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## The Absent Black Father: Race, The Welfare-Child Support System, and the Cyclical Nature of Fatherlessness

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### ABSTRACT

The perception of Black fathers is that they are largely absent from their children's lives, and that such absence—and the ensuing experience of growing up fatherless—is a direct cause of social issues in Black communities. Through media representations and policymaking, the absent Black father narrative has taken shape over the past fifty years, giving rise to the belief that fatherlessness is a distinctly Black issue. To safeguard against misplaced assumptions, this Comment proposes a new, cyclical model by which to view fatherlessness. Rather than a linear process that ascribes the blame for Black plight to Black fathers, this Comment posits that socially constructed notions of race and stringent welfare-child support laws perpetuate the absent Black father stereotype. This cycle begins with a Black father being absent from the home; he then has child support enforced against him, irrespective of his ability to pay; consequently, the child takes on the identity of being fatherless and the father who cannot pay child support is rendered deadbeat. This produces real social consequences, which feed back into the social perception of Black fatherlessness. Through this lens, this Comment assesses incentives in state child support enforcement and questions whether states are actually motivated to push Black fathers out of their homes. Ultimately, this Comment concludes that understanding fatherlessness as both socially and legally constructed can help eliminate the trope of the absent Black father.

### AUTHOR

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## INTRODUCTION

Senator Rand Paul, a Republican presidential candidate, blamed the 2015 Baltimore riots protesting police brutality on “the breakdown of the family structure, the lack of fathers, the lack of a moral code in our society.”<sup>1</sup> Ignoring the killing of Freddie Gray as the real cause of the riots,<sup>2</sup> Paul shifted the blame to the Black<sup>3</sup> family, including Black fathers and single Black mothers. This attempt to identify Black fatherlessness as the cause of Black lawlessness and violence is not novel. Fatherlessness has traditionally been considered an exclusively Black issue,<sup>4</sup> and any occurrence in whites is an irregularity.<sup>5</sup> And much as Blackness is consistently cast in a harsh light, the concept of Black fatherlessness is complex and often regarded as a cause of the Black community’s plight.

This Comment examines the interaction of race and fatherlessness, and how aspects of the legal system—specifically welfare and child support enforcement programs—perpetuate the stereotype of the absent Black father. Black fatherlessness is typically perceived as a linear process that is purely sociological: Black fathers—because of their own moral failings—leave, neglect, or are removed from their homes. Consequently, Black children grow up without their

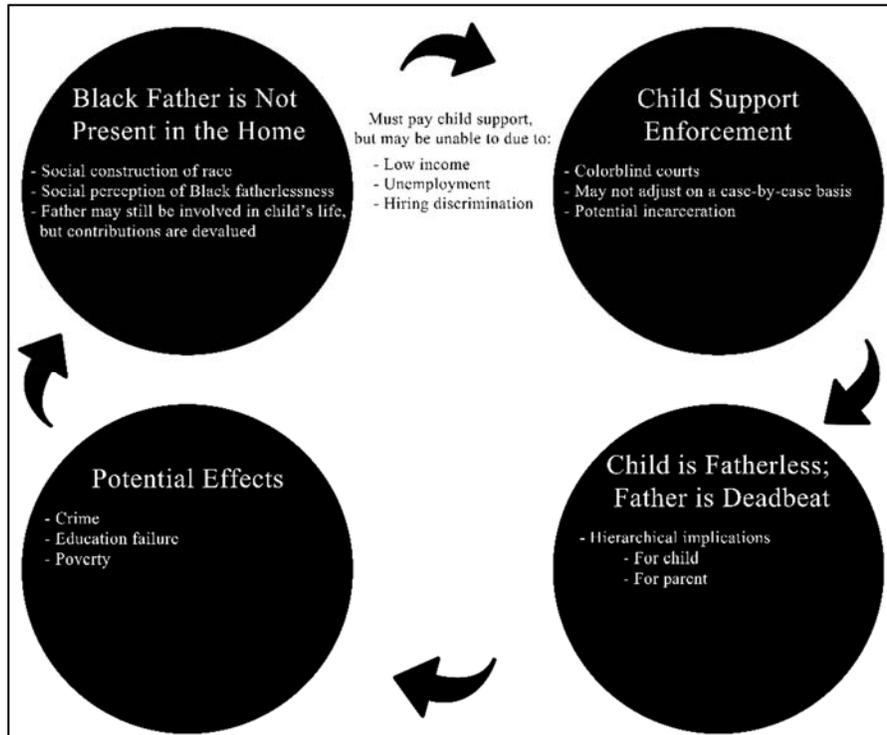
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1. Jessica Chasmar, *Rand Paul Blames ‘Lack of Fathers, Moral Code’ for Baltimore Unrest*, WASH. TIMES (Apr. 28, 2015), <https://www.washingtontimes.com/news/2015/apr/28/baltimore-riots-rand-paul-blames-lack-of-fathers-m> [<https://perma.cc/UE2Y-UWZ7>].
  2. German Lopez, *The Baltimore Protests Over Freddie Gray’s Death, Explained*, VOX (Aug. 18, 2016, 9:38 AM), <https://www.vox.com/2016/7/27/18089352/freddie-gray-baltimore-riots-police-violence> [<https://perma.cc/7PQ4-EJ5U>].
  3. For an explanation on the capitalization of B in “Black,” see Kimberlé Williams Crenshaw, *Race, Reform, and Retrenchment: Transformation and Legitimation in Antidiscrimination Law*, 101 HARV. L. REV. 1331, 1332 n.2 (1988) (explaining that Black people like other racial minorities, “constitute a specific cultural group, and, as such, require denotation as a proper noun”).
  4. See Solangel Maldonado, *Deadbeat or Deadbroke: Redefining Child Support for Poor Fathers*, 39 U.C. DAVIS L. REV. 991, 993–94 (2006) (“For decades, government officials have focused on paternal absence in African-American families, treating ‘[f]atherlessness . . . as a distinctly Black problem,’ and blaming absent fathers for many of the social ills plaguing African-American communities . . .”) (alteration in original).
  5. Daniel Moynihan discussed at length fatherlessness in the Black community in the Moynihan Report. See discussion *infra* Subpart I.C. In his report, he emphasized that the breakdown of the nuclear family was the root of plight in the Black community and an experience that white people could not comprehend. See DANIEL P. MOYNIHAN, U.S. DEP’T OF LAB., THE NEGRO FAMILY: THE CASE FOR NATIONAL ACTION 5 (1965) [hereinafter MOYNIHAN REPORT] (“At the heart of the deterioration of the fabric of Negro society is the deterioration of the Negro family. It is the fundamental source of the weakness of the Negro community at the present time. There is probably no single fact of Negro American life so little understood by whites.”).

fathers. The lack of a father in their lives then makes them resort to crime and negative behavior.<sup>6</sup>

This Comment frames Black fatherlessness as a nonlinear process that involves many social institutions, including the legal system governing child welfare. This intervention complicates the common sociological model which suggests that Black fathers directly cause the plight in their communities.<sup>7</sup>

Part I discusses conceptions of fatherhood in the legal system, including social and biological definitions which both play an important role in the welfare and child support laws that contribute to the process of fatherlessness. Additionally, it elaborates on the common narrative that fatherlessness causes social pathologies. Part II describes the notion of the absent Black father, analyzes the social construction of race, and discusses how fatherlessness plays a key role in that calculus. Part III argues that welfare and child support enforcement policies demean and criminalize Black fathers unable to pay high child support amounts, regardless of whether the father is employed. In doing so, these laws perpetuate the absent Black father stereotype and subject Black fathers to a cycle of disappointment, stereotypes, and deprivation. Part IV applies a social dominance theory<sup>8</sup> perspective to the notion of Black fatherlessness and the impacts it can have on both Black children and fathers. Part V proposes solutions that may prove to be useful in breaking the cycle of Black fatherlessness via changes to state law.

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6. See, e.g., Anna Tarrant & Michael Ward, *The Myth of the Fatherless Society*, CONVERSATION (Feb. 20, 2017, 12:00 PM), <http://theconversation.com/the-myth-of-the-fatherless-society-73166> [<https://perma.cc/B9CT-YXRZ>] (“The blame for young people’s poverty or any other issues are firmly rooted in assumptions about the failures of parents . . . . Though it makes sense to worry that dads aren’t present, it is not so easy to say that the behavior of the stereotypes are the sole cause of young people’s problems generally.”); Claudio Sanchez, *Poverty, Dropouts, Pregnancy, Suicide: What the Numbers Say About Fatherless Kids*, NPR (June 18, 2017, 6:04 AM), <https://www.npr.org/sections/ed/2017/06/18/533062607/poverty-dropouts-pregnancy-suicide-what-the-numbers-say-about-fatherless-kids> [<https://perma.cc/WV7G-X6LG>] (“[A]t the root of kids’ [academic] problems, is the lack of a relationship with their father.”); Anna Sutherland, *Yes, Father Absence Causes the Problems It’s Associated With*, INST. FOR FAM. STUD. (Feb. 4, 2014), <https://ifstudies.org/blog/yes-father-absence-causes-the-problems-its-associated-with> [<https://perma.cc/8XAA-H4PQ>] (discussing a study in which the researchers concluded that fatherlessness has direct negative effects on children’s life outcomes).
  7. See Mychal Denzel Smith, *The Dangerous Myth of the ‘Missing Black Father’*, WASH. POST (Jan. 10, 2017, 3:01 PM), [https://www.washingtonpost.com/posteverything/wp/2017/01/10/the-dangerous-myth-of-the-missing-black-father/?noredirect=on&utm\\_term=.59c1dc297ce6](https://www.washingtonpost.com/posteverything/wp/2017/01/10/the-dangerous-myth-of-the-missing-black-father/?noredirect=on&utm_term=.59c1dc297ce6) [<https://perma.cc/8LAP-KQ66>] (describing the common sociological model that implicates Black fathers for the plight in their communities).
  8. Social dominance theory asserts that intergroup hierarchies are socially constructed. Its application to this problem theorizes the effect that socially and legally constructed fatherlessness can have on both Black children and fathers.

**Figure 1:** The Cycle of Fatherlessness

*Note:* This diagram presents a model of a Black father's absence from the family unit and how social factors and legal mechanisms combine to maintain the cycle of fatherlessness.<sup>9</sup> This illustration will be useful in understanding the issue of fatherlessness as it relates to the notion that race is a system of hierarchy and how the legal system can implement and rely on the social construction of race to create a particular set of outcomes, namely the reproduction of group-based hierarchy in Black fatherlessness.

This Comment ultimately concludes that race, fatherlessness, and the legal system are closely connected. This close connection helps create fatherlessness by forcing Black fathers away from their homes, while stigmatizing those fathers involved in their families. Both scenarios result in negative outcomes for the children and fathers wrapped in the cycle. These consequences can include stereotyping, victim blaming, and compromising the childhood and future of

9. I created this diagram to show the cyclical nature of fatherlessness that includes multiple factors that can have an adverse effect on the children and fathers involved. This diagram functions as a visual supplement to the contents of this Comment.

Black children. Therefore, this Comment suggests that one way to change social perception of Black fatherlessness is to reform multiple steps of the welfare–child support system, particularly ensuring that (1) state laws are not incentivized to strictly enforce child support at a Black father’s detriment and (2) courts instead opt to use a fluid standard when enforcing child support.

## I. FATHERLESSNESS

Fatherlessness is inherently tied to the state of fatherhood and traditional notions of what it means to be a father. This Part describes the varying definitions of a father and fatherhood, as well as the expectations that come with that role. This Part also defines fatherlessness as a father’s absence from the home and, thus, the lack of fatherhood, while providing an introduction into the collective understanding of the significance of a father’s absence.

### A. Fatherhood

Generally, a father is the man with the closest biological association to a child,<sup>10</sup> while fatherhood refers to the social role that a father plays in his child’s life.<sup>11</sup> But this distinction is of recent origin and highlights a shift in how fatherhood is understood. Traditional notions of fatherhood revolved around a biological connection between a man and a child, whereas modern conceptions of the term focus on the real world social relationship between a man and a child: “[F]athers have asserted a new, more engaged model of fatherhood. Nurture is valued rather than simple biological or marital ties, or actions limited to economic breadwinning . . . Nurture includes the physical, psychological, emotional, and spiritual care of children.”<sup>12</sup> In light of these changes in the social expectations of what it means to be engaged, the social model of fatherhood has diverted from a purely biological model. This model includes men fathering

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10. See, e.g., *Father*, MERRIAM-WEBSTER DICTIONARY, <https://www.merriam-webster.com/dictionary/father> [<https://perma.cc/T79M-P352>]. While this Comment recognizes the existence of transgender fathers and gender-nonconforming parents and their respective experiences with parenthood, its focus is exclusively on the experience of the Black cisgender male – the figure most commonly associated with the absent Black father trope.

11. See Nancy E. Dowd, *Parentage at Birth: Birthfathers and Social Fatherhood*, 14 WM. & MARY BILL RTS. J. 909, 910 (2006) (“A number of changes have moved parentage away from the marital/genetic/patriarchal model that valued the marital family above genes or social fatherhood.”).

12. *Id.* at 910, 912–13.

children that biologically are not theirs;<sup>13</sup> men parenting children in same-sex relationships; and men parenting their children by themselves. This shift differentiates between the biological definition of “father” and the developing social definition of “fatherhood.”<sup>14</sup> This Comment demonstrates that the former can be key to child support enforcement under the current legal regime,<sup>15</sup> and argues that the latter should also be considered.

