

Unmothering Black Women: Formula Feeding as an Incident of Slavery

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Laws and policies that impede Black mothers' ability to breastfeed their children began in slavery and persist as an incident of that institution today. They originated in the practice of removing enslaved new mothers from their infants to work or to serve as wet nurses for slave owners' children. The stereotype of the bad Black mother justified this separation. This trope also underlies racial disparities in breastfeeding rates in the present. The mythical Mammy loved the White children under her care but callously neglected her own. Today, the Welfare Queen reproduces for the sole purpose of gaming the system. Collective belief in the existence of the bad Black mother leads to low or no investment in resources for Black mothers who want to breastfeed, and to laws and policies that inhibit their opportunities to do so. Black infants and mothers suffer from related health conditions, including infant mortality, at disproportionately and unacceptably high rates. Structural reforms grounded in constitutional principles are necessary to reverse this manifestation of food oppression.

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INTRODUCTION

On May 23, 1946, in the rural southern town of Reidsville, North Carolina, a small miracle occurred. The woman responsible for this miracle was Annie Mae Fultz, a Black-Cherokee mother of six children who had lost the ability to hear or speak as a child. Beginning at 1:13am, Annie Mae gave birth, in short intervals, to the world's first recorded identical Black quadruplets ever to survive into adulthood.¹ Against the odds, each of these four strong, tiny girls survived their first few hours and began to grow steadily. Annie Mae's joy at her perfect new daughters was irrepressible, expressed in exuberant debates with friends and

1. *Fultz Quads 'More Amazing' than Dionne Quintuplets*, PITTSBURGH COURIER, Aug. 3, 1946, at 22 ("Physicians here declare that the two-month-old Fultz babies are even more amazing than the [Dionne] 'quints' because they are not premature infants, and, should they live, will be the first of six recorded sets of [African American] quads to survive."); Frances M. Ward, *Seeing Double Times Two Famous Foursome Make Their Mark as World's First Black Quadruplets*, GREENSBORO (May 22, 1990), http://www.greensboro.com/seeing-double-times-two-famous-foursome-make-their-mark-as/article_80d5c093-598c-55e1-8d39-32d59b090368.html; *Quadruplets Born to Mute at Reidsville*, DAILY TIMES (Burlington, N.C.), May 23, 1946, at 14; Lorraine Ahearn, *And Then There Was One*, GREENSBORO (Aug. 3, 2002), http://www.greensboro.com/and-then-there-was-one-they-were-four-of-the/article_7d5869a7-3b2b-5b7d-b5d0-044464d8aba3.html; Melba Newsome, *I Think It Was the Shots*, O, OPRAH MAG., Apr. 1, 2005, at 232; *Feminine Front*, BALT. AFRO-AM., Aug. 25, 1956, at 11 ("Anne, Louis [sic], Alice, and Catherine are the world's only identical colored quadruplets."); see also *Famous Fultz Quads, Now 16, Begin to Look Ahead for Careers*, BALT. AFRO-AM., Oct. 20, 1962, at 6 ("At the time of their birth, they were the only living identical colored quadruplets on record in the world . . . Also, at that time, there had been only six other sets on record; none of these lived.").

relatives at her hospital bedside about possible names for the girls.² Their father, Pete, a tenant farmer on a tobacco farm, collapsed onto his bed when he learned of the four new babies.³ But Annie Mae and Pete's happiness was short-lived.

Fred Klenner, the White doctor who delivered the girls in the Basement wing of Annie Penn hospital, was quick to recognize that he stood to gain from their instant celebrity.⁴ Klenner began testing his controversial theories about Vitamin C on the sisters on the day of their birth, injecting them with 50 milligrams each.⁵ Even worse, Klenner named the girls himself, snatching the privilege from Annie Mae and Pete. He gave them all the first name Mary, then middle names belonging to his wife, sister, aunt, and great-aunt: Ann, Louise, Alice, and Catherine.⁶ Klenner's sense of ownership over the girls did not stop there. He instigated a bidding war among formula companies seeking to break into the untapped market of Black mothers by becoming the newly famous Fultz Quads' corporate godfather.⁷ Klenner selected St. Louis' Pet Milk Company for this honor, setting in motion a chain of events that would lead Annie Mae to lose, not just the right to name her children, but her beloved girls themselves.⁸

2. See *Names for Quads Posing Problem*, STATESVILLE DAILY REC., May 25, 1946, at 9 ("Annie Mae, who is the mother of six other children, said that she was all set to call them Betty, Clara, Billie and Anne, when friends persuaded her to change their names to Laurinda, Belinda, Lucinda and Magenda. No sooner had she decided to call them by the latter names, she said, than an aunt appeared at Memorial hospital and pleaded that they be known by different names. Now, Annie Mae says she's waiting for all concerned to have their say before she settles on a definite set of names."); cf. *Mother Deaf Mute: Carolina Tenant Farm Pair Parents of Quads*, PITTSBURGH COURIER, June 1, 1946, at 2 ("The infants, Rosetta, Loretta, Margretta and Henrietta, were delivered by Dr. Fred R. Klenner . . .").

