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DEADBEAT DADS & WELFARE QUEENS: HOW METAPHOR SHAPES POVERTY LAW

ANN CAMMETT*

Abstract: Since the 1960s, racialized metaphors describing dysfunctional parents have been deployed by conservative policymakers to shape the way that the public views anti-poverty programs. The merging of race and welfare has eroded support for a robust social safety net, despite growing poverty and economic inequality throughout the land. This Article begins by describing the influence that metaphors have on the way people unconsciously perceive reality. It proceeds by examining historical racial tropes for Black families and how they were repurposed to create the Welfare Queen and Deadbeat Dad, the metaphorical villains of welfare programs. It also tracks the demise of welfare entitlements and the simultaneous ascendancy of punitive child support enforcement intended to penalize both “absent” parents and families with non-normative structures. Ultimately, this Article argues that the focus on demonizing Black parents in the welfare system has created an obstacle to providing necessary resources to alleviate the suffering of a growing number of poor children of all races, the intended beneficiaries of public assistance.

“[P]eople in power get to impose their metaphors.”¹

INTRODUCTION

In 2011, presidential candidate Newt Gingrich kicked off his campaign for the Republican Party’s nomination to thunderous applause by deriding

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¹ GEORGE LAKOFF & MARK JOHNSON, METAPHORS WE LIVE BY 157 (1980). The authors go on to note that, “[n]ew metaphors, like conventional metaphors, can have the power to define reality.” *See id.*

Barack Obama as “the most successful food stamp president in American history.”² The symbolism of linking the nation’s first African American president with food stamps, a social welfare program that often is associated with poor Blacks, was not lost on his Georgia audience or on the electorate as a whole.³ By cynically stoking racial resentment about entitlements, Gingrich deployed a well-worn and effective trope to galvanize supporters while minimizing the effects of an acute economic crisis among the poor and middle classes across all racial and ethnic groups.⁴ As poverty scholar Mark R. Rank notes, “few[] topics in American society have more myths and stereotypes surrounding them than poverty, misconceptions that distort both our politics and our domestic policymaking.”⁵ The “food stamp president” metaphor⁶ is only the latest rhetorical device laden with strong racial undercurrents that serves to trigger the politics of resentment, rather than empathy, during a time of economic insecurity for many Americans.

² See Philip Rucker, *Gingrich Promises to Slash Taxes, Calls Obama ‘Food Stamp President,’* WASH. POST (May 13, 2011), http://www.washingtonpost.com/politics/gingrich-promises-to-slash-taxes-calls-obama-food-stamp-president/2011/05/13/AF9Q602G_story.html.

³ See Lisa A. Crooms, *Don’t Believe the Hype: Black Women, Patriarchy, and the New Welfareism*, 38 HOW. L.J. 611, 613 (1995) (“Although the rhetoric is facially neutral, the conduct it seeks to modify is associated with poor black women in impoverished, ghetto communities.”); see also Elicia Dover, *Gingrich Says Poor Children Have No Work Habits*, ABC NEWS (Dec. 1, 2011), <http://abcnews.go.com/blogs/politics/2011/12/gingrich-says-poor-children-have-no-work-ethic/> (noting Gingrich’s belief that poor children have “no habits of working and nobody around them who works”).

⁴ See Erik R. Stegman, *Introduction and Summary*, in HALF IN TEN ANNUAL REPORT 7 (Nov. 2013), available at http://www.americanprogressaction.org/wp-content/uploads/2013/10/HalfInTen_2013_CAP1.pdf (“The Supplemental Nutrition Assistance Program, or SNAP, formerly known as food stamps, which expands and contracts according to economic conditions, lifted 4.7 million people out of poverty by helping struggling families put adequate and nutritional food on their tables.”); W.W., *Newt and the ‘Food Stamp President,’* ECONOMIST DEMOCRACY IN AM. BLOG (Jan. 18, 2012, 2:02 PM), <http://www.economist.com/blogs/democracyinamerica/2012/01/newt-gingrich> (“The audience of Monday night’s Republican debate in Myrtle Beach, South Carolina reached its climax of enthusiasm during Newt Gingrich’s exchange with Juan Williams, who asked Mr. Gingrich if he could perhaps see how certain comments he has made in the past might give special offence to black Americans.”).

⁵ Mark R. Rank, *Poverty in America Is Mainstream*, N.Y. TIMES, Nov. 3, 2013, at SR12.

⁶ WEBSTER’S THIRD NEW INTERNATIONAL DICTIONARY 1420 (1986). A metaphor is “a figure of speech in which a word or phrase denoting one kind of object or action is used in place of another to suggest a likeness or analogy between them.” *Id.* Examples are “that burden is my cross to bear” or more famously, the “All the World’s a Stage” monologue in *As You Like It*:

All the world’s a stage,
 And all the men and women merely players;
 They have their exits and their entrances;
 And one man in his time plays many parts,
 His acts being seven ages.

Regardless of widespread notions about the correlation of race and poverty, the need for public assistance is more mainstream than ever.⁷ Overall, 52% of families of fast-food workers are enrolled in one or more public assistance programs, compared with 25% of *all* workers.⁸ Nearly four in five Americans will at some point experience a condition, such as unemployment, requiring some form of public assistance.⁹ Yet legislation on both the state and national levels has veered sharply away from providing relief during difficult times.¹⁰ It seems we have become accustomed to accepting reactionary policies that negatively affect a growing number of us—and our neighbors—rather than demanding a robust public discourse about the rapid expansion of economic inequality in the United States.

Since the high-water mark of the anti-poverty programs of President Lyndon B. Johnson's Great Society in the 1960s and 1970s, conservative theorists and policymakers have launched attacks on the existence of the economic safety net as a whole. They have been most vehemently opposed to Aid to Families with Dependent Children ("AFDC"), commonly known as welfare.¹¹ Politicians proffered their concerns about the cost of public assistance programs to taxpayers as a rationale for scaling back the social welfare state, but the rhetoric quickly devolved into racial stigmatization of welfare recipients. According to political scientist Martin Gilens, exhaustive studies examining Americans' attitudes on race and their views on welfare spending have demon-

⁷ Rank, *supra* note 5; see also CARMEN DENAVAS-WALT ET AL., U.S. CENSUS BUREAU, INCOME, POVERTY, AND HEALTH INSURANCE COVERAGE IN THE UNITED STATES: 2012, at 13 (2013), available at <https://www.census.gov/prod/2013pubs/p60-245.pdf> (stating that in 2012 the official poverty rate in the United States was fifteen percent, with 46.5 million Americans living below the official federal poverty line).

⁸ Susan Berfield, *Fast-Food Wages Come with a \$7 Billion Side of Public Assistance*, BLOOMBERG BUSINESSWEEK (Oct. 15, 2013), <http://www.businessweek.com/articles/2013-10-15/mcdonalds-low-wages-come-with-a-7-billion-side-of-welfare>. Regarding fast food workers, Berfield notes that, "Medicaid and the Children's Health Insurance Program accounted for nearly \$4 billion of the \$7 billion [cost of public assistance]. The Earned Income Tax Credit, food stamps, and the Temporary Assistance for Needy Families program accounted for the rest. Public benefits receipt is the rule, rather than the exception, for this workforce." *Id.*

⁹ See Rank, *supra* note 5.

¹⁰ See *id.* ("Contrary to political rhetoric, the American social safety net is extremely weak and filled with gaping holes. Furthermore, it has become even weaker over the past 40 years because of various welfare reform and budget cutting measures.").

¹¹ See CHARLES MURRAY, *LOSING GROUND: AMERICAN SOCIAL POLICY 1950–1980*, at 157–66 (1984) (arguing that the Great Society was a failure, that social programs only make problems worse by encouraging women to have more children, and that the entire welfare system should be abolished). Influential political theorist Charles Murray, foreshadowing the backlash on social programs, contended that social problems, not poverty, were the source of welfare growth. See *id.* at 9; see also JILL QUADAGNO, *THE COLOR OF WELFARE: HOW RACISM UNDERMINED THE WAR ON POVERTY* 176 (1994) (contending that "[w]hat demoralized the poor most . . . was a perverse welfare system that eroded work and family values and eliminated incentives to move up the ladder of equal opportunity").

strated that “perceptions of blacks continue to play the dominant role in shaping the public’s attitudes toward welfare.”¹² Therefore, although the majority of public assistance recipients are White, welfare’s association with Blacks in the public imagination continues to drive policy around poverty issues as a whole.¹³ The rhetorical discourse about self-sufficiency, personal responsibility, and deservedness has laid the groundwork for the transformation or, more accurately, the evisceration of the social safety net.¹⁴ By 1996, the enactment of the Personal Responsibility and Work Opportunity Reconciliation Act (“PRWORA”)—also known as welfare reform—effectively eliminated the federal AFDC program, replacing it with far less robust, more discretionary, and steadily shrinking state block grant programs that no longer keep families out of dire poverty.¹⁵ This is where we stand today.

This Article makes three interrelated claims. First, while the destruction of the social safety net was complete upon the enactment of PRWORA, the metaphorical groundwork had already been laid for this shift during the apex of the War on Poverty programs in the 1960s and 1970s. The realities and economic shock of post-industrialization in urban areas were merged with longstanding stereotypes about Black family life and cultural dysfunction to create toxic symbolism; making poor mothers the targets of negative debate. The public discourse about poverty and low-income families was carried out in the context of shrinking blue-collar employment, White flight from urban centers, and the nascent emergence of mass criminalization. These changing social conditions, however, were channeled into the political process in a particularly

¹² See MARTIN GILENS, WHY AMERICANS HATE WELFARE: RACE MEDIA AND THE POLITICS OF ANTIPOVERTY POLICY 71 (2000); see also Franklin D. Gilliam Jr., *The “Welfare Queen” Experiment: How Viewers React to Images of African-American Mothers on Welfare*, 53 NIEMAN REPORTS 1–2, 4–6 (1999), available at <http://escholarship.org/uc/item/17m7r1rq> (examining the impact of media portrayals of the Welfare Queen, establishing a “narrative script” about welfare mothers, and confirming reduced support for them when they are depicted as Black).

¹³ See Rank, *supra* note 5. This is not to say that Americans have an altogether comfortable relationship with poverty, even as it is associated with poor Whites. See Frances Fox Piven, *The War Against the Poor*, HUFFINGTON POST (Nov. 11, 2011), http://www.huffingtonpost.com/frances-fox-piven/the-war-against-the-poor_b_1079881.html (noting that “[t]he racial theme quickly melded into political propaganda targeting the poor and contemporary poor-relief programs”). The association of poverty, and especially entitlements, triggers a different kind of resentment, which is tied to historical notions of deservedness that is further explored in Parts II and III. See Gilliam, *supra* note 12, at 4–6.

¹⁴ See Bridgette Baldwin, *Stratification of the Welfare Poor: Intersections of Gender, Race, and “Worthiness” in Poverty Discourse and Policy*, 6 MODERN AM. 4, 4, 10 (2010) (“The history of economic ‘worthiness,’ this revelation, is significant for welfare policy discourse.”).

