

I. Introduction

Starting over 400 years ago, the federal and state governments of our country have decimated African American families, both through their own official action and inaction, as well as through creating and supporting systems in which private actors enacted racist policies and practices. After the end of the legal enslavement of African Americans, the apprenticeship system and segregation laws denied African Americans the stability and safety of the family unit.¹ In the past century, both financial assistance and child welfare systems have based decisions on racist beliefs about African Americans.²

As a result, these government-run systems have excluded African Americans from receiving benefits and targeted Black families for investigations of child mistreatment and neglect.³ Further, these structures have placed African American children in foster care systems at much higher rates than white children.⁴ Meanwhile, the criminal and juvenile justice systems have intensified these harms to African American families by imprisoning large numbers of African American children, thereby separating African American families.⁵ All of these actions have systematically worked to deny African Americans the opportunities to form stable, supportive family structures, and have often further stereotyped and blamed African Americans themselves for resulting harms.

Section III of this chapter addresses the treatment—and decimation—of family structure among African American enslaved persons during the slavery era of American history. Section IV discusses the African American family from emancipation until the Civil Rights Era, during which government structures and policies empowered the continued enslavement of African American children, excluded both African American women and African American men from healthy parenting relationships, and continued to deny the legitimacy—both literal and figurative—of African American marriages and children, so as to ensure white wealth was not dispersed to them. Section V addresses the Moynihan Report, which largely blamed the culture of African American families for the injustices faced by African Americans and proposed deeply problematic solutions to remedy them. Section VI addresses direct cash assistance welfare programs, from their overtly racist origins through modern programs that continue



to systematically disadvantage impoverished African American families. Section VII lays out the history of the foster care and other child welfare systems in America, discussing the myriad ways in which that system further attacked the African American family and denied them resources afforded to other Americans. Section VIII

addresses the criminalization of African American youth, who are targeted consistently both within and outside of schools, further breaking families apart. Section IX addresses issues relating to African American victims of domestic violence, who are doubted and excluded from assistance in ways that many white victims are not.

II. Enslavement

Throughout the slavery era of American history, federal and state governments empowered and protected white enslavers in their destruction of African American family structures by treating enslaved people as chattel, unworthy of family love, care, and support.

Enslavers and state governments maintained no records of the origins of enslaved Africans, and replaced their names with those of their new enslavers. This erased their identity, severed them from their family, and made it extremely difficult for them to find each other after emancipation.

The Transatlantic Slave Trade and Reproductive Slavery

As Frederick Douglass observed over 250 years ago, “[g]enealogical trees do not flourish among slaves.”⁶

The vast majority of the nearly 400,000 enslaved persons brought over from Africa were children or young adults, and more than a quarter were children.⁷ Upon the arrival of enslaved people in the United States, private parties and state governments maintained no records of their origins, replacing their names with those of their new enslavers, names by which they were called throughout their lives.⁸ This erased an individual’s identity, severed them from their family, and made it extremely difficult for them to find each other after emancipation.⁹ See Chapter 2, Enslavement, for more detailed information about this process.

Federal and state governments passed laws that protected enslavers’ ability to destroy African American families and use African American women and their children as a way to increase the wealth of enslavers. Before 1662, English law governing the American colonies held that children of enslaved fathers were enslaved, but the child of enslaved women and white male enslavers were free persons upon their birth, thereby entitling them to the full protection of the law.¹⁰ This changed in 1662, when the colonial

government of Virginia passed a law stating that all children born to enslaved mothers were enslaved themselves, regardless of whether or not the father was white, African American, enslaved, or free.¹¹ This law created a new source of wealth as enslavers used these children to settle debts,

pass on a larger inheritance, or otherwise enrich themselves.¹² The doctrine underlying this law became known as “partus sequitur ventrem,” Latin for “that which is brought forth follows the womb.”¹³ It was adopted in laws by virtually all other states in which enslavement was legal.¹⁴

The United States outlawed trafficking enslaved people into the country in 1807.¹⁵ The only legal way

to increase the number of enslaved people and free labor for the American economy was therefore through domestic birth of new enslaved persons. This created a financial incentive for impregnating African American women and girls and carrying the pregnancies to term.¹⁶ Historians have found evidence that enslavers raped African American women and forced them to birth children to create more enslaved people and further enrich their enslavers.¹⁷

Professor Daina Ramey Berry has argued that this sexual slavery served to provide great benefits to both government and private actors within both the southern and northern states.¹⁸ The labor of African American enslaved people created wealth for their enslavers, sustained cotton production and other private industries, and paid state and local taxes across the country.¹⁹ In the North, maritime industry, merchants, textile manufacturers, and even consumers of cheap cloth were all dependent on the southern cotton plantation economy, which was based on the sexual slavery of Black women and men²⁰ and the destruction of Black families.²¹ Professor Berry argues that enslavers focused on the fertility of young African American women during slave auctions, and that early childbirth was considered to be a valuable skill, like housekeeping and clothes-mending.²² Enslavers considered the birth of enslaved infants

not with humanity, but “appraised” them with a monetary value, one that typically increased as they aged.²³

Marriage Between Enslaved People

American governments prohibited or did not recognize marriage between enslaved people. Across the southern enslaving states, enslaved persons were generally prohibited by law from entering any legally-binding marriage.²⁴ Abolitionist William Goodell described the way that American law treated the families of enslaved people in 1853 as: “The slave has no rights. Of course he, or she, cannot have the rights of a husband, a wife. The slave is a chattel, and chattels do not marry. ‘The slave is not ranked among sentient beings, but among things,’ and things are not married.”²⁵ Tennessee was the only enslaving state that allowed for marriage between enslaved persons, but the law required consent of the enslavers for the marriage to be valid.²⁶ Because enslaved persons were not considered to be human beings under the law, they could not enter into legal contracts.²⁷ Therefore, enslaved people could neither own nor transfer property, which is what American law recognized their husbands, wives, and children to be.²⁸

The North Carolina Supreme Court in 1858 said: “The relation between slaves is essentially different from that of man and wife joined in lawful wedlock,” because “with slaves it may be dissolved at the pleasure of either party, or by the sale of one or both, dependent upon the caprice or necessity of the owners.”²⁹

Their condition was compatible only with a form of concubinage, “voluntary on the part of the slaves, and permissive on that of the master.”³⁰

These attitudes and legal mandates were not limited to the South. One notable example is the case of Basil Campbell, who at the time of his death in 1906 was one of the wealthiest African American men in California.³¹ He arrived to California from Missouri in 1854 as an enslaved person, forcibly removed from his wife and two children, who never saw him again.³² After his death, his two adult sons from his marriage in Missouri sued to seek their inheritance, leading three different courts, including the California Supreme Court, to reject their claims.³³ Indeed, one appellate court held—nearly 50 years after the legal emancipation of enslaved African Americans—that describing Campbell’s marriage to his enslaved wife as a marriage would make a “mockery” of the institution.³⁴

Interracial Marriage

Laws prohibiting interracial marriage, known as anti-miscegenation laws, devalued African American families. The earliest known anti-miscegenation law, passed in 1661 in the Colony of Maryland, stated that a white woman who married an African American man became an enslaved person herself.³⁵ Other colonies followed suit to prohib-

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it interracial marriage during slavery.³⁶ However, from slavery through the era of legal segregation, American society accepted white men having sex with African American women—whether consensual or rape—especially when those women were treated as the property of white men.³⁷ The children of these interracial interactions were typically enslaved and could not inherit their white father’s wealth.³⁸

Fears of interracial marriage often led to violence. In 1834, a false rumor that abolitionist ministers had married an interracial couple led to 11 days of racial terror in New York City.³⁹ Mobs attacked a mixed-race gathering of the American Anti-Slavery Society and destroyed African American churches, homes, schools, and businesses, as well as the homes and churches of leading abolitionists.⁴⁰ A similar incident occurred in Philadelphia in 1838.⁴¹

Punishments for interracial marriage varied by state, but in many states prior to the Civil War, white Americans were punished more often than African Americans, at least within the legal system.⁴² Scholars have argued that this reflects anti-Black racist attitudes that, depending on the circumstance, African American people were sometimes considered “too irresponsible and too inferior to punish” and “it was whites’ responsibility to protect the purity of their own bloodlines.”⁴³ Punishments for African Americans, however, were still severe, including whippings, fines, exile, or even enslavement if they were free at the time of their violation of the law.⁴⁴ Although it is unclear how often anti-miscegenation laws were enforced, evidence suggests that they were used to make examples of high-visibility interracial couples, who were considered a threat to public order.⁴⁵

Parent-Child Relationships

Enslavement treated enslaved African Americans as replaceable property, so enslavers separated children from their parents if it was profitable to do so, and sometimes in order to discourage potential rebellion. This was justified by the enslavers in various ways. For example, Thomas

State law legally entitled enslavers to separate enslaved parents and children at any time, and to relocate them at different plantations at the time of the child's birth. In some southern states, approximately one-third of enslaved children were separated from one or both parents.

R.R. Cobb, a legal scholar who drafted parts of the Georgia legal code of 1861,⁴⁶ claimed that the African American mother “suffers little” when her children are stolen from her, since she lacked maternal feelings.⁴⁷ Cobb helped write principles of white supremacy into Georgia law, including a provision that presumed African Americans were enslaved unless proven otherwise.⁴⁸

From their birth, enslaved children were considered property of the enslaver, and therefore enslavers controlled a child's life and upbringing.⁴⁹ From the time of birth, enslavers stripped away parental rights, often not allowing the birth parents to choose the newborn's name.⁵⁰ Very soon after giving birth, enslaved mothers were expected to return to work and leave their children with extended family members or an older enslaved woman who was assigned the role to watch over children on the plantation.⁵¹ Even if an enslaved parent had some control over their child's life, the enslaver held the highest authority and could make final decisions as to who would take care of the child, what activities they participated in, or whether they would be separated from their family by selling the parent or child to a different enslaver.⁵² As a result of many children and parents being separated through chattel sales, orphaned children were often adopted and cared for by friends, extended family, or the enslaved community as a whole.⁵³ This approach of allowing white strangers, aided by laws and government actors, to take an African American child from their

family is echoed after enslavement via the apprenticeship system and by the modern foster care system, as discussed further below.

Enslaved children typically received no formal education and were expected to work as soon as they were physically able, forced to work in the fields as young as eight.⁵⁴ They often worked in a similar capacity as the adults, working fields, tending animals, cleaning and serving in their enslavers' houses, and taking care of younger children.⁵⁵ State law legally entitled enslavers to separate enslaved parents and children at any time, and to relocate them at different plantations at the time of the child's birth.⁵⁶ In some southern

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Harriet Mason, an enslaved woman forced to separate from her family at age seven, related that she “used to say I wish I'd died when I was little.”⁵⁸ Members of a family could be separately sold as enslavers fell into debt or wanted to raise profits.⁵⁹ In some parts of the South, an African American enslaved person had a 30 percent chance of being sold in his or her lifetime.⁶⁰ A quarter of trades of enslaved persons across state lines destroyed a first marriage, while approximately half destroyed a nuclear family by separating immediate family members.⁶¹

Opponents of slavery, including those in the federal government, recognized how it destroyed the families of



The Separation of Mother and Child. (1852)

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African Americans. Advocating for the elimination of slavery, U.S. Senator James Harlan of Iowa stated that slavery effected “the abolition practically of the parental relation, robbing the offspring of the care and attention of his parents[.]”⁶² Scholars argue that the anguish caused by the threat of family separation coerced enslaved people into working without complaint.⁶³ The horrors of family separation during slavery were highlighted by abolitionists as a central strategy to enlist people to their cause.⁶⁴ Near the end of the slavery era, in the 1850s, some southern states responded to public horror at child separation by passing laws prohibiting the taking of infants from their enslaved mothers.⁶⁵ Modern scholars analyzing this development have argued that these laws were not passed out of concern for African Americans, but to assuage public outrage in order to maintain slavery.⁶⁶

Extended Family Kinship Structures

In order to cope with the destruction of their nuclear family, enslaved people created deep, extended supportive relationships with other enslaved people.⁶⁷ Some historians have argued that the extended kinship structures of African American enslaved people mirrored similar structures in their native West African homelands.⁶⁸ The role of African American grandparents, other extended relatives, and older Black caregivers who were not biologically related took on particular importance,⁶⁹ with Black grandmothers often serving as a central figure within a plantation ensuring the care of all children of enslaved parents who were sold to other enslavers, killed, or otherwise removed from their nuclear families.⁷⁰ The reliance of Black mothers and African Americans on extended kinship networks was a necessity for mere survival, beginning in the slavery era and continued through legal segregation and other forms of discrimination.⁷¹

Early African American historians argued that the legacy of slavery created “disorganization and instability” in African American families for generations.⁷² In 1899

and again in 1909, prominent sociologist and social critic W.E.B. Du Bois published detailed, fact-driven analyses of African American families, demonstrating the many ways in which a lack of economic means and opportunities after the end of slavery harmed African American families in both the North and South.⁷³ In 1932, sociologist E. Franklin Frazier argued that African American families had particular difficulty adapting to the drastic changes of the early 20th century due to the way that enslavement destroyed African American families and traditions.⁷⁴ As discussed further below, these resulting harms have been used throughout American history to claim that the African American family itself was to blame because it was dysfunctional by its nature.

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Red Cross Relief, drought of 1930-31. African American family of 9. (c. 1930)

III. African American Families from Emancipation to the Civil Rights Era, 1865 to 1960

After slavery, states and private actors continued to discriminate against African American families, particularly with respect to the dominant gender norms of the time. Before the women's liberation movement of the late 1960s redefined the role of women in society,⁷⁵ women were expected to take care of children and the home.⁷⁶ Only men were expected to participate in the public sphere.⁷⁷ For African American women, these

expectations imposed impossible burdens. African American women were expected to be mothers and wives, but white society expected African American women to be their servants and workers.⁷⁸ African American women attempted to do both, which took a great emotional and physical toll on African American women and, in turn, their families.⁷⁹

For African American men, traditional gender roles dictated that they must dominate and lead, acting as the head of the family.⁸⁰ Under these norms of masculinity, society expected men to be stoic figures, enduring all injury without emotion or complaint.⁸¹ These expectations, too, demanded the impossible from Black men, as society expected them to accept the indignities of discrimination without complaint.⁸² When Black men responded to discrimination in anger—one of the few emotions society expected of and allowed for men to exhibit—Black men were criminalized and treated as threats, feeding the stereotypes imposed upon them.⁸³ This, too, has taken a toll on African American men and their families.⁸⁴

American men seeking employment, restricting them to ill-paid menial jobs and limiting their ability to earn income to support their families.⁸⁶ At times, this

Black women were generally precluded from taking public-facing retail jobs or professional secretarial work with traditional nine-to-five work schedules. Instead, typically they were only given opportunities to serve as domestic caregivers and maids, often living in the homes of their white employers and on call at all hours. These domestic service jobs took the individual work of caring and mothering from Black families and gave it to the children of white families, often preventing Black mothers from even living with their children.

