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Don't Forget Dad: Addressing Women's Poverty by Rethinking Forced and Outdated Child Support Policies

Daniel L. Hatcher
University of Baltimore School of Law, dhatcher@ubalt.edu

DON'T FORGET DAD: ADDRESSING WOMEN'S POVERTY BY RETHINKING FORCED AND OUTDATED CHILD SUPPORT POLICIES

DANIEL L. HATCHER*

INTRODUCTION

In the dialogues regarding practice and theory in reducing poverty among women, especially mothers, the inextricably linked issues surrounding low-income men must be simultaneously considered. When the mothers are poor, the fathers are also often poor and can face similar economic barriers.[1] When fathers have been considered in social policy

* Associate Professor of Law, University of Baltimore; J.D. 1996, University of Virginia School of Law. I would like to thank Michele E. Gilman, Caterina Hatcher, and organizers and participants in the Association of American Law Schools 2012 Annual Meeting Joint Session of Sections on Poverty Law & Clinical Legal Education, Panel Discussion on Theory and Praxis in Reducing Women's Poverty, for the opportunity to present this article as a work in progress.

1. *E.g.*, ELAINE SORENSEN & CHAVA ZIBMAN, URBAN INST., NEW FEDERALISM: NATIONAL SURVEY OF AMERICA'S FAMILIES NO. B-30, POOR DADS WHO DON'T PAY

addressing women's poverty, they have too often been considered primarily as an enemy to be pursued rather than a fellow victim of poverty's wrath, and potential partner towards the cure.[2] We want someone to blame, and many assume that impoverished single mothers are best served by always being encouraged—and even forced—to pursue the noncustodial fathers for financial support through adversarial means.[3]

Mothers applying for welfare cash assistance, Medicaid, food stamps, or a child-care voucher can be forced to sue the fathers to initiate child support obligations, with payments often owed to the government to reimburse the cost of the public assistance provided.[4] Choices available to middle class and wealthy women are stolen from poor mothers, and dignity stripped from the fathers.[5] The long outdated notions of bastardy acts, when single mothers were criminalized and forced into court to protect society from the burden of their illegitimate children, still exist.[6]

The potential for collaboration between low-income mothers and fathers can be severely hampered by the forced child support and paternity requirements, and polarization can result. The notion of supporting the potential of the parents to work together, and possibly be together, reeks of conservative marriage promotion efforts.[7] In addition, concern for the

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CHILD SUPPORT: DEADBEATS OR DISADVANTAGED? (2001), *available at* http://www.urban.org/publications/310334.html (explaining that poor fathers who do not pay child support "face similar labor market barriers to those faced by the poor mothers, but the fathers have far fewer opportunities to increase their chances of labor market success.").

2. *See, e.g.*, David Ray Papke, *Family Law for the Underclass: Underscoring Law's Ideological Function*, 42 IND. L. REV. 583, 597-98 (2009) (describing the historical view of "deadbeat dads" as the root cause of poverty among single mothers and children); Anna Marie Smith, *The Sexual Regulation Dimension of Contemporary Welfare Law: A Fifty State Over-View*, 8 MICH. J. GENDER & L. 121, 140 (2002) [hereinafter Smith, *Contemporary Welfare Law*] (noting that the bi-partisan view of welfare policy and poverty considers child support as a panacea: "Paternity identification and child support enforcement measures are widely regarded in the United States today as the single most important initiative that we can take to address poverty.").

3. Papke, *supra* note 2, at 601; Smith, *Contemporary Welfare Law*, *supra* note 2, at 138-140.

4. *See* discussion *infra* Part I.B.1.

5. Smith, *Contemporary Welfare Law*, *supra* note 2, at 140. *See generally* 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 (2007) [hereinafter Hatcher, *Child Support Harming Children*].

6. Hatcher, *Child Support Harming Children*, *supra* note 5, at 1079.

7. *See generally* Judith E. Koons, *Motherhood, Marriage, and Morality: The Pro-Marriage Discourse of American Welfare Policy*, 19 WIS. WOMEN'S L.J. 1 (2004); Angela Onwuachi-Willig, *The Return of the Ring: Welfare Reform's Marriage Cure as the Revival of Post-Bellum Control*, 93 CALIF. L. REV. 1647 (2005); Aly Parker, *Can't Buy Me Love: Funding Marriage Promotion Versus Listening to Real Needs in Breaking the Cycle of Poverty*, 18 S. CAL. REV. L. & SOC. JUST. 493 (2009); Smith, *Contemporary Welfare Law*, *supra* note 2.

welfare of fathers risks being lumped within the realm of more extreme "fatherhood rights" organizations that unfortunately perpetuate the myth of a battle between poor mothers and fathers.[8]

Although we may crave to line up on one side of the fight, the reality is that there are no sides. Low-income mothers and fathers simply do not all fit within current theoretical or politically themed boxes.

This Article seeks to ensure low-income fathers are included in the discussion of women's poverty, and to address the realities of long existing policies that harm fragile families and weaken the social fabric. Part I considers the unfortunate history of bastardy acts in America, how the harmful practices still largely exist in today's paternity and child support requirements, and explains the resulting harm as well as the interconnections with the criminal justice and child welfare systems. Part II describes the development of the feminization of poverty construct, and how the gendered poverty discussion was unfortunately partly converted by the conservative anti-welfare movement and accompanying racialized stereotypes of the 1980s and 90s into an essentialist and often harmful response to women's poverty. The Article concludes with a call for ending these harmful practices and embracing anti-essentialist approaches that recognize the linkages between poor mothers and fathers, value autonomy and self-determination, support coalition building, and provide opportunities for low-income parents to collaborate as partners in the struggle against poverty.

I. MODERN DAY BASTARDY ACTS

Historically, and currently, when fathers are addressed in social policy regarding women's poverty, they are targeted as both enemy and cause. The mothers, also targeted as negligently contributory to their impoverished circumstances, are treated with disdain, burdened with paternalistic policies that undermine their autonomy and that derive from historically racialized and harmful stereotypes. The parents are forced into relationships of opposition in child support and paternity proceedings, proceedings that although deemed as providing support can too often cause harm to poor families and perpetuate their systemic poverty.

To fully grasp the nature of the paternity and child support policies that

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8. Michele A. Adams, *Framing Contests in Child Custody Disputes: Parental Alienation Syndrome, Child Abuse, Gender, and Fathers' Rights*, 40 FAM. L.Q. 315, 322-23 (2006); Richard S. Collier, *The Fathers' Rights Movement, Law Reform, and the New Politics of Fatherhood: Some Reflections on the UK Experience*, 20 U. FLA. J.L. & PUB. POL'Y 65, 93 (2009) ("There has been a negative depiction of women within much of the fathers' rights discourse, and a blaming of mothers in particular that is indicative of a virulent strand of anti-feminism, if not misogyny, within parts of the fathers' rights movement.").

are forced on low-income families today, these policies must be placed in historical context. The following sections look to the past bastardy acts that existed at our nation's founding, explaining how modern policies still harbor much of our country's unfortunate historical view toward single mothers and their children, and describing the harm that results.

