

Policing and Separation of Black Families in the United States
UN Working Group of Experts on People of African Descent
Public Session on Children of African Descent, May 24, 2022
Dorothy E. Roberts, JD
George A. Weiss University Professor of Africana Studies, Law & Sociology
University of Pennsylvania

The System's Power and Racial Disparities

Last year, a Black father named Tyron Deneer live streamed a video of armed deputies from a Florida sheriff's office detaining him, his partner Syesha Mercado, a former "American Idol" finalist, and their 10-day-old baby. The deputies pulled the family's car over on the side of a highway to execute a family court judge's order to seize the couple's newborn daughter. The family's nightmare began when the parents took their 13-month-old son to a hospital in St. Petersburg, Florida, to seek medical care. Mercado was pregnant at the time and was having trouble transitioning the toddler from breastfeeding to eating solid foods and she was concerned that he was dehydrated. Instead of helping the family, hospital staff called the child maltreatment hotline to report that the toddler was malnourished and failing to thrive, and the Department of Children and Families took him from his parents. When the couple's daughter was born six months later, the family court considered the baby at risk, too, and issued the "pick up" order to take her into state custody.

With the help of the viral video, a team of lawyers, and media attention, Mercado and Deneer were reunited with their daughter nine days later while they continued to fight to recover their son. The terror inflicted by the armed officers and child protection workers who tore the infant from her loving parents leaves no doubt that the joint incursion was aimed at criminalizing the parents, not protecting their child.

What happened to Mercado's family is common and reflects key features of the US child welfare system. It accuses, investigates, and punishes Black families in the name of protecting children as a subterfuge for stigmatizing and controlling them.

The US federal government describes the child welfare system as “a group of services designed to promote the well-being of children by ensuring safety, achieving permanency, and strengthening families.” This description hides the system's function to police families of African descent in the United States, as well as the harm it inflicts on Black children and their family caregivers. There is a story about a foreign dignitary who toured the family courts in a large city in the United States and watched judges deciding cases involving families suspected of child maltreatment—often separating children from their parents. After the tour was over, the dignitary asked the US guide, “it was interesting to observe the court proceedings for Black families; when will I see the court system for everyone else?” If you came with no preconceptions about the family court in many US cities, you might conclude that it's a system designed to regulate and tear apart Black families alone.

With the threat of child removal at its core, the US child welfare system regulates massive numbers of families. Every year state agents forcibly take some 250,000 children from their parents and put them in the formal foster care system. At the same time, CPS agencies informally separate an estimated 250,000 more children from their parents based on so-called safety plans, arrangements parents are pressured to agree to in lieu of a formal court proceeding. Black children are grossly overrepresented in the national foster care population: although Black children were only 14 percent of children in the United States in 2019, they made up 23 percent of children in foster care.

While Black children are removed from their homes at higher rates in every state, some states have especially egregious disparities. Black children and white children each make up 20 percent of California's foster care population, but Black children are only 5 percent of the state's child population, compared to white children's 26 percent share. In New York, as well, white children are very underrepresented in foster care (48 percent of child population versus 23 percent of foster care population), while Black children are very overrepresented in the system (15 percent of child population versus 44 percent of foster care population).

More telling are recent data indicating children's chances of landing in foster care at some point while growing up. According to a 2014 study, about 15% of Native children and 12% of Black children could expect to enter foster care before their eighteenth birthday. The rate for white children, about one in twenty, was remarkably lower, reflecting America's racial hierarchy, but still incredibly high. Moreover, in many cities, child welfare agency involvement is concentrated in segregated and impoverished Black neighborhoods, so all children residing in the neighborhood are aware of the threat of being taken from their families by state agents.

Historical Origins of Family Policing

The racial disparities in family separation result from the system's design to police racially marginalized populations. This design is deeply rooted in US history. The ideology of violent supervision of Black families by white people can be traced back to the legal authority enslavers had over enslaved families, giving them absolute control over the relationships Black parents had with their children. This permitted the forcible separation of enslaved families that routinely took place on auction blocks when family members were purchased by different enslavers or whenever enslavers found it economically expedient to sell off enslaved family

members. After Civil War, a critical part of white supremacists' efforts to retain domination of the South was the court-ordered return of emancipated Black children to former white enslavers as apprentices.

For most of the modern child welfare system's history, Black children's needs were ignored. In the first half of the 20th century, dependent Black children were frequently placed in a racist juvenile justice system, where they were treated more harshly than white children. Then, once civil rights activists demanded extension of government welfare entitlements to Black people, public agencies pivoted sharply from providing services to children in their homes to taking children from their parents. Since the 1960s, the total size of the foster care population and the share of Black children skyrocketed simultaneously. Propelling the increase in the foster care population and government funding for it was the massive removal of Black children from their homes.

Punishing Poverty

Their subordinated status makes Black families vulnerable to state intervention in part because of the way child maltreatment is defined. Only 17 percent of US children who enter foster care are in the system because they were physically or sexually abused. Most children taken from their parents by CPS are alleged to have been neglected. States define neglect as failing to provide children with material resources, such as food, housing, and clothing, conflating it with poverty. The system blames impoverished Black parents for the harms to children caused by structural racism and other societal inequities.