African American Parenthood

During this time, prevailing gender norms defined fathers as breadwinners and mothers as caretakers at home.⁸⁵ But racial discrimination combined with these gender expectations to place heavier burdens on African American families and African American parenthood. As described in greater detail in Chapter 10, *Stolen Labor and Hindered Opportunity*, government and private actors discriminated against African

required African American men to direct their children to work to ensure that the family could survive.⁸⁷ African American children, therefore, often could not pursue schooling or their own goals and dreams.⁸⁸

Because discrimination limited African American men's employment opportunities, African American women also had to seek work to supplement the family's income even where white women did not.⁸⁹ This required African American women to play the social roles of both men and women, taking care of children and the household while working jobs at the same time.⁹⁰ The Freedmen's Bureau, a government agency established to aid the transition of enslaved people to freedom, singled out African American women as subset of poor women who were supposed to work rather than remaining at home.⁹¹ For example, South Carolina Freedmen's Bureau agent John de Forest criticized the "myriads of [African American] women who once earned their own living [who] now have aspirations to be like white ladies and, instead of using the hoe, pass the days in dawdling over their trivial housework[.]"⁹²

As a result, a higher percentage of African American married women worked than their white counterparts.⁹³ This systematically denied African American children the care of their mothers when compared to white children whose mothers could more often choose to stay home and provide care.⁹⁴ Later in the 20th century, African American women were generally precluded from taking public-facing retail jobs or professional secretarial work with traditional nine-to-five work schedules.⁹⁵ Instead, typically they were only given opportunities to serve as domestic caregivers and maids, often living in the homes of their white employers and on call at all hours.⁹⁶ These domestic service jobs took the individual work of caring

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(1899)

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Interracial Marriage

Anti-miscegenation laws continued after the end of enslavement. When the Fourteenth Amendment was ratified, it was not considered to prohibit laws banning interracial marriage so long as the laws applied equally to both races.⁹⁸ In 1883, the Supreme Court upheld the constitutionality of laws outlawing interracial marriage, and state courts followed suit through the mid-20th century.⁹⁹ Members of Congress also tried—unsuccessfully—to ban interracial marriage nationwide through legislative proposals made in 1871, 1912, and 1928.¹⁰⁰ Eventually, a total of 38 states established such laws.¹⁰¹

Many scholars argue that the white-dominated state governments passed anti-miscegenation laws to prevent African Americans—enslaved or otherwise—from accumulating wealth, in addition to controlling women's

wealth by proving that the sibling's spouse was African American, and that the marriage was therefore void.¹⁰⁷ Anti-miscegenation laws continued to deny economic benefits—especially in probate, i.e., a judicial process whereby a will is “proven” in court—to African Americans who would have otherwise received them, since, by operation of law, assets of those who died without wills would be inherited by spouses.¹⁰⁸

Government officials and white militants enforced bans on sexual intimacy between African American men and white women with particular intensity due to the overlapping aims of maintaining racial hierarchy and policing white women's bodies.¹⁰⁹ The Ku Klux Klan, an all-male group, claimed one of its purposes was to treat white women as the “special objects of [its] regard and protection.”¹¹⁰ Nevertheless, they abused, raped, and mutilated white women who fraternized with Black men.¹¹¹

This also meant that African American men were special targets for violence after any interactions with white women. In Alabama in 1929, for example, Elijah Fields, a 50-year-old African American man, and Ollie Roden, a 25-year-old white woman, were both arrested and tried for violation of the state's anti-miscegenation law, which also prohibited cohabitation.¹¹² An Alabama jury convicted Fields even though Roden's father testified that he had only asked Fields to drive his daughter, who was incontinent and suffering from open sores, from a hospital to a boardinghouse.¹¹³ The state sentenced Fields to two to three years in prison, although it was later reversed on appeal.¹¹⁴

In 1967, in *Loving v. Virginia*, the U.S. Supreme Court finally struck down all anti-miscegenation laws as unconstitutional.¹¹⁵

Continued Enslavement of African American Children Through Apprenticeship

The so-called “apprenticeship system” was a system that existed both before and after the Civil War under which state and local governments, through court decisions and agency actions, removed African American children from their families and placed them in the control of white adults who sometimes forced them to work without pay.¹¹⁶ This system had existed in some form since the late 1700s, including when enslavement of African American children was legal.¹¹⁷ However, even during the slavery era, it was used to exploit the labor of *free* African American children, including in enslaving

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sexuality.¹⁰² In America's earliest days, white colonists were also concerned with possible mixing of African Americans and Native Americans, given that an alliance of both groups might provide sufficient strength to rise against slavery and other forms of economic oppression.¹⁰³

The most direct concern was a passing on of white wealth to interracial offspring through inheritance or probate laws, undermining race-based social stratification.¹⁰⁴ Children of legally-unrecognized interracial marriages were almost always excluded from economic benefits they would have received if their parents were both white.¹⁰⁵ The children were legally considered “bastards,” and had no claim to the estates of their biological fathers, nor could the man or woman in such a “void” marriage claim alimony, child support, death benefits, or any inheritance.¹⁰⁶

White relatives also had a strong motivation to ensure these statutes were strictly and aggressively enforced, since a sibling who might inherit nothing on the death of a married brother or sister could inherit that sibling's

states.¹¹⁸ For example, records reveal that in 1857 a three-year-old free African American boy named Charles Bell was bound to an apprenticeship in Frederick County, Maryland, until the age of 21, through an agreement between local county officials and Nathaniel C. Lupton, which makes no mention of his parents.¹¹⁹

Immediately after emancipation, former enslavers continued to exploit children, both sexually and as a cheap source of labor, through the apprenticeship system.¹²⁰ Enslavers refused to free children when their parents were freed, either through apprenticeship laws or through outright kidnapping.¹²¹ Former enslavers petitioned state courts to remove African American children from their families based on apprenticeship laws.¹²² These laws often allowed former enslavers to gain legal custody of African American children simply by claiming their parents were incapable of financially supporting them.¹²³ In addition to the trauma of losing a child, African American families often suffered substantial economic harm since farming families relied upon children to assist in agricultural work.¹²⁴

This apprenticeship system controlled African American girls until they were 18 and African American boys until they were 21.¹²⁵ Although it is not known precisely how many children were effectively re-enslaved through apprenticeship, scholars estimate that many thousands of children in the South were taken from their recently-freed parents.¹²⁶

Court cases throughout the second half of the 19th century document occasionally-successful attempts of parents to free their children from this form of enslavement, but also reveal the continued success of the system at ensuring that white former enslavers could profit from their continued exploitation of African American children.¹²⁷

In one well-known example, a young Black girl named Elizabeth Turner was apprenticed as a “house servant” at the age of eight, two days after her emancipation.

Southern white people defended the apprenticeship system as benevolent in nature. One Maryland newspaper, for example, described the system in 1864 as being “prompted by feelings of humanity towards these unfortunate young ones.”¹²⁸ One Texas judge described the Texas apprenticeship system as granting “justice to these children” by placing them in “good comfortable homes” where they would receive “some education.”¹²⁹

State and local courts were involved in empowering this injustice. So-called “orphan” courts across the southern states, typically run by pro-slavery judges, bound an estimated 10,000 children of freed African American men and women to these apprenticeships, which for all intents and purposes were an extension of their forced labor under slavery, operating to the benefit of the children’s former enslavers.¹³⁰ Chief Justice of the United States Supreme

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Photograph shows ten African American children of various ages in a field picking berries. (c.1920)

Court Salmon Chase noted, in an 1867 case, that under the Maryland apprenticeship system “younger persons were bound as apprentices, usually, if not always, to their late masters.”¹³¹ This legal dispute arose because, under Maryland law, anyone seeking to apprentice a white child was required to provide an education, and could not involuntarily “transfer” the apprenticed child to another.¹³²

However, African American children subjected to apprenticeship were not provided similar rights, and were described as a “property and interest.”¹³³ In one well-known example, a young African American girl named

Elizabeth Turner was apprenticed as a “house servant” at the age of eight, two days after her emancipation.¹³⁴ She challenged her apprenticeship because of the differences between apprenticeship laws for African American and white children.¹³⁵ The Supreme Court held that no African American child could be bound to an

apprenticeship without the protections afforded to white children, concluding that “the alleged apprenticeship in the present case is involuntary servitude, within the meaning of...the [thirteenth] amendment.”¹³⁶

Although this decision meant freedom for Elizabeth Turner, many southern trial courts ignored Justice Chase’s observations, and the re-enslavement of African American youth continued in the South.¹³⁷

Since apprenticeship laws allowed local courts to judge whether African American parents were financially able to raise their children, white former enslavers often easily convinced white judges that the children would be better off placed with them.¹³⁸

Scholars have noted that these attitudes have continued through modern family court and child welfare systems, which continue to apply three presumptions that are racist in practice: 1) that the state knows how to raise African American children better than their parents; 2) that poverty in and of itself prevents parents from raising their children well; and 3) that menial or vocational work, instead of an academic education, is more appropriate for African American youth.¹³⁹

During the New Deal, the federal government had a chance to remedy these abuses but did not. The Fair Labor Standards Act of 1938, a federal law that generally outlawed child labor explicitly carved out agricultural and domestic work, which was then largely done by African American workers.¹⁴⁰ The United States Congress excluded these industries from labor protections, thereby denying African American children the labor protections given to white children.¹⁴¹ See Chapter 10, *Stolen Labor and Hindered Opportunity*, for further discussion of related issues.

Impacts of the Great Migration on the African American Family

In the first half of the 20th century, millions of African Americans left the segregated South in search of greater opportunity in urban centers in the North and the West in a phenomenon called the Great Migration, which is discussed in detail in Chapter 1. This was, in part, because these cities already had some existing Black social networks and possibly relatives with whom southern African Americans could connect.¹⁴² Older studies theorized that Black migrants during the Great Migration had disorganized family structures in the South, which they brought with them when they migrated to the North, contributing to higher rates of single parenthood and child-birth outside of marriage.¹⁴³ Many African American families sent one parent, northwards or westwards first, with the rest of the family to follow months or years later.¹⁴⁴

Modern scholarship disputed these conclusions, noting that African American migrants from the South were more likely than African Americans already living in the North to have children living with two parents, married women living with their spouses, and fewer mothers that had never married.¹⁴⁵ They were also less likely than northern African Americans to receive welfare payments,¹⁴⁶ contradicting claims in the Moynihan Report, which is discussed further below, that the higher welfare payments in the North drew migrants from the South.

California

California had an anti-miscegenation statute even as other nearby states did not.¹⁴⁷ In fact, California enacted an anti-miscegenation law in its very first legislative session in 1850.¹⁴⁸ It initially singled out “negroes and mulattos” as the sole group which was prohibited from marrying “whites,” following the national trend of disenfranchising African American people from entering into legally-recognized marriages with white Americans.¹⁴⁹ Although the law was based in slavery-era motivations for prohibiting such marriages, other racial groups facing waves of societal discrimination in California were targeted by later amendments to the original law.¹⁵⁰ California legislators exported its ban on interracial marriage to other states: In 1939, California legislators convinced the Utah legislature to add “Malay” to their state’s anti-miscegenation law in order to avoid having to recognize marriages between Filipino Americans and white people performed in Utah.¹⁵¹

It was not until 1948 that the California anti-miscegenation law was struck down by the California Supreme

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Photograph shows Lavinia Russell Baker and her five surviving children after the lynching of her husband, Postmaster Frazer Baker, and their daughter, Julia, on February 22, 1898. The Post Office and Baker family home was burned and family members were attacked by gunfire as they sought to escape.

Court.¹⁵² At oral argument, in defense of the law, the attorney for Los Angeles County asserted that “it has been shown that the white race is superior physically and mentally to the black race, and the intermarriage of these races results in a lessening of physical vitality and mentality in their offspring” and that “people who enter into miscegenous marriages are usually from the

lower walks of both races . . . generally people who are lost to shame.”¹⁵³ Even after the law was struck down as unconstitutional, the California legislature repeatedly refused to repeal the law.¹⁵⁴ It was not until *11 years* later that the California legislature finally repealed the statute, following consistent pressure from the National Association for the Advancement of Colored People.¹⁵⁵

IV. The Moynihan Report

Few developments in the past half-century have been as impactful, or arguably as harmful, to America's perception of African American families as the “Moynihan Report” of 1965.