A. Historical Treatment of Children and Unwed Parents

The law of the past did not treat unwed mothers or their children well. Looking back to the Elizabethan Poor Laws, local parishes sought to protect society from the risk and burden of supporting indigent children born to unwed mothers.[9] In America, state laws modeled on the Elizabethan Poor Laws of 1601 authorized towns to sue fathers in order to reimburse public assistance provided to their children.[10] Then, through bastardy acts, states sought protection against the financial risks of illegitimate children, even before any government cost was incurred, by requiring bonds to be paid by unwed mothers and fathers.[11] The law in Maryland in 1781 provides a representative example, requiring incarceration of unwed mothers until they paid the required bond or named the father:

> [A]ny justice of the peace . . . informed of any female person having an illegitimate child . . . shall call on her for security to indemnify the county from any charge that may accrue by means of such child, and, upon neglect or refusal, to commit her . . . to be . . . safely kept until she shall give such security; but in case she shall on oath discover the father, then the said justice is hereby required to discharge her . . . and directed to call such father . . . before him, and shall cause him to give security . . . to indemnify the county from all charges that may arise for the maintenance of such child . . . .[12]

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9. Drew D. Hansen, Note, *The American Invention of Child Support: Dependency and Punishment in Early American Child Support Law*, 108 YALE L.J. 1123, 1134 (1999); Hatcher, *Child Support Harming Children*, *supra* note 5, at 1037.

10. Jacobus tenBroek, *California's Dual System of Family Law: Its Origin, Development, and Present Status, Part I*, 16 STAN. L. REV. 257, 283-84 (1964); Hansen, *supra* note 9, at 1145.

11. Hansen, *supra note* 9, at 1144; Hatcher, *Child Support Harming Children*, *supra* note 5, at 1038.

12. Virginia v. Autry, 441 A.2d 1056, 1060 (Md. 1982) (citing 1781 Md. Laws, ch. 13, § 1). Very similar requirements existed in other states. *See, e.g.*, Cahill v. State, 411 A.2d 317, 321 (Del. Super. Ct. 1980) (quoting 1796 2 Del. Laws c. CVIII. c., p. 1304: "it shall and may be lawful for any Justice of the Peace within this state, as often as he shall be informed of any female person having an illegitimate child, to issue his warrant to any Constable, who is hereby required to carry such person before some Justice of the Peace of the county, who shall call on her for security to indemnify the county from any charge that may accrue by means of such child, and upon neglect or refusal, to commit her to the custody of the Sheriff of the county, to be by him safely kept until she shall give such security; but in case she shall, on oath or affirmation, discover the father, then the said Justice is hereby required to discharge her from such

One hundred and thirty years later in Maryland, like other states, little had changed:

> The act of 1912 repealed and re-enacted article 12 of the Code, entitled "Bastardy and Fornication," and made many material changes on the subject. It will be helpful to refer to so much of that act as is involved in this case. Section 1 requires a justice of the peace, upon written information under oath of a woman being pregnant with or delivered of a bastard child, to cause her to be brought before him, and, upon failure to disclose the father, to give bond to indemnify the county . . . .[13]

And after yet another one hundred years, the bastardy acts' requirements are still largely intact today.

B. Child Support Cooperation Requirements Today

Modern paternity and child support policies are not so modern. Even today, social policy forces poor mothers and fathers into hostile positions of opposing courtroom tables; they are seated apart as plaintiff and defendant and forced to divulge intimate details before crowded courtrooms.[14] Unwed mothers are still forced to name possible fathers in order to indemnify society for the costs of single parenting. The mothers are forced to cooperate with paternity and child support establishment by making their children and themselves available for DNA testing, by initiating and participating in lawsuits against the fathers for such indemnification, and by appearing along with the putative fathers at judicial proceedings that are often open to the public. Any resulting child support payments are often taken by the government rather than used to benefit to the custodial family. Such requirements are included within our current welfare program, and are further expanded into numerous other public assistance programs.[15] Further, the draconian requirements are worsened by the interaction with the criminal justice and child welfare systems.

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warrant, and directed to call such father, if a resident of the county, before him, and shall cause him to give such security"); *see also* Scott v. Ely, 4 Wend. 555, 555 (N.Y. Sup. Ct. 1830) (noting that "justices of the peace may *commit* the mother of a bastard child to prison for refusing to discover the putative father," and then describing facts of case where a mother "refusing to be sworn and examined as to the putative father of her child" was therefore "committed to the common jail of the county, there to remain until she should consent to be sworn and examined" but that the warrant was mistakenly issued for the wrong woman).

13. O'Brien v. State, 94 A. 1034, 1035 (Md. 1915).

14. *See* discussion *infra* Part I.B.1.

15. CENTER FOR LAW AND SOCIAL POLICY, CHILD SUPPORT COOPERATION REQUIREMENTS AND PUBLIC BENEFITS PROGRAMS: AN OVERVIEW OF ISSUES AND RECOMMENDATIONS FOR CHANGE (2005) [hereinafter ISSUES AND RECOMMENDATIONS], *available at* http://www.clasp.org/admin/site/publications/files/0252.pdf.

1. TANF and Other Public Assistance

Single parents—usually the mothers—who apply for welfare cash assistance are forced to determine the identity of the absent parent, to sue the absent parents to establish child support obligations, and to assign any resulting child support to the government to pay back the costs of welfare.[16] Similar child support cooperation requirements can face custodial parents that apply for Medicaid, food stamps, or child-care assistance,[17] and some have argued for an even further expansion of forced paternity and child support establishment, such as a proposed requirement for Social Security benefits.[18]

Title IV-D of the Social Security Act was enacted in 1974, creating a child support enforcement program and partnership between the federal and state governments.[19] Title IV-D formalized the welfare cost recovery structural requirements that still exists today, including the requirements that poor mothers applying for welfare cash assistance must establish paternity, sue the fathers for child support,[20] and assign the resulting child support rights to the government to pay back the costs of the welfare.[21] Thus, the primary goal of the Title IV-D program at its creation was—like the bastardy acts—to protect society from the burden of poor children.[22]

In 1996, President Clinton signed the Personal Responsibility and Work Opportunity Reconciliation Act ("PRWORA"), which replaced the old Aid to Families with Dependent Children ("AFDC") welfare program with a new block grant program titled Temporary Assistance for Needy Families

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16. *See infra* notes 20-25 and accompanying text.

17. *See* ISSUES AND RECOMMENDATIONS, *supra* note 15, at 2.

18. *Improving Child Support Enforcement for Children Receiving SSI*, 64 SOC. SEC. ADMIN. BULL., no. 1, 2001-2002, *available at* http://www.ssa.gov/policy/docs/ssb/v64n1/v64n1p16.pdf (arguing for child support cooperation requirement when single parents apply for SSI benefits on behalf of a disabled child).

19. Social Services Amendments of 1974, Pub. L. No. 93-647, § 101(a), 88 Stat. 2337, 2716, 2732-40 (1975) (relevant sections codified at 42 U.S.C. § 608(a)(2)-(3) (2000)); *see* Jacqueline M. Fontana, *Cooperation and Good Cause: Greater Sanctions and the Failure to Account for Domestic Violence*, 15 WIS. WOMEN'S L.J. 367, 372 (2000); Jane C. Murphy, *Legal Images of Fatherhood: Welfare Reform, Child Support Enforcement, and Fatherless Children*, 81 NOTRE DAME L. REV. 325, 345, n.85 (2005).

20. This Article refers to custodial parents as mothers and noncustodial parents as fathers, although certainly recognizes that the situation may often be reversed.

21. Social Services Amendments of 1974 § 101(a).

22. STAFF OF H. COMM. ON WAYS AND MEANS, 108TH CONG., 2004 GREEN BOOK: BACKGROUND MATERIAL AND DATA ON THE PROGRAMS WITHIN THE JURISDICTION OF THE COMMITTEE ON WAYS AND MEANS 8-67 (Comm. Print 2004) [hereinafter GREEN BOOK], *available at* http://www.gpoaccess.gov/wmprints/green/2004.html ("When Congress enacted the Child Support Enforcement program in 1975, the floor debate shows that members of the House and Senate supported the program primarily because retaining welfare collections would help offset welfare expenditures.").