3. *Quadruplets Born to Mute at Reidsville*, DAILY TIMES (Burlington, N.C.) May 23, 1946, at 14 ("Man, you better get up to the hospital quick. You got a whole bunch of babies. They's so many of them, they laying 'em cross-wise of the bed.").

4. Newsome, *supra* note 1.

5. Lorraine Ahearn, *Four Sisters, One Love*, GREENSBORO (Aug. 8, 2002), http://www.greensboro.com/four-sisters-one-love/article_cdccc43c-bd23-5e85-931f-2ad69c4a1f40.html; Newsome, *supra* note 1; see also STEVE HICKEY & ANDREW W. SAUL, VITAMIN C: THE REAL STORY: THE REMARKABLE AND CONTROVERSIAL HEALING FACTOR 25–28 (2008) (evaluating the importance of vitamin C, and the need for supplemental doses of the vitamin). See generally Fred R. Klenner, *Observations on the Dose and Administration of Ascorbic Acid When Employed Beyond the Range of a Vitamin in Human Pathology*, 13 J. ORTHOMOLECULAR MED. 198 (1998).

6. Ahearn, *supra* note 1; Newsome, *supra* note 1. But see *Fultz Quads 'More Amazing,' supra* note 1, at 22 ("Deciding to give the babies the same first name because they are so much alike, Mrs. Fultz has named them Mary Ann, 'Ann' for Dr. Klenner's eldest daughter; Mary Louise, for his second child; Mary Alice for the babies' aunt; and Mary Catherine for the physician's niece.").

7. See Ahearn, *supra* note 1 ("Nobody wanted a piece of the story more than the big national dairies that produced infant formula for the emerging post-war baby boom. Borden and Carnation were the first to come calling, but Klenner awarded the deal to Pet, a midland dairy based in St. Louis.").

8. See Ahearn, *supra* note 1; see also Lorraine Ahearn, *A Birthday Party with the Governor*, GREENSBORO (Aug. 4, 2002), <http://www.greensboro.com/a-birthday-party-with-the>

The contract with Pet Milk led the girls down a path of poverty and isolation, despite their fame as the poster children for Pet Milk products. At age six, they moved out of their family home, away from their parents and siblings, to attend elementary school.⁹ When the girls turned ten, Alma Saylor, a nurse hired by Pet Milk, formally adopted them.¹⁰ Frequent travel to promote Pet Milk disrupted the girls' schedules and left them far behind their peers academically. Later, when they pursued a college education in music, Florida's Bethune-Cookman College asked them to leave after their second year.¹¹ Their adoptive parents moved them far from home to upstate New York, where they tried and failed to break into the entertainment business, working instead in factories and as nurses.¹² Beginning at age forty-five, they all received breast cancer diagnoses and, by age fifty-five, only Catherine was alive.¹³

The legacy of Klenner's deal with Pet Milk reached far beyond the Fultz sisters. The contract facilitated the company's launch of the first formula advertising campaign targeted at Black women.¹⁴ Before the campaign, corporations limited their marketing to Black consumers to alcohol and beauty products. They feared the stigma that would attach to their brands if they used Black models or portrayed Black life in a positive

governor/article_c4aa1058-b794-5db1-b2e9-7ca5c53a6043.html ("The judge, milk company and doctor who managed their affairs decided that their live-in nurse and her husband would be more suitable stewards . . ."); Newsome, *supra* note 1 ("Again, Klenner, not the Fultzes, made the decision to award the deal to Pet Milk over Carnation.").

9. Newsome, *supra* note 1; see also Charles Stanback, *Fultz Quadruplets Enter N.C. School*, BALT. AFRO-AM., Sept. 16, 1952, at 1 ("They now live with their nurse . . .").