A man that engages in sexual intercourse with a woman that results in a pregnancy and a child does not necessarily satisfy the social expectations of fatherhood. Fatherhood, in that sense, refers to a man’s interactions, level of involvement, and influence in a child’s life. Social expectations of American fathers have developed over time,<sup>16</sup> ranging from lessons of piety to financial stability.<sup>17</sup> Scholars note that the social concept of fatherhood has evolved through

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13. This includes stepfathers and other men that are the only fathers a child has known, even family members functioning as father figures such as uncles and grandfathers.

14. See Monika J. Ulrich, *Dual Daddies: Low-Income Urban Non-Residential Biological Fathering and Residential Social Fathering 4* (Univ. of Ariz. Sociology Working Paper No. 8, 2008) (“Substantial historical and cultural analysis has shown that hegemonic ideals of fatherhood behavior and men’s own responses to those ideals, more so than motherhood, are socially constructed in each society . . . . In fact, the very definition of fatherhood is subject to social forces . . .”).

15. There are some instances in which biology is not the predominant factor in child support enforcement. For instance, a man who plans on having a child through surrogacy would still be responsible for child support—rather than the sperm donor—because the man intends to be the father of the child, despite not being biologically connected. See William J. Giacomo & Angela DiBiasi, *Mommy Dearest: Determining Parental Rights and Enforceability of Surrogacy Agreements*, 36 PACE L. REV. 251, 260 (2015) (“[In discussing Sherri Shepherd’s lawsuit regarding whether Shepherd owed child support for her child born from surrogacy,] [h]er ex-husband could rely on the [*Buzzanca v. Buzzanca*] holding to assert that he and Sherri Shepherd were the intended parents under the surrogacy agreement and thus are the legal parents responsible for child support obligations, irrespective of the fact that the intended mother (Sherri Shepherd) has no biological connection to the child.”).

16. “American fathers,” refers to the normative experience that has included white fathers and forced fathers of other races to assimilate to meet the white standard or risk being viewed as abnormal. See Michael Enku Ide, Blair Harrington, Yolanda Wiggins, Tanya Rouleau Whitworth & Naomi Gerstel, *Emerging Adult Sons and Their Fathers: Race and the Construction of Masculinity*, 32 GENDER & SOC’Y 5, 6 (2018) (noting that public discourse regarding fathers valorize white conceptions of fatherhood).

17. In the beginning stages of colonial America, fathers were generally presumed to teach their children good work habits and faith in religion. This shifted in the post-Civil War era when the American economy grew, as it became acceptable for more men to take jobs outside of the home (compared to working within the family business or agriculture). Finally, the increasing importance of literary works also influenced fatherly expectations, putting more significance on loving one’s child, sharing acquired wisdom, and spending quality time. Olivia B. Waxman, *What It Means to Be a ‘Good’ Father in America Has Changed. Here’s How*, TIME (June 15, 2018, 2:30 PM), <http://time.com/5312912/history-american-fathers> [<https://perma.cc/F4YG-VCE9>].

four phases: (1) the moral teacher, (2) the breadwinner, (3) the sex-role model, and (4) the loving father.<sup>18</sup> But while the notion of social fatherhood has evolved, a father's ability to economically sustain his family still serves as the fundamental measuring stick for a man's familial success. This evolution indicates that fathers now also face societal expectations to care for their children, be present in the home, have enough monetary income to support his family, and perhaps most importantly, instill lessons of discipline, integrity, and leadership.<sup>19</sup>

With so many distinct responsibilities given to fathers, their absence is strongly felt if they are not present in a child's life. Fatherlessness is thus defined as the reality of "having no father because he is dead or absent from the home."<sup>20</sup> Although the definition gives two justifications for fatherlessness—both of which have overlapping and independent implications—absence from the home is the predominant definition used when discussing fatherlessness as a cause of social ills.<sup>21</sup>

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18. The moral guide represented the father who is responsible for ensuring his children grew up with good values, while seeing to their education and religious devotion. The breadwinner was a byproduct of industrialization and was a symbol of financial stability. The sex-role model motif is particularly in reference to a father being a good role model for his son(s). Finally, the nurturing father, a relatively recent development, made it socially acceptable for a father to be involved in his children's lives—being labeled as an 'active parent.' Michael E. Lamb, *The History of Research on Father Involvement: An Overview*, 29 MARRIAGE & FAM. REV. 23, 26–27 (2000).
19. "The way fathers play [with their children] has effects on everything from the management of emotions to intelligence and academic achievement. It is particularly important in promoting self-control . . . '[C]hildren who roughhouse with their fathers quickly learn that biting, kicking and other forms of physical violence are not acceptable. They learn when to 'shut it down.'" David Popenoe, *Life Without Father*, in LOST FATHERS: THE POLITICS OF FATHERLESSNESS IN AMERICA 33, 39 (Cynthia R. Daniels ed., 1998).
20. *Fatherlessness*, OXFORD DICTIONARIES, <https://en.oxforddictionaries.com/definition/fatherlessness> [<https://perma.cc/VD3G-N3UB>].
21. While a father's death highlights an aspect of fatherlessness briefly considered later in this Comment, a father's absence functions as the primary definition because sociological ills are primarily tied to a father's chosen absence, as opposed to absence created by death. See Willis Krumholz, *Family Breakdown and America's Welfare System*, INST. FOR FAM. STUD. (Oct. 7, 2019), <https://ifstudies.org/blog/family-breakdown-and-americas-welfare-system> [<https://perma.cc/PSL5-6BV4>] ("[T]he problem of broken families is interchangeable with 'fatherlessness.'"). Furthermore, the father's-absence definition focuses on a child's experience of fatherlessness. The other definition highlighted in this Comment will describe fatherlessness as referring to the ineptitude of a father to provide for and support his children. This understanding draws attention to a father's experience and stigmatization due to fatherlessness.

## B. Significance of Fatherlessness

Fatherlessness is often linked to many of the United States's<sup>22</sup> social ills, and subsequently considered to be the leading cause for many of the nation's problems, namely poverty,<sup>23</sup> lack of education,<sup>24</sup> crime, and teenage pregnancy.<sup>25</sup> In 2011, 12 percent of children living in homes with both parents experienced poverty, while 44 percent of children living with only their mother experienced poverty.<sup>26</sup> A 2012 study found that 71 percent of high school dropouts are fatherless, and that fatherless children perform poorly on tests in reading, mathematics, and critical thinking.<sup>27</sup> A 1 percent increase in the number of single-parent families in a neighborhood corresponds with a 3 percent increase in instances of adolescent violence behavior.<sup>28</sup> And 60 percent of rapists, 72 percent of adolescent murderers, and 70 percent of longterm prison inmates come from fatherless homes.<sup>29</sup> While the statistics are valuable in indicating the potential effects of absent-father homes in a community, they are particularly

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22. The United States has the highest proportion of children with some experience living outside a two-parent family by the time they turn fifteen when compared to European countries. The U.S. rate is as high as 50 percent, while many European rates peak at around 25 to 33 percent. This difference suggests that America's rate may be explained by factors that are either not present or are significantly reduced in other countries. See Gunnar Andersson, *Children's Experience of Family Disruption and Family Formation: Evidence From 16 FFS Countries*, 7 DEMOGRAPHIC RSCH. 343, 354 (2002), <https://www.demographic-research.org/volumes/vol7/7/7-7.pdf> [<https://perma.cc/DKF9-62DG>]. In 2018, 65% of Black children (6,166,000) lived in single-parent households. See *Children in Single-Parent Families by Race in the United States*, KIDS COUNT DATA CTR. <https://datacenter.kidscount.org/data/tables/107-children-in-single-parent-families-by-race?loc=1&doct=1#detailed/1/any/false/37,871,870,573,869,36,868,867,133,38/10,11,9,12,1,185,13/432,431> [<https://perma.cc/6WWJ-26J7>] (last updated Dec. 2020).
  23. See Sanchez, *supra* note 6 (“Children are four-times more likely to be poor if the father is not around.”).
  24. See *id.* (“[Fatherless kids] are also twice as likely to drop out.”).
  25. Richard E. Vatz, *The Social Costs of Fatherlessness*, WASH. TIMES (Dec. 18, 2017), <https://www.washingtontimes.com/news/2017/dec/18/the-social-costs-of-fatherlessness> [<https://perma.cc/9XC5-4W7U>] (“[F]ather absence, rather than poverty, was a strong predictor of young men's violent behavior.”); see Sanchez, *supra* note 6 (“[Fatherless girls are] four-times more likely to get pregnant as teenagers.”).
  26. *The Consequences of Fatherlessness*, FATHERS.COM, <http://fathers.com/statistics-and-research/the-consequences-of-fatherlessness> [<https://perma.cc/CQ3Q-ZUH5>].
  27. Edward Kruk, *Father Absence, Father Deficit, Father Hunger*, PSYCH. TODAY (May 23, 2012), <https://www.psychologytoday.com/us/blog/co-parenting-after-divorce/201205/father-absence-father-deficit-father-hunger> [<https://perma.cc/E95H-YZF4>].
  28. *The Consequences of Fatherlessness*, *supra* note 26.
  29. Popenoe, *supra* note 19, at 41.

detrimental when used as a way of concluding that fatherlessness is essentially the root of all evil.

Consider the following quote from Charles A. Ballard, founder and president of the Institute for Responsible Fatherhood and Family Revitalization:<sup>30</sup>

Fatherlessness is linked to the increase in murders, assaults, drive-by shootings, and drug and alcohol abuse. Fatherlessness is the cause of teenage pregnancy, infant mortality, suicide, neglect, and abandonment. Fatherlessness is the root cause of truancy, education failure, community failure, and despair . . . . Fatherlessness, is [sic]tunity left unchecked and uncorrected will lead to the demise of our American society as we have known it.<sup>31</sup>

If we understand “fatherlessness” to be about the lack of “fatherhood”—not simply the lack of a father living in the home—then Ballard is arguing that the lack of fatherly quality time, fatherly love, fatherly financial stability, and fatherly moral example will, in the aggregate, prompt the destruction of American life. This statement represents how the social science data can be used to look at the problem of fatherlessness only as a cause of social problems, rather than as a phenomenon that is better understood as correlated with social problems. Society should look at fatherlessness as one of many factors that affects a child’s proclivity for crime or antisocial behavior. The remainder of this Comment argues that the perception of fatherlessness as the cause of social ills in Black communities combines with legal processes to collectively perpetuate fatherless homes and to contribute to the continuation of the cyclical process of fatherlessness.

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30. The Institute for Fatherhood and Family Revitalization is a grassroots organization that offers help in paternity establishment and child support assistance, among other services. *Institute for Responsible Fatherhood and Family Revitalization*, INTERCHANGE, <http://www.interchange.org/ROMROS/resource-12.html> [https://perma.cc/ZCC7-KNH2]. Charles Ballard was one of the leading voices in the fatherlessness conversation and supported Daniel Moynihan’s report attributing pathologies in the Black community to the breakdown of the nuclear family. Lynne Haney & Miranda March, *Married Fathers and Caring Daddies: Welfare Reform and the Discursive Politics of Paternity*, 50 SOC. PROBS. 461, 466 (2003) (noting that Ballard praised Moynihan’s statements and urged Congress to follow Moynihan’s suggestions for restoring Black family structure).
31. *Encouraging Responsible Fatherhood: Hearing on Examining Initiatives to Encourage Responsible Fatherhood Before the Subcomm. on Children and Families of the Comm. on Labor and Human Res.*, 104th Cong. 23 (1996) (statement of Charles A. Ballard, Founder and President, Institute for Responsible Fatherhood and Family Revitalization).

### C. Black Fatherhood: An Overview

Black fathers experience a damaging narrative, one that portrays them as not being present in their children's lives.<sup>32</sup>

The absent Black father stereotype is often first attributed to Daniel Patrick Moynihan's 1965 report entitled *The Negro Family: The Case for National Action* (the Moynihan Report). Released in the heart of the Civil Rights era, the Moynihan Report blamed disadvantage in the Black community on the breakdown of the Black nuclear family, specifically the desertion of the Black father and the preeminence of Black women at the heads of households.<sup>33</sup> Moynihan used the proportion of Black children born out of wedlock, divorce rates among Black couples, and disparity in educational attainment between Black men and women as the basis for measuring the rates of absent Black fathers. He then linked that absence to Black youth pathologies, including low educational attainment and crime and delinquency.<sup>34</sup>

Implied in Moynihan's discussion of absent fathers and the degradation of the nuclear Black family is the idea that it is harmful for a Black woman to serve as the head of her household.<sup>35</sup> When a father is not present in the home, the corollary of his absence is Black matriarchy. But Moynihan argued that Black matriarchy is a primary cause of fatherlessness because Black men would see

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32. See THE OPPORTUNITY AGENDA, SOCIAL SCIENCE LITERATURE REVIEW: MEDIA REPRESENTATIONS AND IMPACT ON THE LIVES OF BLACK MEN AND BOYS 24 (2011), <https://www.racialequitytools.org/resourcefiles/Media-Impact-onLives-of-Black-Men-and-Boys-OppAgenda.pdf> [<https://perma.cc/7XXU-5Q2B>] (“As discussed, even . . . [if] black males are presented sympathetically, they tend to be absent from some important types of roles, e.g., as fathers in parenting situations that audiences relate to.”); German Lopez, *Debunking the Most Pervasive Myth About Black Fatherhood*, VOX (June 19, 2016, 11:25 AM), <https://www.vox.com/2015/6/21/8820537/black-fathers-day> [<https://perma.cc/BYZA-CWMS>]; Maurice Berger, *Revealing the Lives of Black Fathers*, N.Y. TIMES (Aug. 6, 2018), <https://www.nytimes.com/2018/08/06/lens/revealing-the-lives-of-black-fathers.html> [<https://perma.cc/9BVH-CV6P>]; see also Danielle Cadet, *5 Lies We Should Stop Telling About Black Fatherhood*, HUFFPOST: BLACK VOICES (June 13, 2014, 2:30 PM), [https://www.huffpost.com/entry/black-fatherhood-statistics\\_n\\_5491980](https://www.huffpost.com/entry/black-fatherhood-statistics_n_5491980) [<https://perma.cc/R5SD-TSB9>].

