

Spring 2020

To Keep that Bond: Navigating Black Motherhood under a Parental State

Anaisa T. Tenuta
Bard College

Follow this and additional works at: https://digitalcommons.bard.edu/senproj_s2020



Part of the [Civil Rights and Discrimination Commons](#), [Criminal Procedure Commons](#), [Human Rights Law Commons](#), [Race, Ethnicity and Post-Colonial Studies Commons](#), and the [Social Welfare Law Commons](#)



This work is licensed under a [Creative Commons Attribution-NonCommercial-No Derivative Works 4.0 License](#).

Recommended Citation

Tenuta, Anaisa T., "To Keep that Bond: Navigating Black Motherhood under a Parental State" (2020). *Senior Projects Spring 2020*. 131.
https://digitalcommons.bard.edu/senproj_s2020/131

This Open Access work is protected by copyright and/or related rights. It has been provided to you by Bard College's Stevenson Library with permission from the rights-holder(s). You are free to use this work in any way that is permitted by the copyright and related rights. For other uses you need to obtain permission from the rights-holder(s) directly, unless additional rights are indicated by a Creative Commons license in the record and/or on the work itself. For more information, please contact digitalcommons@bard.edu.

To Keep that Bond: Navigating Black Motherhood under a Parental State

Senior Project Submitted to
The Division of Social Studies
of Bard College

by
Anaisa Tenuta

Annandale-on-Hudson, New York

May 2020

Acknowledgements

Acknowledgement

I'd like to take a moment to thank the many people who've helped me along on this journey.

First, a BIG, never ending THANK YOU to my amazing advisor, Myra Armstead, who always has a million things going on at once, but nonetheless was always there to help and support me when I needed it.

I'd also like to thank Thomas Keenan and Gregory Morton Duff for talking through my ideas with me, and providing their unique perspectives on my topic to help me gain a well rounded understanding.

Major appreciation to my friends and family who stuck by me along the way. Who would've thought... the stress was worth it, guys! And I could not have made it here without you to keep me balanced.

I want to give a special shoutout to my dear friend Stella Frank. The first PEER I've ever let read my writing, and I couldn't have been more happy to share it with you. Thank you for building me up and being my hypeman!

All of these amazing people helped me to the finish line, but I want to dedicate this paper to the mothers who were willing to speak with me and all the mothers on the inside still fighting for their children and for proper recognition. We see you and we stand with you.

Table of Contents

Introduction	1
The Role of the Parental State through Child Protective Services and the Adoption and Safe Families Act (ASFA)	17
Cultural Legacies of Race, Slavery, and Maternalism	41
Bedford Hills and Black Incarcerated Mothers: A Case Study	61
Conclusion: A Reflection on Human Rights and the Right to Motherhood	80
Glossary	85
Bibliography	87

Introduction

“Although the State has had different agendas at different times and places, it has consistently attempted to regulate and control [Black] women’s minds and bodies towards ends that were not women’s own.”¹

Susan C. Craig

In the 1990’s, Angela had a Master’s degree in business, owned a successful car dealership, and was a mother to her young son, Kevin.² Despite her trajectory towards a highly successful life, shortly after her marriage to an accountant named Andre, Angela was arrested and charged with drug possession, conspiracy to distribute, and money laundering.³ The mandatory minimum sentence for these charges? Twenty-four years in a federal prison. These charges came after she participated in a business transaction that she believed would aid in the release of her husband from jail on a cash bond. To Angela’s surprise, this transaction, orchestrated by Andre, turned out to be with a drug distributor. Because of the harsh federal conspiracy laws put into place during the War on Drugs of the 1980’s and 1990’s, Angela was immediately implicated in the crime. Her lack of knowledge surrounding the deal and conspiracy, due to her lack of involvement generally, would actually go on to hurt her case more than it would aid her. She had little information to offer the police as leverage, leaving her to face an even harsher sentence than that of her husband.

Before her arrest, before the conspiracy, and even before Andre, Angela was first the mother to a young boy named Kevin, and he was her main priority. When she became incarcerated, Kevin was left in the care of Angela’s mother, who struggled to fully support him. Initially, her mother would bring Kevin to the prison to visit Angela so that they could maintain

¹ Susan C. Craig, "A Historical Review of Mother and Child Programs for Incarcerated Women." *The Prison Journal* 89, no. 1 (2009): 49S.

² "Words from Prison: Women's Incarceration and Loss of Parental Rights," ACLU, accessed February 12, 2020, <https://www.aclu.org/other/words-prison-womens-incarceration-and-loss-parental-rights>.

³ Ibid.

their mother-child connection. However, as time went on, these visits became far and few inbetween. In large part, this is because of the strain the long distance journey put on her mother. Angela was then forced to rely on the prison telephone system, which costs anywhere from 5-16¢/minute, as her primary source of interaction with Kevin.⁴ When her mother died a few years later, Angela lost not only her mother, but also the sole caregiver and provider of a stable home for Kevin. With no one else that she could trust to take care of her son, Child Protective Services (CPS) placed him in foster care. The length of Angela's sentence threatened her position as mother under the Adoption and Safe Families Act (AFSA) of 1997, which requires the CPS to begin the process of terminating parental rights after a child has been in foster care for 15 out of 22 months.⁵ The challenges Angela faced as an incarcerated mother are unfortunately becoming commonplace as the number of women and mothers behind bars in America continues to grow.

Currently, women are the fastest growing incarcerated population in the country.

According to a study done by the Women's Prison Association (WPA), the number of women in prisons and jails has increased by over 832 percent in the last 30 years.⁶ Today, there are more than 225,000 women in U.S. prisons and jails. There are roughly 5 times as many women under the surveillance of semi-carceral institutions such as probation and parole as there are in prisons and jails.⁷ The vast majority of women who are impacted by the criminal justice system, about 80 percent, identify as mothers. Over half of these mothers have children under the age of 18

⁴ "Words from Prison," ACLU.

⁵ Eli Hager and Anna Flagg, "How Incarcerated Parents Are Losing Their Children Forever," Marshall Project, last modified December 2, 2018. <https://www.themarshallproject.org/2018/12/03/how-incarcerated-parents-are-losing-their-children-forever>.

⁶ "Quick Facts: 10 Things You Probably Didn't Know about Women and the Criminal Justice System," Women's Prison Association, <http://www.wpaonline.org/resources/quick-facts>.

⁷ Lynne Allison Haney. *Offending Women: Power, Punishment, and the Regulation of Desire* (Los Angeles, CA: University of California Press, 2010), 15.

years old.⁸ The majority of incarcerated women were the primary caretakers of their children prior to incarceration, placing both the mother and the children in a precarious position.⁹

These stints of family separation due to incarceration most often impact families of color, as Black and brown women represent 60 percent of the female incarcerated population.¹⁰ Studies have shown that women of color are disproportionately incarcerated at approximately twice the rate of white women.¹¹ Once incarcerated, these women either have to find a reliable family member to take care of their children or else they must turn their children over to Child Protective Services and the foster care system. Turning children over to the state is a last resort for most of these women, who are informed by a long history of distrust towards the government and fear of state-sponsored separation. The general distrust incarcerated women have towards CPS is reinforced by the fact that one-third of incarcerated mothers find themselves in situations where they are unable to reunite with their children upon release.¹² In fact, studies have shown that 17 percent of incarcerated women lose the parental rights to their children because of their incarceration.¹³ The rising population of women and mothers in our current carceral system can be directly linked to policies implemented during the War on Drugs.

More than 61 percent of women in prison today are there for non-violent drug offenses as a result of policies from this era.¹⁴ As a result of “flaws in our drug policy and criminal justice

⁸ The Sentencing Project. "Fact Sheet: Incarcerated Women and Girls, 1980-2016." (2018).

⁹ Dorothy E. Roberts. "Prison, Foster Care, and the Systemic Punishment of Black Mothers," *UCLA Law Review* 59, no. 6 (August 2012): 1495.

¹⁰ "Quick Facts," Women's Prison Association.

¹¹ Sentencing Project, "Fact Sheet: Incarcerated Women".

¹² Sandra Enos, *Mothering from the Inside: Parenting in a Women's Prison* (New York, NY: SUNY Press, 2001), 140.

¹³ Chenelle A. Jones and Renita L. Seabrook, "The New Jane Crow: Mass Incarceration and the Denied Maternity of Black Women," in *Sociology of Crime, Law, and Deviance*, ed. Mathieu Deflem, vol. 22, *Race, Ethnicity, and Law* (UK: Emerald Publishing, 2017), 137.

¹⁴ "Women and the Drug War," Drug Policy Alliance, accessed February 11, 2020, <http://www.drugpolicy.org/issues/women-drug-war>.

system... nonviolent, capable mothers [are being sent] to jail, and then prevent[ed] from raising their children".¹⁵ When the War on Drugs took full effect throughout the 1980's and 90's, America witnessed the hyper-incarceration of poor women and thus, poor mothers. U.S. drug policies and reform laws that came out of this era not only drove the rise of mass incarceration but also the systematic removal of mothers from already disenfranchised communities. The "Tough on Crime" rhetoric of this era was indicative of a larger societal shift from a rehabilitative approach towards drug addiction to a more punitive response as the government began to target the drug users just as harshly as the drug dealers through "civil penalties".¹⁶ The Anti-Drug Abuse Act was enacted by President Ronald Reagan in 1986 to establish harsh, mandatory minimum sentences for drug possession. This act determined the length of one's sentence based on the quantity of drugs obtained. In 1988, the act was amended to make possession of crack the only drug that came with a mandatory minimum sentence of five years for a first time offense.¹⁷ The disproportionate targeting of and harsher sentencing for crack over cocaine and other drugs during this time can be understood as a largely racialized policy, as it "unfairly [impacted] inner city minorities who were more involved with sale and consumption of crack," including women and mothers.¹⁸

The Anti-Drug Abuse legislation of the 1980's disproportionately targeted people of color involved with drugs through both trade and/or substance abuse. These policies also established a norm for current federal drug conspiracy laws. Conspiracy drug laws implicated

¹⁵ Emily Halter, "Parental Prisoners: The Incarcerated Mother's Constitutional Right to Parent," *The Journal of Criminal Law and Criminology* 108, no. 3 (2018): 548.

¹⁶ Michelle Alexander, *The New Jim Crow: Mass Incarceration in the Age of Colorblindness*, 2nd ed. (New York, NY: New Press, 2010). 53.

¹⁷ "Anti-Drug Abuse Act of 1988," Wikipedia, accessed February 11, 2020, https://en.wikipedia.org/wiki/Anti-Drug_Abuse_Act_of_1988.

¹⁸ "Drug Use and Control, A Brief History – Overview," Smart Drug Policy: Global Drug Policy for the 21st Century, last modified 2018. <http://www.smartdrugpolicy.org/reagan-raises-the-battle-flag-against-drugs-1981-1989/>.

anyone involved in a drug conspiracy, even peripherally or unknowingly, meaning a person with almost no involvement would be charged with the same severity as the person in charge of the whole operation. This involvement can range from simply living in a home where drugs are sold to being present during a drug sale or handling the money.¹⁹ Because “prosecutors have a much lower burden of proof for conspiracy drug offenses than they do for proving other violent crimes” it became easier for women in the periphery to be criminalized and convicted.²⁰ As a result, women like Angela, the “low hanging fruit,” who often have little say in whether or not they want to participate in such activities due to economic dependence, power dynamics, and/or commitment to the family, become implicated in criminal activity.²¹ These women are then removed from the home and rebranded as criminals.

Incarcerated mothers pose unique problems for how American society thinks about motherhood, maternal rights, our criminal justice system, and human rights. Looking at the treatment of incarcerated mothers and their children in comparison to non-incarcerated mothers and children forces one to reflect on how the government defines motherhood in the first place. Incarcerated mothers are held up to the same societal standards and expectations of non-incarcerated mothers when it comes to showing commitment to their children. “Holding inmate mothers to standards of performance that are [even] difficult for mothers in the community to meet [works to] doubly punish women by using their term of imprisonment as evidence that they are unfit mothers”.²² There is little regard on behalf of the state and Child Protective Services (CPS) to the many barriers and limitations incarcerated women face when it comes to performing

¹⁹ Aldina Mesic, "Women and the War on Drugs," Public Health Post, last modified May 16, 2017. <https://www.publichealthpost.org/research/women-and-the-war-on-drugs/>.

²⁰ Halter, "Parental Prisoners," 547-548.

²¹ Mesic, "Women and the War on Drugs," Public Health Post.

²² Enos, *Mothering from the Inside*.

their role as a mother behind bars. In some cases, the barriers that arise from the state's failure to address the needs and rights of incarcerated mothers and their children come as a result of limited resources and services available to aid and maintain a mother's connection with her child, leading to the termination of parental rights (TPR).

What additional care and assistance is needed for incarcerated mothers and how does the state work to provide them? If a large majority of these mothers arrested for drug offenses struggle with addiction, then shouldn't the state offer treatment services as part of the "special care" a woman needs to rehabilitate and return to her children a stronger mother. It seems contradictory that historically the state has put so much emphasis on motherhood and the mother's role in the home with her children, then turn its back on those mothers who are incarcerated. In large part, this has to do with the common misconception— by both the state and society— that incarcerated mothers are "bad" or "undeserving" mothers who pose a risk to their children. In theory, one would assume that looking out for a mother's best interest would be in the best interest of the child as well. Despite the research that's been done to prove the benefits of a rehabilitative approach to incarcerated mothers, America's carceral system continues to prioritize a punitive response, resulting in a cycle of dependence on state institutions.

Article 25 of the Universal Declaration of Human Rights (UDHR) of 1948 states, "Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection".²³ This article is one of the many efforts of the UDHR to secure freedom from want for citizens and establish their right to a decent standard of living.²⁴ The underlying maternal assumptions embedded within Article 25

²³ UN General Assembly. "Universal Declaration of Human Rights." *UN General Assembly* 302, no. 2 (1948).

²⁴ "Article 25: Right to Adequate Standard of Living," United Nations Human Rights Office of the High Commissioner (OHCHR), accessed February 12, 2020, <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=23970&LangID=E>.

have gone on to inform state governments on how they should address mothers and their children. The international incorporation of maternalism in the UDHR meant the widespread promotion of mother-child protection. However, it also meant that the UDHR was promoting predominantly white, middle-class ideals of motherhood, which situated women in the home, and failed to take into consideration the needs of women who fall outside of such ideals.

The United States has used the UDHR as a foundation for civil and political governance, promising individuals (including mothers and children) the rights to participate in society with protections against discrimination or repression. However, for mothers and children in need of further socio-economic assistance, the “social protections” made available in the U.S. with the creation of state-funded organizations and services has resulted in the increased surveillance, monitorization, and regulation of poor families. Following maternalist ideals, which will be discussed in more detail in the second chapter, the U.S. intentionally left space to determine who is morally “deserving” or “undeserving” of such rights in a way that is often discriminatory and accusatory of poor families.

The U.S. does not regard poverty as a violation of one’s human rights. Rather, poverty is treated as a moral crime on behalf of individuals. The UDHR, on the other hand, recognizes all citizens as having a right to adequate standard of living, and/or additional care and assistance. Through various welfare services and state institutions such as Aid to Families of Dependent Children (AFDC), Temporary Assistance for Needy Families (TANF), and Child Protective Services (CPS), the American government has become increasingly involved in the lives of poor mothers and families. Often, these services overlook mothers’ right to privacy, and work to villainize their dependence on the state.²⁵ The state's power to define what makes a mother

²⁵ Khiara M. Bridges, *The Poverty of Privacy Rights* (Stanford, CA: Stanford University Press, 2017).

“good” or “bad” as well as its increased surveillance of them is indicative of its growing position as a “Parental State” during this time. This concept, discussed more in the following chapter, recognized the dual role of the state as both the protector of children and the punitive reformer of “deviant” and dependent parents.

There is an underlying racialized component to these “protective” state institutions and services that cannot be ignored. A majority of mothers dependent on state programs for aid and assistance are women of color, coming from lower-income families and/or single-parent households. The use of these social services does not come without consequences, however. While “single mothers [are] the main beneficiaries of socio-economic support... they [are] also the disproportionate target of social worker intervention and removal of children”.²⁶ The use of state-sponsored welfare programs welcomes outside eyes and scrutiny into poor, single parent households and onto assistance-dependent mothers instead of offering long-term solutions and support. Although the UDHR calls for the protection of motherhood and childhood through socio-economic aid, its maternalist assumptions— overlooking the plight of women who’ve historically been excluded from its very definition— allowed dependency on state assistance to be interpreted as a reflection of one’s own weakness as a parent rather than a reflection of U.S. social inequities.

When I first began my investigation into the lives of incarcerated mothers, I was interested in learning about the intergenerational impact of having an incarcerated parent. However, further research revealed a gap in the academic literature done on this topic. I found that there was already a plethora of available research centered around the most vulnerable population impacted by this whole carceral process: the children. While many scholars did

²⁶ Mary Ann Mason. *From Father's Property to Children's Rights: The History of Child Custody in the United States* (New York, NY: Columbia University Press, 1994), 110.

address the barriers incarcerated mothers have to face in prison, the main concern was with the children's rights, their needs while having an incarcerated parent, and the potential psychological impact of having an incarcerated parent.

One of the main concerns was born out of attachment theory, the idea that in the early years of life, a child needs to develop a relationship with the mother or primary caregiver for normal social and emotional development to occur. Incarceration then, poses a great risk to early child development and their odds of healthy social integration.²⁷ These studies went on to reveal the mental strain these children go through, the stigma they face from the community and/or in school, and the ways in which this additional stress plays out negatively through either violence, social withdrawal, depression, anxiety, etc.²⁸ The Center for Disease Control (CDC) has even gone on to recognize parental incarceration as an 'Adverse Childhood Experience' (ACE), which "significantly increases the likelihood of long-term negative outcomes for children".²⁹ Other circumstances that the CDC recognized as ACE's include child abuse and/or neglect, violence in the home, parental substance abuse, and mental health issues.³⁰ By grouping parental separation via incarceration with these other ACE's, the CDC is actively promoting the stigmatization of having an incarcerated parent while offering few alternatives. The CDC also fails to take into account the fact that many of these ACE's come as a result of poverty. This classification of parental incarceration being an ACE should prompt the state to embrace and promote programs which would maintain the mother-child connection, lessening the negative impact on the child.

