for child-rearing decisions, there was no similar outcry to establish broad support from the national government to assist the great many parents in Harrell’s situation.

What makes Harrell’s experience particularly problematic, though, is the presumption of criminality based on the charge of unlawful neglect of a child that was attributed to her parenting choices. As noted earlier, much of the stereotyping that has historically defined black mothers through the proliferation of the Welfare Queen trope has focused on their perceived deficits in mothering. Thus, in the eyes of the state, whatever sympathetic currency Harrell might have gained from her employment status did not translate to the perception of her mothering. In addition to the structural system that expects her to simultaneously perform her dual obligations as parent and worker, the local woman who called the authorities, the cruel and judgmental media accounts, and the police officer who used his considerable discretion to pursue criminal charges against her were all unaware or unsympathetic to her no-win situation. Consider that more than 8 percent of nine-to-eleven-year-olds and 27 percent of twelve-to-fourteen-year-olds are left unsupervised for some period of time, according to a Census report from 2011.⁶⁸ Harrell’s actions, while potentially problematic, were not those of an outlier. In fact, the passerby made a determination that Harrell’s actions were neglectful despite a number of facts that arguably limited the actual risk to the child. For example, she played with dozens of children in the park, some of whom she knew; she had a cell phone with which to call her mother; and she was present during the operation of a program in the park where adults provided free supervised breakfasts and

64 Jonathan Chait, *Working Mom Arrested for Letting Her Daughter Play Outside*, N.Y. MAG. (Jul. 15, 2014), <http://nymag.com/daily/intelligencer/2014/07/mom-arrested-for-letting-daughter-play-outside.html> (“[c]ompounding the horribleness is the news coverage, in which reporters and onlookers alike are united in disgust at Harrell . . .”); see also Dodai Stewart, *Mom Arrested for Letting Kid Play in Park Gets Doxxed by Local News*, JEZEBEL (Aug. 13, 2015), <http://jezebel.com/mom-arrested-for-letting-kid-play-in-park-gets-doxxed-b-1620674465>.

65 See Gustafson, *supra* note 4.

66 See Meg Mirshak, *Stranger Helps Raise \$40,000 For North Augusta Mother Who Left Child in Park While She Was at Work*, AUGUSTA CHRONICLE (July 27, 2014), <http://chronicle.augusta.com/news/crime-courts/2014-07-26/stranger-helps-raise-40000-north-augusta-mother-who-left-child-park>; see also *Support Debra Harrell*, FACEBOOK, <https://www.facebook.com/supportdebraharrell> (last visited Nov. 7, 2015) (Clair Ryan, of New Hampshire, said she felt compelled to help North Augusta mother Debra Harrell after reading her story published by New York Magazine).

67 See Ross Douthat, *The Parent Trap*, N.Y. TIMES (July 19, 2014), <http://www.nytimes.com/2014/07/20/opinion/sunday/ross-douthat-the-parent-trap.html?hp&action=click&pgtype=Homepage&module=c-column-top-span-region®ion=c-column-top-span-region&WT.nav=c-column-top-span-region>.

68 Jillian Berman, *Mom Whose Daughter Played Outside While She Worked Was Not Fired*, HUFFINGTON POST (July 25, 2014), http://www.huffingtonpost.com/2014/07/22/debra-harrell-fired_n_5610099.html.

lunches for the children that were playing there.⁶⁹ To satisfy her obvious concerns about safety, the concerned passerby could have made other choices to address the perceived problem, serving as a supportive neighbor in the proverbial “village.” Instead, she called the authorities to precipitate an unwarranted arrest and prosecution, ignoring the unintended consequences that could and did follow the criminal justice system’s intervention.

Dorothy Roberts has long argued that policing of black women is based on stereotypes of negligent mothering—in this case directing women into the prison system, which then works in tandem with the child welfare agency.⁷⁰ This is a process that does violence to family relationships. With persuasive statistical support, Roberts exposes a cycle in which stereotypes about black female criminality and irresponsibility legitimate government intervention.⁷¹ In fact, black children are greatly overrepresented in the child welfare system.⁷² In a troubling cycle, the destructive effects of government intervention into black families, in turn, reinforce stereotypes of poor mothering. In this instance, as in so many others, the removal of her daughter from Harrell’s care, under the questionable pretext of protecting her from harm, served to directly harm her daughter in ways that go unrecognized for many black children. Separation from their parents under traumatic circumstances, and subsequent placement in state foster care, away from family for an extended period of time, is itself a source of grievous harm to children.

In this context it is important to recognize that, although Harrell was criminalized directly through a police agency, the family courts typically have concurrent jurisdiction with the criminal courts in matters of child abuse and neglect. Therefore, a report of abuse or neglect transmitted through any number of systems that poor families frequent (public schools, welfare offices, and the like) can result in state intervention and child removal. School and other officials are often mandatory reporters who must alert authorities to suspected cases of abuse or neglect that are based on potentially biased perceptions of negligent mothering. In fact, one could

69 “Summerfield Park, to be exact, a well-used oasis of North Augusta, a city of 22,000 on the north bank of the Savannah River. The park has a spray ground, a basketball court, a kid play area, restrooms, a jogging path and a free breakfast and lunch program on summer weekdays. Not to mention fresh air, other children and a smattering of adults—parents, babysitters, child-care workers—keeping an unofficial watch.” Anndee Hochman, *In Defense of a ‘Bad Mother’: Debra Harrell’s Village Fails Her*, NEWSWORKS (July 28, 2014), <http://www.newsworks.org/index.php/local/essayworks/70909-in-defense-of-a-bad-mother-debra-harrells-village-fails-her>.

70 See, e.g., Dorothy E. Roberts, *Prison, Foster Care, and the Systemic Punishment of Black Mothers*, 59 UCLA L. REV. 1474, 1476 (2012) (“[f]oster care is more than a precursor to prison (for children), and prison is more than a precursor to foster care for children (of the incarcerated). The simultaneous buildup and operation of the prison and foster care systems rely on the punishment of black mothers, who suffer greatly from the systems’ intersection.”).

71 See *id.* at 1485 (“[b]oth the welfare and foster care systems, then, responded to a growing black female clientele by reducing services to families while intensifying their punitive functions. The main mission of child welfare departments became protecting children not from social disadvantages stemming from poverty and racial discrimination but from maltreatment inflicted by their mothers.”).

72 See *id.* at 1484 (“[b]lack children are still grossly overrepresented in the U.S. child welfare system: Even though they represent only 15 percent of the nation’s children, black children currently compose about 30 percent of the nation’s foster care population.”).

argue that this accounts, in part, for the wildly disproportionate minority representation within the foster care system. This type of harm is rarely publicized because the lens through which black mothers are viewed routinely identifies *them* as the primary source of the harm. Harrell, despite her status as a worker in the post-welfare world, was subject to the scrutiny that persists from historical discursive constructs of pathologized black mothering. It is a potent example of how the social construction of the Welfare Queen has transcended even welfare reform and redounds to the detriment of poor black women in the age of neoliberalism.

III. NEOLIBERALISM: POLICING PUBLIC PROPERTY AND RACIAL BOUNDARIES

In 2010 Tanya McDowell enrolled her six-year-old son in an elementary school in Norwalk, Connecticut.⁷³ At the time McDowell was homeless, mostly unemployed, and floating between the Open Door homeless shelter in Norwalk and a house in Bridgeport, where a friend let her sleep sometimes at night.⁷⁴ McDowell registered her son under her babysitter's address in a Norwalk public housing apartment where he went every day after school.⁷⁵ Her son had previously been enrolled in day care in Norwalk at a help center where she was getting assistance in a program for people seeking employment.⁷⁶

The authorities were alerted to the purported illegal out-of-district school enrollment after McDowell testified at an eviction hearing for her babysitter.⁷⁷ The babysitter, Ana Marquez, had been accused of allowing Ms. McDowell and her son to live with her, a violation of her lease.⁷⁸ During that hearing, McDowell testified for Ms. Marquez under oath that McDowell and her son did not reside at the Roodner Court public housing project where Ms. Marquez lived, but instead resided in Bridgeport.⁷⁹ This brought her to the attention of an attorney for the Norwalk Housing Authority, who reported her to the Prosecutor's Office.⁸⁰ She was then arrested and charged with first-degree larceny for registering her son to

73 E.g., Gustafson, *supra* note 4, at 321–22.

74 Stacy Teicher Khadaroo, *Homeless Child Enrolled in Wrong School: What Should Happen to Him?*, CHRISTIAN SCI. MONITOR (Apr. 28, 2011), <http://www.csmonitor.com/USA/Education/2011/0428/Homeless-child-enrolled-in-wrong-school-What-should-happen-to-him>.

