

Transcript of “CRT and Family Regulation: Toward Abolition”

[TAPE]

Syesha Mercado cries out, “Do you guys not feel anything? I'm human. This is my baby, my baby is days old, and you're taking my baby away from me, you're taking my baby away from me.”

[TAPE]

Background music. Courtesy of Free Music Archive.

MANNY ZHANG

That was the sound of Syesha Mercado's daughter being removed from her by CPS when she was just a few days old. CPS had already taken her older son from her when she sought help at the hospital because her and her partner were struggling to get him to accept fluids. They were accused of malnutrition and their son was removed from their care in rapid succession. At the same time, Syesha was pregnant with her daughter. Once her son was in the system, her daughter was immediately flagged. Even though her daughter was healthy and had just been to the hospital for a check-up, she was taken during a planned roadside welfare check.

ABIE GREEN

Sadly, this story is by no means an isolated incident. Syesha's story is representative of millions of Black and Indigenous families across the United States. **[TAPE: Background music. Courtesy of Coma-Media]**

On today's episode of Columbia Race Talks, we will look at the child welfare system in the United States, which some argue is better understood as the family regulation or the family policing system.

My name is Abie Green.

MANNY

And I'm Manny Zhang.

We are law students in the Critical Race Theory seminar at Columbia Law School. Today we will be hearing from scholars, practitioners and activists, involved in the movement toward the abolition of the child welfare system.

ABIE

Since it formally began in the 19th century, the child welfare system has been used to commit violence on communities of color. These effects have been mostly felt by Black and Indigenous communities.

MANNY

The child welfare system that we know today began in the late 1800s with wealthy philanthropists setting up orphanages, which were almost exclusively for white children.

The foster care system grew out of these private orphanages. After WWII, the proportion of Black children in foster care steadily increased along with the size of the foster care system. This also coincided with changes in the view of how the system should function.

ABIE

Peaking in the 1970s, there was a move from child welfare services to foster care, so instead of helping to keep families together, the new focus of the system was to investigate abuse and neglect, and remove children from their homes.

Then in the 1980s, there was an enormous growth in foster care caseloads. This concentrated primarily in cities, where there are sizable Black communities.

By 1986, Black children, who were only 15% of the child population, made up about a quarter of children entering foster care. And by the end of that year, they were 35% of the children still in foster care.¹

[TAPE]

Background music. Courtesy of Free Music Archive.

MANNY

But forced separation of Black and Indigenous families isn't a recent phenomenon.

The removal of Black and Indigenous children from their families can be traced back to slavery and colonization at the very founding of this country.

DOROTHY ROBERTS

The forcible separation of enslaved families, the control of emancipated Black children as apprentices to former white enslavers, the removal of Indigenous children as an instrument of tribal genocide. The whole point of the child welfare system has always been to regulate economically and racially marginalized communities. That's why there, there aren't any virtually, any at all, you know, wealthy white people in the child welfare system. It's not because they don't harm their children, ever. It's because that's not the point of this system. It's, it's not intended, it's not designed to protect children or care for children. It's designed really to do the opposite - to blame marginalized communities for harms to their children that are caused by societal inequities, by structural racism, by poverty, by sexism and patriarchy. So, family policing helps to not only blame them, but then keep them in a subordinated status by disrupting their relationships in their communities. And more broadly, it implements an approach to what's supposed to be child welfare that actually supports an unequal and racist social structure.²

MANNY

Not only were enslaved African American children routinely separated from their families, but so too were Native American children.

Around the same time as the desegregation of the foster system, there was a shift from residential schools to using the child welfare system to take Indigenous children from their homes and to place them with white families.

This was an active policy that was essentially advertising Native children to white families in the 70s and 80s and it was, unfortunately, very successful. The backlash to this eventually led to legislation being passed to protect Native children and their families.³

¹ DOROTHY E. ROBERTS, *SHATTERED BONDS: THE COLOR OF CHILD WELFARE* (2001).

² Center for Contemporary Critical Thought, *Abolition Democracy 10/13: Abolishing Family Policing*, YouTube (Feb. 25, 2021), <https://youtu.be/yL8wbL1xG6o>.

³ DOROTHY E. ROBERTS, *supra* note 1.

Disparities faced by Indigenous children continue despite the passage of the Indian Child Welfare Act, which aims to keep Native families together. Many states remain non-compliant with the law and the disproportionate impact on indigenous families remains prevalent throughout the country.

ABIE

At every stage of the system, Black and Indigenous children and families are disproportionately impacted despite there being no evidence that there are higher rates of abuse or neglect within those groups.