²⁷ "Attachment Theory." *Wikipedia*.

²⁸ Enos, *Mothering from the Inside*.

²⁹ Jean C. Lawrence, (2014) "ASFA in the Age of Mass Incarceration: Go to Prison—Lose Your Child," *William Mitchell Law Review*: Vol. 40: Iss. 3, Article 5. 1003-1005.

³⁰ "Preventing Adverse Childhood Experiences," Center for Disease Control, <https://www.cdc.gov/violenceprevention/childabuseandneglect/aces/fastfact.html>.

Despite the very serious consequences a child faces from having an incarcerated mother or parent, it would seem that both academic scholars and the Parental State are more concerned with the protection of childhood over the enablement of motherhood. This division feels contradictory, given the fact that the two have been traditionally constructed and understood as something inherently intertwined. The incarceration of a mother and the subsequent separation from her children is just as damaging to her as it is to her children. In fact, many women suffer from deteriorating mental health (depression, anxiety, suicidal thoughts) following incarceration and separation from children.³¹ For this reason, my interests shifted from the impact that maternal incarceration has on children to the needs of the mothers, the rights and protections incarcerated mothers have over their children, the potential for their rights to be terminated through Child Protective Services (CPS) and the Adoption and Safe Families Act (ASFA), and the positive impact of in-prison nursery and parenting programs on mother-child relationships.

This is not going to be a story about children's rights because those issues have been investigated and analyzed time and time again. We as a society have clearly defined children's rights, and what it looks like when they are violated. Mothers rights, or rather the right to motherhood, have barely been defined outside the scope of maternalism and fail to take into account the nuances and intersectional factors that influence motherhood. Overall the sanctity of motherhood, specifically in regards to Black or incarcerated mothers, and the right to preserve the mother-child bond has continuously been overlooked by the state and society.

Incarcerated mothers who are separated from their children by the state display a high level of dependency on the state for the wellbeing of both themselves and their children. In fact, if we were to categorize mothers by their level of dependency— those not at all reliant on the

³¹ Lawrence, "ASFA in the Age of Mass," 1003.

state, those dependent on the state for financial support, and those incarcerated (who are dependent on outside forces for financial support, caregiving, maintaining communication with their children, and visitations)— it becomes clear that incarcerated mothers require the highest level of aid and support from the government to uphold their role as mother. The goal of this paper will be to better understand how incarcerated mothers are able to navigate motherhood under the Parental State. It seeks to clarify the ways in which the Parental State strengthens or interferes with the mother-child bond. Using Article 25 of the UDHR, this paper will analyze measures taken by the Parental State to uphold the basic human rights of incarcerated mothers, who theoretically should be “entitled to [additional] special care and assistance” but are often written off as undeserving of that care because of their criminal history. From a human rights perspective, it is not clear whether or not Article 25 functions to protect incarcerated women from the additional barriers and stigma that come with incarceration which make it more difficult to fulfill duties as a mother. In fact, it could be argued that it actually prioritizes the child’s rights over the mothers.

This paper will begin with an examination of the role of the Parental State through Child Protective Services (CPS) and the Adoption and Safe Families Act (ASFA). Here the paper will begin by discussing the historical rise and evolution of the Parental State into its current role. In large part, the rise of this version of the state began with the sentimentalization of children that has been growing and evolving since the 19th century. This sentimentalization made childhood something that has to be protected from outside forces, leading to the creation of institutions like the Children’s Bureau in 1912. Looking at the subsequent institutions and policies such as CPS, ASFA, and other state-sponsored programs will help to inform how the Parental State came into its current position.

One of the primary ways that the state is able to involve itself in the lives of mothers is through the bureaucratic apparatus that is Child Protective Services (CPS). While the bureaucratic functions of CPS vary by state, there remains a common national goal and that is to protect the best interests of the child. For this reason, it is necessary to ask if a “child’s best interest” reflects the best interests of the mother or of the state. How is this taken into account upon maternal incarceration? In-depth analysis of CPS will uncover the ways in which it works to break the mother-child bond and ultimately pit the needs of mothers and children against each other. I argue that these state agencies, which position themselves as sources of aid, should not increase the obstacle incarcerated mothers have to face.

This chapter will also be looking into the Adoption and Safe Families Act (ASFA) and the actual process of terminating one’s parental rights. It is necessary to look at ASFA because of the profound impact it has on incarcerated parents and mothers. This act mandates that state-funded child welfare services must “begin termination of parental rights” (TPR) when a child has been in foster care or kinship care for 15 of the last 22 months.³² On average, incarcerated parents lose their parental rights in about 1 in 8 cases opened because of ASFA. The threat this law poses to incarcerated mothers raises a series of questions: If motherhood is seen as something to be protected by the UDHR, then is motherhood something to be regarded as a basic human right? What does it mean to interfere with and/or violate one’s right to mother? Are these rights to be taken as natural and if so, what does it mean to terminate these rights? These questions will be addressed using personal accounts from formerly incarcerated mothers of their experiences with CPS.³³

³² Hager and Flagg, "How Incarcerated," Marshall Project.

³³ The COVID-19 public health crisis ultimately interfered with my ability to connect with and interview mothers from Bedford. In the end, I succeeded in having only one interview with a formerly incarcerated mother, which still

The following chapter will reflect on the cultural legacies that inform, feed, and disrupt the Parental State. This chapter will take a more historical approach to inform our understanding of how the state addresses Black incarcerated mothers today. It will start by looking at maternalism, which positioned the women in the home as the primary parent from the mid-nineteenth century through the early twentieth century. The concepts of womanhood that grew out of maternalism would go on to define what it meant to be a “True Woman” in society and eventually influence the UDHR. By deconstructing maternalism, and its classist, highly racialized origins, it becomes clear how the ideology trickled down to create stereotypes of black women and families and inform the states perception of them. This analysis of maternalism will lead us to the cultural legacy of slavery, during which black families were frequently and systematically separated. I argue that there is a clear link between the legacy of slavery and the modern-day separation of black families through the incarceration of mothers.

The final chapter of this paper will end with a case study of current parenting programs available for incarcerated mothers. These programs range from parenting classes which work to define “good” and “bad” behaviors for a mother, nurseries that provide a space for new mothers to keep their babies and toddlers with them for an extended period of time, transportation and visitation assistance, and halfway houses or community-based alternatives. For the purposes of this paper, I will be doing a case study on programs run by the HourChildren non-profit organization based in the Bedford Hills Correctional Facility. Because Bedford is one of the oldest and well known facilities with a nursery program, deeper analysis into its programs, as well as how or if it has changed over time will potentially reveal how the Parental State’s attitude towards incarcerated mothers has evolved over time. Looking at Bedford’s nursery program will

greatly benefitted my understanding of Bedford’s programs and how ASFA impacts families with an incarcerated parent.

work to understand and promote the impact of prison nursery programs, given the fact that “the 5–10% of women... enter prison while pregnant, [but] only nine states (New York, California, Illinois, Indiana, Ohio, Nebraska, South Dakota, Washington, and West Virginia) have prison nurseries”.³⁴ This chapter will draw on interviews from women who experienced the programs first hand in order to supplement and inform our understanding of how HourChildren works to foster and maintain the mother-child bond as well as accounts from incarcerated women interviewed by Sandra Enos in her book, *Mothering from the Inside: Parenting in a Women's Prison*.³⁵

The analysis of this paper will be informed by theories put forward by Walter Benjamin in his essay, *Critique of Violence*. Drawing on this essay, in which Benjamin makes the claim that law is inherently violent, this paper will be applying a critical lense against the Parental State when it comes to analyzing the policies it's implemented for poor, Black, and/or incarcerated mothers and their children. The german word for violence, *die Gewalt*, can be translated to mean power or control. Similarly the german word, *die Giewalt*, is translated to mean law. Law and violence, power, and control are then closely tied and potentially even interchangeable concepts. With this in mind, we can understand law to be an instrument through which state-sanctioned violence is used to display state power and control over subjugated bodies. Under the Parental state, law preserves itself through the carceral system and the regulating of poor communities by police and Child Protective Services (CPS). This paper will work to show how state intervention into the lives of poor and/or incarcerated Black mothers, and the subsequent separation of these mothers from their children is a form of violence in itself. The way the U.S. handles incarcerated

³⁴ Stacy L. Mallicoat, "The Incarceration of Women," in *Women and Crime: A Text/Reader* (Los Angeles, CA: SAGE Publications, 2012), 466.

³⁵ See: Footnote 29 about barriers to the interview process.

mothers and their families sends a message “that the law and government don’t care about the integrity of the [Black] family”.³⁶ The Parental State’s control over black bodies through these legal institutions works to perpetuate a history steeped in racism and fundamentally preserve the racial hierarchy which exists in America.

³⁶ San Francisco Children of Incarcerated Parents Partnership, *Children of Incarcerated Parents: A Bill of Rights* (San Francisco, CA: San Francisco Children of Incarcerated Parents Partnership, 2005).

The Role of the Parental State through Child Protective Services and the Adoption and Safe Families Act (ASFA)

“Soon the state people were making plans to take over all of my mothers' children ... A Judge... in Lansing had authority over me and all of my brothers and sisters. We were "state children," court wards; he had the full say-so over us. A white man in charge of a black man's children! Nothing but legal, modern slavery - however kindly intentioned I truly believe that if ever a state social agency destroyed a family, it destroyed ours.”³⁷

Malcolm X

The role of the state in the lives of children and families has changed and evolved roughly three times over the course of American history. In this chapter we follow the state’s evolution into what I call the “Parental State,” which simultaneously upholds and protects the sanctity of childhood as “superparent” and punishes parents or mothers as “punitive parent”. The first shift arose with the Industrial Revolution and the growing movement around child protection against labor abuse during the Progressive Era (1890-1920’s) in the United States. The second shift came during the New Deal, which guided in the era of the high welfare state in this country. Beginning in the 1930s, state responsibility over child protection became articulated in law for the first time. This period also saw a rise in welfare services as the state worked to protect children from the abuse and neglect that was believed to be tied to poverty. Lastly, the 1960s marked the state’s final shift into becoming the “Parental State,” as it became more concerned with child abuse in the home. With each of these ideological progressions, we see the state finding more and more opportunities to intervene into and regulate formerly privatized family life and practices. With the concept of the Parental State in mind, this chapter will go on to investigate the ways in which the state disproportionately impedes in the lives of poor Black and brown mothers and children through institutions such as Child Protective Services (CPS), foster care, and prisons. Additionally, it will look at legislation that worked to break the mother-child bond, such as the Child Abuse Prevention and Treatment Act (CAPTA) and the Adoption and Safe Families Act (ASFA).

³⁷ Dorothy E. Roberts, "Racism and Patriarchy in the Meaning of Motherhood," *American University Journal of Gender and the Law* 1 (1993): 13.

Defining the Parental State

The State as Superparent

Historically, United States' governance, defined as "patterns of power and regulation that shape, guide, and manage social conduct," has been grounded in paternalism.³⁸ Paternalism is the eighteenth century idea that the state should act as "a protector and promoter of virtue" through practices of subordination in efforts to safeguard the best interests of society.³⁹ With the Progressive Era, the state's paternal role began to extend into family life and specifically the lives of children in the United States.⁴⁰ In large part, this newfound concern with the traditionally private life of families came for the societal "discovery of childhood". It was during this time that the state adopted the common law doctrine of "parens patriae ('parent of the nations'), which grants the state the authority to protect children".⁴¹ This marked the states' evolution into that of the Superparent, which mandated acceptable parenting practices and situated itself as the "protector of childhood".⁴² This evolution of the state into Superparent can be first seen in the creation of the Children's Bureau in 1912. The purpose of the Children's Bureau was to "investigate and report upon all matters pertaining to the welfare of children and child life among *all classes* of our people".⁴³ As Superparent, the state became "generous and nurturing" towards children, "but judgemental," towards their parents, making the final decisions on how children

³⁸ Haney, *Offending Women*, 7.

³⁹ Kelley L. Ross, "The Paternal State, the Liberal State, and the Welfare State," Friesian, accessed March 1, 2020, <https://www.friesian.com/freestat.htm>.

⁴⁰ Mason, *From Father's Property*, 86.

⁴¹ Bridges, *The Poverty of Privacy*, 87.

⁴² Mason, *From Father's Property*, 86.

⁴³ Katherine B. Oettinger, "It's Your Children's Bureau," Social Security Administration, <https://www.ssa.gov/history/childb2.html>.

should be raised and who they should live with.⁴⁴ Thus, the state began to dictate which conditions and parenting practices were acceptable.

With the increased role of the state as Superparent came the growing sentimentalization of childhood and the idea that there was something to protect the children *from*: labor abuse. In response to the country's major industrial evolution at this time, and reflecting the major anxieties of reformers at the time, the Superparent state of the Progressive Era centered its concerns around children in the industrial sphere. Advocates on behalf of women and children, typically well-educated middle-class white women, objected to the disruption of domestic life and values that occurred when poor mothers and their children went to work in factories. These female advocates and reformers argued for the need to *protect* traditional, middle-class family relations by instituting age limits on child workers and by limiting working hours for women. Protective legislation passed during this time argued on behalf of women by assuming their physical frailty and innate maternal nature. For example, Clare DeGraffenreid, a Wesleyan College alumnae argued:

[T]he physical organization of the female is of greater delicacy and more easily affected by unfavorable environment, [and thus] the stronger is the likelihood that the shattered constitution of the girl-worker will bequeath to generations yet unborn the scourge of inherited blood poison and the moral curse of racial depravity.⁴⁵

Using sociological evidence, lawyers like Louis Brandeis argued that women were weakened by excessive hours at the workplace. Additionally, such work—taking place outside of the

⁴⁴ Mason, *From Father's Property*, 87.

⁴⁵ Clare DeGraffenreid, "Child Labor," *Publications of the American Economic Association*, Vol. 5, No. 2 (1890), 220.

household— was believed to jeopardize the reproductive capacities of working women who were from poor families. The success of these reform efforts can be seen in various state child labor laws and the 1908 *Muller v. Oregon* decision, which limited female laundry workers to a 10-hour day.⁴⁶

Building upon the factory inspection system, reformers used scientific evidence to argue that factories exposed children to toxic, unsafe environments that would impair their health. Furthermore, reformers used socioeconomic evidence to make the case that not only were the products produced by child labor inferior, but also that child labor was injurious to the family structure— the bedrock of a “civilized and functioning society”. By putting children in the labor force, it was believed they were weakened and physically stunted, creating an inadequate future of “voters and legislators”.⁴⁷ Lastly, the moral standing of the Progressive era promoted the idea that child labor was an evil, unchristian form of slavery practiced by employers.⁴⁸

The concerns of reform advocates at this time failed to take into account the structural obstacles poor mothers and families faced that forced them into the labor market in the first place. By limiting women’s working hours, and moving to protect children by removing them from the labor force, poor women had little choice but to increase their reliance on child welfare services. Despite the common understanding that dependence on child welfare services during this time was tied to social conditions and poverty rather than parental unfitness and/or moral weakness, economic reliance on this Superparent state brought scrutiny into the households of poor mothers and families.⁴⁹ Although one of the principles of the Progressive Era was family

⁴⁶ Melvin I. Urofsky, "State Courts and Protective Legislation during the Progressive Era: A Reevaluation." *The Journal of American History* 72, no. 1 (1985): 73. doi:10.2307/1903737.

⁴⁷ Ibid.

⁴⁸ Ibid.

⁴⁹ Mason, *From Father's Property*, 90-93.

preservation, it is here that we see the first steps on behalf of the state to uncouple the parent-child, or for our purposes, mother-child bond as government services increasingly began to monitor and regulate the parenting practices of specifically poor, working mothers. The surveillance and regulation of poor mothers under the Superparent state set a precedent for the treatment of dependent mothers today, in which “single mothers [are] the main beneficiaries of socio-economic support, but they[are] also the disproportionate target of social worker intervention and removal of children”.⁵⁰ Although the Superparent state’s attempt to protect children from a child labor abuse began as a noble cause, it ultimately led to the increased scrutiny of mothers rather than factories and the labor market.

We are now able to see the Superparent state situated within modern day economic aid and welfare services born out of the Children’s Bureau, such as: Aid to Families with Dependent Children (AFDC), Temporary Assistance for Needy Families (TANF), Child Welfare Services (CWS), and the foster care system. Formerly known as the Aid to Dependent Children Program (ADC), the AFDC, which ran until 1996, had its roots in the Great Depression as the federal government moved to support households with children who were impoverished due to the absence of a wage-earning father.⁵¹ From its inception, this welfare program was entrenched with white middle-class moral values. Because the program was administered on a state level rather than federally until 1960, states had the power to determine family eligibility to the program. States often invoked criteria for “suitable homes” to disqualify children whose mothers were considered “undeserving” because they were unwed. These qualifications had a tendency to target specific demographics, primarily African-American mothers who had never married. This

⁵⁰ Mason, *From Father's Property*, 101.

⁵¹ Susan W. Blank and Barbara B. Blum, “A Brief History of Work Expectations for Welfare Mothers.” *The Future of Children*, Vol. 7, No. 1 (Spring 1997), 29-30.

excluded them from benefits by labelling their families as “undesirable”.⁵² Through implementation of programs and services created to aid poor families, like AFDC, the Superparent state role played simultaneously as the supervisor of parenting habits and the protector of children’s best interest, all while finding ways to target and exclude certain populations.

