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The Racialized Nature of Child Welfare Policies and the Social Control of Black Bodies

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Black women are disproportionately involved in the child welfare system. This state-level intervention occurs at two levels—a higher likelihood of being (i) screened for drug use during pregnancy and (ii) reported to child welfare authorities after delivery. Consequently, they face further enmeshment in state-systems, including custody loss and lower reunification odds. Using evidence from the past forty years of research and media reports, we argue that systemic forces and policies largely contribute to racial disproportionality in the child welfare system, and assert this state intervention serves as a mechanism to control black reproduction.

Introduction

State and social control of black reproduction in the United States has a history that can be traced back to slavery. Despite the abolition of slavery in the United States, state intervention in the lives of black women and their families persists in less overt forms today. Specifically, black women and their children (born and unborn) are disproportionately affected by the child welfare system (CWS) and also affected by punitive CWS policies. This control is exercised on multiple levels. First, black women are more likely than women of other races to be screened for drug use during pregnancy and to face legal consequences for prenatal drug use, including incarceration and the loss of custody of their child immediately postpartum. Second, black women are more often reported to the CWS and more likely than women of other races to lose custody of their children as a result. They are also less likely to be reunited with their children. These policies, whose stated aim is the protection of children and the preservation of families, are unevenly enforced and have largely failed to achieve the desired outcomes, yet progress in this arena has been piecemeal and insufficient.

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In this review, we provide a synthesis of existing scholarship on the experiences of African-American women during their reproductive years, and posit that this is a unique point-in-time during which they are subjected to targeted societal efforts whose latent effect is controlling and punishing African-American women and disrupting their families and communities. We detail the effect of the media in shaping societal perceptions of and policy responses to maternal drug use, and assert that systemic forces and policies, rather than individual behavior or characteristics, are the driving forces behind this disproportionality. Additionally, by blaming individual behavior for disparities, we stymie the opportunity for discussions about how to address disparities at the systemic level that would benefit all children and their families.

Differential Treatment of Substance-Using Women During the Pre- and Perinatal Period

In the past forty years, attempts to prosecute women whose newborn babies test positive for illegal drugs have increased, due in part to the perceived conflict between the state's obligation to protect both pregnant women's rights and the rights of the fetus. There is an *a priori* assumption that the needs of a pregnant woman (at least *some* pregnant women) are not only different from the needs of her fetus, but that the fulfillment of her needs causes harm to the fetus. This antagonistic perspective can lead to the dubious conclusion that the needs of one must be prioritized over the needs of the other when, in truth, maternal and fetal needs are closely aligned. Still, this perceived adversarial relationship between "fetal rights" and "maternal rights" (Hoffman 1990) has not been universally applied to all mother–fetus dyads. The majority of women and infants who are screened for drug use prenatally and in the neonatal period, who lose custody of their baby upon hospital discharge, and/or who face criminal prosecutions are poor and black (Adams 2013; Mohapatra 2011). Why is this the case? Drawing from the body of research in this area, we discuss possible explanations.

One explanation for why pregnant black women have disproportionately been on the receiving end of punitive CWS policies is that there are system-level factors that disproportionately impact them. At the CWS level, systemic issues such as lack of support services (e.g. employment, housing, and mental health providers) in black communities and limited access to private, rather than public, service providers (Fluke et al. 2011) expose women to greater surveillance by social service agencies, health-care providers, and law enforcement. At the health-care systems and provider level, the criteria commonly used to determine which women and babies are screened for drugs also unfairly place black women in the crosshairs of health-care professionals. No mandate exists wherein screening criteria are uniform nationwide. Instead, individual states, jurisdictions, and hospitals determine these criteria;

however, the most commonly used criteria for determining to conduct a pre/neonatal drug screen when a formal policy is not in place include: late entry (third trimester) into or lack of prenatal care, history of substance abuse with suspected continued usage, signs or symptoms of infant drug withdrawal, previous Child Protective Services involvement, giving birth in a public hospital, and the mother exhibiting signs or symptoms consistent with substance abuse (Bada 2017; Byrd et al. 1999; Chasnoff, Landress, and Barrett 1990; Kerker, Horwitz, and Leventhal 2004; Minnes et al. 2008; Whiteford and Vitucci 1997). Because black women are more likely to live below the poverty line than women of other races (Semega, Fontenot, and Kollar 2017), they are also more likely to lack the health insurance necessary for prenatal care. When they do receive prenatal care, it is more often from publicly funded clinics and hospitals with greater government supervision, making their drug use subject to greater detection and reporting (Children's Bureau 2016).