MANNY

Black children represent 14% of the total child population, but account for 23% of all kids in foster care. Indigenous children make up less than 1% of the child population, but are 2% of the children in foster care.⁴

ABIE

Black children are 2.4 times more likely to be placed in foster care in comparison to the general population, while Indigenous children are 3 times more likely to be placed in foster care.

Black and Indigenous children are also less likely to exit the child welfare system under legal guardianship of a caregiver.⁵

MANNY

These racial disparities are also reflected in mass incarceration systems which are interlinked with the child welfare system in a number of ways.

[TAPE]

Background music. Courtesy of Free Music Archive.

JOYCE MCMILLAN

Because kids are strip searched just like prisoners, they're both separated from everything and everyone they know and love. They both change their locations using garbage bags or pillowcases. They both have set visit times on set visit dates. They both eat what they are served. They are both paroled back either to the community or to their parents. They both have oversight during that parole period. You're going to try to convince me that, that system was designed to look just like the prison system, by accident?⁶

ABIE

That was Joyce McMillan, an advocate, activist, community organizer, and educator.

After fighting to recover her own children when they were taken by child welfare workers, Joyce has become a leader of a growing movement that is advocating for the abolition of the family regulation system.

MANNY

Joyce created PLAN or the Parent Legislative Action Network, a coalition of parents and social workers, working towards abolishing the family regulation system.

⁴ Partners for Our Children, *The History of Foster Care*, <http://www.partnersforourchildren.org/sites/default/files/Short%20history%20of%20foster%20care%20brief%20December%202020.pdf> (last visited Dec. 15, 2021).

⁵ DOROTHY E. ROBERTS, *supra* note 1.

⁶ Shriver Center on Poverty Law, *Moving from Why to How: Parent Leaders' Perspectives on the Movement for Child Welfare Justice*, YouTube (Oct. 6, 2020), <https://youtu.be/v-B76Xypals>.

[TAPE]

Background music. Courtesy of Coma-Media.

JOYCE

And so for me, it's not about trying to untangle little pieces. It's about tearing it down. And we need to be focused on what we are putting in place. I'm asking for a shift from people who are not about abolishing. They don't want to swing the sledgehammer. Start building what we're going to have in a community in place of that. But these little changes is never going to get us where we want to be. It's a conditioning for us to believe that little changes here and there when they put all types of safety mechanisms in place to ensure that a little change doesn't amount to change for my community.⁷

ABIE

Professor Dorothy Roberts, an acclaimed legal scholar at UPenn Law School, author of several books and a social justice advocate, is also actively involved with the movement toward abolition.

In her book, *Shattered Bonds: The Color of Child Welfare*, Professor Roberts reveals how racial disparities are connected to the ideology of family policing and in her new upcoming book she urges for the abolition of the system itself. [TAPE: Background music. Courtesy of Coma-Media.]

Last year, as part of the 13/13 seminars created by the Columbia Center for Contemporary Critical Thought, Professor Roberts explained how she became involved with the abolition movement and why the system of family regulation needs to be dismantled.

DOROTHY

Part of the reason that I became a family policing abolitionist is because of what I've learned over the last 20 years about prison abolition, and being drawn to the theory and practice and framework and inspiration of prison abolitionists. It became clear to me that the movement to abolish police prisons and surveillance was deeply connected to the need to abolish family policing.

So another thing that prison abolitionists have taught us is that the system's repressive outcomes don't result from a malfunction. You know, it's not the case that the reason why so many unarmed Black people have been killed by police officers – because of the bad apples in the police force. No, it's because the police force is designed to intimidate and violently control, Black and brown communities.

So we can learn from that the same thing about family policing. That there is no malfunction in the system that creates the racial disproportionality. You know, when I, when I started working on *Shattered Bonds*, there wasn't much attention to racial disparities to these statistics. And since then, there's now this buzzword – racial disproportionality. And probably, you know, every major child welfare system has some kind of task force to deal with racial disproportionality and recommendations for reform. I've participated in some of those. I actually worked for nine years on an expert panel that was trying to reform foster care in Washington State. I've spoken at numerous trainings to try to get caseworkers to be less racially biased in life. I've done it all.