¹⁵ See Personal Responsibility and Work Opportunity Act of 1996, Pub. L. 104-193, 110 Stat. 2105; Jason DeParle, *Welfare Limits Left Poor Adrift as Recession Hit*, N.Y. TIMES, Apr. 8, 2012, at A1 (criticizing the diversion of block grant funds as the recession hit, which left many people destitute); *A New Paradigm for Welfare Reform: The Need for Civil Rights Enforcement*, U.S. COMM’N ON CIVIL RIGHTS (Aug. 2002), <http://www.usccr.gov/pubs/prwora/welfare.htm>.

harmful way, generating what scholar Ange-Marie Hancock called the “politics of disgust.”¹⁶

Specifically, the social construction of poor Black single mothers deemed them the agents of their own misfortune due to their unmarried status—assumed to indicate loose morals, hypersexuality, and presumed laziness—framed as reliance on public assistance rather than work.¹⁷ For example, stigmatizing metaphors such as the “Welfare Queen” were built on longstanding race and gender stereotypes and widely held beliefs.¹⁸ These perceptions persisted despite the fact that for most of the history of AFDC, these mothers were routinely restricted from accessing benefits for which they were eligible. Nevertheless, the “public identity” of the Welfare Queen, though coined and popularized in the 1980s, had already been shaped in the public imagination by the 1960s.¹⁹

Second, many scholars have explored the history and construction of welfare reform and the use of the Welfare Queen as “race code” for undeserving beneficiaries of welfare.²⁰ Far less has been written about another simultaneous but related phenomenon: its intersection with aggressive child support enforcement. This change in policy was designed to transfer the burden of financial support from the government to non-resident fathers. If the Welfare Queen is a public identity, her corollary is the “Deadbeat Dad.”²¹ The political backlash over expanded access to assistance for Black mothers evolved in tandem with the identification of Deadbeat Dads as the engines of child poverty, even

¹⁶ See ANGE-MARIE HANCOCK, *THE POLITICS OF DISGUST: THE PUBLIC IDENTITY OF THE WELFARE QUEEN* 3 (2004). To establish these claims, Hancock uses a broad array of methods, including historical analysis, qualitative and quantitative content analysis, and in-depth interviewing. *See id.* at 21–22. Hancock’s discourse analysis shows that the welfare reform debate lacked the voices of poor women, dichotomized work and non-work, hardly ever mentioned welfare recipients as “good mothers,” and only invoked compassion for children, rather than mothers themselves. *See id.* at 71–72, 81, 86, 136.

¹⁷ *Id.* at 25. (“The ‘welfare queen’ public identity, a contemporary moniker applied to welfare recipients, has two organizing dimensions: hyperfertility and laziness.”)

¹⁸ *See id.*

¹⁹ *See id.* at 40–41. Hancock later explores the “public identity” of the Welfare Queen during the later debates about welfare reform. *See id.* at 118–36. These debates, she argues, stirred up disgust, and consequently, channeled the political process in a particularly harmful direction. *See id.* Hancock describes the four features of the politics of disgust: (1) a perversion of democratic attention; (2) an unequal communicative context; (3) a failure of representative thinking; and (4) a lack of solidarity from traditional allies. *See id.*

²⁰ *See, e.g.* GILENS, *supra* note 12, at 67–72; HANCOCK, *supra* note 16, at 25; DOROTHY ROBERTS, *SHATTERED BONDS: THE COLOR OF CHILD WELFARE* 64–67 (2002); Baldwin, *supra* note 14, at 17; Martha L. Fineman, *Images of Mothers in Poverty Discourses*, 1991 DUKE L.J. 274, 282; Kaaryn Gustafson, *Degradation Ceremonies and the Criminalization of Low-Income Women*, 3 U.C. IRVINE L. REV. 297, 342–43 (2013); Joya Misra et al., *Envisioning Dependency: Changing Media Depictions of Welfare in the 20th Century*, 50 SOC. PROBS. 482, 494 (2003).

²¹ *See* Ann Cammett, *Deadbeats, Deadbrokes, and Prisoners*, 18 GEO. J. POV. L. & POL’Y 127, 137 (2011).

when fathers were poor themselves. This concept of a “broken” family,²² another ubiquitous metaphor, headed by a poor single mother in need of rehabilitation, and an “absent”²³ father is another powerful cultural narrative informing the social construction of poor Black families.²⁴ The image of the Deadbeat Dad also slowly emerged as a racialized trope: an uncaring Black father unwilling to pull his weight, often with multiple families, who expects taxpayers to carry his burden. Together they serve as a proxy, both unconscious and conscious, for a particular type of racialized dysfunctional parent union—one that lends itself to public scorn and opprobrium under a dominant group consensus of what parenthood should look like. The widespread trope of Welfare Queens and Deadbeat Dads, rather than the actions of any given parent or even more poor parents, sets the stage for policy in the area of social welfare.

Finally, this Article examines many of the efforts that powered the transformation of AFDC and how they were, rhetorically, carried out in the service of children’s needs. Policymakers evoked compassion for welfare children, arguing that the children of female-headed households were the “victims” of non-normative household structures.²⁵ To that end, politicians have constructed policies to punish poor parents, which have further impoverished children. For instance, “family caps” on public assistance,²⁶ cuts to child-centered programs like Head Start,²⁷ and ongoing cuts to food stamps²⁸ are all examples of punitive legislative actions to constrain the social welfare state that directly harm children. It is difficult, in a rhetorical context that routinely denigrates poor parents, to remember that the greatest victims of such demonization are the children of those in need, a group that is rapidly expanding.²⁹ This victimization of poor children stands in contrast to the rhetoric of wellbeing that purports to govern our child policies. As I will demonstrate, some anti-poverty

²² Fineman, *supra* note 20, at 287.

²³ See Cammett, *supra* note 21, at 136; Fineman, *supra* note 20, at 287.

²⁴ See Cammett, *supra* note 21, at 136.

²⁵ See GILENS, *supra* note 12, at 1 (“‘The current welfare system,’ President Nixon proclaimed, ‘has become a monstrous, consuming outrage—an outrage against the community, against the taxpayer, and particularly against the children it is supposed to help.’” (quoting President Richard Nixon, Annual Message to Congress on the State of the Union (January 22, 1971))); Cammett, *supra* note 21, at 136.

²⁶ See Barbara Vodejda & Judith Havermann, *Doing the Math on the Welfare ‘Family Cap,’* WASH. POST, Mar. 30, 1997, at A1 (discussing impact on families in welfare when states started implementing “family caps”).

²⁷ See Kathleen McCartney, *Cutting Head Start Is Bad Fiscal Policy*, CNN.COM (Mar. 14, 2011), <http://www.cnn.com/2011/OPINION/03/14/mccartney.head.start/>.

²⁸ See Arthur Delaney, *Food Stamp Cut Reverberates Across Country*, HUFFINGTON POST (Nov. 4, 2013), http://www.huffingtonpost.com/2013/11/01/food-stamp-cut_n_4191975.html.

²⁹ See Curtis Skinner, *Child Poverty by the Numbers*, AM. PROSPECT (May 31, 2013), <http://prospect.org/article/child-poverty-numbers> (“The recession and its lingering aftermath helped drive an estimated 2.8 million additional American children into poverty, raising the nation’s share of poor children to one of the highest recorded in nearly 50 years.”).

strategies such as aggressive child support enforcement, though conceptually compelling, have the unintended consequence of entrenching children further into poverty.³⁰

The use of metaphorical language by conservative policymakers during the expansion of Great Society programs served to denigrate poor parents and called into question their worthiness, using racialized metaphors to accelerate the widespread eradication of the social safety net. All of this occurred without the benefit of parents' own voices or lived experiences in the public record.³¹ Like Gingrich's call to arms against the "Food Stamp President," scornful conceptual imagery has operated more forcefully than rational discourse for the purpose of engaging the public on issues of social welfare. Welfare Queens and Deadbeat Dads became the face of low-income parents in America, and policies designed to alienate and punish them continue to hurt the rapidly growing number of poor children.

Part I of this Article draws on conceptual metaphor theory to examine the role of cognitive science in public policy, including an exploration of implicit bias as the companion to metaphor in transmitting racialized rhetoric to the public discourse about poverty. Furthermore, this Part examines metaphor and political rhetoric as a method for tapping into unconscious racism in order to advance a reactionary political agenda, specifically exploring the power of the Welfare Queen metaphor.

Part II tracks another powerful metaphor, the "culture of poverty" and its related discourse, by first examining historical stereotypes of Black families that predispose Americans to accept racial stereotypes as true. It then explores the racially skewed eligibility criteria of early twentieth century Mothers' Pensions and the AFDC. These hidden racial exclusions made public resentment and backlash inevitable after welfare access for eligible Black mothers was secured during the War on Poverty's expansion of civil rights.

Part III situates Deadbeat Dads in the emergence of the War on Poverty Programs and analyzes the metaphorical importance of phrases like "tangle of pathology" unleashed by the *Moynihan Report*³² in its description of Black families. This part also explores the persistence of the patriarchal family wage ideology in the modern child support enforcement state, which was constructed after constitutional protections for poor women were secured by poverty lawyers, including abolishment of "man-in-the house" laws under *King v. Smith* in 1968.³³

³⁰ See Cammett, *supra* note 21, at 127.

³¹ See HANCOCK, *supra* note 16, at 136.

³² See DANIEL P. MOYNIHAN, U.S. DEP'T OF LABOR, OFFICE OF POLICY PLANNING & RESEARCH, *THE NEGRO FAMILY: THE CASE FOR NATIONAL ACTION* (1965).

³³ See 392 U.S. 309, 334 (1968).

Finally, this paper concludes by showing that the divestment of entitlement programs under welfare reform served to simultaneously merge it with the federal child support infrastructure, rendering enforcement against parents more aggressive, punitive, and criminalizing, without equal benefit to many poor children.

I. CONCEPTUAL METAPHOR & POVERTY LAW POLICY

Metaphors play an important role in framing the manner in which individuals perceive the world around them.³⁴ They utilize the collective experiences of the listener to transfer meaning in a way that is readily accessible and understood.³⁵ The use of metaphors was particularly effective in framing the debate about welfare programs through the use of the Welfare Queen metaphor, which played upon the preconceived notions of those who believed welfare recipients were lazy and undeserving of aid.³⁶

A. *Conceptual Metaphor & Unconscious Bias*

According to cognitive linguists, human thought is defined by metaphors.³⁷ Far from providing solely linguistic ornamentation as figures of speech, metaphors do yeoman's work. The central purpose of metaphor is to transfer meanings based on a person's understanding of the world.³⁸ Pioneering cognitive scientists Lakoff and Johnson argue that metaphors are pervasive in everyday life, not just in language but also in thought and action.³⁹ They establish that our perceptions of reality are mediated through our conceptual systems, which are largely metaphorical.⁴⁰ Metaphors are so fundamental to our experience that we would be unable to think about or know the world without them.⁴¹ In the world of law and policy, that concept has far-reaching implications.

³⁴ LAKOFF & JOHNSON, *supra* note 1, at 3.

³⁵ *See id.* ("Our ordinary conceptual system, in terms of which we both think and act, is fundamentally metaphorical in nature.")

³⁶ *See* HANCOCK, *supra* note 16, at 23–26; MICHAEL B. KATZ, *THE UNDESERVING POOR: AMERICA'S ENDURING CONFRONTATION WITH POVERTY* 167 (2013).

³⁷ *See* Markus Tendahl & Raymond W. Gibbs Jr., *Complementary Perspectives on Metaphor: Cognitive Linguistics and Relevance Theory*, 40 *J. OF PRAGMATICS* 1823, 1824 (2008).

³⁸ *See* JONATHAN CHARTERIS-BLACK, *CORPUS APPROACHES TO CRITICAL METAPHOR ANALYSIS* 19 (2004). In the world of law and policy, that concept has far reaching implications "[b]ecause metaphor is persuasive it is frequently employed discursively in rhetorical and argumentative language such as political speeches." *Id.* at 7.

³⁹ *See* LAKOFF & JOHNSON, *supra*, note 1, at 3.

⁴⁰ *See id.* at 6.

⁴¹ *See id.* at 3–6.