Child welfare decision making is also rife with racial bias. For example, a number of studies have shown that clinicians are more likely to evaluate for, diagnose and report child abuse in Black infants and toddlers than in white children who arrive at the hospital with similar injuries. Screening and reporting of drug use during pregnancy as child neglect are also highly biased against Black mothers. Other studies have revealed that caseworkers are more likely to interpret the same home conditions as riskier for Black children than for white children and require less evidence of risk to remove Black children from their homes.

Surveillance & Regulation

The power of state agencies to investigate families extends far beyond placing children in foster care and also falls most heavily on people of African descent. A pathbreaking 2017 study estimated that more than a third of all U.S. children (37.4 percent) experience a CPS investigation at least once by their 18th birthday. More than half of Black children are subjected to a CPS investigation at some point during their childhoods—almost twice the lifetime prevalence for white children. Family policing relies on an expansive network of information sharing that spans the school, health care, public assistance, and law enforcement systems. This confluence of social services and child protective services directs state surveillance against poor and low-income families, especially Black families, who are more likely to rely on public service providers.

Identifying children as at risk for abuse or neglect gives caseworkers the authority to probe into and regulate every aspect of their family's life. Indeed, child welfare authorities can wield *greater* control over families than police while providing fewer legal protections to parents and children. Caseworkers can make multiple unannounced home visits at any time of

day or night, interrogate all household members, force children to disrobe, do criminal background checks, and request personal information from teachers, hospitals, therapists, and other service providers. Although the Fourth Amendment of the US Constitution applies to government maltreatment investigations, many agencies and courts in effect have created a child welfare exception to the constitutional provisions that pertain to police searches. Family policing expands the government's power to investigate and regulate Black communities beyond what would be permitted by criminal justice.

Harms to Children

Given its oppressive foundations, it should come as no surprise that the child welfare system is structured to cause devastating injuries to the children it separates from their families. On top of inflicting the trauma of separating children from their loved ones, which is a violation of UN conventions, state agencies fail to ensure that the children in their custody receive the care they need, and subject many of them to sexual and physical abuse. With many children shuffled to multiple placements, the system is set up to interfere with their emotional and physical health, their education, and their social relationships. It forces many of them into poverty, homelessness, and prisons.

Large numbers of children are placed in some form of congregate care — group homes, residential treatment centers, and psychiatric hospitals. In 2017, a third of teenagers in foster care, who are disproportionately of African descent, were in a congregate placement. Agencies often confine Black children who are adjudicated dependent and those who are adjudicated delinquent in the same horrific—and sometimes lethal—institutions, where no child should have to suffer. In 2021, a report by Think of Us, a research lab founded and directed by former

foster youth, observed that these children “frequently compared institutional placements to prison, as institutional placements have many functions of a carceral environment: confined, surveilling, punitive, restrictive, and degrading.”

Global Implications

The policing of Black families in the United States reflects a global pattern in how states identify who is an appropriate target of scrutiny, investigation, and violation of children’s and families’ human rights. The foundational ideologies of anti-Black racism, white supremacy, and devalued Black family bonds have structured legal and social systems around the world.

A critical aspect of the experience of people of African descent in the global diaspora is the supervision and disruption of family relationships by the white political elite. Black families have been torn apart by legalized separation ever since the global trade in enslaved people and the international agreement that people of African descent, including children, were legally property to be trafficked and sold. This historical dehumanization of Black people includes sale at the auction block, systematic rape and forced breeding, inhumane work expectations during and after pregnancy, and criminalization of pregnancy and childbearing. These inhumane practices have been upheld by racist images and narratives that hypersexualize Black women, label them immoral, and delegitimize their authority and investments in their own children and families. Research is demonstrating how dominant US culture continues to deny presumptions of childhood innocence, psychological pain, and family love to Black parents and Black children on the basis of their race. The harms to these children and families, also counter to the historical narrative, is devastating and long-lasting.

Unfortunately, broad commitments of human rights treaties can whitewash the disproportionate and discriminatory effects of family policing systems that result in racialized family surveillance and child removal across the globe. The core human rights treaties recognize the sanctity of the family and commit to non-discrimination on the basis of race in either intent or effect, and set forth proactive responsibilities for nation states to redress racial discrimination where it exists. The Universal Declaration on Human Rights, the International Covenant on Civil and Political Rights, the Convention on the Rights of the Child, and the International Convention on the Elimination of Racial Discrimination all prohibit racialized removal of children.

Yet it should be remembered that human rights treaties were enacted in a climate that tolerated—and sometimes legalized—rampant racial discrimination and violence, during the Jim Crow period in the United States and colonization of African nations by European superpowers. Today, despite these human rights commitments, and despite compelling evidence of racial targeting and harms caused by family policing systems, states remain reluctant to confront this form of oppression against Black children and their families. They continue to ignore these violations of human rights by claiming to be protecting children from abuse.

It is time to stop this pretense and to call out the targeting and destruction inflicted by family policing systems as violations of the human rights of people of African descent. It is crucial for all nation states to collect data that can document the racialized impact of family surveillance and separation on Black people. More fundamentally, NGOs, policy makers, and others concerned with human rights and racial equality should include prominently family

policing among their concerns. Ultimately, we should dismantle these systems designed to regulate, control, and disrupt Black communities, and we should build in their place radically different approaches that truly support children's welfare and safety.