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ARTICLES

RECLAIMING THE WELFARE QUEEN: FEMINIST AND CRITICAL RACE THEORY ALTERNATIVES TO EXISTING ANTI-POVERTY DISCOURSE

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I. INTRODUCTION

Last year marked the fiftieth anniversary of the *Moynihan Report*, a Senate report commissioned by Daniel Patrick Moynihan in 1965 to investigate what he claimed was a social and cultural crisis compromising the family formation process in the African American community.¹ The report's anniversary seems the perfect occasion to reflect on the continuing cultural significance of the political construct called the "welfare queen," as the report is widely viewed as providing the factual and political context to create this troubling political figure.² The report was framed as an attempt to diagnose the social, economic, and cultural conditions that produce a disproportionately large number of black, single, female heads-of-household with children, as compared to other racial groups. Because many black families deviated from the cultural norm of the male head-of-household or breadwinner, Moynihan argued that these families were destined to be long-term dependents on state assistance programs.³ As time has progressed, evidence has made it clear that economic conditions, rather than culture, powered the rise of single, female heads-of-household in the United States. The welfare queen construct, however, inflicted a great deal of social and political damage before these realities were understood.⁴ On

1 DANIEL P. MOYNIHAN, U.S. DEP'T OF LABOR, OFFICE OF POLICY PLANNING & RESEARCH, *THE NEGRO FAMILY: THE CASE FOR NATIONAL ACTION* (1965). The Moynihan Report argued that slavery had fundamentally distorted gender roles and the traditional nuclear family structure in the African American community, resulting in a growing community of economically vulnerable matriarchal homes dependent on government assistance.

2 ANGE-MARIE HANCOCK, *THE POLITICS OF DISGUST: THE PUBLIC IDENTITY OF THE WELFARE QUEEN* 56 (2004). While Moynihan discussed the emergence of what he called the black matriarch, or the African American female head-of-household, this figure was further pathologized in subsequent policy discussions and emerged as "the welfare queen." See also Ann Cammett, *Deadbeat Dads and Welfare Queens: How Metaphor Shapes Poverty Law*, 34 B.C. J.L. & SOC. JUST. 233, 255-56 (2014). The welfare queen was a poor single mother with multiple children and dependent on the state for financial support. These women, it was argued, gave rise to multi-generational poverty as they gave birth to children that ultimately, as adults, become dependent on state assistance programs.

3 For further discussion and critique of the report's claims regarding the "tangle of pathology" in black communities, see Cammett, *supra* note 2, at 239. Scholars in subsequent years have argued that the report made the fatal error of assuming the growth of black female households was due to cultural forces, rather than economic ones. As market problems such as chronic underemployment and unemployment began to affect other economic groups, the proportion of single female heads-of-household in other racial groups grew as well. See generally Frank F. Furstenberg, *If Moynihan Had Only Known: Race, Class, and Family Change in the Late Twentieth Century*, *The Moynihan Report Revisited: Lessons and Reflections After Four Decades*, 621 ANNALS AM. ACAD. POL. & SOC. SCI. 94 (2009) (arguing that the Moynihan Report's focus on race caused researchers to misanalyse the crisis and improperly minimize the impact large scale job market changes had on the ability of American families to form traditional nuclear family units).

4 See Angela McNair Turner, *The Elephant in the Hearing Room: Colorblindness in Section 8 Voucher Termination Hearings*, 13 BERKLEY J. AFR.-AM. L. & POL'Y 45, 54 (2011) (arguing that the welfare queen stereotype leads many to turn a blind eye to the unique harms suffered by black women who participate in Section 8 housing programs).

April 24, 2015, PRISM: The Initiative for the Study of Race, Gender, Sexuality and the Law, convened twenty-five anti-poverty, critical race theory, and feminist legal theory scholars to take stock of the effects of the welfare queen construct and the cultural anxieties surrounding this figure.⁵ The symposium, *Reframing the Welfare Queen: Feminist and Critical Race Theory Alternatives to Existing Poverty Discourse*, invited participants to examine the welfare queen construct's origins and prior mobilizations, to map its contemporary iterations, and to examine its broader social effects. The attendees' ambitions, however, were far greater: we sought to move anti-poverty conversations forward by "reframing the welfare queen."⁶ This reframing process called on us as scholars to use this discursive construct as an opportunity to uncover and explore the state's anxieties about family dependency,⁷ privacy,⁸ work,⁹ and reproductive freedom.¹⁰

5 PRISM is a project housed at the University of Southern California Gould School of Law that was launched in the Spring of 2015 by Camille Gear Rich. The *Reframing the Welfare Queen* symposium was PRISM's first major initiative.

6 The term discourse studies or discursive analysis refers to an approach that examines language constructs to determine the way these constructs shape social reality, frame social relations, and sometimes make it difficult to articulate ideas outside of the existing framework for understanding social relations. See Shawn Cassiman, *Resisting the Neo-liberal Poverty Discourse: On Constructing Deadbeat Dads and Welfare Queens*, 2 SOC. COMPASS 1690, 1693 (2008) (explaining that "discursive analyses focus on how 'words frame/shape/create our world-views, our values, and ourselves'"). Discursive constructs are intended to function in ways that make certain ideas and understandings seem impossible and others seem extremely seductive and strongly plausible. *Id.* at 1690–1700 (noting that welfare discourse combines racism and misogyny in ways that facilitate widespread resentment of anti-poverty initiatives).

7 Numerous scholars have commented on the ways that state welfare programs impose norms about family structure and stymie our ability to address issues of financial need and dependency that require departure from the status quo. See, e.g., Laura T. Kessler, *Community Parenting*, 24 WASH. U. J.L. & POL'Y 47, 50 (2007) (arguing that increasingly families do not match the two parent two caregiver model and law must be attentive to changing family structure); Robin Lenhardt, *Marriage as Black Citizenship*, 66 HASTINGS L.J. 1317 (2015) (arguing that the marriage norm promoted in the Moynihan report has often functioned as a basis for subordinating black families that create loving relationships outside of this framework); Melissa Murray, *The Networked Family: Reframing the Legal Understanding of Caregiving and Caregivers*, 94 VA. L. REV. 385 (2008) (arguing that state support programs premised on a nuclear family model fail to adequately capture the caregiving arrangements that sustain many poor and working class families).

8 Several scholars have drawn attention to the ways in which government public assistance programs require recipients to cede certain privacy rights in exchange for benefits. See, e.g., Michele E. Gilman, *Welfare, Privacy, and Feminism*, 39 U. BALT. L.F. 1, 25 (2008) (describing how current welfare regulations invade the informational, physical, and decisional privacy rights of welfare others); Hayes Holderness, *Taxing Privacy*, 21 GEO. J. POVERTY L. & POL'Y 1, 25–33 (2013) (examining how public assistance recipients suffer harmful infringements upon their privacy rights).

9 Several scholars have explored the way in which welfare work requirements or "workfare" impose onerous and questionable demands on welfare recipients—demands that may actually compromise their ability to find long-term employment that pays a living wage. See Noah Zatz, *Welfare to What?*, 57 HASTINGS L.J. 1131 (2006) (problematizing the various definitions of "work" that meet the workfare obligations of welfare); Kerry C. Woodward, *Beyond "Work First": An Empowering Approach to Welfare Programs* (2009) (unpublished Ph.D. dissertation, University of California, Berkeley) (on file with the Repository of the University of California) (discussing ways in which many welfare programs push women into the first available job rather than ensuring that they enter the workforce in positions that provide the skills and resources that permit long term labor force participation).

10 Typically, reproductive freedom is represented in feminist research as primarily about the constitutional right to birth control and abortion. Dorothy E. Roberts, *Racism and Patriarchy in the Meaning of Motherhood*, 1 AM. U. J. GENDER & SOC. POL'Y & L. 1, 32–33 (1993) (arguing that the focus on the right to birth control and abortion neglects the broader issue that poor women of color are

Definitions and descriptions of the welfare queen vary,¹¹ particularly at an era in which the welfare queen construct is deployed in an assortment of different contexts to vilify a variety of different figures.¹² Introduced in the 1980s by Ronald Reagan in a campaign speech, the original welfare queen was the criminal mastermind, alleged baby thief, and accused murderer Linda Taylor who, when she was not committing major crimes, committed welfare fraud by collecting public assistance checks under multiple names in various states.¹³ But the welfare queen construct that ultimately emerged placed less emphasis on technical fraud and more emphasis on the welfare queen's alleged sense of entitlement and irrepressible procreative instincts. Specifically, the welfare queen archetype is typically represented as a woman whose irresponsible choice to have children out of wedlock has caused her to turn to the state for financial support.¹⁴ Fiscally and sexually irresponsible, she is a threat to social order precisely because she rejects the importance of the nuclear family as a bedrock social institution.¹⁵ The welfare queen is also represented as indolent, as she finds ways to indefinitely extend her right to demand support from the state and to maximize the dollars the state confers. She is an immediate threat because she imposes a financial burden on the state to support her children.¹⁶ She is also seen as a future threat because she fails to transmit the values of

often reliant on the state for access to these rights, allowing the state to interfere with reproductive decisions). The lives of welfare recipients, however, reveal that the state seeks to interfere in reproductive freedom choices in multiple other ways that largely go undiscussed in feminist literature. For excellent treatment of some of these less-studied reproductive freedom questions, see Michelle Oberman, *Girls in the Master's House: Of Protection, Patriarchy and the Potential for Using the Master's Tools to Reconfigure Statutory Rape Law*, 50 DEPAUL L. REV. 799, 812–13 (2001) (describing the father reporting requirement women must face to qualify for public assistance and arguing that the requirement deters single mothers from seeking public assistance due to the fear that the father may be prosecuted under statutory rape law).

11 The standard description of the welfare queen is described by Catherine Albiston in her work. Catherine R. Albiston, *Welfare Queens and Other Fairy Tales: Welfare Reforms and Unconstitutional Reproductive Controls*, 38 HOW. L.J. 473, 486 (1995) ("The term 'welfare mother' brings to mind several key characteristics, all of which connect to stereotypes of women of color. First, a 'welfare mother' is presumed to be black. Second, she is by definition poor. Third, she is presumed to be single and under the age of eighteen. Finally, she is commonly portrayed as the mother of several children, all of whom were conceived out of wedlock because of the availability of generous welfare benefits."); see also Cammett, *supra* note 2, at 237 (discussing the standard description of the welfare queen as "poor black single mothers . . . deemed 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") (citing HANCOCK, *supra* note 2, at 25).

12 The term "welfare queen" is now often used to describe wealthy individuals or corporations that secure tax breaks and other benefits from the Government. For more discussion, see *infra* Part II. B.

13 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 (tracing the roots of the term "welfare queen" to a woman named Linda Taylor who was engaged in extensive welfare fraud).

14 See HANCOCK, *supra* note 2, at 25 ("The 'welfare queen' public identity, a contemporary moniker applied to welfare recipients, has two organizing dimensions: hyperfertility and laziness").