Lakoff and Johnson show how everyday language is filled with metaphors we may not always notice.⁴² For example, to say that “argument is war” is also to recognize that this metaphor is reflected in our everyday language by a wide variety of related expressions that are mutually reinforcing—for example, “your claims are *indefensible*,” “he *attacked every weak* point in my argument,” “I never *won* an argument with her,” and many other expressions.⁴³ The authors further note that we not only *talk* about arguments in terms of war, but that language is metaphorically structured. We actually *win* or *lose* arguments. The person we are arguing with is an *opponent*. We *attack* his or her positions and *defend* our own. Most importantly, many of the things we do in argument are structured by the concept of war, which is imbedded in our conceptual system and defines the very nature of our understanding.⁴⁴ To make their point, Lakoff and Johnson pose a contrasting metaphor: argument is “dance.”⁴⁵ “Although it is plausible to argue that this metaphor concept represents literal aspects of argument (like synchronization or rhythm, high energy, or playfulness), it jars our senses.”⁴⁶ That is to say that our habituated knowledge of the concept of argument makes this alternative metaphor seem wrong.⁴⁷ Such is the power of an established metaphor.

Some conceptual metaphor theorists posit that legal reasoning is grounded in metaphors that derive from our “embodied” experiences as physical, social, and cultural beings.⁴⁸ To this end, the study of language, and in particular metaphor, can be effective for illuminating law and social policy, showing that “metaphors can be ‘generative,’ creating new meaning by defining problems in a particular way, and thereby framing how they are perceived and addressed.”⁴⁹ The use of metaphor in public policy discourse shapes not only our language, but also our understanding of governing norms, and this framing carries normative force.⁵⁰

⁴² See *id.* at 4–5 (“Our conventional ways of talking about arguments presuppose a metaphor we are hardly ever conscious of.”).

⁴³ *Id.* at 4.

⁴⁴ *Id.* at 4–6.

⁴⁵ *Id.* at 5.

⁴⁶ SARAH ARMSTRONG, MANAGING MEANING: THE USE OF METAPHOR IN CRIMINAL JUSTICE POLICY 4 (June 15, 2009), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1508340 (analyzing the “argument is war” and “argument is dance” metaphors posed by Lakoff and Johnson).

⁴⁷ *Id.*

⁴⁸ Steven L. Winter, *Transcendental Nonsense, Metaphoric Reasoning, and the Cognitive Stakes for Law*, 137 U. PA. L. REV. 1105, 1113, 1130 (1988).

⁴⁹ See ARMSTRONG, *supra*, note 46, at 2. (“Policy language presents an important area of study because the policy text is an increasingly important technique of governance, aiming at one level to satisfy desires for transparency and public consultation, and . . . to translate law and norms into technical rules of everyday practice.”).

⁵⁰ See GEORGE LAKOFF, MORAL POLITICS: HOW LIBERALS AND CONSERVATIVES THINK 3 (2d ed. 2002) (“Contemporary American politics is about worldview.”). Pioneering theorist George Lakoff opines that:

Charles R. Lawrence III's foundational work on implicit bias gives us a perspective for understanding the role that metaphor can play.⁵¹ Metaphor serves to transmit racial stereotypes in a country long defined by racial markers of worthiness or stigma. Racism plays a central role in Americans' collective historical and cultural heritage.⁵² Metaphors in this context also act as "carriers of cultural elements," shaping how we make sense of the world and what we value and privilege.⁵³ Lawrence asserts, "We do not recognize the ways in which our cultural experience has influenced our beliefs about race or the occasions on which those beliefs affect our actions. In other words, a large part of the behavior that produces racial discrimination is influenced by unconscious racial motivation."⁵⁴ Lakoff offers a similar caveat about objectivity in our common sense perceptions, noting that "[n]othing is 'just' common sense. Common sense has a conceptual structure that is usually unconscious."⁵⁵ The process of perception is "situated in the experiences of actual human beings and is shaped by the ways they understand their experience."⁵⁶

Therefore, majoritarian consensus about social norms and how we should address problems like entrenched poverty is informed by longstanding biases about race, class, gender, and entitlement. These are transmitted alongside pronouncements that appear, on the surface, to be neutral policy.⁵⁷ Moreover, consistently repeated negative phrases, like Welfare Queen and Deadbeat Dad, in

One of the most fundamental results in cognitive science, one that comes from the study of commonsense reasoning, is that most of our thought is unconscious . . . simply in that we are not aware of it. We think and talk at too fast a rate and at too deep a level to have conscious awareness and control over everything we think and say. We are even less conscious of the components of thoughts—concepts.

See id. at 4–5.

⁵¹ See Charles R. Lawrence, *The Id, the Ego, and Equal Protection: Reckoning with Unconscious Racism*, 39 STAN. L. REV. 317, 322 (1987). Lawrence argues that requiring intentional discrimination in equal protection cases as a prerequisite to constitutional recognition "ignores much of what we understand about how the human mind works. It also disregards both the irrationality of racism and the profound effect that the history of American race relations has had on the individual and collective unconscious." *See id.* at 323.

⁵² *See id.* at 322.

⁵³ See Silvia Gherardi, *Where Learning Is: Metaphors and Situated Learning in a Planning Group*, 53 HUM. RELATIONS 1057, 1062 (2000).

⁵⁴ Lawrence, *supra* note 51, at 322.

⁵⁵ LAKOFF, *supra* note 50, at 4. Lakoff goes on to say, "[o]ne of the most fundamental results in cognitive science, one that comes from the study of commonsense reasoning, is that most of our thought is unconscious . . ." *Id.*; see Keith Cunningham-Parmeter, *Alien Language: Immigration Metaphors and the Jurisprudence of Otherness*, 79 FORDHAM L. REV. 1545, 1550 (2010) ("[I]f immigrants are viewed as *illegal alien criminals*, then they should be captured and deported. If immigration is an *invasion* from the south, then the government should construct a virtual fence across the border to resist the Mexican offensive. These 'common sense' responses are made possible by selective metaphoric framing.").

⁵⁶ See Winter, *supra* note 48, at 1113.

⁵⁷ See ARMSTRONG, *supra* note 46, at 2–3.

law and popular culture reinforce cultural norms, making a very limited range of acceptable social structures and relationships seem natural, normal, and even necessary.⁵⁸ In this way, implicit bias works to transform the unconscious metaphorical reasoning of the listener, who makes sense of information specifically in ways that comport with their pre-existing understanding of the world.

B. Metaphor & Political Rhetoric

While the conceptual mechanism for receiving information may operate on an unconscious level, politicians' rhetorical purpose in channeling any given discourse is almost never unintentional.⁵⁹ Metaphor provides an outstanding rhetorical device, and politicians are experts in manipulating the unconscious effects of emotionally charged speech.⁶⁰ Critical metaphor scholar Jonathan Charteris-Black explains that metaphors are persuasive and ideologically effective when they are "cognitively plausible and evoke an emotional response."⁶¹ This is because, when employing a metaphor, the speaker invites the listener to participate in an interpretive act. The metaphor will succeed "if the hearer is able to overcome the tension of what is said and what is meant."⁶² The tension in a phrase like Welfare Queen, which is inherently oxymoronic, requires the speaker to draw upon the cultural understanding and anxieties of the listener and make sense of them by resolving the semantic conflict between the wretchedness of "welfare" and the power invoked by "queen." By synthesizing and correlating these terms, presidential candidate Ronald Reagan was able to draw upon Americans' ideological and psychological preferences for identifying with individualism, egalitarianism, small government, and personal re-

⁵⁸ See Angela P. Harris, *Theorizing Class, Gender, and the Law: Three Approaches*, 72 LAW & CONTEMP. PROBS. 37, 39 (2009) ("[I]t could be argued that categories like 'race' were invented precisely to justify exploitative social relations.").

⁵⁹ See CHARTERIS-BLACK, *supra* note 38, at 7. In what could be read as an echo of Lakoff and Johnson's dictum, "people in power get to impose their metaphors," Charteris-Black aims to investigate metaphors that are used by individuals and institutions with positions of authority: politicians, newspapers, and religious texts. *See id.* at 18; LAKOFF & JOHNSON, *supra* note 1, at 157. His ultimate goal emphatically goes beyond academic self-centeredness. He states that he "hold[s] the belief that a better understanding of language is the basis of creating a better society." CHARTERIS-BLACK, *supra* note 38, at xii.

⁶⁰ See CHARTERIS-BLACK, *supra* note 38, at 19. Metaphor is effective in persuading the listener because of its potential for moving us emotionally. *See id.* The impact of metaphor accounts for its frequent use in poetry and other literature. *See id.*

⁶¹ *Id.*

⁶² *Id.* at 12.

sponsibility,⁶³ while targeting the “undeserving poor” —the real source of their unhappiness.⁶⁴

It is an oft-repeated story. On the primary campaign trail in 1976, Reagan exhorted his audience to share in his ire over a woman in Chicago feeding fraudulently off the public troth:

She has 80 names, 30 addresses, 12 Social Security cards and is collecting veterans’ benefits on four non-existing deceased husbands. And she’s collecting Social Security on her cards. She’s got Medicaid, getting food stamps, and she is collecting welfare under each of her names. Her tax-free cash income alone is over \$150,000.⁶⁵

And so the Welfare Queen trope was born, except it was much more complicated than the stereotype of generalized lazy Black indolence that Reagan wanted to convey.⁶⁶ Reagan did not mention race; he did not have to. “She” was then, and is now, universally understood to be Black. He embellished the story as he went along on the campaign trail, adding her ownership of a Cadillac or two to serve as another racial signpost.⁶⁷ Moreover, reporters traveling with the candidate noted that prior to describing his Welfare Queen, Reagan greeted his New Hampshire audience by acknowledging that they were “hardworking people’ who pay their bills and put up with high taxes.”⁶⁸ He would also indignantly

⁶³ See GILENS, *supra* note 12, at 1 (“Americans’ opposition to welfare does not seem hard to understand. For one thing, the welfare state is widely viewed as a European invention, thoroughly at odds with Americans’ preferences for small government, personal freedom, and individual responsibility.”); “Welfare Queen” Becomes Issue in Reagan Campaign, N.Y. TIMES, Feb. 15, 1976, at 51.

⁶⁴ GILENS, *supra* note 12, at 3 (“In large measure, Americans hate welfare because they view it as a program that rewards the undeserving poor.”).

⁶⁵ “Welfare Queen” Becomes Issue in Reagan Campaign, *supra* note 63.

⁶⁶ See Josh Levin, *The Welfare Queen*, SLATE (Dec. 19, 2013), http://www.slate.com/articles/news_and_politics/history/2013/12/linda_taylor_welfare_queen_ronald_reagan_made_her_a_notorious_american_villain.html. The actual woman that Reagan referenced was not a garden-variety cheat, but was rather a full-fledge psychopath and con artist named Linda Taylor, whose other possible crimes included murder and kidnapping. *Id.*; see also John Blake, *Return of the “Welfare Queen,”* CNN.COM (Jan. 23, 2012), <http://cnn.com/2012/01/23/politics/welfare-queen/index.html> (quoting poverty scholar Kaaryn Gustafson as saying, “[t]his image of the lazy African-American woman who refuses to get a job and keeps having kids is pretty enduring. It’s always been a good way to distract the public from any meaningful conversations about poverty and inequality”).

⁶⁷ See Blake, *supra* note 66. John Hinshaw, a professor of history at Lebanon Valley College, explained that while Reagan never explicitly described the Welfare Queen as Black, the message was clear:

The Welfare Queen driving a pink Cadillac to cash her welfare checks at the liquor store fits a narrative that many white, working-class Americans had about inner-city blacks It doesn’t matter if the story was fabricated, it fit the narrative, and so it felt true, and it didn’t need to be verified.

See id.