("TANF").[23] TANF continues the welfare cost recovery requirements that were in the AFDC program, including paternity establishment and child support cooperation and assignment, but contains a harsher penalty for noncompliance. Under the old AFDC rules, a parent's failure to cooperate resulted in a reduction but not a complete loss of welfare assistance.[24] Under TANF, the sanction is much harsher with the potential of the applicant and her family losing all benefits.[25]

Although the number of low-income mothers on TANF has significantly declined, the impact of the child support requirements does not end with TANF.[26] Not only are mothers applying for welfare cash assistance required to cooperate with paternity and child support establishment, but struggling parents applying for food stamps, Medicaid, or childcare assistance may face the same requirements.[27]

For Medicaid, both the cooperation and accompanying assignment of support rights are required, whereas in the food stamps and childcare assistance programs only cooperation is required.[28] Absent the government's selfish motive of cost recovery through the forced assignment of support rights to the government, the presence of the cooperation requirement is even more emblematic of the paternalistic view towards poor women.

2. *Impact of Forced Paternity and Child Support*

When a custodial parent's autonomy is preserved, she is able to weigh all the factors and decide to pursue child support, and the noncustodial parent has the ability to pay, the support payments can provide much needed assistance when distributed to the custodial parent and children. However, harm results when autonomy is removed, the paternity and child support system is forced on impoverished mothers and fathers, and resulting payments are retained by the government rather than helping the children. This forced child support system surrounds and can suffocate the exhausted

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23. Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, § 101-116, 110 Stat. 2105, 2110-85 (1996); *see* Murphy, *supra* note 19, at 328, n.14.

24. HARRY D. KRAUSE, CHILD SUPPORT IN AMERICA: THE LEGAL PERSPECTIVE 356 (1981).

25. *See* 42 U.S.C. § 608(a)(2)(A) (requiring the state to reduce the assistance grant by at least twenty-five percent and allowing it to deny all assistance to the family when a TANF applicant fails to cooperate with child support enforcement).

26. Further, many low income mothers likely forgo applying for welfare—thus adding to the decline in participation—because of the paternity and child support requirements. *See* ANNA MARIE SMITH, WELFARE REFORM AND SEXUAL REGULATION 3 (2007) [hereinafter SMITH, WELFARE REFORM].

27. *See generally* ISSUES AND RECOMMENDATIONS, *supra* note 15.

28. *Id.* at 5-7, 8, 10.

struggles of poor mothers and fathers.

Given the choice, a mother applying for public assistance is in the best position to decide whether or not to establish paternity and seek involvement of the child support system. Several reasons could lead her to making such a decision—correct for her individualized family circumstances—not to seek child support. She may fear retribution in the form of challenged custody litigation or increased risk of domestic violence,[29] or she may have already made the choice that the unaware father should not be part of the child's life.[30] Or, the mother and child may hope to not disrupt the already existing positive relationship with the father, including in-kind or informal support, co-parenting and possibly cohabitation.[31]

Studies show that low-income unmarried parents in "fragile families" have hope for their relationships.[32] Mothers often desire the fathers to be in their lives, and in the lives of their children, and the young fathers want the same.[33] The potential for healthy relationships, including the possibility of cohabitation and at least the possibility of collaborative parenting, is real. But rather than supporting the hope for healthy relationships, current policies are pushing fragile families apart and contributing to systemic poverty.[34]

In fact, states have wide discretion to provide for exceptions to the child support cooperation requirements that could include the many reasons a custodial parent may prefer not to establish paternity or child support.[35]

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29. OFFICE OF INSPECTOR GENERAL, U.S. DEP'T OF HEALTH & HUMAN SERVS., CLIENT COOPERATION WITH CHILD SUPPORT ENFORCEMENT: CHALLENGES AND STRATEGIES TO IMPROVEMENT 6 (2000) [hereinafter CHALLENGES AND STRATEGIES], *available at* http://oig.hhs.gov/oei/reports/oei-06-98-00041.pdf; Naomi Stern, *Battered by the System: How Advocates Against Domestic Violence Have Improved Victims' Access to Child Support and TANF*, 14 HASTINGS WOMEN'S L.J. 47, 59-60 (2003).

30. CHALLENGES AND STRATEGIES, *supra* note 29, at 6.

31. *Id.* at 6 tbl.2. Of the possible reasons for noncooperation, 94% of surveyed child support caseworkers report the mother's desire to protect the noncustodial parent and 88% report the fear of losing informal support, compared to 63% reporting the fear of domestic violence. *Id.* For the surveyed welfare office caseworkers, the numbers are similar: 92% report the desire to protect the noncustodial parent and 88% report the fear of losing informal support, while 73% report the fear of domestic violence. *Id.*

32. SARAH MCLANAHAN, IRWIN GARFINKEL & RONALD B. MINCY, BROOKINGS INST., FRAGILE FAMILIES, WELFARE REFORM, AND MARRIAGE 2 (2001), *available at* http://www.brookings.edu/~/media/research/files/papers/2001/12/childrenfamilies%20mclanahan/pb10.pdf.

33. *Id.* ("Most fathers say they want to help raise their child, and the overwhelming majority of mothers say they want the fathers to be involved.").

34. Hatcher, *Child Support Harming Children*, *supra* note 5, at 1086; Lisa Kelly, *If Anybody Asks You Who I Am: An Outsider's Story of the Duty to Establish Paternity*, 6 YALE J.L. & FEMINISM 297, 302-03 (1994).

35. 42 U.S.C. § 654(29) (2000) (explaining that the cooperation requirements are "subject to good cause and other exceptions which . . . shall, at the option of the State, be defined, taking into account the best interests of the child, and applied in each

But most states have used very narrow definitions of "good cause," primarily focusing on risks of domestic violence and whether an adoption might be pending.[36] In addition to being narrowly prescribed, the good cause exception is also limited due to lack of notice requirements and the transfer of processing good cause requests from the state welfare agencies to the child support offices, putting the decision in the hands of the agency charged with increasing child support collections and therefore less likely to grant the exception.[37]

Adding to the loss of potential family funds when child support payments are taken by the government, further family financial harm can result from the mandated policies. For example, when a custodial parent's autonomy is undermined, and the mother and father are forced into the child support system, the struggling father may feel alienated and stop previous efforts of making informal and in-kind support. The U.S. Department of Health and Human Services' Office of Inspector General has recognized the concern, noting that the forced child support requirements for families applying for public benefits can make the families worse off.[38]

Further, the mandated policies can block the efforts of struggling low-income noncustodial fathers to obtain economic stability—with a particularly difficult impact on minority men. The statistics facing young minority males are daunting. Employment rates of young minority men have plummeted, with over half of young African American men not otherwise in school failing to find work.[39] Of young minority men who are able to finish high school, 45% of African American males "will end up

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case"); ISSUES AND RECOMMENDATIONS, *supra* note 15, at 2 (explaining how good cause exceptions are also available for other public benefit programs in addition to TANF).

36. Fontana, *supra* note 19, at 375 (quoting Vicki Turetsky & Susan Notar, *Models for Safe Child Support Enforcement* 13 (Ctr. for Law & Soc. Policy, Oct. 1999)); *see* OFFICE OF INSPECTOR GENERAL, U.S. DEP'T OF HEALTH & HUMAN SERVS., CLIENT COOPERATION WITH CHILD SUPPORT ENFORCEMENT: USE OF GOOD CAUSE EXCEPTIONS 4 (2000) [hereinafter GOOD CAUSE EXCEPTIONS], *available at* http://oig.hhs.gov/oei/reports/oei-06-98-00043.pdf (noting that federal definitions of good cause include "cases of domestic violence, when conception was the result of forcible rape or incest, when adoption is pending, or when the client is consulting with a social service agency regarding the possibility of adoption").