75 Gustafson, *supra* note 4, at 321–22.

76 David Gurliacci, *Mayor: I Don't Believe McDowell*, NORWALK PATCH (May 10, 2011), <http://patch.com/connecticut/norwalk/mayor-i-dont-believe-mcdowell>.

77 Jessica Hopper, *NAACP Backs Connecticut Woman Arrested for Illegally Enrolling Son in School*, ABC NEWS (Apr. 26, 2011), <http://abcnews.go.com/US/tanya-mcdowell-case-naacp-appoints-lawyer-connecticut-wom.an/story?id=13462495>.

78 *Id.*

79 *Id.*

80 *Id.*

attend school in Norwalk.⁸¹ While out on bail, McDowell was again arrested by Bridgeport police; this time she was charged with selling marijuana and crack cocaine on different occasions to an undercover police officer.⁸² Ms. Marquez, the babysitter, was later evicted from her apartment for providing documents to allow McDowell to enroll her child at Norwalk's Brookside Elementary.⁸³

On February 22, 2012, McDowell pleaded guilty in Norwalk Superior Court and was sentenced to five years prison for charges of first-degree larceny and conspiracy to commit first-degree larceny by defrauding a public community.⁸⁴ McDowell entered her plea under the Alford Doctrine (where the defendant does not admit guilt, but agrees that the state likely has enough evidence against her to get a conviction).⁸⁵ She also pleaded guilty to selling narcotics.⁸⁶ On March 27, 2012, the judge sentenced her to twelve years prison on the two counts of sale of narcotics, which would be suspended after she serves five years in prison and five years of probation.⁸⁷ Her attorney said that he tried to separate the drug cases from the school case, but prosecutors refused to sever them.⁸⁸ As part of her probation, McDowell will still have to make \$6,200 restitution to Norwalk, the estimated cost of her son's education while enrolled in the public school there.⁸⁹

Parenting typically involves hard choices, presumably made in the best interests of children. These decisions are made in accordance with values informed by our culture and experience. We make those decisions in the context of the opportunities that arise within the framework of our given circumstances. Of the recent metaphors that give voice to our anxieties about parenting one of the most complex is the "Tiger Mom"—a neologism used to describe a tough, disciplinarian mother who aggressively demands excellence from her children in all things, especially educational pursuits. Yale Professor Amy Chua authored a controversial article based on her book *Battle Hymn of the Tiger Mother*,⁹⁰ advancing this strict disciplinary approach as the correct model of parenting deployed by Chinese (and other

81 Bob Connors, *Cops Bust Woman for Sending Child to School*, NBC CONN. (Apr. 21, 2011), <http://www.nbcconnecticut.com/news/local/Cops-Bust-Homless-Woman-for-Sending-Child-to-School-120004374.html>.

82 See Peter Applebome, *In a Mother's Case, Reminders of Educational Inequalities*, N.Y. TIMES (Apr. 27, 2011), <http://www.nytimes.com/2011/04/28/nyregion/some-see-educational-inequality-at-heart-of-connecticut-case.html>.

83 See Connors, *supra* note 81.

84 See John Nickerson, *Mom Accused of Stealing Education Pleads Guilty*, STAMFORD ADVOCATE (Feb. 22, 2012, 10:14 PM), <http://www.stamfordadvocate.com/news/article/Mom-accused-of-stealing-education-pleads-guilty-3349999.php>.

85 *Id.*

86 *Id.*

87 Daniel Tepfer, *Tanya McDowell Sentenced to Five Years In Prison*, CTPOST (March 27, 2012, 11:40 PM), <http://www.ctpost.com/news/article/Tanya-McDowell-sentenced-to-5-years-in-prison-3437974.php>.

88 Nickerson, *supra* note 84.

89 *Id.*

90 AMY CHUA, *BATTLE HYMN OF THE TIGER MOTHER* (2012).

similarly strict) mothers in order to assure the rearing of successful children.⁹¹ She reported that in one study of forty-eight Chinese immigrant mothers, the vast majority “said that they believe their children can be ‘the best’ students, that ‘academic achievement reflects successful parenting,’ and that if children did not excel at school then there was ‘a problem’ and parents ‘were not doing their job.’”⁹²

Chua’s article served as a counterpoint to what she called more permissive “western” parenting, which focuses on the preservation of self-esteem.⁹³ Chua received a good deal of affirmation from readers that supported the notion that aggressive parenting and expectations were a reflection of deep caring for children.⁹⁴ People also generally agreed that individual parents are in fact responsible for the educational achievements of their children.⁹⁵ Her approach was also met with criticism, but the critiques tended to center on the potential psychological damage to children done by unrelenting expectations of excellence.⁹⁶ Fewer critics seemed to challenge her underlying assumptions about power, privilege and access to resources—all important criteria for a child’s success.⁹⁷ This is not to say that a great many disadvantaged parents have not done very well by their children. Rather, it minimizes the enormous historical and structural disadvantages that impact the vast majority of low-income African Americans who can only afford to raise their children in districts that contain insufficient funding and failing schools.

In her article Chua trades on stereotyping about the qualities of Chinese parents, not just to advance a particular theory of parenting, but also to explain the considerable educational achievements attained by many in Asian communities.⁹⁸ The disciplinarian attributes she touts no doubt help with success, and they have become equated over time and in the public imagination with model minority status. Ironically, however, black mothers also have a reputation for being more disciplinarian, but simultaneously are presumed to be less interested in or committed to education.⁹⁹ Evidently there is a widespread belief that black parents, who presumably fall within this “western” tradition of parenting, don’t value education. Commentators from across the spectrum—big-city mayors, leaders of teachers’ unions,

91 Amy Chua, *Why Chinese Mothers Are Superior*, WALL ST. J. (Jan. 8, 2011), <http://www.wsj.com/articles/SB10001424052748704111504576059713528698754>.

92 *Id.*

93 *See id.*

94 *See generally* Comments to Amy Chua, *Why Chinese Mothers Are Superior*, WALL ST. J. (Jan. 8, 2011), <http://www.wsj.com/articles/SB10001424052748704111504576059713528698754> (last visited Nov. 7, 2015).

95 *Id.*

96 *Id.*

97 *Id.*

98 *See* Kevin Sieff, *Achievement Gap Widening Between Asian American Students and Everyone Else*, WASH. POST (Apr. 5, 2011),

http://www.washingtonpost.com/local/education/achievement-gap-widening-between-asian-american-students-and-everyone-else/2011/04/05/AF5YvcIC_story.html.

99 THOMAS P. GULLOTTA, GERALD R. ADAMS & CAROL A. MARKSTROM, *THE ADOLESCENT EXPERIENCE* 190 (1999) (summarizing psychological literature, “[d]rawing from evidence that Black mothers discipline early adolescents more strictly than White mothers . . .”).

and other pundits—have offered this observation, usually to explain academic underachievement among black children.¹⁰⁰ However, the long history of education advocacy in the black community belies this article of faith. As historian Gloria Browne-Marshall has opined, “[b]lack parents have waged a centuries-long battle to gain a proper education for their children.”¹⁰¹ She painstakingly details the history of efforts, through litigation or stealth, to overcome structural limitations to education imposed by slave codes, Jim Crow policies and practices, and the inequity that results from persistent residential segregation.¹⁰² From attempting to circumvent the prohibition of slaves from learning to read and write, to challenging the “separate but equal” doctrine, through busing and continuing to protest failing schools in poor communities, the notion that black parents don’t care about education simply rings hollow. Yet gaps in educational attainment between blacks and other racial groups persist. Is it because black parents have failed to instill the value of education in their children, as Chua’s remarks might imply? The evidence suggests not.