⁶⁸ See “Welfare Queen” Becomes Issue in Reagan Campaign, *supra* note 63.

describe a housing project in New York City, saying that “[i]f you are a slum dweller, you can get an apartment with 11-foot ceilings, with a 20-foot balcony, a swimming pool and a gymnasium, laundry room and play room, and the rent begins at \$113.20 and that includes utilities.”⁶⁹ This too was revealed as an outright distortion.⁷⁰ For example, the amenities described were part of a larger development designed for community use, in this case 200,000 other Black and Puerto Rican residents.⁷¹ The truth mattered little, the symbolism, a lot.

It is not hard to see how Reagan was asking his audiences to engage in an interpretive act. Martin Gilens’s research reveals that, even today, the American public holds two prevalent beliefs about welfare. First, that most people who receive welfare are Black, and second, that Blacks are less dedicated to working than other Americans.⁷² Hearing the tale of the Welfare Queen and believing that the government was privileging non-deserving loafers over hardworking people like them, would comport with many Americans’ racial perceptions and, therefore, be cognitively plausible.⁷³ The advantage of using metaphors is that it taps into an accepted communal system of values. By implying that committing acts of fraud was part of the character of the Welfare Queen trope, Reagan reinforced the “undeserving” status of the recipient.⁷⁴ Reagan, casting this story as truth, confirmed many White Americans’ common sense of outrage over the deterioration of *their* country. As critical race scholar Richard Delgado notes, “[t]he stories or narratives told by the ingroup remind it of its identity in relation to outgroups, and provide it with a form of shared reality in which its own superior position is seen as natural.”⁷⁵

Moreover, by 1976, the ongoing assault on welfare recipients coincided with a period of high inflation, falling wages, post-Vietnam War humiliation, and civil-rights weariness.⁷⁶ The Welfare Queen trope triggered an emotional

⁶⁹ See *id.*

⁷⁰ See *id.*

⁷¹ See *id.* The newspaper account immediately noted the many inaccuracies in his statement. See *id.*

⁷² GILENS, *supra* note 12, at 3 (arguing “that racial stereotypes play a central role in generating opposition to welfare in America,” and “[i]n particular, the centuries-old stereotype of blacks as lazy remains credible for large numbers of white Americans”).

⁷³ See THOMAS BYRNE EDSALL & MARY D. EDSALL, CHAIN REACTION: THE IMPACT OF RACE, RIGHTS, AND TAXES ON AMERICAN POLITICS 202–07 (1991).

⁷⁴ See MARISA CHAPPELL, THE WAR ON WELFARE: FAMILY, POVERTY, AND POLITICS IN MODERN AMERICA 204 (2011) (“Reagan found tales of welfare fraud a useful answer to critics of his social spending cuts.”); Senator Russell B. Long, Chairman, Senate Comm. on Fin., Welfare Cheating, Address Before the U.S. Senate (Mar. 14, 1972), in 118 CONG. REC. 38, at 1 (“[T]he welfare system, as we know it today, is being manipulated and abused by malingers, cheats and outright frauds . . .”).

⁷⁵ Richard Delgado, *Storytelling for Oppositionists and Others: A Plea for Narrative*, 87 MICH. L. R. 2411, 2412 (1988).

⁷⁶ See CHAPPELL, *supra* note 74, at 145 (noting that “[b]y the late 1970s, crippling inflation, persistent unemployment, and sluggish productivity . . . encouraged a profound pessimism about the nation’s economic future, making the free-market case against welfare seem increasingly plausible”).

response in a body politic already anxious, seething with resentment, and primed to create a scapegoat: a welfare cheat who was perceived to be living a lavish lifestyle at taxpayer expense. Reagan continued to symbolically deploy his polarizing approach throughout the primary season. He was not reticent to exploit Americans' racial fears, doing so consistently, selectively, and with language culturally resonant to each group of listeners.⁷⁷

The Welfare Queen persists, despite the absence of truth underlying the symbol.⁷⁸ "It hangs together as a good story because it's consistent with people's perception of the real world," says Craig R. Smith, a speechwriter for former President Gerald Ford and consulting writer for former President George H. W. Bush.⁷⁹ "Like in any good mythology, you need heroes and villains and in the Welfare Queen, you had a villain who was taking advantage of the system."⁸⁰ Alternatively, scholar Dorothy Roberts attributes the trend to the search for answers to the rise in social inequality, noting that "it's far easier to blame individuals than it is to indict the policies and culture that have structured poor people's lives."⁸¹

II. WELFARE QUEENS: TRACKING THE "POVERTY CULTURE" DISCOURSE

Michael Katz astutely observes that conservative politicians arguing for eradication of a welfare safety net "triumphed intellectually in the 1980s because they offered ordinary Americans a convincing narrative that explained their manifold worries."⁸² He writes, "In this narrative, welfare, the undeserving poor, and the cities they inhabited became centerpieces of an explanation

⁷⁷ See DREW WESTEN, *THE POLITICAL BRAIN: THE ROLE OF EMOTION IN DECIDING THE FATE OF THE NATION* 159–64 (2008). Candidate Reagan was not above manipulating racial fears quite directly, such as when he declared to cheering crowds in the south, "I believe in states' rights" in the town in Mississippi where civil rights workers had been murdered a decade earlier. See *id.* at 160; Bob Herbert, Op-Ed, *Righting Reagan's Wrongs?*, N.Y. TIMES (Nov. 13, 2007), http://www.nytimes.com/2007/11/13/opinion/13herbert.html?_r=0; see also Paul Krugman, Op-Ed, *Republicans and Race*, N.Y. TIMES (Nov. 19, 2007), <http://www.nytimes.com/2007/11/19/opinion/19krugman.html> ("Reagan often talked about how upset workers must be to see an able-bodied man using food stamps at the grocery store. In the South—but not in the North—the food-stamp user became a 'strapping young buck' buying T-bone steaks.").

⁷⁸ See Blake, *supra* note 66 ("Critics have accused the three leading [2012] Republican presidential candidates of resurrecting Reagan's Welfare Queen by calling President Obama the 'food stamp president,' implying that blacks live off other people's money, and by declaring that America is moving toward an 'entitlement society.'").

⁷⁹ See *id.*

⁸⁰ See *id.*

⁸¹ Julianne Hing, *Jezebels, Welfare Queens—And Now, Criminally Bad Moms*, COLORLINES (Aug. 8, 2011), http://colorlines.com/archives/2011/08/the_criminal_justice_systems_hit_and_run_of_black_moms_in_the_us.html.

⁸² KATZ, *supra* note 36, at 167.

for economic stagnation and moral decay.”⁸³ To this end, the metaphor of the Welfare Queen has proven to be a devastatingly effective master “narrative”⁸⁴ of the dysfunctional Black family that takes more than its fair share of public resources. Troubling stereotypes about Black family construction, however, are not new; they abound in American culture and have deep roots. The resilience of those tropes may explain why many are so predisposed to accept such a simplistic explanation of their own socio-economic anxieties.

A. Historical Stereotypes & Black Families

Since the American Republic’s formative years, images of Blacks have been developed by architects of the slaveocracy to justify their horrific treatment in the form of brutality, labor cooptation, and sexual exploitation of Black people, especially women.⁸⁵ Moreover, discriminatory treatment of Blacks served an alternative purpose as a signifier of White privilege, regardless of whatever class poor Whites occupied.⁸⁶ Scholar and social theorist Angela Y. Davis makes an important observation about the treatment of Blacks in the context of the larger emerging democracy in the United States. She notes that, “the institution of slavery served as a receptacle for those forms of punishment considered to be too uncivilized to be inflicted on white citizens within a democratic society.”⁸⁷ While Davis was specifically referring to capital punishment and its connection to lynch law, the twisted interrelationships demanded by slave codes, between Whites and Blacks and among Blacks, demonstrate how stereotypes can serve as per se evidence of the dysfunction of Black slave families, even though this dysfunction arises from the very conditions designed to subjugate them.

⁸³ *Id.* Katz goes on to say that, “Welfare was an easy target, first because its rolls and expense had swollen so greatly in the preceding several years and, second, because so many of its clients were the quintessential undeserving poor—unmarried black women.” *Id.*

⁸⁴ See Linda L. Berger, *How Embedded Knowledge Structures Affect Judicial Decision Making: A Rhetorical Analysis of Metaphor, Narrative, and Imagination in Child Custody Disputes*, 18 S. CAL. INTERDISC. L.J. 259, 305 (2009) (explaining that metaphors derive from what she calls “master stories,” which are powerful because they are so tied to our history and culture and, therefore, exert underlying influence).

⁸⁵ See Dorothy E. Roberts, *Racism and Patriarchy in the Meaning of Motherhood*, 1 AM. U. J. GEND. & L. 1, 7 (1993) (“The social order established by powerful white men was founded on two inseparable ingredients: the dehumanization of Africans on the basis of race, and the control of women’s sexuality and reproduction Female slaves were commercially valuable to their masters . . . for their ability to produce more slaves.”).

⁸⁶ See MICHELLE ALEXANDER, *THE NEW JIM CROW: MASS INCARCERATION IN THE AGE OF COLORBLINDNESS* 24–25 (2010) (explaining that 17th century multiracial organizing to resist planter class oppression during “Bacon’s Rebellion” was squashed by extending privileges to poor whites in an effort to drive a wedge between the indentured servants and black slaves, resulting in a “racial bribe”).

⁸⁷ See ANGELA Y. DAVIS, *ABOLITION DEMOCRACY: BEYOND EMPIRE, PRISONS, AND TORTURE* 37 (2005).

For example, historical images of Black women cast them as pathological, countering acceptable forms of motherhood at the time. There are numerous, contradictory, and persistent stereotypical descriptions of Black women. During slavery, Black women were characterized as “Jezebels” who had loose morals and outsized sexual desires, justifying both their enslavement and White men’s violence toward them.⁸⁸ The Jezebel is, in some ways, the counterpoint to the “Victorian Lady,”⁸⁹ a dutiful White woman who deserves protection. Conversely, during and after Emancipation, Black women were also portrayed as “Mammies”: asexual caretakers who prioritized the care of White children over their own.⁹⁰ This was another historical dynamic not framed in its actual context of forced labor exploitation.

Yet another historical trope for Black Women is that of “Sapphire.”⁹¹ Sapphire was a strong, masculine workhorse who labored with Black men in the fields. Moreover, she was an aggressive woman who drove her children and partners away with her overbearing nature. Sapphire’s assertive demeanor pairs her with Mammy. Unlike Mammy, however, she is devoid of maternal compassion and understanding. These multiple portrayals appear to be contradictory, but find their fusion in one central propagandizing tenet: that Black women, through historical conditioning, have maternal deficits and are, therefore, unfit or uninterested in caring for their children.⁹² According to Roberts, this stems from a “long history of negative stereotypes of black women that have changed over time to suit the political circumstances, but that focus on our irresponsible childrearing and mothering.”⁹³

⁸⁸ See Hing, *supra* note 81; see also Roberts, *supra* note 85, at 7–8 (“White masters, therefore, could increase their wealth by controlling their slaves’ reproductive capacity—by rewarding pregnancy; punishing slave women who did not bear children; forcing them to breed; and raping them.”); MELISSA V. HARRIS-PERRY, *SISTER CITIZEN: SHAME, STEREOTYPES, AND BLACK WOMEN* 55 (2011) (“The idea that black women were hypersexual beings created space for white moral superiority by justifying the brutality of Southern white men.”).

⁸⁹ DOROTHY ROBERTS, *KILLING THE BLACK BODY: RACE, REPRODUCTION, AND THE MEANING OF LIBERTY* 15 (1997) (“While Victorian roles required white women to be nurturing mothers, dutiful housekeepers, and gentle companions to their husbands, slave women’s role required backbreaking work in the fields.”).