10. *Quadruplet Girls Seek Music Careers at Bethune-Cookman*, DAYTONA BEACH MORNING J., June 17, 1965, at 13 ("The Saylor adopted the quads in 1956 when the girls' parents were no longer able to care for them.").

11. Charles L. Sanders, *The Fultz Quads: Grown-up, Disappointed and Bitter*, EBONY, Nov. 1968, at 212, 220.

12. *Id.* at 216; Lorraine Ahearn, *Corporate Adoptions, Golden Futures*, GREENSBORO (Aug. 6, 2002), http://www.greensboro.com/corporate-adoptions-golden-futures/article_2c63a2fb-0ab3-5ab7-860e-f2adaa7a85b6.html; Lorraine Ahearn, *What Ever Happened to Alice's Baby?*, GREENSBORO (Aug. 7, 2002), http://www.greensboro.com/what-ever-happened-to-alice-s-baby/article_635ca64c-e1aa-585a-a6a6-c11871bffbbo.html.

13. Ahearn, *supra* note 1.

14. See Lorraine Ahearn, *From Madison, N.C., to Madison Ave.*, GREENSBORO (Aug. 5, 2002), http://www.greensboro.com/from-madison-n-c-to-madison-ave/article_e2389602-8fda-59c7-bc08-b99d73fd018c.html (noting that the quads were born during a time in which Pet Milk could take great advantage of the specific need—stemming from convergence of the post-war baby boom and the Great Migration—for convenience in the form of canned, evaporated milk "[i]n an era before the concept of marketing had been discovered"). Newsome states:

Major dairy-food companies didn't wait that long to start courting them to help sell evaporated milk—a popular convenience among busy mothers everywhere, particularly working black women. The mass migration of black workers from farms to urban factories over the past 30 years had given them increased buying power, and corporations were now pursuing them as customers.

Newsome, *supra* note 1.

light. Overcoming this apprehension, Pet Milk's bold and innovative marketing scheme persuaded many Black women that formula was just as healthy as, or healthier than, breast milk, making it easier for them to succumb to a host of external pressures not to breastfeed.

Over the following decades, images marketing formula to Black women increased. Simultaneously, depictions of Black women breastfeeding remained virtually non-existent outside the pages of anthropological magazines such as *National Geographic*. Popular and media imagery thus reflected and perpetuated racial disparities in breastfeeding rates. Formula marketing schemes and commonplace portrayals of breastfeeding mothers as White also aligned with stereotypes, first popularized in slavery, of Black mothers as cold and uncaring.

In 2008, only fifty-nine percent of Black women¹⁵ had ever tried breastfeeding, compared to eighty percent of Latinx mothers and seventy-five percent of White mothers.¹⁶ Only twelve percent of Black mothers still breastfed at six months, compared to approximately twenty-six percent of Latinx mothers and just over twenty-four percent of White mothers.¹⁷ These disparities in breastfeeding rates correspond with other racial health disparities, including infant mortality, which strikes more than twice as many Black babies as White babies.¹⁸ This ratio has remained consistent since slavery.¹⁹

15. Although this Article refers primarily to breastfeeding women and mothers, these terms are not intended to exclude men and others who do not identify as women who breastfeed, or people who are not mothers who breastfeed. I use these terms simply as shorthand.

16. *Progress in Increasing Breastfeeding and Reducing Racial/Ethnic Differences—United States, 2000-2008 Births*, 62 *MORBIDITY & MORTALITY WKLY. REP.* 77, 77–80 (2013).

17. For more statistics on breastfeeding rates and disparities, see Katherine Bain, *The Incidence of Breast Feeding in Hospitals in the United States*, 2 *PEDIATRICS* 313, 313–20 (1948) (looking at breastfeeding rates in hospitals in 1948); Starr-Renee Corbin, *Raising Parents: Breastfeeding Trends from 1900 to Present Day* (May 2010) (unpublished M.A. report, University of Texas at Austin), <https://repositories.lib.utexas.edu/bitstream/handle/2152/ETD-UT-2010-05-819/CORBIN-MASTERS-REPORT.pdf>; Alan S. Ryan et al., *Breastfeeding Continues to Increase into the New Millennium*, 110 *PEDIATRICS* 1103, 1108 (2002); Anne L. Wright & Richard J. Schanler, *The Resurgence of Breastfeeding at the End of the Second Millennium*, 131 *J. NUTR.* 421S, 422S–23S (2001); Charles Hirschman & Marilyn Butler, *Trends and Differentials in Breast Feeding: An Update*, 18 *DEMOGRAPHY* 39, 46, 51 (1981).