37. The AFDC rule requiring written notice regarding the availability of the good cause exception was eliminated under TANF. Hatcher, *Child Support Harming Children*, *supra* note 5, at 1047; Stern, *supra* note 29, at 56-57; *see also* GOOD CAUSE EXCEPTIONS, *supra* note 36, at 2 ("States report receiving very few requests for exceptions and granting even fewer.").

38. CHALLENGES AND STRATEGIES, *supra* note 29, at 6.

39. PAUL OFFNER & HARRY HOLZER, BROOKINGS INST., LEFT BEHIND IN THE LABOR MARKET: RECENT EMPLOYMENT TRENDS AMONG YOUNG BLACK MEN 2-3 (2002), http://www.brookings.edu/es/urban/publications/offnerholzer.pdf.

unemployed, incarcerated or dead."[40] By the age of 34, up to half of African American men will be noncustodial fathers.[41] Overly aggressive child support enforcement disproportionately impacts young African-American men, including a negative impact on their participation in the workforce.[42] Facing unrealistically high child support orders and having up to 65% of their net wages garnished, many low-income fathers have no other realistic choice other than to leave the "above-ground" economy.[43] These fathers are more likely to engage in criminal activities, less likely to receive medical care, less likely to pay taxes, less likely to pay child support, and less likely to have a positive relationship with the mothers or their children.[44]

C. Incarcerated Fathers.

The forced child support requirements, and their negative effects on impoverished parents, are further worsened by the criminal justice system. Incarceration has a disproportionate impact based on race, gender, and class.[45] Bruce Western and Sarah McLanahan explain that the increase in incarceration "involves a massive institutionalization significantly affecting young, poorly educated, minority males," and that the "expansion of the penal system does not appear to be strongly related to crime rates but is instead rooted in policy shifts closely connected with federal and state governments' 'war on crime' and 'war on drugs.'"[46] The war on deadbeat dads is inextricably linked with the wars on crime and drugs. Often the same low-income men who are targeted by the criminal justice system are also targeted by the child support policies forced on poor mothers. Along with the obvious and devastating impact incarceration can have on the relationships within low-income families,[47] the current child support structure adds to the harm. As Ann Cammett explains:

> The child support enforcement system punishes some low-income

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40. JOHN MICHAEL LEE, JR., & TAFAYA RANSOM, COLLEGEBOARD ADVOCACY & POLICY CENTER, THE EDUCATIONAL EXPERIENCE OF YOUNG MEN OF COLOR: A REVIEW OF RESEARCH, PATHWAYS AND PROGRESS 50 (2011), *available at* http://youngmenofcolor.collegeboard.org/sites/default/files/downloads/EEYMC-ResearchReport.pdf.

41. PETER EDELMAN ET AL., RECONNECTING DISADVANTAGED YOUNG MEN 129 (2006).

42. *Id.*

43. Hatcher, *Child Support Harming Children*, *supra* note 5, at 1075.

44. *Id.*

45. BRUCE WESTERN & SARA MCLANAHAN, FATHERS BEHIND BARS: THE IMPACT OF INCARCERATION ON FAMILY FORMATION 2-3 (2000); Ann Cammett, *Deadbeats, Deadbrokes and Prisoners*, 18 GEO. J. ON POVERTY L. & POL'Y 127 (2011).

46. WESTERN & MCLANAHAN, *supra* note 45, at 4.

47. *Id.* at 18.

> families, especially those with an incarcerated parent . . . . In the case of incarcerated parents, who are disproportionately poor and from communities of color, federal enforcement of child support orders plays a more limited role in securing more financial stability for their children. Indeed the opposite result is common: aggressive enforcement and uncollectible debt can manifest in unintended consequences that hamper the larger goal of ongoing parental support.[48]

Due to the accrual of unmanageable child support arrearages while incarcerated, a father may have little chance at successfully struggling for economic independence after leaving prison.[49] As a result, the father is often less likely to successfully pay child support and the already tenuous relationship between the father and the mother and children can be further torn.[50]

D. Interaction with the Child Welfare System

As are the combination of interactive effects from the child support and criminal justice systems, the child welfare system is intertwined and linked to poverty as both a result—and a cause. Children enter the child welfare system much more often from neglect than abuse, and neglect is often a direct result of poverty.[51] The child welfare system can simultaneously result from and contribute to poverty, with a disproportionate impact on impoverished minority communities.[52] Again resulting from forced child support policies imposed upon low-income parents—in this case against both mothers and fathers when children are receiving child welfare services—the parents' struggles to overcome economic hardships are often hindered if not blocked, and the relationships between mothers, fathers, and children are again strained.

Similar to requirements imposed by TANF cash assistance, government-owed child support obligations are often involuntarily imposed when

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48. Cammett, *supra* note 45, at 128.

49. *Id.* at 148; Hatcher, *Child Support Harming Children*, *supra* note 5, at 1031.

50. Hatcher, *Child Support Harming Children*, *supra* note 5.

51. *See, e.g.*, ANDREA J. SEDLAK & DIANE D. BROADHURST, ADMIN. FOR CHILDREN & FAMILIES, U.S. DEP'T OF HEALTH & HUMAN SERVS., EXECUTIVE SUMMARY OF THE THIRD NATIONAL INCIDENCE STUDY OF CHILD ABUSE AND NEGLECT (1996), *available at* http://www.childwelfare.gov/pubs/statsinfo/nis3.cfm; Kathleen A. Bailie, *The Other "Neglected" Parties in Child Protective Proceedings: Parents in Poverty and the Role of the Lawyers Who Represent Them*, 66 FORDHAM L. REV. 2285, 2294-98 (1998); Naomi R. Cahn, *Representing Race Outside of Explicitly Racialized Contexts*, 95 MICH. L. REV. 965, 1198 (1997); Daniel L. Hatcher, *Collateral Children: Consequence and Illegality at the Intersection of Foster Care and Child Support*, 74 BROOK. L. REV. 1333, 1338 (2009) [hereinafter Hatcher, *Collateral Children*]; Dorothy E. Roberts, *Is There Justice in Children's Rights? The Critique of Federal Family Preservation Policy*, 2 U. PA. J. CONST. L. 112, 125-26 (1999).

52. *See generally* DOROTHY ROBERTS, SHATTERED BONDS: THE COLOR OF CHILD WELFARE (2003).

children receive foster care assistance. As children from poor families are placed in foster care, federal law requires the pursuit of child support obligations against the children's parents with any resulting payments owed to the federal and state governments to recover the foster care costs.[53] Although the societal knee-jerk view is likely that a parent of a child taken into foster care should have to pay the resulting costs, the requirement targets impoverished parents—and disproportionately minority parents—whose children are most often removed due to poverty-induced neglect.[54]

Initiating child support obligations against impoverished mothers when their children are taken into foster care causes harm, and no benefit. The child support obligations imposed on the low-income mothers provide no benefit to the children because any payments are used to repay the costs of government care.[55] The obligations can undermine reunification efforts, damage the relationship between the parent and child welfare caseworker, and can contribute to systemic poverty.[56] Also, the government reaps little if any financial benefit because the administrative costs of enforcing the obligations may be greater than the resulting payments.[57]

Further, the child support obligations in child welfare cases can also alienate the fathers, reducing their potential as a placement resource and reducing the likelihood that the fathers will assist the mothers in their efforts to obtain economic stability and reunification. Although an increased effort of the child welfare system to engage with absent fathers is evident, the child support requirements can cause the opposite effect.