As drug screening criteria are not standardized across hospitals in the United States, health-care providers often have discretion in determining whether or not to screen a pregnant woman, leaving a great deal of room for bias and discriminatory practices (Adams 2013; Byrd et al. 1999; Chasnoff, et al. 1990). A 1990 study of 715 pregnant women in one Florida county found the overall prevalence of a positive drug screen was the same for women at public and private clinics and between black and white women (14.8 percent). Despite these findings, however, of the 133 women reported to health authorities after delivery, black women were reported at ten times the rate of white women ($p < 0.0001$), and poor women were more likely to be reported. Doctors at private facilities may fear losing patients if they question drug use and are more likely to identify with the social class and background of their primarily white patients, and thus avoid uncomfortable questions about drug use habits (Adams 2013). This enables racial and class biases in doctors' suspicions of prenatal drug use and decisions about whether or not to screen pregnant women.

The Role of Media in Our Response to Drug Epidemics

Another key factor contributing to the disproportionate drug screening of black women and infants compared with women of other races is media coverage of the crack baby "epidemic" in the 1980s (Roberts 1991) and its effect on society's perception of poor black communities. During this time, media reports and researchers focused on prenatal crack/cocaine use specifically, even though it is less common than alcohol or tobacco use and we now know that its effects on the developing fetus were greatly exaggerated - in reality being on par with those caused by alcohol and tobacco, and less severe in some cases (Carroll 2003; Frank et al. 2001; Okie 2009). Several studies have found the damages to a fetus from crack were grossly overexaggerated during this time period. Research has continually demonstrated that poverty is the most

important factor in children's short- and long-term health trajectories (Bennett, Bendersky, and Lewis, 2002; Gostin 2001; Wild et al. 2013).

A review of news articles on prenatal cocaine use during this time yields titles such as: "Cocaine: Litany of Fetal Risks Grows" (Brody 1988); "Born to Lose: Babies of Crack Users Crowd Hospitals, Break Everybody's Heart" (Trost 1989); "From Drug Babies, a Cry for Help" (Gurny 1989); and "Drug-Exposed Babies Bog System Care" (Smith 1990). Within eleven months of its first mention in the media, six of the nation's largest newspapers and news magazines ran over 1,000 stories about crack (Gomez 1997, 14). Medical research during this time followed a similar pattern. Much of the medical research referenced in media reports focused on the deformities of "crack babies" and implied that these deformities were certain and perhaps worse than death (Daniels 1993). In her essay criticizing the fetal rights movement, Toscano (2005) implicates the medical community as partially to blame. She cites one study which found that the journal *Society for Pediatric Research* published 58 percent of the studies which found cocaine had adverse effects on the fetus, but only 11 percent of those studies which did *not* report such effects. This disparity remained after accounting for the rigor of the research methods used (Hutchings 1993; Toscano 2005). The emphasis on the horrors of prenatal crack/cocaine use had a significant impact on the reproductive freedom of black women that continues even today. Roberts (1991), a prominent gender, law, and race scholar writes, "Although different forms of substance abuse prevail among pregnant women of various socioeconomic levels and racial and ethnic backgrounds, inner-city black communities have the highest concentrations of crack addicts. Therefore, selecting crack abuse as the primary fetal harm to be punished has a discriminatory impact . . ." (1435). In fact, states such as South Carolina implemented punitive measures against mothers during this time-period, leading to the arrest of pregnant women who tested positive for cocaine, while referring pregnant women using opioids to social services (Gostin 2001).

By contrast, a newspaper article search in 2019 on pregnancy and opioids reveals titles much different in tone to those reported above; "Pregnant Women Addicted to Opioids Face Tough Choices" (Ockerman 2017) and "New 'No Judgement' Approach to Opioid-Dependent Moms Also Helps Their Babies" (Innes 2017). The high volume of news coverage on the effect of both the crack and opioid crises highlights the burden on the health care system with "hospitals scrambling" (Masters 2017; Munz 2016) to care for drug-exposed infants. Yet the stark contrast in how these two conversations are framed indicates a society that is more compassionate to the largely white population of opioid-dependent women (Holloway 2016; Stroud 2016). As the opioid crisis has grown, the media, politicians, and researchers alike have advocated to extend substance abuse treatment access to these women—a far cry from the punitive approach taken at the height of prenatal cocaine use, despite the fact that current rates of opioid use during pregnancy are comparable

to rates of cocaine use among pregnant women at the height of the crack crisis.[1]

Further evidence supporting the argument that the "crack epidemic" was generated primarily as a control mechanism for black reproduction can be seen in the paradoxical public reaction to the victims: black infants and children. While media reports on one hand pitied these infants and emphasized the terrible physical and developmental conditions they suffered at the expense of their selfish mothers' drug use, there was a simultaneous villainizing of these infants almost from birth (Logan 1999). Political and media discussions in the early 1990s about "super-predators"—the idea that an emerging class of juvenile offenders who lacked morals or empathy were a threat to middle-class safety—frequently included narratives about crack use. These narratives about using or being exposed to crack relied on images of mostly black youth to create such widespread fear that a "get tough on crime" approach was welcomed by many as it seemed like the only hope for protecting innocent citizens from harm. On the reproductive front, some went so far as to assert that crack use actually destroyed a woman's maternal instinct (Appel 1992; Hopkins 1990; Irwin 1995), and pregnant, crack-using women were portrayed as "inhumane threats" to both their fetuses and society at large (Irwin 1995, 635; Logan 1999).