18. T.J. Mathews et al., *Infant Mortality Statistics from the 2013 Period Linked Birth/Infant Death Data Set*, 64 *NAT'L VITAL STAT. REP.* 1, 4 (2015), https://www.cdc.gov/nchs/data/nvsr/nvsr64/nvsr64_09.pdf.

19. See WILMA A. DUNAWAY, *THE AFRICAN-AMERICAN FAMILY IN SLAVERY AND EMANCIPATION* 141 (2003) (“A slave infant was 2.2 times more likely to die than a white baby, and white children between five and fourteen survived 1.9 times more often than did slave children of the same ages.”); Steven Mintz, *Childhood and Transatlantic Slavery*, *CHILD. & YOUTH IN HIST.*, <http://chnm.gmu.edu/cyh/case-studies/57> (last visited July 30, 2018); Marian F. MacDorman & T.J. Mathews, *Infant Deaths—United States, 2000-2007*, U.S. DEP'T OF HEALTH AND HUMAN SERVS: NAT'L CTR. FOR HEALTH STATISTICS 2–6 (2011), <https://www.cdc.gov/nchs/data/databriefs/db74.pdf>;

A complex web of laws and policies contributes to these racial disparities in breastfeeding.²⁰ They include: (1) the distribution of free formula to new mothers through the United States Department of Agriculture's ("USDA") Special Assistance to Women and Children ("WIC") program, in which Black women participate disproportionately;²¹ (2) the United States' failure to adopt the World Health Organization's ("WHO") Ban on Advertising of Breast Milk Substitutes, which leaves the door open to marketing that targets Black women;²² (3) the lack of baby-friendly requirements for hospitals and the dearth of voluntarily adopted baby-friendly practices in hospitals in Black neighborhoods;²³ (4) welfare reform, enacted in 1996, that forces new mothers out of the home to work;²⁴ and (5) inadequate workplace breastfeeding accommodation laws.²⁵ The extent of the relationship between the formula industry and the U.S. government took center stage in 2018 when U.S. officials threatened Ecuador with trade and aid sanctions if it did not withdraw a resolution promoting breastfeeding from the World Health Assembly.²⁶ This Article explores the history and social paradigms that led to this legal and policy framework.

Racial disparities in breastfeeding are a form of food oppression.²⁷ Food oppression is facially neutral food-related law, policy, or government practice that creates health disparities along race, gender, and class lines.²⁸ Cultural myths about personal responsibility obscure the structural determinants of behavior that obviate personal choice. Negative racial stereotypes reinforce these cultural beliefs and make racial health disparities seem inevitable. Therefore, to reverse the effects

Mathews et al., *supra* note 18, at 1; Carol J. Rowland Hogue & Martha A. Hargraves, *Class, Race, and Infant Mortality in the United States*, 83 AM. J. PUB. HEALTH 9 (1993).

20. Andrea Freeman, "First Food" Justice: Racial Disparities in Infant Feeding as Food Oppression, 83 FORDHAM L. REV. 3053, 3065 (2015).

21. *Id.* at 3075–79.

22. *Id.* at 3068–70.

23. *Id.* at 3070–72. Baby-friendly practices encourage breastfeeding over formula feeding and include rooming babies and mothers together, offering lactation support, and not providing new mothers with formula unless requested or required. *Id.*

24. *Id.* at 3072. Black women are disproportionately represented as welfare recipients.

25. *Id.* at 3072–74.

26. Andrew Jacobs, *Opposition to Breast-Feeding Resolution by U.S. Stuns World Health Officials*, N.Y. TIMES (July 8, 2018), <https://www.nytimes.com/2018/07/08/health/world-health-breastfeeding-ecuador-trump.html?smid=fb-nytimes&smtyp=cur>; Andrea Freeman, *Opinion, U.S. Support of Formula over Breastfeeding Is a Race Issue*, CONVERSATION (July 23, 2018, 7:00 PM), <https://theconversation.com/u-s-support-of-formula-over-breastfeeding-is-a-race-issue-99987>.

27. *Id.* at 3086–87.

28. Andrea Freeman, *The Unbearable Whiteness of Milk: Food Oppression and the USDA*, 3 U.C. IRVINE L. REV. 1251, 1253 (2013) (explaining that "[f]ood oppression is institutional, systemic, food-related action or policy that physically debilitates a socially subordinated group . . . [i]n the long term, food oppression diminishes already vulnerable populations in numbers and in power.").

of food oppression, efforts to change people's minds about food and racial justice must accompany attempts to reform law and policy. In the context of "first food" oppression,²⁹ it is essential to dismantle the stereotype of the bad Black mother.