Recently, a study by Rice University’s Kinder Institute for Urban Research found that African Americans were the group that was *most* likely to view post-secondary education as necessary for success, at ninety percent, followed by Asians and Latinos, while whites, at sixty-four percent, were least likely to believe higher education is necessary for success.¹⁰³ Moreover, survey author Stephen Klineberg, Kinder Institute co-director and Rice Professor of sociology, has said, “[t]he survey provides no evidence whatsoever to support the belief that blacks or Latinos do not value education as much as Anglos and Asians do The educational disparities have much more to do with resources and income inequalities than with any presumed differences in aspirations or values.”¹⁰⁴ Similarly, Dr. Andre Perry, Dean of Education at Davenport University, has opined, “[p]rivileged parents hold onto the false notion that their children’s progress comes from thrift, dedication and hard work—not from the money their parents made. Our assumption that ‘poverty doesn’t matter’ and insistence on blaming black families’ perceived disinterest in education for their children’s underachievement simply reflects our negative attitudes towards poor, brown people and deflects our responsibility to address the real root problems of the achievement gap.”¹⁰⁵ Similarly, access to

100 Nat Hentoff, *Bloomberg: Black Parents Fail Their Kids*, VILLAGE VOICE, (Jun. 29, 2011), <http://www.villagevoice.com/news/bloomberg-black-parents-fail-their-kids-6431609> (quoting New York mayor Michael Bloomberg: “[u]nfortunately, there are some parents who . . . never had a formal education, and they don’t understand the value of an education. Many of our kids come from [such] families . . .”).

101 GLORIA J. BROWNE-MARSHALL, *RACE, LAW, AND AMERICAN SOCIETY: 1607 TO THE PRESENT* 17 (2007).

102 See generally *id.*

103 Andre M. Perry, *Stop Blaming Black Parents for Underachieving Kids*, WASH. POST (July 30, 2014), <http://www.washingtonpost.com/posteverything/wp/2014/07/30/stop-blaming-black-parents-for-underachieving-kids/>; see also Amy McCaig, *African-Americans Are The Most Likely to Value Postsecondary Education, According to First-Ever Houston Education Survey*, RICE UNIV. NEWS & MEDIA (Nov. 12, 2013), <http://news.rice.edu/2013/11/12/african-americans-are-the-most-likely-to-value-postsecondary-education/#sthash.ByOPhJOR.dpuf>.

104 McCaig, *supra* note 103.

105 Perry, *supra* note 103.

educational resources can be stymied by increasingly policed geographic boundaries. As scholar Priscilla Ocen posits, this can occur by “maintaining racial space through a variety of race-neutral means, including opposition to public and affordable housing developments . . . [and] imposition of restrictive attendance zones for school enrollment . . .”¹⁰⁶

As Tonya McDowell’s case illustrates, if you are a poor person living in a poor neighborhood—or without a stable residence at all—access to *quality* education for your child can be difficult to obtain. Even resources like public education have become property interests that continue to be heavily policed along geographic and racial boundaries: only those who can afford to live in affluent neighborhoods can access good or superior education.¹⁰⁷ McDowell’s situation represents the convergence of a number of systems in the age of neoliberalism that intersect to render her actions, motivations, and identity criminal: exclusionary educational zoning, increased oversight and scrutiny in public housing, barriers to legitimate employment, and the omnipresence of criminal justice enforcement to support regulation in these areas.

It began with McDowell’s attempt to enroll her son in a better school district—an act that was met with resistance and policed through cross-referenced databases.¹⁰⁸ As McDowell stated throughout her ordeal, she simply wanted to enroll her son in a quality public school; she said: “You shouldn’t be arrested for stealing a free education. It’s just wrong.”¹⁰⁹ The Stamford-Bridgeport-Norwalk area has been labeled by the Census as a district containing stark income inequality,¹¹⁰ the result of persistent housing segregation and failing schools. As a homeless parent occupying a variety of geographic spaces, her instinct to enroll him in Brookside Elementary made perfect sense. Yet, McDowell had two primary issues to overcome in her quest to educate her son. She had to buck the local power brokers in Norwalk, who resisted her efforts to seek a “free” education within the geographic boundaries of their relatively more affluent

106 Priscilla A. Ocen, *The New Racially Restrictive Covenant: Race, Welfare, and the Policing Of Black Women In Subsidized Housing*, 59 UCLA L. REV. 1540, 1542–44 (2012). Ocen goes on to say, “[t]he social harms wrought by persistent residential segregation are more than cosmetic. Rather, racially segregated communities produce, for example, racially isolated and underfunded schools. Within these racially isolated schools, pupils are often exposed to less economic diversity, inexperienced teachers, deteriorating physical plants, and lower scores on standardized tests.” *Id.* at 1551.

107 “[O]ver the long term, the effects of housing segregation can alter future incomes and opportunities. A Harvard study released in May found that young children whose families had been given housing vouchers that allowed them to move to better neighborhoods were more likely to attend college—and to attend better colleges—than those whose families had not received the vouchers.” Editorial Board, *The Supreme Court Keeps the Fair Housing Law Effective*, N.Y. TIMES (June 25, 2015), http://www.nytimes.com/2015/06/26/opinion/the-supreme-court-keeps-the-fair-housing-law-effective.html?_r=0; see also RAJ CHETTY & NATHANIEL HENDREN, THE IMPACTS OF NEIGHBORHOODS ON INTERGENERATIONAL MOBILITY: CHILDHOOD EXPOSURE EFFECTS AND COUNTY-LEVEL ESTIMATES (2015).

108 See Gustafson, *supra* note 4, at 322 (“officials at the Housing Authority, apparently through routine data exchanges with other government offices, found discrepancies between the names of residents listed on the lease agreement and the names of residents listed in school enrollment records.”).

109 Nickerson, *supra* note 84.

110 Gustafson, *supra* note 4, at 322 (citing DANIEL H. WEINBERG, U.S. CENSUS BUREAU, U.S. NEIGHBORHOOD INCOME INEQUALITY IN THE 2005-2009 PERIOD, 5 (2011), <http://www.census.gov/prod/2011pubs/acs-16.pdf>).

community—and who used the media to challenge her integrity and entitlement to services. Even more significantly, her quest to secure a better education for her son was severely limited after the imposition of other criminal charges against her during the pendency of the case. Support for her was diminished because of her association with illegal drug activity.

Despite the fact that she was charged with drug offenses, her status as a homeless mother should have been the sole inquiry as to whether or not McDowell's son was entitled to an education in the Norwalk schools. The federal McKinney Vento Act's definition of homelessness comports with McDowell's description of her and her son's inconsistent and marginal housing.¹¹¹ The statute is designed to protect homeless children and youth: "individuals who lack a fixed, regular, and adequate nighttime residence . . ."¹¹² Her intermittent time spent in a homeless shelter with her son in and of itself would have qualified him as a homeless child. Yet, the most vocal critic of McDowell was Norwalk Mayor Richard A. Moccia, who asserted publicly from the beginning that he did not believe McDowell's claim of homelessness. According to *Norwalk Patch* news reporter David Gurliacci, the Mayor gave two reasons why he didn't believe that McDowell was homeless.¹¹³ First, he revealed publicly that McDowell had previous criminal convictions, and thus cast aspersions on her truthfulness generally.¹¹⁴ He said, "She's been convicted . . . She's been arrested . . . Do any of those actions reflect on how accurate she's being now?"¹¹⁵ Second, the Mayor said that McDowell didn't use any of the services the city offers to homeless people. However, McDowell and her son did access some services. According to Gurliacci, who interviewed McDowell, she enrolled her child in a day-care program at NEON (an anti-poverty program in Norwalk) as part of her earlier stay at the city's homeless shelter.¹¹⁶ Moreover, McDowell had also been getting assistance in a NEON program for people searching for employment.¹¹⁷ That is where she was helped to enroll her child at Brookside, "a school she picked out because other people she knew had children there and told her it was a good school."¹¹⁸

In a separate interview the mayor hinted at an alternative reason for his insistence on moving forward with McDowell's prosecution. He stated, "[t]his now sends a message to other parents that may have been living in other towns and registering their kids with phony addresses."¹¹⁹ He continued, "[t]his woman never claimed she was homeless, never told us

111 42 U.S.C. §§ 11431–11435 (2015).

112 42 U.S.C. § 11434a(2)(A) (2015).