33. MOYNIHAN REPORT, *supra* note 5, at 30–37.

34. *Id.* at 35 (“Negro children without fathers flounder—and fail.”). “The combined impact of poverty, failure, and isolation among Negro youth has had the predictable outcome in a disastrous delinquency and crime rate . . . . It is probable that at present, a majority of the crimes against the person, such as rape, murder, and aggravated assault are committed by Negroes.” *Id.* at 38.

35. *Id.* at 29 (“[T]he Negro community has been forced into a matriarchal structure which, because it is so out of line with the rest of the American society, seriously retards the progress of the group as a whole, and imposes a crushing burden on the Negro male and, in consequence, on a great many Negro women as well.”).

their power within their families decrease and subsequently renounce their responsibilities as patriarchs.<sup>36</sup> In other words, Moynihan articulated that Black matriarchy resulted in what could be considered a sort of “psychological castration” for Black men.<sup>37</sup> As the report depicted female-headed households as negative and Black matriarchy as dangerous, it further stigmatized absent fathers, blaming them for the circumstances that they leave behind. The findings ultimately concluded that a single Black mother is incapable of maintaining the household without a man while also raising her child(ren) to be upstanding citizens in modern society. By pathologizing Black fatherlessness and the households that are headed by women, the report shifted the blame from structural racism to Black people themselves and created the sociopolitical context for constructs such as the absent Black father and the Welfare Queen.<sup>38</sup>

The theory of the single Black mother’s ineptitude is embodied through the construction of the metaphorical Welfare Queen. The Welfare Queen is the absent Black father’s equally villainized metaphorical and stereotypical equal. First described by Ronald Reagan in the 1970s on the campaign trail, the term was used as a political tool to convey dislike for America’s public assistance program at the time.<sup>39</sup> The term then came to indicate “a woman whose irresponsible choice to have children out of wedlock has caused her to turn to the state for financial support . . . [one who] is a threat to social order precisely because she rejects the importance of the nuclear family as a bedrock social institution.”<sup>40</sup> The Moynihan Report and the Welfare Queen construction worked in tandem to inform the societal view of single Black mothers by depicting them as having poor, irresponsible procreative habits. A Welfare Queen is viewed as having both a

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36. *Id.* at 30–34.

37. *Id.*; See also Robert Staples, *The Myth of the Black Matriarchy*, 1 BLACK SCHOLAR 8, 8 (1970).

38. Camille Gear Rich, *Reclaiming the Welfare Queen: Feminist and Critical Race Theory Alternatives to Existing Anti-Poverty Discourse*, 25 S. CAL. INTERDISC. L.J. 257, 258 (2016).

39. ‘Welfare Queen’ Becomes Issue in Reagan Campaign, N.Y. TIMES (Feb. 15, 1976), <https://www.nytimes.com/1976/02/15/archives/welfare-queen-becomes-issue-in-reagan-campaign-hitting-a-nerve-now.html> [<https://perma.cc/67WF-LCW3>]. Reagan rarely used the actual term Welfare Queen, but he repeatedly described a woman in Chicago who continued to take advantage of the public assistance program. This woman was Linda Taylor, a Black woman who committed welfare fraud. Based on his rhetoric, headlines began describing Taylor as the “welfare queen.” *Id.* The term “welfare queen” functioned as a way of perpetuating a racist stereotype of a single Black mother relying on the government’s dollars to support herself. Gillian Brockell, *She Was Stereotyped As ‘The Welfare Queen.’ The Truth Was More Disturbing, a New Book Says*, WASH. POST (May 21, 2019, 9:01 AM), <https://www.washingtonpost.com/history/2019/05/21/she-was-stereotyped-welfare-queen-truth-was-more-disturbing-new-book-says> [<https://perma.cc/34G8-PJTT>].

40. Rich, *supra* note 38, at 260.

disregard for fiscal responsibility and a sense of entitlement that the state is supposed to support her children. As a result, the trope pathologizes single Black mothers: It is a negative experience for Black children to grow up in single-mothered households because they are not raised under the same conditions as children in a nuclear family.<sup>41</sup> The pathology provides an understanding as to the weight of the absent Black father stereotype and its place in society: Black fathers allegedly abandon and neglect their children, leaving them with a single Black mother who is incapable of engaging in meaningful childrearing. The repeated use of the Welfare Queen and absent Black father tropes in popular culture, media, and the law reinforce whiteness-informed norms for what family structure and parenting should look like: both parents living together in the home.<sup>42</sup>

News media has played a dominant role in the modern perpetuation of the absent Black father stereotype. A study conducted on the news media's depiction of Black families during the 2016 presidential election cycle found that media outlets portrayed Black mothers, white mothers, and white fathers as having similar rates of involvement in their children's lives.<sup>43</sup> But the same outlets portrayed Black fathers as having half the rate of involvement as other groups. The study also noted that news commentators identified Black fathers 60 percent of the time they specifically mentioned an absent father.<sup>44</sup> These results reflect many of the same stereotypes about Black fathers as were present in the 1960s.<sup>45</sup>

In contemporary America, images of absent Black fathers are commonplace in mass media. Major retailers, such as Macy's, fail to include images of Black

41. See Tarrant & Ward, *supra* note 6 (noting that the discussion of fatherlessness says a lot about how society feels about single-mothered households).

42. Ann Cammett, *Deadbeat Dads & Welfare Queens: How Metaphor Shapes Poverty Law*, 34 B.C. J.L. & SOC. JUST. 233, 238 (2014); see W. Bradford Wilcox & Hal Boyd, *The Nuclear Family is Still Indispensable*, ATLANTIC (Feb. 21, 2020), <https://www.theatlantic.com/ideas/archive/2020/02/nuclear-family-still-indispensable/606841> [<https://perma.cc/ZA72-9MK4>] (“[A] nuclear family headed by two loving married parents remains the most stable and safest environment for raising children.”).

43. Nicole Rodgers & Rashad Robinson, *How the News Media Distorts Black Families*, WASH. POST (Dec. 29, 2017), [https://www.washingtonpost.com/outlook/2017/12/29/a374a268-ea6d-11e7-8a6a-80acf0774e64\\_story.html](https://www.washingtonpost.com/outlook/2017/12/29/a374a268-ea6d-11e7-8a6a-80acf0774e64_story.html) [<https://perma.cc/3L4V-7XXD>].

44. TRAVIS L. DIXON, A DANGEROUS DISTORTION OF OUR FAMILIES: REPRESENTATIONS OF FAMILIES, BY RACE, IN NEWS & OPINION MEDIA 35 (2017), [https://colorofchange.org/wp-content/uploads/2019/05/COC-FS-Families-Representation-Report\\_Full\\_121217.pdf](https://colorofchange.org/wp-content/uploads/2019/05/COC-FS-Families-Representation-Report_Full_121217.pdf) [<https://perma.cc/T5RT-7UYT>]. White fathers were identified as absent only 20 percent of the time. *Id.*

45. See generally MOYNIHAN REPORT, *supra* note 5 (suggesting the Black father's desertion of his family as the leading cause of plight within the Black community when compared to fatherlessness rates among other races).

fathers in their family holiday campaigns.<sup>46</sup> Hollywood has rewarded Oscars for Best Picture to films like *Moonlight*, applauding the film as a breakthrough in Black cinema even though the film wholly excluded the Black protagonist's father while highlighting the protagonist's drug addict of a mother.<sup>47</sup> Meanwhile, other films like 1964's *Nothing But a Man* go relatively unnoticed, despite showcasing a Black man overcoming his troubled relationship with his absent father to be a better father to his own son.<sup>48</sup> Moreover, the Black family as depicted in film and television often does not resemble the experience of the average Black individual in reality. The Black father remains notably absent in much of the media society consumes,<sup>49</sup> which influences social perceptions of Black families.

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46. In Macy's 2018 Christmas advertisements, they used four images that consisted of two nuclear white families, one Black single mother of three boys, and one male, same-sex, interracial couple parenting two children. None of these images included a traditional nuclear, Black family, which raised great concern for the idea such a campaign conveys: Black, heterosexual men do not have the ability to contribute to happy families. See Nigel Roberts, *Macy's Dragged for How It Portrays Black Fathers in New Holiday Ad*, 97.9 THE BEAT, <https://thebeatdfw.com/3107745/macys-dragged-for-how-it-portrays-black-fathers-in-new-holiday-ad> [<https://perma.cc/X3PS-LTMX>].
47. MOONLIGHT (A24 Films 2016), <https://a24films.com/films/moonlight> [<https://perma.cc/8KHJ-4WW7>]; Bilge Ebiri, *Critic's Notebook: Why 'Get Out' and 'Moonlight' Are Breakthroughs in Black Filmmaking*, HOLLYWOOD REP. (Mar. 7, 2017, 12:56 PM), <https://www.hollywoodreporter.com/news/why-get-moonlight-are-breakthroughs-black-filmmaking-critics-notebook-984129> [<https://perma.cc/AFP3-74LG>]; J.R. Jones, *A Minor Character Plays a Major Role in the Barry Jenkins Drama Moonlight*, CHI. READER (Oct. 28, 2016), <https://www.chicagoreader.com/chicago/mahershala-ali-barry-jenkins-moonlight-film-review/Content?oid=24128010> [<https://perma.cc/G7VZ-3CRC>] ("Academy voters looking to address that [diverse nominee] imbalance this year will be all over Barry Jenkins's *Moonlight*, an intimate and haunting drama about a poor, fatherless African-American kid . . .").
48. NOTHING BUT A MAN (Cinema V 1964), [https://www.youtube.com/watch?v=0xmC\\_pkDszU](https://www.youtube.com/watch?v=0xmC_pkDszU) [<https://perma.cc/7MLC-AE6Z>]. See also Chris Miller, *The Representation of the Black Male in Film*, 3 J. AFR. AM. MEN 19, 25 (1998) ("When his father dies, and Duff cannot tell the undertaker how old his father is or where his father was born . . . he sees that he is carrying on a tradition that is passed from father to son; a father who runs from his responsibilities and blames all but himself. Duff sees this pattern repeat itself from generation to generation. So Duff changes; he accepts the responsibility of being a father and husband and learns what it is to be a man.") (emphasis omitted).
49. Dating back to 1950, there have only been approximately twenty notable sitcoms primarily featuring Black families. Kat Chow, *A Timeline of Sitcoms Featuring Families of Color*, NPR (Oct. 28, 2014, 7:03 AM), <https://www.npr.org/sections/codeswitch/2014/10/28/358307426/a-timeline-of-51-family-sitcoms-with-people-of-color> [<https://perma.cc/3PUX-4G7B>]. While television has portrayed Black fathers in classic shows such as *The Cosby Show*, *Good Times*, *The Jeffersons*, *The Bernie Mac Show*, and *My Wife and Kids*, among others, the primary modern representation of Black fathers on television are *Black-Ish*, *The Paynes*, and *The Neighborhood*. But *The Paynes* was canceled by its network, shortening the list of positive depictions of Black fathers on television. See Rodney Ho, *OWN Ends 'The Paynes,' But Will Tyler Perry's Comedy Move to BET or Not?*,

The lack of present Black fathers in mainstream media likely influences day-to-day interactions that Black fathers have with others. Consider the following example of a Black father's experience while out with his child:

I took my daughter on a stroll to a local Starbucks. While we waited in line, a very pleasant white woman in her fifties . . . approached me and showered my little one with compliments regarding her unmistakable cuteness. Everything was completely on the level, but as soon as she received her drink, she hit me with this: 'No offense, but it's not often that I see Black men out with their kids, but it's such a wonderful thing. No matter what happens, I hope you stay involved in her life.' And then she left.<sup>50</sup>

The woman's words, "No matter what happens," reflect a view that a Black father may choose to leave his partner and child if he ever faces adversity or tough circumstances. In this sense, participation in Black fatherhood is considered to be voluntary.<sup>51</sup> Consequently, Black fathers are described as "deadbeat; uninvolved; and great at making kids, but horrible at taking care of them."<sup>52</sup> This perspective, however, ignores the reality that absence from Black fatherhood is not wholly voluntary: Incarceration separates Black nuclear families.<sup>53</sup> Black fathers sometimes are involuntarily removed from the family unit, a reality that the modern narrative of Black fatherhood does not consider. The remainder of this Comment discusses the legal mechanisms in place that contribute to and preserve the trope of the absent Black father.

## II. THE ABSENT FATHER AND RACE

Fatherlessness is not exclusive to one race. Within the United States, people of all races, ethnicities, and socioeconomic statuses grow up wholly without a

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AJC (Aug. 8, 2019), <https://www.ajc.com/blog/radiotv/own-ends-the-paynes-but-will-tyler-perry-comedy-move-bet-not/d72MnRpAZRjuBzogtpuPYM> [<https://perma.cc/67DA-7UXP>].

50. Doyin Richards, *My Rude Introduction to Black Fatherhood*, FATHERLY (Mar. 13, 2019, 11:11 AM), <https://www.fatherly.com/love-money/my-rude-introduction-to-black-fatherhood> [<https://perma.cc/JYZ4-QFEF>].

51. Although non-Black individuals perpetuate this stereotype, even those that are Black themselves may hold a similar view. The supposed voluntary exodus of the Black father served as the crux of former President Barack Obama's My Brother's Keeper initiative and in many of his speeches to primarily Black audiences, as he emphasized that "[Black fathers] have abandoned their responsibilities, acting like boys instead of men." Smith, *supra* note 7.