Investigating the Role of Race, Drug Type, and Poverty

When examining the current opioid epidemic, prevalence rates by race differ greatly. The whiteness of the current epidemic (Hansen and Netherland 2016; Martins et al. 2017) and the call for therapeutic treatment rather than criminal sanctions are not coincidental. Recent data indicate significant racial differences, as over 70 percent of infants born with neonatal abstinence syndrome are born to white mothers, while only 5 percent are born to black mothers (Milliren et al. 2018; Tolia et al. 2015). That is not to say that states have not reacted punitively toward women using opioids. With the incidence rate of neonatal abstinence syndrome rising 300 percent from 1999 to 2013, some states have implemented criminal sanctions. Tennessee became the first state to criminalize drug use during pregnancy but provided a way for women to avoid charges by completing court-approved treatment. However, after rates of women receiving no prenatal care increased dramatically (Saunders 2017) the law was allowed to expire in July 2016.

In Washington state, the majority of substance-exposed infants (70 percent) born between 2006 and 2013 were born to white mothers. Among infants with prenatal *opioid* exposure, 11 percent were reported and removed by CWS authorities, compared with 30 percent for cocaine-exposed infants. While rates of reporting and removal were found to differ by the type of drug the infant was exposed to, this study found no differences based on race alone

(Rebbe et al. 2019). A systematic review of the research on maternal substance use and factors associated with child custody loss found cocaine use more commonly predicted custody loss than other types of drug use (Canfield et al. 2017), but did not control for race. While a lack of racial differences in CWS intervention in the current era may reflect positive changes in maternal and CWS policies, it also highlights the disparity in how black women were treated when in a similar societal position. Some of these differences continue to be reflected in other ways, such as socioeconomic status. For example, amphetamine exposed infants also have a higher likelihood of reporting and/or removal (Putnam-Hornstein, Prindle, and Leventhal 2016; Rebbe et al. 2019) and amphetamine use may be more common among minorities (specifically Hispanics) and/or low-socioeconomic status whites (Wermuth 2000; Wu et al. 2009).

While a focus on race alone does not account for the complexity of disparities within the CWS, there is ample evidence that it plays a critical role. While women of all races use substances during pregnancy at similar rates (Adams 2013; Bishop et al. 2017), black women are surveilled and punished more harshly for it. Black women are not only more likely to be screened for drug use prenatally and upon delivery but are also subject to harsher penalties as a result of positive drug screens. Several studies have found that being black greatly increases the likelihood of being reported to the police and CWS, and of having one's newborn placed in the care of someone other than the mother upon delivery (Chasnoff, Landress, and Barrett 1990; Hill 2007; Krase 2013; Neuspiel et al. 1993; Rivaux et al. 2008; Whiteford and Vitucci 1997). In fact, Neuspiel and colleagues (1993) found that this occurred despite the overall characteristics and health of infants being the same for black and white women in the study. A national study of CWS agencies' responses to referrals of prenatal drug exposure found that CWS agencies in rural counties responded much more harshly than in urban counties in cases where cocaine exposure was identified (but not exposure to other drugs) (Ondersma, Malcoe, and Simpson 2001), indicating harsher treatment for crack/cocaine users who are disproportionately likely to be black (Criminal Justice Policy Foundation 2019).

The present state of CWS policies pertaining to prenatal drug exposure is marred by inconsistencies. For instance, women continue to face state interference in their lives due to prenatal drug and alcohol use even when (i) the infant does not experience any developmental consequences, or (ii) the consequences cannot be directly tied to the mother's drug use. Research demonstrates that it is nearly impossible (except in severe cases of Fetal Alcohol Syndrome where characteristic deformities are evident) to determine with certainty that any birth defect is the result of maternal drug/alcohol use and not some other factor (Daniels 1993; Mayes et al. 1992). However, hundreds of pregnant women in the United States have been arrested and charged with crimes pertaining to their illicit substance use when they or their babies test