15 Albiston, *supra* note 11, at 475.

16 "The welfare queen embodies two stereotypes. On the one hand, she is a cunning, rational actor seeking to maximize government largesse for her benefit by having multiple children and refusing to work. On the other hand, she is a lazy, promiscuous woman 'robb[ing] the country of its moral and economic resources.'" See Michele E. Gilman, *The Return of the Welfare Queen*, 22 AM. U.J. GENDER SOC. POL'Y & L. 247, 254 (2014) (quoting STEPHANIE D. SEARS, IMAGINING BLACK WOMANHOOD 38 (2010)).

restraint, respect for law and order, and fiscal responsibility to her children.¹⁷ As a consequence, the welfare queen promises to birth both a new generation of welfare dependents that will look to the state for financial assistance and a new generation of criminals that must be incarcerated lest they inflict further social and financial damage.¹⁸

Numerous scholars, activists, and commentators have explored how the welfare queen construct is used to demonize poor women of color in need of state assistance.¹⁹ While their work has been critically important in opening a much-needed dialogue about the needs of the poor, this symposium was organized with the understanding that anti-poverty scholars should be urged to move beyond discussions that isolate poor minority female welfare recipients as a special category in need of special assistance. As political scientist Ange-Marie Hancock has observed, political conversations that make poor minority mothers a special category engage in a kind of divide and conquer strategy intended to isolate vulnerable communities and to encourage Americans to shame the vulnerable and dependent rather than recognize that the needs and struggles of the disempowered are often shared across different constituencies in the body politic.²⁰ Consistent with this view, Lanier Guiner and Gerald Torres have argued that vulnerable groups often act as “miner’s canaries”; their experiences warn about dangers that threaten Americans more generally.²¹ Symposium participants, therefore, considered how the challenges faced by welfare recipients might be relevant to understanding the challenges faced by mothers generally or variously by low-wage workers as a class.

The symposium discussions also focused on a meta-question I posed about the welfare queen, namely: “What can the welfare queen teach us about the state’s definition of ideal citizenship?” The *Reframing the*

17 Albiston, *supra* note 11, at 485 n.73; Nancy Fraser & Linda Gordon, *A Genealogy of Dependency: Tracing a Keyword of the U.S. Welfare State*, 19 SIGNS 309, 309 (1994) (discussing Clarence Thomas’s description of how the welfare system reinforces dependency values in the subsequent generations of children).

18 See Ann Cammett, *supra* note 2, at 255 (explaining how the Moynihan Report created the perception that “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.”).

19 See, e.g., Tonya L. Brito, *From Madonna to Proletariat: Constructing a New Ideology of Motherhood in Welfare Discourse*, 44 VILL. L. REV. 415 (1999); Franklin D. Gilliam Jr., *The “Welfare Queen” Experiment: How Viewers React to Images of African-American Mothers on Welfare*, 53 NIEMAN REPORTS, Summer 1999, at 49-53, <http://escholarship.org/uc/item/17m7r1rq> (explaining how media portrayals have created a narrative regarding the welfare queen that indicts all welfare mothers and how hostility increases when the welfare recipient is represented as black); Laurel P. West, *SOCCER MOMS, WELFARE QUEENS, WAITRESS MOMS, AND SUPER MOMS: MYTHS OF MOTHERHOOD IN STATE MEDIA COVERAGE OF CHILD CARE* (2002) (discussing how myths regarding ideal motherhood are circulated by mass media outlets, pitting figures such as the soccer mom against the welfare queen).

20 See, e.g., HANCOCK, *supra* note 2, at 40-41; see also Julilly Kohler-Hausmann, *“The Crime of Survival”: Fraud Prosecutions, Community Surveillance, and the Original “Welfare Queen,”* 41 J. SOC. HIST. 329, 330-31 (2007) (discussing the tendency in scholarship to separate welfare recipients from other members of the working poor).

21 LANI GUINIER & GERALD TORRES, *THE MINER’S CANARY: ENLISTING RACE, RESISTING POWER, TRANSFORMING DEMOCRACY* 11-12 (2002). Miner’s canary analysis posits that the problems of minority groups provide advance notice of larger structural and material problems that will ultimately threaten all Americans.

Welfare Queen symposium is the first step in a larger project I am undertaking, one that examines what stigmatized figures teach us about state norms for citizenship and, by extension, the state's efforts to pathologize and privatize vulnerability and dependency. Alternatively stated, the welfare queen illustrates what the state regards as the proper reciprocal give-and-take between an individual and the larger political body of which she is a member. The welfare queen construct, therefore, is not just a historically-situated discursive tool used to limit the political appeal and agency of certain populations. Rather, the construct embeds certain ideal citizenship norms that inherently limit conversations about anti-poverty programs. By making these citizenship norms visible, we can begin to systematically find ways for feminist legal theory and critical race theory to move past current discursive blocks in anti-poverty conversations.

In more concrete terms, the negative portrait drawn of mothers in need of state assistance over the past forty-five years gives us an opportunity to reflect on whether we believe the state has properly responded to the challenges posed by citizens' economic and social vulnerability. When we re-examine the so-called demands the welfare queen makes of the state, stripped of the caricature produced by conservative forces, we gain insight into an alternative model of obligation between the state and its citizens. We also gain insight regarding how obligation to the state might be understood and repaid by citizens that receive benefits.²² In short, when we reclaim the welfare queen and interrogate the hidden citizenship norms that make her a villanized figure, we learn a great deal about how these norms threaten to impose costs on all Americans, regardless of race, class, or gender.²³

By "reframing" and "reclaiming" the welfare queen construct, we have an opportunity to imagine new forms of governmental assistance that might better match up with the working poor's needs and experiences.²⁴ We have an opportunity to consider whether the scapegoating of this figure has created certain discursive roadblocks and cultural reluctance to pursue

22 Specifically, the organizing theme of the conference, to the extent it "reclaims the welfare queen," introduces what I hope will grow into a new area of inquiry in Critical Race Theory and advance a discursive analysis that turns a critical lens on constructs used to mask the state's anxieties about vulnerability and dependency. The specifics of this approach will be elaborated on in a subsequent publication that explores the role of "stigmatized figures" in political discourse.

23 For example, by reclaiming the welfare queen, we can more clearly see the challenges poor women face in negotiating the role of the ideal worker in a destabilized economy. We can more deeply consider what role the state might play in helping working mothers balance their caregiving responsibilities with work and economic responsibilities. We can consider whether the marriage norm, currently cast as a near-essential component of full citizenship, is a norm that still serves the economic interests of poor mothers. Finally, we can consider whether the norms we have in place about reproductive freedom, which stress abortion and birth control, rather than a right to subsistence for children, limits our conversation in critical ways.

24 One has evidence of the welfare queen construct's extraordinary discursive power when one considers how the construct makes relationships of support between poor individuals and the government inherently suspect. The construct encourages Americans to believe that poverty is caused by weak morals in poor families rather than the absence of quality jobs and childcare for poor women. As a consequence, voters are more inclined to support funding for parenting classes for poor mothers over college education or skills classes that might enable them to better compete in the job market.

certain feminist values and anti-poverty goals. Fear of the welfare queen prevents certain theoretical and political questions from being asked, questions regarding how we define the right to work, the right to mother,²⁵ and how we construct rights to liberty, dignity, and privacy.

With these questions in mind, Part II explores the different arguments produced by reframing and reclaiming the welfare queen. Section A explores scholarship that reframes this figure, identifying contemporary iterations of the welfare queen construct and charting their effects. With this background in place, Section A challenges the notion that the welfare queen construct no longer influences contemporary politics or the construction of citizens' identities. The discussion explores the key ways in which the welfare queen construct continues to discipline welfare recipients, low-wage workers, and the general American public as we work through understandings of individual dependency, private obligations, and the appropriate role, if any, of state assistance to manage family needs. Section A also explores the way the discourse of the welfare queen racializes and feminizes need and dependency in the modern state. It shows how the racialization of poverty serves to both isolate poor minorities as a dysfunctional class, and relatedly, discipline whites currently facing financial challenges to feel deeply uncomfortable about requesting state assistance. It further shows how the welfare queen's feminization of poverty, along with the motherhood norm in other social services programs, reinstantiates the cultural norm that women should marry to ensure financial stability for their families. Simultaneously, this feminization renders invisible scores of underemployed and unemployed men who, in the absence of "mothering" duties, would appear to have no valid basis for requesting state assistance.²⁶ These insights are critical in understanding the costs the welfare queen construct has for constituencies other than the low-income minority mothers stigmatized and subordinated by the construct for the past thirty-five years.

Part II, Section B, further describes what it means to "reclaim" the welfare queen. The discussion attempts to uncover what the welfare queen construct teaches us about the state's anxieties about dependency and the state's construct of the ideal citizen. This Section demonstrates that key citizenship norms, including baseline rights and interests can be redefined in a productive manner if we examine the alleged "demands" made by the welfare queen as a way of challenging our thinking about the state's proper

25 See, e.g., Angela Davis, *Racism, Birth Control and Reproductive Rights*, in *FEMINIST POSTCOLONIAL THEORY: A READER* 353, 355 (Reina Lewis & Sara Mills eds., 2003) (discussing specific views of poor women of color feminists as distinct from the core movement because they wanted abortion rights not just for autonomy reasons, but because conditions of poverty prevented them from providing for their children).

26 Indeed, the welfare queen has consequences for both poor women and poor men. For example, it naturalizes the idea that financial vulnerability or financial need stems from motherhood, and therefore suggests that government support programs typically will be targeted to women with children. As a result of this construct, most Americans typically fail to consider whether the government validly might want to offer financial support to single, childless, underemployed men. Yet, this group might also have valid reasons for seeking financial assistance in a post-industrial economy.

role in ensuring individual liberty, privacy, dignity, as well as the state's proper response to citizens' financial and social vulnerability. Part III explores the conference discussions in more detail, tracing out the various reclaiming and reframing questions scholars posed over the course of the two-day symposium. The video feed of the conference is also available online.²⁷ This written summary ties together the presentation themes to facilitate scholars' future investigations and discussions.

II. REFRAMING AND RECLAIMING THE WELFARE QUEEN

A. HISTORICAL RELIC OR CURRENT REALITY? UNDERSTANDING THE ROLE OF THE WELFARE QUEEN

When I initially suggested holding a symposium on the discursive power of the welfare queen, the idea was met with a certain skepticism; some scholars believed that the construct had ceased to play an important role in American political conversations. This view was understandable. The 1980s and the 1990s were replete with references to the welfare queen, but once conservatives like Newt Gingrich had cobbled together enough centrist support and political will to kill traditional welfare—Aid to Families with Dependent Children (“AFDC”) programs and their state equivalents—discussions of the welfare queen seemingly faded away for many Americans.²⁸ What arose in place of the former AFDC programs were today's federal Temporary Assistance to Needy Families (“TANF”) block grants.²⁹ Under these grants, states created anti-poverty programs with severe restrictions intended to prevent poor mothers from using public assistance for extended periods of time.

On close view, many of the features of contemporary state TANF programs seem to be a direct response to the imagined threats posed by the welfare queen. Under federal TANF guidelines, states are prohibited from granting welfare recipients benefits for more than two years,³⁰ and there is

27 A conference schedule, list of speakers, and panel videos are available at *Reframing the Welfare Queen: Feminist and CRT Alternatives to Existing Poverty Discourse*, USC GOULD SCHOOL OF LAW (Apr. 23-24, 2015), <http://weblaw.usc.edu/who/faculty/conferences/welfare-queen-conference>.