The State as Punitive Parent

Following the Progressive Era, the New Deal, and its legacy into the Great Society programs of Lyndon B. Johnson in the 1960s, American society witnessed an ideological shift in it’s approach to poor mothers with children. This shift is characterized by the Superparent state’s punitive response to state dependence and welfare, resulting in the increased monitoring of poor families. The state’s decision to take a more punitive position over society and families began in the late 1960s with a the “discovery” of child abuse. Thus, the new focus of the state became the abused child. The discovery of child abuse intersected with the rise of the “Culture of Control” era (1970s-present), which marked the rise in punitive action on behalf of the state as it decreased its role in the lives of its citizens with the decline of welfare assistance. Its punitive position over poor and disenfranchised families continued to grow into the 1980s with the criminalization of poverty.⁵³ The state was able to justify its growing presence in these communities with the commercialization of crime control, where the increase in crime reporting in the media led society to believe there was an actual increase in crime.

The War on Drugs and rise of mass incarceration directly coincides with Child Welfare reforms in the 1980s and 1990s.⁵⁴ The increased reliance on both the prison and foster care

⁵² Blank and Blum, “A Brief History,” 29-30.

⁵³ Dorothy Roberts. *Shattered Bonds: The Color of Child Welfare*. (New York, NY: Civitas Books, 2002), 14-15.

⁵⁴ Daniel Denvir, "Dorothy Roberts: Policing Poor Black Families," *The Dig*, podcast audio, May 12, 2018.

systems that began in the 1980s were direct responses to rising social crises in the nation. With the end of the “welfare safety net” and decline in family services came the exponential growth of prison and foster care populations.⁵⁵ Increasingly, “the state...shuffle[d] family members into the punitive machinery of law enforcement and child protection”.⁵⁶ By taking a more punitive approach to poverty, which emphasized individual moral depravity, parental unfitness, and retribution, the state redirected the blame for the rising social inequity within the nation back onto disenfranchised communities.⁵⁷

During this time, the state has increasingly “relied on incarceration as the predominant system of social control” in order to act as the moral authority over poor families and mothers.⁵⁸ Its growing reliance on the carceral system to punish those deemed unfit due to poverty simultaneously allowed for the criminalization of these families. This can be seen in the criminalization of mothers struggling with addiction, or those struggling to provide basic necessities for their children, which is a direct result of poverty and fewer available welfare services.⁵⁹ Judith Clark, a formerly incarcerated activist, has referred to the state’s adaptation of carceral practices as “a process of forced institutional dependency... as a ‘punitive parent’... taking away women’s autonomy and responsibility”.⁶⁰ Here, Clark is noting the ways in which the prison, as “punitive parent,” alongside other systems of oppression, effectively works to infantilize incarcerated mothers. This process of infantilization works to create a cycle of institutional dependency and criminalization for both incarcerated mothers and their children.

⁵⁵ Roberts, *Shattered Bonds*, 15.

⁵⁶ Roberts, "Prison, Foster Care," 1491-1492.

⁵⁷ Roberts, *Shattered Bonds*, 206.

⁵⁸ Jones and Seabrook, "The New Jane Crow," 145.

⁵⁹ Denvir, "Dorothy Roberts."

⁶⁰ Susan L. Miller, ed., *Crime Control and Women: Feminist Implications of Criminal Justice Policy* (Thousand Oaks, CA: SAGE Publications, 1998), 135.

These women are regarded by the punitive parental state as deviants with weak morals and insufficient parenting practices that may negatively impact their children. Prisons, jails, semi-carceral services like probation and parole, and Child Protective Services (CPS), all function as “punitive parent” institutions used to monitor, regulate, surveill, and punish poor mothers, Black mothers, and especially incarcerated mothers.

The Parental State

I combine these two concepts of the state as Superparent and as Punitive Parent to create the overarching “Parental State”: an entity which claims to uphold the sanctity of childhood, while simultaneously punishing those parents deemed “unworthy” of their title, and thus devaluing the familial bonds that exist between mother and child. The state takes on this role of the “Parental State” upon a parent’s— specifically a mother’s in this context—incarceration. Under this new “Parental” role, the state acts as both the protective Superparent over children and the punishing Punitive Parent over infantilized, incarcerated mothers. Despite its claim to child protection, much of the work of the Parental State fosters supervision into the lives of Black children and their mothers through incarceration and CPS, ultimately functioning in such a way that puts both mothers *and* children at risk. The Parental State, acting as the regulator of motherhood, has created barriers to mother-child reunification through CPS, the Adoption and Safe Families Act of 1997 (ASFA), and maternal incarceration. These institutions and policies intersect to create a forced cycle of dependency and intervention on behalf of the state. In this way, “the supportive state [Superparent] and the punitive state [Punitive parent] trap poor people” and mothers in order to continue the practice of surveillance, regulation, intervention into their lives.⁶¹

⁶¹ Bridges, *The Poverty of Privacy*, 87.

Under the Parental State, the separation of families becomes the acceptable norm. By criminalizing poverty and poor mothers, familial ties are undermined as maternal rights are pitted against the childrens' best interests. The separation of mother and child has become the state's most common response to incarceration, which portrays the mother as unfit and undeserving. In fact, the Parental state *relies* on a mother's incarceration in order to maintain its own position. A mother's incarceration becomes a justification for the state to act as the protector of the child from the now "criminal" mother, who has—in the eyes of the state—become a threat to both the child and society at large. Incarceration thus becomes a means through which the state is able to "disconnect the moral fabric that embodies the relationship between mother and child".⁶² The Parental state positions itself as the legal and moral authority over incarcerated mothers and their children regardless of the fact that a mother's rights are protected by Article 25 of the UDHR, the U.S. Constitution, and the UN Bangkok laws of 2010, which I will discuss further in the third chapter.⁶³

Research has shown the psychological and emotional trauma created by the carceral separation of mother and child.⁶⁴ However, the Parental state continues to act without regard to the idea that the best interest of both parties is to maintain family bonds. As mentioned earlier, the Parental State seems to have become an all-encompassing entity in the lives of poor and/or incarcerated mothers and their children. Its reach permeates all aspects of society as it stretches from the Criminal Justice Systems' prisons and jails, to the semi-carceral institutions of probation and parole, and extends into communities through welfare services like the formerly

⁶² Jones and Seabrook, "The New Jane Crow," 145.

⁶³ UN General Assembly. "Universal Declaration"; Rosemary Barberet and Crystal Jackson. "UN Rules for the Treatment of Women Prisoners and Non-Custodial Sanctions for Women Offenders (the Bangkok Rules): A Gendered Critique." *Papers: revista de sociologia* 102, no. 2 (2017): 215-230.

⁶⁴ Jones and Seabrook, "The New Jane Crow," 147.

implemented AFDC, TANF, and CPS. Although this is not the focus for this paper, the Parental State can also be seen in the surveillance of poor families and communities on behalf of schools, medical professionals, and even neighbors.⁶⁵

Racial Bias within the Parental State

Child Protective Services (CPS), the foster care system, and the mass incarceration of women all disproportionately impact Black and brown mothers and families under the Parental State. These systems should be regarded as mechanisms through which poor mothers of color are surveilled and regulated on behalf of the state. Dorothy Roberts, a renowned legal scholar of Black maternalism, racism, and poverty policing, has argued that these “systems work together to punish Black mothers in the service of preserving U.S. race, gender, and class inequality in a neoliberal age”.⁶⁶ Today, approximately half of all children in foster care are Black, despite only making up 17 percent of the nation's youth population.⁶⁷ As of 2007, roughly “1.7 million children in America [had] a parent in prison, more than 70 percent of whom were children of color”.⁶⁸ Recent data has gone on to show that parental incarceration plays a role in about eight percent of foster care placements. Because we know that women of color make up roughly 60 percent of the female incarcerated population, and are five times more likely than men to have been the primary caretakers of their children prior to incarceration, these foster care placements disproportionately impact Black children.⁶⁹ A 2010 study done by the Pew Charitable Trusts, one in nine African American children have a parent involved with the criminal justice system, while

⁶⁵ Bridges, *The Poverty of Privacy*, 118.

⁶⁶ Roberts, "Prison, Foster Care," 1476.

⁶⁷ Roberts, *Shattered Bonds*, 8.

⁶⁸ The Sentencing Project, *Incarcerated Parents and Their Children: Trends 1991-2007* (February 2009), 1.

⁶⁹ Brent Pattison, "Mama Tried: Shifting Thinking (and Practice) in Child Welfare Cases When a Parent Is Incarcerated," *American University Journal of Gender, Social Policy & the Law* 27, no. 4 (2019): 498; "Quick Facts," Women's Prison Association.

one in 28 Hispanic children and only one in 57 White children have a parent involved in the criminal justice system.⁷⁰ According to The Marshall Project, the children of incarcerated women are five times more likely than incarcerated men to end up in foster care because of women's tendency to be the primary caretaker prior to incarceration.⁷¹

In large part, the disproportionate placement of Black children in foster care and CPS has to do with what the Parental State deems "fit" or "normal" for parents. Traditionally, family structure theorists have regarded families as "the primary agent of social control and transmitter of values".⁷² However, cultural and historical legacies, which will be discussed more in depth in the next chapter, have come to portray Black families as being inadequate. In large part this has to do with the fact that Black family structures have historically fallen outside of the scope of what American society sees as normal and acceptable (i.e the nuclear family with a two-parent, patriarchal household). Meanwhile, families that fall in line with traditional American family structures (middle-class, white) are regarded by the state as being beneficial to the nation and democracy.⁷³ This comes from the belief that the parents of these acceptable households will pass down their "good" moral values to their children that will ultimately benefit society.

Poor Black mothers, on the other hand, who are often the head of their household, are regarded as a threat to society because they fall outside of the "appropriate family environment."⁷⁴ If we are to follow social conceptions that "patriarchy is a moral order, then Black mothers... were agents of immorality".⁷⁵ From the state perspective, these women have the

⁷⁰ Lawrence, "ASFA in the Age of Mass," (2014): 991.

⁷¹ Hager and Flagg, "How Incarcerated," Marshall Project.

⁷² Jacklyn Huey and Michael J. Lynch, "The Image of Black Women in Criminology: Historical Stereotypes as Theoretical Foundation," in *Race, Crime, and Justice: A Reader*, ed. Shaun L. Gabbidon and Helen Taylor Greene (New York, NY: Routledge, 2005), 132.

⁷³ Bridges, *The Poverty of Privacy*, 108.

⁷⁴ Huey and Lynch, "The Image," 132.

⁷⁵ Bridges, *The Poverty of Privacy*, 53.

ability to transmit morals and values to their children, which lie at odds with the state's values. Due to what law professor Khiara Bridges refers to as "the moral construction of poverty," these mothers are expected to have and pass down their "bad" moral character and criminal values.⁷⁶ As a result, the Parental State functions (out of fear) with the belief that it is "safer for the nation if the state supervises poor [mothers] as they go about inculcating values in their children" be it through the criminal justice system, the welfare system, the foster care system, or CPS.⁷⁷

The Rise of Child Protective Services (CPS)

Child Protective Services as we know and understand it today first began to emerge with the The Child Abuse Prevention and Treatment Act (CAPTA) of 1974. Under this policy, society was put under increased scrutiny to "to prevent, identify and treat child abuse and neglect".⁷⁸ This policy went on to disproportionately impact poor families due to the growing racialized misconception that neglect was inherently tied to poverty.⁷⁹ It is through CAPTA that society began to see the uncoupling of the parent-child bond, as the two became inherently pitted against each other. Only a short time later, the state enacted the Adoption Assistance and Child Welfare Act of 1980 (AACWA).⁸⁰ Under AACWA, caseworkers were discouraged from relying on temporary foster care placements for children, where often they would remain for long periods of time and languish in a type of "limbo".⁸¹ Unlike CAPTA, the AACWA actually promoted and encouraged the reunification of families over adoption, though many children were still placed

⁷⁶ Bridges, *The Poverty of Privacy*, 108; Bridges defines the "moral construction of poverty" as the belief that the poor are responsible for their poverty as a result of moral character deficiencies.

⁷⁷ Ibid.

⁷⁸ "Child Protective Services," Wikipedia, https://en.wikipedia.org/wiki/Child_Protective_Services#History.

⁷⁹ Denvir, "Dorothy Roberts."

⁸⁰ Lawrence, "ASFA in the Age of Mass," 994.

⁸¹ Ibid.

away from their families in other homes that offered greater permanence and stability.⁸² Despite AACWA's emphasis on family ties, many still understood CPS as a tool for the regulation of poor families and believed that "the point of a CPS investigation [was] to divest the family and the members that constitute it of privacy so that they may become visible to the state".⁸³ Through CPS, the state has been able to maintain access and surveillance into the lives and practices of poor families. In this respect, CPS has long functioned as "Big Brother" over disenfranchised families and communities, constantly watching and waiting for a misstep that would allow the state to come in, criminalize parents, and swoop their children away.⁸⁴ The monitoring, regulation, and/or punishment of poor families in need on part of CPS caseworkers means that in many respects they can and should be regarded as an extension of law enforcement.⁸⁵

Once a mother or family is under investigation by CPS, there are a plethora of rules and requirements that she has to manage in order to keep her children. The number of children entangled in the web of CPS as a result of maternal incarceration continues to grow as the rate of female incarceration continues to rise. Today, over 10 million— or approximately one in every 29—children have been impacted by parental incarceration at some point in their life.⁸⁶ As of 2012, the number of children with an incarcerated mother had risen 131 percent since 1991.⁸⁷ It is estimated that 8-10 percent of these children end up in the care of a foster home or agency.⁸⁸ Despite the record high number of children and families navigating CPS as a result of parental

⁸² Jennifer L. Harris and Ronnie Halperin, "Parental Rights of Incarcerated Mothers with Children in Foster Care: A Policy Vacuum," *Feminist Studies* 30, no. 2 (Summer 2004): 340. <https://www.jstor.org/stable/20458967>.

⁸³ Bridges, *The Poverty of Privacy*, 10.

⁸⁴ Roberts, *Shattered Bonds*, 74.

⁸⁵ Ibid.

⁸⁶ Pattison, "Mama Tried: Shifting Thinking," 498.

⁸⁷ Kristen S. Wallace, *The Adoptions and Safe Families Act: Barrier to Reunification between Children and Incarcerated Mothers*, May 2012, 4.

⁸⁸ Adela Beckerman, "Mothers in Prison: Meeting Prerequisite Conditions for Permanency Planning," *Social Work* 39, no. 1 (January 1994): 10.

incarceration, “the state's obligation to provide reasonable efforts” for mother-child contact and reunification is typically not reinforced under these circumstances.⁸⁹ As a result, permanency case planning efforts, a requirement under AACWA, often fail to meet the needs of incarcerated mothers, putting their parental rights and children at risk.⁹⁰

The challenges and barriers mothers face behind bars has made it almost impossible for them to meet CPS requirements and maintain healthy relationships with their children. Incarcerated mothers “abruptly become an ‘in-between’ parent, sharing responsibility for her child’s supervision with caseworkers, foster parents, and the courts”.⁹¹ The struggles they face are compounded by the fact that most caseworkers have little experience working within the criminal justice system and thus are unfamiliar with prison regulations, resources, programs available to mothers. Additionally, caseworkers assigned to incarcerated mothers are often subconsciously influenced by the societal assumption that children are better off without parents involved in the criminal justice system due to the instability they bring into their child’s life. According to the Marshall Project’s analysis of approximately three million child-welfare cases nationally, “mothers... who have a child placed in foster care because they are incarcerated—but who have not been accused of child abuse, neglect, endangerment, or even drug or alcohol use—are more likely to have their parental rights terminated than those who [are not incarcerated and] physically or sexually assault their kids”.⁹² This comes as a result of the state’s belief that it is not in a child’s best interest to wait for their mother’s release to have a stable or permanent home life.⁹³ Rather than find alternatives which would maintain the mother-child

⁸⁹ Pattison, "Mama Tried: Shifting Thinking," 507.

⁹⁰ Harris and Halperin, "Parental Rights," 340.

⁹¹ Beckerman, "Mothers in Prison," 12.

⁹² Hager and Flagg, "How Incarcerated," Marshall Project.

⁹³ Roberts, "Prison, Foster Care," 1497.

bond through a mother's incarceration, the Parental state has entirely written off their right and ability to parent.

It is important to note that Child Protective Services only gets involved if there is not an immediate and willing caretaker available for the child, such as a father, partner, or grandparents— otherwise referred to as “kinship care”.⁹⁴ If there is no kinship care readily available, and a child is placed in foster care, incarcerated mothers must try their best to navigate CPS case planning requirements to keep their children and parental rights. This process begins as soon as a child enters the foster care system with an initial Disposition Hearing, during which a tentative case plan is created.⁹⁵ According to the “*Welfare & Institutions Code* section 16501.1 (a) (1)... the case plan is the foundation and central unifying tool in child welfare services”.⁹⁶ This case plan takes note of services needed by the child and their family, details the conditions for visitation and support, and creates requirements the parent must meet in order to be deemed fit, and granted reunification.⁹⁷ Incarceration deprives most mothers of the ability to attend and participate in these critical disposition hearings. With the absence of “parental testimony, court decisions are based on the record presented by the child welfare worker”.⁹⁸ In these instances, incarcerated mothers are thus rendered voiceless and invisible to the court system, undermining their chance to display how much they care for their children's wellbeing.⁹⁹ Caseworkers lack of understanding in regards to the prison system and how it functions negatively impacts the

⁹⁴ Roberts, *Shattered Bonds*, 23.

⁹⁵ Harris and Halperin, "Parental Rights," 341.

⁹⁶ Charlene Wear Simmons and Emily Danker-Feldman, "Parental Incarceration, Termination of Parental Rights and Adoption: A Case Study of the Intersection between the Child Welfare and Criminal Justice Systems," *Justice Policy Journal* 7, no. 2 (Fall 2010).

⁹⁷ Harris and Halperin, "Parental Rights," 341.

⁹⁸ Simmons and Danker-Feldman, "Parental Incarceration".