113 Gurliacci, *supra* note 76.

114 *Id.*

115 *Id.* (The *Norwalk Patch*, a local newspaper, reported that "Moccia also says he doesn't believe that McDowell's child was ejected from Norwalk Public Schools . . . [W]hen told that McDowell says she received a telephone call from a school official who informed her that the child would have to leave Brookside Elementary School because McDowell didn't live in Norwalk, Moccia replied, 'That's her version.'").

116 *Id.*

117 *Id.*

118 *Id.*

119 Connors, *supra* note 81.

she was homeless, was using an illegal address in a public housing complex, has a checkered past and despite all the protestation that she's concerned about her son, if she had done things right, this would have never happened."¹²⁰ Importantly, Moccia's impugning of McDowell's character and truthfulness was not simply gratuitous; it had the effect of diverting attention away from the likelihood that, under federal law, her son as a homeless child was entitled to stay registered in the Norwalk school under threat of a civil rights violation.¹²¹

When McDowell testified in the case between the housing authority and Ana Marquez, school officials became aware that McDowell and her son did not actually reside at the address reported on the school enrollment form.¹²² McDowell withdrew her son and transferred him to a school in Bridgeport, the locale of her last known address.¹²³ "Despite removing her child from the Norwalk school in the middle of the school year, McDowell was charged with first-degree larceny."¹²⁴ Ironically, McDowell was arrested at a homeless shelter.¹²⁵ The decision to criminally prosecute her was unsettling to some.¹²⁶ According to an NBC News report, police lieutenant Paul Resnick said this was the first time he had heard of this happening.¹²⁷ Others agreed; "Usually when they find a kid out of district, they send him back. I have never heard of people being arrested for it," said Norwalk Board of Education Chairman Jack Chiramonte.¹²⁸ Her defense attorney asserted that "twenty-six other families had also had their children removed from Norwalk schools based on their residency, but that McDowell was the only one arrested and prosecuted . . ."¹²⁹ Because McDowell is African American, the National Association for the Advancement of Colored People (NAACP) came to her defense, suggesting that race played a factor in the state's decision to bring criminal charges against her.¹³⁰ "The NAACP doesn't like that they're trying to attack somebody [who is] [sic] poor and doesn't have a good support system," said Scot X. Esdaile, president of the Connecticut State Conference of the NAACP, "[t]his is discrimination."¹³¹ McDowell's story highlights the specious way in which poor people's exposure to state

120 Hopper, *supra* note 77.

121 The language of the McKinney-Vento Act also defines "homeless" as including "children and youths who are sharing the housing of other persons due to loss of housing, economic hardship, or a similar reason . . ." 42 U.S.C. § 11434a(2)(B)(i) (2015). McDowell's son would have been entitled to stay registered at Brookside, pending an investigation of her claims of homelessness; *See also* John Nickerson, *Tanya McDowell Pleads Not Guilty to Stealing Son's Education*, STAMFORD ADVOCATE (Apr. 28, 2011), <http://www.stamfordadvocate.com/news/article/Tanya-McDowell-pleads-not-guilty-to-stealing-1354415.php>. Ironically, McDowell's lawyer argued that she "was undeniably homeless when she enrolled her son at the school and he should have been allowed to remain there, according to federal law."

122 Hopper, *supra* note 77.

123 *E.g.*, Gustafson, *supra* note 4, at 322.

124 *Id.*

125 Connors, *supra* note 81.

126 *Id.*

127 *Id.*

128 *Id.*

129 Gustafson, *supra* note 4, at 323.

130 *See id.*

131 Hopper, *supra* note 77.

surveillance puts them at risk of criminalization when they attempt to access public services that are geographically foreclosed to them. Much was made of the fact that McDowell did not testify under oath to the fact that she was homeless, but this makes sense if the purpose of her testimony was to assure the housing authority that her friend and babysitter had only provided an address for McDowell's son for enrollment purposes, and that they were not in fact living there in violation of Marquez's lease agreement. It is fair to assume that McDowell did not know that information established at the Norwalk Housing Court would be turned over to the school district and cross-referenced for residency purposes, or that she would be prosecuted. Since the purpose of the hearing was to prove that McDowell was not living with Marquez, she had no reason to raise the issue of homelessness. Such a claim, albeit accurate, might have raised suspicions that she was lying about not residing in the apartment. In the end, regardless, Marquez was evicted and McDowell was arrested for theft of services. The systems that poor families interact with can, and in this instance did, conspire to monitor, regulate, and criminalize them.

Significantly, Tanya McDowell's arrest for selling narcotics signaled the end of her ability to frame her case as the right to seek a proper education for her son and draw further attention to state rules that prohibited cross-district enrollment—a practice that entrenches poverty in poor communities. It also diminished her ability to speak for others because she was unable to establish “perfect victim” status as an aggrieved mother, part of a litigation strategy perceived as crucial when seeking to pursue claims under the law, not to mention in the media. In order to extract a plea agreement from McDowell, prosecutors refused to sever the larceny charges from the subsequent drug charges, even though they were completely unrelated.¹³² Doing so assured that the criminal taint of the drug arrests bootstrapped onto the larceny charges, making factual assertions of homelessness and her defenses to the larceny case less believable, as Mayor Muccia intimidated.¹³³ McDowell could no longer claim the moral high ground so she accepted a plea covering both cases in order to avoid the potential of exposing herself to more prison time.

At McDowell's sentencing hearing she lamented her involvement in the drug case, but also reiterated that she did not regret seeking a better education for her son.¹³⁴ The judge resisted this assertion, and stated that the sole source of her problems was her drug conviction, ignoring that criminal activity to secure income can often have a connection to poverty, lack of employment opportunities, and other social problems.¹³⁵ The judge then proceeded to scold her about making an honest living and becoming a role model for her son after she is finally released from prison.¹³⁶ However,

132 Nickerson, *supra* note 84.

133 See Gurliacci, *supra* note 76.

134 Tepfer, *supra* note 87.

135 *Id.*

136 See *id.* Superior Court Judge Frank Ionnotti responded that, “[t]his case is about the convictions for the sale of narcotics to an undercover police officer . . . I think you understand that

McDowell's criminal convictions greatly impact her ability to do just that. The prevalence of criminalization in black communities has an outsized impact on the ability of many to maintain legitimate employment, low-wage or otherwise.¹³⁷ In much the same way that criminalization is now conflated with blackness, blackness itself is a trigger for employment discrimination, leading to further economic instability.¹³⁸ Poor economic prospects for low-wage workers are troubling in the age of neoliberalism, but having a criminal conviction compounds the problem. The punitive nature of this conundrum is that while people are blamed for engaging in criminal activity, legitimate economic opportunities are increasingly foreclosed to them, perpetuating a cycle of continuous criminal justice involvement that exposes them to public scorn. McDowell clearly sought to engage in legitimate work, as evidenced by her engagement with the work-support program at the anti-poverty agency in Norwalk. However, in the end, her actual ability to do so was severely curtailed by her previous criminal convictions, used against her by the Mayor to frame the discourse and denigrate her claims to city services. What seems to have been lost in the coverage of the case, and even the Judge's perspective on McDowell's situation, is that her own circumscribed options might have motivated her to fight so hard for the promise of better educational opportunities for her son.

In a final bit of irony, the lead prosecutor in the case, Suzanne Vieux, is the daughter of McDowell's very public critic, Mayor Muccio.¹³⁹ Vieux wasted no time in conflating McDowell's final drug plea agreement with the school case, exclaiming "[w]hile there were many issues regarding educational inequities that were openly debated and ignited by this case, that should in no way deter from the fact that individuals who use city services to further their illegal narcotic conduct will be held accountable."¹⁴⁰ The Prosecutor's lip service to healthy policy discourse notwithstanding, criminal charges for theft of educational services are becoming a more common occurrence nationally. There are numerous other examples of state laws providing for criminal penalties for falsely claiming residency within a school district, regardless of the reasons why parents register their children in districts outside of the ones in which

because that is really the essence of what has gotten you into the predicament you find yourself [in] today." *Id.*

¹³⁷ Susan Bandes, *The Arrest Power Unchained*, JOTWELL (July 13, 2015) (reviewing Eisha Jain, *Arrests as Regulation*, 67 STAN. L. REV. 809 (2015)), <http://crim.jotwell.com/the-arrest-power-unchained/> ("[a]rrests are used as a proxy, or a low-cost auditing mechanism, by agencies regulating public housing, public benefits, licensing for various professions, education, child welfare, and immigration, as well as by employers and other non-governmental actors. These agencies and individuals use arrests as a means of monitoring and tracking individuals . . . and a means of setting regulatory priorities, for example determining who is entitled to public housing or employment or professional licensing.").