28 Some scholars argue that welfare queen rhetoric has lost its force in the wake of the recession because almost 50 percent of American households receive some form of government benefit; see, e.g., John Blake, *Return of the “Welfare Queen”*, CNN (Jan. 23, 2012, 5:32 PM), <http://www.cnn.com/2012/01/23/politics/welfare-queen>. Others suggest that the welfare queen concept “died” when President Clinton and a Republican-controlled Congress ended the Aid to Families with Dependent Children program in 1996. *Id.* Newt Gingrich, however, made social welfare program cuts the focus of his presidential campaign, opening his campaign with a speech in which he called President Obama “the most successful food stamp president in American history.” Phillip 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.

29 See Personal Responsibility and Work Opportunity Reconciliation Act (“PRWORA”) of 1996, Pub. L. No. 104-193 (codified as amended in scattered subsections of 42 U.S.C. § 1305 (1996)). TANF is the means-tested cash assistance program that replaced welfare or AFDC under PRWORA.

30 See H.R. 4605, 103d Cong. (2d Sess. 1994) (amending Title IV-A of the Social Security Act to limit most households to twenty-four months of AFDC benefits).

a lifetime, five-year cap on receipt of benefits. Also, states can more easily terminate financial assistance to recipients. Some federal block grant provisions even reward states for finding ways to shrink the number of families on the welfare rolls.³¹ State TANF programs also can impose family caps that prevent TANF recipients from receiving an increase in aid when they have additional children.³² The most vaunted and potentially significant change, one clearly linked to the welfare queen construct, is the standard work requirement imposed on adult TANF recipients.³³ Recipients cannot draw aid after their children have reached a certain age unless they participate in a work program or some vocational or educational training designed to deliver them into the workforce fairly rapidly.³⁴ Experts rightly argue that the welfare queen was the primary reason for this shift in government focus, as conservatives suggested that the welfare queen would not have existed but for the United States' allegedly generous, open-ended support programs for families in poverty.

No one can deny the welfare queen's incredible political salience in the 1980s and 1990s, but this early period of deployment only documents the story of the welfare queen in part. The welfare queen construct is still used today to punish poor African American mothers who were initially its targets. The only difference today is these mothers are more quickly thrust into the pool of the working poor; they receive extremely short-term welfare benefits; and, further, they are subject to an array of humiliating symbolic restrictions during the period they receive cash support. Indeed, in the same month that the *Reframing the Welfare Queen* symposium was held, government officials in several states issued restrictions on welfare benefits that prevented poor mothers from purchasing cruises, theme park tickets, tattoos, nail salon services, and other non-essentials.³⁵ These restrictions seem particularly ironic given that the standard welfare allotment is barely sufficient to support a family's basic food and housing requirements in most jurisdictions. The restrictions are even more ironic given that there is no evidence that substantial state or federal dollars were

31 See Barbara Vobejda, *States to Get \$1 Billion Bonus for Welfare Reform*, WASH. POST (Feb. 17, 1998), <http://www.washingtonpost.com/archive/politics/1998/02/17/states-to-get-1-billion-bonus-for-welfare-reform/117abe80-d227-4f87-bf33-0d1d559a00b3> ("The Clinton administration has decided to distribute \$1 billion in federal bonuses to states that are most successful in moving welfare recipients into jobs and keeping them there.").

32 Carole M. Hirsch, *When the War on Poverty Became the War on Poor, Pregnant Women: Political Rhetoric, the Unconstitutional Conditions Doctrine, and the Family Cap Restrictions*, 8 WM. & MARY J. WOMEN & L. 335, 345 (2002).

33 See Margie K. Shields & Richard E. Behrman, *Children and Welfare Reform: Analysis and Recommendations*, 12 FUTURE CHILD. 6 (2002), <http://files.eric.ed.gov/fulltext/ED464168.pdf>.

34 *Id.* at 9 ("[S]tates are encouraged to require single parents on welfare to seek work when they have a child as young as one year old, and can require single parents of even younger children to participate in welfare-to-work programs. As a result, sixteen states now have work requirements for single parents with children under age one. In eleven states, parents with children as young as twelve weeks old are required to participate in work activities").

35 See KANSAS DEPARTMENT OF CHILDREN AND FAMILIES, TEMPORARY ASSISTANCE FOR NEEDY FAMILIES STATE PLAN 14 (effective 2014, amended 2015), <http://content.dcf.ks.gov/ees/KansasTANFStatePlan.pdf> (listing prohibited purchases that include fortune tellers, dog parks, and sporting events).

going to non-essential items.³⁶ Instead, these TANF reform initiatives were being used as tools in support of the "symbolic state," a disciplinary regime under which individuals that rely on the government for cash support are required to conform to particular family norms.³⁷ Indeed, the state often uses these social welfare programs as an opportunity to promote a normative understanding of family life and punish those who violate these strictures. Politicians propose symbolic welfare restrictions to remind TANF recipients of their abject, regulated status, even when there is no evidence of wrongful behavior. They also know that these "symbolic" restrictions serve as a panacea or safety valve for the frustration of the working poor who do not receive welfare benefits. Poor workers often cannot afford material luxuries, and they enjoy some solace when they have public confirmation that welfare recipients are also required to endure the same kind of deprivation.

Moreover, discursive scholars know that, even in contexts where the welfare queen construct is no longer explicitly invoked, the construct still has broad regulatory power. Cultural and political symbols often fade into the background once a substantive victory is achieved; however, these symbols continue to structure conversations even when they are no longer explicitly invoked because they naturalize certain assumptions that remain central in political debates. As Antonio Gramsci explains, hegemony is reached when a construct achieves such central cultural or discursive significance that both supporters and opponents feel they must engage with the construct or risk being rendered culturally unintelligible.³⁸ But the welfare queen has achieved "advanced hegemonic status," to coin a term. Specifically, the welfare queen has become so firmly a part of the American cultural landscape that she is no longer a clear cultural referent for some portion of the American public (born after welfare reform); however, the citizenship norms she imposes structure conversations in key ways. To be clear, a political construct can achieve a fully transparent hegemonic status when the anxieties and fears associated with the construct are so firmly entrenched, so embedded, that parties structure everyday conversations, political arguments, and government programs in ways that hew to the

36 See Gilman, *supra* note 16, at 268 (noting that TANF financial allotments provide a family of three with income below 50% of the federal poverty line and in many jurisdictions the allotment is only 30% of the income necessary to reach the federal poverty line). Ben Rooney, *Kansas Signs Sweeping Welfare Crackdown*, CNN Money (April 16, 2015, 1:31 PM), <http://money.cnn.com/2015/04/16/news/kansas-welfare-limits/> (discussing Kansas restrictions and noting that there is little evidence of this kind of misuse. Rooney also notes that a 2013 federal report indicates that less than 1% of welfare dollars were spent in casinos, strip clubs, or liquor stores).

37 This construct, the "symbolic state," which posits that persons dependent on government assistance are often subject to restrictions and penalties that allow the state to express its normative view about the ideal structure for intimate relations and families, will be explored in more detail in a future co-authored piece with Professor Melissa Murray.

38 Mike Donaldson, *What is Hegemonic Masculinity?*, 22 THEORY & SOC'Y (SPECIAL ISSUE: MASCULINITIES) 643, 645 (1993) (summarizing Gramsci's concept of hegemony).

implicit citizenship norms imposed by the construct without ever explicitly mentioning the construct at all.³⁹

The welfare queen construct is even more powerful now than it was in the 1990s, precisely because we are no longer even aware when anxieties associated with the construct are being triggered. However, we know that the welfare queen construct still profoundly shapes political conversation because it is virtually impossible to imagine any kind of long term state-sponsored anti-poverty program, or to imagine an anti-poverty program that does not require able-bodied persons to engage in paid employment. Instead we formulate government programs to disrupt the culture of poverty, a not so veiled reference to the alleged cultural norms in welfare families that discourage a proper work ethic. Even dialogue among progressive scholars and anti-poverty activists in the United States has fallen victim to the invidious, invisible influence of the welfare queen construct. Most of the contemporary anti-poverty scholarship in legal literature focuses on contemporary programs (instead of imagining wholly new alternatives), and these contemporary programs are premised on converting the poor into gainfully-employed low-wage workers. Because of this focus, anti-poverty scholars and activists advocate for various living wage proposals. Such discussion concentrates on raising the minimum wage or increasing the Earned Income Tax Credit. Again, the understanding firmly naturalized at this point is that the best way to help the poor is to *reward the working poor*.⁴⁰ This focus on rewarding the working poor discounts the possibility that it might be better for poor mothers to stay at home with their children and not participate in wage labor.⁴¹ This focus obscures the fact that many of the income supports for the working poor actually function as cash transfers to corporations to allow them to hire people for salaries that do not produce a living wage or health care benefits, with the understanding that government will fill the gap and provide these necessities.⁴² No one needs to invoke the welfare queen. Rather, the anxieties associated with the construct prevent anyone from suggesting that paying poor mothers to stay home with their children is a realistic or

³⁹ *Id.*

⁴⁰ See Leslie Book, *Preventing the Hybrid from Backfiring: Delivery of Benefits to the Working Poor Through the Tax System*, 2006 WIS. L. REV. 1103, 1104–05 (2006). Along with the Child Care Tax Credit, the EITC lifted 9.4 million people above the poverty threshold in 2011. *Id.*; see Ruby Mendenhall et al., *The Role of Earned Income Tax Credit in the Budgets of Low-Income Households*, 86 SOC. SERV. REV. 367, 371 (2012).

⁴¹ See Dorothy E. Roberts, *The Value of Black Mothers' Work*, 26 CONN. L. REV. 871, 871–74 (1994) (“The logic that propelled maternalist welfare policy was precisely the opposite of that backing workfare: widowed mothers needed government aid so that they would not have to relinquish their maternal duties in the home in order to join the work force.”).

⁴² See Susan Berfield, *Fast-Food Wages Come with a \$7 Billion Side of Public Assistance*, BLOOMBERG BUSINESSWEEK (Oct. 15, 2013), <http://www.bloomberg.com/bw/articles/2013-10-15/mcdonalds-low-wages-come-with-a-7-billion-side-of-welfare> (explaining that public benefits usage is the rule not the exception with low-wage fast-food employees). See also Bill Quigley, *Ten Examples of Welfare for Corporations and the Ultra-Rich*, MOYERS & CO. (Jan. 16, 2014), <http://billmoyers.com/2014/01/16/ten-examples-of-welfare-for-corporations-and-the-ultra-rich/> (citing studies and alleging that the federal government provides \$243 billion each year to subsidize public benefits for workers employed at fast food restaurants because these workers' wages are insufficient to function as a living wage).

positive goal.⁴³ One would think that feminists, given their historic interest in recognizing the value of stay-at-home mothers' labor, would have remained strong supporters of mothers committed to remaining in the domestic sphere; instead, there was little opposition to TANF restrictions. This result is a testament to the power of the welfare queen construct and evidence of its legacy.

Moreover, one could argue that the welfare queen construct is far stronger today than it was in the late 1980s and early 1990s, as the welfare queen is now powerful enough to be deployed in multiple directions. She is used by advocates on the Right and the Left to target groups other than poor African American mothers. Specifically, the Right has used the welfare queen construct to demonize poor and newly immigrated Asian and Latino mothers who allegedly have "anchor babies." They argue that these "anchor babies" drain state resources by giving mothers a foothold on citizenship or residency status in the United States where these mothers can unfairly draw on state resources.⁴⁴ Concerns about immigrant fertility and reproductive decisions are faulted for the huge number of students that now must be served by financially strapped public schools.⁴⁵ The essential components of the welfare queen appear in these debates, as immigrant mothers are described as overly fertile, overly sexual tricksters who have children in a desperate attempt to access state handouts.