Drafting and Content of the Moynihan Report

In the midst of the civil rights movement, in 1965, Daniel Moynihan, an Assistant Secretary of Labor researching policies as part of the Johnson Administration's “War on Poverty,” drafted what was originally an internal Department of Labor Report entitled, “The Negro Family: The Case For National Action.”¹⁵⁶ As described in the introduction of the report, one of its goals was to analyze the African American family structure, which Moynihan saw as the fundamental problem underlying the gap in income, standards of living, and education between African Americans and other groups.¹⁵⁷

The report described numerous ways that the historical legacy of slavery and institutional racism created lasting, harmful effects on African Americans and the African American family.¹⁵⁸ However, while acknowledging the impacts of these historical realities, the report essentially claimed that the high rate of single motherhood in African American families in America was a major reason for the continued failure of African Americans to achieve full and equal access to success in America.¹⁵⁹ It further asserted that such equality could only be achieved by changing the culture of African Americans, and particularly of African American men, who Moynihan claimed had been feminized and rendered inadequate workers through being raised without male role models.¹⁶⁰

Even when advocating for governmental intervention to assist African Americans, the Moynihan Report still portrayed them as helpless but for the intervention of white Americans, describing what Moynihan called the “pathology” of Black America as “capable of perpetuating itself without assistance from the white world.”¹⁶¹ Although the Moynihan Report relied heavily on scholarship previously published by African American scholars, and linked the poverty experienced by African

Americans to the historical traumas of slavery, it also argued that the Civil Rights Act and equality of opportunity would not resolve them.¹⁶²

Instead, the Moynihan Report asserted that “[t]he gap between the Negro and other groups in American society is widening. The fundamental problem, in which this is most clearly the case, is that of family structure.”¹⁶³ Moynihan argued, for example, that the prevalence of single motherhood in African American families created “a matriarchal structure which . . . seriously retards the progress of the group as a whole.”¹⁶⁴

The overt sexism and gender-stereotyping of the report also dovetailed with existing hostility towards African American women serving as leaders in the Civil Rights movement.¹⁶⁵ Contemporary African American women leaders were outraged that Moynihan explicitly advocated for improved governmental job opportunities for African American men over African American women to ensure male “breadwinners.”¹⁶⁶

Trailblazing advocate Pauli Murray stated that Moynihan's criticism of African American women in the workforce was “bitterly ironic,” as criticism “for their efforts to overcome a handicap not of their own making.”¹⁶⁷ Murray and others sharply disputed that traditional gender roles could solve African American poverty and racism.¹⁶⁸ Social scientist Donna Franklin argued that the family instability Moynihan focused on was mostly a result of the fact that African American women were hired as maids and child caregivers, while racial discrimination prevented African American men from finding jobs.¹⁶⁹ W.E.B. Du Bois made a similar observation nearly a half a century before the Moynihan Report.¹⁷⁰

Franklin also noted that the many single mothers in the African American community noted by Moynihan was at least partially due to the fact that adoption services did not accept African American children.¹⁷¹ As a result, single African American women were forced into motherhood when white women had the option of giving their children up for adoption.¹⁷² During the 1950s, 70

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Unidentified African American Civil War veteran in Grand Army of the Republic uniform with two children. (c. 1900)

percent of white single mothers gave up their children for adoption, but only five percent or fewer of African American single mothers did so.¹⁷³

As Ta-Nehisi Coates wrote, the report helped create “the myth...that fatherhood is the great antidote to all that ails black people.”¹⁷⁴

Ultimately, no national effort resulted from the Moynihan Report. President Johnson called for a White House conference in its wake, which occurred in November of 1965.¹⁷⁵ At that point, the report had engendered so much controversy that Moynihan himself was largely sidelined at the conference, having recently left the administration.¹⁷⁶

The Contemporary Response of African American Leaders to the Moynihan Report

Largely in response to the Moynihan Report, President Johnson acknowledged the legacy of state-sanctioned

slavery and discrimination when he publicly stated, “Negro poverty is not white poverty.”¹⁷⁷ Nevertheless, his administration followed that announcement with few meaningful efforts to address disparities of African Americans.¹⁷⁸

Johnson did, however, convene a group of well-respected civil rights leaders to address African American poverty, which produced a report proposing that the federal government spend billions of dollars to ensure jobs, universal health insurance, and a basic minimum income paid to all Americans, regardless of race.¹⁷⁹ Their approach did not acknowledge that the American government has harmed African Americans in a unique way, since they believed proposals aimed at helping all poor Americans, African American and white, were likely to succeed.¹⁸⁰ Nevertheless, very few of their recommendations ultimately manifested in any federal legislation from the Johnson Administration, or otherwise.¹⁸¹

Impacts on Public Discourse and Social Policy

Scholars have consistently criticized the Moynihan Report for blaming the victim.¹⁸² For some politicians

and government actors, the Moynihan Report justified a stance that African Americans were unworthy of public assistance because African American culture was to blame for harms resulting from the enslavement and racial discrimination.¹⁸³

Moynihan also suggested that every young African American man should join the armed forces, which would provide African American men with a much-needed “world away from women, a world run by strong men of unquestioned authority, where discipline, if harsh, is nonetheless orderly and predictable.”¹⁸⁴ This recommendation was made as American involvement in the Vietnam War was beginning to escalate, at a time in which African American men were underrepresented in the armed forces.¹⁸⁵ Moynihan’s analysis and recommendation lead to Secretary of Defense Robert McNamara’s “Project 100,000,” a program ostensibly designed to allow greater access to the U.S. Military for those who initially failed the qualifications test.¹⁸⁶ Project 100,000 ultimately served as a successful

recruitment tool for Black soldiers in the Vietnam War—40 percent of those recruited were Black, a proportion nearly four times the percentage of African Americans in the general population.¹⁸⁷ Regardless, African American men were more likely to be drafted than white men, further devastating African American families when thousands of African American men died in the war.¹⁸⁸

Although the Moynihan Report and its central conclusions were immediately controversial and contested, President Johnson adopted its language and central focus in decrying the “breakdown of the Negro family structure” as fundamental to the challenges faced by African Americans.¹⁸⁹ Several high-profile scholars also used the conclusions of the Moynihan Report to argue against the very social welfare programs for which Moynihan had advocated to help African Americans out of poverty. These included Arthur Jensen and Charles Murray—best known for their deeply controversial book “The Bell Curve”—who argued

that the wealth gap between African American and white Americans existed because white Americans were more intelligent, a position Moynihan explicitly rejected.¹⁹⁰

Later scholars argued the Moynihan Report provided grounds for politicians to blame African American single-parent families for their poverty and to deny assistance to African Americans in need.¹⁹¹ Scholars have noted that Ronald Reagan, as California governor, “exploited” the perception of the single African American mother popularized by the Moynihan report when he coined the term “welfare queen” as part of his larger campaign for limited government.¹⁹² Historians have argued that the Moynihan Report, despite arguing for greater interventions to combat African American poverty, nevertheless influenced the political movement within the federal government in the 1990s to cut welfare programs and impose punitive “welfare to work” training or employment requirements on recipients of cash assistance.¹⁹³

V. The Welfare System: Assistance to Families

Despite the consistent arguments of politicians in the 1980s and 1990s stereotyping African Americans as unfairly taking advantage of government welfare policies, the American welfare system throughout history has actually discriminated against African American women and families, both explicitly and implicitly.

were slower to enact such pensions and/or less generous with them when they were enacted.²⁰¹

Both Northern and Southern states also implemented standards that disproportionately disqualified African American women, such as barring unmarried mothers

1900 to 1935: State “Mothers’ Pensions”

States across America developed centralized welfare systems in the early 1900s to provide economic aid to low-income single mothers taking care of their children.¹⁹⁴ States made support payments every month to ensure a basic standard of living to care for both mother and child.¹⁹⁵ By 1930, all but two of the 48 existing states had created these “mothers’ pensions.”¹⁹⁶

Throughout the era of mothers’ pensions, Southern states consistently avoided giving aid to single African American mothers.¹⁹⁷ These policies discriminated against African American mothers, despite their greater economic need on average.¹⁹⁸ This approach was in line with southern state officials’ administration of federal public works programs; such officials generally argued that African Americans should not need or be given relief so long as menial jobs were available to them.¹⁹⁹ Research has shown that between 1910 and 1920, the states in the South that enacted no “mothers’ pensions” were those with greatest percentage of African American single mothers.²⁰⁰ Similarly, states that had higher African American single motherhood rates

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African-American family living in crowded quarters, Chicago, Illinois. (1941)

from receiving benefits.²⁰² Many states across the nation only gave mothers' pensions to widows, thereby excluding unmarried mothers who were more often African American women.²⁰³ Even nominally race-neutral programs were often racist in their administration, since discretion in administering these programs was often left to "line officials (judges as well as county agencies)" who made decisions "to separate the worthy mothers from the unworthy" and about whether to provide benefits at all.²⁰⁴

A welfare field supervisor in the 1930s explained that the withholding of welfare payments from African American mothers was to prevent them from staying at home caring for their children and to instead force them into the work place.²⁰⁵ This reflected the attitude of the white community that African American women should be forced to continue engaging in seasonal labor jobs or domestic service rather than receive any aid.²⁰⁶

MOTHERS' PENSIONS RECIPIENTS 1931 BY RACE A FORM OF GOVERNMENT AID TO NEEDY FAMILIES

Percent receiving funds



A survey of all mothers' pensions across states in 1931 found that 96 percent of recipients were white; only three percent went to African American mothers.²⁰⁷ All the states of the Deep South—Arkansas, Florida, Louisiana, Mississippi, North Carolina, Tennessee, and Texas—created "mothers' pension" programs, but provided almost no assistance to African American single mothers. Across these seven states in 1931, only 39 African American families received mothers' pensions, compared to 2,957 white families.²⁰⁸

1935 to The Present: Federal Aid to Dependent Children and Modern Welfare

In 1935, the federal government passed the Social Security Act, which created a federal program similar to the state mothers' pensions known as "Aid to Dependent Children," later renamed "Aid to Families with Dependent Children."²⁰⁹ In the 1950s, the federal government established payment programs to help poor Americans, but these programs were administered by state government agents who often denied welfare benefits to African American families by claiming that their homes were immoral, typically because children were born out of wedlock.²¹⁰ For example, in 1960 the Louisiana government

removed 23,000 children from its state welfare rolls solely because their parents were not married, which was more likely to be the case among African American families.²¹¹

In response, the federal government prohibited states from denying welfare benefits solely because a child was born to unmarried parents, and required them to decide on a case-by-case basis whether a family was "unsuitable" for welfare and to provide service interventions to such families.²¹² Although the intent of this rule, which became known as "Flemming Rule," was to prohibit states from excluding families from welfare assistance by applying broad (and often arbitrary) rules to all recipients, the effect was to push more African American children into foster care.²¹³ State welfare officials investigated African American families to consider whether to remove their children, often simply because the family was poor.²¹⁴ Again, scholars have noted that these policies were in many ways a modern day continuation of the apprenticeship process of removing African American children from their low-income families.²¹⁵

For example, in 1960 in Florida, the largely white state welfare worker staff investigated and challenged the "suitability" of approximately 13,000 families already receiving welfare assistance.²¹⁶ Of these 13,000 families, only nine percent were white, even though welfare recipients as a whole were 39 percent white.²¹⁷ The State of Florida forced these 13,000 families to choose between their children or their welfare benefits.²¹⁸ Based on the racist beliefs that African American women had little maternal connection to their children, state workers expressed surprise that only 168 families agreed to place their children in state care.²¹⁹

In modern times, the welfare system of cash assistance has remained biased against African Americans. In 1996, as part of a public movement against so-called "welfare moms," Congress passed the Personal Responsibility and Work Opportunity Reconciliation Act, which created the Temporary Assistance to Needy Families program, a system of federal funds sent to the states.²²⁰ This system awards fixed dollar amounts to each state, but allows them to spend that money how they see fit to achieve federal goals.²²¹ Those goals include, but are not limited to, providing cash assistance to needy families and ending the dependence of needy parents on government benefits.²²²

This system has allowed states to craft policies that determine who is eligible for assistance, and these state policies tend to disqualify African American families from receiving cash assistance at a higher rate than other racial and ethnic groups.²²³ For example, seven states have policies that completely ban individuals with any drug-related convictions from eligibility for cash assistance.²²⁴ As discussed in Chapter 11, An Unjust Legal System, African American

individuals are much more likely than white individuals to be convicted of drug offenses due to discrimination in the criminal justice system.²²⁵ Therefore, these restrictions are more likely to burden poor African Americans.²²⁶ Similarly, 11 states still maintain “family cap” policies that originated in “welfare mom” stereotypes, which deny benefit increases when welfare recipients have another child, and which have disproportionate impacts on African American families that tend to be larger than white families.²²⁷

One other notable change has emerged in very recent times. Because the law gives states the power to spend

percent of federal money was spent on welfare benefits nationwide, whereas in 2019 states spent only 21 percent of their federal money on such benefits.²²⁹ Again, African Americans are more likely to suffer from this change, as states with larger percentages of African American residents have tended to spend the least percentage of their federal funds on welfare benefits.²³⁰

California

Historically, California provided “mother’s pensions” solely to widows, and was thus more likely to give these benefits to white single mothers because of the greater percentage of unwed African American mothers.²³¹ Moreover, the racist stereotype of “Welfare Queen” was arguably popularized by then-California Governor Ronald Reagan in 1976, who ran for President in part on a promise to cut welfare benefits, as he had done as Governor of California.²³²

Currently, California spends a greater percentage of its federal Temporary Assistance to Needy Families funds on basic assistance than most other states in the nation.²³³ However, that percentage has reduced from 51 percent in 2009 to 39 percent in 2020.²³⁴ Advocates and academics note that these reductions disproportionately harm African American families.²³⁵

Both during and for many decades after the slavery era, Black children were systematically excluded from orphanages and other resources designed to care for poor children. Instead, some free Black children were placed in charitable housing for homeless or very low-income adults, where they faced abuse and were sometimes “indentured” into forced labor, effectively re-enslaving them.

