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POLITICAL-ECONOMIC ROOTS OF COERCION—SLAVERY, NEOLIBERALISM, AND THE RACIAL FAMILY POLICY LOGIC OF CHILD AND SOCIAL WELFARE

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The Article argues that at the core of the American neoliberal policy regime, of which child welfare is a critical part, lies an enduring raced family policy logic of two racially stratified standards: a punitive Black economic utility family standard and a supportive white domestic affection family standard, whose policy roots and practices trace back to slavery in the antebellum South. Historically and contemporaneously, state regulation of poor Black families has been shaped by, and in turn perpetuates, the Black economic utility standard that normalizes and places political value above all else on the promotion of labor by Black mothers outside of their homes in service of a racially-discriminatory market order. By doing so, the state devalues the affective, nurturing labor that Black mothers perform within their households and towards their children. Long followed in Southern local policy practices and led by the efforts of congressmen from the South, the Black economic utility standard is shown to have been formalized nationally within the neoliberal policy regime through a repurposing of overtly racial ideas into

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behavioral values of work and self-sufficiency that are enshrined in social and child welfare reforms. The Article suggests that the deployment of the Black economic utility standard by the neoliberal policy regime pathologizes poor Black women's childbearing and motherhood as economically irresponsible, obscures centuries-long structural inequalities and racial family coercion, and serves to perpetuate and justify Black family disruptions in colorblind ways.

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I. INTRODUCTION

Empirical research has amply documented the institutionalization of racial disproportionality and disparity in the child welfare system, as well as the disproportionate harm experienced by Black¹ children, families, and communities as a consequence of the system's practices.² The modern child welfare system's disruption, over-surveillance, and criminalization of the Black family has been embraced by the United States since the 1980s and is linked to the rise of neoliberalism—the political ideology that elevates free markets as critical to human wellbeing, characterized by private property rights, entrepreneurship, and free trade.³ As a policy regime,⁴ the neoliberal American state has been critiqued for the many unique ways in which it overly penalizes and coerces Black and Brown populations, produces racial marginality, and exercises a “racial authoritarianism” that has starkly limited the civic belonging of African Americans, in particular, after a period of democratic inclusion in the 1960s.⁵

¹ The Article uses the term “Black” as a heuristic device to denote African Americans as a specific racially-constructed group, whose members share an identifiable historical past and ongoing common experience. In contrast “white” is treated as a looser racial category and so uncapitalized.

² For a representative summary of this literature, see Aland J. Dettlaff et al., *It Is Not a Broken System, It Is a System that Needs to Be Broken: The upEND Movement to Abolish the Child Welfare System*, 14 J. PUB. CHILD WELFARE 500, 501–04 (2020) (discussing how the child welfare system disproportionately harms Black children and families).

³ DAVID HARVEY, A BRIEF HISTORY OF NEOLIBERALISM 2 (2007).

⁴ Policy regimes are specific governing arrangements designed to address policy problems, made up of three mutually-constitutive elements: ideas, institutional arrangements, and interests. See Peter J. May & Ashley E. Jochim, *Policy Regime Perspectives: Policies, Politics, and Governing*, 41 POL'Y STUDS. J. 426, 428 (2013).

⁵ On the neoliberal state's melding of penal sanction and welfare supervision into a cohesive mechanism for behavioral control of marginal, raced populations, see LOIC WACQUANT, PUNISHING THE POOR: THE NEOLIBERAL GOVERNMENT OF SOCIAL INSECURITY (2009) (analyzing the strong link between neoliberal penal policies and neoliberal social policies toward marginal communities). See also JOE SOSS, RICHARD C. FORDING & SANFORD F. SCHRAM, DISCIPLINING THE POOR: NEOLIBERAL PATERNALISM AND THE PERSISTENT POWER OF RACE (2011) (analyzing the ways in which governments achieve the cooperation and contributions of marginal populations in politically viable ways). On the linkage of child welfare to prisonfare, welfare retrenchment, and rise of workfare in the late twentieth century, see Dorothy E. Roberts, *Complicating the Triangle of Race, Class and State: The Insights of Black Feminists*, 37 ETHNIC & RACIAL STUDS. 1776 (2014) [hereinafter Roberts,

Black child welfare has followed a similar historical trajectory. The proportion of Black children in public child protection caseloads increased after World War II as the system moved away from open segregation and outright exclusion of Black people. However, it was also only in the late 1980s when both the total size of the foster care population and the share of Black children within it exploded, marking the durable shift that Dorothy Roberts seminally described in *Shattered Bonds* as one that “cement[ed] the child welfare system’s current relationship to Black Americans.”⁶ In later work, Roberts expressly placed the current system of child welfare within the larger political project of neoliberalism and highlighted the cumulative neoliberal reconfiguring of welfare, child welfare, and prison fare policies as commonly stigmatizing poor Black mothers and effecting their “systemic punishment” by “attributing social inequality to Black women’s childbearing.”⁷ In addition to racial bias as a cause for the disproportionate removal of Black children from their homes, Roberts has stressed the significance of *political* choices in public policy that approach the pressing social problem of (Black) “child poverty by investigating [and blaming] parents,” specifically Black mothers, rather than “tackling poverty’s structural roots.”⁸

This Article furthers Roberts’s critical political framework and offers a new conceptual framework focused on family-centered policy logics that I use to explain why and how the American state came to choose its current, punitive, child welfare approach that normalizes the widespread removal of Black children from their homes despite claims of colorblindness. More specifically, the Article argues that at the core of the American neoliberal policy regime, of which child welfare is a

Complicating the Triangle] (adding a focus on gender and experiences of Black women to Wacquant’s triangle of race, class, and state); Derek Kirton, *Neoliberalism, ‘Race’ and Child Welfare*, 6 CRITICAL & RADICAL SOC. WORK 311 (2018) (analyzing the significance of race and ethnicity in the relationship between neoliberalism and child welfare in the U.K.). On “racial authoritarianism” as a recurrent pattern in US democracy after periods of democratic expansion, see Vesla M. Weaver & Gwen Prowse, *Racial Authoritarianism in U.S. Democracy*, 369 SCIENCE 1176 (2020) (discussing the centrality of racial authoritarianism to American citizenship and governance in the 20th and early 21st centuries)

⁶ DOROTHY E. ROBERTS, *SHATTERED BONDS: THE COLOR OF CHILD WELFARE* 8 (2002).

⁷ Roberts, *Complicating the Triangle*, *supra* note 5, at 1776.

⁸ Dorothy E. Roberts, *Child Protection as Surveillance of African American Families*, 36 J. SOC. WELFARE & FAM. L. 426, 428 (2014).

critical part, lies an enduring raced family policy logic that has long permeated how Black and white families are disparately viewed (and treated) in public policy. The neoliberal policy logic of family is made up of two racially stratified standards: a punitive Black *economic utility* family standard and a supportive white *domestic affection* family standard, whose policy roots and practices trace back to slavery in the antebellum South. In previous work, I have shown how this bifurcated family policy logic was developed by the antebellum Southern state for Black and white families.⁹ Through the construction of racial family policy standards, Southern courts and legislatures engaged in the political project of thwarting abolitionist attacks by upholding racial slavery as a legitimate form of market liberalism and liberal democracy and elevating the white patriarchal family as the bulwark of white social and political hegemony.¹⁰ As discussed in this Article, historically and contemporaneously, state regulation of poor Black families is shaped by—and in turn perpetuates—the Black economic utility standard, which normalizes and places political value, above all else, on the promotion of labor by Black parents—particularly Black mothers—outside of their homes in service of a prevailing and racially discriminatory market order.¹¹ By doing so, the state devalues the affective, nurturing labor that Black mothers perform within their own households and towards their own children.¹² Long followed in Southern local policy practices and

⁹ Gwendoline M. Alphonso, *Naturalizing Affection, Securing Property: Family, Slavery, and the Courts in Antebellum South Carolina, 1830–1860*, STUDS. AM. POL. DEV. (forthcoming 2021) [hereinafter Alphonso, *Naturalizing Affection*].