positive for illicit drugs or alcohol (Center for Reproductive Rights 2000; Paltrow 1992)—a majority of whom are black. These prosecutions have occurred in all but four states (Miranda, Dixon, and Reyes 2015). Further, these prosecutions are directly linked to the disproportionate rate at which black women are screened for prenatal drug use as compared with their white counterparts (Mohapatra 2011; Roberts 2008). Several studies have found that the largest predictor of whether an infant will experience drug- or alcohol-related birth defects is socioeconomic status (Abel 1995; Abel and Hannigan 1995; Bennett et al. 2002; Bingol et al. 1987; Frank et al. 2001; Wild et al. 2013). Other research has highlighted that the concomitants of poverty have a more decisive negative impact on prenatal development and infant health than drug use alone, yet punitive policies deter women from seeking prenatal care or drug treatment because of the risk of losing their child (Bingol et al. 1987; Stone 2015)—again indicating that actual concern for infant health is of less priority than criminalizing the behavior of black reproductive bodies. While the opioid epidemic has been met with urgent changes to policy to improve access to substance abuse treatment and improve infant health outcomes, approaches to the crack epidemic were overwhelmingly punitive, and the consequences of this disparity have and continue to be shouldered by black women and their children.

It is important to note that black women can and do enter into the CWS for reasons beyond substance use screening. While the current research elected to focus on the disparities related to black women's *reproductive* bodies, black families face risk factors for abuse and/or neglect, such as poverty, at a disproportionate rate which increases the likelihood of CWS involvement (Krase 2013). However, pregnancy represents an important and unique "starting" point of state intervention for many black women and their children. And it is also worth consideration that despite the lack of specific evidence that black women who use cocaine during pregnancy are more likely to lose care of their children than white women who use, for instance, opioids during pregnancy, the most consistent, robust predictors of child custody loss are conditions associated with living in poverty, which is disproportionately experienced by African Americans (Reeves, Rodrigue, and Kneebone 2016).

Putting Our Money (and Efforts) Where Our Mouth Is Not

Several organizations, including the American Academy of Pediatrics, the American Medical Association, and the March of Dimes, have spoken out against the criminal prosecution of pregnant women with substance use problems (Center for Reproductive Rights 2000). They argue that punitive measures do not achieve the intended goal of deterring pregnant women from using substances—such an assumption ignores the very nature of drug

addiction—but will rather discourage substance-using pregnant women from getting prenatal care out of fear of prosecution. This in turn presents a greater danger to the woman and fetus than that posed by substance use alone. As mentioned previously, this played a role in Tennessee's decision to allow their fetal assault law to expire in July 2016. Others have opposed criminalization on the grounds that it encourages pregnant women to have abortions rather than risk prosecution (Kandall 1996), as in the case of Martina Greywind in 1992. Greywind was charged with endangering her fetus through paint sniffing, and twelve days later had an abortion, causing the prosecutor to drop the charges against her noting it was "no longer worth the time or expense" (Kandall 1996, 275).

Policy makers contend the ultimate goals of CWS policies are child protection and family preservation and reunification, yet the size of the foster care population continues to increase. As part of the Child and Family Services Improvement and Innovation Act of 2014, states are required to spend a "significant" portion of federal funds for the Promoting Safe and Stable Families Program on each area of the CWS: family support services, family preservation services, family reunification, and adoption promotion services (Stoltzfus 2017, 2018); however, of the $9.5 billion in federal CWS funds in 2018, only 4 percent went toward the Promoting Safe and Stable Families program. In 2015, Congress stopped appropriating funds for Family Connection Grants which supported children in or at-risk of foster care to remain connected with their families. In 2014, the CWS appropriated $15 million toward these grants which aimed to reduce family separation and improve reunification, which was less than 1 percent of the total CWS budget (Stoltzfus 2017). The majority of these funds were instead used to fund foster care ($4.8 billion) and adoption assistance ($2.6 billion). Black women in the United States, in addition to being disproportionately subject to prenatal drug screens and state intervention in child welfare issues, are also often less likely to be reunited with their children than women of other races (Children's Bureau 2016; Summers 2015). Thus, while the stated intention of CWS policies is to protect children and preserve families, funding priorities consistently favor practices that separate families and whose effects are disproportionately doled out to African-American households.

Racial Disparities in CWS Involvement after the Neonatal Period

Black women are subject to heightened state surveillance and intervention during the prenatal and neonatal period, and this disproportionate involvement with the CWS continues to impact black women as their children grow. While the racial disproportionality of black children in foster care has decreased since the year 2000, they are still placed in foster care at a rate that

is 1.8 times that of their rate in the general population (Summers 2015). Rates of disproportionality vary by locale; in some states, the rate is as high as six times their general population rate and only two states (Maine and Vermont) report an absence of racial disproportionality (Foster 2012). In some Chicago neighborhoods, black children make up nearly two-thirds of the foster care population (Illinois Department of Children and Family Services 2018). Although black women's reproduction and freedom has been a site of control by state and public agencies for over a century, modern-day conditions have continually worsened since the mid-1990s. Black families are routinely disrupted by child protection authorities (Roberts 2002, 8), so much so that some have argued they are being "*systematically* demolished" (Roberts 2002, vii, emphasis in original) through the CWS.