Additionally, moderates, libertarians, and even progressives now use the welfare queen construct to vilify powerful financial institutions that receive state support. Investment banks, after the federal bailout, were accused of being "welfare queens."⁴⁶ Mega-farms that receive government farm subsidies are charged with stealing money from the taxpayers with

43 Cf. Lucie E. White, *On the "Consensus" to End Welfare: Where Are the Women's Voices?*, 26 CONN. L. REV. 843, 851 (1994) (describing other ways that welfare reform conversations are inherently underinclusive and limited because they do not address issues like comparable worth, childcare, maternity leave, and sexism in the workplace).

44 See generally KATRINA BLOCH & TIFFANY TAYLOR, *Welfare Queens and Anchor Babies: A Comparative Study of Stigmatized Mothers in the United States*, in *MOTHERING IN THE AGE OF NEOLIBERALISM* (Melinda Vandenbeld Giles ed., 2014).

45 NATIONAL CENTER FOR PUBLIC POLICY RESEARCH, INFLUX OF ILLEGAL IMMIGRANT CHILDREN LIKELY TO STRAIN PUBLIC SCHOOLS, http://www.nationalcenter.org/P21PR-Immigration_Public_Schools_081814.html (Advocates in the report argue that poor black mothers are criminalized for trying to access quality public schools when they do not live in a particular district, whereas immigrant mothers are allowed to strategically target the US to gain access to educational resources). See also FEDERATION FOR AMERICAN IMMIGRATION REFORM, *THE COST OF ILLEGAL IMMIGRANTS TO CALIFORNIANS I*, http://www.fairus.org/site/DocServer/ca_costs.pdf, (estimating that illegal immigrant children and their US born siblings represent nearly 15 percent of K-12 public school students in California).

46 Justin Rosario, *Wall St. Under Intense Investigation And Millionaire Welfare Queen Whines He's 'Under Assault'* ADDICTING INFO (Jan. 15, 2015, 2:11 PM) <http://www.addictinginfo.org/2015/01/15/wall-st-under-intense-investigation-and-millionaire-welfare-queen-whines-hes-under-assault/> (charging JP Morgan executive with being a welfare queen). Cf. James W. Harris, *America's Real Welfare Queens: Fortune 100 Companies*, ADVOCATES FOR SELF-GOVERNMENT: LIBERATOR ONLINE (Sept. 3, 2014), <https://www.theadvocates.org/americas-real-welfare-queens-fortune-100-companies/> (arguing that major corporations whose franchises secure low-interest loans from the Small Business Association should be regarded as welfare queens).

their tricks and stratagems⁴⁷—true welfare queens. A recent newspaper article asked, “Are Asian Chemical Companies the New Welfare Queens?”⁴⁸ The deployment of the welfare queen construct by parties across the political spectrum demonstrates that the construct is so powerful, so universally understood, that it can be used as a cultural shorthand to immediately pathologize any relationship of support or exchange between the state and a citizen or corporation. Arguments about the growth of the current “Entitlement Society,” a discursive construct used to pathologize claims for state support or assistance by working and middle class whites, make the hydra-headed power of the welfare queen construct clear. We know that, regardless of race or class, anyone today who makes a demand of support on the state can be labeled a welfare queen.⁴⁹

Progressives perhaps require the most justification to explain their use of the “welfare queen” epithet, as it is a highly costly form of intervention in political conversations. Progressives that charge powerful, exploitative, and opportunistic businesses with being “welfare queens,” only further entrench the cultural salience of a construct, which ultimately works to the detriment of progressive causes. If all government programs that amount to cash transfers to the wealthy or middle class constitute “welfare queen” handouts, we only strengthen the basic norm that the state should not provide support to any party. Progressives must consider the larger ideological costs of this kind of representation. Now that most family assistance programs have been dismantled, some space needs to be created for understanding relationships of support between the state and its citizens, without the dependent party feeling villanized for her request for assistance. When we use the welfare queen construct to target and marginalize other constituencies, we further confirm that dependency and vulnerability are properly regarded as private concerns beyond the state’s interest or purview.

As Part II, Section A shows, the welfare queen is neither dead nor forgotten. There is still plenty of work to be done in examining current and past iterations of the welfare queen and the ways in which she disciplines and limits contemporary political conversation. Policies are still passed to prevent TANF recipients from becoming “welfare queens” who take advantage of the state. Moreover, anyone who suggests he or she might be “entitled” to some government assistance in overcoming financial

47 Doc Durango, *Farmer Welfare Queens*, DAILY KOS (June 24, 2014, 1:58 PM), <http://www.dailykos.com/story/2010/6/24/879057/-;> Steven Moore, *Corporate Welfare Queens*, NATIONAL REVIEW (Mar. 27, 2014, 4:00 AM), <http://www.nationalreview.com/article/374321/corporate-welfare-queens-stephen-moore> (describing farm subsidies to ADM as welfare payments).

48 R.P. Siegel, *Are Asian Chemical Companies the New Welfare Queens?*, TRIPLE PUNDIT (Sept. 3, 2010), <http://www.triplepundit.com/2010/09/are-chemical-companies-the-new-welfare-queens>.

49 Joseph P. Rose, *The New Racism in the Media: A Discourse Analysis of Newspaper Commentary on Race, Presidential Politics, and Welfare Reform* 11, 17 (Aug. 12, 2014) (unpublished masters thesis, Georgia State University), http://scholarworks.gsu.edu/sociology_theses/51 (“The example in ‘America has Become an Entitlement Society’ is a clear reference to the welfare queen, a minority woman taking advantage of government benefits for personal gain”).

challenges runs the risk of being branded a welfare queen. The more descriptive accounts of the welfare queen in Part A naturally lead into the second set of normative “reclaiming” questions explored in the sections that follow. Section B introduces this reclaiming approach by directing our attention to ways the welfare queen construct encourages us to reinterpret and problematize the state’s orientation to basic rights such as liberty, privacy, and dignity. Section B further shows that reclaiming discussions, beyond their theoretical and philosophical value, can produce numerous productive policy suggestions. Welfare enforcement regulations teach us much about how the state regards the right to reproductive freedom of poor women and the centrality of wage labor in a poor citizen’s life. Additionally, these regulations make it clear that when citizens make claims beyond the basic minimum the state is prepared to willingly offer, these demands can and will be constructed as attempts at fraud and even criminal behavior.⁵⁰

B. CHARTING A WAY FORWARD: RECLAIMING THE WELFARE QUEEN

What would it mean to “reclaim” rather than “reframe” the welfare queen? How can we advance anti-poverty discourse by moving beyond discussions that merely reframe the interests of poor mothers and their families? A review of anti-poverty literature shows that most of the scholarly discussion on welfare reform of the past two decades has focused on reframing poor single minority mothers’ interests.⁵¹ Sociologists, political scientists, and legal scholars have repeatedly attempted to disrupt the caricature of poor mothers offered by the welfare queen construct and instead present descriptive and analytic accounts that allow others to understand that poor women and their families merely want basic necessities—quality jobs, healthcare, secure homes—and equal access to the American Dream.⁵²

While these reframing conversations have been critically important in strategizing how to best represent women in the post-welfare reform state, they inherently limit the scope of anti-poverty discourse. By contrast, conversations that “reclaim” the welfare queen compel the state to confront the normative model of citizenship it endorses by vilifying the welfare queen. For the welfare queen is depicted as a cultural pariah because of the allegedly irrational, irresponsible, and even avaricious demands she makes on the state without providing sufficient benefit in return. Yet politicians

50 Kohler-Hausmann, *supra* note 20, at 329 (discussing degradation ritual in which welfare recipients were issued orange prison jumpsuits and required to work at the side of the highway picking up trash for workfare benefits).

51 See generally, e.g., Ivy Kennelly, “That Single-Mother Element”: How White Employers Typify Black Women, 13 GEN. & SOC’Y 168, 179–82 (1999) (attempting to disrupt stereotypes associated with welfare queen discourse that makes poor black women seem like deficient workers); see generally Woodward, *supra* note 9 (attempting to disrupt understandings promoted by TANF programs that women should immediately be directed into jobs rather than exercising more discretion and receiving training); see also Rose, *supra* note 49, at 11; see also Kohler-Hausmann, *supra* note 20, at 330.

52 See generally sources cited *supra* note 51.

that have embraced the figure are not required to articulate precisely why the demands she makes, and the norms and understandings that govern her conduct, are inimical to responsible citizenship. Certainly, the most dramatic representations of the welfare queen do, indeed, make her an indefensible creature because she rejects all bonds of community and responsibility. However, other iterations make her simply a defiant figure that expects the state to help her with certain issues of “dependency,” which she assumes are part of her just due. By reclaiming the welfare queen, we have an opportunity to consider the claims the single poor mother makes on state resources and, further, ask why her requests for assistance are pathologized or rendered invisible in current anti-poverty conversations.

To make this contrast clear, consider the following example: a discussion that “reframes” the welfare queen challenges the claim that poor mothers on public assistance are lazy, and it does so by demonstrating that poor women are hard working and do want jobs. In these reframing discussions, anti-poverty advocates urge the state to adopt programs that will ease the burdens of poor women engaged in wage labor: comparable worth policies, maternity leave, and other workplace support programs.⁵³ The reframing discussion operates based on the assumption that once we build in social supports for poor mothers, they can achieve their true desire—to join the low-wage workforce. Importantly, these traditional “reframing” discussions do help poor mothers by correcting certain misrepresentations about their interests, industriousness, and skills. However, they also reinforce the notion that one must participate in the labor force in order to be considered a worthy and responsible citizen. In other reframing discussions, anti-poverty advocates argue that we should create job skills or educational programs that allow women to better compete in the labor market.⁵⁴ This approach still assumes that labor market participation is key, but the state also has an interest in forgoing the poor mother’s immediate participation to ensure that she gains sufficient skills to lift herself and her children out of poverty. Finally, some reframing discussions adopt a miner’s canary approach. These scholars argue that difficulties facing poor women workers in finding and maintaining employment are problems that all poor people, or all mothers face.⁵⁵ Poor women just experience these problems in an early or more aggressive form,

53 See generally sources cited *supra* note 51. See also Nancy A. Naples, GRASSROOTS WARRIORS: ACTIVIST MOTHERING, COMMUNITY WORK, AND THE WAR ON POVERTY 188 (1998) (discussing various policy analysts views that comparable worth, parental leave, and national health care would better equip poor workers to participate in the workforce). *Cf. id.* at 190–91 (noting that this focus on the world of paid work renders invisible the important home work women do to assist children, provide care to elderly family members, and support community programming and institutions). Naples notes that the policy focus on paid employment causes poor women to engage in triple duty as they are forced to function as workers, mothers, and community activists simultaneously. *Id.*

54 Naples, *supra* note 53, at 188–89.

55 White, *supra* note 43, at 853 (arguing that race has been mobilized to prevent working class and middle class women from recognizing their shared interest in improving workplace opportunities and conditions for poor women).

and therefore provide us with a basis for addressing these global problems. Again, however, even in a miner's canary analysis, the primary market-based assumption operates undisturbed: we learn that labor market participation is a key, even constitutive, element of citizenship.