52. Richards, *supra* note 50 (internal quotations omitted).

53. See discussion *infra* Part III.

father or with a father that does not fulfill his social expectations of fatherhood.<sup>54</sup> In 2012, 55 percent of Black children lived in single-family homes, which tend to be headed by a single-mother, compared to 31 percent of Hispanic children and 21 percent of white children.<sup>55</sup> These numbers jumped to 66 percent, 42 percent, and 24 percent respectively by 2016.<sup>56</sup> But the lack of a father is routinely linked with the Black community based on misleading statistics.<sup>57</sup> Many statistics use living arrangement as the only factor in determining fatherlessness, inflating the numbers because children of divorced couples may not share an address with their fathers but still frequently see them,<sup>58</sup> overlooking the fact that most Black fathers live with their children,<sup>59</sup> and relying on the percentage of children raised by single women, which focuses on the mother's marital status and does not necessarily indicate fatherlessness.<sup>60</sup> While fatherlessness is not determined by race, it has become racialized in the United States due to racism and various factors that disproportionately, and negatively, impact the Black community. This Part examines the intersection of fatherlessness and race, discussing the notion of race

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Five decades after [Daniel] Moynihan's work, white families exhibit the same rates of nonmarital childbearing and single parenting as black families did in the 1960s when Moynihan sounded his alarm. Meanwhile, the disintegration of the black nuclear family continued apace. That the decline of traditional families occurred across racial and ethnic groups indicates that factors driving the decline do not lie solely within the black community but in the larger social and economic context.

GREGORY ACS, KENNETH BRASWELL, ELAINE SORENSEN & MARGERY AUSTIN TURNER, URB. INST., *THE MOYNIHAN REPORT REVISITED* 5 (2013).

55. JONATHAN VESPA, JAMIE M. LEWIS & ROSE M. KREIDER, U.S. CENSUS BUREAU, *AMERICA'S FAMILY AND LIVING ARRANGEMENTS: 2012*, at 2 (2013). Because legal processes emphasize the importance of a father's biological connection to a child, it is important to note that even though the 58 percent may be in the household with a stepfather or other paternal role model that socially contributes to their upbringing, the absence of a biological father in the home is particularly relevant. 89 percent of Black solo parents in single-family households are mothers. Gretchen Livingston, *The Changing Profile of Unmarried Parents*, PEW RSCH. CTR. (Apr. 25, 2018), <https://www.pewsocialtrends.org/2018/04/25/the-changing-profile-of-unmarried-parents> [<https://perma.cc/MAJ4-7HM5>].

56. *Children in Single-Parent Families by Race in the United States*, *supra* note 22.

57. See Josh Levs, *No, Most Black Kids Are Not Fatherless*, HUFFINGTON POST (July 27, 2017, 6:35 PM), [https://www.huffpost.com/entry/no-most-black-kids-are-no\\_b\\_11109876](https://www.huffpost.com/entry/no-most-black-kids-are-no_b_11109876) [<https://perma.cc/237P-G7KK>] (discussing the author's book that seeks to debunk misleading statistics that have contributed to the myth of the absent Black father).

58. *Id.*

59. *Id.* ("There are about 2.5 million who live with their children, and 1.7 million who don't, according to the [Centers for Disease Control and Prevention].").

60. *Id.*

as a social construct—rather than biological—and how it relates to the social understanding of the absent Black father.

Because this Comment posits that fatherlessness is socially constructed based on notions of race and power, Critical Race Theory provides a valuable context for examining how white supremacy informs society’s perception of Black identity. A core principle of Critical Race Theory is that race is a social construction,<sup>61</sup> meaning that race is not grounded in biology.<sup>62</sup> Instead, a society’s understanding of race is formed through various social processes, including the legal system. In order to explicate the process of the social construction of race, this Part will consider a model proposed by Devon Carbado that shows how racial categorization takes place.<sup>63</sup>

Carbado’s model<sup>64</sup> demonstrates the factors that affect a person’s categorization of race. First, a person is assigned to a racial category based on factors that influence how one perceives an individual’s race, like phenotype, ancestry, geography, culture, language, and religion.<sup>65</sup> After that initial classification, that same person is associated with certain social meanings that are associated with their racial group.<sup>66</sup> Finally, this person experiences reality in specific race-conscious ways based on his assigned racial category.<sup>67</sup> Their experiences can confirm and reinforce existing social meanings. In other words, there are certain social meanings (such as inferior or superior) that are linked with particular racial experiences like slavery or freedom. In a more practical sense, slavery and inferiority are then connected to African Americans, just as freedom and superiority are connected to whites.

Injecting fatherlessness into this model helps us understand how people socially interpret fatherlessness as a racialized, Black issue. Carbado’s model

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61. Critical Race Theory is a school of thought and theoretical mode of analysis that questions the “intellectual assumptions of White supremacy in law.” Tukufu Zuberi, *Critical Race Theory of Society*, 43 CONN. L. REV. 1573, 1575 (2011). It is a discipline that “challeng[es] racial orthodoxy, shak[es] up the legal academy, question[s] comfortable liberal premises, and lead[s] the search for new ways of thinking about our nation’s most intractable, and insoluble, problem—race.” CRITICAL RACE THEORY: THE CUTTING EDGE xvi (Richard Delgado & Jean Stefancic eds., 2d ed. 2000); see also Jerry Kang, *Implicit Bias and the Pushback From the Left*, 54 ST. LOUIS U. L.J. 1139, 1143 (2010) (addressing the socially formulated nature of race).

62. *See id.*

63. Professor of Law at UCLA School of Law. Devon W. Carbado, *Faculty Profile*, UCLA LAW, <https://law.ucla.edu/faculty/faculty-profiles/devon-w-carbado> [<https://perma.cc/Q45Y-3639>].

64. Devon Carbado, Hon. Harry Pregerson Professor of L., UCLA School of L., Acting White? Rethinking Race in Post-Racial America (Nov. 25, 2013).

65. *Id.*

66. *Id.*

67. *Id.*

emphasizes the circular nature of race, namely how ideologies linked with racial categories vindicate some experiences that influence how people perceive race in the first instance. While there is a key difference between race and fatherlessness—race is entirely socially constructed, yet fatherlessness is partially socially constructed and partially rooted in a father’s real absence—Carbado’s model helps us understand the relationship between the two. Here, the ideology surrounding fatherlessness is that absent fathers voluntarily leave their children and are lazy, irresponsible, inconsiderate, and incompetent. This ideology is linked to race by media portrayals and other socializing mechanisms that blend these characteristics with common Black stereotypes. Thus, when people see a Black man, they associate his Blackness and maleness with absent fatherhood. Likewise, when people think of the generic absent father, they link that concept to Blackness. The relationship between fatherlessness and Blackness, then, becomes inextricable. Furthermore, that experience is not a neutral experience. Fatherlessness is not simply the objective “absence” from a child’s life. It is associated with a moral failing, a voluntary, conscious, and selfish choice that men make with regard to their children. This trope is easy to associate with Blackness given that Blackness itself is associated with conscious moral depravity.

The misuse of statistics and biased media depictions bears this out. Even though other races experience fatherlessness, the overwhelming belief is that fatherlessness—the morally wrong, conscious decision to neglect one’s child—is primarily a problem of Blackness.<sup>68</sup>

This model suggests not only that race is a social construct, but that the relationship among fatherlessness, Blackness, and many social ills such as crime, unemployment, and gaps in educational attainment is also socially constructed. In making this connection, other important factors, such as unfair legal processes and high unemployment rates induced by hiring discrimination, are ignored in favor of creating a narrative and mapping rules to govern the social understanding of what it means to be Black as perceived by non-Black people.

### III. THE FATHERLESS CYCLE OF WELFARE AND CHILD SUPPORT ENFORCEMENT

Just as cognitive social comprehension shapes fatherlessness, legal mechanisms such as the welfare and child support systems have an influential role

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68. Katy Faust & Stacy Manning, *To Truly Reduce Racial Disparities, We Must Acknowledge Black Fathers Matter*, FEDERALIST (June 12, 2020), <https://thefederalist.com/2020/06/12/to-truly-reduce-racial-disparities-we-must-acknowledge-black-fathers-matter> [<https://perma.cc/3SWF-F8Q5>].

in determining fatherlessness. This Part addresses the way in which these systems and the policies they enforce limit the notion of fatherhood, disadvantaging fathers that are not capable of supporting their children financially through means of strict child support enforcement and incarceration. This process further perpetuates fatherlessness. Additionally, this Part also discusses the cyclical nature of fatherlessness determinations and the end result of criminalization that influences the social understanding of the absent Black father.

Welfare laws and child support enforcement are closely related and intended to reduce government welfare expenditures. Welfare law requires that custodial parents, who are typically mothers,<sup>69</sup> seeking public aid determine paternity by looking to the biological father of their children. Over the last three decades, evolving welfare policies have limited the scope of fatherhood and created more fatherless homes. In 1974, the Child Support Enforcement Act created the Federal Office of Child Support Enforcement and required welfare beneficiaries to transfer their right to receive child support payments from the noncustodial parent to the government, to offset welfare expenditures.<sup>70</sup> After a series of amendments and new policies, Congress enacted the Omnibus Budget Reconciliation Act of 1993, where it noted “the ‘first step in securing child support is the establishment of paternity’ . . . .”<sup>71</sup> The importance of determining paternity can also be seen in the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA).<sup>72</sup> When a mother receives both welfare benefits from the government and child support payments from a noncustodial father, the government tries to recoup some of the welfare

69. While this Comment focuses on the heterosexual relationship between a mother and father in regard to fatherlessness, child support and welfare laws are also applicable to same-sex couple contexts.

70. Jane C. Murphy, *Legal Images of Fatherhood: Welfare Reform, Child Support Enforcement, and Fatherless Children*, 81 NOTRE DAME L. REV. 325, 345 (2005); see, e.g., 42 U.S.C. § 666(a)(5)(C)(i) (corresponds to Pub. L. 103–66, Title XIII, § 13721(b)(2)(C)) (necessitating that states provide basic civil processes for paternity establishment).

71. Murphy, *supra* note 70, at 347. See, e.g., David L. Chambers, *Fathers, the Welfare System, and the Virtues and Perils of Child-Support Enforcement*, 81 VA. L. REV. 2575, 2584 (1995) (“At the first stage—establishing eligibility for support—mothers of children born outside of marriage have been required as a condition of eligibility to cooperate with state officials in establishing the paternity of their children.”) (referring to 42 U.S.C. § 602(a)(26)(B) (1988)). A father legally has no rights or responsibilities to his child until paternity is determined. Therefore, paternity determinations bring about the duty to pay child support.

72. See Press Release, U.S. Dep’t of Health & Hum. Servs., *Welfare Reform: Implementing the Personal Responsibility and Work Opportunity Reconciliation Act of 1996* (May 24, 2002), [http://lobby.la.psu.edu/\\_107th/110\\_TANF\\_Work\\_Training/Agency\\_Activities/HHS/HHS\\_Personal\\_Responsibility\\_Work\\_Opportunity\\_Reconciliation\\_Act.htm](http://lobby.la.psu.edu/_107th/110_TANF_Work_Training/Agency_Activities/HHS/HHS_Personal_Responsibility_Work_Opportunity_Reconciliation_Act.htm) [https://perma.cc/4QW4-AF43].

benefits it distributed by collecting part of the child support payments made by the noncustodial parent, connecting child support and welfare. Because the PRWORA established that a mother's failure to designate the paternity of her child could result in a reduction of welfare benefits by at least 25 percent, it increased the need for mothers applying for welfare to assist the government in identifying the biological father of the child.<sup>73</sup> The PRWORA also strengthened child support enforcement procedures by allowing states to withhold a biological father's income,<sup>74</sup> suspend his driver's or professional licenses, and place liens against his property, if he owed child support.<sup>75</sup>

These welfare laws create an infrastructure in which states must strictly enforce child support determinations and a father's limited role in the home is considered valuable to individual states because it allows the government to recover expended costs related to welfare.<sup>76</sup> Under the Child Support Enforcement Act, the federal government matches the amount each state collects in child support.<sup>77</sup> States have since enacted laws that associate the amount of child support a custodial parent—usually the mother—receives to the amount of time the mother has with the child. Therefore, a decrease in the time a father spends with his child (or overall fatherlessness) corresponds with an increase in child support that a mother is awarded and in turn, an increase in the amount the state government will receive from the federal government. The converse of this scenario is that an increase in the amount of time a father spends with his child coincides with a decrease in the child support award, and less state funding. The rationale is that a more present father will partially contribute to the costs of raising the child—including the costs of food and clothes—in addition to however much he pays in child support, as opposed to the child support award being intended to cover all costs. Presumably, fathers would prefer the second scenario, as they are able to spend more time with their children. But this places their interests against

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73. *See id.*

74. In fact, federal law requires that employers automatically withhold wages of those who are required to pay child support. Margaret Reiter & Robin Leonard, *Government Efforts to Collect Child Support*, NOLO, <https://www.nolo.com/legal-encyclopedia/government-efforts-collect-child-support.html> [https://perma.cc/K9E8-NNN].

75. Margaret Reiter, *Property Liens for Unpaid Child Support*, NOLO, <https://www.nolo.com/legal-encyclopedia/property-liens-unpaid-child-support.html> [https://perma.cc/DK2Q-7QA2].

76. Marisa Lagos, *For Low-Income Parents, Most Child Support Goes to the State—Not the Kids*, KQED (Aug. 20, 2019), <https://www.kqed.org/news/11768419/for-low-income-parents-most-child-support-goes-to-the-state-not-the-kids> [https://perma.cc/5WWL-ZDE7].

