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State Control of Black Mothers

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

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Dorothy Roberts has long provided insightful analysis of the ways in which criminal justice policies police black families and the ways in which child welfare policies police the bodies of black women.1

In *Prison, Foster Care, and the Systemic Punishment of Black Mothers* (which was a part of an impressive UCLA symposium entitled *Overpoliced and Underprotected: Women, Race and Criminalization*), Roberts develops a detailed description of the "system intersectionality" between the punishing controlling systems of child welfare and the similarly racially discriminatory controlling systems that result in what is usually termed mass incarceration.2

Roberts describes the continuity between systems of mass incarceration that result in the incarceration of disproportionate numbers of black women, many of whom are the primary caretakers of children, and the disproportionate number of black children in foster care. Roberts highlights the political decision-making that creates these realities: "The welfare, prison, foster care, and deportation systems have all become extremely punitive mechanisms for regulating residents of the very neighborhoods most devastated by the evisceration of public resources." (P. 1478.) "Instead of devoting adequate resources to support [the families of black mothers,] the state increasingly shuffles family members into the punitive machinery of law enforcement and child protection." (Pp. 1491–92.)

Roberts begins with an overview of the dismal racial/gender disparities of imprisonment and foster care: Roughly one-third of women in prison are black and most of them are the primary caretakers of children; about one-third of children in foster care are black. These two phenomena are, of course, related to each other. The increase in incarceration of nonviolent mothers that is the result of punitive drug war enforcement that targets poor communities of color results in increases in the number of black children in foster care. But the intersections between the two systems are deeper. Mass incarceration diminishes the "extended networks of kin and friends" that might otherwise assist mothers who are not themselves imprisoned. Thus mothers whose financial position is already devastated by decreases in services and desperate economic conditions are left with fewer resources with which to cope, increasing the likelihood of child welfare intervention.

Roberts' foci are not solely on the coexistence or even only on the intersection of foster care systems and criminal justice systems in the lives of black women. Just as mass incarceration has a spatial concentration, so too does welfare supervision and foster care removal—the impact of which social scientists have not fully investigated, according to Roberts. Furthermore, this spatial intersectional effect is often ignored in feminist

analysis of domestic violence, which fails to "situate private violence within a broader context of inequitable social structures, including male domination but also barriers created by poverty, racism, and anti-immigrant polices that trap many women in violent homes." (P. 1489.)

Roberts describes "system intersectionality," which allows for an analysis of how "structures of privilege and disadvantages, such as gender, race, and class, interact . . ." and the ways in which "structures of power inextricably connect with and shape each other to create a system interlocking oppressions." (P. 1491.) In the case of child welfare and prison, these systems "function together to discipline and control poor and low-income black women by keeping them under intense state supervision and blaming them for the hardships their families face as a result of societal inequities." (P. 1491.) Prison rules that make visitation difficult and contact expensive, federal adoption law that insists on early decisions on permanent placement for children in foster care, and state laws that require incarcerated parents to fulfill case plans or lose custody conspire to make it nearly impossible for incarcerated parents to retain custody of their children. I would add that the expansive reach of conspiracy law, coupled with the war on drugs and mandatory sentencing means that many of these mothers will receive long prison sentences, further diminishing their prospects for retaining custody.3 And if that weren't enough, the collateral consequences of a felony conviction—denial of public benefits including housing and education and the statutory disqualification from employment in the many low-level care-taking roles filled predominantly by women—dramatically increase the likelihood that felon mothers who managed to retain custody while incarcerated will subsequently lose custody of their children to the state post-release.

Roberts describes the ways in which crime and welfare policies reinforce and jointly produce stereotypes of black mothers as unfit parents because they are criminal, sexually promiscuous, "devious Welfare Queen[s]," or "family-demolishing Matriarch[s]." These stereotypes then justify the continued punitive controlling policies of both systems.

Roberts concludes by calling for "cross-movement strategies that can address multiple forms of systemic injustice." While it is beyond the scope of Roberts' essay to describe more fully what these "cross-movement strategies" might look like or what organizations are already involved in such efforts, there are many signs that others are heeding this call. I will mention just two. *INCITE! Women of Color Against Violence* is a formative organization that is a part of the effort to address violence against women of color across a spectrum from state violence to violence perpetrated by individuals. A second, though less programmatic (and newer) response can be found in a recent conference that I had the privilege of helping to organize: *Converge! Re-Imagining the Movement to End Gender Violence*. *Converge!* similarly focused on the "system intersectionality" of neoliberal government policies (criminal justice, immigration, child welfare, labor) that create and foster gender violence and simultaneously diminish the resources of poor women, particularly poor women of color, to respond to violence.

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1. *See, e.g.,* **Shattered Bonds: The Color of Child Welfare** (2002); **Killing the Black Body: Race, Reproduction, and the Meaning of Liberty** (1997). [?]
2. Those interested in more discussions of these intersections of neoliberal policy can find many excellent books on the topic. *See* Michelle Alexander, **The New Jim Crow: Mass Incarceration in the Age of Colorblindness** (2010); Kaaryn Gustafson, **Cheating Welfare: Public Assistance and the Criminalization of Poverty** (2011); Beth Richie, **Arrested Justice: Black Women, Violence, and America's Prison Nation** (2012); Loïc Wacquant, **Punishing the Poor: The Neoliberal Government of Social Insecurity** (2009). [?]
3. For more discussion of this concern, see Donna Coker, *Addressing the Real World of Racial Injustice in the Criminal Justice System*, 93 **J. Crim. L. & Criminology** 827 (2003) and Myrna S. Raeder, *Gender and Sentencing: Single Moms, Battered Women, and Other Sex-Based Anomalies in the Gender-Free World of the Federal Sentencing Guidelines*

, 20 **Pepp. L. Rev.** 905 (1993). [?]

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