This Article argues that Black women's low breastfeeding rates arise directly out of slavery practices and their justifications. The phrase "badge and incident of slavery" first appeared in the 1883 *Civil Rights Cases* as a legal term of art to define the scope of Congress' enforcement power under section 2 of the Thirteenth Amendment.³⁰ Despite disagreement about the term's exact meaning, it generally refers to ongoing racial subordination or discrimination that originated in slavery.³¹ This includes "the abolition of the parental relation."³² In 1968, the U.S. Supreme Court expanded this concept to include "relics and vestiges" of slavery.³³ Disparities in breastfeeding rates and related illnesses and deaths represent both an "incident" and a "vestige" of slavery that both the courts and Congress have the authority and responsibility to eliminate.

The Article begins in Part I with a history of infant feeding from a critical race theory perspective. This Part demonstrates how society has consistently devalued Black maternal love bestowed on Black children. In slavery, Whites celebrated the Black Mammy figure as an ideal nurse for their children but not her own. Later, developing ideals of good motherhood consistently excluded Black mothers. This Part also explores how the aspirations of pediatricians to legitimize an emerging medical field and evolving technologies of artificial milk perpetuated the racial divide in breastfeeding.

Part II examines how formula companies developed successful, racially targeted marketing strategies in the absence of positive popular images of Black mothers. Next, it traces the modern incarnations of the bad Black mother, the Welfare Queen and the Welfare Mother, to their roots in slavery. Throughout history, this stereotype has justified a lack of support for breastfeeding Black mothers. The legacy of slavery has also discouraged Black mothers from reliving aspects of their enslavement, including exposing their bodies in public to nurse. Finally, Part II deconstructs the stereotype of the bad Black mother in modern Black cultural production. Seeking to curtail the enduring legacies of slavery,

29. See generally Freeman, *supra* note 20 (referring to infant food oppression).

30. United States v. Stanley, 109 U.S. 3, 20 (1883) [hereinafter *Civil Rights Cases*]. For a survey of the origin and meanings of this term, see Jennifer Mason McAward, *Defining the Badges and Incidents of Slavery*, 14 U. PA. J. CONST. L. 561, 570–582 (2012).

31. McAward, *supra* note 30, at 570–71.

32. CONG. GLOBE, 38th Cong., 1st Sess. 1439–40 (1864).

33. See Jones v. Alfred H. Mayer Co., 392 U.S. 409, 441 n.78 (1968).

Part III explores the viability of reducing racial disparities in breastfeeding rates through constitutionally-grounded systemic reform.

I. A HISTORY OF BLACK WOMEN AND INFANT FEEDING

Comparatively low breastfeeding rates in Black communities began in slavery and have remained consistent over the following centuries, even as attitudes to and rates of breastfeeding have fluctuated dramatically for Whites. In the twentieth century, perhaps the only consistent aspect of popular breastfeeding philosophies and practices was the exclusion of Black women from portrayals of ideal motherhood.

Historical accounts of breastfeeding in the United States generally focus on the experiences of White women, sometimes with a cursory nod to the experience of wet nursing by enslaved women. These narrow accounts fail to explain the racial disparities in breastfeeding rates between Black and White women that began in slavery and persist today. Looking at these disparities from an ahistorical perspective can lead to the false conclusion that they reflect cultural preferences that education can reduce or eliminate. Instead, these disparities reflect long-standing, deep-rooted, and institutionalized practices and policies that ignore or devalue Black women and children.

Slave owners' efforts to appropriate Black women's reproductive capacities for economic exploitation led to the disruption, not only of Black family bonds, but of the mother-child relationship at its most physical level.³⁴ The intimacy of breastfeeding, the literal giving of one's own body to sustain the life of another's, is a painful privilege often touted as the ultimate sacrifice and symbol of motherhood. Characterizing the act in this way primarily serves to glorify White motherhood. Throughout history, it has been predominantly White, well-off mothers who have had the time, resources, and support to facilitate successful nursing, particularly for an extended period. Reverence of breastfeeding can therefore appear to demean Black mothers who do not breastfeed, framing their reliance on formula or other alternative feeding methods as the product of unfortunate choices, instead of external circumstances.