77. *See* JESSICA TOLLESTRUP, CONG. RSCH. SERV., CHILD SUPPORT ENFORCEMENT: PROGRAM BASICS (July 25, 2019).

those of the state governments, because a lower child support award signifies less money for the state to recoup.

By creating laws that connect the amount of child support owed to the amount of time a father spends with his child, states receive more money. State-run child support enforcement agencies collect child support and place it into a state fund. The federal government, however, can influence the way that the child support programs function. The federal government pays for 66 percent of state administrative costs to run child support programs.<sup>78</sup> Additionally, the federal government gives incentive funds to states to have successful child support enforcement programs, with the incentive pool reaching \$454 million in 2004.<sup>79</sup> The states are then able to obtain a waiver to allocate any incentive funds to whatever cause the state chooses.<sup>80</sup> In sum, if a mother receives welfare benefits, the child support she would otherwise be given is instead collected by the state as reimbursement for those welfare benefits.<sup>81</sup> The more child support rules that are established and enforced equates to more money funneling into state governments from the federal government to replenish their welfare funds.<sup>82</sup>

The following illustration proves useful for simplifying the relationship between fatherlessness and the child support-welfare systems. Imagine a Black nuclear family of four: a Black father, a Black mother, and their two children. This family lives in Los Angeles, California and is below the poverty line.<sup>83</sup> Therefore,

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78. U.S. GOV'T ACCOUNTABILITY OFF., GAO-06-491, CHILD SUPPORT ENFORCEMENT: MORE FOCUS ON LABOR COSTS AND ADMINISTRATIVE COST AUDITS COULD HELP REDUCE FEDERAL EXPENDITURES 7 (2006).

79. *Id.* at 7–8.

80. *Reinvesting Child Support Incentive Payments*, OFF. OF CHILD SUPPORT ENFORCEMENT (Jan. 31, 2020), <https://www.acf.hhs.gov/css/resource/reinvesting-child-support-incentive-payments> [<https://perma.cc/7GWF-GF9M>].

81. The goal here is to reduce the federal budget, but the current incentives make it unlikely to decrease.

82. Bruce Eden, Opinion, *Letter: Child-Support Enforcement Hurts Families*, DAILY RECORD (Sept. 9, 2016, 12:03 AM), <https://www.dailyrecord.com/story/opinion/letters/2016/09/09/child-support-enforcement-hurts-families/90043140> [<https://perma.cc/XZ8W-75R6>].

83. The official poverty line is about \$25,465 annually for a family of four. *Poverty Thresholds for 2018 by Size of Family and Number of Children*, U.S. CENSUS BUREAU, <https://www.census.gov/data/tables/time-series/demo/income-poverty/historical-poverty-thresholds.html> [<https://perma.cc/VLR6-3Q4C>] (choosing “2018” from list of years). This, however, does not account for California’s housing costs and other expenses. Sarah Bohn, Caroline Danielson & Tess Thorman, *Just Facts: Poverty in California*, PUB. POL’Y INST. CAL. (July 2020), <https://www.ppic.org/publication/poverty-in-california> [<https://perma.cc/ZNC7-AULR>]. For a more comprehensive measurement of poverty in California, the Public Policy Institute of California and the Stanford Center on Poverty and Inequality jointly created the California Poverty Measure, which considers factors such as the cost of living and social safety net

they receive welfare benefits in order to meet their basic needs. Assume this family of four receives the maximum CalWORKS cash grant amount for a nonexempt recipient living in an urban county in California: \$1060 per month.<sup>84</sup> The family also receives the maximum amount of CalFresh monthly food benefits for a household of their size: \$646.<sup>85</sup> These welfare benefits equate to a total safety net of \$20,472 annually to sustain the members of the family for two years and accounts for if the father is unable to secure employment for any reason. Under this set of circumstances, the state provides the parents a sum of money to sustain themselves and their children. The money does not need to be paid back to the state and the state does not seek to recoup its expenses from this nuclear Black family. Even if the father experiences unemployment and is unable to financially provide for his family, the state's welfare benefits act as meaningful aid for two years with no attempt at recoupment by the state.

But if the parents separate and the father moves outside of the home, the father would be required to pay child support. In this scenario, the family's benefits would decrease to the maximum cash and food allotments per month for a household of three—\$878 and \$509 respectively—which would amount to \$16,644 for the year.<sup>86</sup> The state would then attempt to recoup some of that portion from the father's child support payments. If the father, hypothetically, now earns the same as the median Black male in California—\$36,884—<sup>87</sup> then he would be required to pay \$969 per month in child support, which equates to \$11,628 per

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benefits. *Id.* The California Poverty Measure lists the official poverty line at roughly \$34,200 per year for a family of four as of 2018. *Id.*

84. See *CalWORKS: The Details*, DISABILITY BENEFITS 101, [https://ca.db101.org/ca/programs/income\\_support/calworks/program2b.htm](https://ca.db101.org/ca/programs/income_support/calworks/program2b.htm) [<https://perma.cc/P7JW-CAZA>].
85. See *How Much in CalFresh Benefits a Household Gets Each Month*, LEGAL SERV OF N. CAL., <http://calfresh.guide/how-much-in-cal-fresh-benefits-a-household-gets-each-month> [<https://perma.cc/68YM-T3NV>] (last updated 2020).
86. See *CalWORKS: The Details*, *supra* note 84 (selecting “See the maximum benefit amounts for different situations”); *How Much in CalFresh Benefits a Household Gets Each Month*, *supra* note 85.
87. For a breakdown of the average earnings in the past year for Black men and Black women, see U.S. CENSUS BUREAU, TABLE B20017B: MEDIAN EARNINGS IN THE PAST 12 MONTHS (IN 2018 INFLATION-ADJUSTED DOLLARS) BY SEX BY WORK EXPERIENCE IN THE PAST 12 MONTHS FOR THE POPULATION 16 YEARS AND OVER WITH EARNINGS IN THE PAST 12 MONTHS (BLACK OR AFRICAN AMERICAN ALONE), <https://data.census.gov/cedsci/table?q=B20017b&g=0100000US.04000.001&tid=ACSDT1Y2019.B20017B&tp=true&hidePreview=false> [[perma.cc/PFQ7-WGET](https://perma.cc/PFQ7-WGET)]. The amount of child support that the father would have to pay was calculated using California's child support calculator. *Guideline Calculator*, CAL. CHILD SUPPORT SERVS., <https://childdsupport.ca.gov/guideline-calculator> [<https://perma.cc/B5B2-J34H>]. The calculation included the father's salary and the calculator's automatic, standard 20 percent of time that the father spent with his children.

year. In California, the first fifty dollars of each month's paid child support is actually paid to the custodial parent, while the remainder is collected by the state as repayment for its expended welfare benefits.<sup>88</sup> Therefore, \$600 would go to the family each year, while the government would receive \$11,008. Thanks to the father's child support payments, the government's net expenditure is only \$5636, as opposed to \$20,472 in the first situation.

Now imagine if this father suddenly faces unemployment. In the situation where he lives with his family, the family continues to receive their welfare payments. But in the situation where he no longer lives with the family, he would be unable to pay the set child support amount each month. The state would still enforce child support in light of these conditions, because it places a higher priority on the needs of a child over the financial struggles of a father that could likely be remedied by simply finding other employment.<sup>89</sup> The state only seeks recoupment if the father is not present in the home. As a result, the state treats him differently because he is not a father in a nuclear family. Given these surely simplified assumptions, with the state able to recover some of its expenses from fathers' child support payments, the state stands to benefit from the absence of fathers. This begs the question: Is the state incentivized to actually push fathers out of their homes?

Unfortunately, current child support laws ignore that many welfare-class fathers are unemployed or have incomes insufficient to pay their set child support,<sup>90</sup> which leads to strict enforcement as a way to maintain their ability to tap into the aforementioned incentive fund. These laws contribute to the

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88. CHRISTA BROWN, JAMIE AUSTIN, JESSICA BARTHOLOW, JHUMPA BHATTACHARYA, ASHLEY BROWN, LEWIS BROWN JR., TARA GAMBOA-EASTMAN, JAKE LEOS-URBEL, ANNE STUHLREHER, *THE PAYBACK PROBLEM: HOW TAKING PARENTS' CHILD SUPPORT PAYMENTS TO PAY BACK THE COST OF PUBLIC ASSISTANCE HARMS CALIFORNIA LOW-INCOME CHILDREN & FAMILIES* 3 (2019).

89. See Debrina Washington, *What to Know About Unemployment and Child Support*, VERYWELL FAM. (May 2, 2020), <https://www.verywellfamily.com/unemployment-and-child-support-2997969> [<https://perma.cc/N7EG-Z3T9>].

90. The government is owed \$115 billion in child support, and 70 percent of that amount is owed by people making less than \$10,000 per year. Collier Meyerson, *How Our Racist Child Support Laws Hurt Poor, Black Fathers the Most*, SPLINTER (Aug. 10, 2016, 9:37 AM), <https://splinternews.com/how-our-racist-child-support-laws-hurt-poor-black-fath-1793861034> [<https://perma.cc/87AV-MCW6>]. By April 2003, individuals that earned less than \$10,000 annually owed 70 percent of the \$70 billion in unpaid child support. OFF. OF CHILD SUPPORT ENF'T., U.S. DEP'T HEALTH & HUM. SERVS., *THE STORY BEHIND THE NUMBERS: WHO OWES THE CHILD SUPPORT DEBT?* 1 (2004). See ELAINE SORENSEN, LILIANA SOUSA & SIMON SCHANER, *URB. INST., ASSESSING CHILD SUPPORT ARREARS IN NINE LARGE STATES AND THE NATION* 67 (2007) (showing that the child support orders did not grow proportionately to annual income and some individuals with low salaries received high child support orders relative to their yearly incomes).

construction of the morally-depraved narrative about the absent Black father. African American males are more likely than other social groups to be unemployed.<sup>91</sup> The comparatively high unemployment rate in the Black community is the byproduct of labor market discrimination and racist perspectives solidified during the Great Depression that continue to persist today in the experience described as “first fired, last hired.”<sup>92</sup> Additionally, the high rate of Black unemployment may be attributed to outright discriminatory practices in both hiring processes and actual experiences in the workplace.<sup>93</sup> Other scholars may be inclined to attribute this discrepancy in unemployment to incarceration rates and education differences. While both explanations may be true, both incarceration rates and differences in educational attainment are fundamentally shaped by racism and discrimination. African Americans are seven times more likely to be incarcerated before the age of thirty-five largely due to the social construction of Blackness as threatening and the effect such social understanding has on the overpolicing of Black communities.<sup>94</sup> Furthermore, this ignores the reality that differences in education

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The U.S. Census Bureau’s American Community Survey gathered data on the jobless rate of non-institutionalized men, 20 to 34 years old, averaged over the period, 2010–2014, for 34 major US cities. The data paints a grim picture for black men, particularly in the Midwestern industrial and the Mid-Atlantic cities. Like Milwaukee, Chicago, Detroit, Cleveland, Milwaukee, Philadelphia, Baltimore, and D.C. all had black jobless rates above 45 percent. In these cities, more young black men were either jobless or imprisoned than employed. Black joblessness in southern and western cities was modestly lower . . . . As a result, the national jobless rate for young black men was 39 percent, versus only about 22 percent for both white and Latino young men.

Robert Cherry, *The Jobless Rate for Young Black Men Is a National Disgrace*, REALCLEAR POL’Y (Sept. 1, 2016), [https://www.realclearpolicy.com/blog/2016/09/02/the\\_jobless\\_rate\\_for\\_young\\_black\\_men\\_is\\_a\\_national\\_disgrace.html](https://www.realclearpolicy.com/blog/2016/09/02/the_jobless_rate_for_young_black_men_is_a_national_disgrace.html) [<https://perma.cc/2J8W-KF8H>].

92. Jasmine A. Williams, “*Unemployed (and Black) Need Not Apply*”: *A Discussion of Unemployment Discrimination, Its Disparate Impact on the Black Community, and Proposed Legal Remedies*, 56 HOW. L.J. 629, 636 (2013) (citation omitted).

93. Fifty-seven percent of African Americans that participated in a 2017 study said that they have been personally discriminated against in regards to being paid or promoted equally. Fifty-six percent of African Americans were discriminated against when applying for jobs. NPR, ROBERT WOOD JOHNSON FOUND. & HARV. T.H. CHAN SCH. PUB. HEALTH, *DISCRIMINATION IN AMERICA: EXPERIENCE AND VIEWS OF AFRICAN AMERICANS* 6 (2017).

94. The police frame their attitudes and tendencies in a social context that includes “the enduring stereotype that blacks are more likely to be violent, aggressive, and engaged in crime.” CHARLES R. EPP, STEVEN MAYNARD-MOODY & DONALD HAIDER-MARKEL, *PULLED OVER: HOW POLICE STOPS DEFINE RACE AND CITIZENSHIP* 42 (2014). This framing can consequently influence police investigatory stops, as officers instructed to recognize people who look “suspicious” may rely on implicit, socially constructed racial stereotypes.

are often the result of children of predominantly Black communities attending neglected schools that have deprived students of the opportunity to receive good education.<sup>95</sup> Therefore, arguably the greatest factor in Black male unemployment rates is the impact of hiring discrimination and other forms of systemic oppression.