Much of the reason for this worsening can be attributed to policy changes. While the Adoption Assistance and Child Welfare Act of 1980 directed CWS toward family preservation and away from separating families (Pelton 1997), this was reversed when the Adoption and Safe Families Act of 1997 (ASFA) was passed. The ASFA represented a key shift in public policy by emphasizing "the primacy of protection of children over preservation and reunification," and included provisions that made the process of removing a child from their home easier and sped up the process for terminating parental rights (Hines et al. 2004; USDHHS 1998). This shift had significant implications for black children for many reasons: it diverted policy emphasis away from prevention and reunification and toward foster care and adoption; it shortened the time limits for reunification with birth parents, meaning parents with chronic problems could face termination of their legal rights after a shorter time period; it led to the pressuring of relatives to adopt related children in order to move them out of the system legally; and it no longer provided foster care maintenance payments for legal guardianship, instead providing funding only for adoption subsidies (Chipungu 2004).

Another factor contributing to the continuing overrepresentation of black children in the CWS is racial disparities in investigations, substantiations, caseworker evaluations, and reunification policies. Three past National Incidence Studies of Child Abuse and Neglect found that the average black child is no more at risk for abuse and neglect than a child of any other race (Ards, Chung, and Myers 1998; Ards and Harrell 1993; Carter and Myers 2007; Sedlak and Broadhurst 1996). In contrast to the previous three studies, the most recent National Incidence Study (NIS-4) found rates of maltreatment incidence to be higher for African American children than children of other races (Fluke et al. 2011), even after controlling for variables like household income. However, important limitations to this study are that (i) the data were collected from professionals (medical professionals and law enforcement), so maltreatment rates refer only to incidences known to these professionals; and (ii) the findings could be due to missing data and failure to adjust

for inflation in the analysis (Drake and Jonson-Reid 2011; Fluke et al. 2011), so it may not be a reliable source for actual prevalence rates.

Other studies examining national data on CWS involvement have led researchers to conclude that there are four reasons why black children are overrepresented in the CWS: the disproportionate and disparate needs of black children due to higher poverty rates, racial bias, and discrimination by individuals in reporting (e.g. caseworkers, etc.), CWS factors (e.g. lack of resources for black families), and/or geographic context (e.g. state and neighborhood) (Children's Bureau 2016). Poverty has a significant effect but cannot fully explain differences by race (Fluke et al. 2011). Although several studies indicate black parents are more often reported for maltreatment than whites, most research suggests a strong correlation between social class and child maltreatment reporting, meaning that maltreatment is more often reported for low-income than for middle- and upper-income families (Derezotes and Poertner 2005; Sedlak and Schultz 2005). Poverty is associated with higher risk score assessment by caseworkers. Research by Rivaux et al. (2008) found that while whites had higher risk scores, black parents were more likely to be moved forward in the CWS process and have their children removed. So even when controlling for other factors such as risk scores and poverty, race affects the decision to remove black children from their homes. Attempts to account for aggregation bias in data find that racial disparities continue among substantiated claims even when other factors are controlled for (Ards et al. 2003). Other studies have reported a positive correlation between poverty and reports of child abuse, which the researchers attributed to the high visibility of families in poverty to public agencies (Costin et al. 1996; Fontana 1973; Sedlak and Schultz 2005). This relationship between poverty and CWS involvement is of particular concern for black children entering care due to parental substance abuse, as suspected parental substance use is a key reason for CWS intervention in black households (Sedlak and Schultz 2005), with black parents being suspected of substance use more often than white parents (Roberts 2011), despite similar use rates. And one rapid evidence assessment found factors associated with poverty (e.g, unstable housing and unemployment) to be especially predictive of custody loss for substance-using mothers (Canfield et al. 2017).