And that's part of the reason I know it won't work. Because all of these projects by foundations and welfare departments to reduce the foster care population and its racial disparities, none of them has worked. In fact, what happens is that there may be a little bit of reduction in disparities or populations – actually, it fluctuates, depending on factors that have, that aren't related to actual amounts of children's needs or child abuse and neglect. They have to do with other political factors – but none of it has changed

⁷

Shriver Center on Poverty Law, *supra* note 4.

the way in which the family policing operates. It continues to operate in a racist way, and in a way that relies on terrorizing families. And it continues to convey this ideology, that the reason for children's, harms to children, is the pathology of, of parents. That's still through all of these reforms has been maintained. And so then because the foundational logic is still there, the system ends up just absorbing whatever efforts to mitigate the flaws or continues to reproducing its terror in some other way.⁸

MANNY

To learn more about the family regulation system and to discuss its alternatives, we reached out to Professor Anna Arons, who is an Acting Assistant Professor of Lawyering at NYU Law. Her research focuses on the government's regulation and policing of families and the intersection of parental rights with race, gender, and poverty. [TAPE: Background music. Courtesy of Coma-Media.]

Thank you so much for making the time to speak with us today. We really appreciate it.

So, we were doing research for this podcast on critical race theory and the family regulation system and we came across an article you wrote, where you look at how the COVID-19 pandemic may have become this unplanned experiment for abolition

We were really interested in your research as well as your experiences working as a family defender, and are just incredibly excited to be able to interview you for this podcast.

ANNA ARONS

Of course, and I'm glad to hear that, well, for one, I was excited to hear that, you know, anyone is reading my paper. But I'm excited to hear that it sounds like you all took some things away from it, or, you know, at least somewhat interested in it. So, I'm happy to chat about it to anyone.

ABIE

[laughs] No, very, very interested in your paper. We thought it would be good for you to be able to introduce yourself, and tell a little bit about how you became involved in family regulation abolition.

ANNA

Yeah, okay, totally. I currently am teaching at NYU. I'm an Acting Assistant Professor in the lawyer and program there. But prior to that I was a family defense attorney at Neighborhood Defender Service of Harlem. So while I was there, I was representing parents and family court proceedings in Upper Manhattan when the state was trying to either remove their children from their care or otherwise impinge on their parental rights by imposing certain conditions on their parenting of their children. So, in terms of, kind of, what brought me to the work, I think, there is a way in which, kind of my personal connection to it is from the perspective of someone whose family was not regulated. I'm a white woman, my parents both went to college. And I also happened to be from a family that has a pretty significant history of mental health issues and substance use issues. And that aside, no one cared about that. It was completely fine for my parents to parent me as they saw fit and completely fine for them to deal with whatever these family situations were in the way that made sense to them and made sense to our family. And that is worlds away from the life experience that so many of my clients had as poor Black, Latinx parents in Upper Manhattan. The same is true for much of New York. And the same is true around the country.

Although you know, if we're going to talk about what particular groups are being policed, if you are in other parts of the country, you're going to see more Native families being policed. But kind of the across the board reality is that we are not policing white families. And we are not policing families with money

⁸ Center for Contemporary Critical Thought, *supra* note 2.

to anywhere near the same degree. So I think that's kind of why the work speaks to me on an emotional level, just in what brought me into it in the first place.

But in terms of specifically, why do I care about abolition, why do I see that as kind of the only path forward? I think that is something that I have come to largely through just being in court and doing the work.

Over the course of the four years I was in family court, I think I had hundreds, probably around 200 clients. Of those 200 clients, four of them were white.

And then you also see that what is being policed is, you know, I talk about mental health, I talk about substance use. I talk about these are things that yes, they present difficulty sometimes when you're parenting your child. There's this whole other class of things that have no effect on your parenting at all and are just the fact that you are poor.

So, I had cases where it was literally, you know, my client's child went to school and they had dirt on their skin. Or there were cockroaches in the home. Or the parent had to leave the child home alone so that they could go to work, and they didn't have other childcare. These kinds of things where, maybe some of them are not kind of the ideal world that we would want any child to be raised in. But that's not through the fault of the parents, that's through the fault of our entire society that has been essentially set up for their parents to fail, and for their parents' lives to be hard.

And so if I look at all of that, and I look at what I did in family court, where even if I succeeded in my job as a lawyer, and advocated for my client, we're looking at the best possible outcome is that a family goes home, back to an over-policed neighborhood, where someone else can call in another report the next day, and where by the point that they have come to family court, by the point that an investigation has been completed, this immense trauma has already been inflicted, on a family. Just in terms of, I think, we don't pay enough attention to, even if a case never ends up in court, even if its state agent goes to the family's home, one to two times, investigates and says there's nothing here, that alone is having someone from the government come into their home, look in every cabinet, ask to examine their child's nude body, interrogate the child, interrogate the parent. So, I think there's this very real trauma enacted on both children and parents alike from the invasiveness of that. And I think it's just a fundamental kind of disruption of the sense of security that all parents should be able to give to their child, and the sense of being able to say to their child, "I will protect you, and nothing is going to come between you and me."