Similar to the essentialist policies in the forced child support requirements of other public assistance programs, little or no applied discretion is present in the child welfare system's requirements.[58] Rather than considering the individualized circumstances of each parent and child, a uniform and blindly punitive response is imposed, with the vilification of deadbeat dads now unfortunately directed towards the mothers as well.

II. GENDER, RACE, PLACE, AND THE ESSENTIALIST RESPONSE TO THE ANTI-ESSENTIALIST POOR

The core of anti-essentialism lies in the recognition that people and problems are different, and is often applied in feminist scholarship to ensure women are not considered as one homogenous group. Leigh

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53. *See* 42 U.S.C. § 671(a)(17) (2000); Hatcher, *Collateral Children, supra* note 51, at 1334.

54. *See* Hatcher, *Collateral Children, supra* note 51, at 1333, 1338.

55. *Id.* at 1343.

56. *Id.* at 1353.

57. *Id.* at 1354-55.

58. *Id.* at 1345-46.

Goodmark explains:

> Anti-essentialist feminism rejects the idea that there a unitary, overarching women's experience that can serve as the basis for making law and policy affecting women . . . . An essentialist view of women elides the complexities of identity and the ways that various identities shape women's experiences. Anti-essentialist feminism focuses instead on the ways those identities intersect, constructing and reinforcing women's oppression . . . . The goal of anti-essentialist feminism is to ensure that needs and concerns of subgroups, particularly marginalized subgroups, are not lost in the rush to ascribe the common experience of oppression to gender without considering how women's multiple identities contribute to and reinforce that oppression.[59]

The principle has also been considered in the context of critical race theory,[60] and has recently been encouraged in discussions of masculinities—as Nancy Dowd suggests:

> In much feminist analysis, men as a group largely have been undifferentiated, even universal. What has been critiqued as essentialist when considering women as a group has been accepted with respect to men. It is time, I would suggest, to "ask the man question" in feminist theory. It is a logical consequence of anti-essentialist principles and it serves feminist theory for several reasons.[61]

And as Lisa Pruitt reminds us, place matters too—that geographical differences, whether rural, urban, or suburban, must be brought within the

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59. LEIGH GOODMARK, A TROUBLED MARRIAGE: DOMESTIC VIOLENCE AND THE LEGAL SYSTEM at 136-37 (2011); *see also* Nancy E. Dowd, *The "F" Factor: Fineman as Method and Substance*, 59 EMORY L.J. 1191, 1199 (2010) ("Angela Harris's and Kimberlé Crenshaw's critiques of the unexamined racial assumptions of feminists made anti-essentialism a core method of feminist theory."); Sally F. Goldfarb, *Viewing the Violence Against Women Act Through the Lens of Feminist Legal Theory*, 31 WOMEN'S RTS. L. REP. 198, 202 (2010) ("Another important thread in feminist legal theory is anti-essentialism—the recognition that 'woman' is not a fixed and homogeneous category and that social and legal forces operate differently as a result of the intersection of sex with race, class, sexual orientation, disability, and other variables."); Leigh Goodmark, *Autonomy Feminism: An Anti-Essentialist Critique of Mandatory Interventions in Domestic Violence Cases*, 37 FLA. ST. U. L. REV. 1 (2009) [hereinafter Goodmark, *Autonomy Feminism*] (arguing that "the time has come to shift the lens through which we view domestic violence law and policy from dominance feminism to anti-essentialist feminism, allowing us to see how problematic mandatory policies are and helping us to craft domestic violence law and policy that honors the goals and priorities of women who have been battered").

60. Richard Delgado, *Rodrigo's Reconsideration: Intersectionality and the Future of Critical Race Theory*, 96 IOWA L. REV. 1247, 1259-1262 (2011); Catharine A. MacKinnon, *Keeping It Real: On Anti-"Essentialism" in Crossroads, Directions and a New Critical Race Theory* 71 (Francisco Valdés et. al eds., 2002).

61. Nancy E. Dowd, *Masculinities and Feminist Legal Theory*, 23 WIS. J.L. GENDER & SOC'Y 201, 204 (2008); *see also* Nancy E. Dowd, *The Man Question: Male Subordination and Privilege*, 26 BERKELEY J. GENDER L. & JUST. 384 (2010) (discussing the construction and enforcement of "masculinity").

realm of anti-essentialist application of social policy.[62]

But regarding poverty, anti-essentialism has experienced a tumultuous relationship. Scholars continue to recognize the varied needs of impoverished individuals, including differences based on gender, race, age, and geography.[63] However, much of our nation's social policy has adopted what is largely an essentialist view of poverty—that poverty affects women much more so than men,[64] and that the failings of absent fathers to adequately support single mothers is the root cause.[65] The feminization of poverty construct gained attention simultaneously during the conservative anti-welfare movement and negative societal views against welfare mothers, and the resulting increased focus on paternity establishment and child support enforcement inadvertently lead to an essentialist response to an anti-essentialist problem.[66]

A. The Feminization of Poverty

Diana M. Pearce is widely recognized as having named the feminization of poverty construct in 1978.[67] By that time, scholarship and political attention had long existed regarding women's poverty and the connection between impoverished single mothers and child support in particular.[68] Leading up to the creation in 1975 of the federal-state partnership to establish and enforce child support obligation under Title IV-D of the Social Security Act, significant attention was paid to the societal costs of

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62. Lisa R. Pruitt, *Spatial Inequality as Constitutional Infirmity: Equal Protection, Child Poverty and Place,* 71 MONT. L. REV. 1 (2010) [hereinafter, Pruitt, *Spatial Inequaltiy*]; Lisa Pruitt, *Place Matters: Domestic Violence and Rural Difference*, 23 WIS. J. L. GENDER & SOC'Y 347, 352-53 (2008).

63. *See, e.g.*, Pruitt, *Spatial Inequality*, *supra* note 62 (exploring the capacity and significance of spatial inequality in relation to legal equality guarantees).

64. *See supra* notes 49-55 and accompanying text.

65. *See supra* notes 9-13 and accompanying text.

66. Johanna Brenner, *Feminist Political Discourses: Radical Versus Liberal Approaches to the Feminization of Poverty and Comparable Worth*, 1 GENDER & SOC'Y 447, 451-52 (1987) ("Two central assertions of the feminization of poverty campaign—'Divorce produces a single man and single mother,' '40 percent of ex-husbands contribute nothing to their children's support'—link women's poverty primarily to men's failure to support their families.").

67. *See, e.g.*, Diana M. Pearce, *The Feminization of Poverty: Women, Work and Welfare*, 11 URB & SOC. CHANGE REV. 28 (1978) (coining the term "feminization of poverty").

68. *See, e.g.*, HEATHER L. ROSS AND ISABEL V. SAWHILL, TIME OF TRANSITION: THE GROWTH OF FAMILIES HEADED BY WOMEN (1975); MARIAN P. WINSTON & TRUDE FORSHER, NONSUPPORT OF LEGITIMATE CHILDREN BY AFFLUENT FATHERS AS A CAUSE OF POVERTY AND WELFARE DEPENDENCE (1971); H. Paul Breslin, *Liability of Possible Fathers: A Support Remedy for Illegitimate Children*, 18 STAN. L. REV. 859, 865-66 (1966); Robert L. Stein, *The Economic Status of Families Headed by Women*, 93 MONTHLY LAB. REV. 3 (1970).

impoverished female-headed households.[69] Pearce's research and labeling of the feminization of poverty construct sparked a further heightening of attention to women's poverty, attention that was—and is—very much needed.[70] But while the complex interwoven causes called out for nuanced and varied approaches to developing solutions, the response by policy makers into the 80s and 90s was to use the feminization of poverty phrase as part of a simplistic rallying cry to align against a perceived common enemy—deadbeat dads.[71]

B. Essentialist Response—Targeting Fathers

To be sure, many scholars have voiced questions and concerns regarding the simplistic reaction of focusing primarily on stepped-up child support enforcement efforts as the cure for the feminization of poverty.[72] For example, Johanna Brenner recognized that "[f]or the underclass, minority or white, poverty is not simply a problem of women without men—it

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69. *See generally* Social Services Amendments of 1974, Pub. L. No. 93-647, §§ 101(a), 451-460, 88 Stat. 2337, 2351-58 (1975) (codified as amended at 42 U.S.C. §§ 651-660 (2000)).