Despite Black male unemployment rates impeding their collective ability to pay child support, there is no distinction in popular understanding between a father that cannot pay and one that refuses to pay.<sup>96</sup> The trope of the absent Black father then becomes synonymous with the “deadbeat dad.” The deadbeat dad is narrowly defined as “a father who owes money to his former wife to help raise their children but does not pay it.”<sup>97</sup> But the trope of the deadbeat father often includes fathers that do not necessarily have a court-mandated child support payment, but who neglect their responsibilities as a parent anyway.<sup>98</sup>

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See Daanika Gordon & Emma Shakeshaft, *Linking Racial Classification, Racial Inequality, and Racial Formation: The Contributions of Pulled Over*, 44 LAW & SOC. INQUIRY 257, 264 (2019) (“Investigatory stops are, hence, a *racially framed* institutionalized practice—one that ‘grows from and reproduces negative racial stereotypes.’”); see also Evan Horowitz, *Trump Claims the Racial Divide Can Be Solved With More Jobs. The Disparity in Jobless Rates Says Otherwise*, BOS. GLOBE (Aug. 31, 2017, 5:44 PM), <https://www.bostonglobe.com/business/2017/08/31/what-behind-huge-gap-between-black-and-white-jobless-rates/piq4zOZXhl7RLKUscO7HGP/story.html> [<https://perma.cc/4X64-7RGY>]; Devah Pager, *Double Jeopardy: Race, Crime, and Getting a Job*, 2005 WIS. L. REV. 617, 645 (2005) (According to a study, “[W]hites with criminal records even receive more favorable treatment (17%) than [B]lack without criminal records (14%)” by receiving callbacks at higher rates in hiring processes).

95. See SAMUEL BOWLES & HERBERT GINTIS, *SCHOOLING IN CAPITALIST AMERICA: EDUCATIONAL REFORM AND THE CONTRADICTIONS OF ECONOMIC LIFE* 129 (Haymarket Books 2011) (1976) (“[T]he educational system tailors the self-concepts, aspirations, and social class identifications of individuals to the requirements of the social division of labor.”); see also Jeannie Oakes, *Classroom Social Relationships: Exploring the Bowles and Gintis Hypotheses*, 55 SOC. EDUC. 197, 197 (1982) (concluding that educational track levels in school, which reflect racial and social divisions of society, show that students in low track classes “expressed more negative attitudes about themselves and their futures.”) (citing BOWLES & GINTIS, *supra*).
96. Maldonado, *supra* note 4, at 1003 (“The law has failed to distinguish between fathers who can pay child support but refuse (the true deadbeats), and those who are unemployed or severely underemployed (those who are deadbroke).”); see SORENSEN, SOUSA & SCHANER, *supra* note 90, at 67–68 (“[M]ost low-income obligors were expected to devote more than half of their monthly reported income on child support. No other income category of obligors was expected to pay that much of their reported income on child support.”).
97. *Deadbeat Dad*, MERRIAM-WEBSTER DICTIONARY, <https://www.merriam-webster.com/dictionary/deadbeat%20dad> [<https://perma.cc/D365-SBWF>].
98. See Cammett, *supra* note 42, at 238 (“The image of the Deadbeat Dad also slowly emerged as a racialized trope: an uncaring Black father unwilling to pull his weight, often with multiple

Responsibilities are key to the deadbeat construction. Paternal involvement, as it relates to child support, is commonly defined in monetary terms. Thus, a nonresident father's failure to provide financially for his child is determined as paternal negligence, which overlooks a father's desire to be present in the child's life, irrespective of money. Studies have shown that "low-income, never married African-American nonresident fathers are more involved with their children than are nonresident fathers of other races."<sup>99</sup> Nevertheless, African American fathers are considered to be the "most absent—abandoning their children at disproportionately high rates and never looking back."<sup>100</sup> This disparity must be understood alongside the principle that state welfare-child support policies give women benefits if the father's role is reduced. Therefore, in absolute terms, a father's mere physical presence without monetary contribution is not immediately valuable because a monetary contribution would provide an immediate benefit, whereas the benefit of father's physical presence may be measured by more longlasting effects.<sup>101</sup>

Given the state incentives to ensure that fathers abide by child support laws, courts are encouraged by their state government agencies to strictly uphold

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families, who expects taxpayers to carry his burden."). The deadbeat-father construct has broadly evolved:

Originally a construct used to sanction middle class fathers who failed to care for children after divorce, the deadbeat dad has taken on a new role in more recent policy discussions. In the era of the [W]elfare [Q]ueen, the construct changed to villainize men that 'refused' to take on a breadwinner role because of moral and cultural dysfunction. The State responded to this new deadbeat dad by chasing down poor fathers and forcing them to honor their child support obligations. However, this approach ignores the fact of widespread underemployment and unemployment in poor communities . . . [T]he deadbeat dad construct ensures that there is no 'meaningful political and policy discourse about what distinguishes deadbeat [Dads] from "deadbroke" [Dads]—those who simply don't have the ability to pay.'

Camille Gear Rich, *Who's Afraid of the Welfare Queen?: Stigmatized Motherhood, Tropes and the Policing of the American Poor*, 2015 JOTWELL: J. THINGS WE LIKE 168, 169 (discussing Cammett, *supra* note 42).

99. Maldonado, *supra* note 4, at 994. Black fathers living outside of the home are more likely to take their children to activities, talk about their children's days, and help their children with homework when compared to similarly situated fathers of other races. Philip Bump, *Rand Paul Cites a 'Lack of Fathers' in Baltimore. Here's What the Data Actually Show.*, WASH. POST (Apr. 29, 2015, 4:19 AM), [https://www.washingtonpost.com/news/the-fix/wp/2015/04/29/rand-paul-cites-a-lack-of-fathers-in-baltimore-its-more-nuanced-than-you-think/?utm\\_term=.9b5a30935555](https://www.washingtonpost.com/news/the-fix/wp/2015/04/29/rand-paul-cites-a-lack-of-fathers-in-baltimore-its-more-nuanced-than-you-think/?utm_term=.9b5a30935555) [<https://perma.cc/W8PM-HW5B>].

100. Maldonado, *supra* note 4, at 994.

101. This ignores that a father's presence has mental and emotional benefits for a child. See Meyerson, *supra* note 90 (quoting Orenthius Perkins) ("Kids remember memories. A three or four-year-old child doesn't know about money.").

disproportionate child support amounts. Unfortunately, while the fathers that appear in court due to nonpayment are predominantly Black,<sup>102</sup> the judges, lawyers, and court officials that determine the decisionmaking process are mainly white.<sup>103</sup> In a study conducted in Indiana, unmarried, Black fathers had child support enforced against them in court at a rate of 57 percent, compared to 45 percent of White unmarried fathers and 38 percent of Hispanic unmarried fathers. It would likely be better for the rate of Black-father child support enforcement to decrease given the systemic structures that can make it difficult for Black fathers to pay child support. But in the event that decreasing that rate is not feasible, increasing the rates of enforcement for other races would only be fair so that there is an equitable administration of child support. This representation gap likely creates a situation where the white decisionmakers decline to view the welfare system through a racialized lens and obscure the role of race in the process, even though it is clearly present.<sup>104</sup> To compound the issue further, white defense attorneys even exhibit colorblindness in the process, attributing unemployment to individual effort or a weak economy that affects everyone, not just African Americans.<sup>105</sup> Therefore, even the ones advocating for their clients ignore racial barriers to obtaining employment to pay child support, which ultimately impacts a decision if the judge subconsciously relies on stereotypes attributed to the Black community, such as laziness and poor work ethic.

Incarceration due to nonpayment is the most problematic of enforcement tactics. Every state has a law that permits jail time for nonpayment.<sup>106</sup> Because states have discretion, some states select imprisonment more than others. In South Carolina, one out of every eight inmates are jailed due to being held in contempt of court for child support nonpayment.<sup>107</sup> This has large implications, particularly

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102. Margaret F. Brinig, *Racial and Gender Justice in the Child Welfare and Child Support Systems*, 35 LAW & INEQ. 199, 208 (2017).

103. Tonya L. Brito, David J. Pate, Jr. & Jia-Hui Stefanie Wong, "I Do for My Kids": *Negotiating Race and Racial Inequality in Family Court*, 83 FORDHAM L. REV. 3027, 3036-44 (2015).

104. *Id.* (discussing how race was rarely mentioned in the observed child support hearings, except for the theme of racial inequality woven throughout the Black fathers' narratives regarding systems that disadvantage Blacks and are not actually race-neutral barriers).

105. *Id.* at 3041.

106. See Irin Carmon, *How Falling Behind on Child Support Can End in Jail*, MSNBC (Apr. 9, 2015, 5:05 PM), <http://www.msnbc.com/msnbc/how-falling-behind-child-support-can-end-jail#56748> [https://perma.cc/3DU6-XMK5#56748]; see also *In re C.F.*, 576 S.W.3d 761, 770 (Tex. App. 2019) ("A person may be held in contempt and imprisoned for failing to pay child support because the obligation to pay child support is a duty, not a debt.").

107. Carmon, *supra* note 106.

for Black fathers:<sup>108</sup> (1) Courts create more fatherless children by giving fathers jail time, eliminating any time that was spent with a child; (2) The absent Black father motif is then given more weight; (3) The overall amount of child support owed increases while the father is incarcerated,<sup>109</sup> because he cannot work during that time;<sup>110</sup> (4) Once the father is released, he then has a criminal record and the stigma of a “convict,” which affects his ability to obtain employment and likelihood to encounter police;<sup>111</sup> (5) If the father cannot secure a job (one that is sufficient to cover child support and cost of living), the cycle will repeat itself.

Considering the cyclical nature of the interaction between fatherlessness, race, and the law,<sup>112</sup> it is important to clearly draw the connections that drive this system of oppression. The aforementioned strict enforcement and inflexible standards in how child support is evaluated suggest that a father’s inability to pay equates to his status as a bad father, especially if the father is incarcerated. Because the law appears to hold that a father’s absence is of his own volition, society then upholds fatherlessness as encompassing notions of neglect, disappointment, and failure. These stereotypes of fatherlessness fit neatly with the stereotypes ascribed to Blackness, such as being lazy or unintelligent. When the descriptor of fatherlessness, as currently understood, is applied to race, this understanding further impacts how courts enforce child support against a Black father as opposed to a father of another race, specifically white fathers. Decisionmakers might have a more negative understanding of Black absent fathers than white absent fathers, and, even if they do not,<sup>113</sup> courts still maintain

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108. In the same Indiana study, roughly 15 percent of the fathers were imprisoned after the paternity determination. Seventy-five percent of that group was Black. Brinig, *supra* note 102, at 208 n.47.

109. See, e.g., David L. Warnock, *Hurting Dads, Hurting Kids*, BALT. SUN (Oct. 21, 2012, 8:00 AM), <https://www.baltimoresun.com/opinion/op-ed/bs-ed-child-support-20121019-story.html> [<https://perma.cc/5W5D-WVQB>] (noting that the average total amount of child support owed by a noncustodial parent who is currently or formerly incarcerated is \$22,000).

110. Some states allow modifications for child support payments if the parent is incarcerated. See *Child Support and Incarceration*, NAT’L CONF. STATE LEGISLATURES (Mar. 4, 2019), <https://www.ncsl.org/research/human-services/child-support-and-incarceration.aspx> [<https://perma.cc/7CKQ-XU8Z>].

111. See Jennifer Goulah, *The Cart Before the Horse: Michigan Jumps the Gun in Jailing Deadbeat Dads*, 83 U. DET. MERCY L. REV. 479, 493 (2006) (quoting Ronald Fraser, *State Should Help Ex-Convicts Rebuild Lives*, CRAIN’S DET. 9 (May 10, 2004)) (“Michigan, like some other states, allows employers ‘to deny employment in public agencies and in private business’ based on a felony conviction.”).

112. See *supra* fig.1.

113. Although implicit bias (the unconscious association of specific stereotypes and feelings to a member of a particular group) has not been explicitly mentioned as a part of this conversation, the role of social meaning inherently affects perception of particular groups. Therefore, a person may not believe their interactions with a Black absent father are influenced by the social construction of race, but they typically are.

strict child support and welfare standards that are utilized as more punitive measures rather than mechanisms built to prop up and assist the family unit under tough socioeconomic circumstances. As a result, the absent Black father's contact with these laws and the subsequent incarceration and financial exhaustion he experiences become the racial experiences within the context proposed by Carbado. This interplay evolves into a symbol of Black pathology.

Furthermore, since child support and welfare laws place an increased importance on paternity determinations, the courts prioritize biological fathers and marginalize social fathers. The law holds that if paternity tests determine that an individual is the father, he has to pay a set amount in child support. Therefore, a connection is made between fatherlessness, biology, and money. By drawing this line, the child support-welfare system incorporates structural racism that otherwise should not be present in this context, namely the aforementioned hiring discrimination and incarceration that affects one's employment possibilities. By making the system a solely money-oriented regime, courts inherently make employment discrimination even more relevant in the fatherlessness conversation. Accordingly, this allows courts to punish absent Black fathers more easily because they may not be capable of paying, since employment possibilities are inherently limited for Black males.<sup>114</sup> These types of punitive decisions ignore the systemically oppressive factors that impede Black male employment. Equally problematic, these decisions ignore the social role of fathers who may not be able to pay. Rather than suggesting child support reductions for those fathers that still remain highly involved in their children's lives irrespective of financial limitations, courts suggest that the only real responsibility that matters for a father is his ability to pay the mandated amount of child support. This insinuation has several consequences for both the fathers and children caught in the cycle of fatherlessness.