¹⁰ *Id.*

¹¹ The Article focuses on Black mothers (to the exclusion of Black fathers) insofar as enslaved Black mothers were central to the legal and ideological formulation of Black economic utility as a family standard in the antebellum period. Additionally, the historical focus on Black mothers in the policy treatment of Black families as demonstrated here, highlights the centrality of race and gender as intersectional sites in the construction of racial subordination and, arguably, challenges the contemporary political discursive focus on endangered Black males as pivotal to Black family vulnerability. On the intersectional vulnerabilities of Black women as obscured by the discourse of endangered Black males, see Kimberlé W. Crenshaw, *From Private Violence to Mass Incarceration: The Intersectionality of Women, Race, and Social Control*, 59 UCLA L. REV. 1418, 1432, 1467–70 (2021).

¹² Dorothy Roberts alluded to a related logic when pointing to the racialized division of domestic labor into “spiritual” work expected by white women within their own homes and “menial” housework expected from Black

led by the efforts of congressmen from the South, the Black economic utility standard has been formalized at the national level within the neoliberal policy regime through a repurposing of overtly racial ideas into behavioral values of work and self-sufficiency that are enshrined in social and child welfare reforms. As a consequence of these policy reforms, poor Black mothers receive even less cash assistance than before and are increasingly, and with greater impunity, subjected to racial bias and disparate state intervention and sanctions. In turn, the discriminatory treatment of Black mothers significantly increases the risk of Black children's poverty, prompting increased assessments of their maltreatment, surveillance, and family removals. The deployment of the Black economic utility standard by the neoliberal policy regime pathologizes poor Black women's childbearing and motherhood as *economically* irresponsible in addition to being morally transgressive, obscuring centuries-long structural inequalities and justifying Black family disruptions in colorblind ways.

The following narrative will first discuss the Southern political-economic origins of racial family policy logic, in particular the coercive Black economic utility family standard, as developed by the antebellum slave state to apply to enslaved Black mothers. Second, it will demonstrate how and in what ways this standard informed the discriminatory policy treatment of Black mothers and their families throughout the twentieth century. In so doing, this section identifies and describes the political and economic conditions under which this raced family standard came to be formalized and upheld by the neoliberal welfare and child welfare policy reforms of the 1990s. By identifying the Southern political-economic roots of Black mother-family labor coercion, highlighting its foundations in slavery and its intensifying pernicious effects on poor Black families under the neoliberal policy regime, this Article

female domestic workers, whose "spiritual" labor in their own households was consistently devalued by social policies designed to coerce Black women into performing menial household labor for others. Dorothy Roberts, *Welfare's Ban on Poor Motherhood*, in *WHOSE WELFARE?* 158, 158–63 (Gwendolyn Mink ed., 1997). For a comprehensive history of coercion of Black women to supply cheap labor in service of white economic interests and racially stratified economic orders, see JACQUELINE JONES, *LABOR OF LOVE, LABOR OF SORROW: BLACK WOMEN, WORK, AND THE FAMILY FROM SLAVERY TO THE PRESENT* (1985) (discussing the history of the commodification of Black women's labor in service of white economic interests).

highlights the urgent need for systemic reckoning and overhaul, underscoring calls to refocus policy attention away from punitive to redistributive social policies.

Much has been written on racial family policy frames such as “welfare queen” single mothers and “deadbeat” fathers—racially-coded dog whistles that include stigmatizing Black childbearing and sexuality—and the embrace of racial family imagery in twentieth-century neoliberal political ideology.¹³ Missed in much of this discussion, however, is the enduring institutional significance of *family*, as a deliberate political racial institution constructed and maintained by the state, that perpetuates racial disparities and subordinates Black citizenship.¹⁴ It is not only in the direct pathologizing of poor, Black mothers and families that the neoliberal state produces Black marginality, but also, more indirectly, in the kinds of racially disparate family coercions and discriminatory logics of motherhood and child wellbeing that the state *normalizes* and pursues through policies.

Several groundbreaking works identify deliberate political linkages between race, class, and civic marginality in

¹³ On racial policy frames, see DOROTHY E. ROBERTS, *KILLING THE BLACK BODY: RACE, REPRODUCTION AND THE MEANING OF LIBERTY* 15–21 (1997) [hereinafter ROBERTS, *KILLING THE BLACK BODY*] (discussing the pervasive stereotypes of the “unwed Black mother,” the “Welfare Queen,” and the Black child “incapable of contributing anything to society”). See also WACQUANT, *supra* note 5, at 50. See generally DEBORAH E. WARD, *THE WHITE WELFARE STATE: THE RACIALIZATION OF US WELFARE POLICY* (2005) (analyzing how the institutionalization of race influenced and defined the American welfare system at the national level); KENNETH J. NEUBECK & NOEL A. CAZENAVE, *WELFARE RACISM: PLAYING THE RACE CARD AGAINST AMERICA’S POOR* (2001) (defining welfare racism and its effects on all poverty-stricken families). On “Dog Whistle Politics,” see IAN HANEY LÓPEZ, *DOG WHISTLE POLITICS: HOW CODED RACIAL APPEALS HAVE REINVENTED RACISM AND WRECKED THE MIDDLE CLASS* (2014) (defining racial dog whistles as coded racial talk that is inaudible and easily denied on the one hand, and the cause of strong reactions on the other hand). On racial family-based assumptions in neoliberalism, see Tamara Metz, Obergefell, *Marriage, and the Neoliberal Politics of Care*, in *STATING THE FAMILY: NEW DIRECTIONS IN THE STUDY OF AMERICAN POLITICS* 45–71 (Julie Novkov & Carol Nackenoff eds., 2020) (arguing that the institution of marriage has obscured the consequences of the welfare state).

¹⁴ As a notable exception to the overall overlook of family, see Patricia Hill Collins, *It’s All in the Family: Intersections of Gender, Race, and Nation*, 13 *HYPATIA* 62 (1998) (arguing that the traditional family acts as an exemplar of intersectionality in the United States).

neoliberal discourse and policy,¹⁵ and Dorothy Roberts has significantly expanded this framework to include gender within that three-fold nexus.¹⁶ Yet, the political construction and significance of *family* as an enduring prism that absorbs and converges multiple dimensions of coercion in the “matrix of oppression” of Black and Brown Americans is largely overlooked.¹⁷ It is to this theoretical end that I direct this Article.