⁹⁰ DEBORAH GRAY WHITE, *AR’N’T I A WOMAN?: FEMALE SLAVES IN THE PLANTATION SOUTH* 46–61 (1999); see Carolyn M. West, *Mammy, Jezebel, Sapphire, and Their Homegirls: Developing an “Oppositional Gaze” Toward the Image of Black Women*, in *LECTURES ON THE PSYCHOLOGY OF WOMEN* 287, 289 (Joan C. Chrisler et al. eds., 4th ed. 2008).

⁹¹ See West, *supra* note 90, at 295–97.

⁹² See ROBERTS, *supra* note 20, at 65–67 (discussing the child welfare system’s devaluation of black motherhood); Fineman, *supra* note 20, at 282 (describing the stereotype of poor, unmarried mothers of color as “bad” mothers).

⁹³ See Hing, *supra* note 81 (interviewing scholar Dorothy Roberts); see also Gustafson, *supra* note 20, at 304 (observing that “[b]oth low-income men of color and low-income women of color are treated as marginal and are subject to degradation ceremonies. For women, however, the ceremonies are somewhat different, in part because the negative stereotypes and the behaviors labeled deviant are different for women and often revolve around motherhood”).

Similarly, Black slave fathers were deemed to lack any paternal connection to their offspring, by virtue of the historical lack of a legal relationship with their children, who could be beaten, abused, or sold away at an owner's whim.⁹⁴ Slave children inherited their legal status from the condition, slave or free, of their mothers. Slave fathers had none of the authority, status, or rights possessed by White male patriarchs.⁹⁵ Rather, slave fathers were compelled to serve functionally, and psychologically, as sires of children who were not legally theirs, and instead were the master's property.⁹⁶ Like slave mothers, fathers were powerless over anything that happened with or to their families.⁹⁷

After the Civil War, Black families resisted the destructive effects of slavery by seeking to reconstitute their families through reunification, including through marriage. As scholar Angela Onwauchi-Willig explains, however, one of the states' primary interests in sanctioning post-bellum marriages between former slaves stemmed from the need to minimize the states' economic responsibility, especially for children born during slavery.⁹⁸ Due to the marriage restrictions on Blacks in the years preceding the Civil War, the children of Black slaves were technically illegitimate.⁹⁹ After the war, lawmakers sought to ensure that the economic wellbeing of these children and their mothers rested with freed Black men in order to ensure that the responsibility for these children did not fall on the government.¹⁰⁰

In nineteenth century America, the home was seen as an "ideological space" where a free White man was considered the "master of a family." "[T]he husband's consolation prize for his precarious market circumstances was property in a wife and her labor . . . in exchange for [her] dependency."¹⁰¹ A married White woman's standing derived from her husband, the worker, and

⁹⁴ See Angela Onwauchi-Willig, *Return of the Ring: Welfare Reform's Marriage Cure as the Revival of Post-Bellum Control*, 93 CAL. L. REV. 1647, 1654–56 (2005) (noting that slaves could not legally marry and that informal family relationships were often "ripped apart at the slave market").

⁹⁵ See *id.* at 1655 ("[S]lavemasters were deemed the head of each household and bore the financial responsibility of caring for each of their dependents, including their slaves."); Roberts, *supra* note 85, at 9–10 ("[T]he slave's mother determined her child's identity as slave or free, Black or white.").

⁹⁶ See Onwauchi-Willig, *supra* note 94, at 1654–56.

⁹⁷ See *id.* at 1655–56.

⁹⁸ See *id.* at 1659.

⁹⁹ See *id.*

¹⁰⁰ See *id.* In her article, Onwauchi-Willig:

scrutinizes the racialization of welfare recipients in the United States and dissects current and proposed TANF marriage promotion provisions to reveal how marriage is again being manipulated to domesticate "uncontrollable" welfare queens and to minimize the government's economic responsibility to provide for the modern descendants of "colonized" Blacks of the post-bellum period.

Id. at 1653.

¹⁰¹ See Cristina Gallo, *Marrying Poor: Women's Citizenship, Race, and TANF Policies*, 19 UCLA WOMEN'S L.J. 61, 68–69 (2012).

limited her ability to make citizenship claims based on her status as a wife and mother—roles not considered work.¹⁰² Nevertheless, for men, this “family wage” system was dependent upon an ability to contract for labor, an ability that was severely constrained for Black male workers who have faced persistent racial discrimination after the Civil War, and ever since.¹⁰³

Locating the role of Black women in the family wage system is even more complex. While the family wage has prevailed ideologically, it does not truly represent women’s participation in the labor market.¹⁰⁴ This is especially true for Black women, who have disproportionately been required to work outside the home since abolition.¹⁰⁵ The problem for Black women, and many working-class White women, is that there was no expectation that their duties to their children could take priority over working outside the home.¹⁰⁶ Because of the low wages paid to Black men, the economic reality for Black women was that they must remain hard at work in the labor force.¹⁰⁷ Moreover, under the dictates of the Freedman’s Bureau,¹⁰⁸ freedwomen “were expected to fuse wage work and domesticity.”¹⁰⁹ In short, their primary identities as workers contradicted their status as mothers within the family wage paradigm. This working role did not comport with Victorian notions of dependent White wom-

¹⁰² *Id.* at 70. Gallo further notes that:

a white wife’s access to citizenship was sharply curtailed. Her citizenship was not economic because she did not work; it was not civil because she surrendered the “opportunity to work” upon marriage; nor was it political in scope, because she was precluded from exercise of the franchise. Rather, a married white woman’s citizenship was merely “social,” in that she was assured of the “right . . . not to starve.”

Id. at 70–71 (alteration in original) (quoting ALICE KESSLER-HARRIS, *GENDERING LABOR HISTORY* 257 (2006)).

¹⁰³ *See id.* at 68–70.

¹⁰⁴ *See id.* at 72.

¹⁰⁵ *See id.*

¹⁰⁶ *See* ROBERTS, *supra* note 89, at 15 (noting that after emancipation, black wives were five times as likely to work outside the home as white wives); Gallo, *supra* note 101, at 74.

¹⁰⁷ *See* Gallo, *supra* note 101, at 74.

¹⁰⁸ *See id.* at 72–73 (quoting AMY DRU STANLEY, *FROM BONDAGE TO CONTRACT: WAGE LABOR, MARRIAGE, AND THE MARKET IN THE AGE OF EMANCIPATION* 188 (1998)). In 1865, Congress created the Freedmen’s Bureau (officially known as the U.S. Bureau of Refugees, Freedmen, and Abandoned Lands) to “provide relief for freed slaves and white war refugees.” *See id.* According to Gallo:

From the outset the Freedmen’s Bureau institutionalized a racialized vision of social welfare policy, one that preserved the family wage ideal for white working men and their wives, and carried with it implications for the citizenship capacity of freedmen and women. For former slavewomen, Freedmen’s Bureau policy exemplified the degree to which black women were expected to embody male, work, and female, homemaking, norms of free (read: white) citizenship. Current TANF recipients still face these contradictions

See id.

¹⁰⁹ *See id.* at 75 (internal quotation marks omitted).

anhood.¹¹⁰ These contradictions shaped how Black women, and men, were later viewed during the establishment of the New Deal's federal social programs, which were intended to protect poor families from economic destitution, but excluded many Black families. Black parents' status solely as workers, and their inability to function within narrowly defined gender norms set them apart as undeserving families, even after slavery.

B. Writing Race into Policy: The Progressive Era & the New Deal

The Progressive Era of the early twentieth century is sometimes viewed as a movement of positive social reform during a time when the socio-economic landscape "left many people exposed to the underside of capitalist progress."¹¹¹ Middle class reformers were focused on improving the conditions of women forced to work because of poverty due to the "death, divorce, or insufficient employment of their male providers."¹¹² These reformers were crucial to the establishment of "Mothers' Pensions," the first social welfare program specifically designed for women.¹¹³ The original purpose of support for children through state aid to mothers was to defray the cost of raising children in their own homes and to deter child labor and the institutionalization of fatherless children, as was common during the era.¹¹⁴ Thus, the goals of the programs were primarily child-centered. Advocates for Mothers' Pensions, however, structured those policies to require the loss of a male provider and offered protections only to those women who labored solely in the home as mothers. Many Black women worked as domestics to support their families and did not meet the eligibility requirements or dictates of "true womanhood" under these criteria.¹¹⁵ Eligibility was also loosely predicated on moral standing in the community.

Progressive reformers were dedicated to serving those who they deemed to have proper morals and worthy character and who deserved assistance, for example, because they had lost their provider. Black women were still affected by the legacy of stereotypes dating from the antebellum era, which cast them as innately immoral. For instance, legal scholar Bridgette Baldwin observes that, "black women . . . were branded as inherently undeserving and suspected of vice, immorality and intemperance in ways that working class white ethical

¹¹⁰ *Id.* at 76.

¹¹¹ See Baldwin, *supra* note 14, at 5.

¹¹² *Id.*

¹¹³ *Id.*

¹¹⁴ See MARY ANN MASON, FROM FATHER'S PROPERTY TO CHILDREN'S RIGHTS: THE HISTORY OF CHILD CUSTODY IN THE UNITED STATES 6 (1994); Baldwin, *supra* note 14, at 5.

¹¹⁵ Baldwin, *supra* note 14, at 5.

women were not.”¹¹⁶ Setting the criteria for pensions was also left to the discretion of local authorities. They were accorded deference to determine who was a “fit and proper” mother under ambiguous behavioral standards that also excluded many Black women.¹¹⁷ Ironically, the domestic work historically performed by most Black women contributed to their designation as undeserving; they had always worked, therefore, it was expected that they could work.¹¹⁸ Progress for women in this era was stratified and stifled along racial lines.

Mothers’ Pensions were state conceived and administered.¹¹⁹ In 1935 however, the U.S. Congress enacted the Social Security Act,¹²⁰ a New Deal national economic security program intended to alleviate the suffering of the Great Depression. Local governments were “staggering under the costs of relief,” and “the massive unemployment of previously employed white, male voters made it politically impossible to dismiss the poor as responsible for their own situation.”¹²¹ Under Title IV of the Social Security Act, Aid to Dependent Children (“ADC”)¹²² was established to add funds to state-based Mothers’ Pensions, providing monthly payments to families who met certain federal requirements. The New Deal could have been an opportunity to restructure the Mothers’ Pensions to distribute them in a more egalitarian fashion, according to actual need, rather than in a racially biased manner.

Unfortunately, the new American welfare state “intentionally excluded black families . . . from access to social welfare benefits under New Deal Legislation.”¹²³ For instance, New Deal labor legislation granted workers the right to organize, but allowed trade unions to discriminate against Blacks.¹²⁴ New Deal housing policy reinforced neighborhood segregation through redlining and the subsequent failure to commit resources to those Black neighborhoods.¹²⁵ New Deal policies disproportionately affected Blacks in other nega-

¹¹⁶ *Id.*; see Eileen Boris, *Reconstructing the “Family:” Women, Progressive Reform, and the Problem of Social Control*, in *GENDER, CLASS, RACE, AND REFORM IN THE PROGRESSIVE ERA* 73, 78 (Noralee Frankel & Nancy S. Dye eds., 1991).

¹¹⁷ See Baldwin, *supra* note 14, at 5–6.

¹¹⁸ *Id.* at 6.

¹¹⁹ LINDA GORDON, *PITIED BUT NOT ENTITLED: SINGLE MOTHERS AND THE HISTORY OF WELFARE 1890–1935*, at 37 (1994) (stating also that state mothers’ aid programs were so prevalent that forty-six of the forty-eight states had passed laws authorizing them).

¹²⁰ 42 U.S.C. § 301 (1935).

¹²¹ Lucy A. Williams, *The Ideology of Division: Behavior Modification Welfare Reform Proposals*, 102 *YALE L.J.* 719, 722 (1992) (“The Great Depression provided the impetus for a national framework to provide assistance to the poor.”).