Reclaiming the welfare queen requires a wholly different approach. Instead, one would directly challenge the relevant citizenship norm imposed by the welfare queen—in this case, the idea that the only persons worthy of support are working citizens. When we reclaim the welfare queen, we have the opportunity to consider that citizens might provide other sources of value to the state, either by providing care for others, by engaging in consumption that powers the economy, or even more paradigm-shifting, by providing value to the country by some non-economic or non-market measure. By reclaiming the welfare queen, we can ask why it is that the state would presume that society is best served by having poor women populate the low-wage work force instead of tending to their children.⁵⁶ Is it more socially beneficial to have a child's mother frying french fries at McDonald's rather than arranging enrichment activities for her child or serving in community organizations that strengthen or make her community safer?⁵⁷ Are we best served by requiring the poor mothers to work forty- or sixty-hour shifts at Home Depot to earn \$15,000 to support their children, or by allowing them to gain skills that would allow them to help their children with their homework, prepare meals, and otherwise provide a safe and stable home?

The second citizenship norm imposed by the welfare queen is the understanding that responsible mothers do not have children before they can afford them.⁵⁸ In neo-liberal welfare queen discourse, motherhood is transformed from a presumed choice or right, into a privilege, one only available to those financially able to support the children they produce in a manner the state deems acceptable.⁵⁹ Women's reproductive choices, therefore, are judged under the framework of personal responsibility, given their limited economic resources. The welfare queen construct and culture of poverty discourse ensures that poor women's reproductive capacity is seen as a problem. Yet this discursive framing fundamentally contradicts

56 Gilman, *supra* note 16, at 276. A bill was introduced to reflect this understanding as part of a challenge to Mitt Romney during the last presidential campaign regarding his claims that poor women needed to work outside of the home to earn respect. Ironically, his wife Ann Romney was a full-time homemaker while they raised their children. *Id.* (discussing Women's Option to Raise Kids Act, H.R. 4379, 112th Cong. (2nd Sess. 2012)).

57 Gilman, *supra* note 16, at 278 ("Currently, a minimum wage worker who is employed full-time for fifty-two weeks (meaning no sick leave or vacation) earns \$15,080 annually.").

58 Brito, *supra* note 19, at 415. As Tanya Brito explains, "The [TANF welfare] reforms connote an image of mother as a worker first—a reluctant worker, to be sure, but a worker nonetheless. The new welfare mother fulfills her societal obligations by providing for her children economically through her wages rather than emotionally through her caregiving."

59 This moral position has substantial implications for the poor who, because of tenuous economic circumstances, often have children before they are "sure" they can support them. See generally KATHRYN EDIN & MARIA J. KEFALAS, PROMISES I CAN KEEP: WHY POOR WOMEN PUT MOTHERHOOD BEFORE MARRIAGE (2005) (finding that the higher rate of out-of-wedlock births in lower socioeconomic status communities is due to a difference in values, *i.e.*, children are more important than marriage).

the tenets of the American dream because it presumes class stagnation: it posits that children born into poverty will remain in poverty, and therefore the poor should not reproduce.

By reclaiming the welfare queen, we have the opportunity to look at poor women's reproductive interests in a much different way, one that asks whether poor women's reproductive interests are in line with the state's needs. More importantly, we can ask the following: are we comfortable with a society that makes reproduction a "privilege" reserved by class, or is having a child an important part of self-realization that the state must respect and support in some fashion? With regard to the first question, there are reasons that the state might want to encourage young, and even poor young women, to have children. This statement is likely to be met with incredulity by skeptical readers. However, demographers are deeply concerned that the United States population is shrinking because of depressed birth rates (currently at 1.93), as young women are deciding to wait or not have children.⁶⁰ Population shrinkage has huge consequences for a country, as the most innovative and economically productive nations tend to be those with growing populations.⁶¹ Furthermore, a shrinking and aging population leads to critical resource problems, including an economy that is overinvested in healthcare.⁶² The evidence suggests that unless birth rates in the United States increase, we will suffer the same fate as Japan and other nations with low-birth-rate challenges.

Importantly, the dropping birth rate in the United States is largely driven by women's greater labor market participation; some policymakers recognize that contemporary workplace norms are largely incompatible with child-rearing. Policymakers also note that we would have already experienced the consequences of falling birth rates *but for the high birth rates of immigrants coming to this country*. Specifically, in recent years poor Latino immigrants arriving in the United States have tended to have larger numbers of children than established U.S. families, propping up the United States' flagging birth rate for more than a decade. Experts note, however, that recently arrived Latino immigrants are now having fewer children than expected, and the United States can no longer rely on this group to sustain the population. Experts have argued that the United States, similar to other countries, should consider policies that will encourage women to have more children. These policies would offer strong support, and even bonuses, for women who decide to become mothers.

60 Jonathan V. Last, *America's Baby Bust*, WALL ST. J. (Feb. 12, 2013), <http://www.wsj.com/articles/SB10001424127887323375204578270053387770718> ("Today, America's total fertility rate is 1.93, according to the latest figures from the Centers for Disease Control and Prevention; it hasn't been above the replacement rate in a sustained way since the early 1970s. The nation's falling fertility rate underlies many of our most difficult problems. Once a country's fertility rate falls consistently below replacement, its age profile begins to shift. You get more old people than young people. And eventually, as the bloated cohort of old people dies off, population begins to contract. This dual problem—a population that is disproportionately old and shrinking overall—has enormous economic, political, and cultural consequences.").

61 *Id.*

62 *Id.*

As one can see, reclaiming the welfare queen opens up novel solutions to concrete economic and political challenges.⁶³ Demographers are proposing that the United States create measures to encourage young women to have children as well as institute a living wage and child supportive government programming. These calls start to sound a lot like some of the affirmatively structured, family supportive social welfare programs under AFDC, rather than the punitive work first programs that punish fertility under TANF. Indeed, one could argue that our current problems with population growth are in part caused by the work-before-motherhood paradigm that informed the TANF welfare reform movement. The United States' persistent indictment of poor women for having children "before they are ready" or outside of marital unions has become a costly political and cultural indulgence that hurts us from a market perspective.⁶⁴ Reclaiming the welfare queen allows us to establish children in poor families as future caretakers and workers with their own independent rights to habitation and resources. The state has an interest in ensuring the health and safety of these children as the vast majority of them will end up in the laborforce, and they will assist in producing social wealth and be active members of their communities. However, this is only true if these children are treated by the state as citizens of value.⁶⁵

A third citizenship norm that is challenged by reclaiming the welfare queen is the understanding of the relationship between state support and privacy, specifically, the kinds of privacy concessions that the state should be able to demand in exchange for providing benefits. Welfare law scholars note that in many jurisdictions TANF recipients must be fingerprinted before they can receive benefits. This fingerprinting process is a form of subjection that, again, makes poverty itself into a status crime that requires the basic sacrifice of dignity and privacy. Allegations that fraud predominates in welfare programs seem weak justification for a fingerprinting regime that so deeply compromises privacy considerations. Certainly there is fraud in student loan programs. Would we advocate for fingerprinting student loan recipients? Would the same hold for farm

63 See James Jennings, *Welfare Reform and Neighborhoods: Race and Civic Participation*, 577 ANNALS AM. ACAD. POL. & SOC. SCI. 94, 100 (2001) (discussing other unintended consequences of welfare reform such as the racialization of poverty as facilitating welfare reform initiatives) (arguing welfare reform initiatives have weakened civic organizations in black and Latino neighborhoods because it encourages competition among entities to show that they are tracking individuals into work and because it increases their bureaucratic obligations).

64 One of the major reasons for declining fertility is delayed age of first conception. Andrew Cherlin et al., *The Effects of the Great Recession on Family Structure and Fertility*, 650 ANNALS AM. ACAD. POL. & SOC. SCI. 214-31 (2013) (discussing increased age of first conception). See Last, *supra* note 60 (citing the large economic investments parents are expected to make in their children as a deterrent to parents interested in having more children).

65 See generally GWENDOLYN MINK, *WELFARE'S END* (2002) (arguing that PRWRA circumscribes poor women's reproductive freedom, right to form families of their own choosing, and ability to care for their children; proposing that society and welfare regulations must place a value on caregiving work performed by poor single mothers); see also Maxine Eichner, *Dependency and the Liberal Polity: On Martha Fineman's "The Autonomy Myth"*, 93 CALIF. L. REV. 1285, 1286-87 (2005) (arguing that Fineman's view of state responsibility is better stated as society's obligation to protect its citizens and develop their capabilities).

worker subsidies or doctors that are involved in Medicaid reimbursement? Welfare's strong cultural association with African Americans allows for certain basic privacy compromises to be instituted with little complaint from the American public. However, once these privacy concessions are demanded for the right to participate in a government need-based program, a norm is instituted that allows the Government to demand the same or equivalent privacy compromises in other domains.

Paternity reporting requirements for TANF participation also troubles some family law scholars on privacy grounds. They argue that the child support obligations imposed on poor fathers end up being a basis for criminal prosecution (because fathers simply cannot meet these obligations) and because the mother is required to compromise a privacy interest that should be seen as a basic reproductive freedom.⁶⁶ Would we feel comfortable demanding these types of paternity disclosures in any other context: as a condition for participating in a federal headstart program (perhaps the father has income that would render the child ineligible or allow the state to seek compensation for the child's use of services); for vaccination programs; for enrollment in public schools? In the welfare benefits context, the privacy concessions mothers are asked to make often discourage women from seeking state assistance of any kind. While this may disincentivize poor women from participating, making welfare programs cheaper in the short term, the deprivations that the children in poor families experience as a consequence of foregoing welfare benefits are likely quite high, but cannot be fully known.

In summary, reframing discussions—which provides descriptive and analytical accounts of the damage caused by the welfare queen construct—challenges the basic citizenship norms the state imposes that cast poor women's vulnerabilities as a social problem. Symposium attendees addressed these concerns, providing incisive descriptive accounts of the current workings of the welfare queen construct and its destructive effects. Others conducted an archeological inquiry into the origins of the state's anxieties regarding the welfare queen, the citizenship norms the construct enforces, and ways in which we might think beyond this restrictive framework to imagine new relationships of community and exchange between the state and the citizens in its charge. Part III describes the symposium discussions in more detail.

66 Michele Goodwin, *Law's Limits: Regulating Statutory Rape Law*, 2013 Wis. L. Rev. 481, 500 (2013) (explaining that mothers on public assistance are required to surrender the name of the child's father in order to satisfy their children's basic dietary needs); See also Gwendolyn Mink, *The Lady and the Tramp (II): Feminist Welfare Politics, Poor Single Mothers and the Challenge of Welfare Justice*, 24 FEMINIST STUDIES 55-64 (1998) (more generally discussing intrusions on reproductive freedom of poor mothers on public assistance).

III. UNDERSTANDING THE WELFARE QUEEN: CONFERENCE PANELS AND DISCUSSIONS

A. THE DISCIPLINARY POWER OF THE WELFARE QUEEN

I had the privilege of moderating the opening plenary of the conference, *The Disciplinary Power of the Welfare Queen: Policy, Practice and Politics*. The panel featured two experts on the welfare queen. Our first presenter was law professor, sociologist, and critical race theorist, Dorothy Roberts, who is well known for her large corpus of work on race and the role the state plays in surveilling and subordinating poor families. Our second presenter was Ange-Marie Hancock, political scientist and author of a seminal book in critical race theory, *The Politics of Disgust: The Public Identity of the Welfare Queen*.⁶⁷ Professor Roberts and Professor Hancock explored the disciplinary power that the welfare queen has in political, social, and cultural conversations. The conversation focused on disciplinary practices, a Foucauldian approach, which requires scholars to reflect on the ways social constructs or ways of speaking about particular problems powerfully shape state institutional practices, the wording and positions available in political debates, as well as options for individual identity construction. The panel discussion illustrated how the welfare queen construct exerts power in all three domains.