34. See, e.g., DOROTHY ROBERTS, *KILLING THE BLACK BODY: RACE, REPRODUCTION, AND THE MEANING OF LIBERTY* 22–25 (Vintage Books 2d ed. 2017) (“The story of control of Black reproduction begins with the experiences of slave women like Rose Williams. Black procreation helped to sustain slavery, giving slave masters an economic incentive to govern Black women’s reproductive lives . . . This feature of slavery made control of reproduction a central aspect of whites’ subjugation of African people in America. It marked Black women from the beginning as objects whose decisions about reproduction should be subject to social regulation rather than to their own will.”); see also DUNAWAY, *supra* note 19, at 138.

The fact that Black women breastfeed less than other mothers has served varying White interests throughout history. In slavery, it made invaluable breast milk, a food often referred to as liquid gold, available to White infants while denying its significant benefits to Black babies.³⁵ During and after slavery, preventing Black mothers from breastfeeding their children made Black women available to perform exploitative labor for Whites.

In the twentieth century, promoting formula to Black women, while restricting resources for Black mothers who wanted to breastfeed, resulted in large profits for the formula industry. These corporate gains came at the expense of Black mothers' and children's health. The persistence of racial disparities in breastfeeding rates reflects policy and lawmakers' reluctance to implement changes to redress past harms and reverse current practices that benefit the formula industry. Low breastfeeding rates among Black mothers represent one of the most harmful and enduring incidents of slavery.

A. MAMMY AND WET NURSING DURING SLAVERY

The history of breastfeeding and race in the United States begins with the arrival of the English and their quest to claim stolen land as their own. These settlers sought to create a sustainable economy without the resources, knowledge, and labor required to replicate their previous way of life. Before and after colonization, Native American mothers breastfed their babies.³⁶ English settlers similarly brought with them a belief that breastfeeding provides ideal nutrition for babies.³⁷ Who should perform this breastfeeding, however, was a complex question. Colonizers belonging to social groups that employed wet nurses in England,

35. DUNAWAY, *supra* note 19, at 140 (“[W]et nursing claimed the benefits of breastfeeding for the offspring of white masters while denying or limiting those health advantages to slave infants.”).

36. Ann Seacrest, *Breastfeeding Is Food Sovereignty for Native Communities*, NATIVE NEWS ONLINE (Apr. 17, 2014), <http://nativenewsonline.net/health/breastfeeding-food-sovereignty-native-communities/>; Rob Capriccioso, *Breast-feeding's Role in Taking Back Native Culture*, INDIAN COUNTRY TODAY (Mar. 1, 2011), <https://indiancountrymedianetwork.com/news/breast-feedings-role-in-taking-back-native-culture/> (“After all, before colonization and the many changes in society that came along with it (baby formula included), Indian moms didn't face the same kinds of barriers to breast-feeding that they do today.”); see also *Reclaiming Breastfeeding in Indian Country*, W.K. KELLOGG FOUND., <https://www.wkcf.org/what-we-do/featured-work/bringing-breastfeeding-back-to-indian-country> (last visited July 30, 2018) (“For many Native Americans, however, this belief and the tradition of breastfeeding has lapsed over generations of historical trauma.”); INTER-TRIBAL COUNCIL OF MICH., *BREASTFEEDING FOLLOWING TRADITION WORKS FOR WORKING WOMEN* 3 (2013), www.itcni.org/wp-content/uploads/2013/05/Breastfeeding-Toolkit-for-the-American-Indian-Worksite.pdf (“Breast milk is known as the first traditional food for Native American[s], but the colonization of the Native American population discouraged the inclusion of many traditional foods including breast milk.”).

37. Marylynn Salmon, *The Cultural Significance of Breastfeeding and Infant Care in Early Modern England and America*, 28 J. SOC. HIST. 247, 249 (1994).

including doctors, clergy, merchants, and others in the upper and noble classes, continued the wet-nursing tradition in America.³⁸ Additionally, colonists from lower and artisan classes who prospered in their new home often emulated the upper classes by hiring wet nurses.³⁹

In contrast, many religious White settlers encouraged their wives to breastfeed as part of their Christian duty. Puritan minister Cotton Mather embodied this approach, condemning mothers who did not nurse their children as lazy and irreverent.⁴⁰ In *Ornaments for the Daughters of Zion*, his influential 1692 treatise dictating the proper conduct of colonial women, he wrote, “You can suckle your infant yourself if you can; be not such an ostrich as to decline it merely because you would be one of the careless women, living at ease. Of such we read, they are dead while they live.”⁴¹ Puritans also believed that many women chose to stop breastfeeding so that they could engage in sexual intercourse, an act commonly viewed at the time as incompatible with nursing.⁴² Seventeenth century English physicians asserted that breast milk was menstrual blood of a different color, and that sex would trigger menstruation, turning the milk back into blood, rendering it unsuitable for infant feeding.⁴³