In addition to being more likely to be removed from their homes than children of other races, black children also remain in foster care longer, have more placements, receive fewer services, and are less likely to be reunited with their mothers or be adopted (Courtney et al. 1996; Hill 2007; Hines et al. 2004; Lu et al. 2004; Roberts 2002). Stereotypes about black family dysfunction and risk permeate, with many thinking black children are better off removed from their families (Rivaux et al. 2008; Roberts 2014a). It is not surprising that many black women view the CWS as an agency that disrupts and punishes, rather than a resource in times of need (Roberts 2014b). The disproportionate enforcement of punitive CWS policies on black women

and their families has effectively forced many women to choose between receiving prenatal care and/or substance abuse treatment, or keeping their children, as the two have become mutually exclusive. The need for medical care during pregnancy and delivery places reproductive bodies at a heightened risk of state intervention unlike any other time in one's life, and this continues to be a mechanism by which policy makers, health-care providers, and CWS authorities control women's reproductive bodies, particularly those of color.

Over-Involvement in the CWS and Its Effects

Perhaps the most detrimental outcome of punitive CWS policies is the degree of disruption to black families and communities. This occurs in several ways. First, there's a direct connection between the CWS and criminal justice system. As Roberts (2002) writes, "the two institutions are remarkably similar . . . both populated almost exclusively by poor people and by grossly disproportionate numbers of Blacks" (201). The imprisonment of parents leaves many children in foster care. And many black children move from the CWS to the juvenile justice system (Roberts 2002). Adolescents in the foster care system are often sent to juvenile detention centers for "acting out" (Roberts 2002, 200). Furthermore, stressors related to foster care and group home placements often lead adolescents to act out or run away. Upon reaching legal age, young adults abruptly leave their foster homes or institutions. Of the approximately 25,000 young people who age out of foster care each year, the vast majority are black (Roberts 2002). This transition is understandably difficult. The relationship between aging out of foster care and dropping out of high school, unemployment, homelessness, and substance use can produce dire circumstances that lead to criminal involvement (Roberts 2002; Stott 2012), with a quarter of foster care alumni entering the criminal justice system within two years of exiting care (Juvenile Law Center 2018).

The high incarceration rate of black mothers is also an important factor in this discussion. Black women's incarceration rate outpaces that of black men and the overall prison population. Across two decades, the number of African American women in correctional facilities increased by 1,003 percent (Harrison and Beck 2005). And though the imprisonment rate for black women has been declining since 2000, it remains more than double that of white women (The Sentencing Project 2015). Drug-related offenses have significantly contributed to the ballooning prison and probation populations in recent years due to more punitive U.S. drug policies (Blankenship et al. 2005). As of year end 2016, nearly a quarter of female state prisoners were serving time for a drug offense (Bronson and Parsons 2019). There is a clear link between the increase in the number of women and African Americans incarcerated in the United States and the emergence of crack cocaine use in the 1980s (Belenko, Shedlin, and Chaple 2005; Chitwood, Rivers, and Inciardi 1996; De

La Rosa, Lambert, and Gropper 1990). U.S. policies like mandatory minimum sentencing, penalty enhancements for the use or sale of drugs in drug-free zones, unequal penalties associated with crack (versus powder cocaine), and limitations on the availability of syringes increased arrest and incarceration rates (Smoyer and Blankenship 2004). A majority of incarcerated black women are single mothers who were providing sole care for their children prior to incarceration, and most are never visited by their children during incarceration because of the burden on relative caregivers and the long distances at which women are often held from their families (Roberts 2011). Incarceration creates significant barriers to maintaining contact with one's children (Roberts 2011). Upon release, mothers face obstacles to employment and difficulties trying to regain custody of their children. The intersection of these systems compounds the trauma. Per Roberts (2012), "Prison and foster care function together to discipline and control poor and low-income Black women by keeping them under intense state supervision and blaming them for the hardships their families face as a result of social inequalities" (1491).

Recent studies of African American mothers in one U.S. state found that not only did substance use and criminal involvement increase the likelihood a mother would lose custody of her children (Harp and Oser 2016) but that maternal substance use and criminal involvement actually increased in the months after custody loss (Harp and Oser 2018). Thus, these punitive CWS policies have a negative effect on mothers struggling to cope with the loss of their children, and rather than decrease maternal drug use, may contribute to an increase in these behaviors, thus reducing a mother's chances of being rehabilitated and reunited with her children. This again calls into question the extent to which these policies' earnest intention is protecting children and preserving families.

Punitive CWS and criminal justice system policies that disproportionately affect black individuals also impact their communities. Dorothy Roberts writes extensively about the community-level impact of mass incarceration and foster care involvement. One fundamental effect of these policies is economic; the mass incarceration of black men and women has depleted communities of their workforce and income (Roberts 2002). The resulting destruction creates a cycle of crime, poverty, and disadvantage which is then used by those in power to justify racial inequality and blame individuals rather than institutions for appalling material conditions. The heavy involvement of CWS authorities in one Chicago neighborhood was seen by community members as damaging children's ability to form social relationships and increasing distrust among community members because of the prevailing fear that one's neighbors would report them to authorities (Roberts 2008).