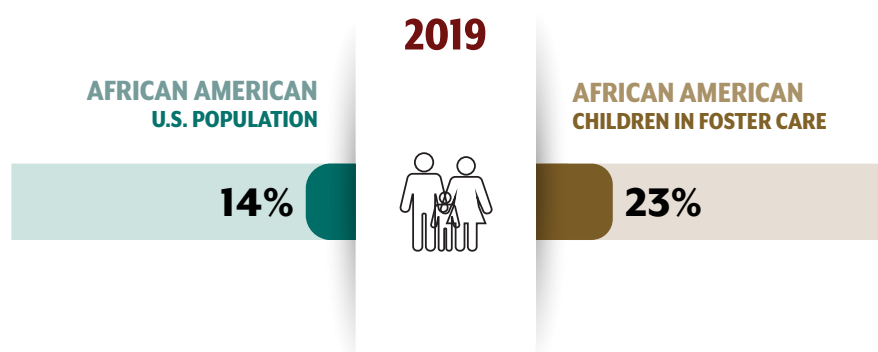
federal money on programs other than direct cash assistance, states are motivated to minimize cash assistance so they can spend more on other programs that might otherwise drain state coffers.²²⁸ Over the past 20 years there has been a dramatic reduction in the percentage of federal money spent on cash assistance. In 1997, 71

VI. Foster Care Systems and Other Forms of Child Welfare

Historically and through today, African American families have faced racism in the child welfare system. After the Civil War, government agencies excluded African American orphans from government care and have consistently been more likely to investigate African American families. As of 2019, African American children “accounted for roughly 14 percent of the child population [but] 23 percent of the foster care population.”²³⁶

The fact that child welfare agencies are more likely to investigate African American families is not because African American parents are more likely to mistreat their children, but rather due to many other factors.²³⁷ An official study of the U.S. Department of Health and Human Services found in 1996 that the

disproportionality of African American children being taken from their parents and placed in foster care “does not derive from inherent differences in the rates at which they are abused or neglected,” but rather reflects the “differential attention” received by African American children “along the child welfare service pathway.”²³⁸ Since then, some studies have found slightly higher rates of mistreatment within African American families, but scholars have



observed that these higher rates are due to the fact that African American families are more likely to be poor, and the stresses of poverty correlate with child mistreatment.²³⁹

Foster Care and Adoption Throughout American History

Both during and for many decades after the slavery era, Black children were systematically excluded from orphanages and other resources designed to care for poor children.²⁴⁰ Instead, some free African American children were placed in charitable housing for unhoused or very low-income adults, where they faced abuse and were sometimes “indentured” into forced labor, effectively re-enslaving them.²⁴¹ Non-governmental African American child welfare organizations were sometimes established to help some African American children rejected from private and public entities that only assisted white children.²⁴² For example, Pittsburgh’s Home for Colored Children was founded after a young Black girl, Nellie Grant, wandered the streets after being rejected from the city’s childcare institutions because she was Black.²⁴³

Scholars have argued that more African American children end up in foster care because adoption services believed that African American children were “unadoptable” due to the preferences of the white families which they served to adopt white children.²⁴⁴ After governmental child adoption services were officially open to African American children, most were not still given the same opportunities as white families because adoption agencies catered to the pref-

From 1945 to 1982, the percentage of nonwhite children in foster care rose from 17 percent to 47 percent, with 80 percent of nonwhite children being Black. Scholars have found that racial discrimination exists at every stage of the child welfare process.

erences of white families.²⁴⁵ Non-governmental agencies similarly excluded African American children by catering to the private adoption market, which was largely affluent and white.²⁴⁶ When these adoption institutions failed to place Black children with families, they blamed the children and stigmatized them as “unadoptable.”²⁴⁷

State government systems that take children from caregivers believed to be unfit and place them in other environments designed to ensure their safety developed after World War II.²⁴⁸ From the start, state agencies removed African American children from their families and placed them into foster care far more often than white children. Between the years of 1945 and 1961, the number

In 2008, compared to white children, similarly-situated African American children were

77% MORE LIKELY to be removed from their homes

of nonwhite children in child welfare caseloads almost doubled, increasing from 14 percent to 27 percent.²⁴⁹

As the modern foster care system developed, various governmental policies have placed African American youth at greater risk of being taken from their families. As discussed above, until the 1950s, poor African American families continued to be denied benefits available to other poor Americans based on federal policies, and then were faced with potential removal of their children into foster care because of “unsuitable” home conditions.²⁵⁰

The criminalization of African Americans through the “War on Drugs” also contributed to increasing numbers of Black children being removed from families and placed into the foster care system, as Black men in particular were disproportionately arrested for minor crimes, breaking apart families and often leaving children in the care of extended relatives or strangers.²⁵¹ Child welfare agencies tasked with ensuring child safety also often pay particular attention to families experiencing homelessness and housing instability, which African Americans are more likely to experience.²⁵²

Housing instability can also delay the return of a child who has been removed to their family.²⁵³ From 1945 to 1982, the percentage of nonwhite children in foster care rose from 17 percent to 47 percent, with 80 percent of nonwhite children being African American.²⁵⁴

Scholars have found that racial discrimination exists at every stage of the child welfare process. State agencies are more likely to be involved with African American families than with white families.²⁵⁵ African American parents are more likely to be investigated than other families, because neighbors, teachers, and bystanders are more likely to report African American families than white families, likely due to their own racial biases.²⁵⁶

When equally poor African American and white families are compared, even where the families are considered to be at equal risk for future abuse, state agencies are more likely to remove African American than white children from their families.²⁵⁷ A 2008 study found that

African American children were 77 percent more likely than similarly-situated white children to be removed from their homes as opposed to receiving in-home services.²⁵⁸ African American children placed in foster care spend more time there, and are less likely to reunify with their families.²⁵⁹ All other factors being equal, African American parents are more likely than white parents to have their parental rights terminated.²⁶⁰

In 2017, the *New York Times* published evidence of racist foster care interventions in New York City in which African American mothers not only had their children taken away, but also faced unfair criminal consequences.²⁶¹ One African American woman, who remained anonymous in the article, called emergency services when she went into premature labor, but then realized her boyfriend could not be reached unless she walked to his location.²⁶² She left her six-year-old-daughter alone at her apartment and walked to get her boyfriend, returning 40 minutes later to find emergency services and police.²⁶³ Immediately after giving birth, she was handcuffed and placed under arrest for child endangerment, and both of her children—including her newborn baby—were placed in foster care.²⁶⁴ Scholars argue that the refusal of some academics to consider the narrative experiences of African American parents facing foster care interventions such as these echo the arguments of the Moynihan Report.²⁶⁵

Consequences of Foster Care Disparities

As a group, children in the foster care system are often subjected to harms as a result of the experience. These children are more likely to be African American.²⁶⁶ For example, Brittany Clark spent 12 years in state care.²⁶⁷ At age seven, she was placed as the only girl in a long-term home, during which she experienced physical and sexual abuse.²⁶⁸ After five years, Clark was relocated and spent the remainder of her time in foster care moving from home to home, encountering individuals who cared more about receiving foster care payments than caring for her.²⁶⁹ This instability, lack of control over circumstances, and repeated loss of connection harms foster children in compounding and lasting ways.²⁷⁰

Foster children as a group—in which African American children are greatly overrepresented—demonstrate various long term negative outcomes when compared to children not involved in the foster care system. Compared to youth nationally, children who age out of foster care are less likely to be employed or employed regularly, and earn far less, than young adults who were not in the foster care system.²⁷¹ By age 26, only three to four percent of young adults who aged out of foster care earn a college degree.²⁷² One in five of these youth will experience homelessness after turning 18.²⁷³ Only *half* will obtain *any* employment

by 24.²⁷⁴ Over 70 percent of female foster youth will become pregnant by 21, and one in four former foster youth will experience Post-Traumatic Stress Disorder.²⁷⁵

Children in foster care are also far more likely to be involved with the criminal justice system. Some children taken from their families are placed in correctional facilities, and within this group, African American children were placed in various penal facilities at rates much higher than white children.²⁷⁶ Approximately 25 percent of children in foster care will become involved with the criminal justice system within two years of leaving foster care, and over half of youth currently in foster care experience an arrest, conviction, or stay at a correctional facility by the age of 17.²⁷⁷ For children who have been moved through multiple foster care placements, the risk is even higher, with one study indicating that over 90 percent of foster youth who move five or more times will end up in the juvenile justice system.²⁷⁸ Foster youth, particularly girls, are targeted by sex traffickers, and the criminalization of sex work can funnel these victims of modern-day slavery into the criminal justice system.²⁷⁹

As a result of these severe disadvantages faced by foster youth, some modern scholars have advocated for the abolition of the modern “Child Protective Services” agency, arguing that it is inherently racist and should be replaced with a child protection model that implements policies and procedures designed from the ground-up to exclude racist presumptions.²⁸⁰

California

California’s Child Welfare system historically exhibited, and continues to exhibit, the same disparities between African American and white families that are discussed

Compared to white children in California, African American children are

2x
MORE LIKELY

to experience a Child Protective Services Event

above at the national level, generally in even more extreme forms. For example, African American children in California make up approximately 22 percent of the foster population, while only *six percent* of the general child population.²⁸¹ Nationally, these percentages are 24 percent and 15 percent, meaning that, in California, African American children are more than twice as overrepresented in foster care when compared to the national average.²⁸²

A 2015 study ranked California among the five worst states in foster care racial disparities.²⁸³ Some counties in California—both urban and rural—have much higher disparities compared to the statewide average. In San Francisco County, which is largely urban and has nearly 900,000 residents, the percentage of African American children in foster care in 2018 was over 25 times the rate

Compared to white children in California, African American children are



to spend time in foster care or experience a termination in parental rights

of white children.²⁸⁴ In Yolo County, which is largely rural and has approximately 200,000 residents, the percentage of African American children in foster care in 2018 was over 8 times the rate of white children.²⁸⁵ In 2014, Los Angeles County's Commission on Child Protection issued a detailed report noting widespread failures and shortcomings across the county's child welfare system—failures that fall disproportionately on the overrepresented African American population within that system.²⁸⁶

Similar to national statistics, a 2003 study showed that, even when normalizing for other relevant factors like poverty, Black children in California are more likely to be removed from their caretakers and placed in foster care than white children.²⁸⁷ African American children in California are approximately twice as likely as white children to experience

a Child Protective Services investigation, and approximately three times as likely to spend some time in foster care or experience a termination in parental rights.²⁸⁸

California youth who enter foster care also consistently exhibit various achievement gaps compared to children not involved with foster care, further worsening disparities for African Americans. By age 24, California foster youth who age out of foster care earn less than half what an average 24-year-old earns nationally.²⁸⁹ Only 53 percent of foster youth in California graduate high school on time, compared with 83 percent of all youth in California.²⁹⁰

California has made some recent attempts to address these dramatic disparities between foster youth and those not in the foster system, though little has been done to specifically target the racial disparities discussed above. In September 2021, California Assembly Bill 12 was passed into law, enabling foster youth to remain in care through age 21 as a tool to help increase foster youth college attendance rates and address some of the negative consequences of youth aging out of care at 18 with no sources of support.²⁹¹ In July 2021, California lawmakers approved the first ever state-funded plan to guarantee monthly cash payments to youth leaving the foster system.²⁹² All University of California, California State University, and California Community College campuses now have foster youth programs designed to provide help and support to former foster youth on their campuses.²⁹³ Explicitly addressing the racial disparity in Los Angeles County's foster care system, the Los Angeles County Board of Supervisors created an "office of equity" within the agency administering the foster care system.²⁹⁴ It was created, however, with "no proposed budget or more specific mandates on the office in terms of actual services it will provide."²⁹⁵

VII. Criminalization of African American Youth

Black youth are more likely to be exposed to the criminal legal system as a result of racism and over-policing.²⁹⁶ In recent years, these disparities have often gotten worse.²⁹⁷ In 2018, while African American youth made up 16 percent of the youth population, the rate of arrest of African American youth was 2.6 times that of white youth, and African American youth accounted for 50 percent of all youth arrests for violent crimes.²⁹⁸

Once charged with a crime, African American youth are at risk of harsher prosecution, detention, and punishment.²⁹⁹ African American youth are transferred to adult

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Photograph shows children of William and Daisy Myers, the first black residents of Levittown, Pennsylvania riding bicycles on the sidewalk. (1957)

court at a much higher rate than white youth. In 2018, while African American youth only accounted for 35 percent of all cases, they made up more than 51 percent of transfers from the juvenile court system to adult court.³⁰⁰ African American girls are 3.5 times more likely to be incarcerated than their white peers.³⁰¹ African American girls also comprise 34 percent of girls in residential placements, but accounted for 15 percent of the female youth population.³⁰² A 2016 study found that for youth serving life without parole sentences in the United States, twice as many individuals were African American as white.³⁰³

Law enforcement and other government agencies across America often treat African American youth as adults, or as less than human, in myriad ways. Research confirms that law enforcement often overestimates the age of African American youth when they are suspected of a felony based on contact with police.³⁰⁴ One study found that Black boys are perceived as older than they are and less innocent than their white peers.³⁰⁵

School Policing

In all 50 states, public schools, including elementary schools, employ student resource officers, which often do not go by the title of police.³⁰⁶ Proponents of school policing have long tied this practice to fears after deadly mass shootings in places like Columbine High School, while some scholars have argued its prevalence is linked to white fear of African American youth under the guise of protecting school children.³⁰⁷ In either case, over the past several decades the number of law enforcement officers on school campuses throughout the United States has skyrocketed.

In the 2015-16 school year, Black students were arrested at three times the rate of white students, while only comprising 15 percent of the population in schools. This is at least partially explained by findings that Black girls are seen by authorities and teachers as “disobedient” or “disruptive” for similar but accepted behaviors from white children.

In 1975, the number of U.S. schools with police presence on campus was only one percent.³⁰⁸ By 2016, there were 27,000 school resource officers patrolling U.S. schools, up from about 9,400 in 1997.³⁰⁹ This equated to sworn officers in approximately 36 percent of elementary schools, 67.6 percent of middle schools, and 72 percent of high schools in the 2017-18 school year.³¹⁰ This is at least partially due to a dramatic increase in federal funding for school police.³¹¹ Congress passed

COURTESY OF NATIONAL YOUTH ADMINISTRATION/NATIONAL ARCHIVES



A photograph taken by the Federal Security Agency, National Youth Administration. The original caption stated: “Oakland, California. High School Youth. Two Negro youngsters look over the shoulders of a couple of fortunate enough to own a model plane. The white boys can hope to become aviators” (1940)

the Violent Crime Control and Law Enforcement Act in 1994 to increase federal involvement in school policing and safety.³¹² The law provided massive federal aid for policing at the state and local level and in schools.³¹³

In the 2015-16 school year, African American students were arrested at three times the rate of white students, while only comprising 15 percent of the population in schools.³¹⁴ This disparity widens for African American girls, who make up 17 percent of the school population, but are arrested at 3.3 times the rate of white girls.³¹⁵ This is at least partially explained by findings that Black girls are seen by authorities and teachers as “disobedient” or “disruptive” for similar but accepted behaviors from white children.³¹⁶

Moreover, schools have historically disciplined clothing trends popular among African American youth, including “sagging,” oversized, and baggy clothes.³¹⁷ Police played a role in creating a narrative in schools that sagging was a symbol of gang activity, and school officials proceeded to ban sagging as a way to prevent gang violence, graffiti, and create “safe” environments for kids, thereby further targeting African American youth.³¹⁸ See Chapter 6, *Separate and Unequal Education*, for more information on the so-called “school to prison pipeline.”