II. ECONOMIC UTILITY AND BLACK FAMILIES DURING SLAVERY

A. Legal and Ideological Foundations of Black Family Utility

In the antebellum South, the enslavement of Black people was upheld not as a pre-modern system of labor but as a form of modern market liberalism.¹⁸ In contrast to the Revolutionary era when racial slavery was accommodated as a necessary evil, from the 1830s through the Civil War, it was defended as a positive good—as a legitimate property regime integral to a white male’s right to accumulate property for the care and provision of his family. South Carolinian slaveholder Edmund Bellinger speaking in defense of slavery in 1835 gave voice to the prevailing Southern view, stating:

[N]egro slavery . . . is our property, like other property, bequeathed to us by our parents, or earned by the sweat or our brow—by the hard efforts of honest industry . . . no authority on earth has the right, nor . . . the power, to strip us of that property or to crush the hope that we will be enabled to leave some small pittance to our children.¹⁹

In the three decades before the Civil War, the goal of providing for one’s children came to be viewed as part of natural

¹⁵ WACQUANT, *supra* note 5; SOSS, FORDING & SCHRAM, *supra* note 5.

¹⁶ Roberts, *Complicating the Triangle of Race*, *supra* note 5.

¹⁷ On “matrix of domination,” see PATRICIA HILL COLLINS, *BLACK FEMINIST THOUGHT: KNOWLEDGE, CONSCIOUSNESS, AND THE POLITICS OF EMPOWERMENT* (2d ed. 2010) (referring to the organized intersection of oppression and its effects on Black women in particular).

¹⁸ *SLAVERY’S CAPITALISM: A NEW HISTORY OF AMERICAN ECONOMIC DEVELOPMENT* (Sven Beckert & Seth Rockman eds., 2016) (arguing that American slavery was part of the national capitalist system and its evolution).

¹⁹ EDMUND BELLINGER, *A SPEECH ON THE SUBJECT OF SLAVERY* 14 (1835).

paternal feeling, a form of domestic affection that was increasingly valued within the emerging family ideology of “domesticity” for white families.²⁰ When deciding family cases involving diverse subjects such as gifts, inheritance, wills, estates, alimony, property, and contracts, antebellum Southern courts constructed a new family standard to characterize and assess white family relations, centered on establishing affection as a natural norm practiced by white male slaveowners in their roles as fathers, husbands, and especially masters. In so doing the courts invoked the ideal of domestic affection to uphold the statutory regime of racial slavery as a benign, paternalist, familial system, elevating the white patriarchal family as deserving of special legal protections whilst condoning the brutality of the system by assembling the legal fiction of masterly, paternal affection towards enslaved workers. In this way, courts and legislatures engaged in the deliberate political project of constructing the Southern market order of racial human enslavement as a benign, familial enterprise in contrast to the abolitionist rendering of slavery as a brutal, inhumane system.²¹

At the core of the legal regime of racial slavery lay the construction of Black economic utility: the commodification and quantification of the market value of an enslaved Black person. Commodification of human beings into quantifiable economic value or price—what historian Walter Johnson has seminally called the “chattel principle”—was the very being of slavery.²² For the enslaved, their economic value was inextricably tied to their bodies and their labor, which had distinct racial and gendered implications in the case of Black women. Unlike white

²⁰ On the rise of affection-based domesticity in nineteenth-century United States, see STEPHANIE COONTZ, *MARRIAGE, A HISTORY: FROM OBEDIENCE TO INTIMACY OR HOW LOVE CONQUERED MARRIAGE* 164–65 (2005).

²¹ Alphonso, *Naturalizing Affection*, *supra* note 9. See also LACY FORD, *DELIVER US FROM EVIL: THE SLAVERY QUESTION IN THE OLD SOUTH* (2009).

²² WALTER JOHNSON, *SOUL BY SOUL: LIFE INSIDE THE ANTEBELLUM SLAVE MARKET* 19 (1999) (quoting J.W.C. Pennington, *The Fugitive Blacksmith: Or Events in the Life of James W.C. Pennington* iv–vii (1849)). For an excellent example of the emerging new economic history of American slavery that incorporates the voices of enslaved people to detail the commodification of enslaved people through every phase of their lives, see DIANA RAMEY BERRY, *THE PRICE OF THEIR POUND OF FLESH: THE VALUE OF THE ENSLAVED, FROM WOMB TO GRAVE, IN THE BUILDING OF A NATION* (2017) (demonstrating, through the perspective of enslaved persons, how commodification touched every aspect of an enslaved person’s life).

women, whose child-rearing and contributions within their households were seen as integral to the reproduction of republican virtue and civic wellbeing,²³ Black women, free or enslaved, were only valued by the state for their economic productivity *outside* of their households. In colonial Virginia for instance, Black women were legally defined as “tithable” (taxable) labor. Whereas white women laborers were exempt from taxes, “the tax on an African woman had to be paid by her master (if she was a slave or servant), by her husband (if she was free and married), or by herself (if she was [free and] single).”²⁴ The law thus placed a public economic value on the labor of Black women alone, burdening only free Black households with levies on wives and daughters that impeded them from advancing economically and/or purchasing the freedom of loved ones.

The standard of Black economic utility was also, fundamentally, a family standard that centered on the body of the enslaved Black woman, whose reproductive labor was ascribed with distinctive economic value.²⁵ The practiced legal doctrine of *partus sequitur ventrem* (the legal status of the offspring, as free or enslaved, follows the condition of the mother) rendered enslaved Black childbearing as a source of wealth

²³ Linda K. Kerber, *The Republican Mother: Women and the Enlightenment—An American Perspective*, 28 AM. Q. 187 (1976) (arguing that the Republican Mother in American culture defined how women might influence civic culture and the state).

²⁴ TERA W. HUNTER, BOUND IN WEDLOCK: SLAVE AND FREE BLACK MARRIAGE IN THE NINETEENTH CENTURY 9 (2017).

²⁵ Enslaved women’s financial value increased during childbearing years. See Diana Ramey Berry, “We’m Fus’ Rate Bargain”: *Value, Labor, and Price in a Georgia Slave Community*, in THE CHATTEL PRINCIPLE: INTERNAL SLAVE TRADES IN THE AMERICAS, 1808–1888, at 55–71 (Walter Johnson ed., 2004) (demonstrating that enslaved women understood the monetary value assigned to their reproductivity and used this knowledge to negotiate their sale in order to maintain family ties). On enslaved women’s reproductive labor and its centrality within Atlantic Slavery, see JENNIFER L. MORGAN, LABORING WOMEN: REPRODUCTION AND GENDER IN NEW WORLD SLAVERY (2004) (using the commodification of enslaved women’s reproductive identities as the operative framework for comparing slavery in the Caribbean and in the American South); Jennifer L. Morgan, *Partus Sequitur Ventrem: Law, Race, and Reproduction in Colonial Slavery*, 22 SMALL AXE 1 (2018) (arguing that American slavery relied on a reproductive logic inseparable from race). More generally, on the social value of enslaved women wholly in terms of productive and reproductive labor for their enslavers, and their attempt to subvert that dictum upon emancipation, see TERA HUNTER, TO ’JOY MY FREEDOM 2–3 (1997); Jones, *supra* note 12, at 4, 13–29.

generation, commodifying enslaved children and divesting them of their humanity and familial belonging. Courts were apt to observe that, “our law . . . which declares that the issue shall follow the condition of the mother . . . applies to the young of slaves, because as objects of property, they stand on the same footing as other animals, which are assets to be administered . . . by the owner.”²⁶ Black affective and physical familial bonds between enslaved children and their mothers were viewed wholly in terms of how much or little these bonds enhanced their productive and economic value for the benefit of their enslaver. As opined by a South Carolina court of equity, “the issue of a female slave would often be valueless but for her exertions and sufferings, all of which are at the risk of her master or owner.” It was the master who was held to have “incur[red] the risk” and was thus “reasonably entitled to the gain” in terms of the value and labor of the enslaved Black child.²⁷

The Black economic utility standard steadily rose to preeminence in the three decades leading up to the Civil War in 1861. Through a variety of commercial, accounting, and management techniques increasingly devised and sanctioned by law—such as using enslaved people as collateral for mortgages, as speculative futures, as the means for credit, or as payment of debt—the commodification of Black personhood into economic value progressed with increasing sophistication.²⁸ The cotton boom of the nineteenth century resulted in a 10,000% increase in cotton, propelling the United States to the top of the international market and generating an ever-increasing demand for enslaved labor in the industrializing cotton South.²⁹ Given

²⁶ *M'Vaughters v. Elder*, 4 S.C.L. (2 Brev.) 307 (1809).