On the occasion that a non-punitive approach is used to assist women with alcohol and/or drug problems it is typically in the interest of her fetus, whether to protect fetal well-being or improve the woman's ability to mother her offspring (Coleman and Miller 2006). While the suggestion that treatment

will help these women to be better mothers is perhaps an improvement over the harsher portrayal in past decades of pregnant, substance-using women as "anti-mothers" (Daniels 1993, 107) deserving of punishment, the devaluation of her full personhood remains unchallenged and unchanged. Once a woman becomes pregnant, "mother" becomes her key identifier and is implicated in the various ways society responds to her. Black women, already experiencing the devaluation of their rights and bodies on the basis of race, are particularly unlikely to be viewed by society as adequate mothers. It is hard to find direct "proof" of racially biased decisions by abuse/neglect reporters, caseworkers, and judges as racial biases are rarely articulated. Long-existing racist ideologies regarding the sexuality and moral character of black women have helped to sustain a society in favor of CWS policies that fail to protect children and preserve families and often impart severe consequences. As Roberts describes,

> Black reproduction ... is treated as a form of *degeneracy*. Black mothers, it is believed, transmit inferior physical traits to the product of conception through their genes. They damage their babies in the womb through their bad habits during pregnancy. Then they impart a deviant lifestyle to their children through their example. This damaging behavior on the part of Black mothers—not arrangements of power—explains the persistence of Black poverty and marginality. Thus it warrants strict measures to control Black women's childbearing rather than wasting resources on useless social programs. (Roberts 1997, 9)

Whether or not these thought processes are conscious, their consequences are clearly illustrated by how black women and children fair in the CWS. Again, Roberts' (1997) insight is incisive: "The powerful Western image of childhood innocence does not seem to benefit Black children. Black children are born guilty. The new bio-underclass constitutes nothing but a menace to society—criminals, crackheads, and welfare cheats waiting to happen. Blaming Black women for bringing up a next generation of degeneracy stigmatizes not only mothers but their children as well" (21). This contributes to the experiences of black women during their reproductive years, from pregnancy to motherhood; their ability to parent is questioned almost as a matter of habit. And at every stage in the CWS process, white protectionism is enacted and white women are perceived of as more capable of reform than women of color (Dirks, Heldman, and Zack 2015).

Robert Hill's concept of "structural discrimination" is useful here, referring to the disparate adverse consequences of societal trends and institutional policies on racial minorities that may not have been explicitly designed to have racially discriminatory effects (Hill 1990). One explanation for why black children have more and worse experiences with the CWS than white children is that the culture and functioning of black families has been devalued.

Hill (2004) argues that because black families are overrepresented among the poor, individuals often perceive of and treat them differently on the basis of class-related characteristics. There is an association in the minds of many Americans between being black and being poor and vice versa. Concomitant prejudices regarding the moral character of those in poverty disadvantage poor individuals of all races; however, unique stereotypes regarding the hypersexuality and criminality of black men and women ("welfare queen," "baby daddy," etc.) make them appear less redeemable. These views extend to black children as well.

While the CWS could better serve children by providing in-home, preventative services to families, parental substance abuse treatment, and employment opportunities, most CWS funding goes toward the foster care system. Unlike many middle-class white women with substance abuse problems who can avoid agency detection because of access to private resources, economically disadvantaged black mothers often have to seek help in publicly funded institutions which, by and large, respond to their help-seeking behavior by reporting them to authorities. This control over black women's bodies as sites of reproductive struggle has kept the focus on individual behavior rather than structural inequalities. Current CWS policies maintain this power structure.

Understanding that many of these policies serve to reaffirm the centrality one's "mother" role should have to her identity, and knowing that black motherhood has been delegitimized, black women have few options. What has become clear is that CWS policies are focused more on reforming the behavior of poor black mothers, and less on improving the conditions in which children of color grow up. The importance of race in these discussions is critical as structural discrimination and social and state control of black women cannot be understood using purely gender-based theories. Further, the oppression black women experience cannot be comprehensively explained using racial, gendered, or class-based terms alone. In the 1970s, feminist scholars including bell hooks, the Combahee River Collective, and Patricia Hill Collins began articulating what was later coined by Crenshaw (1994) as the Theory of Intersectionality to describe the unique position of minority women who are oppressed simultaneously by intersecting systems of race, gender, sexuality, and class. Black mothers experience oppression because of their minority racial status, gender, and presumed class position. Further, the experiences of black mothers who are lesbians may differ greatly from black heterosexual mothers. In essence, these identities cannot be isolated from one another. For this reason, the very concept of "universal policies" meant to be applied identically across the board fails to consider material differences in the life experiences of various populations and reflects an emphasis on domination. In order for CWS policies to succeed in protecting children, preserving families, and changing the nature of overarching cultural assumptions regarding gender and race, a better-informed dialogue is necessary.