⁹⁹ Pattison, "Mama Tried: Shifting Thinking," 512.

outcomes of such hearings, and can increase the odds that one's parental rights will be terminated.

After the disposition hearings, incarcerated mothers have 12 months to work with their caseworkers to establish a permanency plan. During this period, mothers must be heavily involved in “case planning, remain... in their children's lives, and demonstrate their commitment and ability to reform” through parenting classes or substance abuse programs.¹⁰⁰ There are three main prerequisite conditions for mothers who are working towards permanency planning with caseworkers: written correspondence with caseworkers, telephone correspondence with caseworkers, and timely notification of upcoming court hearings.¹⁰¹ These conditions allow mothers to remain involved when determining the permanent outcome for their children. Despite these requirements, a study done by Adela Beckerman in 1994 revealed that less than half of the mothers in her study received any correspondence from caseworkers, 68 percent of mothers reported not receiving any phone calls from their caseworkers, and only 30 percent received a copy of their child’s case plan from their caseworker.¹⁰² These disparities come as a result of the Department of Corrections (DOC) policies limiting a mother's access to the phone and outside communication. In many cases, the lack of necessary reunification services (parenting classes, substance abuse treatment, mental health therapy, or educational programs) creates grave barriers to a mother’s ability to fulfill the CPS requirements for their child’s case to ensure reunification.¹⁰³

CPS’ condition requiring mothers to show reasonable efforts to maintain communication with their children is one of the most painful, stressful, and difficult requirements for

¹⁰⁰ Harris and Halperin, "Parental Rights," 340.

¹⁰¹ Beckerman, "Mothers in Prison," 10.

¹⁰² Beckerman, "Mothers in Prison," 11.

¹⁰³ Harris and Halperin, "Parental Rights," 344; Simmons and Danker-Feldman, "Parental Incarceration".

incarcerated mothers. This is particularly felt by the “majority of [mothers] in federal or state prison [who] are incarcerated more than 100 miles from home,” and not accessible by any form of public transportation, making visitation from children nearly impossible.¹⁰⁴ Some states, like New York, have tried to combat this distance barrier by requiring caseworkers to follow a “75 mile limit” rule, wherein caseworkers are obligated to arrange prison visits within 75 miles of the child’s residence.¹⁰⁵ Even this, however, has proved insufficient, as over 50 percent of incarcerated mothers still reported that they did not receive any in-person visits from their children.¹⁰⁶ All of these barriers that mothers face while incarcerated (distance, stigma, co-parenting with caseworkers and/or temp guardians, maintaining contact and communications with their children through prison walls) have cornered them into situations in which the likelihood for reunification becomes almost impossible.

Adoption and Safe Families Act of 1997(ASFA)

Incarcerated mothers face an abundance of hardships and structural barriers when working with CPS and its caseworkers in an effort to reunite with their children and keep them safe. Although many of the aforementioned policies claim to prioritize family reunification, they often fail to address the additional needs of incarcerated mothers necessary to ensure this reunification. Efforts for family reunification and preservation have been almost completely undermined with the implementation of the 1997 Adoption and Safe Families Act (ASFA). This act was originally enacted in an effort to avoid the phenomenon of “foster care drift,” in which children remain in the foster care system for an extended period of time without hope for family

¹⁰⁴ Pattison, "Mama Tried: Shifting Thinking," 515.

¹⁰⁵ Harris and Halperin, "Parental Rights," 343.

¹⁰⁶ Beckerman, "Mothers in Prison," 11.

reunification or an alternative permanency placement.¹⁰⁷ Prior to ASFA, children spent an average of five years in foster care before receiving placements.¹⁰⁸

In an attempt to increase the number of children adopted out of the foster care system, “the federal government [began funding] adoption incentive payments for families” and bonuses for states that facilitated the adoptions.¹⁰⁹ In fact, for every child adopted beyond an established baseline, states receive financial bonuses ranging from \$4,000-\$6,000.¹¹⁰ Since its implementation, the federal government has given out over \$639 million in incentive payments and bonuses.¹¹¹ These economic benefits, taken together with the knowledge that the majority of children in foster care are Black, makes it clear that states are actually profiting by sanctioning Black family separation. This reality is eerily reminiscent of America’s history of slavery.

In line with the racialized implications of the child welfare system (CWS), The Adoption and Safe Families Act (ASFA) has gone on to disproportionately impact incarcerated mothers and their families. One of the major changes that came with the passage of ASFA was its 15/22 mandate, which required CPS to file a petition to terminate a parents’ rights if they have been absent and their child has been in foster care for 15 of the last 22 months.¹¹² By definition, parents that are incarcerated are considered absent parents. This rule created a major threat to incarcerated mothers, who on average are sentenced to over four years in prison.¹¹³ Because of ASFA’s time constraints, incarcerated women automatically find themselves at a greater risk of having their parental rights terminated. As many scholars have argued, the “combination of long

¹⁰⁷ Harris and Halperin, "Parental Rights," 340.

¹⁰⁸ *Ann Arbor News* (Ann Arbor, Michigan), October 12, 1998: 6. *Readex: America's Historical Newspapers*.

¹⁰⁹ Simmons and Danker-Feldman, "Parental Incarceration".

¹¹⁰ Jones and Seabrook, "The New Jane Crow," 147.

¹¹¹ Hager and Flagg, "How Incarcerated," Marshall Project.

¹¹² *Ibid.*

¹¹³ Halter, "Parental Prisoners," 543.

sentences and short-timelines for reunification” makes the “termination of parental rights...unavoidable” for incarcerated mothers.¹¹⁴ The data that has been collected in the years since ASFA’s passage further reinforces this idea. In the five years after its passage, from 1997-2002, termination proceedings for incarcerated parents doubled.¹¹⁵ Another study done during this same five-year period found that “parental rights were terminated in 92.9% of cases of maternal incarceration”.¹¹⁶ The implementation of ASFA is indicative of an ideological shift within CPS, moving from a philosophy grounded in child protection and family reunification to one more focused on child protection and adoption.¹¹⁷

According to former president of the National Council of Juvenile and Family Court Judges, Anthony Capizzi, this lack of concern for how ASFA harms and disadvantages incarcerated mothers and their children comes from the “impression among some in our [criminal justice] community that incarcerated folks don’t deserve to have a family”.¹¹⁸ By this logic, the children of these incarcerated mothers are being punished as well, as AFSA inherently weakens the possibility for family preservation. In addition, legislation makes it more difficult for family reunification as “courts may terminate the rights of [incarcerated mothers] but have no [new] parents to give [the children], so the children remain in foster care, with no legal ties to any parents”.¹¹⁹ This runs contrary to the very “foster care drift” phenomenon that AFSA was originally put in place to stop.

Despite the many arguments promoting ASFA and the potential stability it can bring to children, I argue that this policy contradicts the role of CPS as the protector of children from

¹¹⁴ Pattison, "Mama Tried: Shifting Thinking," 507.

¹¹⁵ Lawrence, "ASFA in the Age of Mass," 993.

¹¹⁶ Ibid.

¹¹⁷ Jones and Seabrook, "The New Jane Crow," 145.

¹¹⁸ Hager and Flagg, "How Incarcerated," Marshall Project.

¹¹⁹ Roberts, *Shattered Bonds*, 24.

abuse and neglect and overall promoter of family reunification. Although maternal incarceration can negatively impact children, it remains in the childrens' best interests to maintain bonds with their mothers. Too often, the women who lose their parental rights have never been charged with, or investigated for, neglect or abuse.¹²⁰ Their incarceration becomes enough justification for the Parental state to terminate their rights, regardless of their demonstrated parenting capabilities. Even when incarcerated mothers are able to meet all of the CPS case planning requirements and maintain contact with their children, the state characterizes these parents as irredeemable. Incarceration and ASFA thus function to the benefit of the Parental State.

Today, incarcerated parents have their parental rights terminated in roughly one in eight cases.¹²¹ While incarcerated mothers are still disproportionately overlooked when faced with the threat of losing their parental rights the slight decrease in how many actually lose their parental rights comes as a result of state policy reforms. "Although ASFA requires a termination of parental rights (TPR) filing in certain cases, it is state—not federal—law that defines legal grounds for such termination".¹²² Time and research have shown state governments how a lack of agency behind bars hurts mothers' chances at reunification with their children, and also violates their human rights as a parent. As a result, some states have amended ASFA to account for maternal incarceration. States such as Massachusetts, Missouri, Nebraska have implemented reforms specifying that incarceration alone cannot be taken as a valid reason to terminate TPR.¹²³ Similarly, Colorado, New Mexico have passed legislation that allows exceptions to be made to

¹²⁰ Hager and Flagg, "How Incarcerated," Marshall Project: "According to the Marshall Project analysis, at least 32,000 incarcerated parents since 2006 had their children permanently taken from them without being accused of physical or sexual abuse, though other factors, often related to their poverty, may have been involved. Of those, nearly 5,000 appear to have lost their parental rights because of their imprisonment alone."

¹²¹ Ibid.

¹²² Steve Christian, "Children of Incarcerated Parents," *National Conference of State Legislatures*, March 2009, 5.

¹²³ Lawrence, "ASFA in the Age of Mass," 998.

the 15/22 rule for when the length of time in care is due to circumstances beyond the control of the parent, such as incarceration.¹²⁴ On the other hand, some states have passed legislation that further violates the rights of incarcerated mothers and their chances at reunification. Alaska, Kentucky, and North Dakota have all cited parental absence due to incarceration as enough justification to waive CPS's "reasonable efforts" for reunification and begin the process of terminating parental rights.¹²⁵ Although Iowa has not actually passed any amended legislation, it is in favor of laws like those aforementioned.¹²⁶

California and New York have passed detailed legislation in response to ASFA and incarcerated parents. In 2008, California passed legislation (Chapter 482, Statutes of 2008) that "requires the courts to consider the barriers that those parents face in accessing court-ordered services and maintaining contact with their children".¹²⁷ Through this legislation, California took into consideration the barriers these mothers face, and set clear definitions for what should be considered "reasonable efforts" on behalf of incarcerated parents to see, contact, and interact with their children. By taking these barriers into consideration, the state also mandates that incarcerated mothers have access to services such as telephone calls and transportation which would aid in their "reasonable efforts" and ultimately, reunification.¹²⁸ Reunification Services and the ASFA timeline "may be extended up to 24 months if (1) the permanency plan is to return the child to the home; (2) reasonable services have not been provided; and, (3) it is in the best

¹²⁴ Wallace, *The Adoptions*, 6.

¹²⁵ Lawrence, "ASFA in the Age of Mass," 998.

¹²⁶ Ibid.

¹²⁷ Simmons and Danker-Feldman, "Parental Incarceration".

¹²⁸ Wallace, *The Adoptions*, 5- 6.

interests of the child”.¹²⁹ Additionally, California courts can only take a parents criminal history into consideration if it is heavily implicated in one's parenting ability.¹³⁰

Similarly, New York makes a serious effort to maintain the mother-child bond through various reunification services. This can be seen in the “75 mile limit” rule that was discussed earlier, under which caseworkers have to make visitation efforts if the parent is incarcerated within 75 miles of the child’s residence. In addition, the state has made diligent efforts to provide social services to mothers struggling with past traumas or substance abuse problems which could impact one’s parenting abilities upon reunification.¹³¹ Historically, New York State has also long had programs, such as Bedford Correctional Facility, which work to maintain the mother-child connection.

Incarceration, Child Protective Services (CPS), and the Adoption and Safe Families Act (ASFA) all function as the means through which the Parental State can foster black family separation and maintain the long history of control over Black women’s bodies. Through these state institutions, the Parental State forgoes a mother's right to privacy and autonomy over her children, using incarceration as verification of her “unworthiness” of motherhood. The practices of these state institutions and policies which work to break the mother-child bond actively violate the 1987 *Turner v. Safley* decision. In this supreme court decision, it was determined that “inmates continue to possess all of their constitutional rights that are not inconsistent with their status as prisoners”.¹³² Thus, the right to parent and the right to motherhood should be upheld by the Parental state even while incarcerated. Failure to address the structural barriers of prison

¹²⁹ Wallace, *The Adoptions*, 5- 6.

¹³⁰ Simmons and Danker-Feldman, "Parental Incarceration".

¹³¹ Wallace, *The Adoptions*, 5.

¹³² Jenni Vainik, "The Reproductive and Parental Rights of Incarcerated Mothers." *Family Court Review* 46, no. 4 (2008): 676.

which interfere with one's ability to parent should be understood as a violation of incarcerated mothers rights.

The Cultural Legacies of Race, Slavery, and Maternalism

“The legacy of slavery and the realities of mothering in a racist society [has] made it impossible for African Americans to idealize motherhood in the same way as elite whites. Because black women were historically denied the right to protect and care for their children, their appeals to motherhood [directly] challenged both gender relations and white supremacy.”¹³³

Molly Ladd-Taylor

In the previous chapter, I examined the rise of the state as the Parental State in the twentieth century both conceptually and as an apparatus that interfered with the mother-child bond under the guise of protection, rehabilitation, and economic aid to families. The Parental State is not the only historical process that explains the current situation in which Black incarcerated mothers are separated from their children and in some cases denied their right to motherhood. In this chapter we will review the long standing historical ideologies, stereotypes, and practices born out of slavery which have followed and affected Black mothers over the course of U.S. history. By first examining the movements that grew out of early twentieth century concepts of maternalism, maternal rights, and children rights, we will develop a better understanding of how society defines women and motherhood. This chapter will go on to analyze the racialized stereotypes which have grown out of maternalism and how these stereotypes have become embedded in U.S. law. In doing so, we are able to trace a clear historical path which leads to the criminalization of Black women and Black motherhood. Looking at these issues which are of long historical making in the U.S., and therefore deeply institutionally embedded in policies that affect incarcerated women of color, will inform how these cultural legacies and ideas circulate to feed into our modern day policy system.

¹³³ Molly Ladd-Taylor. "Toward Defining Maternalism in US History." *Journal of Women's History* 5, no. 2 (1993): 112.

Maternalism, True Womanhood, and the Cult of Domesticity:

In her book, *Maternalism Reconsidered*, Sonya Michel defines maternalism as an ideology that “operate[s] on two levels: it extoll[s] the private virtues of domesticity while simultaneously legitimating women’s public relationships to politics and the state, to community, workplace, and marketplace”.¹³⁴ This first level Michel mentions is a reflection of the predominantly Victorian ideological “cult of domesticity” that arose in the 1800s.¹³⁵ The Cult of Domesticity is an extension of “sentimental maternalism” which provided a fundamental view of women as belonging in the confines of maternal and domestic roles.¹³⁶ These maternalist ideals were “rooted in the nineteenth century [patriarchal] doctrine of separate spheres.” This arose with the separation of home from the workplace that accompanied industrialization for the new middle-class. These “separate spheres” designated women as the caregivers and nurturers of the home while men were to spend their days in the workforce.¹³⁷ Relegated to the domestic sphere by these developments, new class-based norms articulated a reproductive role for women. In essence, this ideology “legitimized the confinement of women to the private sphere by defining women as naturally suited for motherhood and naturally unfit for public life”.¹³⁸ This norm put women in a position where they had to be socially and economically dependent on the man of the house. By providing care to their children and raising “citizen-workers”, women were understood as providing a service to the state and their community. Woman’s role as a *good* mother thus necessarily required her absence from the wage earning labor market. Popular

¹³⁴ Sonya Michel, "Maternalism and Beyond." In *Maternalism Reconsidered: Motherhood, Welfare and Social Policy in the Twentieth Century*, edited by Marian Van Der Klein, Rebecca Jo Plant, Sanders Nichole, and Lori R. Weintrob, (Berghahn Books, 2012), 23.

¹³⁵ Roberts, “Racism and Patriarchy,” 16.

¹³⁶ Michel, "Maternalism and Beyond," 27.

¹³⁷ Ladd-Taylor, "Toward Defining Maternalism," 111.

¹³⁸ Roberts, “Racism and Patriarchy,” 16.

conceptions of womanhood and maternalism at this time worked to uphold and promote a standard of sexual innocence and purity, devotion to God, submission to the husband, and domesticity.¹³⁹ These traits, projected in magazines, fiction, and sermons, defined “True Womanhood” in American culture.¹⁴⁰

Because the cult of domesticity so intrinsically promoted the separation of motherhood and employment through the idea that women’s place in society is in the home, it largely excluded working-class women. Those working-class women— native, immigrant, and/or Black— who had to leave the home to help provide for their families were looked down upon as lesser or inferior mothers and wives. These populations who did not fall in line with traditional maternalist beliefs were therefore seen as being at odds with the good of society. The cult of domesticity was thus a social construction that could only apply to white, middle-class women. Despite the narrow scope of this ideology, it went on to influence society’s general understanding of women and motherhood by providing a classist, and predominantly racist, value system against which one could judge and measure another’s role as a wife and mother.

Michel highlights that the second level of maternalism helped to solidify positions of greater power and authority in society for middle-class women. Through the maternalist movement, women were able to build public recognition and power for white, middle-class women. It is a well known fact that “maternalism in practice was an ideology or political strategy most frequently deployed by [white] middle-class women” at the expense of the poor, who they used to justify their activism and position in the public sphere.¹⁴¹ Ironically, the reforms these

¹³⁹ Craig, "A Historical Review," 37S.

¹⁴⁰ Barbara Welter, "The Cult of True Womanhood: 1820-1860," *American Quarterly* 18, no. 2 (Summer 1966): 151, 162: “Woman, in the cult of True Womanhood' presented by the women's magazines, gift annuals and religious literature of the nineteenth century, was the hostage in the home... Domesticity was among the virtues most prized by the women's magazines.”

¹⁴¹ Michel, "Maternalism and Beyond," 24.

middle-class women advocated for only benefitted themselves, offering little to no practical alternatives to mothers who had to work outside of the home as a result of their poverty. Though they advocated around the poor, these women still looked down on the poor with a mixture of pity, “condescension, [and] moralism”.¹⁴² Those poor women and families who received the help of white middle-class women and reformers literally could not be classified by relief agencies as “undeserving”, “unworthy,” or “unmeritorious” or else they would be denied assistance.