One in five students in the U.S. will develop mental health challenges that rise to the level of a diagnosis.³¹⁹ Yet, around the country, schools are more likely to employ law enforcement than mental health counselors, and

African American students are three times more likely than their white peers to have police in their school but no psychologist.³²⁰ African American male youth with disabilities in the 2015-16 school year had an arrest rate of five times the rate of the whole population.³²¹

The Juvenile Justice System

Outside of schools, African American youth face disproportionate harms through various aspects of the juvenile justice system. A 2021 study by researchers from the University of California, Berkeley, found that Black youth in the 10 to 14 age group are injured in police-related incidents at 5.3 times the rate for boys, and 6.7 times the rate for girls, compared to their white peers.³²² The study suggested that especially among African American girls, this disparity could be due to how African American girls are “adultified” compared to white girls and perceived of as older.³²³ Scholars have noted similar “adultification” of African American boys, who at 10 years old are perceived as less childlike, less innocent, and four and a half years older than their white counterparts.³²⁴ Because of this perception of African American children as older and less innocent, they are seen as more responsible for their actions than white children who engage in the same behaviors.³²⁵

Both Black boys and girls are also perceived as more dangerous than their white peers, though the magnitude of the bias has been shown to be stronger for boys than girls.³²⁶

More broadly, as discussed in Chapter 11, An Unjust Legal System of this report, African American youth are more than four times as likely to be detained or committed in juvenile facilities as their white peers.³²⁷ Youth who are stopped more frequently by police are more likely to report feelings such as anger, fear, and stigma, and shame.³²⁸ More invasive stops led to increased feelings of emotional distress and trauma, including posttraumatic stress after the stop.³²⁹ Stress among youth involved in police stops is not contingent on whether they were engaging in any misconduct.³³⁰

The “War on Drugs” in the 1980s and 90s had an outsized impact on African American youth. White youth use drugs at the same or higher rate as African American youth, but African American youth are disproportionately prosecuted though drug cases in juvenile courts.³³¹ Again, this was largely enabled by the federal government. In 1990, Congress passed legislation authorizing Department of Defense resources to be used to combat drug activity by state and local agencies, including public schools.³³² In 2014, schools in states such as California,

Florida, and Texas reported receiving military-grade equipment through the department’s program.³³³

African American youth facing mental health problems or crises are also funneled into the juvenile justice system in ways white children facing similar issues are not.³³⁴ Even when African American youth receive mental health treatment instead of or in addition to incarceration, they are more likely to be inappropriately diagnosed and medicated than their white peers.³³⁵

Once in the juvenile justice system, outreach to families is inadequate.³³⁶ Police and facility outreach to parents is usually limited to notice that their child has an upcoming court appearance, without more information such as why an arrest was made or the circumstances of their child’s confinement.³³⁷ The bail system for youth in the criminal legal system is also deeply flawed. Courts rarely consider what a family can actually afford when setting bail, and bail is regularly set between \$100 to \$500 for children.³³⁸

White youth use drugs at the same or higher rate as Black youth, but Black youth are more likely to be prosecuted.

California

The issues discussed above apply to California’s history and present treatment of African American youth, although there has been some modern pushback to these approaches.

Recent California Attorney General investigations and settlements with California school districts, e.g., the Barstow Unified School District, the Oroville City Elementary School District, and the Oroville Union High School District are all representative of continued targeting of African American youth.³³⁹ Investigations at these districts showed that African American students were more likely to be punished and/or suspended, and were subjected to greater punishments, than similarly-situated peers of other races.³⁴⁰

Other districts have taken proactive steps to change outdated approaches. For example, the Oakland school board voted to remove security officers from schools in June 2020.³⁴¹ Before this vote, school officer practices were governed by a policy and procedure manual that described them as having a “calming presence” in the school.³⁴² The manual also included authorization for officers to restrain students, search students and their property, and even detain individuals if they had reason to believe a crime had been committed.³⁴³ All of these powers,

and the school police enforcing them, have disproportionate harmful impacts on African American students. California-specific research has determined that schools with larger police presences lead to decreased instruction for African American students, likely because police discipline and monitoring contributes to a climate that is incompatible with learning.³⁴⁴

Nevertheless, California still allows law enforcement discretion to add youth over the age of 12 to a gang database as long as two of the following factors—under certain limitations and requirements—are found: admission of gang activity, identification of a gang tattoo, frequent identification in a “gang area,” any known association with gang members, clothing associated with a gang, arrest for typical gang activity, or display of gang signals.³⁴⁵ In California, public defenders and youth advocates estimate that police have tracked children as young as 10 for suspected gang activity.³⁴⁶

In one high-profile incident related to the policing of African American children, in May 2019, police in Sacramento chased down an African American 12-year-old child who they claimed was

Although African Americans experience intimate partner violence at greater rates, very little academic or practical attention has been paid towards specific interventions or assistance models that are explicitly catered to Black victims.

asking people to buy goods he was selling, and forcefully detained him while he was calling for his mom.³⁴⁷ One police officer covered his face with a mesh sack and forced him on the ground with a knee on his back while an officer put a knee on his thigh.³⁴⁸

VIII. Domestic Violence in African American Families

Domestic violence, also termed intimate partner violence, is a significant problem within African American families and communities across the country, and that problem is linked to many of the issues already discussed in this chapter.

Elevated Rates of Domestic Violence

African American women experience intimate partner violence at greater rates, and in more traumatic ways, than other women on average.³⁴⁹ The U.S. Department of Justice estimated that, in 2000, African American females experienced intimate partner violence at a rate 35 percent higher than that of white women.³⁵⁰ In 2007, data indicated that African American women victims of intimate partner violence were twice as likely to be murdered by a spouse and four times as likely to be murdered by an unmarried partner when compared to white women.³⁵¹ Even among victims of intimate partner violence, African American women experience more traumatic forms of violence on average as compared to white women.³⁵² Moreover, African American men also experience elevated rates of intimate partner violence when compared to white men.³⁵³ Similar patterns exist for African American LGBTQ+ victims of both genders, who experience intimate partner violence at greater rates than white LGBTQ+ victims.³⁵⁴ Despite these disparities, very little academic or practical attention has been paid towards specific interventions or assistance models that are explicitly catered to African American victims.³⁵⁵

Causal Factors

The higher rates of domestic violence in African American families cannot be explained by a single cause. Some scholars have noted that, aside from greater rates of poverty, overcrowding, and other domestic violence risk factors experienced by African American families, African American men have experienced systemic racism throughout American history that, when compounded with traditional gender roles, may contribute to displaced anger, hatred, and frustration toward family members.³⁵⁶ Throughout American history, African American men have been subjected to racial discrimination in employment (as further detailed in Chapter 10, Stolen Labor and Hindered Opportunity) while society simultaneously tells them that their role is to provide for their families.³⁵⁷ Scholars have argued that these pressures, which are impossible to reconcile, may lead to expressions of physical violence.³⁵⁸

Regardless of the causes of domestic violence, African American women are less likely to seek assistance from social services agencies because of distrust based on the racially discriminatory history described earlier in this chapter.³⁵⁹

Evidence shows that this distrust is not misplaced. Government actors in social services agencies and the judicial system have unfairly disregarded African American victims as angry “welfare queens” who are

immune to violence, or violent themselves.³⁶⁰ These perceptions are further cemented by media portrayals of African American women as aggressive or emasculating.³⁶¹ Similarly, African American women already involved with the justice system are less likely to seek help from police because they expect to be disbelieved, based on the extensive histories of racist government actions in supporting violence against African American women as detailed in Chapters 3, Racial Terror, 11, An Unjust Legal System and 12, Mental and Physical Harm and Neglect.³⁶² Black female victims of abuse are sometimes reluctant to report abuse by Black men to the “white legal system” even when police intervention is appropriate, given their long exposure to inequities within that system for African Americans.³⁶³ As explained by Cecily Johnson, director of strategic initiatives at the Domestic Violence Network, I have been told personally [by a survivor] they can’t get help because they don’t want their partner to become a statistic There’s a genuine and legitimate fear that if they call the police, their partner could be killed or they, as the survivor, could be killed.³⁶⁴

Black transgender women are similarly hesitant to report abuse to the police because they fear being falsely or illegitimately arrested, are particularly likely to be

High-profile instances of violence against transgender women, especially when transgender women defend themselves, legitimize these fears.³⁶⁷

A lack of understanding of the real and well-founded concerns of Black victims of domestic violence, and the distrust of Black victims of police and social services, has consistently been a major challenge among those tasked with helping victims of intimate partner violence, both within California and nationally.³⁶⁸

California

The patterns discussed above exist in California as well as nationally. California has the largest number of domestic violence survivors in the country, and African American women in California are approximately 25 percent more likely than women generally to experience such violence during their lifetimes.³⁶⁹ Moreover, a report from Blue Shield of California concluded that “Black women in particular . . . experience a significant resource gap after instances of intimate partner violence.”³⁷⁰ These disparities have likely been exacerbated by the COVID-19 epidemic, with significant majorities of Black Californians surveyed saying that they believe the epidemic and its stay-at-home orders both made domestic violence more likely to occur and made it harder for victims of such violence to reach out for help.³⁷¹

Qualitative studies within California have also confirmed that African American Californians perceive poverty, prior trauma, and systemic racism as root causes of domestic violence in African American families.³⁷² African American female

victims in California are also less likely to seek police assistance because they fear police will falsely believe them to be aggressors and arrest them as well.³⁷³

A lack of understanding of the real and well-founded concerns of Black victims of domestic violence, and the distrust of Black victims of police and social services, has consistently been a major challenge among those tasked with helping victims of intimate partner violence, both within California and nationally.

physically or sexually assaulted in prison,³⁶⁵ and because they are more than three times as likely to experience police violence compared to non-transgender people.³⁶⁶

IX. Conclusion

The destruction, commodification, and exploitation of the African American family has occurred throughout American history, and enriched both private and government actors for generations of white Americans.

The racist and sexist stereotypes created during enslavement to sustain the cotton economy and enrich the entire nation are woven throughout American laws, policies, and government agencies. These racist beliefs tore

apart African American families on the auction block during enslavement, justified re-enslaving children through the apprenticeship system, and underlie the continued removal of African American children from their parents in the foster care system. This reality has rarely been recognized, let alone remedied. To the contrary, in the past half-century government actors have blamed African Americans for the harms that have resulted from racist government actions.

Endnotes

¹ Fuke, *Planters, Apprenticeship, and Forced Labor: The Black Family under Pressure in Post-Emancipation Maryland* (1988) 62 Ag. Hist. 57, 62-65; section IV, *infra*.

² Robinson, “The Black Family” and US Social Policy: Moynihan’s Unintended Legacy?, 97 *Revue Française d’études Américaines* (2003) 118, 118-128; Baldwin, *Stratification of the Welfare Poor: Intersections of Gender, Race, and “Worthiness” in Poverty Discourse and Policy* (2010) 6 *The Modern American* 4; Cooper, *Racial Bias in American Foster Care: The National Debate* (2013) 97 *Marq. L. Rev.* 215, 230-233; sections VI & VII, *infra*; see generally Minoff, Center for the Study of Social Policy, [The Racist Roots of Work Requirements](#) (Feb. 2020) (as of Mar. 6, 2022).

³ *Ibid.*

⁴ Lawrence-Webb, *African American Children in the Modern Child Welfare System: A Legacy of the Flemming Rule* (1997) 76 *Child Welfare* 9, 9-21; White, *Federally Mandated Destruction of the Black Family: The Adoption and Safe Families Act* (2006) 1 *Nw. J. L. & Soc. Pol’y* 303, 313; Ladner, *Mixed Families Adopting Across Racial Boundaries* (1978), p. 67; Roberts, *Prison, Foster Care, and the Systemic Punishment of Black Mothers* (2012) 59 *UCLA L. Rev.* 1474, 1480-81.

⁵ See, e.g., Hockenberry & Puzanchera, [Juvenile Court Statistics 2018](#), Nat. Center for Juvenile Justice (2020) (as of Jan. 28, 2021).

⁶ Douglass, *My Bondage and My Freedom* (1855), p. 34.

⁷ Gates, Jr., [How Many Slaves Landed in the U.S.](#), PBS.org (citing Eltis & Richardson, [Trans-Atlantic Slave Trade Database](#)) (as of Mar. 6, 2022); Patton, [Corporal Punishment in Black Communities: Not an Intrinsic Cultural Tradition but Racial Trauma](#) (Apr. 2017) *Am. Psychological Assn.* (as of Apr. 11, 2022).

⁸ See generally Ellis, [Lost Lineage: The Quest to Identify African Americans’ Roots](#) (Oct. 19, 2021) *Wash. Post* (as of Apr. 11, 2022).

⁹ See generally Williams, *Help Me to Find My People* (2012).

¹⁰ Briggs, *Taking Children: A History of American Terror* (2020) p. 20.

¹¹ *Id.* at p. 19.

¹² *Id.* at pp. 20, 43.

¹³ Lamb, [The Peculiar Color of Racial Justice](#) (Jan. 25, 2005) *Christian Science Monitor* (as of Apr. 11, 2022); see also White, *Ar’n’t I a Woman? Female Slaves in the Plantation South* (New York: W. W. Norton, 1985) pp. 67-68.

¹⁴ See Wiecek, *The Statutory Law of Slavery and Race in the Thirteen Mainland, Colonies of British America* (1977) 34 *Wm. & Mary Q.* 258, 262; Morris, *Southern Slavery and the Law, 1619-1860* (1996) pp. 43-48.

¹⁵ *Act Prohibiting Importation of Slaves of 1807*, 2 *Stat.* 426, ch. 22.

¹⁶ California Task Force to Study and Develop Reparation Proposals for African Americans (Oct. 13, 2021), [Testimony of Dr. Jacqueline Jones](#) (as of Apr. 11, 2022) (Testimony of Dr. Jacqueline Jones); Briggs, *supra*, at p. 19; see generally Morgan, *Laboring Women: Reproduction and Gender in New World Slavery* (Philadelphia: University of Pennsylvania Press, 2014).

¹⁷ Testimony of Dr. Jacqueline Jones, *supra*; White, *Ar’n’t I a Woman? Female Slaves in the Plantation South* (New York: W. W. Norton, 1985) pp. 67-68; see generally Rachel A. Feinstein, *When Rape was Legal: The Untold History of Sexual Violence During Slavery* (New York: Routledge, 2019).