Professor Roberts, responding to the original premises that gave birth to the conference, provided a contextual understanding of why the welfare queen is a threatening figure. The conference was organized based on the proposition that the welfare queen is perceived as an outlaw or rebel: she rejects the world of paid work; she assumes her care is the best care for her child,⁶⁸ she expresses agency regarding her sexuality; and she rejects marriage as a condition for childbearing. Professor Roberts provided essential context for understanding why these assertions are threatening, in particular explaining why black women's assertion of the right to reproductive freedom is perceived as defiant by state officials. She noted that the welfare queen arises at the intersection of two seemingly conflicting stereotypes used to discipline black women: the Jezebel, which posits that black women are defined by their unrestrained sexuality, and the Mammy stereotype, which suggests that black women should be available to white families to provide care. Historically, these stereotypes served concrete material interests. The myth of black women's unrestrained sexuality and reproductive capacities were commodified by the state as a way of producing resources in the form of slave children. The black mammy was the ideal for mothering care; however, this same mothering instinct was pathologized when black women wrested their mothering care

67 ANGE-MARIE HANCOCK, *THE POLITICS OF DISGUST: THE PUBLIC IDENTITY OF THE WELFARE QUEEN* (2004).

68 Ironically, although some states consider providing child-care for other TANF recipients as qualifying work activity, no state counts a parent's care of their own children as "work" for the purposes of TANF.

away from the control of white families and defiantly offered that care to her own children. With this historical and ideological backdrop, one sees precisely why the welfare queen is such an attractive target for state sanction and discipline and how American anxieties are negotiated by the public rebuke of this figure.

Professor Hancock explored another aspect of the disciplinary power of the welfare queen problem, explaining that the welfare queen functions as a "public identity," meaning it is used to politically isolate poor black women. She explained that the welfare queen has become a trigger for disgust in public debate, a response that forecloses opportunity for coalition across groups. Professor Hancock showed how the construct has been used by politicians to stigmatize and distance recipients of public assistance from other Americans for decades.⁶⁹ This public identity is so powerful, Professor Hancock explained, that most Americans fail to recognize when their interests dovetail with poor women and fail to organize with them around common rights concerns. As an example, Professor Hancock noted that many of the state's justifications for surveillance of poor welfare recipients should be a source of concern for civil libertarians; however, prior to her work in this area, libertarians had not recognized these connections. Professor Hancock argued that, by re-examining some of the relationships of subordination imposed through the welfare queen figure, we might address issues and concerns of interest to unexpected constituencies. In her view, this approach provides one of the most productive ways of improving poor minority women's lives and making Americans see past the welfare queen construct.

The conversations during the opening panel could not cover all of the ways in which the disciplinary power of the welfare queen expresses itself in society; therefore there are substantial opportunities for future work in this area. For example, the welfare queen plays a powerful role in constructing personal identity and disciplines groups that one might not expect to be touched by the figure. First, the welfare recipient herself is disciplined by the construct of the welfare queen. She has failed in the role of breadwinner and is forced to turn to the state for support. At the same time, her mothering is deemed potentially suspect and ineffective because she must participate in the world of paid labor. This tension makes welfare recipients feel suspect and undeserving, and tends to minimize welfare recipients' activism and demands for improvements in benefits. Additionally, welfare recipients' general anxiety about being perceived as engaged in fraud also stems from the welfare queen construct, and this anxiety shapes their experience of public assistance.⁷⁰ Even when poor

69 See HANCOCK, *supra* note 2, at 25; Ange-Marie Hancock, *Contemporary Welfare Reform and the Public Identity of the "Welfare Queen"*, 10 RACE, GENDER & CLASS 31, 36–38 (2003).

70 Gustafson also noted that these concerns about fraud shape the recipients' perceptions of their own actions. The limited cash payments made to TANF recipients often compel them to work in the informal economy to supplement their income. TANF recipients, however, seemed preoccupied in

women find jobs and become members of the working poor, fear of becoming a welfare queen and fear of being perceived as a drag on state resources can "discipline" minority women workers. Women are less likely to complain about poor job prospects and poor working conditions lest they be seen as attempting to freeload and ask for state support.

The welfare queen also shapes the mindset of other persons not normally thought to be linked to the construct. For example, unemployed working class white males might be seen as needing and deserving of some assistance in the destabilized job market produced by a postindustrial economy. The welfare queen construct helps prevent this group of men from seeing themselves as deserving or needing help. Because welfare has been racialized and feminized through the construct of the welfare queen,⁷¹ the idea of seeking welfare benefits will seem almost intolerable to many poor white men. Immigrant workers as well are disciplined by the welfare queen construct. These workers are conditioned to believe that they should distinguish themselves from "lazy" welfare recipients because these individuals are not grateful for low-wage jobs; they are told welfare recipients have a sense of entitlement that makes them marginal figures in American society. As a consequence immigrants are conditioned to work longer hours without support from social services and to tolerate poor working conditions, in order to avoid seeming entitled and ungrateful. In short, the welfare queen construct divides the poor community into the deserving and undeserving poor, encouraging those engaged in low-wage labor work to resent those that seemingly live off the tax dollars of others, rather than contributing to the economy. Yet this construction obscures the reality that welfare recipients move in and out of the low-wage workforce, and they experience the same economic dislocation as other low-wage workers. Moreover it distracts from the fact that TANF recipients are forced to labor for reduced wages or for free under workforce programs, a dynamic that further destabilizes the low-wage job market and would be expected to drive down wages.

B. POVERTY, PRIVACY, AND REPRODUCTIVE LIBERTY

The second day of the symposium featured four panels. The first panel, "Poverty, Privacy and Reproductive Liberty," examined what the welfare queen construct teaches us about reproductive freedom. Panelists began by challenging the prevailing approach to reproductive rights issues in the feminist literature, which tends to focus on the constitutional right of abortion. The welfare queen construct, however, fundamentally disrupts this understanding and centers the right to procreation as the central issue. Additionally, the construct raises the question of what kinds of privacy infringements should women be required to tolerate in order to have financial assistance from the state while raising their children. Panelists

these interviews with distinguishing their conduct from the conduct of imagined other welfare recipients that they argued were engaged in fraud.

⁷¹ See generally Davis, *supra* note 25.

explored the various subordinating and demeaning rituals poor women are often put through to exercise their reproductive rights. Michele Goodwin, for example, observed how, under TANF, statutory rape law became a supplementary welfare-related law enforcement tool. Underage girls—“future welfare queens”—were required to report their sexual partners if their partners were over the age of twenty-one, with the idea being that these men imposed financial costs on the state by impregnating poor young women. Consider, however, that incarceration for statutory rape compromises the father’s future earning prospects, as well as jeopardizing the father’s relationship with his partner and his child. Moreover, the disclosure requirement forces poor women to engage in a demeaning ritual that fails to respect their sexual privacy. Michele Gilman explored similar themes in her talk. She discussed the numerous privacy invasions welfare recipients suffer related to sexuality and procreation, including “Man in the House” rules (requiring welfare recipients to report cohabitation arrangements or financial support from male partners), as well as family caps and other devices that establish the state’s understanding that reproductive freedom is based on class and privacy deprivations are naturalized for poor women.⁷²

Religious studies scholar Sheila Briggs provided an alternative perspective on the disciplinary power of the Church, rather than the state, on poor women’s reproductive choices. She explored the ways in which black prosperity churches discipline poor working class mothers and mothers on public assistance by suggesting that one’s lack of economic resources is somehow related to not living a pious moral life, or not demonstrating full faith in one’s Heavenly Savior. Legal scholar Lisa Pruitt provided a new class gloss on the abortion debate. She showed how the constitutional right to abortion means little in a context in which courts uphold state law restrictions that place abortion clinics at great distance from poor communities. These geographical restrictions often result in poor women having to travel prohibitively long distances to access abortion clinics, which effectively places abortions out of reach. Many women cannot afford to travel or cannot afford to take time off of work to travel to a distant abortion provider and therefore, for class-based reasons, find abortion as an option impossible.

The panel discussions showed how engagement with the welfare queen construct naturalizes and fundamentally transforms the reproductive rights debate. When we understand the hardships visited on the welfare queen, we understand that the state is naturalizing the claim that one is only entitled to have children if one can “afford” them. Although this issue has not been a central part of the reproductive rights debate in feminist legal circles, the

72 Gilman, *supra* note 16, at 254 (noting that welfare recipients are treated as having the equivalent privacy rights as probationers) (citing *Sanchez v. Cnty. of San Diego*, 483 F.3d 965, 969 (9th Cir. 2007) (Pregerson, J., dissenting)); Michele Estrin Gilman, *Poverty and Communitarianism: Toward a Community-Based Welfare System*, 66 U. PITT. L. REV. 721, 746–47 (2005) (explaining the false premises of welfare reform); see Michele Estrin Gilman, *The Poverty Defense*, 47 U. RICH. L. REV. 495, 540–42 (2013).

right to reproductive freedom in the United States is class based. The right to reproductive freedom can only be fully exercised from a position of privilege. There is no true reproductive freedom when a woman trapped in poverty knows that she is geographically and economically isolated from the medical care that would allow her to make a meaningful choice about whether to have a child. There is no true reproductive freedom when the state can impose family caps that punish women for having children while receiving TANF benefits. There is no true reproductive freedom when the state can also, simultaneously remove children from a home for neglect when it deems the family too poor or economically marginal to support their children. Finally, there is no reproductive freedom when women are coerced into providing the names of their partners in order to access TANF benefits. The welfare queen challenges us to create an affirmative vision of state support for reproductive freedom that includes the right to have children and a state guarantee of subsistence for those children once they are born. The welfare queen challenges us to frame state assistance in a way that asks the state to create programs that support and inform women to make wise reproductive choices rather than penalizing them for their decisions.

C. WELFARE WORKFARE AND THE CRIMINALIZATION OF POVERTY

The second panel discussion moderated by Professor Clare Pastore featured a vigorous debate about the ways in which the welfare queen facilitates the convergence of discourses of criminality and poverty.⁷³ Ann Cammett offered attendees an opportunity to think about how the welfare queen archetype survives in an era when TANF has prevented women from relying long-term on public assistance programs. She revealed how the discourse of fraud, theft of services, and irresponsible fertility affects the treatment of low-wage female workers of color—women who ostensibly would have become welfare queens in a more permissive welfare state. Cammett's work shows that the welfare queen continues to be actualized and operationalized as a subject of derision and scorn in a neo-liberal era of personal responsibility, as poor women are absorbed into low-wage labor. Moreover, the failure to work, to support one's children, or care for them in a particular fashion, facilitates the emergence of abuse and neglect proceedings as means for criminalizing their conduct and making them subject to carceral procedures.