¹³⁸ BRUCE WESTERN & BECKY PETIT, THE PEW CHARITABLE TRUSTS, COLLATERAL COSTS: INCARCERATION'S EFFECT ON ECONOMIC MOBILITY (2010), http://www.pewtrusts.org/~media/legacy/uploadedfiles/pcs_assets/2010/CollateralCosts1pdf.pdf ("[t]he collateral consequences . . . include substantial and lifelong damage to the ability of former inmates, their families and their children to earn a living wage").

¹³⁹ Hopper, *supra* note 77.

¹⁴⁰ Nickerson, *supra* note 84.

they live.¹⁴¹ Those who seek to cross these fault lines representing geographic, economic, and racial boundaries will be perceived as dishonest for doing so rather than lauded for attempting to give their child a quality education.

IV. NEOLIBERALISM: REGULATING MOTHERHOOD IN THE CARCERAL STATE

On March 20, 2014 military veteran Shanesha Taylor was a homeless, unemployed single mother of three, living in Arizona.¹⁴² Taylor needed a job, and was able to secure a promising interview for full-time work at a Scottsdale, Arizona insurance company.¹⁴³ Unfortunately, her childcare fell through on the morning of the interview and she found herself in the company's parking lot with a decision to make: leave her young children, one two years old and the other six months, alone in the car during the interview or pass up the opportunity for a job that she believed would change her family's fortunes for the better.¹⁴⁴ She had been told that the interview would be brief but it extended to forty-five minutes as more supervisors were brought in to meet her, a good sign that she would get the job.¹⁴⁵ While she was interviewing, someone in the parking lot noticed her younger son crying and sweating in the car and called the police.¹⁴⁶ When she returned, Taylor, who had no criminal record, was arrested on two counts of felony child abuse and spent eleven days in jail.¹⁴⁷ The children were examined at a local hospital and released uninjured to the custody of child protective services.¹⁴⁸

141 James Orlando, *Criminal Penalties for Falsely Claiming Residency Within a School District*, OLR RESEARCH (May 5, 2011), <http://www.cga.ct.gov/2011/rpt/2011-R-0214.htm>; see also Gustafson, *supra* note 4 at 326 (listing numerous other examples of cases of parents or guardians charged with theft of educational services).

142 See Sarah Jarvis, *The Ariz. Republic, Mom Who Left Kids in Car Sentenced to 18 Years Probation*, USA TODAY (May 15, 2015, 8:39 PM), <http://www.usatoday.com/story/news/nation/2015/05/15/shanesha-taylor-kids-in-car/27375405/>.

143 *Id.*

144 Eun Kyung Kim, *'Moment Of Desperation' Led Arizona Mom to Leave Kids in Hot Car During Job Interview*, NBC NEWS TODAY (July 24, 2014), <http://www.today.com/parents/moment-desperation-led-shanesha-taylor-leave-kids-hot-car-1D79969954>.

145 See *Mom Who Left Babies Alone in Hot Car Explains Her Decision*, HUFFINGTON POST (May 21, 2015, 10:41 AM), http://www.huffingtonpost.com/2015/05/21/shanesha-taylor-mom-who-left-kids-in-car_n_7348646.html.

146 The Associated Press, *Shanesha Taylor, Phoenix Mom Who Left Kids in Hot Car, Pleads Guilty to Child Abuse*, NBC NEWS (Mar. 16, 2015, 3:59 PM), <http://www.nbcnews.com/news/us-news/shanesha-taylor-mom-who-left-kids-car-pleads-guilty-child-n324476>.

147 See Victoria Uwumarogie, *Shanesha Taylor Reportedly Released from Jail on Bail; Funds Raised for Her Now at \$66,000*, MADAME NOIRE (Mar. 31, 2014), <http://madamenoire.com/415713/shanesha-taylor-released-from-jail/>; Veronica Wells, *Great News: Charges Dropped Against Shanesha Taylor*, MADAME NOIRE (Jul. 18, 2014), <http://madamenoire.com/449720/great-news-charges-dropped-against-shanesha-taylor/>.

148 Kim, *supra* note 144 (explaining why she left the children in the car, in an interview with Matt Lauer on the *Today Show*, Taylor said, "it's making a choice out of desperation. It's choosing what is the best option, what is the best thing for me to do in this particular situation—being able to provide food, a roof, clothes, shoes for them, or take this moment and care for them").

Shanesha Taylor's story presents a powerful case study of how difficult it is for black mothers under siege to manage their parenting choices, and how quickly shaming can supplant empathy in the public discourse. Taylor has said repeatedly that when she left her children in the car during the interview it was a regrettable moment of desperation, a choice between "providing for [her] children and caring for [her] children."¹⁴⁹ It is unlikely that this would have become a national story at all were it not for the media's circulation of her mug shot: her face streaming with tears, her obvious suffering in that photograph struck a visceral chord with people and led many to empathize with her plight. Notwithstanding what some considered poor judgment and potential risk to her children's wellbeing, many people understood that she was facing a difficult choice in the moment as she was attempting to obtain a measure of financial stability for her family. Matt Lauer of the *Today Show* suggested that she had become the "face of the working poor in this country."¹⁵⁰ Amanda Bishop, the young woman who started a fundraising site for Taylor, stated "[t]here are some of us that feel that Shanesha was in an unfortunate situation that sadly an economy like ours is putting many single mothers in a position to make terrible mistakes like this."¹⁵¹ Bishop initiated an online crowdfunding campaign that garnered over \$114,000 of unrestricted funds for Taylor's support.¹⁵² However, for Taylor to maintain sympathy throughout the legal proceedings she had to appear as someone who did not resemble the image that many have of poor black mothers—the omnipresent Welfare Queen—an irresponsible, lazy mother who is somehow scamming the system.¹⁵³ To signal her worthiness, her first lawyer, Benjamin Taylor (no relation), made the strategic choice to trade on stereotypes to advocate for his client. In pressing his case before the prosecutors and the media he insisted, "[t]his is a single mom who was trying to get a job, and unfortunately she was arrested for trying to get a job . . . She wasn't going to a liquor store. She wasn't going to a party. She was going to a job interview."¹⁵⁴

To this end Taylor's actions were quickly contextualized in her willingness to work, and questionable decisions vis-à-vis her children's safety could be understood and forgiven. However, sustaining public support for Taylor was contingent on servility, demonstrated by her

149 *Id.*

150 *See id.*

151 Lisa Flam, *Support Pours in for Mom Accused of Leaving Kids in Hot Car*, NBC NEWS TODAY (Apr. 16, 2014, 11:40 AM), <http://www.today.com/news/support-pours-mom-accused-leaving-kids-hot-car-2D79536366> (Bishop, 24, told MSNBC's Tamron Hall that she launched the fundraising campaign after viewing Taylor's Facebook page and finding nothing but posts and pictures featuring Taylor's kids. "That convinced me she wasn't a bad mom, she just made a terrible mistake," Bishop said.).

152 *Id.*

153 *See How Metaphor Shapes Poverty Law*, *supra* note 21, at 245 ("[h]earing the tale of the Welfare Queen and believing that the government was privileging non-deserving loafers over hardworking people like them . . . reinforced the "undeserving" status of the recipient").

154 Flam, *supra* note 151; *see also* JC Sevcik, *Mother Arrested for Leaving Children in Car During Job Interview; Support Pours In*, UNITED PRESS INT'L (April 16, 2014, 7:06 PM), http://www.upi.com/Top_News/US/2014/04/16/Mother-arrested-for-leaving-children-in-car-during-job-interview-support-pours-in/6941397686901. Her lawyer also noted that "[t]his is Taylor's first criminal offense." *Id.*

willingness to submit to the regulatory decisions of the state Prosecutor's Office. She initially agreed to a plea bargain where charges would be dropped if she completed parenting classes, a substance abuse program, and put \$40,000 [of the money raised for her] into a trust fund for the children's college education.¹⁵⁵ Taylor's actions sparked considerable controversy after she completed all of the other requirements but opted not to make the financial contributions to the trust.¹⁵⁶ In an interview she explained that she didn't feel comfortable with the terms of the trust fund, since her children would only be allowed to access the money if they attended college many years later.¹⁵⁷ Further, she explained, "I can move the money over and put it into place, but if it doesn't take care of the children [now], it's futile."¹⁵⁸ She also stated, "[i]t would lock them out of their money if they didn't go to college."¹⁵⁹ Taylor was expected to make decisions based on others' middle-class notions of what was right for her children rather than being allowed to determine how to fix her current situation, which remained very fragile. Taylor reneged on the agreement and made a decision to retain autonomy and control of her finances in order to stabilize her life in the moment, rather than lock them up for an uncertain future.