70. *See* Laura T. Kessler, *PPI, Patriarchy, and the Schizophrenic View of Women: A Feminist Analysis of Welfare Reform in Maryland*, 6 MD. J. CONTEMP. LEGAL ISSUES 317, n.284 (1995) (noting that "[t]he 'feminization of poverty' was first coined by Diana Pearce in 1978. . ." and that "[s]ince her groundbreaking research in the late 1970s, a number of works, both in law and other fields, have focused on the increase of poverty among women-maintained households" (citing SHIRLEY LORD, SOCIAL WELFARE AND THE FEMINIZATION OF POVERTY (1993))); *see also* EMILY NORTHROP, THE DIMINISHED ANTI-POVERTY IMPACT OF ECONOMIC GROWTH, THE SHIFT TO SERVICES, AND THE FEMINIZATION OF POVERTY (1994); HARRELL RODGERS, JR., POOR WOMEN, POOR FAMILIES (1986); RUTH SIDEL, WOMEN AND CHILDREN LAST (1992); Johanna Brenner, *Feminist Political Discourses: Radical Versus Liberal Approaches to the Feminization of Poverty and Comparable Worth*, 1 GENDER & SOC'Y 447 (1987); Audrey Rowe, *The Feminization of Poverty: An Issue for the 90s*, 4 YALE J.L. & FEMINISM 73 (1991)).

71. *See* MARCIA M BOUMIL & JOEL FRIEDMAN, DEADBEAT DADS: A NATIONAL CHILD SUPPORT SCANDAL, preface (1996) ("We hope that the information contained herein will lead to a reappraisal of the behavior that ultimately impacts most on the innocent victims of deadbeats—the children. It is they who carry the biological heritage of the offending parent and who suffer the effects of poverty, abandonment, and a discontinuity with their personal history."); Papke, *supra* note 2, at 599-601 (explaining how the political demonization of deadbeat dads was bi-partisan, including Presidents Reagan, Clinton, George H.W and George W. Bush, and Senator Lieberman); Smith, *Contemporary Welfare Law*, *supra* note 2, at 140 (explaining that the "dominant bi-partisan approach to welfare policy treats child support payments not as one small element within a comprehensive ensemble of anti-poverty policies . . . but as a 'silver bullet.'").

72. ANGE-MARIE HANCOCK, THE POLITICS OF DISGUST AND THE PUBLIC IDENTITY OF THE WELFARE QUEEN 110-27 (2004); *see also* SMITH, WELFARE REFORM, *supra* note 26, at 120; Cahn, *supra* note 51, at 999 (questioning welfare reforms including the child support cooperation requirements); Deborah Harris, *Child Support for Welfare Families: Family Policy Trapped in Its Own Rhetoric*, 16 N.Y.U. REV. L. & SOC. CHANGE 619 (1987/88); Smith, *Contemporary Welfare Law*, *supra* note 2, at 122; Leslie Joan Harris, *Questioning Child Support Enforcement Policy for Poor Families*, 45 FAM. L.Q. 157, 158 (2011).

includes their sons, husbands and ex-husbands, and fathers," and that "[w]hen the feminization-of-poverty campaign focuses on the increased standard of living of divorced men compared with that of their ex-wives and looks to child-support enforcement legislation as a solution to woman's poverty, it fails to address this reality."[73] Further, Anna Marie Smith explains, "Feminists have long argued that men should shoulder more of the burden where child-rearing is concerned, but the coercive mechanisms currently in place under the Social Security Act [requiring child support cooperation] cannot be reconciled with the feminist principle of self-determination."[74] In 1983, Barbara Ehrenreich and Frances Fox Piven wrote an article in Mother Jones Magazine questioning the hesitant and reactionary response by women's groups:

> The feminization of poverty—or, more accurately, the impoverishment of women—is mobilizing the broadest spectrum of women's groups since the Equal Rights Amendment countdown. From the left wing of feminism all the way to such staid groups as the League of Women Voters and the American Association of University Women, women are organizing conferences and public hearings, issuing reports, and lobbying with a high level of energy and unity. But when it comes to developing solutions, there is, it seems to us, a curious hesitancy. Most of the agitation around women's poverty has been more reactive than visionary and all too narrowly focused on Reagan's budget cuts—as if the solution lay in a restoration of the Carter era plus, perhaps, the apprehension of child support defaulters.[75]

Ehrenreich and Piven then posited that the reluctance to formulate a more visionary response to the feminization of poverty was largely due to the strength of the conservative mindset of the time:

> So why do we hang back? Have the economic ideals of the women's movement in 1977 become too radical for today? We think this hesitancy reflects, in part, the current strength of the conservative ideology in the United States. It is hard to press for an expanded welfare state in the face of right-wing mentality that links the welfare state to the gulag, and "big government" to Big Brother. In addition, many of us have legitimate criticisms of existing government social welfare programs . . . .[76]

Valerie Polakow elaborates on the political climate:

> The conservative backlash against women on welfare that followed the

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73. Johanna Brenner, *Feminist Political Discourses: Radical Versus Liberal Approaches to the Feminization of Poverty and Comparable Worth*, 1 GENDER & SOC'Y 447, 454 (1987).

74. Smith, *Contemporary Welfare Law, supra* note 2, at 147.

75. Barbara Ehrenreich & Frances Fox Piven, *Feminist-Politics: The Left's Best Hope*, MOTHER JONES MAGAZINE, Sep.-Oct. 1983, at 27-28.

76. *Id.* at 28.

> War on Poverty was unleashed in the mid 1970s, reaching full force under the Reagan administration, with disastrous consequences for poor women and their children .... Major cuts were instituted ... soon after Reagan's election and in essence "turned back the clock on welfare policy," eliminating the eligibility of many poor working women and their families.[77]

Thus, the much needed recognition and mobilization regarding the feminization of poverty occurred in the midst of a political mood hostile to the poor—and a highly racialized hostile view towards women on welfare in particular. As Tonya Brito explains, "the public became hostile to welfare once welfare became identified with black single mothers."[78] And the backlash continued through Clinton's welfare reform of the mid-90s, which did not merely turn back the clock on welfare as did the Reagan era, but led to "ending welfare as we know it."[79] At the convergence of the two seemingly opposing forces of the time, the growing hostility to welfare assistance for poor mothers—or "welfare queens"—and the growing mobilization seeking to ameliorate women's poverty, a common target emerged of fathers who failed to support their children. Where the necessary nuanced and visionary elements of effective solutions to the feminization of poverty were rendered impossible in the political climate, going after non-supporting fathers became all too easy—and politicians from both the right and the left salivated at the ease and popularity of targeting deadbeat dads.[80]

Accordingly, the feminization of poverty construct was partially coopted in the 1980s and 90s during the long national pushback against the "welfare state," in what was a conservative but also largely bi-partisan effort to begin shifting responsibility for impoverished women and children from the public sphere to the private.[81] Rather than spurring a newly energized and creative effort to consider an expansion and re-tooling of government policies and programs to assist the poor, the construct was linked to the

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77. VALERIE POLAKOW, LIVES ON THE EDGE: SINGLE MOTHERS AND THEIR CHILDREN IN THE OTHER AMERICA 58 (1993).