²⁷ *Gayle v. Cunningham*, 5 S.C. Eq. (Harp. Eq.) 124, 128 (1824).

²⁸ Bonnie Martin, *Neighbor-to-Neighbor Capitalism: Local Credit Networks and the Mortgaging of Slaves*, in *SLAVERY'S CAPITALISM*, *supra* note 18, at 107 (using neighbor-to-neighbor trade in slaves to illustrate slavery as a financial project of ordinary people); Joshua Rothman, *The Contours of Cotton Capitalism: Speculation, Slavery, and Economic Panic in Mississippi, 1832–1841*, in *SLAVERY'S CAPITALISM*, *supra* note 18, at 122 (arguing that slaves and slavery were both laborers and assets for a growing cotton capitalism); and Kathryn Boodry, *August Belmont and the World the Slaves Made*, in *SLAVERY'S CAPITALISM*, *supra* note 18, at 163 (arguing that the most important financial transactions in the history of slavery involved the transatlantic marketing of agricultural commodities produced by enslaved people under violent coercion).

²⁹ Edward E. Baptist, *Toward a Political Economy of Slave Labor: Hands, Whipping-Machines, and Modern Power*, in *SLAVERY'S CAPITALISM*, *supra* note 18, at 31, 40–41.

that the transatlantic slave trade was abolished in 1808, this meant that the very vitality and propagation of racial slavery rested on natural, encouraged, or coerced reproduction by Black enslaved women within America. In the antebellum period, “breeding” of enslaved women came to be viewed as a practice with the express purpose of wealth creation and profit. Speaking before the Virginia legislature in 1831, state representative James Gholson emphatically defended the practice of breeding for profit, stating that the “value of [breeding] property justifies the expense.”³⁰ He continued, “I do not hesitate to say that *in its increase* consists much of our wealth.”³¹ By the 1830s, the purchase of a “breeding” enslaved woman implied economic investment that could potentially amplify over time.³² A Black enslaved woman’s monetary value increasingly came to be linked to her fertility, and traders, buyers, and sellers alike would make projections based on a woman’s “increase,” the same term they used for flocks and herds.³³

The policy standard of Black economic utility legitimized and upheld coercion at the most intimate level, accommodating practices such as forced copulation and wet-nursing as well as widespread sexual exploitation of enslaved women by their enslavers.³⁴ It was during the antebellum period of slavery’s capitalization that reproduction, sexual intercourse, childbearing and child nurturing, fundamental aspects of intimate family behavior constructed as inherently personal, affection-based, and familial in the context of white families, began to be seen by state policy wholly in terms of economic value in the case of enslaved Black people.³⁵

³⁰ BERRY, *supra* note 22, at 11.

³¹ *Id.* (emphasis added) (original emphasis omitted).

³² *Id.* at 19.

³³ *Id.* at 11–12.

³⁴ *Id.* at 78–83. For wide-ranging discussions on the rhetoric, experiences, memories, and contested historiography on the topic, see GREGORY D. SMITHERS, *SLAVE BREEDING: SEX, VIOLENCE, AND MEMORY IN AFRICAN AMERICAN HISTORY* (2012). See also NED SUBLETTE & CONSTANCE SUBLETTE, *THE AMERICAN SLAVE COAST—A HISTORY OF THE SLAVE-BREEDING INDUSTRY* (2016). On coerced wet-nursing, see Emily West & R.J. Knight, *Mothers’ Milk: Slavery, Wet-Nursing, and Black and White Women in the Antebellum South*, 83 *J.S. HIST.* 37 (2017).

³⁵ STEPHANIE E. JONES-ROGERS, *THEY WERE HER PROPERTY: WHITE WOMEN AS SLAVE OWNERS IN THE AMERICAN SOUTH 20–21* (2019). For differences in the financial valuation of “breeding” women in the antebellum

B. State Practices of Black Family Fragmentation & Coercion

Using the Black economic utility standard, antebellum courts and legislatures upheld widespread fragmentation of Black families. In the decades before the Civil War, slave traders made two-thirds of a million interstate sales, of which twenty-five percent involved the destruction of a marriage and fifty percent destroyed a nuclear Black family—many of these separating children under the age of thirteen from their parents.³⁶ Whether executing estates, disbursing inheritances, or in recuperating debts, creditors, executors, and public officials were required to break apart enslaved families as necessary in light of the fact that “slaves sell best singly,” and officials who failed to act in this way were often held personally liable for failing their clients.³⁷ Similarly, in deciding bequests of enslaved women, courts were steadfast in upholding the principle that, unless specified by the testator, “a child does not pass under the bequest of the mother,”³⁸ not sparing even enslaved infants “to whom the care of the mother may still be necessary,” holding therein that although “considerations of humanity might be of weight in a doubtful case . . . it is little that legal decisions can do to enforce humanity.”³⁹

Free Black families were similarly increasingly fragmented in the antebellum era. Free Black family members, many of whom had been free for all of their lives, were now under greater threat of kidnapping and enslavement and increasingly precluded from buying the freedom of enslaved kin.⁴⁰ In the attempt to reduce the population of free Blacks, seen as moral and physical threats to the institution of racial slavery, states in the 1850s also compelled previously freed slaves to leave the state. Faced with the unbearable prospect of being forever separated from their children, husbands, wives, and kin, some

period, after the abolition of the African slave trade in 1808 as opposed to earlier periods, see BERRY, *supra* note 22, at 21.

³⁶ JOHNSON, *supra* note 22, at 19.

³⁷ HUNTER, *supra* note 24, at 71.

³⁸ Seibels v. Whatley, 11 S.C. Eq. (2 Hill Eq.) 605 (1837); Tidyman v. Rose, 9 S.C. Eq. (Rich. Cas.) 294 (1832).

³⁹ *Tidyman*, 9 S.C. Eq. at 301.