Many alternatives to the current CWS status quo have been implemented and tested across the United States, and many of them have been found to cost less and have better results for children and families. One alternative to prevailing CWS practice is what is called a cultural humility perspective. Cultural humility training encourages individuals in the CWS to consider the multiple identities of mothers. Cultural humility emphasizes the recognition of power differentials, learning from clients, and understanding a family's cultural expressions as they relate to the current welfare situation (Fisher-Borne, Cain, and Martin 2015; Ortega and Faller 2011). Strategies to incorporate intersectionality and cultural humility perspectives into CWS policies include: family group decision making models, diversifying caseworker workforce, and differential/diverted response (Children's Bureau 2016). Concrete examples of "best practices" may not exist, in part because truly intersectional approaches will adapt to individual client needs and circumstance while minding culturally responsive practices such as creating flexible processes and allowing family groups to define who is included in "family" definition (Merkel-Holguin et al. 2015). Provision of flexible training for caseworkers, with ample opportunities to engage a diverse client base, helps with "normalizing" intersectional approaches in the CWS. This is one of numerous alternatives to current CWS practice; however, we are unlikely to see large-scale change in racial disproportionality and the growing foster care population until we stop providing financial incentives for processes that remove a child from his/her home and restricting funding for programs that work to strengthen the home environment without separating families. Given the historical treatment of black women and their families and persistent racist views regarding black reproduction and parenting, it is unlikely we will see large-scale change any time soon.

Conclusions and Implications

It has been said by child welfare experts that "Between the perspective that vulnerable people are responsible for their own self-rescue and the notion that only services can create solutions lies the key" (Campbell and Borgeson 2016, 3). Since the turn of the century, considerable efforts have been made by child welfare researchers and practitioners, as well as politicians, to explore different approaches to helping those in need of CWS services, in an effort to avoid compounding the trauma and stress many children have already experienced. While some of these approaches offer many benefits to families compared to traditional models of CWS service delivery, concerns remain about which families have access to these services. How can we ensure that racial, socioeconomic, and other biases are not driving decisions made by CWS authorities at every level—from receiving an initial allegation to case closure or permanent termination of parental rights? Similarly, some hospitals have implemented

universal drug screening for pregnant women either during pregnancy and/or at the time of delivery. But what mechanisms are in place to make sure the process for *how* these test results are used is equitable? These issues are complex and require consideration of factors at multiple, overlapping levels. As Roberts (1997) notes, "How can we possibly confront racial injustice in America without tackling this assault on Black women's procreative freedom? How can we possibly talk about reproductive health policy without addressing race, as well as gender?" (4). One approach is to involve those who have historically experienced the most harm as a result of these policies in all steps of the discussion and decision-making process—as many others have advocated. Because academia, politics, and health care are primarily populated by whites, the policies and practices produced therein tend to mirror their perspectives. When the experiences of the white middle class become normalized, the experiences of those outside this group tend to become devalued and delegitimized. Over time, the result is often that disparities are attributed to personal or cultural characteristics rather than structural factors.

Although society has typically viewed individual behaviors like substance use as the driving force behind racial disproportionality in CWS involvement, there is significant evidence that systemic forces play a much greater role, allowing for discretion (and discrimination) at nearly every step of the process. If we truly aim to develop effective and equitable policies that address the many issues precipitating CWS involvement (issues like poverty and racism) on a large scale, those most affected by current policies must be at the center of the discussion. CWS policies have historically failed to produce the desired outcomes and have simultaneously had disproportionately negative effects on economically disadvantaged communities of color. However, this approach alone will still be impeded by discretionary decisions about how funding is allocated and who are the intended beneficiaries. The voices of representatives from underserved communities who are disproportionately affected by criminal justice and CWS policies (to name a couple) are needed at every level from the local school board to the White House. Instituting a living wage and other efforts that aim to reduce poverty and its concomitants offer perhaps the most beneficial policy approach for reducing the need for state intervention in the lives of families. However, in the absence of a cultural shift in perceptions of maternal substance use and black reproduction away from personal failure and toward structural inequalities, the prospect of real, sustained progress remains out of view.

Notes

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1. Combined 2007–12 data from the National Surveys on Drug Use and Health (NSDUH) found 0.9 percent of pregnant women aged fifteen to forty-four reported prior-month opioid use (Smith and Lipari 2017). An inherent limitation is that these data exclude institutionalized populations; however, this is comparable to the 0.6 percent found by Muhuri and Gfroerer (2009) who also utilized pooled NSDUH data.

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