It is unclear why Taylor consented to the terms of the agreement in the first place. There are indications that she might not have fully understood the limitations of the agreement or had communicated her reluctance to her attorney who may have been unresponsive to her concerns and pressured her to comply.¹⁶⁰ Tensions soon erupted into a very public battle between Taylor and her attorney about whether he had properly represented her interests in this regard.¹⁶¹ However, there is no question that the funds were

155 Kate McDonough, *Shanesha Taylor's Plea Deal Revoked: Arizona Mother Of Three Heads Back to Trial*, SALON (Nov. 7, 2014, 8:46 AM), http://www.salon.com/2014/11/07/shanesha_taylor_plea_deal_revoked_arizona_mother_of_three_heads_back_to_trial/.

156 Kate Bieri, *Shanesha Taylor Explains Decision to not Fund Trusts*, AZ CENTRAL (Nov. 6, 2014), <http://www.azcentral.com/story/news/local/scottsdale/2014/11/06/shanesha-taylor-misses-deadline-abrk/18585269/>.

157 See McDonough, *supra* note 155.

158 See *id.*

159 See *id.*

160 See B. Cayenne Bird, *Good for Shanesha Taylor For Standing Up to Co. Atty. Bill Montgomery Trying to Seize Her Donations*, DAILY KOS (Nov. 17, 2014), <http://www.dailykos.com/story/2014/11/17/1345430/-Good-for-Shanesha-Taylor-for-standing-up-to-Co-Atty-Bill-Montgomery-trying-to-seize-her-donations#> (according to a statement attributed to Taylor, she stated that, "My mind was not changed about the plea deal. I agreed to the terms of the deal (on the poor recommendation of my attorney) prior to all the terms of the deal being released to me because I foolishly trusted him. The final negotiations were not completed until September. I expressed my concerns with many of the unreasonable details since the negotiations began in July, long after the donors gave me the funds. My concerns and objections were not acknowledged by anyone. I continued to hold my ground on this with my lawyer Benjamin Taylor during the October hearings but I was steamrolled by all involved who made the 'agreement' to lock me out of funds I need to care for my children. The order then was that I had to accept this deal or face the maximum prosecution even though I was cleared of all charges and had the children in my custody. I was told 'you have no choice but to accept this freezing of your donated money for 16 years and only if your kids go to college then, or else we take your kids away from you and send you to prison.'").

161 Ms. Taylor asserted that, "I have been informing my attorney of my concerns the entire time, my concerns have not be addressed, so now here it is where I come to a place where I say to my attorney; I am having a problem with some of the things that you are doing." Fox News 10 Staff,

raised for her alone to determine their best use, and not in anticipation of any contingent criminal plea arrangement. Joyce Vogt, probably the largest single donor to the campaign, a woman who evidently rallied her church to put up the bail and make donations for Taylor said, "I have no regrets in donating to Shaneshia Taylor. I did this as a gift to her, to get her back on her feet . . . There were no strings . . . no expectations . . . no conditions." Vogt went on to assert:

I question the tactics the State is using, insisting that she trade the financial freedom that donors around the world gifted to her for freedom from prosecution for these charges. It seems like a pretty unfair trade that places her back in the financial position that she was in when all this started. It doesn't seem right to me to do that.¹⁶²

Vogt may well be correct on that point. Absent procuring Taylor's expressed agreement, there may have been no way to insist, under the law, that her donations be allocated to satisfy a plea in the criminal case. Nevertheless, the state was in the position to coerce such a deal since it held the threat of incarceration and permanent removal of her children over her head. Whether she did not fully understand the agreement or ultimately decided she could not comply, her actions triggered a backlash.

Taylor's decision unleashed not only outrage by the Prosecutor's Office but other people as well. Incredibly, heading up her list of public detractors was her lawyer, Benjamin Taylor, with whom prosecutors had cut the deal. As soon as the agreement fell through, he asked the court to allow him to withdraw as her counsel, and then publicly addressed the media.¹⁶³ He asserted, "[w]e did our best to represent Ms. Taylor; we got her children back, we got her the deal of a lifetime, which allowed her to get rid of 2 class 3 felonies, and we are proud of that."¹⁶⁴ Whether you agree with Taylor's decision to reject the deal or not, the narrative provided by her erstwhile lawyer served to frame the public perception of her as foolish, greedy, and dismissive of the needs of her children. Other pundits weighed in on Taylor's public shaming and the Internet was ablaze with vitriol and judgment about her motivations.¹⁶⁵ Yet no one focused on her scrupulous attention to the other parts of the agreement directed at regaining custody of her children. Apart from the dispute about the money, Taylor was cleared by the child protective agency itself and met all the requirements of court-

Shaneshia Taylor's Attorney Files to Withdraw Amid Deal Problems, FOX10 PHOENIX.COM (Nov. 6, 2014, 4:01 PM), <http://ktxh.membercenter.worldnow.com/story/27291916/2014/11/05/county-attorney-warns-shaneshia-taylor-about-deal>.

¹⁶² See Bird, *supra* note 160.

¹⁶³ See Fox News 10 Staff, *supra* note 161.

¹⁶⁴ See *id.*

¹⁶⁵ See, e.g., Laurie Roberts, *Shame on You Shaneshia*, THE ARIZ. REPUBLIC (Nov. 19, 2014, 12:38 PM), <http://www.azcentral.com/story/laurieroberts/2014/11/19/shaneshia-taylor-blows-second-chance/19280133/> (Roberts opines, "[s]he was, we were told, the face of poverty: a single mother who had fallen on hard times and had no choice but to endanger her little children. After hearing her tale of woe, kind-hearted people offered their hard-earned cash to give Taylor a hand up. And were repaid with a slap across the face. . . I'm sure the people who handed over their money are just thrilled to learn that it may have gone to finish Taylor's boyfriend's rap video.").

mandated classes, counseling, persistent drug testing, and more.¹⁶⁶ According to Arizona journalist B. Cayenne Bird, who followed the case from the beginning, these requirements “took up almost all her time for 20 weeks, in addition to the \$3,600 she had to pay in [testing] fees and transportation costs.”¹⁶⁷ Despite satisfying all of these obligations, her character was nevertheless being called into question. Taylor, on the defensive, responded that she wasn’t living an extravagant lifestyle in taking her children out to eat at places like McDonald’s and Chuck E. Cheese’s.¹⁶⁸ Taylor tried to fight back, insisting that she had paid rent a year in advance for an apartment and was looking for a decent full-time job.

I just want [the donors] to know that I am who they thought I was, I am still the person still trying to do my best by my children . . . I am not a lazy bum sitting on my butt, sitting on the couch every day, I am not someone who is just sitting up, living off what was given to me. I am using effectively what was given to me.¹⁶⁹

Sadly, as her case played out, predictable stereotypes fueled by rumors and innuendo were bandied about regarding Taylor’s use of her resources.¹⁷⁰ All of these critiques were intended to paint her in a negative light—the public personification of the Welfare Queen construct.

These events played out in public with a pending criminal case looming in the background. With the notable exception of the original organizers, little of the criticism appeared to be directed at the Prosecutor’s Office for insisting on the right to usurp the use of Taylor’s donations to

¹⁶⁶ See Bird, *supra* note 160.