⁴⁰ IRA BERLIN, SLAVES WITHOUT MASTERS: THE FREE NEGRO IN THE ANTEBELLUM SOUTH (1976).

free Black people even opted to be re-enslaved to be able to live with their families.⁴¹

Southern courts and legislatures continued to uphold the Black economic utility standard in their coercion of Black families after slavery. In 1865 and 1866, Southern states passed “apprenticeship laws” that were part of the region’s Black Codes meant to restrict the rights of the newly freed. Purportedly to protect Black orphans, by providing them with guardianship and “good” homes until they reached the age of twenty-one, states took peremptory custody of children who were deemed “orphans,” even when they had parents or relatives willing and able to take care of them. These children were then often forced to work uncompensated for their former owners.⁴² The demands of the Southern political economy continued to dictate work as compulsory for free Black women, many of whom were employed as domestic laborers in white households, caring for white children and families instead of their own.⁴³ Whereas some married Black mothers, when they could afford to, went to lengths to avoid wage work in favor of taking care of their own families, white employers derided these efforts as “playing the lady,” or as displays of false pretensions that jeopardized their own labor needs.⁴⁴ Repressive Black Codes and local laws attempted to enforce compulsory work for newly freed Black adults by defining quitting (of work) as “idleness” and “vagrancy,” both of which were prosecutable offenses.⁴⁵ And the Freedmen’s Bureau, established by the federal government in 1865, served to force Black women and men into accepting labor contracts with severely unfair terms with the directive that agents should “not issue rations or afford shelter to any person who can, and will not labor for his or her own support.”⁴⁶ In 1870 in the rural South, more than forty percent of married Black women had jobs, mostly as field laborers, while over ninety-eight percent of white wives were homemakers; in Southern cities,

⁴¹ TED MARIS-WOLF, *FAMILY BONDS: FREE BLACKS AND RE-ENSLAVEMENT LAW IN ANTEBELLUM VIRGINIA* (2015); EMILY WEST, *FAMILY OR FREEDOM: PEOPLE OF COLOR IN THE ANTEBELLUM SOUTH* (2012).

⁴² HUNTER, *supra* note 25, at 35–36.

⁴³ *Id.* at 3.

⁴⁴ *Id.* at 51–52.

⁴⁵ *Id.* at 29.

⁴⁶ *Id.* at 23–24.

Black married women worked outside the home five times more often than white married women.⁴⁷

In the intervening century and a half since racial slavery, through Jim Crow and following the Civil Rights Movement, white hegemony ceased to be a state policy goal, and overt ideas of natural racial difference and hierarchy in political discourse gave way to color blindness. Nevertheless, racial ideas about Black family work, the primacy of Black mothers' productive labor, and disregard of the bonds of attachment and affection between Black mothers and their children endure in contemporary policy, notably so in the public policies and practices of social policy and child welfare. The rise of the South in national party politics since the late-twentieth century has elevated the political significance of family in American politics, embedding the longstanding discriminatory Southern family policy logic into national policy reforms.⁴⁸

III. BLACK FAMILY ECONOMIC UTILITY IN NEOLIBERAL WORKFARE AND CHILD WELFARE POLICY

The history of child welfare policy in the United States is conventionally portrayed as a pendulum that swings back and forth between a child safety principle, which emphasizes preventing child maltreatment, and a family preservation principle, which emphasizes family unification as central to child wellbeing. The current child welfare system is described as deemphasizing reunification and intent on moving "more children into new homes faster than ever before."⁴⁹ However, by analyzing the twentieth-century policy development of child welfare *alongside* that of public assistance and from the perspective of Black family policy treatment, the following narrative alters the conventional story of a back-and-forth pendulum and instead highlights a pattern of growing formalization of policies that economically coerce poor Black

⁴⁷ ROBERTS, *KILLING THE BLACK BODY*, *supra* note 13, at 10–11.

⁴⁸ On the link between the "southernization" of American Politics and the rise of family in defining national policy debate and partisan agendas, see GWENDOLINE M. ALPHONSO, *POLARIZED FAMILIES, POLARIZED PARTIES: CONTESTING VALUES AND ECONOMICS IN AMERICAN POLITICS* (2018) [hereinafter ALPHONSO, *POLARIZED FAMILIES, POLARIZED PARTIES*].

⁴⁹ JENNIFER A. REICH, *FIXING FAMILIES: PARENTS, POWER, AND THE CHILD WELFARE SYSTEM* 54 (2012).

mothers and their families. Taken together, child welfare and public assistance reforms since the late twentieth century have increasingly mandated poor Black mothers' participation in low-wage labor markets by attaching work requirements to public benefits, increasing sanctions on Black childbearing by limiting cash assistance, enhancing state-level discretionary controls, and maintaining the ever-present threat of child removal. These developments highlight the current national policy iteration of the Black economic utility policy standard that was long used throughout the twentieth century by Southern local welfare agencies to overtly discriminate against and disadvantage poor Black mothers and families. The current therapeutic (individualist) behavioral framing of Black economic utility within the "color blind" neoliberal policy regime effectively obscures its racial character and conceals the structural deficiencies that sustain racial and gendered inequality.

A. Racial Family Foundations of Public Assistance & Child Welfare

The story of child welfare policy development is deeply tied to that of public assistance in that both share a common family policy ideal of affectionate, nurturing families, with associated meanings of home-centered motherhood and homebound maternal worthiness.⁵⁰ Between 1911 and 1920, forty states offered public assistance based on family need in the form of a cash-grant program called "Mothers' Pensions" to support "deserving" widowed mothers to stay home and care for their children.⁵¹ Mothers' Pensions were then established at the national level in the form of the Aid to Dependent Children program (ADC, later renamed Aid to Dependent Families with Children or AFDC) by the Social Security Act of 1935, further institutionalizing government support for needy (female-headed)

⁵⁰ *Id.* at 4, 8–9. For a summary of important literature that links child welfare and public assistance policies, see Frank Edwards, *Saving Children, Controlling Families: Punishment, Redistribution, and Child Protection*, 81 *AM. SOCIO. REV.* 575 (2016).

⁵¹ MARY ANN MASON, *FROM FATHER'S PROPERTY TO CHILDREN'S RIGHTS: THE HISTORY OF CHILD CUSTODY IN THE UNITED STATES* 93 (1994) (stating that from its inception, family public relief and cash assistance were not intended for morally dubious mothers, regardless of their need, instead a mother worthy of assistance was one who did not work outside of her home, devoted herself completely to her children, "and led a conspicuously virtuous life with no male companionship." Needy mothers deemed immoral did not receive benefits and their children were easily removed from their custody).

families on the principle that, “[f]amily life in the home is sapped in its foundations when the mothers of young children work for wages.”⁵² From the start, this principle and its programmatic assistance did not apply to Black mothers, their children, and families. In the Progressive and Great Depression eras, European immigrants received far more generous access to social welfare programs and were protected by social workers to ensure that non-citizenship and illegal status did not exclude them from assistance, whereas Black people were relegated to minimal, racist, and degrading public assistance programs, and Mexicans who asked for assistance were deported with the help of the very social workers to whom they turned for aid.⁵³ In a 1921 U.S. Children’s Bureau study of Mothers’ Pension recipients in eight counties, foreign-born white people were found to be vastly overrepresented, and only one Black family received Mothers’ Pensions across the eight areas studied. In St. Louis, the foreign-born white population represented forty percent of the city’s Mothers’ Pension recipients even though they made up just thirteen percent of the population, and while Black people were ten percent of the city’s population in 1920, only one “negress” was to be found on its Mothers’ Pension rolls.⁵⁴

Though in practice, Black mothers were often the last to apply for relief,⁵⁵ some southerners nevertheless expounded racist ideas of “natural” Black racial inferiority to pathologize Black families and construct Black family dependency. For instance, a professor at Paine College in Augusta, Georgia, claimed:

We say, here in the South, that the mass of Negroes are thriftless and unreliable; that their homes are a menace to the health of the community; and that they largely furnish our supply of criminals and paupers . . . [M]ost of us believe that all this is the natural result, not of the

⁵² JILL QUADAGNO, *THE COLOR OF WELFARE* 119 (1994).