¹⁸ See generally Berry, *The Price for their Pound of Flesh: The Value of the Enslaved, from Womb to Grave, in the Building of a Nation* (Boston: Beacon Press, 2017).

¹⁹ *Ibid.*

²⁰ Foster, “The Sexual Abuse of Black Men under American Slavery.” *Journal of the History of Sexuality*, vol. 20, no. 3, 2011, pp. 445-64, <http://www.jstor.org/stable/41305880>. Accessed 11 Apr. 2022.

²¹ *Ibid.*; Testimony of Dr. Jacqueline Jones, *supra*.

²² Berry, *supra*, at pp. 10-11.

²³ *Id.* at pp. 5-6.

²⁴ Goring, *The History of Slave Marriage in the United States* (2006) 39 *J. Marshall L. Rev.* 299, 299, 302-304.

²⁵ Goodell, *The American Slave Code in Theory and Practice: Its Distinctive Features Shown by its Statutes, Judicial Decisions, & Illustrative Facts* (1853) p.

²⁶ Goring, *supra*, at pp. 314-315.

²⁷ *Id.* at pp. 303-304.

²⁸ *Ibid.*

²⁹ *Howard v. Howard* (N.C. 1858) 51 *N.C.* 235, 240.

³⁰ *State v. Samuel* (1836) 19 *N.C.* 177, 183.

³¹ Smith, *Freedom’s Frontier: California and the Struggle over Unfree Labor, Emancipation, and Reconstruction* (University of North Carolina Press, 2013) p. 231.

³² *Id.* at pp. 231-32.

³³ *Id.* at pp. 232-33.

³⁴ *In re Campbell’s Estate* (1910) 12 *Cal.App.* 707.

³⁵ Volpp, *American Mestizo: Filipinos and Antimiscegenation Laws in California* (2000) 33 *U.C. Davis L. Rev.* 795, 798.

³⁶ Viñas-Nelson, [Interracial Marriage in “Post-Racial” America](#) (July 2017) *Origins* (as of Aug. 13, 2021).

³⁷ Kwon, *Interracial Marriages Among Asian Americans in the U.S. West, 1880-1954* (2011) p. 13.

³⁸ See Wiecek, *supra*, at p. 262; Morris, *supra*, at pp. 43-48; Goring, *supra*, at pp. 303-304.

³⁹ Viñas-Nelson, *supra*.

⁴⁰ *Ibid.*

⁴¹ *Ibid.*

⁴² Kennedy, *Interracial Intimacies* (2003) p. 220.

⁴³ *Ibid.*

⁴⁴*Id.* at 221-22.

⁴⁵Pascoe, *What Comes Naturally: Miscegenation Law and the Making of Race in America* (2009) pp. 135-136.

⁴⁶McCash, *Thomas Cobb and the Codification of Georgia Law* (1978) 62 *The Georgia Historical Quarterly* 9

⁴⁷Briggs, *supra*, at pp. 25-26.

⁴⁸Morriss, *Georgia Code (1861)*, in *Slavery in the United States: A Social, Political, And Historical Encyclopedia* (Santa Barbara: ABC-CLIO, 2007) vol. 2, pp. 314-315.

⁴⁹Crew et al., *Slave Culture: A Documentary Collection of the Slave Narratives from the Federal Writers' Project* (2014) pp. 191. Please see Chapter 12 on Mental and Physical Harm and Neglect for further discussion of the process of birthing and the work demands placed on new mothers.

⁵⁰*Id.* at p. 193.

⁵¹*Id.* at p. 194.

⁵²*Id.* at p. 193

⁵³*Id.* at p. 194.

⁵⁴Steven Mintz, *Childhood and Transatlantic Slavery, Children and Youth in History* (as of Dec. 8, 2021).

⁵⁵Nat. Park Service, *African American Children* (as of Aug. 23, 2021).

⁵⁶See generally Gutman, *The Black Family in Slavery and Freedom: 1750-1925* (1977).

⁵⁷Tadman, *The Hidden History of Slave Trading in Antebellum South Carolina: John Springs III and Other "Gentlemen Dealing in Slaves"* (1996) 97 *S.C. Hist. Mag.* 6, 15.

⁵⁸Holden, *Slavery and America's Legacy of Family Separation* (July 25, 2018) *Black Perspectives* (as of Aug. 24, 2021).

⁵⁹*Id.*

⁶⁰Coates, *The Case for Reparations* (June 2014) *The Atlantic* (as of Apr. 12, 2022).

⁶¹*Ibid.*

⁶²Briggs, *supra*, at p. 18 (quoting *Congressional Globe* (1864) 28th Congress, 1st Session 1439).

⁶³*Id.* at p. 19.

⁶⁴*Id.* at pp. 17-28 (noting that slave narratives "dwelt often on the question of child taking").

⁶⁵Briggs, *supra*, at p.27.

⁶⁶*Ibid.*

⁶⁷See, e.g., Gutman, *supra*, at pp. 212-216; Hunter, *Bound in Wedlock: Slave and Free Black Marriage in the Nineteenth Century* (2017).

⁶⁸Herskovits, *The Myth of the Negro Past* (1941) pp. 167-186.

⁶⁹Fenton, *In A World Not Their Own: The Adoption of Black Children* (1993) 10 *Harv. Blackletter J.* 39, 42.

⁷⁰Rankin, *Why They Won't Take the Money: Black Grandparents and the Success of Informal Kinship Care* (2002) 10 *Elder L. J.* 153, 157.

⁷¹See Holmes, *The Extended Family System in the Black Community: A Child-Centered Model for Adoption Policy* (1995) 68 *Temp. L. Rev.* 1649, 1660 (citing, *inter alia*, Gutman, *supra*).

⁷²Ruggles, *The Origins of African-American Family Structure* (1994) 59 *Am. Sociological Rev.* 136, 136.

⁷³Du Bois, *The Philadelphia Negro* (1899); Du Bois, *The Negro American Family* (1908).

⁷⁴Frazier, *Ethnic Family Patterns: The Negro Family in the United States* (1932).

⁷⁵Evans, *Feminist Theory Today: An Introduction to Second-Wave Feminism* (1995) p. 13.

⁷⁶See *Craig v. Boren* (1976) 429 U.S. 190, 198-99; Beal, *Double Jeopardy: To be Black and Female* (2008) 8 *Meridians* 166, 167.

⁷⁷Beal, *supra*, at p. 167; Jones, *Labor of Love, Labor of Sorrow: Black Women, Work and the Family from Slavery to the Present* (1985) (hereinafter "Labor of Love") pp. 62-66.

⁷⁸See Testimony of Dr. Jacqueline Jones, *supra*; Campbell, *Making Black Los Angeles: Class, Gender, and Community, 1850-1917* (2016), pp. 39-68.

⁷⁹Campbell, *supra*.

⁸⁰Hooks, *The Will to Change: Men, Masculinity, and Love* (2005) pp. 5-10, 18-35.

⁸¹*Ibid.*

⁸²See generally Smith, et al., *Racial Battle Fatigue and the MisEducation of Black Men: Racial Microaggressions, Societal Problems, and Environmental Stress* (2011) 80 *J. of Negro Education* 63.

⁸³Wingfield, *The Modern Mammy and the Angry Black Man* (2007) 14 *Race, Gender & Class* 196, 198-199.

⁸⁴Hooks, *supra*, at pp. 127-129; see generally Smith, et al., *supra*.

⁸⁵See, e.g., Jones, *Labor of Love*, *supra*, pp. 58-64.

⁸⁶Testimony of Dr. Jacqueline Jones, *supra*; see generally Kessler-Harris, *Out to Work: A History of Wage-Earning Women in the United States* (New York: Oxford University Press, 2003); Benson, *Counter Cultures: Saleswomen, Managers, and Customers in American Department Stores, 1890-1940* (Urbana: University of Illinois Press, 1986).

⁸⁷Jones, *Labor of Love*, *supra*, at p. 64.

⁸⁸*Id.* at pp. 64-65.

⁸⁹Testimony of Dr. Jacqueline Jones, *supra*.

⁹⁰*Ibid.*

⁹¹*Ibid.*; Jones, *Labor of Love*, *supra*, at p. 59.

⁹²Jones, *Labor of Love*, *supra*, at p. 59.

⁹³Testimony of Dr. Jacqueline Jones, *supra*; see generally Kessler-Harris, *supra*; Benson, *supra*.

⁹⁴Testimony of Dr. Jacqueline Jones, *supra*; see generally Kessler-Harris, *supra*; Benson, *supra*.

⁹⁵Jones, *American Work: Four Centuries of Black and White Labor* (New York: W. W. Norton, 1998) pp. 222-232.

⁹⁶*Ibid.*

⁹⁷*Ibid.*

⁹⁸Stein, *Past and Present Proposed Amendments to the United States Constitution Regarding Marriage* (2004) 82 *Wash. U. L. Q.* 611, 628.

⁹⁹ *Pace v. Alabama* (1883) 106 U.S. 583; Stein, *supra*, at p. 629; Melton, Note, *Constitutionality of State Anti-miscegenation Statutes* (1951) 5 Southwestern L. J. 452, 453 (“Precedent being established, the state courts uniformly upheld these laws for over half a century until [*Perez v. Sharp*].”).

¹⁰⁰ Stein, *supra*, at pp. 629–630.

¹⁰¹ Cruz & Berson, [Laws that Banned Mixed Marriages](#) (May 2010) Ferris State University – Jim Crow Museum of Racist Memorabilia (as of Aug. 13, 2021); Stein, *supra*, at p. 628, fn. 82. In addition, Washington, Kansas, and New Mexico “prohibited interracial marriages when they were territories, but repealed them when they became states.” Stein, *supra*, at p. 628, fn. 82.

¹⁰² Sohoni, *Unsuitable Suitors: Anti-Miscegenation Laws, Naturalization Laws, and the Construction of Asian Identities* (2007) 41 L. & Soc. Rev. 587, 594; Viñas-Nelson, *supra*.

¹⁰³ Cruz & Berson, *supra*.

¹⁰⁴ Sohoni, *supra*, at p. 594.

¹⁰⁵ Kennedy, *supra*, at p. 2

¹⁰⁶ *Ibid.*

¹⁰⁷ *Ibid.*

¹⁰⁸ See *Ibid.*

¹⁰⁹ Angyal, [I Don't Want to be an Excuse for Racist Violence Anymore](#) (June 22, 2015) New Republic (as of Jan. 26, 2022); Hodes, *The Sexualization of Reconstruction Politics: White Women and Black Men in the South after the Civil War* (1993) 3 J. of the History of Sexuality 402, 408–412, 417.

¹¹⁰ Hodes, *supra*, at p. 409.

¹¹¹ *Id.* at pp. 410–411.

¹¹² Kennedy, *supra*, at p. 214.

¹¹³ *Ibid.*

¹¹⁴ *Id.* at p. 215.

¹¹⁵ (1967) 388 U.S. 1.

¹¹⁶ Fuke, *supra*, at p. 63.

¹¹⁷ Burnham, *Property, Parenthood, and Peonage: Reflections on the Return to Status Quo Antebellum* (1996) 18 Cardozo L. Rev. 433, 437.

¹¹⁸ See, e.g., Mason, [The Farmer's Apprentice: African American Indentures of Apprenticeship in Virginia](#) (May 27, 2020) The Uncommon Wealth: Voices from the Library of Virginia.

¹¹⁹ *Ibid.*

¹²⁰ Smallwood, *Emancipation and the Black Family: A Case Study in Texas* (1977) 57 Soc. Sci. Q. 849, 851.

¹²¹ *Ibid.*

¹²² *Ibid.*

¹²³ Fuke, *supra*, at p. 63.

¹²⁴ *Id.* at pp. 62–63, 67, Smallwood, *supra*, at p. 851.

¹²⁵ Testimony of Dr. Jacqueline Jones; California Task Force to Study and Develop Reparation Proposals for African Americans (Oct. 13, 2021), Testimony of Dr. Cheryl Grills <<https://oag.ca.gov/ab3121/meetings/102021>> (as of Apr. 11, 2022).

¹²⁶ See Burnham, *supra*, at p. 436.

¹²⁷ *Id.* at pp. 439–448.

¹²⁸ Fuke, *supra*, at pp. 63–64.

¹²⁹ Farmer-Kaiser, *Freedwomen and the Freedmen's Bureau: Race, Gender, and Public Policy in the Age of Emancipation* (2010) p. 106.

¹³⁰ Weaver, *The Changing Tides of Adoption: Why Marriage, Race, and Family Identity Still Matter* (2018) 71 SMU L. Rev. 159, 168; Gutman, *supra*, at pp. 402–410.

¹³¹ *In re Turner* (C.C.D. Md. 1867) 24 F.Cas. 337, 339.

¹³² *Ibid.*

¹³³ *Ibid.*

¹³⁴ Burnham, *supra*, at pp. 439–440.

¹³⁵ *In re Turner*, *supra*, at p. 339.

¹³⁶ *Ibid.*

¹³⁷ Burnham, *supra*, at pp. 442–443.

¹³⁸ Fuke, *supra*, at p. 63.

¹³⁹ See, e.g., Burnham, *supra*, at p. 439.

¹⁴⁰ Fair Labor Standards Act of 1938, 29 U.S.C. §§ 203, 213(1940).

¹⁴¹ Testimony of Rebecca Dixon, National Employment Law Project, [From](#)

[Excluded to Essential: Tracing the Racist Exclusion of Farmworkers, Domestic Workers, and Tipped Workers from the Fair Labor Standards Act](#), Hearing before the U.S. House of Representatives Education and Labor Committee, Workforce Protections Subcommittee (May 3, 2021) (as of Apr. 12, 2022).

¹⁴² See generally Gregory, *The Southern Diaspora: How the Great Migrations of Black and White Southerners Transformed America* (2005).

¹⁴³ Tolney, *The Great Migration and Changes in the Northern Black Family, 1940 to 1990* (1997) 75 Social Forces 1213, 1213–1214.

¹⁴⁴ See, e.g., Wilkerson, *The Warmth of Other Suns* (2010) pp. 6, 240–241.

¹⁴⁵ Tolney, *supra*, at pp. 1221–1232.

¹⁴⁶ *Id.* at p. 1232.

¹⁴⁷ Pascoe, *supra*, at p. 193.