Eventually, poor diets made breastfeeding a challenge for White mothers in America. A nursing woman requires a substantial daily intake of calories from nutritious foods to sustain herself and her child. Nursing infants deplete their mothers of nutrients, which, if the mother cannot replace them, can lead to dramatic weight loss and other health problems. Satisfying a nursing baby’s demands became increasingly difficult as colonists struggled to feed themselves adequately during a succession of meagre harvests. By the early 1600s, most families with sufficient means hired wet nurses to preserve the strength of mothers and

38. VALERIE FILDES, *WET NURSING: A HISTORY FROM ANTIQUITY TO PRESENT* 127, 130–31 (1988) (“By the eighteenth century, breastmilk was the most common commodity advertized in colonial newspapers. In Boston and the surrounding country side there is considerable evidence that a wet nursing industry existed similar to that in parts of England.”).

39. *Id.* at 130.

40. *Id.* at 130–31. (“Nevertheless, Mather himself was wet nursed and so were his children.”); see also JANET GOLDEN, *A SOCIAL HISTORY OF WET NURSING IN AMERICA: FROM BREAST TO BOTTLE* 11–13 (1st ed. 1996) (“Minister and Harvard president Benjamin Wadsworth, like Cotton Mather, spoke harshly of women who refused to nurse their babies, calling them ‘criminal and blame-worthy.’”).

41. FILDES, *supra* note 38, at 130.

42. Alice Robb, *Bring Back the Wet Nurse!*, *NEW REPUBLIC* (July 22, 2014), <https://newrepublic.com/article/118786/breastfeeding-wet-nurses-mommy-wars>. Doctors also advised abstinence to avoid resuming menstruation. JANET A. FLAMMANG, *THE TASTE FOR CIVILIZATION: FOOD, POLITICS, AND CIVIL SOCIETY* 138 (2009).

43. Diane Thulier, *Breastfeeding in America: A History of Influencing Factors*, 25 *J. HUM. LACTATION* 85, 86 (2009).

babies.⁴⁴ A wet nurse is a new mother who is paid or, during slavery, compelled, to breastfeed another woman's child.⁴⁵ Alternatives to maternal breastfeeding, including wet nursing, cross nursing (by community members) and "dry-nursing" with food and milk, also became necessary when mothers died, fell ill, or became separated from their children for any reason.

White settlers selected their wet nurses carefully because they believed that women could transfer their temperament to babies through milk.⁴⁶ Their caution reflected both classism and racism, as the characteristics defined as undesirable in wet nurses generally consisted of habits attributed to the lower classes, or physical attributes such as dark skin and other non-White features.⁴⁷ Most often, wet nurses were lower-class White women who had lost a baby, which was a common occurrence from colonization all the way through the 1900s.⁴⁸ Women could work as wet nurses for eight to nine years after giving birth, as long as they nursed continuously to maintain their milk supply.⁴⁹ However, by

44. Paula A. Treckel, *Breastfeeding and Maternal Sexuality in Colonial America*, 20 *J. INTERDISC. HIST.* 25, 26 (1989).

45. Fildes noted:

Wet nursing, or the breastfeeding of another woman's child either in charity or for payment, occurred in all civilizations in which the death of mothers in childbed or during lactation was relatively common, but this was not the only reason why it was employed. Social, political, and religious factors played an important role in determining the incidence and extent of professional breastfeeding in different societies throughout history. In some civilizations wet nursing occurred mainly on a casual basis: where lactating relatives or neighbors fed another child along with, or after weaning, their own infant. In others, it was highly organized among certain classes of the population, and wet nurses and parents were subject to the law of the land or to that of their religion.

FILDES, *supra* note 38, at 1; *see also* GOLDEN, *supra* note 40, at 1 (establishing that a wet nurse refers to "the milk of a woman who is not [a child's] mother . . .").