⁵³ CYBELLE FOX, *THREE WORLDS OF RELIEF: RACE, IMMIGRATION, AND THE AMERICAN WELFARE STATE FROM THE PROGRESSIVE ERA TO THE NEW DEAL* (2012).

⁵⁴ *Id.* at 103, 115.

⁵⁵ *Id.* at 114.

Negro's economic status, but of the Negro's being Negro.⁵⁶

Black mothers and families, primarily because most lived in the South, were excluded from the efforts of social workers and from material programmatic support designed to address family needs.⁵⁷

The Social Security Act of 1935 accommodated the racial distribution of ADC benefits and discriminatory labor-based practices. Key Democratic congressmen and committee chairs from the South predicated their support of the bill on retaining state control over establishing eligibility criteria and deciding who would receive benefits, enabling local welfare officials to direct the vast majority of ADC benefits to white, widowed women with young children.⁵⁸ Local control over welfare benefits had long been instrumental in maintaining a system of racial paternalism and a stratified racial economic order in the South. Since the end of the Civil War, the provision of certain benefits, including access to medical care and protection from violence, had been an important mechanism through which white planter elite maintained their control over mostly Black, but also poor white, agricultural workers.⁵⁹ In 1939, after Congress accommodated widows of industrial workers into the Old-Age Insurance program, ADC became the last resort for single, divorced, and deserted women, many of whom were Black. Southern states and some Northern ones in the 1940s and 1950s then further limited the eligibility criteria, now adding seasonal employment policies that local agencies in turn used to cut mostly Black ADC recipients off the welfare rolls during the cotton-picking season, maintaining the supply of cheap agricultural labor.⁶⁰

Although the welfare rights movement succeeded in extending the ADFC program to Black families in the 1960s, benefits were further curtailed and burdened with behavioral

⁵⁶ *Id.* at 115.

⁵⁷ LINDA GORDON, *PITIED BUT NOT ENTITLED: SINGLE MOTHERS AND THE HISTORY OF WELFARE* 84–85 (1998).

⁵⁸ QUADAGNO, *supra* note 52, at 119.

⁵⁹ LEE J. ALSTON & JOSEPH P. FERRIE, *SOUTHERN PATERNALISM AND THE AMERICAN WELFARE STATE: ECONOMICS, POLITICS AND INSTITUTIONS IN THE SOUTH, 1865–1965* (1999).

⁶⁰ QUADAGNO, *supra* note 56, at 119, 120.

regulations.⁶¹ As late as 1970, the discriminatory local practices targeting Black mothers' labor in the Cotton South were described at a Senate Committee in the following terms: "welfare recipients are made to serve as maids or to do day yard work in white homes to keep their checks. During the cotton-picking season[,] no one is accepted on welfare because plantations need cheap labor to do cotton-picking behind cotton-picking machines."⁶² Thus, despite the formal expansion of welfare support, Southern local practices continued to apply the coercive Black economic utility standard to poor Black mothers, and policymakers at all levels remained largely unconcerned with the wellbeing of Black children when their mothers were required to work, excluding Black families from the limited public daycare assistance programs.⁶³

The post-war neglect of the children of working Black mothers and the Southern use of welfare to mandate labor from needy Black mothers starkly contrasted with the mid-century national state's efforts to positively support a child-centered, patriarchal (white) nuclear marital family ideal.⁶⁴ Multiple congressional committees focused investigations on issues of juvenile delinquency and child neglect and pressed for the urgent need to provide programmatic material and therapeutic support for married white mothers within the home.⁶⁵ Policymakers were also preoccupied with containing white out-of-wedlock births and redeeming the marriageability of white unmarried mothers through adoption placements of their babies. However Black out-of-wedlock children were not included in this policy discussion, and their policy neglect was justified again by racist ideas of

⁶¹ GWENDOLYN MINK, *WELFARE'S END* 52 (1998) ("[S]tates like Louisiana and Alabama evicting Black[people] from welfare in disproportionate numbers through moral fitness tests of one sort or another, with politicians denouncing never-married mothers as welfare chiselers, and with social scientists lamenting the structure of Black families needing welfare, the racial politics of welfare was clear.")

⁶² QUADAGNO, *supra* note 52, at 128.

⁶³ REICH, *supra* note 49, at 11 ("[P]ublic assistance programs provide a source of (limited) economic freedom for women, poor women have experienced the state as oppressive and invasive. Recipients of public assistance have been subjected to 'unreasonable searches, harassing surveillance, eavesdropping and interrogation concerning their sexual activities' by state welfare agencies.")

⁶⁴ ELAINE TYLER MAY, *HOMEWARD BOUND: AMERICAN FAMILIES IN THE COLD WAR ERA* 11–12 (1995).

⁶⁵ ALPHONSO, *POLARIZED FAMILIES, POLARIZED PARTIES*, *supra* note 48, at 82–88.

natural racial difference, maternal behavior, and worth. As Rickie Solinger states, several post-war policymakers “maintained that Black[mother]s had babies out of wedlock because they were Negro, because they were ex-Africans and ex-slaves, irresponsible and immoral, but baby-loving.”⁶⁶ Solinger also rightly notes that this policy ideation of natural Black sexuality and pathological Black maternal “culture” exonerated the state from public responsibility of Black illegitimate children, “since Blacks would take care of their children themselves. And if [they] did not, they were responsible for their own mess.”⁶⁷ Policymakers’ ideation of unwed Black childbearing as natural and thus undeserving of policy attention was soon to be reframed within neoliberal policy discourse.

B. Economic Pathologizing of Non-Marital Black Mothers and Neoliberal Policy Reforms

It was in the post-war era that unwed Black childbearing also began to increase in political salience as a key discursive site for the growing neoliberal vilification of Black mothers as threats to free-market values, paving the way for the economic framing of unwed Black motherhood as critical to the political project of dismantling the New Deal welfare state. The emerging economic pathologizing of poor Black motherhood, which continues into our time, is a testament to the endurance of the Black economic utility standard, in that unwed Black motherhood has been persistently framed in economic terms, viewed firstly as an economic problem with repercussions for the neoliberal market order, in contrast to unwed white motherhood that is politically framed as a social and moral threat to family integrity.

From 1945 to 1965, Southern Dixiecrats and their Northern allies pioneered the discourse of the marketplace to construct poor Black motherhood as an economic pathology and advocate for their punishment in the form of welfare benefit rescindment, sterilization, and even incarceration of “illegitimate mothers.”⁶⁸ Drawing on the trope of “illegitimate child-as-commodity,” Black unmarried mothers were constructed as “women whose business is having illegitimate children,” as those

⁶⁶ Rickie Solinger, *Race and “Value”: Black and White Illegitimate Babies, 1945–1965*, in *MOTHERING: IDEOLOGY, EXPERIENCE, AGENCY* 287, 298 (Grace Chang et al. eds., 2016).