¹²² 42 U.S.C. §§ 601–617 (1935). The name of the program was changed to Aid to Families with Dependent Children (AFDC) in 1962. Public Welfare Amendments of 1962, 42 U.S.C. §§ 1314–1315.

¹²³ See Baldwin, *supra* note 14, at 6.

¹²⁴ See QUADAGNO, *supra* note 11, at 23.

¹²⁵ *Id.*; see Juan F. Perea, *The Echoes of Slavery: Recognizing the Racist Origins of the Agricultural and Domestic Worker Exclusion from the National Labor Relations Act*, 72 *OHIO ST. L.J.* 95,

tive ways, including the automatic exclusion of domestic and agricultural workers from Social Security benefits, ensuring differential economic distribution along racial lines for years to come.¹²⁶ As for the seemingly neutral ADC, the eligibility criteria were not made more inclusive because its implementation was left to the local jurisdictions. This meant that local discriminatory criteria were essentially federalized.¹²⁷ Other scholars have argued that neutral standards that could have been enforceable at the federal level were “sacrificed at the behest of ‘Dixiecrat’ congressmen [who] formed a reactionary core at the heart of the New Deal coalition.”¹²⁸ Legislators in the South “complained that if ADC ‘freed’ working-class black women from the drudgery of domestic and agricultural work, employers might be forced to raise wages.”¹²⁹ Moreover, some southern states simply rejected Black women’s welfare applications or “disqualified them during the cotton-picking season.”¹³⁰ “[W]hile the government has subsidized certain ‘deserving’ mothers to enable them to stay at home, its welfare policy has ensured the availability of less privileged women to do low-wage work.”¹³¹

Much like post-bellum restructuring at the Freedman’s Bureau, the ADC reflected contemporary White Americans’ “assumptions about the proper dynamics of a respectable family and their belief it was appropriate that black women *not* be shielded from the obligation to work,”¹³² even to provide care for their children. Access to the ADC program was also guided by local “suitable home” standards, which allowed caseworkers to reject mothers for any reason that caseworkers deemed morally objectionable.¹³³ For some time after the New Deal, the government continued to provide a social safety net for some, but it maintained the racial cleavages that would stymie the promise of broader New Deal economic reforms for Blacks.

104–17 (2011) (describing how the politics of the era led to the exclusion of most Blacks from New Deal legislation).

¹²⁶ See Perea, *supra* note 125, at 110. (“In order to make a national program of old-age benefits palatable to powerful southern congressional barons, the Roosevelt administration acceded to a southern amendment excluding agricultural and domestic employees from . . . coverage. This provision alone eliminated more than half of the African Americans in the labor force . . .”).

¹²⁷ See Gallo, *supra* note 101, at 80–81.

¹²⁸ See *id.* at 81 (alteration in original) (quoting William E. Forbath, *The New Deal Constitution in Exile*, 51 DUKE L. J. 165, 170 (2001)).

¹²⁹ See *id.*

¹³⁰ See *id.*

¹³¹ See ROBERTS, *supra* note 20, at 203.

¹³² See Gallo, *supra* note 101, at 81 (internal quotation marks omitted) (quoting LINDA K. KERBER, NO CONSTITUTIONAL RIGHT TO BE LADIES: WOMEN AND THE OBLIGATIONS OF CITIZENSHIP 73 (1998)).

¹³³ See GORDON, *supra* note 119, at 275–76.

III. DEADBEAT DADS: WELFARE REFORM & THE DEMONIZATION OF FAMILIES IN POVERTY

In the 1960s, President Lyndon B. Johnson's War on Poverty ended the racial restrictions of New Deal welfare programs. There was, however, an ensuing swell of welfare rolls, as previously ineligible Black mothers became eligible for benefits prompted a backlash that was framed by and also reinforced racial stereotypes about the deservedness of Black families.

A. Expansion & Contraction: The Great Society Meets Daniel Patrick Moynihan

In his State of the Union message on January 8, 1964, President Johnson promised to wage an "unconditional war on poverty."¹³⁴ That year, Congress passed the Economic Opportunity Act, described as "an ambitious group of programs for job training, community action, health care, housing, and education."¹³⁵ President Johnson's task was not merely to extend the New Deal by expanding social rights, but also to eliminate the barriers to equality of opportunity it had created. As historian Jill Quadagno observes,

While the New Deal had excluded African Americans, the War on Poverty would favor them. While the New Deal had conspired with southern elites to deny political and social rights to African Americans, the War on Poverty would integrate them into local politics, local job markets, and local housing markets.¹³⁶

The ADC, renamed the AFDC, grew simultaneously, with broader access for Black recipients.¹³⁷ This occurred for a variety of reasons: mass migration to urban centers with less discriminatory enrollment criteria, economic shifts, such as deindustrialization creating more urban poverty, abolition of unconstitutional restrictions to access such as the "man-in-the-house" rules,¹³⁸ and lib-

¹³⁴ See EDWARD D. BERKOWITZ, *AMERICA'S WELFARE STATE: FROM ROOSEVELT TO REAGAN* 111 (1991); QUADAGNO, *supra* note 11, at 30.

¹³⁵ QUADAGNO, *supra* note 11, at 30. Quadagno notes:

Johnson began preparing his antipoverty programs just months after the 1963 march on Washington where African Americans dramatically proclaimed the need for freedom (the vote) and jobs. The bill passed during the summer of 1964, as urban riots swept across Harlem, Bedford Stuyvesant, Rochester, Jersey City, Paterson, Elizabeth, Chicago, and Philadelphia. Perhaps the timing was merely coincidental. However, the structure of the War on Poverty suggests otherwise.

Id.

¹³⁶ See *id.* at 31.

¹³⁷ See CHAPPELL, *supra* note 74, at 10 ("In the 1960s, [previously excluded] mothers began to organize and demand their 'right' to welfare, a massive civil rights movement demanded attention to racial disadvantage . . .").

¹³⁸ See *King v. Smith*, 392 U.S. 309, 334 (1968).

eralizing amendments to the Social Security Act, pursuant to Johnson's Great Society initiatives. What is uncontested is that from 1960 to 1970 the welfare caseload had increased fivefold.¹³⁹ The increase reflected, in large measure, a surge in enrollment of Black mothers who had always been eligible for benefits, but were previously excluded by racist policies. It also contained a much higher percentage of Black female-headed households.¹⁴⁰

By the 1970s, this increase in the number of people receiving public assistance brought with it a predictable backlash. Fueling this backlash against Black welfare mothers in particular was the release of a now infamous report authored by then Assistant Labor Secretary, Daniel Patrick Moynihan. The 1965 report, entitled *The Negro Family: The Case For National Action*,¹⁴¹ argued that the basic problem for the Black population was male unemployment and the low wages Black workers received. Most people agreed with that basic premise. The Report, however, concentrated on the instability of Black family life, particularly the "proliferation of the single-parent or female-headed family and its illegitimate offspring."¹⁴² Moynihan considered these to be the major causes of what he called a "tangle of pathology" that "helped to mire many Blacks in poverty." In short, Black families' failure to adapt to the family wage paradigm created internal conditions through its matriarchal structure that were self-replicating and intergenerational, including poor school performance, street crime, delinquency, and drug use.

The Report unleashed praise and scorn in equal measure. Originally, President Johnson had planned to utilize the Report as the government's official position on the issue, but criticism of the Report rapidly mounted.¹⁴³ At various forums around the country, Black civil-rights leaders such as Martin Luther

¹³⁹ See Baldwin, *supra* note 14, at 9 ("From 1960 to 1970 there were approximately 5 million people receiving public assistance, five times more people than were on the welfare rolls between 1950 and 1960.").

¹⁴⁰ See Williams, *supra* note 121, at 724–25 (noting that the number of African Americans receiving AFDC benefits increased approximately fifteen percent from 1965 to 1971). The program did not expire, but rather expanded and opened up to those who had previously been excluded. See *id.* The civil rights and welfare rights movements of the 1960s, and "[a]ggressive lawyering on behalf of poor people removed many of the systematic administrative barriers used to keep African-American women off the welfare rolls." See *id.* at 724; see also ANNEISE ORLECK, *STORMING CAESAR'S PALACE: HOW BLACK MOTHERS FOUGHT THEIR OWN WAR ON POVERTY* 69–82 (2009) (recounting the stories of Ruby Duncan, Mary Wesley, Alversia Beals, and Rosie Seals—women of the Welfare Rights Movement).

¹⁴¹ MOYNIHAN, *supra* note 32, at 5–9.

¹⁴² See Herbert J. Gans, *The Moynihan Report and Its Aftermath: A Critical Analysis*, 8 DU BOIS REV. 315, 316–24 (2011) (offering numerous critiques on the methodology and conclusions of the original report).

¹⁴³ See Thomas Meehan, *Moynihan of the Moynihan Report*, N.Y. TIMES (July 31, 1966), <http://nytimes.com/books/98/10/04/specials/moynihan-report.html>.

King Jr., Bayard Rustin, John Lewis and Floyd McKissick angrily criticized the report.¹⁴⁴ McKissick noted:

My major criticism of the report is that it assumes that middle-class American values are the correct values for everyone in America Moynihan thinks that everyone should have a family structure like his own. Moynihan also emphasizes the negative aspects of the Negroes and then seems to say that it's the individual's fault when it's the damn system that really needs changing.¹⁴⁵

Then and now, critiques centered on Moynihan's blaming of family construction for the crippling poverty produced by persistent racism.¹⁴⁶ Despite the overwhelming criticism of the Report and its contentions about Black family dysfunction, it has obtained iconic status.¹⁴⁷ The report coincided with emerging conservative theories that described poor female-headed households as perpetuating a "culture of poverty."¹⁴⁸ Critics of the entire welfare regime found in the Report an opportunity to frame the growing costs of welfare as a Black female problem, a notion that many Americans could accept based on entrenched historical stereotypes.¹⁴⁹ The Moynihan Report "explicitly racialized and gendered the category of poverty as black and female"¹⁵⁰ a full decade before the intentional deployment of the Welfare Queen image, presenting a modern version of the Sapphire stereotype of an aggressive woman who drove men away.

These characterizations of poor families gave rise to an avalanche of calls for welfare reform, even at the apex of Great Society programs. At congressional hearings on welfare reform as early as 1971, the Department of Health, Education, and Welfare offered an assessment on the state of welfare recipients, reflecting the new language of family dysfunction:

The AFDC program serves seriously troubled people, those for whom a normal family life is threatened or has already been disrupted. Only a small proportion . . . are what might be called normal,

¹⁴⁴ *Id.*

¹⁴⁵ *Id.* (alteration in original) (quoting Floyd McKissick).

¹⁴⁶ See Gans, *supra* note 142, at 316. ("[T]he Report was flawed in a number of ways. First, Moynihan could even then have been criticized for failing to look at [many] studies of the poor Black family and community other than those by Frazier (1939) and Clark (1965).")

¹⁴⁷ See *id.* at 315. ("'The Negro Family: The Case for Federal Action' . . . will be fifty years old, but there are already signs that it could become immortal.")

¹⁴⁸ See Baldwin, *supra* note 14, at 9.

