

Neglecting Mothers aka An Abolitionist Horizon for Child Welfare

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Jennifer leaves her 8-year-old home alone to run to the grocery store for 30 minutes. Susan spansks her 11-year-old son on the bottom for being rude to a teacher. Catherine leaves her five young children in the car for a few minutes while she goes into a café to buy muffins for the family. Emily has missed two of her son's therapy appointments this month due to train delays, and she smokes a small amount of marijuana after her children are asleep to ease her arthritis pain.¹ All of these cases may seem like routine, if perhaps imperfect, parenting choices but were treated as child neglect. Neglect cases make up over 75% of child welfare cases in most states and ensnare hundreds of thousands of families annually. Involvement in the quasi-criminal family regulation system has severe consequences for families, including invasive and lengthy state surveillance, removal of children to foster care, and, not infrequently, permanent termination of parental rights.

Yet most parents who engage in this conduct are not deemed neglectful. Instead, it is overwhelmingly low-income mothers, disproportionately women of color.² As anthropologist Tina Lee details in her study of one major urban system, “[i]n most of the cases. . .the problems reported to child welfare were [not about abuse or intentional mistreatment] but about the problems facing poor mothers of color that they had inadequate resources to manage” including domestic violence, drug use, mental health, and inadequate access to services including child care and therapy.³ This is so for numerous factors. First, the very definition of neglect is constructed in a class and racial/ethnic biased manner. To give just one example, Native Americans often live in large extended family groups in one dwelling, a tradition sometimes termed “neglect.”⁴ Compounding this, the statutory language is so broad and vague as to give immense discretion to caseworkers and prosecutors. Typical is Oklahoma's statute: “the failure . . . to provide . . . *adequate* nurturance and affection, food, clothing, shelter, sanitation, hygiene, or *appropriate* education.” Third, an allegation of child neglect brings stigma and further harm rather than resources or assistance; for instance a neglect finding precludes employment as a child-care worker or home health aid—two common jobs for low-income women. These factors combine to further exclude these already-marginalized mothers from the public sphere for relatively minor conduct that virtually all parents engage in with no repercussions if they have sufficient resources, e.g. child care so they are not required to leave children alone. Unable to participate as full workers and citizens due to a lack of quality equal public education, a living wage, affordable child care, and health care, these women are now punished for the impact of poverty on their children. A particularly egregious example is one school district's recent threat to reports parents with unpaid school lunch fees because non-payment “constitutes child neglect.”⁵

Dorothy Roberts has aptly described this nexus of criminal and child welfare scrutiny as “a form of punitive governance that perpetuates social inequality,” particularly for women of color.⁶ As such, the family regulation system operates in tandem to the criminal system, with a long history of racialized social control, extreme costs, and ineffectiveness at preventing or redressing harm to children—in fact

¹ These are all based on recent cases reported in the media or relayed to me by family defense attorneys.

² <https://www.risemagazine.org/parents-facing-child-welfare/>

³ Tina Lee, *Catching A Case: Inequality and Fear in New York City's Child Welfare System* (2016). See also

⁴ Laura Sullivan & Amy Walters, *Incentives and Cultural Bias Fuel Foster System*, NPR (Oct. 25, 2011), <http://www.npr.org/2011/10/25/141662357/incentives-and-cultural-bias-fuel-foster-system>.

⁵ NJ school-lunch policies, *The Philadelphia Inquirer* (Aug. 24, 2019)

⁶ Dorothy Roberts, *Prison, Foster Care, and the Systemic Punishment of Black Mothers*, 59 *UCLA L. Rev.* 1474 (2012).

perpetuating more harm—and pathologizing individuals rather than addressing structural societal deficits. The low-income women of color most often impacted form a female analog to the police and incarceration of men of color.⁷

The child neglect framework also reveals broad structural flaws in American family law and social welfare policy: the privatization of dependency, failure to economically or politically value caregiving, lack of financial state support for families, and the concomitant demonization of “less-than-perfect” mothers. These factors coalesce as most punitive to the low-income women swept into the child neglect system, but many of them also resonate to hinder the full participation of all mothers in the public civic and economic spheres.⁸

I conclude by arguing that reforms, such as clearer enforcement guidelines or better trained workers, are not sufficient to fix this broken system. Instead, the child welfare/family regulation system should be abolished. Indeed, reforms can inadvertently legitimate and reentrench harmful systems; as Mariame Kaba explains in the context of policing, “the only way that we will address oppressive policing is to abolish the police. Therefore all of the reforms that focus on strengthening the police or ‘morphing’ policing into something more invisible but still as deadly should be opposed.”⁹ Similarly, all reforms to the family regulation system must be measured against its long term dismantlement, and advocates and scholars should only support those that lead to abolition, such as funding shifts from foster care to material aid for families.

⁷ See Paul Butler, *The System Is Working the Way It Is Supposed to: The Limits of Criminal Justice Reform*, 104 GEO. L. J. 1419 (2016) (persuasively arguing that police violence against Black men is a systemic problem and calling for radical change).

⁸ One apt example is the recent string of lawsuits against law firms for discrimination against mothers (i.e. not against women, per se).

⁹ Mariame Kaba, *Police “Reforms” You Should Always Oppose*, TRUTHOUT (Dec. 7, 2014), <https://truthout.org/articles/police-reforms-you-should-always-oppose/> (giving as one example of proposals to support legislation to decrease and re-direct policing funds to other social goods).