¹⁴⁸ Stats. 1850, ch. 140, § 3, page 424. The act, “An Act regulating marriages,” is actually older than the state itself: it passed on April 22, 1850, just over four months before California was granted official statehood.

¹⁴⁹ *Ibid.*

¹⁵⁰ Volpp, *supra*, at p. 822; Pascoe, *supra*, at p. 93.

¹⁵¹ Pascoe, *supra*, at p. 195.

¹⁵² *Perez v. Sharp* (1948) 32 Cal.2d 711.

¹⁵³ Pascoe, *supra*, at p. 217.

¹⁵⁴ Volpp, *supra*, at p. 824

¹⁵⁵ *Ibid.*; Pascoe, *supra*, at p. 242.

¹⁵⁶ Daniel Moynihan, Office of Policy Planning and Research, United States Department of Labor, *The Negro Family: The Case for National Action* (1965) (hereinafter, “Moynihan Report”).

¹⁵⁷ *Ibid.*

¹⁵⁸ *Ibid.*

¹⁵⁹ *Ibid.*

¹⁶⁰ *Ibid.*; Geary, *The Moynihan Report: An Annotated Edition*, The Atlantic (Sept. 14, 2015).

¹⁶¹ Moynihan Report, *supra*, at p. 47.

¹⁶² Geary, *supra*; see also Weaver, *African-American Grandmothers: Does the Gender-Entrapment Theory Apply?* Essay Response to Professor Beth Richie (2011) 37 Wash. U. J.L. & Pol'y 153, 161 (hereinafter "Weaver 2011"); Robinson, *supra*.

¹⁶³ Moynihan Report, *supra*, at p. 3.

¹⁶⁴ *Id.* at p. 29.

¹⁶⁵ See *Id.*; Waters, *Some Core Themes of Black Feminism*, in *Black Women's Intellectual Traditions: Speaking Their Minds* (Kristin Waters & Carol B. Conaway eds., 2007) p. 377.

¹⁶⁶ Geary, *supra*.

¹⁶⁷ *Ibid.*

¹⁶⁸ Geary, *Moynihan's Anti-Feminism* (July 1, 2015) Jacobin Magazine (as of Apr. 13, 2022).

¹⁶⁹ Franklin, *Ensuring Inequality: The Structural Transformation of the African-American Family* (1997) p. 39.

¹⁷⁰ Du Bois (1908), *supra*, at p. 36.

¹⁷¹ Franklin, *supra*, at p. 138.

¹⁷² *Ibid.*

¹⁷³ *Ibid.*

¹⁷⁴ Coates, *supra*; see generally Hill, *The Strengths of Black Families* (1972).

¹⁷⁵ Geary, *supra*.

¹⁷⁶ *Ibid.*

¹⁷⁷ Coates, *supra*.

¹⁷⁸ *Ibid.*

¹⁷⁹ Randolph & Rustin, *A Freedom Budget for All Americans (Annotated)* (Feb. 2018) The Atlantic (as of Apr. 13, 2022).

¹⁸⁰ Coates, *supra*.

¹⁸¹ Randolph & Rustin, *supra*.

¹⁸² See, e.g., Ryan, *Blaming the Victim* (Vintage Books 1976) p. xii; Peller, *The Moynihan Report, Self-Help, and Black Power* (2016) 8 Geo. J.L. & Mod. Critical Race Persp. 39, 41.

¹⁸³ Weaver 2011, *supra*, at p. 161.

¹⁸⁴ Geary, *supra*.

¹⁸⁵ See *Ibid.*

¹⁸⁶ *Ibid.*

¹⁸⁷ Chow & Bates, *As Da 5 Bloods Hits Netflix, Black Vietnam Veterans Recall the Real Injustices They Faced During and After the War* (June 12, 2020) Time Magazine.

¹⁸⁸ Geary, *supra*.

¹⁸⁹ Robinson, *supra*.

¹⁹⁰ *Ibid.* (citing Murray, *Losing Ground* (1984)); Murray, *The Bell Curve: Intelligence and Class Structure in American Life* (1994); see Jacoby & Glauber, *The Bell Curve Debate* (1995) (accumulating critical studies undermining the central premises of "The Bell Curve"); Geary, *supra*.

¹⁹¹ See, e.g., Steinberg, *The Moynihan Report at Fifty* (June 24, 2015) Boston Review (as of Apr. 13, 2022).

¹⁹² McMillian, *From Loving Mother to Welfare Queen to Drug Addict? Lebron v. Secretary of Florida Department of Children and Families and the Evolving Public View of the Poor as a Class of Sub-Humans with Sub-Rights* (2016) 35 Miss. C. L. Rev. 197, 210-211.

¹⁹³ *Ibid.* (noting that then-Senator Moynihan was adamantly opposed to the elimination of the modern federal welfare program in 1996); Robinson, *supra*; Baldwin, *Stratification of the Welfare Poor: Intersections of Gender, Race, and "Worthiness" in Poverty Discourse and Policy* (2010) 6 The Modern American 3, 9; Minoff, *supra*

¹⁹⁴ Floyd et al., *TANF Policies Reflect Racist Legacy of Cash Assistance* (Aug. 4, 2021) Ctr. on Budget & Pol'y Priorities, p. 10.

¹⁹⁵ *Id.* at pp. 10-11.

¹⁹⁶ Sribnick & Johnsen, *The Historical Perspective: Mothers' Pensions* (2012) Institute for Children, Poverty & Homelessness, p. 29.

¹⁹⁷ Moehling, *Mother's Pensions and Female Headship* (2002) Yale University, pp. 12-18, 31 table 9 (analyzing data from Alabama, Florida, Georgia, Louisiana, Mississippi, North Carolina, South Carolina, Tennessee, and Virginia).

¹⁹⁸ *Ibid.* at pp. 2-3, 12-18.

¹⁹⁹ Testimony of Dr. Jacqueline Jones, *supra*; Jones, *Labor of Love*, pp. 163-194.

²⁰⁰ Moehling, *supra*, at pp. 12-18, 31 table 9.

²⁰¹ *Ibid.*

²⁰² Gallo, *Marrying Poor: Women's Citizenship, Race, and TANF Policies* (2012) 19 UCLA Women's L.J. 61, 80.

²⁰³ See Moehling, *supra*, at p. 17.

²⁰⁴ Handler & Hasenfeld, *The Moral Construction of Poverty: Welfare Reform in America* (1991) p. 70.

²⁰⁵ Briggs, *supra*, at p. 31.

²⁰⁶ *Ibid.*

²⁰⁷ Moehling, *supra*, at p. 7.

²⁰⁸ Floyd et al., *supra*, at p. 10.

²⁰⁹ Title IV, Social Security Act, Pub. L. No. 74-271 (1935) 49 Stat. 620.

²¹⁰ Lawrence-Webb, *supra*, at p. 11.

²¹¹ *Id.* at pp. 11-12.

²¹² *Ibid.*

²¹³ *Id.* at pp. 20-21.

²¹⁴ See *Ibid.*

²¹⁵ See, e.g., Burnham, *supra*, at p. 439.

²¹⁶ Briggs, *supra*, at p. 38.

²¹⁷ *Ibid.*

²¹⁸ *Ibid.*

²¹⁹ *Ibid.*; see also Ards et al., *Racialized Perceptions and Child Neglect* (2012) 34 Child Youth Serv Rev. 1480.

²²⁰ Pub. L. No. 104-193 (1996) (Personal Responsibility and Work Opportunity Reconciliation Act of 1996).

²²¹ *Ibid.*

²²² *Ibid.*

²²³ Floyd et al., *supra*, at pp. 29-31.

²²⁴ *Ibid.* at p. 32.

²²⁵ Hinton et al., *An Unjust Burden: The Disparate Treatment of African Americans in the Criminal Justice System* (2018) Vera Institute of Justice, p. 6.

²²⁶ *Ibid.*

²²⁷ Floyd et al., *supra*, at p. 31.

²²⁸ *Id.* at p. 32.

²²⁹ *Id.* at p. 33.

²³⁰ *Id.* at pp. 29–33.

²³¹ See Moehling, *supra*, at p. 17.

²³² Floyd et al., *supra*, at p. 20; Turner, [Reagan Cuts \\$503-Million From the Budget Passed by California Legislature](#) (July 4, 1971) N.Y. Times (as of Mar. 7, 2022).

²³³ See Congressional Resource Service, [The Temporary Assistance for Needy Families \(TANF\) Block Grant: Responses to Frequently Asked Questions](#) (Dec. 14, 2020), Appendix B-1 (as of Mar. 8, 2022); see also Azevedo-McCaffrey & Safawi, [To Promote Equity, States Should Invest More TANF Dollars in Basic Assistance](#) (Jan. 12, 2022) Center on Budget and Priorities (as of Mar. 7, 2022) (noting that “states only spend a little over one-fifth of their combined federal and state TANF dollars on basic assistance”).

²³⁴ Compare Center on Budget and Priorities, [California TANF Spending](#) (as of Mar. 7, 2022) with Center on Budget and Priorities, [California TANF Spending Factsheet](#) (as of Mar. 7, 2022).

²³⁵ Azevedo-McCaffrey & Safawi, *supra*.

²³⁶ Children’s Bureau, Child Welfare Practice to Address Racial Disproportionality and Disparity (Apr. 2021) U.S. Dept. of Health and Human Services, pp. 2–3.

²³⁷ Cooper, *Racial Bias in American Foster Care: The National Debate* (2013) 97 Marq. L. Rev. 215, 230; Sedlak & Broadhurst, Third National Incidence Study of Child Abuse and Neglect: Final Report (1996) U.S. Dept. of Health and Human Services, Administration for Children and Families, p. 8–7; see generally 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* (2020) 14 J. of Public Child Welfare 500 (hereinafter “Dettlaff et al. 2020”).

²³⁸ Dettlaff et al. 2020, *supra* (quoting congressionally-mandated national incidence study of 1996).

²³⁹ Sedlak et al. Supplementary Analyses of Race Differences in Child Maltreatment Rates in the NIS-4 (Mar. 2010) U.S. Dept. of Health and

Human Services, Administration for Children and Families, p. 1; Sedlak, et al., Fourth National Incidence Study of Child Abuse and Neglect (NIS-4): Report to Congress (Jan. 2010) U.S. Dept. of Health and Human Services, Administration for Children and Families, pp. 9–10, 20–21; see generally Bartholet, *Race & Child Welfare: Disproportionality, Disparity, Discrimination: Re-assessing the Facts, Re-thinking the Policy Options* (July 2011) Harvard Law School Child Advocacy Program.

²⁴⁰ White, *Federally Mandated Destruction of the Black Family: The Adoption and Safe Families Act* (2006) 1 Nw. J. L. & Soc. Pol’y 303, 305; Ladner, *Mixed Families: Adopting Across Racial Boundaries* (1978) p. 67.

²⁴¹ Hogan & Siu, *Minority Children and the Child Welfare System: An Historical Perspective* (1988) 33 Soc. Work 493, 493.

²⁴² *Id.* at p. 494.

²⁴³ Ramey, *Child Care in Black and White* (2012) pp. 159–161.

²⁴⁴ See Billingsley & Giovannoni, *Children of the Storm* (1972) pp. 132–134.

²⁴⁵ White, *supra*, at p. 305; Landner, *supra*, at pp. 67–68.

²⁴⁶ *Ibid.*

²⁴⁷ Fenton, *In a World Not Their Own: The Adoption of Black Children* (1993) 10 Harv. Black Letter J. 39, 42.

²⁴⁸ Roberts, *Shattered Bonds: The Color of Child Welfare* (Basic Civitas Books, 2002), p.

²⁴⁹ *Ibid.*

²⁵⁰ Lawrence-Webb, *supra*.

²⁵¹ Roberts, *Prison, Foster Care, and the Systemic Punishment of Black Mothers* (2012) 59 UCLA L. Rev. 1474, 1480–1481.

²⁵² *Ibid.*

²⁵³ See *Ibid.*

²⁵⁴ Oversight on the Implementation of the Indian Child Welfare Act of 1978, Hearing before Sen. Select Com. on Indian Affairs, 98th Cong., 2d Sess., at pp. 35–36 (Apr. 25, 1984).

²⁵⁵ *Id.*

²⁵⁶ Dettlaff, et al. 2020, *supra*; Children’s Bureau, *supra*, pp. 2–3.

²⁵⁷ Dettlaff, et al., *Disentangling Substantiation: The Influence of Race, Income, and Risk on the Substantiation Decision in Child Welfare* (2011) 33 Children and Youth Services Review 1630, 1634–1635; Miller, *Racial Disproportionality in Washington State’s Child Welfare System* (June 2008) Washington State Institute for Public Policy; Rivaux et al., *The Intersection of Race, Poverty, and Risk: Understanding the Decision to Provide Services to Clients and to Remove Children* (2008) 87 Child Welfare 151, 151–152.

²⁵⁸ Rivaux, *supra*, at pp. 161–162.

²⁵⁹ Children’s Bureau, *supra*, pp.

²⁶⁰ *Ibid.*

²⁶¹ Clifford & Silver-Greenberg, [Foster Care as Punishment: The New Reality of ‘Jane Crow’](#) (July 21, 2017) N.Y. Times.

²⁶² *Ibid.*

²⁶³ *Ibid.*

²⁶⁴ *Ibid.*

²⁶⁵ Dettlaff et al. 2020, *supra*.

²⁶⁶ Children’s Bureau, *supra*, at pp. 2–3; Cooper, *supra*.

²⁶⁷ Clark, [My Experiences in Foster Care](#), Children’s Rights (May 24, 2015) (as of Mar. 9, 2022).

²⁶⁸ *Ibid.*

²⁶⁹ *Ibid.*

²⁷⁰ Williams-Mbengue, [The Social and Emotional Well-Being of Children in Foster Care](#) (May 9, 2016) Nat. Conference of State Legislatures, p. 2.

²⁷¹ Urban Inst., [Coming of Age: Employment Outcomes for Youth Who Age Out of Foster Care Through Their Middle Twenties](#) (2008) p. 28.

²⁷² Squiers, [Aging Out of Foster Care: 18 and On Your Own](#) (Mar. 30, 2017) Shared Justice (as of Aug. 24, 2021).

²⁷³ *Ibid.*

²⁷⁴ *Ibid.*

²⁷⁵ *Ibid.*

²⁷⁶ Billingsley & Giovannoni, *supra*, at p. 88.