¹⁴⁹ See *id.*

¹⁵⁰ See *id.*

healthy families—that is, those in which the father and mother live together in the same home with the children.¹⁵¹

The report was entered into the Congressional Record as part of a series of hearings to debate the welfare reform approach outlined in President Richard Nixon’s “Family Assistance Plan,”¹⁵² which would have provided a guaranteed income for all Americans and would have shifted the primary burden away from state and local governments, and instead to the federal government.¹⁵³ The language fairly characterized what was to become the prevailing mantra of the anti-welfare movement—that broken families were the cause of poverty, or at least an impediment to addressing it. The Family Assistance Plan was never enacted, felled by a combination of resistance from progressives and conservatives alike.¹⁵⁴ The discourse about poverty, however, became centered on dysfunctional families, rather than on economic rights or on addressing the root causes of structural inequality.¹⁵⁵ The beginning of the end was at hand for welfare rights activists focused on a vision of economic justice for poor people.¹⁵⁶

B. *Deadbeat Dads & the Privatization of Poverty*

Broad public support for punitive measures against Deadbeat Dads¹⁵⁷ was linked in the media, in politics, and in the public imagination to expressions of disgust for their political companions, Welfare Queens.¹⁵⁸ It is still a prevalent societal perception that all parents who fail to pay child support are Deadbeat Dads. As a result, policies designed to punish those who fail to pay support are

¹⁵¹ DEP’T OF HEALTH, EDUC., & WELFARE, 92ND CONG., SERVICES TO FAMILIES 7 (Comm. Print 1971).

¹⁵² See ROBERT J. LAMPMAN, INST. FOR RESEARCH ON POVERTY, NIXON’S FAMILY ASSISTANCE PLAN 18 (1969) (“President Nixon has offered a multi-faceted program in response to the problems and remedies reviewed above. Its broad strategy is (1) to make working-poor families with children eligible for income-supplementation benefits; and (2) to raise the benefits to the categorical poor in the low-benefit states.”).

¹⁵³ *Id.* at 14.

¹⁵⁴ QUADAGNO, *supra* note 11, at 131–34. Progressives wanted more of a guaranteed income, while conservatives wanted to do away with the entire notion of entitlements. *See id.*

¹⁵⁵ See MURRAY, *supra* note 11, at 124–33; Amy L. Wax, *Engines of Inequality: Class, Race, and Family Structure*, 41 FAM. L. Q. 567, 568–70 (2007); *see also* DEP’T OF HEALTH, EDUC., & WELFARE, *supra* note 151, at 8 (noting that the same report acknowledges that Blacks were likely to be engaged as “service workers” and that this type of work alone would not be enough to “yield enough income to support a family without welfare payments”).

¹⁵⁶ See NATIONAL WELFARE RIGHTS NETWORK, <https://www.welfarerights.org.au> (last visited May 14, 2014).

¹⁵⁷ See Tonya L. Brito, *The Welfarization of Family Law*, 48 U. KAN. L. REV. 229, 263 (2000); Cammett, *supra* note 21, at 136.

¹⁵⁸ See Brito, *supra* note 157, at 263–64 (“To drive home the point that these fathers were culpable, lawmakers characterized them as ‘deadbeats.’ Since then, the public has had little patience for the fathers of children on the welfare rolls.”); Cammett, *supra* note 21, at 136.

politically popular.¹⁵⁹ The Deadbeat Dad is ubiquitous. An example of how mainstream the concept has become lies in its inclusion in the Oxford Advanced Learner's Dictionary, which defines a Deadbeat Dad as "a father who does not live with his children and does not pay their mother any money to take care of them."¹⁶⁰ Moreover, a routine "Google" search of "Deadbeat Dads" produced nearly two million results.¹⁶¹

Calls for non-resident fathers to pick up the tab for the support of poor children have informed critiques of the public assistance program for quite some time, especially since most families on welfare are primarily headed by single mothers.¹⁶² Welfare cost recovery was a major tenet in the call for child support enforcement.¹⁶³ To some degree, this makes sense. Modern child support policy is predicated on a common tenet of financial obligation. Additionally, the family wage ideal still deeply permeates American notions about family support. As Martha Minow notes, "[t]he dramatic increase in rigorous enforcement of laws requiring nonresident parents to support their children financially reflects what seems to be a remarkable degree of consensus about a fundamental norm. People who produce children should provide for their support."¹⁶⁴ Moreover, the discourse around public assistance shifted from recoup-

¹⁵⁹ See Brito, *supra* note 157, at 264 (noting that the "[w]ide-scale support for cracking down on deadbeat dads has resulted in child support reforms that are decidedly more punitive in nature"); Cammett, *supra* note 21, at 136–37 (noting that "[t]he reasons why fathers failed to pay were myriad—running the gamut from outright abdication of responsibility to shared poverty—but consideration of their individual circumstances was secondary to the push for overall accountability").

¹⁶⁰ See *Deadbeat*, OXFORD ADVANCED LEARNER'S DICTIONARY, <http://www.oxfordlearnersdictionaries.com/us/definition/english/deadbeat> (last visited May 14, 2014); see also *Deadbeat*, ONLINE ETYMOLOGY DICTIONARY, <http://www.etymonline.com/index.php?term=deadbeat> (last visited May 14, 2014) ("Deadbeat (n.) 'worthless sponging idler,' 1863, American English slang . . . from dead (adj.) + beat. Earlier used colloquially . . . to mean 'completely beaten' (1821)."). During the American Civil War, "beat" was used in military slang as a noun to designate a soldier who shirked duty: "A 'beat' is one who plays sick, shirks guard duty, drills, roll call, etc., and is always missing in a fight." EDWARD KING WHIGHTMAN, FROM ANTIETAM TO FORT FISHER: THE CIVIL WAR LETTERS OF EDWARD KING WIGHTMAN, 1862–65, at 99 (Edward G. Longacre ed., 1985).

¹⁶¹ See GOOGLE, <https://www.google.com/#q=deadbeat+dad> (last visited May 14, 2014).

¹⁶² See Cammett, *supra* note 21, at 136–37; Hanming Fang & Michael P. Keane, *Assessing the Impact of Welfare Reform on Single Mothers*, 1 BROOKINGS PAPERS ON ECON. ACTIVITY 1, 8 n.6 (2004) ("Single women with dependent children have been the main recipients of [welfare] benefits under both AFDC and TANF. Although single-parent families maintained by fathers, child-only families, and two-parent families where the primary earner is unemployed may also be eligible for benefits, single mothers account for a large majority of the caseload.").

¹⁶³ See Daniel L. Hatcher, *Child Support Harming Children: Subordinating the Best Interests of Children to the Fiscal Interests of the State*, 42 WAKE FOREST L. REV. 1029, 1030–41 (2007) (arguing that the welfare cost recovery system served as an important motivation for aggressive enforcement).

¹⁶⁴ Martha L. Minow, *How We Should Think About Child Support Obligations*, in FATHERS UNDER FIRE: THE REVOLUTION IN CHILD SUPPORT ENFORCEMENT 302, 302 (Irwin Garfinkel et al. eds., 1998) (exploring the various rationales for enforcing child support obligations); see David L. Chambers, *Fathers, the Welfare System, and the Virtues and Perils of Child-Support Enforcement*, 81 VA. L. REV. 2575, 2588 (1995). David Chambers writes:

ing welfare costs to countering welfare “dependency.” The articulation of *the problem* with families receiving public assistance centered not only on the need for cost recovery, but also on the need to restore family responsibility.

A major shift in policy came when constitutional protections were secured for poor women at the height of the Great Society, including abolishment of “man-in-the house” laws under *King v. Smith*.¹⁶⁵ The decision in *King* served as a precursor to vigorous child support enforcement initiatives against biological fathers. Under the “man-in-the-house rule,” a child who otherwise qualified for welfare benefits was denied those benefits if the child’s mother was living with, or having sexual relations with, any single or married able-bodied male.¹⁶⁶ The man was considered a substitute father and was liable for support. Prior to *King*, administrative agencies in many states created and enforced man-in-the-house rules.¹⁶⁷ In 1968, however, the U.S. Supreme Court struck down the rules as being contrary to the legislative goal of the Aid to Families of Dependent Children program, which was to provide necessary support for children.¹⁶⁸ In light of *King*, refocusing on biological fathers to recoup support took on new urgency, as restoring money to the public coffers was now entirely dependent upon locating them and establishing child support obligations.

Senator Russell Long served as a prime mover for the forces that took up the clarion call for child support enforcement.¹⁶⁹ During congressional hearings on reform in 1971, he unleashed a series of tirades against welfare recipients,¹⁷⁰ booming from the Senate floor that, “Uncle Sam will not be the inspiration of the free world while the major cities of America are clogged with trash and pollution and tax-paid welfare loafers wallow in litter and debris.”¹⁷¹ Senator Long

The duty that parents have to support their children rests, in our culture, on the widely shared belief in each person’s responsibility for his voluntary actions and in deeply rooted notions of what it means to be a parent. Conservatives feel additional anger when they, as taxpayers, are required to pay for children born of nonmarital relationships that they consider immoral. Liberals feel anger of another sort. They deplore the gendered nature of the problem. They know that it is men who walk away from their children, and women left in poverty who bear the burden. This may be a moral crusade, but it is one well-grounded in a range of American values.

Chambers, *supra*.

¹⁶⁵ See 392 U.S. at 334.

¹⁶⁶ See *id.* at 334–35.

¹⁶⁷ See *id.* at 335–37.

¹⁶⁸ See *id.* at 334–35.

¹⁶⁹ See BIOGRAPHICAL DIRECTORY OF THE U.S. CONG., *Long, Russell Billiu*, <http://bioguide.congress.gov/scripts/biodisplay.pl?index=1000428> (last visited May 14, 2014).

¹⁷⁰ See Senator Russell L. Long, Chairman, Senate Comm. on Fin., Welfare Reform—Or Is It?, Address Before the U.S. Senate (Aug. 6, 1971), in 362 CONG. REC. 15, at 2.

¹⁷¹ See *id.* at 10.

railed against welfare mothers,¹⁷² family dysfunction,¹⁷³ purported fraud,¹⁷⁴ government lawyers who secured constitutional protections for welfare recipients,¹⁷⁵ and the National Welfare Rights Organization.¹⁷⁶ He reserved his special ire for fathers in welfare families, noting that, “the poor of the United States today enjoy a quite unprecedented de facto freedom to abandon their children in the certain knowledge that society will care for them”¹⁷⁷

The narrative driving child support enforcement became progressively more punitive, without allowing for meaningful political and policy discourse about what distinguishes deadbeats from “‘deadbrokes’—those who simply don’t have the ability to pay.”¹⁷⁸ Nor did it contemplate realistic solutions that might help to generate more economic or other support for poor children. Thus, rather than focusing on the wellbeing of children, conservatives called out for regulation and parental punishment, linking the Welfare Queen and Deadbeat Dad metaphors as portrayals of anti-social counterpoints to acceptable family citizenship.

IV. THE SHIFT TOWARD PUNISHMENT & A PROPOSAL FOR A NEW PARADIGM IN THE WELFARE POLICY DEBATE

At the same time that War on Poverty programs came under attack, Senator Long’s call for legislation targeting Deadbeat Dads quickly became a reality, as Congress sought to undertake the first broad restructuring of child support enforcement by enacting federal legislation. Thus, the march toward eradicating welfare’s social safety net was merged with an increasingly aggressive national child support enforcement apparatus.

A. *The Shift Toward Punishment in Combating Poverty*

In 1974, Title IV-D of the Social Security Act was primarily focused on recovering welfare payments made to households with poor children.¹⁷⁹ De-

¹⁷² Senator Russell L. Long, Chairman, Senate Comm. on Fin., *The Welfare Mess: A Scandal of Illegitimacy and Desertion*, Address Before the U.S. Senate (Dec. 14, 1971), in 117 CONG. REC. 196, at 2.

¹⁷³ *See id.*

¹⁷⁴ *See Long, supra* note 170, at 3–4, 7.

¹⁷⁵ *See id.* at 4–5; Long, *supra* note 172, at 2.

¹⁷⁶ *See Long, supra* note 170, 2–3.

¹⁷⁷ *Id.* at 5. “American taxpayers are living up to their own responsibilities, supporting their own children, and it is a brutally unfair law which requires them to also support the children of the deadbeats who abandon them to welfare.” Long, *supra*, note 172, at 4.

¹⁷⁸ *See Cammett, supra* note 21, at 141.