73 Kaaryn Gustafson, *The Criminalization of Poverty*, 99 J. CRIM. L. & CRIMINOLOGY 643, 644–647 (2009) (arguing that poverty and welfare has been criminalized via: 1) practices involving stigmatization, surveillance, and regulation; 2) assumptions of criminality among the poor; and 3) growing intersection between welfare and criminal justice system); Kaaryn Gustafson, *Degradation Ceremonies and the Criminalization of Low-Income Women*, 3 UCI L. REV. 101, 105, 108–110 (2013) (arguing that the current welfare regulations are mechanisms of shame and humiliation that require participation in “degradation ceremonies” to access benefits and in this way marginalize welfare mothers and reinforce existing stereotypes).

Noah Zatz presented attendees with an opportunity to consider how Workfare is part of a larger regime of non-wage labor being established in the United States in ways that exploit vulnerable populations. Workfare for mothers, work requirements for poor fathers in the form of child support enforcement judgments (also part of the welfare reform initiatives), and family court abuse and neglect proceedings against poor mothers for failure to support, all implicitly force poor people into de facto peonage arrangements. Moreover, these regimes forcing the poor to seek low-wage labor may be irrational in the face of current job market conditions; jobs may not be available for low-skill workers. Priscilla Ocen presented a piece called *Birthing Incarceration*, which demonstrated through police department informal correspondence, popular culture images, and norms in social welfare programs, the recurring assumption that poor mothers are giving birth to future criminals. Finally, Leticia Saucedo drew necessary connections between the discourse of “lawful residence” and the legal “right to work,” revealing these terms as the necessary outgrowth of the welfare queen logic now used to discipline immigrant workers. Immigrants are told low-wage work, performed in exploitative and sometimes dangerous conditions, should be understood as a valuable benefit—but one to which they are not legally entitled. They are represented to the American poor, in particular minority populations, as having a superior work ethic for valuing these jobs, in contrast to the welfare queen that must be compelled to accept them. The divide and conquer logic used to alienate different constituencies in the low-wage workforce from one another has been incredibly effective. While these connections between the welfare queen logic and the “right to work” logic used to discipline immigrant workers have not been clearly drawn in previous debates, Professor Saucedo revealed how both the major immigration work reform requirements and the welfare reform requirements were passed within months of each other in 1996, suggesting policymakers were preoccupied with both groups simultaneously.

During our lunchtime discussion with Professor Kaaryn Gustafson, we continued to explore the ways in which the discourses of criminality and poverty have become fused in public debate. Gustafson’s celebrated book, *Cheating Welfare: Public Assistance and the Criminalization of Poverty*, explores whether TANF recipients actually understand the welfare regulations and the penalties imposed for violating these rules, and whether TANF recipients regard the rules as establishing a fair moral paradigm.⁷⁴ Gustafson’s remarks drew to the surface the powerful way the discourse of criminality shapes TANF recipients’ lives. She showed how under current TANF restrictions the failure to report *de minimus* amounts of income from participation in the informal economy (i.e., earning money from babysitting) or even small amounts of assistance from family members can be charged as an intentional attempt to defraud the state. She noted,

74 See generally KAARYN S. GUSTAFSON, *CHEATING WELFARE: PUBLIC ASSISTANCE AND THE CRIMINALIZATION OF POVERTY* (2011).

however, that the small cash allotment available under TANF typically necessitated this kind of financial supplementation for a family to survive, leaving the most industrious and resourceful of the TANF recipients at greatest risk of being charged with a crime. Gustafson also noted that the refusal to supply the name of one's partner to facilitate child support enforcement was deemed duplicitous as well. Yet concerns about being perceived as a welfare queen, a fraud, or someone who is gaming the system haunted many recipients as they did not believe their behavior was dishonest or exploitative. Even more ironic, those that most strongly believed in the fairness of the system were, on average, those who were most likely to find ways to supplement their income.

D. THE SOCIAL CONSTRUCTION OF MOTHERHOOD

The third panel of the day, *The Welfare Queen and the Social Construction of Motherhood*, moderated by Professor Rhacel Parreñas, engaged participants in a discussion about the disciplinary power of motherhood constructs and the role of the welfare queen in the motherhood paradigm. Feminists have long been interested in the destructive power of certain motherhood constructs, as they typically promote an unattainable ideal that is then used to make women feel that their mothering care is deficient in some fashion.⁷⁵ As Dorothy Roberts explains, “[s]ociety’s construction of mother, its image of what constitutes a good mother or a bad mother, facilitates male control of all women.”⁷⁶ The treatment of poor women under the welfare queen construct reinforces the dichotomy of “good mother” and “bad mother” in ways that should concern feminist scholars greatly. Additionally, the welfare queen construct actualizes the double bind that all poor working mothers face: they are deemed deficient mothers if they fail to become ideal workers and discharge their breadwinner obligations.⁷⁷ Simultaneously, however, poor women are deemed deficient unless they prioritize their mothering obligations above all other considerations.⁷⁸ The result is a feeling of failure from attempting to discharge the obligations of two incompatible roles. This proposition deserves further discussion.

75 Adrien K. Wing & Laura Weselmann, *Transcending Traditional Notions of Mothering: The Need for Critical Race Feminist Praxis*, 3 J. GENDER, RACE & JUST. 257, 258 (1999) (“Although each of us has our own idea of what it means to mother, the law constructs its own image of the ideal mother. The law rewards the self-sacrificing, nurturing, married, white, solvent, stay-at-home, monogamous, heterosexual, female mother.”); Jane M. Spinak, *Reflections on a Case (of Motherhood)*, 95 COLUM. L. REV. 1990, 2075 (1995) (“The sacrificing mother is a powerful totem.”). For a discussion of the ways in which these mothering constructs specifically oppress middle class women and make them feel constantly on display, see SUSAN DOUGLAS & MEREDITH MICHAELS, *THE MOMMY MYTH: THE IDEALIZATION OF MOTHERHOOD AND HOW IT HAS UNDERMINED ALL WOMEN* (2004); Melissa Murray, *Panopti-Moms*, 4 CAL. L. REV. CIRCUIT 165, 175–78 (2013) (Offering a discussion of the ways in which these mothering constructs specifically oppress middle class women and make them feel constantly on display).

76 Roberts, *Racism and Patriarchy in the Meaning of Motherhood*, *supra* note 10, at 5; See Dorothy E. Roberts, *Welfare Reform and Economic Freedom: Low-Income Mothers’ Decisions About Work at Home and in the Market*, 44 SANTA CLARA L. REV. 1029, 1034 (2004).

77 JOAN C. WILLIAMS, *RESHAPING THE WORK-FAMILY DEBATE* 125 (2010).

78 *Id.*

Symposium participants such as Ann Cammett and Noah Zatz invited participants to consider the ways in which the construct of the ideal mother and the ideal worker are incompatible. For instance, TANF workfare programs set standards that expect poor mothers to perform the roles of both an ideal worker and ideal mother. As feminists have long observed, the ideal worker is always available to her employer and willingly cedes her private time or family time when work requires her attention.⁷⁹ The symposium participants discussed how the default worker has been cast as the male breadwinner with a wife to cover childcare responsibilities. He does not require flexible job arrangements or low cost government-funded childcare because his caregiving needs are covered by private arrangements. In contrast, the ideal mother is always available for her children and would never prioritize an employer's demands over her child's needs.⁸⁰ However, the poor mothers within the low-wage workforce are required to abandon this notion of an ideal mother and are judged for their alleged "neglect" of their children while they are trying to make a living. Indeed, when they attempt to prioritize their children over work obligations, they are sanctioned again for not discharging their moral obligation to financially support their children. In her remarks, Ann Cammett observed that such a paradoxical dilemma occurs with some frequency. Authorities in multiple jurisdictions have filed abuse and neglect charges against poor mothers for leaving their children with "inappropriate" caregivers while they were attending job interviews or covering shifts at work.

The motherhood panel also explored the ways in which poor women are denied access to some of these ideal versions of motherhood outright. Panelists and participants surfaced multiple examples of mothers engaging in behavior associated with ideal motherhood only to have their behavior pathologized or characterized as a threat or theft. Specifically, participants noted the multiple cases involving women charged with theft of services for sending their children to study in a school district in which they do not reside. Yet, this act seems entirely consistent with a caring, devoted mother who wants to ensure that her child receives a quality education. Indeed, as Ann Cammett observed, this desire to prioritize education and aggressively seek out benefits for your children is associated with the recently emerged "tiger mom" construct of motherhood.

For some, the tiger mom construct seems to reflect general anti-Asian American animus or anxiety about accomplishments of Asian Americans in the United States. In their view, the construct caricatures Asian American mothers as overly devoted to the point of excessively pressuring their children to succeed. For others, the tiger mom construct is just the latest

79 See *id.* at 102–03.

80 See *Thompson v. Thompson*, 974 S.W.2d 494, 496 (Ark. Ct. App. 1998) (noting with approval that the mother quit her job to be able to care for her child during working hours); *Roehrdanz v. Roehrdanz*, 410 N.W.2d 359, 361 (Minn. Ct. App. 1987) (crediting mother because "she took her job . . . only on the condition . . . that her children would always come before work; as a result, her job did not interfere with her duties as a mother").

iteration of devoted motherhood that disciplines all mothers, regardless of race, by challenging them to be fully devoted and work tirelessly to ensure that their children are prepared to compete academically.⁸¹ Indeed, in many ways, the tiger mom and welfare queen constructs are interrelated. Poor mothers are simply not granted access to the tiger mom construct. They are not characterized as good mothers when they aggressively seek state resources to improve their children's lives; instead, poor women are regarded as entitled and potentially at high risk for committing theft of services and fraud.⁸²

Lauren Parker's contribution to this symposium explores how various motherhood constructs compete and discipline different classes of mothers in ways that juxtapose them with the welfare queen stereotype. Her analysis renders visible working-class white "waitress moms," "soccer moms," and "career mothers," and their relationship to the welfare queen stereotype.

The offering Robin Lenhardt presented at the conference considered the persistence of marriage as the solution to the "welfare mother" stereotype. Lenhardt's analysis reveals that marriage has actually served to subordinate African-American communities, particularly when it is treated as a precondition for true citizenship.

Other panelists mapped out additional ways the welfare queen construct shapes the lives of poor mothers. Specifically, Andrea Freeman explored how the welfare queen stereotype, which suggests a woman is indolent, incompetent, or disinterested in caring for her child, makes breast feeding a dangerous and fraught experience for poor women. Her work reveals that poor women who may have difficulty lactating are more likely to be cited for abuse and neglect of the infant. This is in contrast to the sympathy and encouragement given to middle class and white mothers when they struggle to adequately feed an infant with their own breast milk. Kathryn Sabbath considered how the value citizens place on mothering determines which rights are valued in society and, by extension, which rights are deemed valuable enough to merit the protection that comes with a right to counsel. Finally, Eleanor Brown turned to the ways in which the welfare queen construct disciplines middle-class black women to avoid having children out of wedlock, even though they are economically well positioned to do so. She further noted that this constituency's failure to have children has large consequences for the African American community as it thwarts the transmission of social capital in this minority group.

81 See generally AMY CHUA, *BATTLE HYMN OF THE TIGER MOM* (2011) (publication widely credited with creating the contemporary iteration of this motherhood construct).