Black Women’s Exclusion from True Womanhood

Conceptions of maternalism stand inherently at odds with Black women and their history in the United States. In order to uphold the moral standard of maternalism, “True Womanhood” and the cult of domesticity, middle-class women created an “other” which their moral values could stand against. During times of slavery, to which 90 percent of African-descended women in the United States were relegated before the Civil War, Black mothers by definition contradicted these ideals due to the fact that they were required to to work outside of the home and in the fields. Thus, the legal status forced upon Black enslaved women placed them at odds with the very foundations of womanhood and domesticity. If they were ever taken into account when it came to defining womanhood and maternalism, it was in the ways they stood opposite to these ideals. In fact, enslaved women were not even recognized or granted status as woman until after the emancipation of slavery, as evidenced by the basic fact that slave marriages had no legal standing in most southern states before abolition; Black women could not be wives and so had no access to a domestic realm of their own in law. In other words, only “white women were valued as wives and mothers, [and] a Black women's status as wife or mother could not be acknowledged by white society”.¹⁴³ Those within the maternalist movement utilized the racial

¹⁴² Michel, "Maternalism and Beyond," 25.

¹⁴³ Roberts, “Racism and Patriarchy,” 9.

stereotypes that grew out of slavery to strengthen ideas of who is and is not a “true woman”. Black women were often labelled as morally corrupt, promiscuous, and savage workers, while the ideal white American woman was referred to as pious, pure, domestic, fragile, and submissive.¹⁴⁴ Herein lies the roots of the U.S.’s long history of hypersexualization and ultimate criminalization of Black women and mothers.¹⁴⁵ These stereotypes which have persisted and evolved into the present day, function to not only undermine Black women’s status as *women*, but also their right to motherhood.

Although valued for their reproductive capacity, Black women’s defeminization also worked to validate the denial of their right to autonomy over matters of reproduction and reproductive labor. Enslaved women were treated as chattel who would supply and maintain the labor force. Despite being controlled by their slave masters to reproduce— often with the promise of a reward or threat of punishment— enslaved women held no rights over their children. The Virginia Slave Laws of 1662 set the national precedent that “the children of enslaved Africans and Englishmen would be ‘held bond or free according to the condition of the mother’”.¹⁴⁶ This law guaranteed that the children of Black women, even those conceived through the sexual abuse of their masters, would be born into a life of slavery as well. The children born from these circumstances were deemed “legally Black” under the Virginia Slave laws, and thus were regarded by their masters as their legal property.¹⁴⁷ In essence, the Virginia Slave Laws promoted the breeding and raping of Black women in order to create a greater labor force.

¹⁴⁴ Welter, "The Cult," 152.

¹⁴⁵ Huey and Lynch, "The Image," 133-134.

¹⁴⁶ Kali Nicole Gross. "African American Women, Mass Incarceration, and the Politics of Protection." *Journal of American History* 102, no. 1 (2015): 26

¹⁴⁷ Roberts, "Racism and Patriarchy," 8.

Clearly, “under slavery, the ‘law’s concern with [Black] mothering exclusively involved questions of property... they were, as mothers... the economic foundation of a profitable slave society”.¹⁴⁸ As a result of the Virginia Slave Laws, approximately 1/5 of all children in the U.S. were under the status of “slave” by the end of the eighteenth century.¹⁴⁹ Even though these children bore the status of their mothers, they were granted no legal attachments to their mothers, meaning they could be sold off and separated at any time. Ultimately, these laws functioned to promote the racist belief that “the slave status of black children was merely reproduced in their mothers” rather than through unjust power arrangements.¹⁵⁰ This biological explanation for the social inequalities that existed aided in the creation of the very concept of racial difference in America. As we will see later on, the idea that Black women naturally reproduce race, and thus racial difference, has gone on to influence how society, both socially and politically, views Black motherhood today. Thus, the legacy of slavery in defining Black womanhood had two general outcomes: Black women were structurally excluded from the maternal ideal, and the separation of Black mothers from their children was both legitimized and normalized.

However, there was one type of Black womanhood during slavery that perversely supported a domestic, maternal role for female slaves. Although enslaved women held no legal rights over their own children, a select few were still expected to perform maternal acts for the children of their slave masters. House slaves, better known as “Mammys,” were asexual and hypermaternalized figures, whose “roots in the cult of domesticity run deep”.¹⁵¹ Regarded by

¹⁴⁸ Geneva Cobb Moore, "Bodily Evidence: Toni Morrison's Demonic Parody of Racism and Slavery," in *Maternal Metaphors of Power in African American Women's Literature: From Phillis Wheatley to Toni Morrison* (Columbia, SC: University of South Carolina Press, 2017), 257.

¹⁴⁹ Mason, *From Father's Property*, 2.

¹⁵⁰ Dorothy E. Roberts, "Killing the Black Body: A Twenty-Year Retrospective," lecture presented at Whitney Humanities Center Auditorium, Yale University, New Haven, CT, April 27, 2017, video, 24:00-25:00.

¹⁵¹ Deborah Gray White, *Ar'n't I a Woman?* (New York, NY: W.W. Norton, 1995), 58.

slave owners as both “the perfect mother and the perfect slave,” the beloved mammy figure was idealized as a “passive nurturer” who recognized her inferior position but still dedicated her life to the master’s house and family.¹⁵² The domestic and maternal embodiment of the Black woman, the Mammy was expected to devote herself to the raising and caretaking of the slave master’s children as though they were her own. Even while being charged with the care of the master’s children, mammys remained under strict supervision of the house mistress.¹⁵³

This image of the Mammy, who nurtured the children, took care of household chores, and listened to the woes of her master and mistress, perfectly encompassed the maternal ideal of womanhood. Despite being praised for her maternal instinct, the idea of the Mammy figure “placed no value in Black women as the mothers of their own children” rather, it placed value on Black women’s care over the slave masters children and family.¹⁵⁴ Mammy was only granted recognition as a woman having maternal instinct because she was removed from her own family and children. In fact, Mammy's faithful care of her slaveowner’s children worked to underscore *white* maternalism; as chattel, Mammy was simply an extension of her mistress’ will— in other words, her mistress’ love of her own white children. Furthermore, the Mammy figure has always been depicted as an elderly woman. In many respects, this is a reflection of white society’s presumption of mammy’s asexuality.¹⁵⁵ By characterizing the Mammy as an elderly, figure, these enslaved women were also desexualized by white society. If the asexual Mammy figure was the Black female exception which encompassed white values of womanhood, the image of the hypersexual Jezebel represented everything maternalism and the cult of domesticity opposed.

¹⁵² Roberts, “Racism and Patriarchy,” 12.

¹⁵³ Dorothy E. Roberts, "Spiritual and Menial Housework," *Yale Journal of Law and Feminism* 9, no. 1 (1997): 56.

¹⁵⁴ *Ibid.*

¹⁵⁵ White, *Ar'n't I a Woman*, 60.

In contrast to the Mammy, the Jezebel, or sexpot, was first defined by historian Deborah Gray White as a hypersexual “woman governed by her sexual desires”.¹⁵⁶ In the white imagination, the Jezebel was a temptress who threatened the domestic order and tranquility of the white household. The idea that enslaved women were hypersexual beings served two main functions: to justify the sexual abuse Black women faced from their slave owners, and to position them in opposition to the ideals of chastity and purity that dominate “True Womanhood” rhetoric.¹⁵⁷ Southern whites used the Jezebel image to uplift white women’s position in society as the keepers of morality.¹⁵⁸ Slave owning society at this time saw “the increase of the slave population [as] evidence of the slave women’s lust”.¹⁵⁹ This narrative ignored the reality that enslaved women at this time were a sexually exploited population targeted by white slave masters— expected to breed, and treated as chattels whose main purpose on plantations was their reproductive labor and ability to provide sexual gratification for their masters. Despite the condemnation of the sexualized Jezebel women, she became a necessary figure and a perfect foil for white mothers. Her imagined promiscuousness enlarged the image of the moral white woman. Additionally, the exposure of enslaved women’s skin— from manhandling on the auction block, worn or insufficient clothing, and the nature of their work in the plantation fields (which required them to pull up their skirts)— furthered the presumption of their sexual promiscuity.¹⁶⁰ Because such public acknowledgments of sexuality had somewhat criminal undertones for women during this time, hypersexualized enslaved Black women were viewed as

¹⁵⁶ Roberts, “Racism and Patriarchy,” 12.

¹⁵⁷ Ibid.

¹⁵⁸ White, *Ar'n't I a Woman*, 44-45.

¹⁵⁹ Ibid, 31.

¹⁶⁰ Ibid, 32.

unnatural, unfeminine, depraved, and lacking in maternal instinct. The Jezebel stereotype thus effectively worked to dehumanize Black enslaved women.

Women, Race, and Criminality

In line with maternalism was the belief that women and crime were a severely disturbing and unnatural combination. Women who did commit crimes “had offended not only society, but God as well,” and were quickly written off as evil or depraved, fallen from God’s good grace.¹⁶¹ In fact, criminal women of this era were referred to as “fallen women”.¹⁶² Fallen women who are charged with criminal offenses sent to prisons or reformatories to be refined to meet middle-class standards of “True Womanhood”.¹⁶³ This way, the corrupt women of society would be kept out of the public eye and mind where they were unable to influence others. The type of crime committed often determined where the women were sent. For violent offenses, women were sent into the male-dominated prison system. State action against the female criminal, or “fallen women”, was relatively new, and thus prison systems were not equipped to meet the needs of incarcerated women. In fact, women were held in the same institutions as men up until 1870.¹⁶⁴ As a result, women were often subjected to neglect, overcrowding, harsh treatment, and sexual abuse.¹⁶⁵ For “lifestyle offenses”, such as adultery, prostitution, or drunkenness, women were sent to reformatories.¹⁶⁶ These reformatories were organized much differently than the prisons, modelled after reform schools for girls, and focused on training women in domesticity and homemaking. These trainings were racialized and class-specific, “designed to produce better

¹⁶¹ Craig, "A Historical Review," 39S.

¹⁶² Ibid.

¹⁶³ Huey and Lynch, "The Image," 129.

¹⁶⁴ Alana Van Gundy and Amy Baumann-Grau, *Women, Incarceration, and Human Rights Violations: Feminist Criminology and Corrections* (Burlington, VT: Ashgate, 2013), 7.

¹⁶⁵ Craig, "A Historical Review," 39S.

¹⁶⁶ Ibid, 40S.

wives and mothers among middle-class white women [and] skilled domestic servants among Black and poor women”.¹⁶⁷

One of the main reasons “fallen women” found themselves in prisons and reformatories was the growing concern around prostitution, particularly during the Progressive Era. With the emancipation of slavery came a gradual migration of Black people out of the rural South beginning in the 1890s, and a mass migration into industrial cities after the start of the twentieth century and notably in World War I. The subsequent movement of Black women across these landscapes sparked a societal moral panic, which feared the “sexual degeneracy” of these women, indicative of the Jezebel stereotype that followed Black women into free society.¹⁶⁸ Underlying this moral panic was the anxiety in middle-class society caused by single Black women moving to cities and living on their own. There was a slight incentive during this time for Black women to remain single by choice as American common marriage laws required women’s property rights to be transferred to the husband once married.¹⁶⁹ Black women thus frequently chose to remain single for longer in efforts to hold onto their own autonomy and rights to property. White society feared that these women would become mothers without husbands. Reformers felt that these women needed a special kind of protection— moral protection— from employment agencies that steered Black women into disreputable jobs and from lodging houses where they might encounter predatory men or be encouraged to go alone at night after hours into the streets where all sorts of vices waited for them.

In fact, Black women in public were often arrested in cities under false pretenses in the early twentieth century, and ended up in prison. Many of these women found their way to

¹⁶⁷ Angela Davis. *Women, Race, & Class*. (New York, NY: Random House, 1981), 64.

¹⁶⁸ Hazel V. Carby, "Policing the Black Woman's Body in an Urban Context," *Critical Inquiry* 18, no. 4 (Summer 1992): 739.

¹⁶⁹ Roberts, “Racism and Patriarchy,” 24.

Bedford Correctional Facility. LaShawn Harris found that in the 1920s and 1930s, the New York City Police Department operated out of a belief in the inherent sexual looseness of African-American women.¹⁷⁰ It paid informants and undercover officers to trap innocent, poor women—many of them single—into accepting money, and then arrested them on charges of prostitution. Black newspapers and race advocacy agencies objected to this unjust criminalization of Black women. The Seabury Commission, a 1931 New York State investigation into police corruption, gathered the testimony of men who admitted taking money from officers to “shake down innocent” Black women in this way.¹⁷¹ These racially biased practices resulted in Black women making “13 percent of Bedford inmates serving time for prostitution” in the 1920s even though they were only 2 percent of Manhattan’s population at the time.¹⁷²

Still, Black women who made it to cities in the North found a more receptive labor market there than in the South, which was something they *needed* for the welfare of their families and children, but which again was held against them for it placed them outside the domestic ideal of womanhood. During this time, there were very few jobs available for Black men that paid a living family wage, because white society depicted them as both a threat to society as free men and as economic competition for white men. Because of the high rates of unemployment, underemployment, and seasonal employment for Black men, it became the responsibility of the Black women, who were not seen as threatening, to find jobs to provide for themselves and for their families.¹⁷³ As a whole, white women were roughly half as likely to be paid employees than nonwhite women. In 1900, for instance, only 18 percent of white women in

¹⁷⁰ LaShawn Harris, *Sex Workers, Psychics, and Numbers Runners: Black Women in New York City's Underground Economy* (Urbana, IL: University of Illinois Press, 2016), 131-134.

¹⁷¹ *Ibid.*

¹⁷² *Ibid.*

¹⁷³ Leah Platt Boustan and William J. Collins, "The Origins and Persistence of Black-White Differences in Women's Labor Force Participation," *NBER Working Papers*, May 2013.

the U.S. were paid workers, whereas 43 percent of nonwhite women were; in 1920, the figure for white women was 22 percent, and for nonwhite women, it was 43 percent.¹⁷⁴ Only three percent of white, *married* women worked in the labor force in 1900, while 26 percent of nonwhite women did. Similarly, only seven percent of white *married* women were paid laborers in 1920, while 26 percent of nonwhite women were.¹⁷⁵ The low-paying jobs available to nonwhite women during this time were predominantly based in domestic labor as servants and/or laundresses to white communities and families. Once again, the Black woman found herself at odds with the late Victorian and Edwardian ideals of womanhood.

The idea of wage-earning women in public workspaces was antithetical to maternal and domestic ideals, but Black women typically had no choice but to join the labor market. Her position as a wage laborer outside of the home reinforced the idea that Black women were unfit for motherhood.¹⁷⁶ However, middle-class Black women reformers during the Progressive Era differed from their white counterparts by recognizing these economic structures which required poor, Black women to work. Eileen Boris, a feminist scholar, has written about this:

Recognizing that the mothers of their race often had to leave their children to work, the clubwomen accepted the working mother as a worthy mother. They understood how racism and discrimination insured the inadequacy of most black men's wages, making wage-earning a necessity for thousands of black mothers.¹⁷⁷

Rather than critique working-class Black women, these advocates worked hard to ensure and emphasize that they were viewed as respectable in mainstream society. Despite class differences, Black women in the middle-class took more practical approaches to dealing with poor and

¹⁷⁴ Boustan and Collins, "The Origins and Persistence."

¹⁷⁵ Ibid.

¹⁷⁶ Roberts, *Shattered Bonds*, 62.

¹⁷⁷ Eileen Boris, "The Power of Motherhood: Black and White Activist Women Redefine the Political," *Yale Journal of Law and Feminism* 2, no. 1 (Fall 1989): 40.

working mothers by offering domestic education courses and technical training.¹⁷⁸ The reformers believed that offering poor mothers access to job training and technical education would mean that there was less opportunity for white society to make excuses for their exclusion from the job market.¹⁷⁹

Social clubs such as the National Association of Colored Women (NACW) also established kindergartens, day cares, and working girls' lodging to help ensure that the children of working mothers would be taken care of during the day, and that both mother and child would have a secure place to stay at night.¹⁸⁰ Although Black middle-class reformers still believed the best place for a woman was in the home, understanding of the structural realities which required poor Black women to work meant that their priority shifted to focus on improving the actual conditions of mothers and children, rather than writing them off as "bad" mothers or disregarding them entirely. These reformers recognized the sanctity of motherhood within the Black community, given that "between 1880 and 1915, twenty-five to thirty percent of all urban Black families were headed by women".¹⁸¹ This cultural sanctity of Black motherhood was interpreted very differently by white society, who saw the phenomenon of single motherhood as inherently referring to *Black* motherhood.¹⁸² Ultimately, this led to the stereotyped myth of the Black matriarch: the tyrannical, unfeminine, independent female head of Black families.

The concept of the Black Matriarch began to dominate modern popular discourse about Black families after the Black ghetto riots of the 1960s. These riots prompted a presidential commission charged with the investigation of social conditions in America's inner cities. While

¹⁷⁸ Boris, "The Power of Motherhood," 40.

¹⁷⁹ Ibid.

¹⁸⁰ Ibid, 41.

¹⁸¹ Ibid, 25.