ABIE

So, when you talk about these systems, and how you can't see, how this cannot be the way that we are doing things, when those are the best-case scenarios, like you just described, what does family regulation abolition mean to you? Like what does that look like?

ANNA

So I think I can give kind of the big picture, like, where do I see that we end up? And then there's this other question of what do we do, kind of in the meantime? I think for me, the big picture is obvious in that, if we have a society where people's needs are being met, then we don't have the same needs to regulate families through this formalized mechanism of state control. So by that, I mean, if we are giving families access to resources, and by resources, I by and large mean money, so that parents can decide for themselves, how to spend it and how to care for their families, that to me, is going to divert or do away with a huge amount of this, quote, unquote need for family regulation.

I think the other part of that, so there's the part, which is give families money, which is the really kind of simple takeaway I have from all of this. I think the kind of slightly more complicated and/or nuanced

view as well is, I think there also has to be an element of building in trust of families' abilities to make these own, their own plans, when things are going wrong, or when things are difficult. So when I'm talking about that, I'm thinking about there is this large set of cases that I think are fully driven by poverty, right, that the parent is forced to not to forego medical care for their child or providing adequate food or adequate shelter, all of these sorts of things.

So when I think about like, what does the future look like? And how can we not do that? How can we avoid that brutality? I think it requires not just as kind of concrete work, of let's get families money, which I think there have been remarkably, you know, some degree of progress made in that in terms of the Child Tax Credit. And, you know, as much as many of them are abating now, the benefits that were afforded to families over the last two years now, almost. But there's more difficult work, which I think is, requires a dealing with kind of the narratives that we tell, and honestly just the entirely racist premise of the system and the racist assumptions we are making about parents. How do we change that such that there is trust for all parents and the baseline assumption is that all parents are able to build in their own community support, build in their own kind of networks, families, etc., rather than it being the state has to come in and do that for them.

ABIE

And I'm thinking of the topic of reforming the system versus abolition, and I think one of the common arguments that people have is an issue specifically with the concept of like children who are in abusive homes as opposed to neglect, which like we talked about is a lot more to do with poverty. But like, what do you say to that? Like how does that factor into this concept of abolition. How do we work with that?

And do the recent COVID, like incidents, demonstrate that there's better ways to do it? Like I think you explored some of that in your paper, but I wanted to specifically target this.

ANNA

You know, I think this might be kind of implicit in your question, but in case it's not, number one, abuse cases are the minority of cases by an order of magnitude. By which I mean, I think there's something like 15% of reports in New York are related to sexual or physical abuse, and the other 85% are not. And that's pretty consistent across the country. So, starting with kind of that 15%, I think that kind of one of the first points I would make is that the system we have clearly is not working. I think we all can agree that our goal is to have a world where children are not abused by whoever, by their parent, their caretaker, and they aren't abused physically, sexually, whatever that might look like. No one wants that. But if we're looking at, you know, has the family regulation system, as we see it now, has that solved child abuse? Has that even kind of mitigated child abuse? I think the answer is clearly no. That we've been kind of doing this for 50 years, and we have nothing to show for it. There are still child fatalities. So you know, not that many child fatalities, but there are still child fatalities. There are still children who are getting hurt by the people who should be caring for them. And I don't think that there has been, even with this kind of, if we focus on let's say, the last 40 years since the emergence of battered child syndrome as kind of a medical term that we're focused around. It's not like the introduction of more removals and of a more kind of punitive family regulation system has solved the problem of child abuse and has made it so that we do not have battered children for that kind of typical definition. So I think there's that piece of it.

And then this question of, you know, how do these, did the time during COVID tell us anything about us? I think it tells us basically what I just said. And that we don't need the family regulation system to like, that it's not doing anything. And what we have during the last 18 months is in the city, a drop in the number of reports of child fatalities, and no change in the rate of abuse to neglect. So it's not like during COVID, you know, more children were being abused by their parents who they were trapped at home with them and their parents were stressed out.

ABIE

Despite all the fear mongering about that.

ANNA

Yeah, so which is in fact, I think like that initial fear mongering is precisely why I was like, well, I should look at these numbers. Because it was such a prevalent narrative early in COVID, that children are going to be stuck at home outside the watchful eyes of teachers and the you know, the good adults who would really care for them, and their parents are going to hit them and abuse them in these terrible ways. And it's going to be a crisis.