²⁷⁷ Palcheck, [Child Welfare and the Criminal System: Impact, Overlap, Potential Solutions](#) (Mar. 24, 2021), Georgetown J. on Poverty L. & Pol’y (as of Aug. 25, 2021).

²⁷⁸ *Ibid.*

²⁷⁹ Anspach, [The Foster Care to Prison Pipeline: What It Is and How It Works](#) (May 25, 2018), TeenVogue (as of Aug. 25, 2021).

²⁸⁰ E.g., Dettlaff et al., *supra*, at pp. 500–517.

²⁸¹ KidsData, [Children in Foster Care, by Race/Ethnicity](#) (2018) (as of Aug. 27, 2021).

²⁸² Compare *Ibid.* with Children’s Bureau, *supra*, pp. 2–3.

²⁸³ Tiano, [Los Angeles’ Plan to Address the Overrepresentation of Black and LGBTQ Youth in Foster Care](#) (May 22, 2019) The Imprint (as of Aug. 25, 2021).

²⁸⁴ KidsData, *supra*.

²⁸⁵ *Ibid.*

²⁸⁶ Los Angeles County Blue Ribbon Com. on Child Protection, [The Road to Safety for our Children](#) (Apr. 18, 2014) (as of Apr. 15, 2022).

²⁸⁷ Needell et al., *Black Children and Foster Care Placement in California* (2003) 25 Children & Youth Servs. Rev. 393, 405.

²⁸⁸ Lurie, [Child Protective Services Investigates Half of All Black Children in California](#) (Apr. 26, 2021) Mother Jones (as of Aug. 27, 2021).

²⁸⁹ Urban Inst., *supra*, at p. 8.

²⁹⁰ Children’s L. Ctr., [Foster Care Facts](#) (as of Aug. 27, 2021) (as of Apr. 15, 2022).

²⁹¹ Leecia Welch, [California’s AB 12: Historic Step Toward Helping Foster Youth Attend College, But Much Work Ahead](#) (July 1, 2012) Nat. Center for Youth Law (as of Nov. 9, 2021).

²⁹² Beam, [California Approves 1st State-funded Guaranteed Income for Former Foster Youth](#) (July 15, 2021) Youth Today (as of Aug. 19, 2021).

²⁹³ Univ. of Cal., [Current and Former Foster Youth](#) (as of Nov. 9, 2021); Cal. State Univ.,

[Resources for Foster Youth](#) (as of Aug. 24, 2021); [Cal. Comm. Colleges, Foster Youth Success Initiatives](#) (as of Nov. 9, 2021).

²⁹⁴ Tiano, *supra*.

²⁹⁵ *Ibid.*

²⁹⁶ Henning, *The Rage of Innocence: How America Criminalizes Black Youth* (Pantheon Books 2021) p. xv; U.S. Dept. of Justice, Office of Juvenile Justice and Delinquency Prevention, [Statistical Briefing Book: Juvenile Arrest Rates by Race, 1980–2019](#) (2019) (as of Apr. 15, 2022); Puzzanchera, [Juvenile Arrests, 2018](#) (June 2020) U.S. Dept. of Justice, Juvenile Justice Statistics National Report Series Bulletin (as of Apr. 15, 2022).

²⁹⁷ Nat’l Council of Juvenile & Family Ct. Judges, *Addressing Bias in Delinquency and Child Welfare Systems* (2018) 1.

²⁹⁸ Henning, *supra*, at p. xvi; Puzzanchera, *supra*, at p. 8.

²⁹⁹ Henning, *supra*, at p. xvi.

³⁰⁰ *Ibid.*

³⁰¹ *Id.* at p. 105; [Fact Sheet: Incarcerated Women and Girls](#), Sentencing Project, June 2019 (as of Apr. 15, 2022).

³⁰² Henning, *supra*, at p. 105.

³⁰³ *Id.* at p. 246.

³⁰⁴ *Id.* at p. 29.

³⁰⁵ Goff et al., *The Essence of Innocence: Consequences of Dehumanizing Black Children* (2014) 106 J. of Personality and Social Psychology 526, 526–545.

³⁰⁶ Henning, *supra*, at p. 123.

³⁰⁷ *Id.* at p. 127.

³⁰⁸ *Id.* at p. 124.

³⁰⁹ *Ibid.*

³¹⁰ *Ibid.*

³¹¹ See *id.* at p. 130.

³¹² *Ibid.*; Gun-Free Schools Act of 1994, 20 U.S.C. §§ 8921–8923 (1994); Violent Crime Control and Law Enforcement Act, Pub. L. 103–322, 108 Stat. 1796 (1994); Office of Community Oriented Policing Services, *Ab*

³¹³ Henning, *supra*, at p. 124.

³¹⁴ *Id.* at p. 132.

³¹⁵ *Ibid.*

³¹⁶ U.S. Government Accountability Office (Mar. 22, 2018) [K–12 Education: Discipline Disparities for Black Students, Boys and Students with Disabilities](#) (as of Apr. 15, 2022).

³¹⁷ Henning, *supra*, at p. 53.

³¹⁸ *Id.* at p. 52.

³¹⁹ *Id.* at p. 137

³²⁰ *Id.* at p. 138

³²¹ *Ibid.*

³²² Shivaram, [Black Kids In California More Likely To Be Hospitalized For Police-Related Injuries](#) (Sept. 9, 2021) NPR (as of Apr. 15, 2022); Farkas et al., *Injuries to Children and Adolescents by Law Enforcement: An Analysis of California Emergency Department Visits and Hospitalizations, 2005–2017* (2021) 176 JAMA Pediatrics 89, 89.

³²³ *Ibid.*

³²⁴ California Task Force to Study and Develop Reparation Proposals for African Americans (Jan. 28, 2022), [Testimony of Dr. Howard Stevenson](#) (as of Apr. 15, 2022).

³²⁵ Goff et al., *supra*.

³²⁶ Thiem, et al., *Are Black Women and Girls Associated With Danger? Implicit Racial Bias at the Intersection of Target Age and Gender* (2019) 45 Personality and Social Psychology Bulletin 1427, 1427–1439.

³²⁷ See, e.g., Hockenberry & Puzzanchera, *supra*, at pp. 21, 26–27.

³²⁸ Henning, *supra*, at p. 214.

³²⁹ *Ibid.*

³³⁰ *Ibid.*

³³¹ *Id.* at p. 14; Hockenberry & Puzzanchera, *supra*, at p. 24.

³³² Henning, *supra*, at pp. 124–125.

³³³ *Id.*

³³⁴ Marrast et al., *Racial and Ethnic Disparities in Mental Health Care for Children and Young Adults: A National Study* (2016) 46 Internat. J. of Health Services 810, 810–824.

³³⁵ Cancio et al., *The Color of Justice: The Landscape of Traumatic Justice: Youth of Color in Conflict with the Law* (2019) The Alliance of Nat. Psychological Assns. For Racial and Ethnic Equity, p. 17.

³³⁶ Henning, *supra*, at p. 247.

³³⁷ *Ibid.*

³³⁸ *Id.* at p. 275.

³³⁹ Cal. Dept. of Justice, *Attorney General Becerra Secures Settlements with Barstow and Oroville School Districts to Address Discriminatory Treatment of Students Based on Race and Disability Status* (Aug. 25, 2020) (as of Apr. 15, 2022).

³⁴⁰ *Ibid.*

³⁴¹ Henning, *supra*, at p. 134.

³⁴² *Ibid.*; Wilson & Godown, *School Security Officer Policy and Procedures Manual* (June 29, 2016) Oakland School District.

³⁴³ Henning, *supra*, at p. 134.

³⁴⁴ *Id.* at p. 141; Losen & Martinez, *Is California Doing Enough to Close the School Discipline Gap?* (Los Angeles: Civil Rights Project, 2020); Losen & Martinez, *Lost Opportunities: How Disparate School Discipline Continues to Drive Differences in the Opportunity to Learn* (Los Angeles: Civil Rights Project, 2020), pp. 33–34; Fisher & Hennessy, *School Resource Officers and Exclusionary Discipline in U.S. High Schools: A Systematic Review and Meta-analysis* (Aug. 2016) *Adolescent Research Review* 1, no. 3; Weisburst, *Patrolling Public Schools: The Impact of Funding for School Police on Student Discipline and Long-term Education Outcomes* (2019) *Journal of Policy Analysis and Management*, Vol. 38 (2), pp. 338–365.

³⁴⁵ Henning, *supra*, at p. 78.

³⁴⁶ *Id.* at p. 179.

³⁴⁷ *Id.* at p. 220

³⁴⁸ *Id.*

³⁴⁹ Taft et al., *Intimate Partner Violence Against African American Women: An Examination of the Socio-Cultural Context* (2019) 14 *Aggression and Violent Behavior* 50, 50–58.

³⁵⁰ Rennison & Welchans, *Intimate Partner Violence* (Sept. 2009) U.S. Dept. of Justice, Bureau of Justice Statistics, p. 3.

³⁵¹ Catalano & Snyder, *Female Victims of Violence* (Jan. 2014) Violence Policy Center (as of Mar. 10, 2022).

³⁵² Seng et al., *Disparity in Posttraumatic Stress Disorder Diagnosis among African American Pregnant Women* (2011) 14 *Archives of Women's Mental Health* 295, 295–306.

³⁵³ Palmetto et al., *Predictors of Physical Intimate Partner Violence in the Lives of Young Women: Victimization, Perpetration, and Bidirectional Violence* (2013) 28 *Violence and Victims* 103, 103–121; Langhinrichsen-Rohling et al., *Rates of Bi-directional versus Uni-directional Intimate Partner Violence across Samples, Sexual Orientations, and Race/Ethnicities: A Comprehensive Review* (2012) 3 *Partner Abuse* 199, 199–230.

³⁵⁴ See generally Nat. Coalition Against Domestic Violence, *Domestic Violence and the LGBTQ Community* (June 6, 2018) (as of Mar. 10, 2022); Waters, *Lesbian, Gay, Bisexual, Transgender, Queer, and HIV-Affected Intimate Partner Violence in 2015* (2016) Nat. Coalition of Anti-Violence Programs (as of Mar. 10, 2022).

³⁵⁵ Jones & Thorpe, *Domestic Violence and the Impacts on African American Women: A Brief Overview on Race, Class, and Root Causes in the United States* (2016) 7 *OMNES: The J. of Multicultural Society* 22, 22–36 (as of Mar. 10, 2022).

³⁵⁶ See generally, e.g., Hampton et al., *Domestic Violence in the African-American Community* (2009) 9 *Violence Against Women* 533, 539; Blassingame, *The Slave Community* (Oxford University Press 1972); Levine, *Black Culture and Black Consciousness* (Oxford University Press 1977).

³⁵⁷ Hampton et al., *supra*, at p. 539; see generally Madhubuti, *Black Men—Single, Dangerous, and Obsolete* (Third World Press 1990); Staples, *Black Masculinity: The Black Man's Role in American Society* (Black Scholar Press 1982).

³⁵⁸ Hampton et al., *supra*, at p. 539; see generally Madhubuti, *Black Men—Single, Dangerous, and Obsolete* (Third World Press 1990); Staples, *Black Masculinity: The Black Man's Role in American Society* (Black Scholar Press 1982).

³⁵⁹ Sumter, *Domestic Violence and Diversity: A Call for Multicultural Services* (2006) 29 *J. of Health and Human Services Administration* 173, 175–176, 178–179.

³⁶⁰ Sokoloff & Dupont, *Domestic Violence at the Intersections of Race, Class, and Gender Challenges: Contributions to Understanding Violence against Marginalized Women in Diverse Communities* (2005) 11 *Violence against Women* 38, 38–64.

³⁶¹ Young et al., *Does African American Women's Racial Identity Mediate Gendered Racism on Anticipated Relationship Threat?* (2021) 36 *J. of Interpersonal Violence* 9749, 9752.

³⁶² See, e.g., Carbone-Lopez et al., *“Police Wouldn't Give You No Help” Female Offenders on Reporting Sexual Assault to Police* (2015) 22 *Violence against Women* 1, 1–31.

³⁶³ Manetta, *Interpersonal Violence and Suicidal Behavior in Midlife African American Women* (1999) 29 *J. of Black Studies* 510, 518; see generally Richie, *Arrested Justice: Black Women, Violence, and America's Prison Nation* (New York University Press 2012).

³⁶⁴ Coburn Place, *A Layered Look at Domestic Violence in the Black Community* (as of Mar. 10, 2022).

³⁶⁵ Harrison-Quintana et al., *Injustice at Every Turn: A Look at Black Respondents in the National Transgender Discrimination Survey* (as of Mar. 10, 2022).

³⁶⁶ Nat. Coalition of Anti-Violence Programs, *National Report on Hate Violence Against Lesbian, Gay, Bisexual, Transgender, Queer and HIV-Affected Communities Released Today* (May 29, 2014) (as of Mar. 10, 2022).

³⁶⁷ See, e.g., Finoh & Sankofa, *The Legal System Has Failed Black Girls, Women, and Non-Binary Survivors of Violence* (Jan. 28, 2019) *Am. Civil Liberties Union* (as of Mar. 10, 2022).

³⁶⁸Asbury, *African-American Women in Violent Relationships: An Exploration of Cultural Differences*, in Hampton, *Violence in the Black Family: Correlates and Consequences* (1987) pp. 86-106; Hampton & Yung, *Violence in Communities of Color: Where We Were, Where We Are, and Where We Need to Be*, in Jenkins & Gullotta, *Preventing Violence in America* (1996) pp. 53-86.

³⁶⁹Blue Shield of California Foundation [*Perceptions of Domestic Violence in California's African American Communities: Roots, Prevalence and Resources*](#) (Feb. 2019), p. 11 (as of Apr. 15, 2022) (hereinafter “Blue Shield of California Foundation 2019”).

³⁷⁰*Id.* at p. 12.

³⁷¹Blue Shield of California Foundation, [*Key Insights into the Experiences of Black Californians from a Statewide Survey about COVID-19, Equity, and Domestic Violence*](#) (Apr. 2021) (as of Mar. 25, 2022).

³⁷²Blue Shield of California Foundation 2019, *supra*, at p. 17.

³⁷³*Id.* at p. 20.