¹⁸² Ibid.

it is true that “Black families have the highest rate of unwed motherhood, with Black families three times as likely as white families to be headed by a woman,” this stereotype reflects the threat that single Black mothers posed to capitalism and patriarchy.¹⁸³ The stereotype became cemented in societal conceptions of Black motherhood with the publishing of Daniel Patrick Moynihan’s 1965 report, *The Negro Family: The Case for National Action*. This report more or less blamed single-parent households headed by Black mothers for all of the social ills that Black communities have to face, such as poverty and crime. The report primarily critiqued Black single mother households for failing to uphold the patriarchal structure that exists within the predominantly white nuclear family structure. By undermining the “natural hierarchy of patriarchy,” Moynihan argued that the matriarchal structure of Black families ultimately perpetuates their poverty, and is the cause of Black people’s failure to achieve success in America.¹⁸⁴

The lack of a father figure in these homes raised serious concerns for white Americans, who saw fathers as the necessary breadwinners for the family, as well as the enforcers of discipline—which Black children apparently needed. Following this logic, a father in the home, presumably to whom the mother was married, assured that the mother was chaste. Additionally, the lack of a father figure also meant that Black mothers had to leave their children at home to go to work. Society thus regarded the increase in crime as a result of Black mothers’ inability to “properly supervise,” control, and pass down good morals to their children because of their position in the labor force rather than in the home, and their availability for casual, unmarried

¹⁸³ Boris, “The Power of Motherhood,” 25.

¹⁸⁴ Daniel Geary, “The Moynihan Report: An Annotated Edition,” *The Atlantic* (Boston, MA), September 14, 2015. <https://www.theatlantic.com/politics/archive/2015/09/the-moynihan-report-an-annotated-edition/404632/#Chapter%20IV>.

sexual encounters.¹⁸⁵ Ultimately, the “Black matriarch’s” perceived rejection of traditional gender roles and family structures, rather than the socio-economic conditions that continue to subjugate Black communities, became the rationalization for Black poverty.

While the majority of families on welfare were not Black, it was a reality that impoverished single-parent Black households headed by a Black mother were disproportionately dependent on AFDC to support their children. The fact that these women made up a third of AFDC recipients began to preoccupy the mainstream American public in the 1980s—so much so that they inverted this reality.¹⁸⁶ Single, dependent, poor Black women were reimagined by the media and white society as hypersexual con artists who were enriching themselves through the welfare system. Simultaneously occurring with the image of the Black matriarch depicting mothers as tyrannical and absent, was another image of Black mothers, depicting them as lazy, irresponsible, and hypersexual.¹⁸⁷ The Welfare Queen began to gain prominence in the 1980s as poor, Black mothers became increasingly dependent on social welfare programs. During this time, it was widely believed that those Black mothers portrayed as Welfare Queens preferred not to work, but rather to rely on monthly government checks. Conservative writers like Charles Murray helped promote the idea that such welfare programs incentivize Black women to remain single and have more babies. Contrary to the public’s misconception of mothers on welfare having a multitude of children to increase their welfare check, most mothers only had one or two

¹⁸⁵ Huey and Lynch, "The Image," 130.

¹⁸⁶ Dorothy Roberts, *Killing the Black Body: Race, Reproduction, and the Meaning of Liberty*, 2nd ed. (New York, NY: Vintage Books, 2017), 111.

¹⁸⁷ Susila Gurusami, "Motherwork under the State: The Maternal Labor of Formerly Incarcerated Black Women Susila," *Social Problems* 66 (2018): 131.

children.¹⁸⁸ The argument could be made that this myth of the Welfare Queen is a the modern extension of the idea of Black women’s function as breeding during slavery.¹⁸⁹

This image of the fast reproducing Welfare Queen created a “panic of dependency” among white American citizens, who believed their taxpayer dollars were being abused by unworthy mothers and spent on luxuries rather than their children. These people saw welfare mothers as undeserving of aid because they were undeserving of motherhood; not only were their children “illegitimate,” but also the single, Black female mothers themselves were illegitimate. In fact, their position as mother was viewed only as an abuse of status for financial gain. On top of being criticized for abusing welfare funds, it was believed that these mothers would pass down deviant values and perpetuate the cycle of welfare dependency.¹⁹⁰ The assumption that the only values these mothers passed down to their children were criminal or deviant “help[ed] to legitimate the disproportionate disruption of [Black] family bonds”.¹⁹¹ The lack of trust towards welfare mothers on behalf of the state ultimately led to increased surveillance and criminalization of Black mothers. By implementing state supervision into the lives of families on welfare through caseworker visits and inspections, courts resolved that funds would be more likely be used directly for the benefit of the children.¹⁹²

Women and the War on Drugs—A New Kind of Criminalization

The crisis of welfare dependency of the 1980s and simultaneous “Tough on Crime” rhetoric that dominated the War on Drugs culminated in the greater societal criminalization of Black women and girls. It is important to include *girls* here, for the legacy of hypersexualization

¹⁸⁸ Roberts, *Shattered Bonds*, 65.

¹⁸⁹ Huey and Lynch, "The Image," 130.

¹⁹⁰ Roberts, *Killing the Black Body*, 112.

¹⁹¹ Roberts, *Shattered Bonds*, 65.

¹⁹² *Ibid.*

of Black women has led to society disproportionately treating of Black girls as adults from a very young age. In addition to welfare reforms, the War on Drugs welcomed an increase in surveillance over impoverished families and disenfranchised communities. The inability of poor families to meet societal expectations and norms was believed to come as a result of a lack in social controls.¹⁹³ The government's response was to implement "harsher treatment" towards Black mothers, who were considered "more dispensable" to their family than white, middle-class mothers.¹⁹⁴ While Black mothers were controlled through the welfare and punitive penal systems, white mothers were managed through social controls "mediated among... other parents" in the form of internalized discipline.¹⁹⁵

Welfare reforms and the criminal legislation implemented by President Bill Clinton in the 1990s aided heavily in the criminalization of poor Black mothers and families. For example, Clinton passed the Personal Responsibility and Work Opportunity Act (PRWORA) in 1996, which dramatically decreased the number of people eligible to receive welfare assistance. PRWORA effectively "ended welfare as we know it" by replacing the long established Aid to Families with Dependent Children (AFDC) with the The Temporary Assistance for Needy Families (TANF).¹⁹⁶ TANF not only put a five year lifetime limit on welfare assistance, it also placed a lifetime ban on welfare assistance for those who've been convicted of a felony drug offense and made it easier for people with a criminal history to be denied access to public housing.¹⁹⁷ These reforms put poor mothers in a precarious position where they had to choose carefully when to make use of TANF. They particularly had a large impact on incarcerated

¹⁹³ Roberts, "Motherhood and Crime," 103.

¹⁹⁴ Ibid.

¹⁹⁵ Anita Iltis Gary and Margaret K. Nelson, "Policing Motherhood," *International Journal of Sociology of the Family* 7, no. 1 (Spring 2011): 5.

¹⁹⁶ Alexander, *The New Jim Crow*, 57.

¹⁹⁷ Ibid.

mothers, who as we know are predominantly incarcerated for gender-specific traumas, drug offenses, and/or are implicated in crime through conspiracy drug laws.

Welfare reform was ultimately passed so that the State could reallocate public resources to more punitive tools, such as the growing penal system. Under President Clinton and his policy reforms, the rate of prison population grew faster than under Reagan and Bush combined.¹⁹⁸ Overall, the reforms made under Clinton worked to create our current racial underclass as the decrease in welfare and increased reliance on penal institutions led to the greater surveillance, regulation, and criminalization of poor women and families. After all, “society is much more willing to condone the punishment of poor Black women who fail to meet the middle-class ideal of motherhood” than it is willing to admit its role in perpetuating the disruption and separation of Black mothers from their children.¹⁹⁹

Conclusion

The “moral corruption” of Black women that was borne out of the cultural legacies of maternalism, domesticity, and slavery has been used throughout American history to uphold and justify the white moral standard of True Womanhood. “The sexually licentious Jezebel, the family-demolishing Matriarch, the devious Welfare Queen... paints a picture of a dangerous [Black] motherhood that must be regulated and punished”.²⁰⁰ These stereotypes have had a trickle down effect which has gone on to influence accepted family norms and even national policies. Controlling images of Black women as inadequate mothers— which has persisted throughout U.S. history— have served as tools of oppression which consistently delegitimizes

¹⁹⁸ Roberts, *Shattered Bonds*, 201.

¹⁹⁹ Roberts, *Killing the Black Body*, 179.

²⁰⁰ Roberts, “Prison, Foster Care,” 1492.

them as women and mothers, making the disruption and separation of Black families appear warranted on part of the Parental State.

Bedford Hills and Black Incarcerated Mothers: A Case Study

“Susan: A lot of times, the kids are all a woman has. If they would just look at the bond before they would take kids. That’s all these women have.”²⁰¹

Sandra Enos

This chapter provides a case study of incarcerated mothers, specifically those located in New York State’s Bedford Correctional Facility. I apply the concepts of the Parental State and its incorporation of maternalism in the treatment of incarcerated mothers, looking at how they are able to experience and manage the rights over their children from behind bars. This chapter will focus solely on New York State prisons and policies in regard to incarcerated mothers. This is due to my access to the Bard Prison Initiative (BPI), a New York based, nationally recognized model in prison reform, has a presence at Bedford Hills Correctional Facility, which offers a program for incarcerated mothers. It was my belief at the start of this project that this relative proximity— both geographical and social— to Bedford Hills would allow for greater access, connection, and opportunity to meet and interact with formerly incarcerated mothers who have dealt with the Parental State first hand. A deeper look into the programs available for mothers at Bedford Hills provides a better understanding of how the approach toward incarcerated mothers has evolved over time.

HourChildren, a non-profit which runs programs for mothers within Bedford Hills, offers critical insight on what it means to meet mothers’ needs in prison in such a way that promotes long lasting change. HourChildren stands at an usual crossroads between humanitarianism and human rights advocacy, as the organization works to both meet the *needs* of incarcerated mothers while also putting forth the claim that these women have a *right* to motherhood. In a society where the normalized response to maternal incarceration has become mother-child separation,

²⁰¹ Enos, *Mothering from the Inside*, 94.

programs like the ones at Bedford Hills are atypical, innovative exceptions which defy and undermine such norms. HourChildren’s humanitarian origins, which work to provide specialized services for incarcerated mothers, have evolved to a position in which the organization recognizes a need for justice on behalf of these mothers. These programs work to uphold and validate a mother’s rights in addition to prompting society and the state to rethink their approach on how to meet the needs of incarcerated mothers. This advocacy recognizes incarcerated women as mothers— a category from which Black and incarcerated women have historically been denied. Ideally, the work done through organizations like HourChildren will prompt society and the state to rethink their approach on how to meet the needs and rights of incarcerated mothers.

Today in New York, there are over 4,000 women incarcerated in state prisons and jails.²⁰² Of these women, 75 percent identify as mothers and the primary caretakers of their children prior to incarceration.²⁰³ It is estimated that “about 11,000 children have a mother in a New York State prison”.²⁰⁴ As discussed in chapter two, because the “ideals about what a good mother is supposed to do and be are ‘class specific [and] historically located,’” the racial bias which exists inherently within both the criminal justice system and Child Protective Services (CPS) disproportionately impacts Black and brown women and children.²⁰⁵ In New York City specifically, where class disparities run rampant and “one out of every twenty-two Black children... is in foster care,” authorities harbor an assumption that links Black mothers to incarceration, and therefore links their children to the foster care system, increasing these

²⁰² HourChildren, <https://hourchildren.org/>.

²⁰³ "Words from Prison," ACLU.

²⁰⁴ Ibid.

²⁰⁵ Enos, *Mothering from the Inside*, 27.

women's chances of having their parental rights terminated.²⁰⁶ The long cultural history of Black mothers "fail[ing] to meet society's image of the ideal mother," where the ideal mother means the domestic, white mother, "makes their prosecution more acceptable" and the separation from their children appears more justified.²⁰⁷

The Right to Motherhood: Motherhood as Identity

It is important to note that, so far, I have been discussing motherhood and maternalism from a compulsory angle, in which women are bound by social structures and ideological pressures to achieve motherhood. Because of its deeply embedded social construction, women have historically only been able to gain status, power, or recognition through their position as a mother. Sociologist Sandra Enos has critiqued the premise of motherhood as being "so prevalent and so implicit that [it] appear[s] 'natural,' as the way [women] 'should be'".²⁰⁸ She argues that "this 'naturalness' conceals the fact that motherhood is socially produced and constructed".²⁰⁹ Despite the fact that motherhood and the concept of maternalism are social constructs used as tools to subordinate and control women, this should not diminish the importance and impact that motherhood has on an individual level.

For many Black women in the late twentieth and early twenty-first centuries, single motherhood is valued in a way that is not found in white communities. Research shows that many single mothers value the independence that it brings—the ability to set up, run, and have their *own* family.²¹⁰ Additionally, these women do not so much seek husbands as they do good

²⁰⁶ Roberts, *Shattered Bonds*, 9.

²⁰⁷ Ibid.

²⁰⁸ Enos, *Mothering from the Inside*, 23.

²⁰⁹ Ibid.

²¹⁰ Linda M. Blum and Theresa Deussen. "Negotiating Independent Motherhood: Working-class African American Women Talk about Marriage and Motherhood." *Gender & Society* 10, no. 2 (1996): 204.

fathers for their children.²¹¹ It can be argued that American culture has shifted away from Victorian and Progressive ideals that saw marriage as a prerequisite for motherhood, however, Black community values are still at odds with mainstream notions that inform the institutions working under the Parental State.

Black mothers in prison often share Black community values that affirm the legitimacy of their motherhood and parental rights. Many incarcerated women see motherhood as a legitimizing role and define themselves by their status as a mother. Based on first-hand accounts gathered by Enos, “the fact of children provides a normalizing status” for incarcerated mothers which they can rely on during their time behind bars, where life feels anything but normal.²¹² Incarcerated women have to combat higher levels of societal stigma for not only violating criminal law, but also gender norms.²¹³ Embracing one’s identity as a mother helps to challenge or counter the stigmatizing labels of “inmate”, “criminal”, and “addict”, which can follow incarcerated women even after their release.²¹⁴ For many Black women in prison, motherhood serves a very different function than it does for the idealized middle-class white mother. For those who choose to embrace the label of “mother”, motherhood becomes “a rare source of self-affirmation, [whereas] society deems [their] motherhood to be illegitimate and deviant”.²¹⁵ The reclaiming of motherhood on behalf of incarcerated women has deeper sociopolitical implications, as it challenges the traditional image of the white, domestic mother.

Renowned feminist poet Adrienne Rich has pointed out the difference between the “‘experience of motherhood’— the relationship between a woman and her children— and

²¹¹ Blum and Theresa Deussen. "Negotiating Independent Motherhood 208.

²¹² Enos, *Mothering from the Inside*, 35.

²¹³ Barberet and Jackson, "UN Rules," 218.

²¹⁴ Enos, *Mothering from the Inside*, 37.

²¹⁵ Roberts, "Racism and Patriarchy," 4.

‘motherhood as enforced identity and as political institution’”.²¹⁶ Despite this, incarcerated mothers continue to see themselves in the discourse of motherhood even though this discourse—perpetuated by the Parental State—rejects and ignores incarcerated women’s right to motherhood as a result of their crime. The punitive system and society both reject the attempts of incarcerated mothers to redefine or shed this criminal label and instead regarding these women as “mothers who failed to find themselves in motherhood”, more or less erasing their identity as a mother.²¹⁷ The Parental State’s denial of incarcerated women’s experience as mothers is driven by political motivations. By problematizing their position as mother, the state is able to maintain power over women and manage their actions by using their children and parental rights as leverage. Too often, incarceration is used by the Parental State to undermine Black women’s motherhood, which is viewed as contrary to social norms, and diminish the mother-child connection. However, the choice by incarcerated women to reclaim their identities as “mother” is a powerful political response to the Parental State. In doing so, they expose the long history in which these women have been socially excluded from the realm of motherhood and categorized as “immoral” and “undeserving”, women, but then actively reject, problematize, and rewrite that narrative. Programs, such as those HourChildren offers at Bedford Hills, help to legitimate the importance of recognizing a mother’s rights and identity while working to uphold and protect the mother-child bond.

As the penal system developed in the twentieth century to meet the needs of the growing population behind bars, despite the persistence of these unique, cultural understandings of motherhood among Black women, penitentiaries reflected only white, middle-class norms for

²¹⁶ Roberts, “Racism and Patriarchy,” 4.

²¹⁷ Angela Y. Davis, “Surrogates and Outcast Mothers: Racism and Reproductive Politics in the Nineties,” in *The Angela Y. Davis Reader*, ed. Joy James (Malden, MA: Blackwell, 1998), 218.

women in their programs for incarcerated mothers. The Reformatory movement that arose during the Progressive Era alongside maternalism and the growing sentimentalization of childhood resulted in the creation of prison nurseries. During this period, society saw a rise in “fallen women”, or female criminals, due to a shift in social ideology which focused more on acts of (im)morality and began criminalizing “unlawful personal behavior” such as drunkenness, vagrancy, sexual promiscuity, etc. as “lifestyle offenses”.²¹⁸ As we have seen in the previous chapter, Black women especially suffered criminal convictions due to this line of thinking. As the population of women in prisons and reformatories continued to grow in the early twentieth century, so too did the population of pregnant women, babies, and children behind bars. Prior to this period, there were very few women behind bars, and as a result, the state had little to no provisions in place to manage their needs, creating a potential crisis in which both women and children were being neglected and mistreated.²¹⁹

The reformatory movement partially grew out of this phenomena in an attempt to address the gender-specific needs of incarcerated mothers. Conveniently, the rise of maternalism and the sentimentalization of childhood— now a thing to be protected— during this time aided in the development of attachment theory. Attachment theory is the idea that the mother-child bond is detrimental to a “child's cognitive and emotional development” in the early years (six months-two years) of their life.²²⁰ The progressive promotion of maintaining the mother-child bond aided in the growth and success of the reformatory movement. From 1901-1933, society saw a massive expansion in this movement as seventeen new reformatories were opened across the country.²²¹ Reformatories were set up in “cottage-style” systems that mimicked a home-like

²¹⁸ Craig, "A Historical Review," 39S-40S.

²¹⁹ Ibid.

²²⁰ Jbara, "The Price They Pay," 1825.