¹⁷⁹ *See id.* at 136–37. As Congress declared in 1974, “[t]he problem of welfare in the United States is, to a considerable extent, a problem of the non-support of children by their absent parents.” Janelle T. Calhoun, *Interstate Child Support Enforcement System: Juggernaut of Bureaucracy*, 46 MERCER L. REV. 921, 929 (1995) (quoting the Social Services Amendments of 1974, S. Rep. No. 93-

spite the fact that the primary goal of the law was to reduce welfare expenditures, child support enforcement resources were also made available to parents who were not welfare recipients. Additionally, Congress enacted a series of legislative initiatives thereafter to require states to “sharpen their laws and strengthen enforcement powers” even as to non-welfare families.¹⁸⁰ Within a few years, half of all support collections were for non-welfare families, rather than the poorer families that were originally targeted for recoupment.¹⁸¹ This early failure to actually collect from low-income parents indicated a problem with uniform enforcement against all parents. The failure also suggested that some fathers might also be very poor and would, without other supports, be unable to substantially lift their children out of poverty.¹⁸² Nevertheless, the failure to collect from these absent parents was primarily addressed by continuing to tighten enforcement provisions via federal legislation against all obligors, rather than exploring why it was so difficult to collect from these fathers.¹⁸³ At the time, many critics of tightening enforcement wondered aloud about its efficacy. Sociologist David Chambers observed:

My puzzlement arises from a suspicion that although improved enforcement programs would likely produce substantial positive results for many women and children, they would also, for a substantial and unmeasurable number of men, women and children, inflict unintended and undesirable harms that we would regret. As is often true in our society, these negative consequences would be borne disproportionately by the poorest persons and by persons of color.¹⁸⁴

As it turns out, Chambers was correct. Non-supporting parents of both genders were subject to more enhanced penalties, but because of their economic status, they could not produce more financial support for their children.

1356, 93d Cong. 2d Sess. 42). Generally, Title IV-D left the states in charge of collection and paternity establishment but gave the federal government an enhanced role as the “active stimulator, overseer and financier of state collection systems.” See HARRY D. KRAUSE, *CHILD SUPPORT IN AMERICA: THE LEGAL PERSPECTIVE* 308–10 (1981) (discussing the 1974 Amendments).

¹⁸⁰ See Harry D. Krause, *Child Support Reassessed: Limits of Private Responsibility and the Public Interest*, 24 *FAM. L.Q.* 1, 8 (1990). The Child Support Enforcement Amendments of 1984 broadened the scope of the FSA by requiring the states to: withhold child support from delinquent parents (in a limited manner); provide for the imposition of liens against defaulting obligors’ properties; and deduct unpaid support obligations from federal and state income tax refunds. See *id.*

¹⁸¹ See *id.* at 6–7.

¹⁸² *Id.* at 12–13 (“Looking carefully at statistics and reality, one may reasonably conclude that many fathers are unable to provide the support their children need to get a decent start in life, even if many try.”); see Irwin Garfinkel et al., *A Patchwork Portrait of Nonresident Fathers*, in *FATHERS UNDER FIRE: THE REVOLUTION IN CHILD SUPPORT ENFORCEMENT* 31, 48 (Irwin Garfinkel et al. eds., 1998) (noting that one-half of the children of fathers receiving public assistance had incomes below \$6000 per year).

¹⁸³ See Krause, *supra* note 180, at 12–14.

¹⁸⁴ Chambers, *supra* note 164, at 2577.

Ironically, some of the penalties for non-support, including jail, actually served to make parents less able to provide. Nevertheless, despite these unintended consequences, comprehensive overhaul of the increasingly federalized child support system continued unabated, particularly with President Bill Clinton's pledge to "end welfare as we know it."¹⁸⁵ Congress enacted the Personal Responsibility and Work Opportunity Reconciliation Act ("PRWORA") in 1996, ending the federal entitlement program.¹⁸⁶ While it is well understood that welfare reform altered the national landscape of erstwhile entitlements, it is less commonly known that it also effected a significant restructuring of the entire national child support system. This legislation concretized a series of findings about the importance of marriage and responsible parenthood, the national increase of out-of-wedlock pregnancies and births, and the negative consequences of raising children in single parent homes—all concepts that were originally developed and deployed during the War on Poverty.¹⁸⁷

While the PRWORA destroyed the social safety net, child support enforcement was accelerated against poor parents, even under the threat of criminal penalties. By the time the PRWORA became law in 1996, it was already known that there were a significant number of parents owing child support who themselves were living at or below the poverty line.¹⁸⁸ These enactments, and the demonization of fathers, did little to actually improve the lives or financial prospects of very poor children.¹⁸⁹ It did, however, as a matter of public policy, shift the burden of support for poor children to non-custodial parents, exacting civil sanctions and criminal punishments for failure to deliver financial support. Nowhere was this effect more apparent than in low-income minority communities already affected by mass criminalization.¹⁹⁰

¹⁸⁵ Jason DeParle, *From Pledge to Plan: The Campaign to End Welfare—A Special Report; The Clinton Welfare Bill: A Long, Stormy Journey*, N.Y. TIMES, July 15, 1994, at A18. President Clinton first used the phrase "end welfare as we . . . know it" on October 23, 1991 in a speech at Georgetown University. See Governor Bill Clinton, *The New Covenant: Responsibility and Rebuilding the American Community*, Address at Georgetown University (Oct. 23, 1991). After his election in November 1992, he used the phrase in a speech to the National Conference of State Governors. Jason DeParle, *Caution of Welfare; Even Though They Please Moynihan, Clinton's Actions Are Far from Bold*, N.Y. TIMES, Feb. 2, 1993, at A1. See generally Stephen D. Sugarman, *Financial Support of Children and the End of Welfare as We Know It*, 81 VA. L. REV. 2523 (1995) (discussing conservative and liberal approaches to the obligation to provide for children, and the proper government role in actualizing those approaches).

¹⁸⁶ Pub. L. No. 104-193, 110 Stat. 2105 (1996).

¹⁸⁷ See *id.* 110 Stat. 2110–12.

¹⁸⁸ See *id.* Over half of parents in California owing child support arrears earn less than \$10,000 per year. See ELAINE SORENSON, URBAN INST., EXAMINING CHILD SUPPORT ARREARS IN CALIFORNIA: THE COLLECTIBILITY STUDY 10 (2003), available at http://www.urban.org/UploadedPDF/411838_california_child_support.pdf.

¹⁸⁹ See Cammett, *supra* note 21, at 128–29; DENAVAS-WALT ET AL., *supra* note 7, at 16.

¹⁹⁰ See Cammett, *supra* note 21, at 128–31.

Enforcement measures expanded over time to ensure that parents obligated to pay support could not escape those obligations.¹⁹¹ “Many of these enforcement tools—and indeed the panoply of enforcement mechanisms developed over time—are designed to expedite payments from parents operating as economic actors engaged in regularized employment.”¹⁹² For many who are not consistently employed, however, such as the incarcerated, some automatic provisions are counterproductive. These provisions include “withholding, suspension, or restriction of drivers’, professional, and occupational licenses for individuals who owe child support,” garnishing up to sixty-five percent of salaries, and requiring that overdue child support be reported to national credit bureaus.¹⁹³ “Pursued against recalcitrant obligors, these methods are designed to, and can reasonably, act as incentives to payment.”¹⁹⁴ For prisoners who are released from jail, however, these provisions act as barriers to economic adjustment and family reintegration. As I explained in my previous article, *Deadbeats, Deadbrokes and Prisoners*:

[A]s a society we encourage formerly incarcerated parents to find legitimate work, become financially stable, and resume child support once they are released. In fact, this is often a condition of parole. Because most child support is automatically collected through payroll deductions—and garnishment of wages at a rate of up to 65% of salary for child support debt is permissible—it may be impossible for many people reentering society to support themselves with low-wage work, much less pay support on an ongoing basis.¹⁹⁵

The government acknowledges that “[t]here is evidence that child-support pressures may help drive some less-educated, low-skilled parents into the underground economy in order to increase their income or to avoid formal en-

¹⁹¹ See *id.* at 137–38.

¹⁹² *Id.* at 144.

¹⁹³ See *id.* The 1996 Welfare Reform Act requires states to have procedures for periodically reporting, subject to certain due process safeguards, the name of any non-custodial parent owing past-due support and the amount of the delinquency. 42 U.S.C. § 666(a)(7) (2012); see also Ted Weiss Child Support Enforcement Act of 1992, 15 U.S.C. § 1681s-1 (2012). The Ted Weiss Child Support Enforcement Act of 1992 provides that:

Notwithstanding any other provision of this subchapter, a consumer reporting agency shall include in any consumer report furnished by the agency in accordance with section 1681b of this title, any information on the failure of the consumer to pay overdue support which . . . is provided . . . to the consumer reporting agency by a State or local child support enforcement agency; or . . . to the consumer reporting agency and verified by any local, State, or Federal government agency; and . . . antedates the report by 7 years or less.

15 U.S.C. § 1681s-1.

¹⁹⁴ See Cammett, *supra* note 21, at 144–45.

¹⁹⁵ *Id.* at 145 (citations omitted).

forcement.”¹⁹⁶ Participation in the underground economy, which often includes illegal activity, will likely hasten re-incarceration. Once a parent returns to prison, the cycle begins anew, and those parents are unlikely to ever pay support. A parent’s earning capacity will continue to plummet, and their children will be the ultimate losers in this dynamic.

B. *Re-Centering Child Wellbeing in Poverty Law*

The negative racial metaphors used by opponents of welfare programs have framed the policy debate surrounding these programs. They have shifted policies from those that aid children and mothers to those designed to punish the undeserving poor. This failure of focus has, in turn, limited the ability of these programs to help deserving impoverished children.

At the height of the War on Poverty, James L. Sundquist of the Brookings Institution asked a question with continuing relevance, “Are children of the ‘undeserving’ themselves undeserving of a good chance at life?” Half a century later, we are living in a country that is experiencing an unprecedented level of suffering due to economic inequality. Our children have not fared any better. When examining the metaphors that have driven our public policy regarding poverty law, we must have the courage to admit that we have been driven by demonizing metaphors, imbued with historical notions of race, gender, and class that have driven us to destroy our much heralded social safety net. As Richard Delgado notes, “They are like eyeglasses we have worn a long time. They are nearly invisible; we use them to scan and interpret the world and only rarely examine them for themselves.”¹⁹⁷

Instead of focusing on utilizing or combating negative racial tropes in welfare policy debates, politicians and other politically active groups should instead focus on those individuals who were supposed to be helped by these programs. By re-focusing on children, it is possible to construct a paradigm where social welfare policy focuses on the wellbeing of all children, rather than on the punishment of some parents. The fact that policymakers are stymied by existing political realities demonstrates a failure of imagination that the children of America can ill afford if they are to be able to meet the challenges of an increasingly complex world.

CONCLUSION

Metaphor has a tremendous impact on the way we perceive reality. Unfortunately, opponents of welfare policies have utilized historical racial metaphors

¹⁹⁶ See *Report of the Re-Entry Policy Council: Charting the Safe and Successful Return of Prisoners to the Community*, COUNCIL OF STATE GOV'TS 327 (2005), <http://csgjusticecenter.org/wp-content/uploads/2013/04/1694-11.pdf>.

¹⁹⁷ Delgado, *supra* note 75, at 2413.

to discredit the recipients of welfare. The use of tropes like the Welfare Queen and the Deadbeat Dad have shifted the focus of policy debates surrounding poverty programs from helping those in difficult economic situations to punishing those perceived to be at the heart of economic problems. Instead of focusing on negative racial metaphors, the discourse surrounding welfare programs should re-focus on the intended beneficiaries of the social safety net, the deserving children living in poverty.