82 See Clare Huntington, *Staging the Family*, 88 N.Y.U. L. Rev. 589, 616 (2013) ("Motherhood has a hallowed place in American culture, but this is not true for all mothers. The single, low income, African American mother, the welfare queen, is an object of continued derision."); EMILY T. ANDERSON, *MAKING GOOD MOTHERS: STRUCTURAL VIOLENCE, POVERTY AND PRISON PROGRAMS FOR MOTHERS IN THE UNITED STATES* 28 (2014) (discussing the ways in which the construct of the welfare queen has become linked with the culture of poverty and the assumption that poor mothers are by nature bad mothers).

The motherhood panel continued to engage many of the themes raised in the prior panel on welfare and work. Specifically, participants reflected on how workfare devalues mothering care by insisting that all work, and indeed any work, is better than allowing poor women to stay home with their children.⁸³ Indeed, the TANF Workfare requirements reframe an age-old debate in feminism about whether women's caregiving work is appropriately valued.⁸⁴ However, the welfare queen construct makes certain nuances in this debate more clear and their consequences stark. For instance, when childcare is valued in the marketplace, not all women's caregiving work is valued equally. Poor minorities' mothering care, at least when allocated to their own children, is not given much value. Poor women are told they must work. However, this same caregiving work is quickly and easily commodified when poor minority women's caregiving can be sold as a service and provided to other children. By considering the role of race in the valuation of care and work, the discussions highlighted some themes that would be re-examined as part of the last panel of the day, the "Racing of Poverty."

E. THE RACING OF POVERTY

The last panel of the day explored the role race has played in welfare reform debates and the treatment of public assistance programs.⁸⁵ Legal historian Sam Erman led a discussion that explored how race has shaped the politics of welfare, both in terms of resistance to the awarding of cash benefits as well as the imposition of restrictions that invade families' right to privacy and control over family matters.⁸⁶ The representation of the welfare queen as black began with Linda Taylor, the welfare fraud defendant whom Ronald Regan used in his campaign speech introducing the figure.⁸⁷ Dorothy Roberts explains that politicians were able to capitalize on existing racial stereotypes by representing the welfare queen as black, including claims that blacks are lazy, indolent, or hypersexual, and by using long standing stereotypes about the deficient mothering practices of the black poor.⁸⁸ The symposium discussion considered past

83 For further discussion of this issue, see Tanisha L. Jackson, *TANF and Its Implications on the Autonomy of Indigent Single Mothers*, 11 WM. & MARY J. WOMEN & L. 153 (2004) (arguing that the current regulations in place to promote "self-sufficiency" for welfare mothers are insufficient to allow for genuine self-sufficiency). Jackson recommends that welfare should shift from its current focus of imposing predetermined norms and instead attempt to meet the real needs of welfare mothers by creating opportunities for the exercise of autonomy.

84 See Vicki Schultz, *Telling Stories About Women and Work*, 103 HARV. L. REV. 1749, 1840-43 (1990).

85 See Frances F. Piven, *Why Welfare is Racist*, in RACE AND THE POLITICS OF WELFARE REFORM (Sanford F. Schram et al. eds., 2003).

86 For further discussion of this issue, see Lee A. Harris, *From Vermont to Mississippi: Race and Cash Welfare*, 38 COLUM. HUM. RTS. L. REV. 1, 26-28 (2006) (documenting how cash allotments for welfare are lower in jurisdictions where blacks make up a larger segment of the welfare rolls than in communities where they are a smaller share).

87 See Levin, *supra* note 13.

88 Rose, *supra* note 49, at 18-19 (describing how the welfare queen archetype is associated with the bad black mother); Kohler-Hausmann, *supra* note 20, at 333 (noting support for welfare waned

and contemporary iterations of racial bias that are reflected in social welfare programs.

Legal historian Diana Williams outlined how the perception and support for social welfare programs has changed as the actual and perceived racial composition of program users shifted. She revealed how the antecedents of today's TANF programs, the Widow's Pensions awarded to the wives of Civil War veterans, were strongly supported until black widows began to demand payment. AFDC also enjoyed widespread support until policy changes allowed black mothers to qualify for assistance. Harris also examined the discursive tools used to inject race into welfare debates and the consequences of this racialization framework for the status of poor black women and social support programs. She focused on how "whiteness" enables whites—and even poor whites—to separate themselves from the welfare queen construct.⁸⁹ Kimani Paul-Émile, considered how ex-offender status has now become a marker of race and an impediment to the entry of the poor into the labor force.⁹⁰ She noted that black women are convicted more frequently for crimes linked to motherhood, such as drug use during pregnancy or falsifying records to get children into better schools; subsequently, their criminal records are used to deny them jobs, creating a cycle of dependence on the welfare system.

In regard to these issues, I am particularly interested in the mobilization of the welfare queen stereotype in the so-called post-racial era. Consider, for example, that as the welfare queen is automatically assumed to be black in the cultural imagination, one does not need to raise race explicitly. Ironically, because the construct is silently racialized, it can be used to justify poor treatment of the larger pool of welfare recipients regardless of the racial composition of this population.⁹¹ The welfare queen is part of a larger disturbing pattern in post-racial politics: commentators attempt strenuously to avoid any explicit mention of race while they rely on implicitly racialized stereotypes and anti-minority bias to fuel support for punitive policies affecting the poor.⁹² As a result, these punitive policies

in the 1970s as African Americans enrolled in large numbers and the program opened to unmarried mothers). These newly eligible families opened welfare to more attacks.

89 For further discussion on the ways in which "whiteness" functions as a privilege, generating economic, social, and psychological benefits for whites, and even poor whites, see Cheryl I. Harris, *Whiteness as Property*, 106 HARV. L. REV. 1709, 1741–44 (1993).

90 For further discussion on this topic, see Kimani Paul-Émile, *Beyond Title VII: Rethinking Race, Ex-Offender Status, and Employment Discrimination in the Information Age*, 100 VA. L. REV. 893, 910–15 (2014) (explaining how the increased incarceration and arrest rates of African Americans and Hispanics leads to discrimination in employment).

91 Gilliam Jr., *supra* note 19, at 1–2, 4–6 (explaining that media portrayals have created a narrative about the welfare queen that indicts all mothers on public assistance and that public hostility increases when the welfare recipient being described is represented as black).

92 In the post-racial era, portrayals of the welfare queen often feature colorless or orange hued characters with "black" features. For examples see Lee Green, *The SNAP, the Shutdown and the Welfare Queen Myth*, QUIET MIKE, (Oct. 15, 2013), <http://quietmike.org/2013/10/15/snap-shutdown-welfare-queen-myth/>; Amanda Mole, *Debunking the Top 6 Welfare Myths*, EXAMINER.COM, (Apr. 9, 2013) <http://www.examiner.com/article/debunking-the-top-6-welfare-myths>; Beth Reinhard, *The Return of the Welfare Queen*, ATLANTIC, (Dec. 14, 2013) <http://www.theatlantic.com/politics/archive/2013/12/the-return-of-the-welfare-queen/282337>.

often enjoy the support of poor and working class white families despite the fact that these policies concretely work against their interests. Additionally, since anti-poverty programs must be facially race-neutral, policies intended to fall most heavily on poor minority populations will also affect some significant portion of poor white families, a constituency I have referred to as "marginal whites." Higher status or wealthier whites are willing to sacrifice the interests of lower status, poor whites, who are injured by symbolic policies intended to chastise or limit the allegedly questionable moral choices of the minority poor; there is little public outcry to prevent these measures from being instituted. For example, family caps, which prohibit any increase in a family allotment award when a family has another child while on welfare, were designed to target the perceived irresponsible sexual choices of poor black women.⁹³ The effect, however, of family caps is to drive families deeper into poverty, a consequence that falls equally on poor black, brown, and white women and their families. The challenge contemporary anti-poverty activists face is to make the background racial cast of anti-poverty debates explicit, a move that in the post-racial era is characterized as an act of racism itself. Indeed, Chief Justice Roberts has claimed that the only way to end race discrimination is to stop paying attention to race.⁹⁴ However, maintaining silence about the racialized nature of public policy debates in the post-racial era is precisely what policymakers require to use racial stereotypes to subordinate poor communities regardless of race.

The symposium concluded by asking participants to focus on the challenges the welfare queen construct poses for anti-poverty scholars and activists going forward. Descriptive accounts cataloguing the problems created by the construct have played an important role in setting the stage for future action. However, the task now is for scholars to interrogate the state more explicitly about what it believes is necessary to empower poor women and, by extension, what role should the state play in helping poor women achieve dignity and a sense of agency in their lives. If the state is directly presented with these questions, politicians, policymakers, and scholars will be more likely to propose programs that do not frame poor women's reproductive and social choices as a problem. Instead, we will create an environment where the state understands the logic of these women's choices and works to ensure that these choices inure to the individual woman's personal benefit in addition to serving larger public purposes. The welfare queen construct has been an incredibly effective distraction. The massive attempt required to counteract the damage caused by this figure has held back critical race theory and feminist scholars from their original vision, formulating a utopian vision of state-sponsored family support that empowers women regardless of class. This utopian vision may

93 Gilman, *supra* note 8 (noting that there is no empirical support for the proposition that family caps actually incentivize women to have fewer children).

94 *Parents Involved in Cmty. Sch. v. Seattle Sch. Dist. 1*, 551 U.S. 701, 748 (2007) (Roberts, J.) ("The way to stop discriminating on the basis of race is to stop discriminating on the basis of race.").

never be fully realized; however, if we take the time to create this vision, we will devise radically different approaches to family planning that will better serve individual women and their communities' needs.

IV. CONCLUSION

In sum, the participants in *Reframing the Welfare Queen* continued the long-term effort to rescue poor women of color from the circus-like caricature of them drawn by the neo-liberal state. This symposium, however, will be remembered as being unique because it turned the focus back on the state to determine why the demands made by the so-called welfare queen are so fiscally and socially threatening to state order. By revealing the institutional norms naturalized by the welfare queen, it becomes evident that the state's current conception of citizenship is extremely limited and that this limited citizenship model is unresponsive to contemporary economic and social conditions. As a consequence, the insistence of the neo-liberal state that citizenship is actualized through marriage and work as paths to self-sufficiency leaves many Americans, in addition to poor minority women, adrift with no support to negotiate contemporary conditions.

Scholars have long recognized that family support programs in the United States are premised on the idea that family dependency is a private matter. Moreover, the current approach seems to recognize no role for the state in honoring poor women's agency—outside of their right to find employment—or giving them meaningful choices. This approach to family vulnerability has become so entrenched that many people cannot imagine the state in a role of positive proactive engagement in addressing family financial problems. The welfare queen has played a key role in framing the idea that state support is an unattractive and socially corrosive option. The construct racializes poverty in ways that make dependency unattractive and renders the vast problem of white poverty invisible. The construct feminizes dependency in ways that ignore the vast numbers of economically vulnerable men in the post-industrial job market and, relatedly, the understanding that traditional marriage is no longer a path out of dependency and vulnerability for most poor women. The publications included in this volume explore some of these themes and highlight potential future projects that are ripe for investigation. The online video of the conference program provides a full account of the symposium discussions.⁹⁵ This essay provides additional context for understanding the symposium's goals. However, the major insight of the conference is already clearly established: the welfare queen can and should continue to play a central role in feminist legal theory as well as in critical race theory conversations. With the talented array of critical race theory and feminist scholars focused on these issues, I suspect that the most exciting work is yet to come.

95 *Reframing the Welfare Queen*, *supra* note 27.