And we jump forward to last summer, June of 20, oh, gosh, 2021, June 2021 – the most recent June we had – where we had the commissioner for ACS testifying at a hearing that there hadn't been any increase in child abuse. There was no, I think he used the word “bolus,” which is like a medical term, I guess, meaning mass? But there was no bolus of undiscovered cases of child abuse. And there had been no change in admission patterns of ER.

MANNY

So what would be the key takeaway from the data from ACS and from family courts, like what does that show us?

ANNA

So I think what we can take away from that is, at the very least, that we don't need the family regulation system. If our goal is, how do we kind of make sure there's not an increase in child abuse. I think that doesn't still address this bigger question of how do we prevent there from being child abuse in the first place. And I think my argument for that is pretty similar to everything that I have been saying, in that I think there is a way in which our current structures, I'm not going to say make parents abuse their children, but might in certain ways make it harder for parents to get help, if that is something where if they are in a really stressful situation with their kid.

And I think that that's kind of, there are all of these hidden ways where I think, all our society is not set up to make it easy for parents to themselves take action to protect their children. In that everything is so focused around being punitive, that there is a huge risk in seeking help for your child.

[TAPE]

Background music. Courtesy of Coma-Media.

ABIE

What academics like Professor Roberts and Arons are trying to show is that the vast majority of children in the system are put there because of material needs caused by structural inequalities and poverty, which the system doesn't address but, rather makes worse. And, the current system is not designed to prevent harm or violence to families or communities, and in fact inflicts harm itself.⁹

So, faced with this reality, what steps can be taken to abolish the family regulation system?

MANNY

Like all abolitionist movements, this will be a long and arduous process. In the meantime, how can we build the necessary supports to keep children safe? To ensure that decision-making power rests with families and communities? And to dismantle racist policies and practices?

⁹ Rise, 'Abolition Is the Only Answer': A Conversation with Dorothy Roberts, Rise Magazine (Oct. 20,2020), <https://www.risemagazine.org/2020/10/conversation-with-dorothy-roberts/>.

What Joyce McMillan’s work in this space highlights is that the movement must be led by those who are most impacted by the family regulation system.

[TAPE]

Background music. Courtesy of Coma-Media.

JOYCE

But the uprising, however you view it, at the end of the day is people coming together with the same vision, seeking the same change. And that’s going to be the people who have been impacted.¹⁰

ABIE

We also need to recognize that systems of oppression are intertwined and that the family regulation system is no exception to this rule.

JOYCE

I see organizing around the issues. I see community leadership, beginning with people who have been impacted by all sorts of systems, not just child welfare. But of course, today we’re talking about child welfare. But it’s very hard for me to speak about child welfare, when I look at the intersections between housing, mass incarceration, medical care or lack thereof, education. How we’re pipelined from school to either prison or foster care, through the mandated reporters that are calling and over-surveillancing.¹¹

MANNY

And thinking about Professor Robert’s concept of “non-reformist reforms”,¹² which are measures that chip away at oppressive institutions and shrink the state’s capacity for violence rather than legitimize or further entrench those systems.

What non-reformist reforms might move us in the right direction?

ABIE

Joyce’s organization, JMacForFamilies, is focused on just that issue. Through a combination of law reform, policy advocacy and parent empowerment, JMacForFamilies is seeking to make transformative changes in the family regulation system with the objective of demolishing the system rather than fixing it or reforming it.¹³

MANNY

Their requests to lawmakers include that mandated reporting be overhauled, that parents have their rights communicated to them at the start of an investigation, and that preventative services be detached from traumatic surveillance.¹⁴

ABIE

¹⁰ Shriver Center on Poverty Law, *supra* note 4.

¹¹ *Id.*

¹² Dorothy Roberts, *Abolition Constitutionalism*, 133 HARV. L. REV. 1, 114 (2019).

¹³ JMacForFamilies, <https://jmacforfamilies.org/> (last visited Dec. 15, 2020).

¹⁴ Kendra Hurley, *How the Pandemic Became an Unplanned Experiment in Abolishing the Child Welfare System*, The New Republic (Aug. 18, 2021), <https://newrepublic.com/article/163281/pandemic-became-unplanned-experiment-abolishing-child-welfare-system>.

Despite the odds faced by the abolition movement, Joyce is hopeful that these are the first steps toward abolishing the current system and replacing it with a new vision of child safety that grants poor families and families of color the same dignities that other parents enjoy.

JOYCE

Hope is everything to me, and when no one else believed, I believed.¹⁵

END.

¹⁵ The Moth, *The Moth Presents: Joyce McMillan*, YouTube (June 29, 2017), <https://youtu.be/PnOzhz5K7Do>.