#### IV. THE ABSENT BLACK FATHER—HIERARCHICAL IMPLICATIONS

Child support enforcement reinforces the notion that the father is deadbeat and the child is fatherless. One way to understand the effects of the stigma of fatherlessness—for both the fatherless children and “deadbeat” fathers involved—is through a social dominance theory prism. Social dominance theory refers to a

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114. See Lincoln Quillian, Devah Pager, Arnfinn H. Midtbøen & Ole Hexel, *Hiring Discrimination Against Black Americans Hasn't Declined in 25 Years*, HARV. BUS. REV. (Oct. 11, 2017), <https://hbr.org/2017/10/hiring-discrimination-against-black-americans-hasnt-declined-in-25-years> [<https://perma.cc/DY5V-RDJX>].

multifaceted theory of how societies assert group-based dominance, such as through the social construction of intergroup hierarchies.<sup>115</sup> These hierarchies afford certain privileges to the dominant group and disadvantages for the subordinate group. Group-based social hierarchy has a three-tiered framework: an age system, a gender system, and an arbitrary-set system.<sup>116</sup> In other words, given a particular context, there are varying degrees of inequality in each system. The arbitrary-set system, in which groups are formed on the basis of socially constructed lines, includes classifications of race, ethnicity, religion, and socioeconomic status, all related to notions of power. Inequality in each system can vary dramatically depending on the social context. For instance, this can manifest itself in the nature of racial hierarchy in the United States (white vs. Black) and women having more freedom and liberties in some countries compared to others. It is important to note the intersectionality of the systems, meaning that a person is affected by age, gender, and several other conditions.<sup>117</sup> Therefore, a person may be dominant in one system, but not in the others. A white female has more social latitude than, say, a Black male in certain contexts. As a result, a person may exhibit varying levels of social dominance orientation (SDO), a desire for group-based hierarchies, and inequality.<sup>118</sup> If a person is afforded more privileges

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115. See generally JIM SIDANIUS & FELICIA PRATTO, *SOCIAL DOMINANCE: AN INTERGROUP THEORY OF SOCIAL HIERARCHY AND OPPRESSION* (1999) (formulating the principles of social dominance theory); Felicia Pratto & Andrew L. Stewart, *Social Dominance Theory*, in *THE ENCYCLOPEDIA OF PEACE PSYCHOLOGY* (Daniel J. Christie ed., 2012).
  116. Felicia Pratto, Jim Sidanius & Shana Levin, *Social Dominance Theory and the Dynamics of Intergroup Relations: Taking Stock and Looking Forward*, 17 *EUR. REV. SOC. PSYCH.* 271, 273 (2006).
  117. Intersectionality refers to the intertwined nature of social groups that departs from the tendency of “dominant conceptions of discrimination [to] condition us to think about subordination as disadvantage occurring along a single categorical axis.” Kimberlé Crenshaw, *Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics*, 1989 *U. CHI. LEGAL F.* 139, 140. It is a “metaphor for understanding the ways that multiple forms of inequality or disadvantage sometimes compound themselves and they create obstacles that often are not understood within conventional ways of thinking about . . . whatever social-justice-advocacy structures we have.” National Association of Independent Schools (NAIS), *Kimberlé Crenshaw: What is Intersectionality?*, YOUTUBE (June 22, 2018), <https://www.youtube.com/watch?v=ViDtnfQ9FHc> [<https://perma.cc/WQ54-MQ5D>]. The intersectionality of these systems of group-based hierarchy has implications for an individual. These consequences will be discussed as they relate to children and fathers affected by the cycle of fatherlessness.
  118. SIDANIUS & PRATTO, *supra* note 115, at 281 (noting that an individual’s status position affects his inclination for “discrimination against subordinates”).

due to their place in the three-tiered system, they may be more likely to maintain a high SDO.<sup>119</sup>

This group-based dominance is systematized by legitimizing myths or “societal, consensually shared social ideologies.”<sup>120</sup> Legitimizing myths are categorized into hierarchy-enhancing and hierarchy-attenuating.<sup>121</sup> The hierarchy-enhancing myths support hierarchical oppression and include ideologies such as racism, sexism, and stereotyping; the hierarchy-attenuating myths oppose supremacy, and consist of principles like social democracy and feminism.<sup>122</sup> Thus, the narrative of Black fatherhood and Black fatherlessness can be understood as hierarchy-enhancing. Interestingly, as a result of this ideology and its effect on group-based dominance, a Black fatherless child and an absent Black father—at least in America—may be considered inferior to a white child that grows up in a two-parent household and a White male breadwinner respectively, which can have longlasting consequences.

This power dynamic among children is common in the context of bullying. Because children are the most malleable group, their worldviews of race may be influenced by the stereotypical media depictions of Blackness and the potentially prejudicial opinions of their parents.<sup>123</sup> Therefore, if a parent has a bias—explicit or implicit—the child may be likely to exhibit similar beliefs. Black children already experience harassment and bullying in American public schools more than any other racial group. Black children are also more likely than white children to be bullied in the form of false rumors, name-calling, and acts or threats of violence.<sup>124</sup> Concepts of poverty, social disparity, and Blackness shape the opinion of children and the interactions between the victims and perpetrators of bullying. Fatherlessness affects childhood power dynamics as well and the context of bullying provides an example of how the narrative of fatherlessness is permeated.

Consider my younger brother’s experience with a bully as an instance of how these power dynamics are impacted: On September 3rd, 2019, my stepfather

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119. *Id.* at 281–82.

120. *Id.* at 275.

121. *Id.* at 275–76.

122. *Id.*

123. Lisa Selin Davis, *Children Aren’t Born Racist. Here’s How Parents Can Stop Them from Becoming Racist*, CNN (June 06, 2020, 11:29 AM), <https://www.cnn.com/2020/06/06/health/kids-raised-with-bias-wellness/index.html> [https://perma.cc/S5DH-2ZSA] (“If . . . [a child] is harboring certain racist attitudes, it’s something that they are learning from their parents, schools, the media and the culture.”).

124. *Racial Differences in Bullying at School*, J. BLACKS HIGHER EDUC. (Jan. 3, 2017), <https://www.jbhe.com/2017/01/racial-differences-in-bullying-at-school> [https://perma.cc/MW4W-4H7S].

tragically passed away in a car accident. He was the biological father of my younger brother, Jett Daniels, a fourteen-year-old high school freshman. Upon returning to school three weeks after the incident, Jett was bullied by two boys that are also Black. He was bullied for not having a father. “You don’t have a dad!” “Your father didn’t love you anyway!” “Your mom probably had something to do with it!” While, this experience may not align with the definitions of fatherlessness used throughout this Comment,<sup>125</sup> it appears that the distinction of a father passing away versus leaving or being taken away from one’s family does not matter in how children perceive the absence of a father for bullying purposes.<sup>126</sup> A father’s absence forms a part of a child’s identity, no matter how that father may have departed.<sup>127</sup> In fact, “The diversity that presents itself within one’s socioeconomic status (SES), such as housing, community and social experience can impact students within their specific culture or social groups, which can lead to bullying in general.”<sup>128</sup>

A child who is bullied because he does not have a father derives part of his identity from fatherlessness. This identity then has an effect on how the child understands himself. Jett’s experience shows that children pick up on a narrative that if a child’s father is absent in his life, this indicates that the father does not love him.<sup>129</sup> The belief that a fatherless child is unloved then stigmatizes that fatherless child. Bullying may show that the fatherless child’s identity is intertwined with

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125. See *supra* note 21.

126. For example, in 2017, the daughter of Farrah Abraham, a TV show personality from *Teen Mom*, was bullied for not having a father. Abraham’s father similarly died in a car accident before she was born. Alexia Fernandez, *Farrah Abraham Visits Grave of Daughter’s Father, Reveals She Was Bullied for Not Having a Dad*, PEOPLE (Dec. 28, 2017, 5:28 PM), <https://people.com/tv/farrah-abraham-visits-daughter-father-grave> [https://perma.cc/YM8M-4ESK]. See Sarah Nicole, *13 and Bullied . . . Julianna’s Story*, YOUTUBE (Mar. 12, 2018), [https://www.youtube.com/watch?v=4cWX4\\_oko\\_w&ab\\_channel=SarahNicole](https://www.youtube.com/watch?v=4cWX4_oko_w&ab_channel=SarahNicole) [https://perma.cc/Y9ZM-7X7B] (identifying in the description of the video that “[b]ecause she doesn’t have a father, she hurts, and they say ‘who would want to be your dad, I can see why he left you, he probably hates you!’”).

127. Jett’s experience also highlights the idea of intraracial bullying. Black children are not always bullied by people of other races, but sometimes are bullied by their own peers. See generally Roxanne L. Simpson, *The Experiences of Intraracial Bullying Among Black Young Adults* (Oct. 2017) (Ph.D. dissertation, Capella University) (ProQuest).

128. *Id.* at 21.

129. See, e.g., McKenna Meyers, *Fatherless Daughters: How Growing Up Without a Dad Affects Women*, WEHAVEKIDS (Feb. 28, 2020), <https://wehavekids.com/family-relationships/When-Daddy-Dont-Love-Their-Daughters-What-Happens-to-Women-Whose-Fathers-Werent-There-for-Them> [https://perma.cc/6KMT-PEYU] (“It took six decades, but I can finally utter a huge truth that caused me tremendous shame and sadness: My father didn’t love me.”).

pathologies of being unloved and abandoned, rather than simply being a child who lacks a father. It is what the father's absence represents that shapes how children are perceived by their peers, and the stigma of being unloved then has social and psychological consequences.<sup>130</sup> For males, an absent father and blurred distinctions of what it means to be a man may influence a boy's perception of his own masculinity.<sup>131</sup> For females, the status of being a fatherless child may impact the psyche of a young girl and the growth of relationships in her life.<sup>132</sup> Furthermore, because the notion of fatherlessness is inferred as a symbol of familial dysfunction, abandonment, disappointment, and failure, a Black fatherless child's reality is informed by these characterizations as well—meaning that others may infer that they comes from a dysfunctional home in which the child was the cause of the father abandoning the home, further causing feelings of inferiority to contribute to the group-based hierarchy. These social and psychological outcomes may lead to a fatherless child's participation in many of

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130. See, e.g., Peg Streep, *Unloved in Childhood: 10 Common Effects on Your Adult Self*, PSYCH CENT. (Mar. 13, 2017), <https://blogs.psychcentral.com/knotted/2017/03/unloved-in-childhood-10-common-effects-on-your-adult-self> [<https://perma.cc/JM8M-6J7Q>] (listing negative effects for children who grow up feeling unloved by a parent, including insecure attachment, undeveloped emotional intelligence, and impaired sense of self).

131. See Ray Williams, *The Decline of Fatherhood and the Male Identity Crisis*, FATHER MATTERS, <https://fathermatters.org/the-decline-of-fatherhood-and-the-male-identity-crisis> [<https://perma.cc/GW29-3ER2>] (“The many boundaries of a gendered world built around the opposition of work and family—production versus reproduction, competition versus cooperation, hard vs. [sic] soft—have been blurred, and men are groping in the dark for their identity.”).

132. Andrea Bomo, speaking from the experience of the loss of her father as a young Black girl, discusses the impact that a father's absence can have on girls in particular.

Many teenage girls and young women around the world suffer from emotional trauma due to father loss whether it's caused by death, abandonment, divorce, imprisonment, addiction, emotional or physical absence. Whatever the circumstances causing the absence of the father are, the impact is critical as the father-daughter relationship strongly influences key factors of personal development among young women such as: relationships, self-esteem, aspirations, confidence and self-love. Over the years, they become vulnerable young women who find it harder to build healthy personal and professional lives as they are building their lives, relationships, aspirations, and self-representation on the basis of this trauma, especially when it occurs during adolescence.

Andrea Bomo, *Why We Should All Care About the Fatherless Daughter Syndrome*, MEDIUM (June 13, 2016), <https://medium.com/@andrebomo/why-we-should-all-care-about-the-fatherless-daughter-syndrome-5fe527e22cc5> [<https://perma.cc/VW6F-JQBB>].

the social ills attributed to fatherlessness, including crime, teenage pregnancy, and poverty.<sup>133</sup> Therefore, fatherlessness has an effect on a child's social experience.<sup>134</sup>

Furthermore, the social construction of the inferior, Black fatherless child reflects the idea that fatherlessness and poverty may be connected to the determinedly second-class child depending on the community the child comes from. Using bullying as an example, once this social construction has occurred, these children are placed in the subordinate group (victims), while the dominant group (bullies) is afforded certain privileges such as popularity, friendship, and power. Therefore, these children are involuntarily placed in multiple hierarchies: Black vs. white;<sup>135</sup> younger vs. older (if the bully is in a higher grade); fatherless vs. those raised within the normative family structure;<sup>136</sup> and potentially impoverished vs. financially comfortable. But the reality is that fatherlessness combines with many of these hierarchies into one reality for the fatherless child, given the relationship between fatherlessness and race. Because Black fatherless children are wrestling with the combined weight of the various aforementioned hierarchies, social placement in these subordinate groups sets Black fatherless children at a disadvantage. In light of the fact that "members of subordinate groups often contribute to their groups' social location by engaging in behaviors . . . that contribute to their subordination,"<sup>137</sup> bullying could partially explain the effects of a Black fatherless child's potential inclination to engage in