⁶⁷ *Id.*

⁶⁸ *Id.* at 298.

who commodified their reproductive capacities to violate basic consumerist principles by offering “bad value (Black babies) at a high price (taxpayer-supported welfare grants) to the detriment of society, demographically and economically.”⁶⁹ In contrast to white mothers, whose extra-marital childbearing was attributed to their psychopathology and neuroses, the pathology of Black unwed motherhood was constructed in distinctly economic terms, as a drain on public resources that generated cycles of intergenerational Black dependency.⁷⁰

Starting in the late 1970s and peaking in the 1990s, the economic pathologizing of poor Black motherhood and families came to a head as family emerged as a key political battleground on which conservatives waged war on liberalism, shifting the policy spotlight away from structural, economic needs of families to individual family values.⁷¹ Black motherhood, childbearing, and child-rearing now rose to sudden political prominence, as a root cause of poverty and inequality.⁷² The focus on family values added a moral dimension to the growing condemnation of poor Black mothers and their families that drew on previous Southern racist tropes that were now cast as colorblind judgments about immoral *behavior*, not racial traits.⁷³ Nevertheless, these tropes persisted in stigmatizing poor Black mothers as sexually-promiscuous “Jezebels,” irresponsible child-bearers and “matriarchs,” immoral “crackhead moms,” and criminal “Welfare Queens.”⁷⁴

The wellbeing of Black children, their protection from abusive and neglectful mothers, and out-of-home placement also concurrently emerged as a newfound policy goal. In the mid-to-late 1980s, the focus on “crack babies” impelled large-scale child removals from Black families.⁷⁵ Almost all the women prosecuted

⁶⁹ *Id.* at 300.

⁷⁰ *Id.* at 289, 300.

⁷¹ ALPHONSO, POLARIZED FAMILIES, POLARIZED PARTIES, *supra* note 48, at 38–44.

⁷² The focus on Black matriarchal families as generating cycles of social and economic “pathology” is attributed to DANIEL PATRICK MOYNIHAN, *THE NEGRO FAMILY: THE CASE FOR NATIONAL ACTION*, (1965). *See also* ROBERTS, *KILLING THE BLACK BODY*, *supra* note 13, at 8.

⁷³ ROBERTS, *KILLING THE BLACK BODY*, *supra* note 13, at 10–21.

⁷⁴ *Id.*

⁷⁵ REICH, *supra* note 49, at 38–45 (explaining that the landmark child protection legislation, Child Abuse Prevention and Treatment Act of 1974, had constructed child abuse, as a policy issue, in universal terms, as cross-class and

for drug use were Black, a pattern consistent with research that shows that even after controlling for poverty and other variables, Black women were far more likely to be reported for prenatal substance abuse than other women.⁷⁶ The public attention around “crack babies” and positive drug tests further justified greater agency interference in, and regulation of, the lives of poor women of color and their children.

Relying on the pathological construction of poor Black mothers as economic and moral threats, Southern Congressmen, first as Democrats, then as Republicans, successfully spearheaded the movement to reframe and repurpose social welfare in a colorblind way that limited cash assistance and sustained racially stratified labor markets.⁷⁷ The longstanding Black economic utility principle was now formalized in the behavioral requirement of “work” as a new policy goal of social welfare programs.⁷⁸ The landmark Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) of 1996 eliminated the welfare safety net program and replaced it with block grants to states, enshrining state-level discretion over the new Temporary Assistance for Needy Families (TANF) program, requiring work from those receiving benefits, and increasing pressure on states to move participants from cash assistance to work.

Concurrent changes in child welfare policies hastened child removals away from poor Black mothers. The Adoption and Safe Families Act (ASFA), enacted alongside the PRWORA in 1997, limited the scope of “reasonable efforts” to prevent child removals, significantly tightening the previous timeline to six months within which reunification must occur and increasing the financial incentives to encourage states to increase their rates of adoption out of foster care.⁷⁹ Since the 1980s, Black children have remained vastly overrepresented in out-of-home placements, exceed the average number of years in foster care, have the lowest rates of adoption, and are least likely to be placed in

cross-race, encouraging aggressive and increased intervention in favor of child protection, exponentially increasing the number of child removals from their homes and placements into foster care).

⁷⁶ *Id.* at 46.

⁷⁷ EVA BERTRAM, *THE WORKFARE STATE: PUBLIC ASSISTANCE POLITICS FROM THE NEW DEAL TO THE NEW DEMOCRATS* 28 (2015).

⁷⁸ *Id.* at 32.

families.⁸⁰ The Family First Prevention Services Act of 2018 continues to operate within the neoliberal policy framework that focuses on parental behavior regulation to the exclusion of structural remedies. The new legislation constructs “support to children and families” in individual, behavioral terms, calling on states to use Federal funding for enhanced “provision of mental health and substance abuse prevention and treatment services, in-home parent skill-based programs, and kinship navigator services.”⁸¹

The overarching negative framing of Black mothers and families within neoliberal policy discourse is evident in the policy discussions of members of Congress. In their remarks during committee hearings on family-related policies for the period of 1980 to 2005, the period of formative policy change, Congresspersons referenced over 1100 real-life family examples of which 304 were identified by race and 110 were Black families. 52.9% of these Black family examples were invoked by members of Congress to highlight negative policy developments compared to the vast majority (63.1%) of white-identified family cases that were used to illustrate policy successes.⁸² 30.3% of these real-life Black family examples referenced unmarried single-mother families as compared to 2.1% of such white family cases, suggesting the correlation of Black unmarried-mother families with negative policy perceptions.

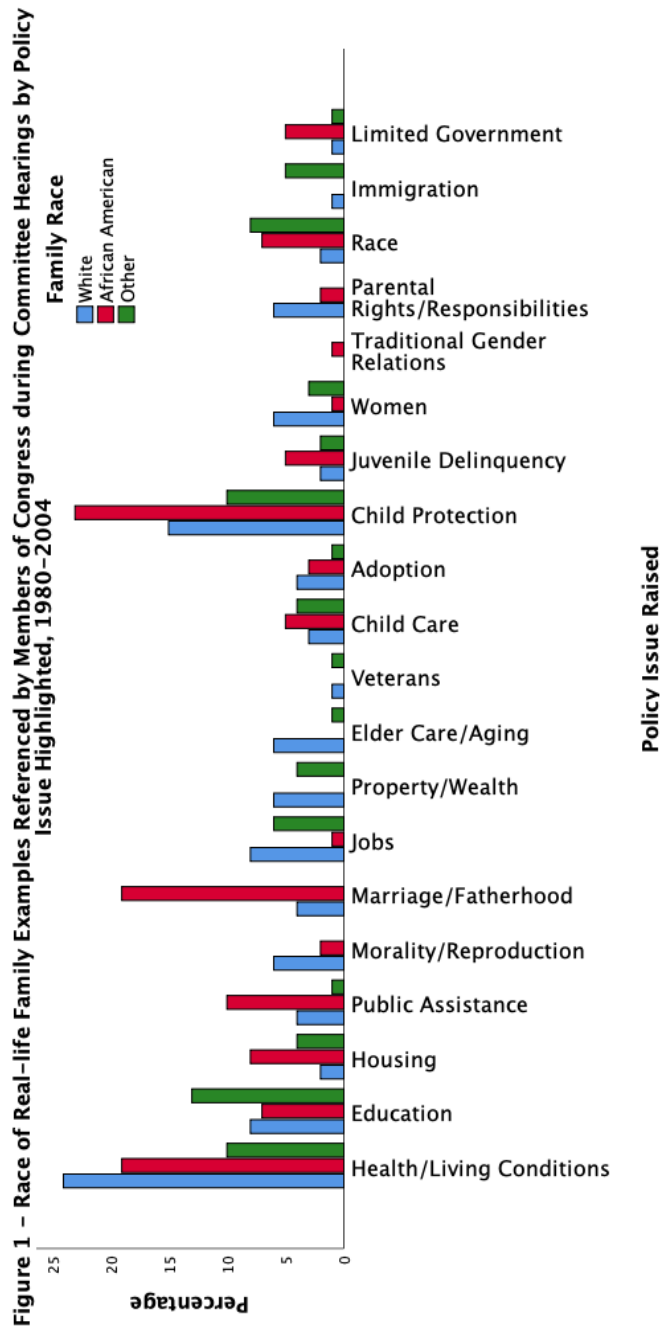
The centrality of child abuse concerns to the policy construction of Black families is also demonstrated by the hearings data. The largest proportion (19.5%) of all Black family references invoked during committee hearings involved discussions of “child protection” policy, followed by the second largest proportions of Black family references (16% each) used as examples in policy discussions regarding “marriage/fatherhood”