78. Tonya L. Brito, *From Madonna to Proletariat: Constructing a New Ideology of Motherhood in Welfare Discourse*, 44 VILL. L. REV. 415, 416 (1999).

79. Remarks on Signing the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 and an Exchange With Reporters, 2 Pub. Papers 1325, 1327 (Aug. 22, 1996).

80. *See* SMITH, WELFARE REFORM, *supra* note 26, at 127-29 (describing Hillary Rodham Clinton's support for mandatory paternity and child support requirements in welfare reform); *see also* Papke, *supra* note 2, at 599-600 (explaining how the targeting of deadbeat dads by politicians has been bi-partisan).

81. WESTERN & MCLANAHAN, *supra* note 45, at 2 ("In 1996, the Federal government abandoned its national standard for public assistance by replacing Aid for Dependent Children with Temporary Assistance for Needy Families. The new welfare law shifts responsibility for children from government to parents by limiting cash assistance to single mothers and by forcing non-resident fathers to pay child support.").

asserted need for more aggressive paternity establishment and child support enforcement.[82]

By the time the welfare reform debates began in the mid-90s, forced paternity and child support establishment was not only widely accepted—including among advocacy groups for low income children and women—it was embraced. Congressional testimony in 1995 on behalf of the U.S. Commission on Interstate Child Support, ABA Center on Children and the Law, called for a strengthening of the child support cooperation requirements by shifting the burden of proof to poor mothers:

> It is important that mothers seeking AFDC be required to provide information to child support agencies about the alleged father. Congress should shift the burden to the mother to prove cooperation by providing a name and social security number or name and two verifiable pieces of information about the alleged father, or to prove good cause for noncooperation. Currently, state agencies shoulder the burden of proving noncooperation by the mother in order to deny benefits.[83]

The National Women's Law Center, although arguing against more

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82. Andrea H. Beller & Seung Sin Chung, *Child Support and the Feminization of Poverty*, *in* THE RECONCEPTUALIZATION OF FAMILY POLICY 179-90 (E. Anderson & R. Hula eds., 1991); *see also* ANDREA H. BELLER & JOHN W. GRAHAM, SMALL CHANGE: THE ECONOMICS OF CHILD SUPPORT 3 (1993) ("This increasing 'feminization of poverty' and the frequent dependence of these women on welfare raised concerns about the economic situation of women and children following divorce and out-of-wedlock birth. Although some of the economic plight of mother-only families can be traced to larger issues of gender inequality, the nonpayment of child support by noncustodial fathers contributes to it."); CHILD SUPPORT, WEST'S ENCYCLOPEDIA OF AMERICAN LAW (2d ed. 2005), *available at* http://www.encyclopedia.com/topic/Child_Support.aspx#1 ("In the mid-1990s, as never before, child support became a topic of urgent U.S. national discussion. The system that awards and enforces child support was declared inadequate by state and federal policy makers. Failures in the system were blamed for child poverty rates, long-term dependence on government assistance, and the 'feminization of poverty.'"); Claire L'Heureux-Dube, *Economic Consequences of Divorce: A View from Canada*, 31 HOUS. L. REV. 451, 467-68 (1994) ("The correlation between low child support orders and the feminization of poverty has been raised by academics, poverty activists, feminist legal theorists, governmental committees, and task forces across the country."); J. Thomas Oldham, *Abating the Feminization of Poverty: Changing the Rules Governing Post-Decree Modification of Child Support Obligations*, 1994 BYU L. REV. 841, 843 (1994).

83. *Personal Responsibility Act: Hearing on H.R. 785 Before the Subcomm. on Human Resources, H. Comm. on Ways & Means*, 104th Cong. 59 (1995) (statement of Margaret Campbell Haynes, Former Chair, U.S. Commission on Interstate Child Support, American Bar Association Center on Children and the Law); *see also Personal Responsibility Act: Hearing on H.R. 785 Before the Subcomm. on Human Resources, H. Comm. on Ways & Means*, 104th Cong. 153 (1995) (statement of Nancy Ebb, Senior Staff Attorney, Children's Defense Fund) (calling for strengthened paternity establishment and child support cooperation and explaining, "We understand the importance of sending a strong message about the importance of cooperating with child support efforts."); *Contract with America: Welfare Reform, Part 2: Hearing on H.R. 4 Before the Subcomm. on Human Resources, H. Comm. on Ways & Means*, 104th Cong. 1643 (1995) (statement of David S. Liederman, Executive Director, Child Welfare League of America) (calling for strengthened paternity establishment and child support enforcement).

punitive requirements that were beyond a mother's control, seemed to either support or acquiesce to the current law that a mother applying for welfare benefits must cooperate in establishing paternity and support, including that "the mother must provide information the state requests on the identity and location of the putative father, submit to genetic tests, appear at hearings, and otherwise assist the state in establishing paternity and securing support."[84] And on behalf of the Clinton administration, Donna Shalala, the Secretary of the U.S. Department of Health and Human Services, testified, "[W]e are proposing the toughest child support system ever to make sure fathers pay their child support."[85] She explained that "mothers who apply for AFDC benefits must cooperate fully with paternity establishment procedures prior to receiving benefits," that "[the administration is] proposing to systematically apply a new, stricter definition of cooperation in every AFDC case," and that "performance-based incentives will encourage states to improve their paternity establishment rates for all out-of-wedlock births, regardless of welfare status."[86]

C. Polarizing the Poor

This increased targeting and blaming of absent fathers occurred amidst the backdrop of men being shunned from poor families receiving public assistance. The initial AFDC rules virtually banned fathers from the households receiving benefits,[87] and many states took things even further with "man in the house" rules, including midnight raids and disqualifying families from AFDC if a man was found residing in the household.[88] The

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84. *Personal Responsibility Act: Hearing on H.R. 785 Before the Subcomm. on Human Resources, H. Comm. on Ways & Means*, 104th Cong. 177, 181 (1995) (statement of Nancy Duff Campbell, Co-President, National Women's Law Center) (calling for strengthened paternity establishment and child support enforcement. Although explaining AFDC benefits should not "be denied to children whose paternity is not established, even when their mothers are fully cooperating with the state," the testimony explains needed child support reform "must assure that 1) paternity is established promptly in all but the few cases where harm to the family could result . . . .").

85. *Work and Responsibility Act of 1994, Hearing on H.R. 4605, Before H. Comm. on Education and Labor*, 103d Cong. 46 (1994) (statement by Donna Shalala, Secretary, U.S. Department of Health & Human Services).

86. *Id.* at 47.

87. David A. Super, *The Quiet "Welfare" Revolution: Resurrecting the Food Stamp Program in the Wake of the 1996 Welfare Law*, 79 N.Y.U. L. REV. 1271, 1292-93 n.71 (2004) (explaining AFDC's bias against two-parent families).