¹⁶⁷ *Id.*

¹⁶⁸ *Hot-Car Mom Shanesha Taylor Hasn’t Put Donations Into Trust Fund*, NBC NEWS, (Nov. 7, 2014), <http://www.nbcnews.com/storyline/hot-cars-and-kids/hot-car-mom-shanesha-taylor-hasnt-put-donations-trust-fund-n243361>; see also Bird, *supra* note 160 (constant surveillance forced Taylor into a defensive posture about how she was spending her own money. “I was not allowed to visit my children for two months which meant that my family had to obtain expensive child care. I owed them for expenditures, back car payments, but I did set up a house, paying first, last, deposit and one year’s rent (\$14522.45). Mandated court classes/counseling have cost me \$3,600 plus childcare. I bought clothing, food for 20 weeks for the four of us and some modest furniture needed to set up my household. I have paid utilities for four months and need to have adequate amounts in reserve. If I lock myself out of what I have left, I will be back to living in my car in a matter of months. I am off government assistance so it is necessary for me to be careful with every dime.”).

¹⁶⁹ Fox Ten News Staff, *County Attorney Warns Shanesha Taylor About Deal*, FOX TEN (Nov. 5, 2015), <http://www.my13la.com/story/27291916/2014/11/05/county-attorney-warns-shanesha-taylor-about-deal#>.

¹⁷⁰ Prosecutors publicized her budget to the media, claiming that Taylor has spent about \$4,100 per month, including more than \$1,000 in “non-essential” items such as cable TV, clothing, and dining. Accusations included the most incendiary and racially coded charge: that she was spending money on her boyfriend’s “rap” album (a charge that she vehemently denied). See, e.g., *Dr. Phil: She Left Her Babies Alone in a Car: Criminal or Mom Misunderstood?*, (CBS television broadcast May 21, 2015). Taylor took to the airwaves in defense of herself from charges that she misused funds and missed an opportunity to settle the case. In a shocking display of contempt for Taylor, the host invited a number of guests including, incredibly, Taylor’s lawyer himself (who obtained a confidentiality waiver) to challenge her character. Ironically, the only people who came to her defense were the ones who raised the money on her behalf; see also Roberts, *supra* note 165 (“I’m sure the people who handed over their money are just thrilled to learn that it may have gone to finish Taylor’s boyfriend’s rap video”).

settle the criminal case. Its actions could reasonably be perceived as paternalism at best and prosecutorial overreach at worst, especially since her financial resources had no bearing on whether she should be criminally culpable for her alleged negligent acts against her children. Moreover, no one questioned whether the state can or should determine that a college fund is the only appropriate use of her resources rather than defer to a mother's understanding of her own circumstances. If Taylor had been a parent with resources, support, and autonomy, she would likely never have been in that unfortunate predicament to begin with. As the case unfolded in the courts and the media, Taylor's status as a poor black mother subjected her to a high degree of scrutiny and public scorn for her decisionmaking, and ultimately, criminalization. Within that coercive context, her unspoken transgression was challenging the state, her lawyer, and pundits of all types who usurped her agency to decide on the best course forward, even after she demonstrated her fitness to parent.

Ultimately, we should ask what was gained by insisting on criminal penalties for Shaneshia Taylor in this case. We might also do well to ponder what was lost. At the outset, Maricopa County prosecutor Bill Montgomery vigorously asserted that, in bringing this case, he was looking out for the interests of Taylor's children¹⁷¹—a concern that may have seemed reasonable because of extensive media coverage given to deaths of children in hot cars at that time. But, as the case proceeded, Montgomery expressed specific frustration about Taylor's unwillingness to settle the criminal case on his terms.¹⁷² Taylor ultimately accepted a plea to one count of a child abuse felony¹⁷³ and other conditions, including a requirement that she attend parenting classes, participate in a program for domestic violence offenders, and be subject to a period of eighteen years of state probation.¹⁷⁴ The sentencing judge, Maricopa County Superior Court Commissioner Jeffrey Rueter, said that he could not excuse Taylor's "criminally poor judgment."¹⁷⁵ In setting an unusually long period of probation, the court required her to live under the surveillance of the government until her children are *adults*—sending the unmistakable message that she can no longer be trusted to parent her own children without the intervention of the criminal justice system.¹⁷⁶ In light of the fact that the state child protective agency had already seen fit to return Taylor's children to her, the Judge's

171 Bob McClay, *Child Abuse Charges Against Unemployed Mom Will Go Forward*, KTAR NEWS (April 2, 2014), <http://ktar.com/22/1719463/Child-abuse-charges-against-unemployed-mom-will-go-forward> ("I respect the fact that people want to be heard on what they think should occur in this case, but I'll point out that not a single communication that has come into this office, as of yet, has at all mentioned the position that those two young children were put in").

172 See Fox News 10 Staff, *supra* note 161.

173 AZ Rev. Stat. § 13-3623(B)(3).

174 Sarah Jarvis, *Shaneshia Taylor Sentenced to 18 Years Probation*, THE ARIZ. REPUBLIC (May 15, 2015, 2:20 PM), <http://www.azcentral.com/story/news/local/scottsdale/2015/05/15/shaneshia-taylor-sentenced-friday-abrk/27365949/>.

175 See *id.* ("Superior Court Commissioner Jeffrey Rueter said he considered Taylor's decision to leave her children in the car an act that was influenced by economic desperation . . . Rueter noted that Taylor complied with the terms laid out by the Department of Child Safety . . . [but] said she ultimately used 'criminally poor judgment.'").

176 See *id.* ("The lengthy probation sentence was handed down to ensure that Taylor's children would be adults when she completed the terms.").

decision seems unnecessarily harsh and punitive and serves more as a degradation ceremony than a remedy for a continuing problem.

One could argue that the broader interests of Taylor's children should also have factored into the final disposition of the case, as many of the requirements of the sentence will burden the entire family for years to come. Scholars have noted that "virtually every felony conviction carries with it a life sentence" through the impact of collateral consequences, such as restrictions on employment, housing, disenfranchisement, public benefits, educational loans, and other obstacles.¹⁷⁷ These barriers to basic necessities and rights will continue to punish Taylor, and thus her dependents, well beyond the imposition of her criminal sentence. As such, the dynamic of criminalizing mothers redounds to the detriment of children and also runs counter to the stated goal of the Prosecutor's Office, which is to protect the children from harm. To this point, studies have also shown that a criminal conviction diminishes a person's earning capacity and their children's over the course of a lifetime.¹⁷⁸ Moreover, in the age of neoliberalism, the very definition of collateral consequences is expanding. For instance, the actual cost of criminal justice involvement is now, more often than not, borne by the defendant directly. This occurs by requiring that the defendant pay for the operation of probation, parole, and other, sometimes unrelated, court costs, euphemistically termed "user fees."¹⁷⁹ In this case, in addition to other obligations, Taylor will be required to pay sixty-five dollars per month to offset the cost of her probation for the entire period, which will total more than \$14,000 over the course of eighteen years. For defendants generally, this system precipitates an ongoing progression of mounting debt, where failure to pay can result in violations and re-incarceration. Some have referred to this dynamic as the return of "debtor's prisons" since criminal defendants are the people least likely to be able to pay this "carceral debt" consistently over time.¹⁸⁰ Thus, in this context, important questions about the efficacy of criminalizing black mothers have been lost in the haze of judgment and recriminations about the life choices of Debra Harrell, Tanya McDowell, Shanisha Taylor, and other women like them. The focus on punishing these women obscures the greater problems that criminal justice involvement creates for them and for

177 See Deborah N. Archer & Kele S. Williams, *Making America "The Land of Second Chances": Restoring Socioeconomic Rights for Ex-Offenders*, 30 N.Y.U. REV. L. & SOC. CHANGE 527 (2006); see also *Shadow Citizens*, *supra* note 6, at 123.

178 WESTERN & PETIT, *supra* note 138, at 21 ("[a]s a new generation of children are touched by the incarceration of a parent, and especially as those children feel the impact of that incarceration in their family incomes and their educational success, their prospects for upward economic mobility become significantly dimmer").

179 Criminal justice related debts are levied on offenders in three primary ways: (1) fines levied to punish the offender, (2) penalties levied for restitution to victims, and (3) assessments with the goal of public cost-recovery. See generally Kirsten D. Levingston & Vicki Turetsky, *Debtors' Prison: Prisoners' Accumulation of Debt as a Barrier to Reentry*, 41 CLEARINGHOUSE REV. J. POVERTY L. & POL'Y 187 (2007) (focusing on the accumulation of debt during a prison stay, the authors note that such policies are ill-advised and undermine the criminal justice system's rehabilitation goals).