²²¹ Craig, "A Historical Review," 41S.

atmosphere, aiding in the state's promotion of domestic, middle-class values.²²² Children were allowed to stay with their mothers in these reformatories up until the age of two.²²³ In allowing women to be with their children in these reformatories, the state was hoping to foster the mother-child bond so that it could create a presumably absent sense of responsibility within the women that would extend outside of the institution upon release.²²⁴

It is important to note the types of women being sent to reformatories during this era, for carceral spaces have long had a racialized component. Thus, the type of correctional institution women were sent tended to have less to do with the crime and more to do with a woman's race. Primarily, it was white, "fallen women" who found themselves in reformatories, while hypersexualized and "immoral" Black women would be sent to custodial prisons even if the same crime was committed. Black women who were sent to reformatories were kept separate from white women.²²⁵ Because reformatories were composed mostly of white women, there was a greater sense of white, middle-class urgency and promotion to maintain the mother-child bond through nursery programs.

While reformatories and nursery programs gained popularity during the Progressive Era, they were not able to be maintained for very long. The Great Depression of the 1930s, World War II, the Women's Rights Movement, and the rise of the modern punitive system through the War on Drugs and the Panic of Dependency in the 1990's all resulted in the massive decline in prison nursery programs. Ironically, the decline in the use of prison nursery programs aligns well with the increasing population of women of color behind bars. This historical trend mirrors a more contemporary one in which the decrease in welfare assistance and child services

²²² Craig, "A Historical Review," 41S.

²²³ Ibid.

²²⁴ Ibid, 42S.

²²⁵ Ibid, 41S.

throughout the 1980's and 1990's was implemented as these systems became increasingly relied upon by families of color. However, recent advocacy work on behalf of the rights of incarcerated mothers has resulted in a resurgence of prison nursery and parenting programs in the last 30 years.²²⁶

HourChildren: A Model with Some Room for Improvement

Throughout the historical rise and fall in popularity of prison nursery programs, the program at Bedford Hills Correctional stands out because it appeared early in the twentieth century, persevered and even expanded. The first of its kind, the Bedford Hills nursery program was first implemented in 1901 and has allowed unwed and/or incarcerated mothers to keep their babies until the child's first birthday since it was put into New York state legislation in 1930.²²⁷ Its long-standing presence has made the program a favorable model for other prisons across the U.S. that are looking to create and/or improve their nursery and parenting programs. Bedford arguably has one of the most ideal prison nursery and parenting programs available to incarcerated mothers in the nation.

Today, Bedford's parenting programs are not sponsored by the state but rather through a non-profit organization known as HourChildren. Since 1992, HourChildren has worked to "help women who have been incarcerated get back on their feet through holistic, supportive programming so that no child's life is defined by their mother's sentence".²²⁸ These programs include prison-based services such as the nursery program, visiting and transportation programs for older children of incarcerated mothers, parenting education classes, and an advocacy program that helps to maintain critical lines of communication between mothers and caregivers/guardians,

²²⁶ Jbara, "The Price They Pay," 1832.

²²⁷ Craig, "A Historical Review," 42S.

²²⁸ HourChildren.

social workers, and counselors regarding issues that may impact her children.²²⁹ The programs and services offered by HourChildren recognize a woman's right to motherhood simply by emphasizing, encouraging, and helping to foster the development of the mother-child connection. In doing so, HourChildren functions to challenge and contradict the universal definition of motherhood.

The most notable of HourChildren's programs has also been the longest running at Bedford Hills: the prison nursery program. The nursery program allows women who gave birth while incarcerated to keep their children with them for up to 12 months.²³⁰ Mothers can apply for an extension in cases where they have a release date set within the following 6 months.²³¹ The founder of HourChildren, Sister Tesa Fitzgerald recognizes the importance of keeping families together, calling the separation of mothers and children "a waste of resources" since "all research shows that the bonding that a child does with the mother in the first year of life is life-changing".²³² Giving mothers the time and space to be with their newborns allows them to create critical bonds with each other, ultimately aiding in the healthy socioemotional development of the child and strengthening the mothers ties to society. However, because the program can only accommodate twenty-nine mothers with children at a time, there are strict prerequisite conditions for eligibility. This program is only available to women who are nonviolent offenders and have no history of child abuse. Mothers and children who are accepted into the nursery program live separately from the rest of the incarcerated population. Instead, these families live "together in unlocked rooms that are decorated and contain toys, such that the rooms more closely resemble a

²²⁹ HourChildren.

²³⁰ Jbara, "The Price They Pay," 1834.

²³¹ Ibid.

²³² Public Radio International, "With More Women Inmates, This New York Prison Allows Them to Keep Their Babies," WSKG, last modified April 2, 2018, <https://wskg.org/news/with-more-women-prisoners-than-ever-a-new-york-prison-allows-them-to-keep-their-babies/>.

child's nursery".²³³ These measures work to provide a humanizing space for incarcerated mothers, one that is more suitable for their kids and also helps reinforce their sense of autonomy and independence over their children. During the day, these mothers are tasked with attending school, mandated parenting programs, or working through HourChildren. While away, their children are taken care of in the Child Development Center, staffed by HourChildren employees and other incarcerated women.²³⁴

I was able to interview only one former participant of the HourChildren programs, who I will call Melinda, and she confirmed the benefit to her of Bedford's parenting programs.²³⁵ She recalls:

I was glad to have contact with [my children] and be incarcerated at Bedford Hills. I'm just going to give you this small comparison. Not only did I do time in Bedford Hills, I also had an open case in New Jersey, so when I finished my nine year sentence in New York, I was transferred to Jersey. So in New York, one thing that I may say about, at least in Bedford Hills, is that they encourage and foster that mother-child relationship and they have endless, countless programs. They really, really support that and encourage that. So what I'm trying to say is that, yes, I did have a good relationship with my kids. And they were able to visit frequently because of the program and because of my family as well. I'm just reiterating what I've already said, that the HourChildren program and the parenting program at Bedford Hills is phenomenal. And I've always said that whenever it

²³³ Halter, "Parental Prisoners," 550.

²³⁴ HourChildren.

²³⁵ Melinda's name has been changed to protect her identity; The COVID-19 public health crisis ultimately interfered with my ability to connect with and interview mothers from Bedford. In the end, I succeeded in having only one interview with a formerly incarcerated mother, which still greatly benefitted my understanding of Bedford's programs and how ASFA impacts families with an incarcerated parent.

comes to speaking up about things that have to do with that, that I would always be willing and open to do it just because had it not been for them, I don't think I would have had the relationship I have with my kids now, you know. Bedford Hills, their mother-child program, their nursery program, Sister Tesa's program, HourChildren.. They take it to the next level. They really do, and I was only able to see that when I was placed in a similar situation in a different state.

Because she spent time in a facility in New Jersey, Melinda was able to compare her ability to maintain contact with her children at Bedford Hills to the barriers that arise when in a facility without parenting programs:

When I was transferred to New Jersey, they [did] not at all have any mother-child program. They don't foster, or support, you know, programs or activities to keep that [mother-child] bond. At all. I mean, I had visits with my kids, special visits with my kids in New Jersey [because of my mother]... And I would be like the only person. And I'm like, how can I be the only person having a visit with my child? You know, it's crazy... the treatment is just totally different. Totally different. And like I said, [because I was at Bedford], I can compare it to something else because New Jersey was horrible. Horrible. And it's so crazy because we're only a bridge apart. In New York, I see that there's more of a human touch... Letting you see your family, I think, is a big way to, like, acknowledge that someone is a human.

Melinda's account of her experience trying to maintain a relationship with her children from a penal institution without parenting programs only reinforces the idea that programs like those at Bedford are detrimental for incarcerated mothers and their children.

In addition to the nursery program, HourChildren also offers transportation and visiting programs for children who are too old to stay with their mother. Often, access to transportation—or rather, the lack thereof—becomes one of the biggest barriers to women seeing their children. Melinda’s children were able to participate in and benefit from these programs:

My kids were able to stay the weekend, not with me, but with host families, and come see me like Saturday and Sunday, you know, and visit from 8-4pm. And then there are free buses so that my mother was able to come up with the kids that were provided by the facility as well... if they meet at a designated bus stop and they pick up the families and they bring them down to the facilities.

Once a month, HourChildren offers these free bus rides to families going to visit incarcerated women and mothers at Bedford. This service greatly helps to diminish the stress put onto the current caregivers of children, who have the pressure and responsibility of finding both the time and the money to make the trek upstate so that children may see their mothers. Once at the facility, children can spend all day at Bedfords’ Children’s Center Playroom, which is a specialized visiting room that caters to the children with games and arts and crafts projects.²³⁶ This environment makes the prison appear more welcoming to the children, and helps to normalize the circumstances under which they can spend time together.

Additionally, HourChildren offers the special multi-day visiting program, during which the children stay with local host families. The host family program appears to be totally unique to the HourChildren organization and is highly successful. This program allows mothers to have extended contact with their children while they stay with the host families for a short period of time. This past summer alone, HourChildren helped sponsor 80 children who were able to spend

²³⁶ HourChildren: Children are only allowed to be in the playroom with their mothers during visiting hours, which are open from 8 am to 4 pm.

a week in the summer visiting with their mothers while staying with host families.²³⁷ In some regards, the program benefits the children more than their mothers, as they are able to meet, interact, and make connections with other children in the same situation. Melinda made note of how important this aspect of the host program is, “just for your kids to know that you're not alone in this, and there's other kids that are going into this as well. And you can still live a normal life and you know, you can still do good.” Thus, the experience of visiting one’s mother in prison becomes less isolating, and more normalized and destigmatized, making the entire experience for the children less grounded in trauma.

HourChildren does more than just help maintain mother-child connections during a mother's incarceration. It also has programs in place to service mothers upon their release in efforts to break the cycle of dependence and recidivism. These programs offer temporary transitional housing, job training, educational opportunities, child care support, a mentoring program for children, and access to a community food pantry.²³⁸ For mothers involved with Child Protective Services, either during their incarceration or after, the programs and services provided by HourChildren help to prove that a mother is making “reasonable efforts” to either remain with or reunify with her children. Ultimately, the ability for women to either be with their children, have greater access to communication with them, and/or have more frequent visitations helps reinforce incarcerated mothers’ sense of identity as they are able to perform her role and feel they still play a critical part in their children’s lives. HourChildren helps to bring a sense of agency and autonomy back into the lives of these mothers.

While Bedford may be most one of the most extensive and successful prison nursery and parenting programs in the nation, it is still flawed. In fact, many of the programs rules and

²³⁷ HourChildren.

²³⁸ Ibid.

restrictions seem contradictory to the cause. According to a 1993 conference held at Bedford, “the child’s best interest is paramount in the philosophy of [their] parenting program”.²³⁹

However, the amount of time the child is allowed to stay in many ways undermined the goal or philosophy of the entire program. Removing the child from its mother after only one year can reverse the entire process of creating an initial bond between the mother and child. This allotted time is simply too short to benefit the child’s long-term development, and its removal only works to disrupt any developments the child might have made.²⁴⁰

Additionally, the requirement that women had to have had their child while incarcerated in order to be eligible for the nursery program meant that women who had their children only a few days or weeks prior to their incarceration are not able to keep their newborns with them. This rule undermines the attachment theory logic behind the nursery program as well as the organization's overarching philosophy. Though this rule may only be in place as a matter of available resources, its exclusion of these mothers meant that their rights as mothers failed to either be taken properly into account or were completely disregarded.

For incarcerated women whose parental rights are threatened by ASFA and do not wish for their children to go into the foster care system, often the only alternative is adoption by a relative or other family. For instance, in the BPI documentary, “College Behind Bars,” a woman named Tamika was able to maintain a connection with her teenage daughter because her mother brings her along on visits. While adoption by a relative can ensure frequency of contact, it nonetheless involves the pain of a mother sacrificing the legal recognition of her parenthood. Melinda recalled the sting of the law as her child’s pre-adoption birth certificate was amended to replace her name as the birth mother with that of her mother’s name. She said:

²³⁹ Jbara, "The Price They Pay," 1834.

²⁴⁰ Ibid.

I have a good relationship with my mom, because she never, ever, like, not came and brought them up or said that she was tired... So when it came to the point of adoption, you know, the judge has to say what she said, which is [that it was] up to my mom. You know, the adoption, it's final... I was kind of torn when I knew that the birth certificate had to be changed... because that's the only thing, the only 'piece of paper,' that's the only proof that they're mine, you know, beside my stretch marks. So that was kind of like, damn. You know, my name's gonna be removed. Like actually, that [original] birth certificate is null and void, the only valid one is the one with my mother's name on it. So getting back to the question, that was the only thing that was torn about me. I just thank God that my parents did have them and that wasn't an issue as to 'Oh, they see me as their mom' or anything like that. Their fathers understood the reason why they had to relinquish their rights. They didn't have an option because it's not like they were stepping up to the plate either. You know, it was something that had to be done and it was done. And um, like I said, the only thing that's kind of like, ugh, my name's not on the birth certificate."

In cases like Melinda's, the legal termination of parental rights (TPR) did not result in the termination of her identity as a mother, however it meant that she had to relinquish the legal rights which would've allowed her to perform her motherhood in all aspects of her children's lives. Research has shown that many incarcerated mothers who've experienced TPR regard it in the same way as Melinda, where the legal termination may interfere with their ability to mother, but does nothing to diminish the connection or feelings of ownership they have towards their children.²⁴¹

²⁴¹ Enos, *Mothering from the Inside*, 98-105.

Additionally, programs offered at Bedford are typically reserved for women with nonviolent offenses, no history of abuse or neglect, and those who were pregnant while in custody.²⁴² The specification for *nonviolent offenses* once again fails to take into account potential trauma leading up to and potentially influencing a women's crime. While there is an abundance of "international institutional rhetoric about the 'empowerment' of women who are survivors of violence," incarcerated women have been consistently excluded from this line of reasoning.²⁴³ According to the HourChildren website, 82 percent of women in New York state prisons struggled with substance abuse problems prior to incarceration.²⁴⁴ Of those women, 70 percent have faced some type of trauma and or abuse before incarceration.²⁴⁵ To have any "violent" crime—most commonly informed by gender-based trauma—keep a woman from performing her role as mother means that the U.S. system is failing to uphold their rights and meet their specific needs.²⁴⁶ Despite this unjust and exclusionary rule, this policy isolates only a small population of women in the state of NY as 85 percent of women incarcerated in the state are there for nonviolent offenses.²⁴⁷

Lastly, based on Melinda's account, the programs offered at HourChildren tend to be geared towards infants and young children. Mothers who have older children typically have different needs than those with young children. However, mothers of older children are often treated as less of a priority by the organization. For mothers like Melinda who had older children under kinship care— with grandparents or other family members— it was assumed that their needs were met or being taken care of. According to Melinda,

²⁴² Jbara, "The Price They Pay," 1825.

²⁴³ Barberet and Jackson, "UN Rules," 219.

²⁴⁴ HourChildren.

²⁴⁵ Ibid.

²⁴⁶ Barberet and Jackson, "UN Rules," 219.

²⁴⁷ "Quick Facts," Women's Prison Association.

Once I came home I lived at one of Sister Tesa's residential transitional homes... I lived there for a while and then it kind of didn't work out. Not to say anything bad about them, but I just personally feel that they were more geared to women who have younger kids as opposed to my boys who were teenagers. And I didn't legally have them and I was self sufficient. So... like ok, even though my kids are adopted, they still mine. That doesn't that mean you don't get to help me, right? I mean, it was like indirectly said... It's like the big elephant in the room. You know, it was just implied, like, well... your kids are older, your mom has them, you know, like what help? I'm like, okay, [my mother] has them because I don't have a place of my own. And that's the reason why I got into the program, for a) residential housing and b) employment. So it seemed like it was always like, well, your kids are older... I guess because... they weren't younger, you know, it's not like child care I need... but I still need help because I still want to be with my kids no matter how old they are, you know.

The organization's diminished concern with maintaining a mothers connection with their older children shows what happens when access to one's kids is not regarded as a human right.

Mothers thus become vulnerable to a decline in services as older children appear to have less immediate needs.

Conclusion

Despite these critiques, the impact of HourChildren's nursery and parenting programs remains extremely important. According to the HourChildren website, women who participate in their nursery and parenting programs are six times less likely to recidivate or return to prison.²⁴⁸

For formerly incarcerated women reliant on the organizations community-based programs, the

²⁴⁸ HourChildren.

recidivism rate is just above 5 percent.²⁴⁹ This low number should be understood as a major feat, seeing as women released in New York state, who did not have access to such programs, have an average recidivism rate of 29 percent within three years of one's release.²⁵⁰ The maintenance of mother-child bonds through Bedford's nursery and parenting programs have proven to significantly decrease recidivism rates for women in addition to helping break the cycle of intergenerational incarceration. The mental and emotional health of both mother and child benefit from the preservation of their relationship through the programs offered at Bedford. Ultimately, HourChildren's programs work to advocate for and maintain the idea that prison is a place for reform rather than punishment. They represent a different, alternative mode of state regulation, one which tries to promote and nurture the relationship between mother and child, falling in line with more contemporary human rights arguments and policy reforms.

²⁴⁹ HourChildren.

²⁵⁰ Ibid.