88. *See, e.g.*, Lee A. Harris, *From Vermont to Mississippi: Race and Cash Welfare*, 38 COLUM. HUMAN RIGHTS L. REV. 1, 40-41 (2006) ("In the 1950s, many state legislatures implemented restrictive man-in-the-house rules. Under these rules, when welfare recipients were found to have a relationship with an able-bodied man, it was presumed that the man was a 'substitute parent' who would provide financial assistance to the family. These rules—which were frequently invoked to cover even casual

rules were racialized, aimed at policing behavior based on stereotypes that society harbored against welfare mothers.[89] Further, even as the AFDC rules evolved to allow states to provide assistance to two-parent families when a father was unemployed, many states refused to provide the optional benefit and when they did often strictly limited the benefit period to as little as six months.[90] Thus, engrained into the early understanding of welfare rules by mothers, fathers, and society was that men were not welcome. Low-income men were banned from households receiving needed public assistance, and then blamed for being absent.

The crackdown and accompanying rhetoric regarding deadbeat dads as the cause of women's poverty that grew during the 80s and 90s added to the polarization of poor mothers and fathers. Further adding to the division, several "fatherhood rights" groups also began to emerge and grow. Although poor fathers desperately needed advocacy assistance, some fatherhood rights groups developed not with an eye towards helping poor fathers but rather with an anti-feminist ideology and more extremist views.[91]

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relationships with men or relationships with men who had no legal obligation to take care of the children—were disproportionately used to cut benefits to African-American families.").

89. *See* Richard Hardack, *Bad Faith: Race, Religion and the Reformation of Welfare Law*, 4 CARDOZO PUB. L. POL'Y & ETHICS J. 539, 616-17 (2006) (explaining the racialized stereotypes and also noting the incorrect societal view that the vast majority of welfare mothers were African-American); *see also* Lucy A. Williams, *The Ideology of Division: Behavior Modification Welfare Reform Proposals*, 102 YALE L.J. 719, 737 (1992) (noting the racialized stereotyping by society that an "AFDC mother is African American, urban, lazy, and a 'bad mother' who gets pregnant to obtain more AFDC [Aid to Families With Dependent Children] benefits.").

90. *See* Edward M. Wayland, *Welfare Reform in Virginia: A Work in Progress*, 3 VA. J. SOC. POL'Y & L. 249, 299 (1996) (explaining that in 1961, "Congress created the AFDC-Unemployed Parent Program (AFDC-UP), under which states were permitted to provide AFDC benefits to two-parent families if the father was unemployed. As of 1988, Virginia was one of twenty-five states which had still not implemented AFDC-UP. In the Family Security Act of 1988, Congress required the remaining states to create an AFDC-UP Program by October 1, 1990. States were permitted, but not required, to impose a maximum time limit on the receipt of AFDC-UP benefits, which could be as little as six months. Virginia opted to limit AFDC-UP benefits to six months."). Further, even under the TANF rules that expanded access to welfare benefits for two-parent families, the requirements are stricter for states providing two-parent benefits; *see also* Yoanna X. Moisedes, *I Just Need Help . . . TANF, the Deficit Reduction Act, and the New "Work-Eligible Individual,"* 11 J. GENDER RACE & JUST. 17, 22 (2007) (discussing the requirements that states must meet 50 percent work participation rate for single parent families and 90 percent for two-parent families); Theodora Ooms, *The Role of the Federal Government in Strengthening Marriage*, 9 VA. J. SOC. POL'Y & L. 163, 182 (2001) (noting the increasing number of states seeking to ease the increased strictness on two-parent families, including the creation of state-funded programs to avoid the stricter federal work participation rates for two-parent families).

91. *See generally* Collier, *supra* note 8, at 82 (explaining that fathers' right groups that are more closely aligned with an anti-feminist "new men's movement" agenda contain greater hostility towards feminism and misogynistic sentiment).

III. TOWARDS ANTI-ESSENTIALISM, AND FROM ENEMIES TO ALLIES

Our nation's essentialist and paternalistic social policies regarding low-income mothers and fathers cause unintended harm, and reduce the potential for individuals and advocates to work together across perceived lines to address poverty's causes. Ten years ago, in a LatCrit symposium titled "Theory and Praxis in a World of Economic Inequality," Athena Mutua called for an anti-essentialist response to women's poverty that encourages coalition building:

> Ultimately, however, neither a feminization of poverty nor a gendered poverty approach captures the range of subordinating structures that shape poverty. Therefore, an approach that seeks to understand the multidimensional nature of poverty and promotes anti-essentialist, anti-subordination principles and practices might better unravel the ties that bind people in poverty and be more inclusive, permitting shared agendas for building coalitions.[92]

The plea is simple—to remember that people and the problems that confront them are different, intertwined with endless variations of context.[93] While recognizing trends can be helpful in considering solutions, applying an essentialist view to the anti-essentialist circumstances of impoverished women risks exacerbating systemic poverty—including policies that pit mothers and fathers against each other rather than allowing for collaboration.[94]

Most fathers can and should pay child support, but many poor fathers simply are unable to comply with unrealistic support obligations and increasingly tough enforcement efforts. For many families, participation with the formal child support and paternity system is beneficial, but for many families the system can cause unintended harms. Many poor mothers and fathers have potential to work together in collaboration towards economic stability, and in some such fragile families the potential for developing into two-parent families is very real. However, also very real in some families is the presence of domestic violence and other concerns that render two-parent family formation goals or parental collaboration inappropriate. The essentialist view that the cure for all poor families is

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92. Athena Mutua, *Why Retire the Feminization of Poverty Construct?*, 78 DENV. U. L. REV. 1179, 1181, 1182 (2001).

93. Goodmark, *Autonomy Feminism*, *supra* note 59, at 5; *see also* Laura T. Kessler, *The Politics of Care*, 23 WIS. J.L. GENDER & SOC'Y 169, 192 (2008) (noting the "important lesson of antiessentialism that race, gender, and class are complex, interdependent systems of subordination," and that there "is no single superior point of entry to attack these systems, because every move will be both potentially progressive and retrograde.").

94. *See, e.g.*, Kelly, *supra* note 34, at 308 n.6 (explaining that successful programs focus on teaching young parents how to work together, while a bureaucratic child-support system may create an impediment to healthy family relationships).

marriage misses the mark, but so too does the view that government policy should never seek to support the potential for poor mothers and fathers to collaborate and possibly form a cohabiting family unit in appropriate circumstances.

The essentialist view of poor mothers and fathers, including the vilification of poor men and corresponding demeaning and paternalistic treatment of poor women, has consequences. It affects the men, becoming indoctrinated into their psyche, and can create a fatalistic view of self, reducing the chances of overcoming the daunting statistics facing low-income fathers. It affects the mothers, damaging self-worth by removing the empowerment of self-directed decision making and taking away the potential for partnership in the struggle to overcome poverty. It affects the children: often losing much-needed informal and in-kind support that can end after the parents are forced into the child support system with payments directed to the government; losing out on the potential for their parents to work together in addressing the chaotic logistics of child-rearing and in their efforts to obtain economic stability; and losing out on the potential for improved relations with both parents as fathers are often increasingly alienated by the forced policies, and where the children caught in the middle of the increased parental conflict can often blame both parents for the results. And it affects society, weakening the social fabric by spurring the cycle of poverty to continue as impoverished parents face heightened barriers to helping themselves, helping each other, and helping create a more emotionally and economically stable environment for their children.

Replacing essentialist views with anti-essentialist policies is a crucial step in overcoming women's poverty, as well as the interlinked poverty facing men and children. Autonomy is crucial in allowing impoverished parents to navigate their continuously shifting individualized circumstances. The current uniformly applied punitive policies must be transformed into nuanced, flexible, and creatively supportive government assistance that incorporates parental autonomy, self-determination, and the potential for collaboration. Placing choice and societal respect back in the hands of low-income parents will provide the opportunity to gradually reverse the harm caused by the decades of racialized and demeaning social policies—policies that should take their proper place among outdated, ill-informed, discriminatory and harmful views of the past that are no longer followed today.