180 See *Shadow Citizens*, *supra* note 6 (this article uses the term "carceral debt" to identify a variety of aggregated criminal justice penalties levied on prisoners, "user fees" assessed to recoup the operating costs of the justice system, and debt incurred during incarceration, including mounting child support obligations).

their children. In addition to triggering intrusive and unnecessary child welfare intervention, criminalizing black mothers rather than assisting them also traps many poor families in an intergenerational cycle of economic disadvantage.

V. CONCLUSION

In 1965, Daniel Patrick Moynihan, then a high-ranking official in the Department of Labor, published *The Negro Family: A Case for National Action*, which became known as the “Moynihan Report.”¹⁸¹ Though ostensibly about the high rate of black unemployment, he focused much of his attention on denigrating poor households headed by single black women—a family structure he likened to a “tangle of pathology” infecting black communities and promoting delinquency, drug use, and school failure in children.¹⁸² In so doing, he gave form to the emerging notion of welfare dependency as a decidedly black and female pathology, auguring the specter of the Welfare Queen. His report immediately provided the lynchpin for successful efforts to defund the social safety net through welfare reform, and conservative theorists continue to use it in order to give voice to victim-blaming theories of poverty.¹⁸³ Liberals too jumped on the bandwagon to claim Moynihan’s simplistic social science instead of embracing a more progressive and nuanced analysis of poverty.¹⁸⁴ Anthropologist Susan Greenbaum posits that liberals generally believe, “[i]f poverty is cultural, then it is curable in individuals through education and rehabilitation.”¹⁸⁵ With great insight she further suggests, “[e]xploring cultural causes also gave poverty researchers a way to join the neoliberal project of the 1980s, and avoid confronting the hard adversaries of corporate power whose drive to lower wages and taxes clashed with the

181 See U.S. DEP’T OF LABOR, OFFICE OF POLICY PLANNING & RESEARCH, *THE NEGRO FAMILY: THE CASE FOR NATIONAL ACTION* (1965) [hereinafter *The Moynihan Report*].

182 *Id.* at 29.

183 These theories tend to blame the poor for their own misfortune, and attribute poverty to non-normative family formation, defective character and/or reproductive choices. See, e.g., CHARLES MURRAY, *LOSING GROUND: AMERICAN SOCIAL POLICY, 1950–1980* (1984) (arguing that social welfare programs, as they have historically been implemented in the United States, tend to increase poverty rather than eliminate it by creating incentives that reward poor behavior); see also George Will, *What Patrick Moynihan Knew About the Importance of Two Parents*, WASH. POST (March 13, 2015), http://www.washingtonpost.com/opinions/what-patrick-moynihan-knew-about-the-importance-of-two-parents/2015/03/13/2cdf9bae-c9a4-11e4-aa1a-86135599fb0f_story.html (“[f]amily structure is the primary predictor of social outcomes, as Daniel Patrick Moynihan knew in 1965”); Daniel Straus, *Can’t Unring That Bell: Jeb Bush Says He’s A Fan Of Charles Murray’s Books*, TPM LIVEWIRE (Apr. 30, 2015, 6:00 PM), <http://talkingpointsmemo.com/livewire/jeb-bush-charles-murray-the-bell-curve> (citing the influence theorist Charles Murray continues to have on political conservatives).

184 See e.g., Nicholas Kristof, *When Liberals Blew It*, N.Y. TIMES (March 11, 2015), <http://www.nytimes.com/2015/03/12/opinion/when-liberals-blew-it.html> (“evidence is now overwhelming that family structure matters a great deal for low-income children of any color”); but see Herbert J. Gans, *The Moynihan Report And Its Aftermaths: A Critical Analysis*, 8 DU BOIS REV. 315 (2011) (offering numerous critiques on the methodology and conclusions of the original report).

185 Susan Greenbaum, *Bipartisan Poverty Shaming: The Moynihan Report at 50*, TALKPOVERTY.ORG (Jul. 8, 2015), <http://www.commondreams.org/views/2015/07/08/bipartisan-poverty-shaming-moynihan-report-50> (Greenbaum opines, “[w]e persist in viewing poverty as a personal failing, rather than as a breach of the social contract”).

needs of working families.”¹⁸⁶ Stated differently, liberals and conservatives both have engaged in attempts at social engineering, such as marriage promotion and anti-poverty programs, rather than a focus directly on the eradication of racism and economic exploitation via corporate hegemony, which negatively impacts working people living in any type of family formation.

The discourse that gave rise to the Welfare Queen construct is alive and well, but the use for which the trope is now deployed has shifted in the age of neoliberalism. On the fiftieth anniversary of *The Negro Family: A Case for National Action*, it stands as a tract that has now achieved iconic status, and continues to do its work of stigmatizing poor black mothers. It does so by depicting them, even in the post-welfare context, as responsible for their own misfortunes when attempting to survive both as workers and caregivers in the marginal world of low-wage employment. The enduring power of the Welfare Queen public identity continues to render them unworthy of support as workers because of perceived character defects, bad choices, or unmarried status. The significant difference in the age of neoliberalism, as opposed to the 1960s Great Society era, is that the burgeoning criminal justice state,¹⁸⁷ rather than a social safety net, serves as the default mechanism that is triggered when joblessness or parenting crises arise from poverty. This is true for the black population generally for whom criminalization is endemic, but it is especially so for black mothers. This dynamic is amply illustrated by the lives of the mothers whose experiences have informed this article. In the era of neoliberalism, we are faced with a new normal: the punitive logic of the carceral state has largely supplanted empathy and social welfare as important values that guide public policy in governance.

Stigmatizing rhetoric that has been so deftly deployed to demonize poor black mothers is experiencing resurgence in recent years. However, in an ironic twist, a much wider swath of the American electorate has been painted with what economist Paul Krugman has referred to as “[t]he Laziness Dogma.”¹⁸⁸ Krugman notes that, notwithstanding that Americans work longer hours than any of their counterparts in wealthy countries, a trope has coalesced in conservative political circles that insists that “a large number of Americans, white as well as black, are choosing not to work, because they can live lives of leisure thanks to government programs.”¹⁸⁹ This rhetoric, given voice in Mitt Romney’s infamous 47 percent remark,¹⁹⁰

¹⁸⁶ *Id.*

¹⁸⁷ See THE GROWTH OF INCARCERATION IN THE UNITED STATES: EXPLORING CAUSES AND CONSEQUENCES, *supra* note 7, *Overview* (“[a]fter decades of stability from the 1920s to the early 1970s, the rate of imprisonment in the United States more than quadrupled during the last four decades. The U.S. penal population of 2.2 million adults is by far the largest in the world. Just under one-quarter of the world’s prisoners are held in American prisons. The U.S. rate of incarceration, with nearly 1 out of every 100 adults in prison or jail, is 5 to 10 times higher than the rates in Western Europe and other democracies.”).

¹⁸⁸ See Paul Krugman, *The Laziness Dogma*, N.Y. TIMES (July 13, 2015), <http://www.nytimes.com/2015/07/13/opinion/paul-krugman-the-laziness-dogma.html>.

¹⁸⁹ *See id.*

¹⁹⁰ David Com, *Mitt Romney’s Incredible 47-Percent Denial: “Actually, I Didn’t Say That”*, MOTHER JONES (Jul. 29, 2013), <http://www.motherjones.com/mojo/2013/07/mitt-romney-47-percent->

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has resonance with many, even though changes in the economic structure result in an economy that no longer offers good jobs to ordinary workers.¹⁹¹ Nonetheless as history has shown, when economic facts don't persuade, one can always resort to blaming rhetoric in order to carry out the neoliberal agenda.

denial (“[t]here are 47 percent of the people who will vote for the president no matter what. All right, there are 47 percent who are with him, who are dependent upon government, who believe that they are victims, who believe the government has a responsibility to care for them, who believe that they are entitled to health care, to food, to housing, to you-name-it. That that’s an entitlement. And the government should give it to them. And they will vote for this president no matter what . . . These are people who pay no income tax . . . [M]y job is not to worry about those people. I’ll never convince them they should take personal responsibility and care for their lives.”).

191 Krugman, *supra* note 188 (Krugman notes that “[t]his happened to African-Americans first, as blue-collar jobs disappeared from inner cities, but has now become a much wider phenomenon thanks to soaring income inequality”).