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133. Bill Walker, *How to Destroy a Child: Make Them Feel Rejected and Unloved*, MEDIUM (Mar. 1, 2018), <https://medium.com/@williamfwalkerjr/how-to-destroy-a-child-make-them-feel-rejected-and-unloved-95b89fcdff1c> [https://perma.cc/S8FR-UKGY] (pointing out a report based on thirty-six studies that concluded children who felt unloved by their parents are more unkind and aggressive to others).
  134. Edgar Graden Cordell Osmond, *The Fatherless Identity: An Exploratory Case Study of Men's Fatherless Experiences* 100 (July 2010) (M.Ed. dissertation, University of Saskatchewan) (available on HARVEST) ("[T]he social impact of the fatherless experience was an element that helped lay the foundation of a fatherless identity."). For more information on how fatherlessness affects a child's social experience, see *id.* at 100–05.
  135. Sometimes the racial hierarchy does not exist, as exhibited in the Black versus Black bullying experienced by my brother, Jett Daniels.
  136. The traditional family structure is nuclear conjugal. Characteristics of a nuclear conjugal family are: "(1) two people; (2) of opposite sex; (3) who enter into a state-sanctioned relationship (marriage); (4) during a relatively early stage of reproductive capacity; (5) to begin procreation shortly thereafter; (6) and assume the permanence of the marriage; (7) while supporting and socializing the offspring produced; (8) and establishing a common domicile; (9) that houses them and their offspring; (10) but no others." Lyman Rhoades, *Population and Challenges to the American Family Structure*, 12 J. FAM. L. 257, 259 (1972).
  137. Jennifer A. Richeson & Samuel R. Sommers, *Toward a Social Psychology of Race and Race Relations for the Twenty-First Century*, 67 ANN. REV. PSYCH. 439, 447 (2016).

poor study habits or, worse, crime.<sup>138</sup> These exact behaviors further contribute to the subordination of Black individuals: Their negative behavior provides support for their own inferiority. Therefore, bullying could lead to Black fatherless children embracing the “very systems that created, maintain, and justify their subordination.”<sup>139</sup> While fatherless children may be considered prone to aggression because of a lack of fatherly discipline,<sup>140</sup> the potential role of bullying in the process shows that there is not a clear linear cause and effect.<sup>141</sup>

Additionally, the implications of a socially constructed fatherlessness are two-fold, also degrading the absent Black father as he lives through feelings of powerlessness. Feelings of powerlessness have been found to trigger a “prevention-focused, inhibition-oriented system of self-regulation,”<sup>142</sup> which impairs one’s confidence. Scholars have showed that the “experimentally induced perception that one is at the bottom of the socioeconomic hierarchy leads to a decrease in self-reported efficacy and control, which in turn increases the likelihood of making decisions that harm one’s well-being.”<sup>143</sup> While the absent Black father experiences many of the same social hierarchies as the Black fatherless child, he also is compared to the traditional white male breadwinner. If the breadwinner symbolizes success, the absent Black father signifies inadequacy. Such a juxtaposition is firmly rooted in the belief of the “American Dream” and a Black male’s lack of success blamed on his inability to “pick himself up by the bootstraps[,]”<sup>144</sup> an image that entirely ignores the systemized oppression against

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138. See Kruk, *supra* note 27; see generally Chris Knoester & Dana L. Haynie, *Community Context, Social Integration Into Family, and Youth Violence*, 67 J. MARRIAGE & FAM. 767 (2005) (discussing a conducted study in which the results showed that neighborhoods with lower rates of single-mothered families have lower rates of teen violence).

139. Richeson & Sommers, *supra* note 137, at 447.

140. See Kimberly Gillan, *Fatherless Children More Antisocial and Aggressive: Study*, NINE (2014), <https://coach.nine.com.au/2015/02/17/10/49/fatherless-children-more-antisocial-and-aggressive-study> [<https://perma.cc/YVA3-D8KQ>].

141. Victims of face-to-face bullying are four times more likely to have aggressive behavior when compared to children that had not been bullied. Mary Brophy Marcus, *The Complicated Fallout of Bullying*, CBS NEWS (May 4, 2016, 12:05 PM), <https://www.cbsnews.com/news/bullied-kids-may-lash-out-study-finds> [<https://perma.cc/Q2Z8-7CR6>].

142. Jim Sidanius, Sarah Cotterill, Jennifer Sheehy-Skeffington, Nour Kteily & Héctor Carvacho, *Social Dominance Theory: Explorations in the Psychology of Oppression*, CAMBRIDGE U. PRESS 149, 161 (2016).

143. *Id.*

144. Dr. Martin Luther King Jr. once said, “It’s alright to tell a man to lift himself by his own bootstraps, but it is a cruel jest to say to a bootless man that he ought to lift himself by his own bootstraps.” *MLK: A Bootless Man Cannot Lift Himself by His Bootstraps*, WLRN (Jan. 17, 2014, 6:36 PM), <https://www.wlrn.org/post/mlk-bootless-man-cannot-lift-himself-his>

the Black community in general, and the Black male in particular. In essence, societal mechanisms like institutional racism and a generalized lack of opportunity limit a Black father's ability to meet the socially constructed standard of male affluence.

More specifically, the current articulation of child support and welfare laws that do not adjust to a father's income and that may choose to incarcerate him place the Black father in a Sisyphean position. He is not able to pay the high child support amount because he either cannot obtain a job or has a low paying one. Therefore, the amount he must pay in child support increases. If he is incarcerated for his inability to pay, he will have an even more difficult journey to paying child support. Therefore, no matter how close he seems to get to being able to pay, he will ultimately fail. That lack of success is then attributed to the Black father's inability to thrive in the midst of such adversity and to stereotypes such as laziness, dependency, and ignorance. This contributes to the very racism that impedes the Black father's opportunity for prosperity in the first place. The traditionalist-patriarchal ideal of the breadwinner ignores that Black fathers function at a systemic disadvantage,<sup>145</sup> which arguably has psychological effects that may justify crime to provide for one's family by any means necessary.<sup>146</sup> Therefore, the Black absent father, similar to the Black fatherless child, could begin to embrace the system of subordination that has placed him in this hierarchy to begin with. Unfortunately, the criminal justice system is not concerned with a Black father's subjective intent if he opts for obtaining financial stability through illegal conduct. The legal system, overall, overlooks the other elements that are at play in shaping Black fatherlessness and social understanding of the matter.

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bootstraps [<https://perma.cc/3M7G-NFJ7>]. This referred to his Poor People's Campaign and emphasized a poor man's inability to pick himself up by the bootstraps because he had no boots at all. *Id.* A similar logic applies in the context of the Black male's plight when compared to the white male breadwinner. While the Black male may have boots, his boots are arguably strapless or, at the very least, weighed down by oppressive mechanisms that simply are not in place for the white male breadwinner.

145. The breadwinner standard is both traditionalist and patriarchal in that it refers to the conceptions of fatherhood tied to whiteness within America. Ellen Mutari, Marilyn Power & Deborah M. Figart, *Neither Mothers Nor Breadwinners: African-American Women's Exclusion From US Minimum Wage Policies, 1912-38*, 8 *FEMINIST ECON.* 37, 37 (2002) ("The male-breadwinner family and public policies designed to foster it became one means of defining a commonality of whiteness among different ethnic groups during a period of assimilation.").
146. See, e.g., Warnock, *supra* note 109 ("If you're a single man in your 20s, with an eighth grade education and two young children who need food and clothing—and your only meaningful work experience happens to be selling drugs—then your options narrow quickly to that which got you locked up in the first place.").

The foregoing analysis of Black fatherlessness through a social dominance theory lens reveals that there are consequences for both children and fathers as a result of socially and legally constructed fatherlessness. Bullying presents a practical context for which group-based hierarchy can manifest itself and exists as an outcome resulting from the stigma that characterizes children.<sup>147</sup> The stigma surrounding Black fathers that is left after child support enforcement actions proves detrimental, as the characterization introduces problems of inferiority for the Black father that contribute to the hierarchical system itself. As a byproduct of the hierarchical implications, children and fathers may be pushed further toward negative experiences of crime, poverty, and education failure that are used to socially construct Blackness in the first place. Thus, child support enforcement, as it is currently designed, can lead to degrading consequences for those trapped in the cycle of fatherlessness, which, in turn, can contribute to social ills that are used to socially construct and perpetuate notions of race.<sup>148</sup>

## V. SOLUTIONS

The difficulty in exploring the intersection of race, fatherlessness, and the welfare-child support legal system is determining how to fix the systemic oppression each piece contributes to. How should society look at fatherlessness? How exactly do we fix the cyclical interplay of Black fatherlessness and welfare-child support enforcement? Perhaps the easiest solution is to shape child support enforcement into a more fluid standard that takes into consideration a father's financial situation (possibly low-income, or on unemployment, or temporary limited wages). Under this modification, a father would never receive a check from his employer for \$0 because the automatic child support deduction took all of his earnings.<sup>149</sup> By allowing courts to adjust child support amounts on a case-by-case basis, fathers are put in better positions to pay their child support. In theory, this method would lead to more collection that could prove useful in a state's showing of a successful enforcement program.

Additionally, modifying the state laws surrounding welfare could prove helpful in breaking the cycle of fatherlessness. As currently constructed, there are two sets of direct connections between the welfare system and fatherlessness: (1) increased benefits for a welfare recipient and the noncustodial parent's—typically the father—reduced role, and (2) a state's funding and the success of child support enforcement programs. The second, quite clearly, could present difficulties in

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147. See *supra* fig. 1.

148. See *id.*

149. See Meyerson, *supra* note 90.

guaranteeing that states—and courts in child support enforcement hearings more specifically—are not biased against Black fathers because the state has a significant stake in ensuring they pay child support. By modifying state laws to remove these linkages, theoretically the state incentive would be removed and the focus of child support enforcement programs would be shifted to where it truly matters: the benefit to the mother and her children. Furthermore, custodial parents are no longer incentivized to limit a father's presence.

The most necessary change, however, is ensuring that the legal system—and those in place to make decisions—acknowledge the reality that race does impact a father's ability to pay child support. If courts are not going to adjust child support amounts based on a father's income—which can be impacted by several systemically oppressive mechanisms as previously discussed—the other intangible contributions a father makes should, at the very least, be considered valuable. This is particularly important given that Black fathers are the most adversely affected among their peers.<sup>150</sup> Contrary to some opinions, post-racialism does not exist in America,<sup>151</sup> and the effects of social and institutional racism are still felt by many on a daily basis, especially African Americans in the employment context. Therefore, a Black father's inability to pay is not always dependent on his inability to pick himself up by the bootstraps.

### CONCLUSION

Race and fatherlessness—two concepts that are shaped by America's own perceptions—are ingrained into the underpinnings of society, at least as it relates to Blackness. Through the process of social construction, people have come to perceive the Black father, generally, as deadbeat, absent, irresponsible, and

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150. See Bump, *supra* note 99.

151. For an explanation of the dangers of post-racialism, see Sumi Cho, *Post-Racialism*, 94 IOWA L. REV. 1589 (2009) (arguing that post-racialism degrades the centrality of race in society while serving as an ideology of white normativity). See Kimberlé Williams Crenshaw, *Race to the Bottom: How the Post-Racial Revolution Became a Whitewash*, BAFFLER (June 2017), <https://thebaffler.com/salvos/race-to-bottom-crenshaw> [https://perma.cc/6DF8-57G6] (“[T]he shelf life of post-racialism turned out to be far shorter than its cheerleaders supposed . . . . The symbolic breakthrough of Obama's election has plainly given way to a terrifying new political order that is anything but post-racial. White voters overwhelmingly rallied to the presidential candidacy of Donald Trump, a leader whose racist worldview is emblazoned at the base of his career in the same way that his name is plastered across his global real estate empire.”). See also William M. Carter, Jr., *The Paradox of Political Power: Post-Racialism, Equal Protection, and Democracy*, 61 EMORY L.J. 1123, 1123 (2012) (“Some observers, including some members of the Supreme Court, have pointed to evidence of isolated electoral success as proof of ‘post-racialism,’ while ignoring the evidence of substantial continued disparities for the vast majority of people of color.”).

unsuccessful. Sociologists and scholars have linked the supposed ineptitude of the Black father and his absence from the home (fatherlessness) to the weakness of the Black family, and, more significantly, poverty and violence. In this association, a father's contributions to the social and emotional components of childrearing have been ignored, and fatherlessness has been deemed a Black issue.

In actuality, all of the abovementioned potential solutions must work in tandem in order to implement real change. Ultimately, society must change the way in which it looks at and interacts with Blackness. In order to do so, it is important to recognize that a person's perception of Blackness, Black fatherhood, and Black fatherlessness are all socially and legally constructed. In that sense, Black fatherlessness is an example of how social factors and legal devices often rely on and perpetuate the very perception of Black fathers that is the problem itself. Fatherlessness is not a Black issue. The absent Black father is not the cause of crime and the downfall of society. The failure to recognize the role of racial inequity in the perception of fatherlessness and the enforcement of the child support system only perpetuates the very systemized oppression that is contrary to America's postracialism ideal. In understanding Black fatherlessness, the focus must shift away from a linear, damaging narrative and toward its true actuality: a cyclical process that is perpetuated by socially and legally constructed notions of race, power, and hierarchy.

The Absent Black Father: Race, The Welfare-Child Support System, and the Cyclical Nature of Fatherlessness  
Omarr Rambert

ABSTRACT

The perception of Black fathers is that they are largely absent from their children’s lives, and that such absence—and the ensuing experience of growing up fatherless—is a direct cause of social issues in Black communities. Through media representations and policymaking, the absent Black father narrative has taken shape over the past fifty years, giving rise to the belief that fatherlessness is a distinctly Black issue. To safeguard against misplaced assumptions, this Comment proposes a new, cyclical model by which to view fatherlessness. Rather than a linear process that ascribes the blame for Black plight to Black fathers, this Comment posits that socially constructed notions of race and stringent welfare-child support laws perpetuate the absent Black father stereotype. This cycle begins with a Black father being absent from the home; he then has child support enforced against him, irrespective of his ability to pay; consequently, the child takes on the identity of being fatherless and the father who cannot pay child support is rendered deadbeat. This produces real social consequences, which feed back into the social perception of Black fatherlessness. Through this lens, this Comment assesses incentives in state child support enforcement and questions whether states are actually motivated to push Black fathers out of their homes. Ultimately, this Comment concludes that understanding fatherlessness as both socially and legally constructed can help eliminate the trope of the absent Black father.

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