Conclusion: A Reflection on Human Rights and the Right to Motherhood

“When an individual becomes a ward of the state at an institution, their health, safety, and human rights protections become the rights of those who are incarcerating them... neglecting to understand and address the gender-specific consequences for women whose parental bond is broken constitutes a human rights violation for both mother and child.”²⁵¹

Alana Van Gundy and Amy Baumann-Grau

This paper has worked to provide in depth analysis on the ways in which family intervention on behalf of the Parental State into the lives of poor and/or incarcerated Black mothers, and the subsequent separation of these mothers from their children is a form of violence. The continuous disruption of Black families through the penal system, Child Protective Services, and the foster care system has become a means through which the state can deny Black women’s right to motherhood. The Parental State’s control over Black bodies through these legal institutions has worked to perpetuate a history steeped in racism and fundamentally preserve the racial hierarchy which exists in America. According to Dorothy Roberts, “Black mothers are useful to the neoliberal agenda because state regulation of their bodies, already devalued by a long history of reproductive regulation and derogatory stereotypes of maternal irresponsibility, makes excessive policing by foster care and prison seem necessary to protect children and the public from harm”.²⁵²

In working to uncover the ways in which Black women in America have historically been excluded from motherhood, it quickly became clear that the rights of Black mothers and incarcerated mothers have been consistently undermined on behalf of the Parental State. In large part, this has to do with the fact that definitions of womanhood have been historically dominated by white, middle-class ideals of maternalism. In fact, The 1948 Universal Declaration Human

²⁵¹ Gundy and Baumann-Grau, *Women, Incarceration, and Human Rights*, 24, 43.

²⁵² Roberts, "Prison, Foster Care," 1500.

Rights (UDHR) relied on these traditional conceptions of maternalism when defining the rights of women, mothers, and children. Article 25 of the UDHR states, “Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection”.²⁵³ With maternalism and the promotion of mother-child protection embedded in law, the plight of women who fell outside of white, middle-class maternal definitions was easily overlooked. As this paper has made clear, these maternal ideas have been steeped in domesticity and patriarchy, and are highly exclusionary. Traditionally, the needs-based focus of this article has aided in the justification for state intervention into the lives of Black women and children who need extra care and assistance. Rather than bringing real assistance, Article 25 helped set a precedent for the Parental State which could exclude those mothers it saw as unworthy of motherhood and/or financial aid. However, the need-based rhetoric within Article 25 has recently been rearticulated and expanded to encompass the rights of these women and mothers who have historically been excluded from traditional definitions of motherhood and maternalism and targeted by the state—especially that of incarcerated women of color.

Recently, there has been a reinvigoration within the human rights movement which has finally taken into consideration the needs and rights of incarcerated women and mothers. The 2010 United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the “Bangkok Rules”) for the first time addressed the gender-specific needs of incarcerated mothers and their children, outlining measures states can and should take to help maintain the mother-child relationship. Recognizing the inherently masculine nature of prison systems, these rules worked to create a new set of standards more tailored towards women

²⁵³ UN General Assembly, "Universal Declaration."

needs. This needs-based human rights doctrine has been informed by research and personal accounts of incarcerated women. In addition to recognizing their need for gender-specific health care, substance abuse and mental health services, and access to hygiene products, the Bangkok Rules most importantly recognize a women's right to mother her children while incarcerated.²⁵⁴

Many of the rules within the Bangkok Rules promoting the maintenance of the mother-child bond throughout a mother's incarceration fall in line with the innovative work being done through HourChildren. For decades, HourChildren has been one of the few programs which has worked to acknowledge the incarcerated women's right to motherhood. HourChildren and other parenting programs around the nation are notable for their very existence advocates for the recognition of these women's rights to motherhood, which are now reinforced through law in the Bangkok Rules. However, there is still room for improvement and exclusionary factors embedded within even these programs.

While the focus of this paper was one more concerned with the history of Black motherhood and the ways it's been managed and translated into the present day, it is still important to acknowledge that this paper is steeped in "normative, cisgender definitions of 'woman' and heteronormative assumptions about sexual identity and family".²⁵⁵ We have already seen the ways in which white, middle-class, heteronormative values permeate social conceptions of family and family law, thus it was necessary to work within these confines for my analysis. In large part this has to do with the heteronormative and predominantly masculine nature of the U.S. prison system and literature surrounding the prison system. While the Bangkok Rules and programs like HourChildren have made huge progressive strides to

²⁵⁴ Gundy and Baumann-Grau, *Women, Incarceration, and Human Rights*, 21.

²⁵⁵ Barberet and Jackson, "UN Rules," 223.

recognize motherhood in women who've traditionally been excluded from its definition, there is still work to be done in terms of expanding our definitions of motherhood.

Glossary

U.S. Institutions:

Child Protective Services	CPS
Child Welfare Services	CWS
Criminal Justice System	CJS
Department of Corrections	DOC
Foster Care System	FC

U.S. Policies:

Aid to Dependent Children (1910-1920)	ADC
Aid to Families with Dependent Children (1935-1996)	AFDC
Child Abuse Prevention and Treatment Act (1974)	
CAPTA	
Adoption Assistance and Child Welfare Act (1980)	
AACWA	
Personal Responsibility and Work Opportunity Act (1996)	PRWORA
Temporary Assistance for Needy Families (1997)	TANF
Adoption and Safe Families Act (1997)	ASFA
Termination of Parental Rights	TPR

United Nations (UN) Doctrines:

Universal Declaration of Human Rights (1948)	UDHR
Standard Minimum Rules for the Treatment of Prisoners (1955)	SMR
Conventions on the Rights of the Child (1989)	CRC
The United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders	The “Bangkok Rules”

Bibliography

Alexander, Michelle. *The New Jim Crow: Mass Incarceration in the Age of Colorblindness*. 2nd ed. New York, NY: New Press, 2010.

Ann Arbor News (Ann Arbor, Michigan), October 12, 1998: 6. *Readex: America's Historical Newspapers*.

<https://iw.newsbank.com/apps/readex/doc?p=EANX&docref=image/v2%3A124AC00F04CB9A3C%40EANX-17108D7B65BE6641%402451099-16F6CE892375D32A%405-16F6CE892375D32A%40>.

"Anti-Drug Abuse Act of 1988." Wikipedia. Accessed February 11, 2020.
https://en.wikipedia.org/wiki/Anti-Drug_Abuse_Act_of_1988.

"Article 25: Right to Adequate Standard of Living." United Nations Human Rights Office of the High Commissioner (OHCHR). Accessed February 12, 2020.
<https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=23970&LangID=E>.

"Attachment Theory." Wikipedia. Accessed March 5, 2020.
https://en.wikipedia.org/wiki/Attachment_theory

Barberet, Rosemary, and Crystal Jackson. "UN Rules for the Treatment of Women Prisoners and Non-Custodial Sanctions for Women Offenders (the Bangkok Rules): A Gendered Critique." *Papers: Revista de Sociología* 102, no. 2 (2017): 215-30.

Beckerman, Adela. "Mothers in Prison: Meeting Prerequisite Conditions for Permanency Planning." *Social Work* 39, no. 1 (January 1994): 9-14. Accessed March 2, 2020.

Blank, Susan W. and Barbara B. Blum, "A Brief History of Work Expectations for Welfare Mothers." *The Future of Children*, Vol. 7, No. 1 (Spring 1997), 28-38.

Blum, Linda M. and Theresa Deussen. "Negotiating Independent Motherhood: Working-class African American Women Talk about Marriage and Motherhood." *Gender & Society* 10, no. 2 (1996): 199-211.

Boustan, Leah Platt and William J. Collins, "The Origins and Persistence of Black-White Differences in Women's Labor Force Participation," *NBER Working Papers*, May 2013.

Eileen Boris, "The Power of Motherhood: Black and White Activist Women Redefine the Political," *Yale Journal of Law and Feminism* 2, no. 1 (Fall 1989): 25-50.

Bridges, Khiara M. *The Poverty of Privacy Rights*. Stanford, CA: Stanford University Press, 2017.

- Carby, Hazel V. "Policing the Black Woman's Body in an Urban Context." *Critical Inquiry* 18, no. 4 (Summer 1992): 738-55. <https://www.jstor.org/stable/1343828>.
- "Child Protective Services." Wikipedia.
https://en.wikipedia.org/wiki/Child_Protective_Services#History.
- Christian, Steve. "Children of Incarcerated Parents." *National Conference of State Legislatures*, March 2009, 1-17.
- Craig, Susan C. "A Historical Review of Mother and Child Programs for Incarcerated Women." *The Prison Journal* 89, no. 1 (2009): 35S-53S.
- Davis, Angela Y. "Surrogates and Outcast Mothers: Racism and Reproductive Politics in the Nineties." In *The Angela Y. Davis Reader*, edited by Joy James, 210-21. Malden, MA: Blackwell, 1998.
- Davis, Angela. *Women, Race, & Class*. (New York, NY: Random House, 1981).
- DeGraffenreid, Clare. "Child Labor," *Publications of the American Economic Association*, Vol. 5, No. 2 (March 1890).
- Denvir, Daniel. "Dorothy Roberts: Policing Poor Black Families." *The Dig*. Podcast audio. May 12, 2018. Accessed March 1, 2020. <https://www.thedigradio.com/podcast/dorothy-roberts-policing-poor-black-families/>.
- "Drug Use and Control, A Brief History – Overview." Smart Drug Policy: Global Drug Policy for the 21st Century. Last modified 2018. Accessed February 11, 2020.
<http://www.smartdrugpolicy.org/reagan-raises-the-battle-flag-against-drugs-1981-1989/>.
- Enos, Sandra. *Mothering from the Inside: Parenting in a Women's Prison* (New York, NY: SUNY Press, 2001).
- Gary, Anita Iltia and Margaret K. Nelson, "Policing Motherhood," *International Journal of Sociology of the Family* 7, no. 1 (Spring 2011): 1-7.
- Geary, Daniel. "The Moynihan Report: An Annotated Edition." *The Atlantic* (Boston, MA), September 14, 2015. <https://www.theatlantic.com/politics/archive/2015/09/the-moynihan-report-an-annotated-edition/404632/#Chapter%20IV>.
- Gross, Kali Nicole. "African American Women, Mass Incarceration, and the Politics of Protection." *Journal of American History* 102, no. 1 (2015): 25-33.
- Gurusami, Susila. "Motherwork under the State: The Maternal Labor of Formerly Incarcerated Black Women Susila." *Social Problems* 66 (2018): 128-43.

- Hager, Eli, and Anna Flagg. "How Incarcerated Parents Are Losing Their Children Forever." Marshall Project. Last modified December 2, 2018. Accessed February 13, 2020. <https://www.themarshallproject.org/2018/12/03/how-incarcerated-parents-are-losing-their-children-forever>.
- Halter, Emily. "Parental Prisoners: The Incarcerated Mother's Constitutional Right to Parent." *The Journal of Criminal Law and Criminology* 108, no. 3 (2018): 539-67.
- Haney, Lynn. *Offending Women: Power, Punishment, and the Regulation of Desire*. Los Angeles, CA: University of California Press, 2010.
- Harris, Jennifer L., and Ronnie Halperin. "Parental Rights of Incarcerated Mothers with Children in Foster Care: A Policy Vacuum." *Feminist Studies* 30, no. 2 (Summer 2004): 339-52. <https://www.jstor.org/stable/20458967>.
- Harris, LaShawn. *Sex Workers, Psychics, and Numbers Runners: Black Women in New York City's Underground Economy* (Urbana, IL: University of Illinois Press, 2016), 131-134.
- Hicks, Cheryl D. *Talk with You like a Woman: African American Women, Justice, and Reform in New York, 1890-1935*. Chapel Hill, NC: University of North Carolina Press, 2010.
- HourChildren. <https://hourchildren.org/>.
- Huey, Jacklyn, and Michael J. Lynch. "The Image of Black Women in Criminology: Historical Stereotypes as Theoretical Foundation." In *Race, Crime, and Justice : A Reader*, edited by Shaun L. Gabbidon and Helen Taylor Greene, 127-40. New York, NY: Routledge, 2005. <http://ebookcentral.proquest.com/lib/bard/detail.action?docID=1487046>.
- "Human Rights and the United States." The Advocates for Human Rights. Accessed February 12, 2020. https://www.theadvocatesforhumanrights.org/human_rights_and_the_united_states.
- Jones, Chenelle A., and Renita L. Seabrook. "The New Jane Crow: Mass Incarceration and the Denied Maternity of Black Women." In *Sociology of Crime, Law, and Deviance*, edited by Mathieu Deflem, 135-54. Vol. 22 of *Race, Ethnicity, and Law*. Emerald Publishing, 2017.
- Ladd-Taylor, Molly. "Toward Defining Maternalism in US History." *Journal of Women's History* 5, no. 2 (1993): 110-113.
- Lawrence, Jean C. "ASFA in the Age of Mass Incarceration: Go to Prison—Lose Your Child." *William Mitchell Law Review Article* 40, no. 3 (2014): 990-1007. Accessed January 15, 2020. <http://open.mitchellhamline.edu/wmlr/vol40/iss3/5>.

- Mallicoat, Stacy L. "The Incarceration of Women." In *Women and Crime: A Text/Reader*, 461-511. Los Angeles, CA: SAGE Publications, 2012.
- Mason, Mary Ann. *From Father's Property to Children's Rights: The History of Child Custody in the United States*. New York, NY: Columbia University Press, 1994.
- Mesic, Aldina. "Women and the War on Drugs." Public Health Post. Last modified May 16, 2017. Accessed February 11, 2020. <https://www.publichealthpost.org/research/women-and-the-war-on-drugs/>.
- Michel, Sonya. "Maternalism and Beyond." In *Maternalism Reconsidered: Motherhood, Welfare and Social Policy in the Twentieth Century*, edited by Marian Van Der Klein, Rebecca Jo Plant, Sanders Nichole, and Lori R. Weintrob, (Berghahn Books, 2012).
- Miller, Susan L., ed. *Crime Control and Women: Feminist Implications of Criminal Justice Policy*. Thousand Oaks, CA: SAGE Publications, 1998.
- Moore, Geneva Cobb. "Bodily Evidence: Toni Morrison's Demonic Parody of Racism and Slavery." In *Maternal Metaphors of Power in African American Women's Literature: From Phillis Wheatley to Toni Morrison*, 228-301. Columbia, SC: University of South Carolina Press, 2017.
- Oettinger, Katherine B. "It's Your Children's Bureau." Social Security Administration. <https://www.ssa.gov/history/childb2.html>.
- Pattison, Brent. "Mama Tried: Shifting Thinking (and Practice) in Child Welfare Cases When a Parent Is Incarcerated," *American University Journal of Gender, Social Policy & the Law* 27, no. 4 (2019): 496-524.
- "Preventing Adverse Childhood Experiences." Center for Disease Control. <https://www.cdc.gov/violenceprevention/childabuseandneglect/aces/fastfact.html>.
- Public Radio International. "With More Women Inmates, This New York Prison Allows Them to Keep Their Babies." WSKG. Last modified April 2, 2018. <https://wskg.org/news/with-more-women-prisoners-than-ever-a-new-york-prison-allows-them-to-keep-their-babies/>.
- "Quick Facts: 10 Things You Probably Didn't Know about Women and the Criminal Justice System." Women's Prison Association. <http://www.wpaonline.org/resources/quick-facts>.
- Roberts, Dorothy. *Killing the Black Body: Race, Reproduction, and the Meaning of Liberty*. 2nd ed. New York, NY: Vintage Books, 2017.
- Roberts, Dorothy E. "Killing the Black Body: A Twenty-Year Retrospective." Lecture presented at Whitney Humanities Center Auditorium, Yale University, New Haven, CT, April 27, 2017. Video, 1:33:27. Youtube. Posted by Yale University, June 5, 2017. <https://www.youtube.com/watch?v=IHcjJfkVQaQ&list=WL&index=2&t=4507s>.

- Roberts, Dorothy E. "Prison, Foster Care, and the Systemic Punishment of Black Mothers," *UCLA Law Review* 59, no. 6 (August 2012): 1474-1500.
- Roberts, Dorothy E. "Racism and Patriarchy in the Meaning of Motherhood," *American University Journal of Gender and the Law* 1 (1993): 1-38.
- Roberts, Dorothy. *Shattered Bonds: The Color of Child Welfare*. (New York, NY: Civitas Books, 2002).
- Roberts, Dorothy E. "Spiritual and Menial Housework," *Yale Journal of Law and Feminism* 9, no. 1 (1997): 51-80.
- Ross, Kelley L. "The Paternal State, the Liberal State, and the Welfare State." *Friesian*. Accessed March 1, 2020. <https://www.friesian.com/freestat.htm>.
- San Francisco Children of Incarcerated Parents Partnership. *Children of Incarcerated Parents: A Bill of Rights*. San Francisco, CA: San Francisco Children of Incarcerated Parents Partnership, 2005.
- The Sentencing Project, comp. *Incarcerated Parents and Their Children: Trends 1991-2007*. February 2009.
- The Sentencing Project. "Fact Sheet: Incarcerated Women and Girls, 1980-2016." (2018).
- Simmons, Charlene Wear, and Emily Danker-Feldman. "Parental Incarceration, Termination of Parental Rights and Adoption: A Case Study of the Intersection between the Child Welfare and Criminal Justice Systems." *Justice Policy Journal* 7, no. 2 (Fall 2010).
- UN General Assembly. "Universal Declaration of Human Rights." *UN General Assembly* 302, no. 2 (1948).
- Van Gundy, Alana, and Amy Baumann-Grau. *Women, Incarceration, and Human Rights Violations: Feminist Criminology and Corrections*. Burlington, VT: Ashgate, 2013.
- Wallace, Kristen S. *The Adoptions and Safe Families Act: Barrier to Reunification between Children and Incarcerated Mothers*.
- Welter, Barbara. "The Cult of True Womanhood: 1820-1860." *American Quarterly* 18, no. 2 (Summer 1966): 151-74. <https://www.jstor.org/stable/2711179>.
- White, Deborah Gray. *Ar'n't I a Woman?* New York, NY: W.W. Norton, 1995.
- "Women and the Drug War." Drug Policy Alliance. Accessed February 11, 2020. <http://www.drugpolicy.org/issues/women-drug-war>.

"Words from Prison: Women's Incarceration and Loss of Parental Rights." ACLU. Accessed February 12, 2020. <https://www.aclu.org/other/words-prison-womens-incarceration-and-loss-parental-rights>.

Vainik, Jenni. "The Reproductive and Parental Rights of Incarcerated Mothers." *Family Court Review* 46, no. 4 (2008): 130-138.