⁸⁰ *Foster Care*, CHILD TRENDS DATABANK (May 24, 2018), <https://www.childtrends.org/?indicators=foster-care> [https://perma.cc/4PH3-5TK8]. See also *Keeping Kids in Families: Trends in Foster Care Placement*, ANNIE E. CASEY FOUND. (April 2, 2019), <https://assets.aecf.org/m/resourcedoc/aecf-keepingkidsinfamilies-2019.pdf> [https://perma.cc/N4ZS-GN95].

⁸¹ Family First Prevention Services Act, Pub. L. No. 115-123, 132 Stat. 232 (2018).

⁸² Data throughout the rest of this section has been computed by author; for methodology and case selection criteria, see ALPHONSO, POLARIZED FAMILIES, POLARIZED PARTIES, *supra* note 48, at 177–83.

and “housing/living conditions.” Given that only a fraction of all family examples discussed in committee hearings were identifiable by their race, those that were racially-identifiable were especially suggestive of when and how race mattered and was expressly or indirectly referenced, and in which kinds of policy discussions. It is thus telling that Blackness, as a family characteristic, was highlighted the most by members of Congress when referring to policies pertaining to child abuse and protection, suggesting the close associative link between child abuse and Blackness of family in neoliberal policy discourse and logic as well as to marriage and fatherhood regulation. The whiteness of a family, on the other hand, was disproportionately identified in discussions focused on “women” (women’s rights), “jobs,” “elder care,” “wealth,” and “parental rights” (see Figure 1).



Given the overwhelmingly negative policy perception of poor Black mothers and families and the formalization of the coercive Black economic utility standard into the TANF program of workfare and discretionary state practices, the most coercive compulsory work practices continue to be directed at Black mothers and their families. There is much evidence that states use their enhanced discretion over sanctioning, for example, to uphold racialized distribution of benefits.⁸³ States are found to use racial ideologies to justify and normalize higher rates of sanctioning of mothers of color by rescinding their benefits more often and more severely than white mothers.⁸⁴ Additionally, other research points to labor market discrimination that makes complying with work requirements more difficult for women of color, in turn justifying sanctions for their noncompliance.⁸⁵ One study found that racial inequities in states' administration of the TANF program contributed to the impoverishment of approximately 256,000 Black children per year from 2012–2014, also finding that states with larger percentages of Black residents are less likely to prioritize the provision of cash assistance, but more likely to allocate funds toward the discouragement of lone motherhood.⁸⁶

Startling rates of economic insecurity now persist in Black households as do disproportionately high Black child removals from their families. In 2019, 40% of Black children had parents who lacked secure employment, compared to 20% of white children, with 31% of Black children living in poverty,

⁸³ On the use of sanctioning to uphold racialized distribution of benefits, see Shannon M. Monnat, *The Color of Welfare Sanctioning: Exploring the Individual and Contextual Roles of Race and TANF Case Closures and Benefit Reductions*, 51 SOCIO. Q. 678–707 (2010); Richard C. Fording et al., *Devolution, Discretion, and the Effect of Local Political Values on TANF Sanctioning*, 81 SOC. SERV. REV. 285 (2007); Carolyn Y. Barnes & Julia R. Henly, “*They Are Underpaid and Understaffed*”: *How Clients Interpret Encounters with Street-Level Bureaucrats*, 2018 J. PUB. ADMIN. RSCH. & THEORY 165 (Black people facing harsher sanctioning and negative encounters); Bradley L. Hardy et al., *Cash Assistance in America: The Role of Race, Politics, and Poverty*, THE R. OF BLACK POL. ECON. 306 (2019) (Black families as less likely to receive cash assistance).

⁸⁴ See Monnat, *supra* note 83, at 680.

⁸⁵ *Id.* at 681.

⁸⁶ Zachary Parolin, *Temporary Assistance for Needy Families and the Black–White Child Poverty Gap in the United States*, SOCIO-ECON. REV., May 2019, at 1, 24.

compared to 10% of white children.⁸⁷ For poor Black mothers seeking assistance, whose poverty runs counter to the expected policy standard of Black economic utility, their poverty engenders the constant threat of surveillance and child removals, far more than any other group. As opposed to any other racial group, it is far more likely that child removals for Black mothers resulted from poverty than maltreatment.⁸⁸ Moreover, economic status uniquely increases the vulnerability of Black women in family court systems; in addition to undermining their access to resources, poverty undergirds their stereotypical representation as bad mothers, justifying punishment and family separation as the preferred intervention.⁸⁹

IV. CONCLUSION

This Article has outlined the policy development of the coercive Black economic utility policy standard as applied to poor Black mothers and their families since slavery, highlighting its Southern political-economic roots, its development through the twentieth century, and its colorblind framing within current neoliberal child welfare and social welfare policy regimes. By doing so, it has pointed to the underlying racial family policy logic to explain the persisting racial disparities and increasing punitive governmentality in the treatment of poor Black mothers and children and highlights the deliberate political choices that have come to embed this logic in national policies and state-level implementation. The racially-stratified family policy framework identified here, comprising of the punitive Black economic utility family standard and the supportive white affective family standard, provides us with new conceptual tools to evaluate proposals for reforms to the child welfare and social welfare systems and calls for a radical overhaul focused on federal anti-poverty assistance as opposed to state-level behavioral

⁸⁷ *Children Whose Parents Lack Secure Employment by Race and Ethnicity in the United States*, KIDS COUNT DATA CTR., ANNIE E. CASEY FOUND. <https://datacenter.kidscount.org/data/tables/5064-children-whose-parents-lack-secure-employment-by-race-and-ethnicity> [https://perma.cc/7HNZ-9986] (last visited June 4, 2021); *Children in Poverty by Race and Ethnicity in the United States*, KIDS COUNT DATA CTR., ANNIE E. CASEY FOUND., <https://datacenter.kidscount.org/data/tables/44-children-in-poverty-by-race-and-ethnicity> [https://perma.cc/63F9-T38M] (last visited June 4, 2021).

⁸⁸ Hyunil Kim & Brett Drake, *Child Maltreatment Risk as a Function of Poverty and Race/Ethnicity in the USA*, 47 INT'L. J. EPIDEMIOLOGY 780 (2018).

⁸⁹ Crenshaw, *supra* note 11, at 1427 nn.19 & 21.

regulation. The paper's historical policy analysis suggests that all reforms that devalue the affective and nurturing labor performed by Black mothers in favor of their economic regulation will perpetuate racially stratified family policy ideals, obscure the unique vulnerabilities of poor Black women and their families, and impede the goal of meaningful anti-racist family support and inclusion.