46. Treckel, *supra* note 44, at 30; *see also* Robb, *supra* note 42 ("upper-class English mothers fretted that the wet nurse would transmit some moral failing or lower-class value" to their babies) (citing ISABELLA MARY BEETON, *THE BOOK OF HOUSEHOLD MANAGEMENT* 1022–24 (S.O. Bertone ed., 1st ed. 1861)) (According to Mrs. Beeton, families should put up their wet nurses in their homes to ensure that their behavior conformed to Victorian codes of virtue and chastity. Additionally, they should look for a wet nurse with "clear open countenance, the ruddy tone of the skin, the full, round, and elastic state of the breasts . . ."). However, Robb fails to recognize the coded racial meaning of these concerns, the racism that created the high demand for White wet nurses, and the complex relationship between race and wet nursing described in her incomplete history and simplistic call for the revival of wet nursing.

47. JACQUELINE H. WOLF, *DON'T KILL YOUR BABY: PUBLIC HEALTH AND THE DECLINE OF BREASTFEEDING IN THE NINETEENTH AND TWENTIETH CENTURIES* 137–38 (2001) (discussing biased attitudes towards wet nurses).

48. White wet nurses advertised their services in newspapers and through doctors and had their pick of families. GOLDEN, *supra* note 40, at 69–72; Robb, *supra* note 42 (citing Grace Peckham, *Infancy in the City*, 28 *POPULAR SCI. MONTHLY* 683, 686 (1886)) ("The search for a wet-nurse is one of the most disheartening. The supply is in no way proportioned to the demand.")

49. *See* Robb, *supra* note 42 (citing ERICA EISDORFER, *THE WET NURSE'S TALE* (2010)) (telling the story of a White woman, Susan Rose: "Susan Rose was not your average Victorian heroine. She's

the end of the seventeenth century, rising infant mortality rates caused many families to blame their children's deaths on wet nurses' negligence. Foregoing their wet nurses, parents instead fed their infants cow's milk, tea, or pap, a mixture of flour, sugar, water and milk.⁵⁰ Unfortunately, babies fared no better under this feeding regime due to the often-fatal consequences of ingesting unpasteurized milk or spoiled food.⁵¹

Different concerns animated the history of breastfeeding on slave plantations. Enslaved women breastfed for far shorter lengths of time than their counterparts in Africa, commonly nursing for only one year instead of two or three.⁵² Several factors contributed to this significant difference, which could profoundly affect children's development. Some slave owners prevented mothers from breastfeeding longer because they believed that nursing was a form of contraception⁵³ and they wanted to produce more slaves by raping new mothers. Slave owners also wanted mothers to take as little time off from labor as possible. Breastfeeding on demand, which was necessary without the technology of breast pumps, bottles, and milk refrigeration, interrupted the steady flow of work. Therefore, it was common for mothers to share breastfeeding duties by cross-nursing.⁵⁴ This communal approach to nursing helped to ensure that babies received breast milk in the first crucial days and months, fortifying them against many potential health problems.

promiscuous, lovable, plump, and scheming. Luckily for Susan, her big heart is covered by an equally big bosom, and her bosom is her fortune—for Susan becomes a professional wet nurse, like her mother before her, and she makes it her business to know all the intrigues and scandals that the upper crust would prefer to keep to themselves.”) (quoting *About “The Wet Nurse’s Tale,”* PENGUIN RANDOM HOUSE, <https://www.penguinrandomhouse.com/books/304744/the-wet-nurses-tale-by-erica-isorfer/9780425234471/> (last visited July 30, 2018)).

50. GOLDEN, *supra* note 40, at 9; Thulier, *supra* note 43, at 87.

51. Julie E. Artis, *Breastfeed at Your Own Risk*, CONTEXTS (Nov. 12, 2009), <https://contexts.org/articles/breastfeed-at-your-own-risk/>; see also Emily E. Stevens et al., *A History of Infant Feeding*, 18 J. PERINATAL EDUC. 32, 34 (2009), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2684040/pdf/jpe-18-032.pdf> (noting that artificial feeding only became a “feasible substitute” for breastfeeding in the nineteenth century).

52. Herbert S. Klein & Stanley L. Engerman, *Fertility Differentials Between Slaves in the United States and the British West Indies: A Note on Lactation Practices and Their Possible Implications*, 35 WM. & MARY Q. 357, 358 (1978); DUNAWAY, *supra* note 19, at 138 (“West African women nursed children two to three years and abstained from sexual intercourse until the child was weaned.”).

53. Klein & Engerman, *supra* note 52, at 358, 571 (“[G]iven the effectiveness of lactation as a contraceptive . . .”). Medical wisdom was that breastfeeding postponed the resumption of menstrual periods. FLAMMANG, *supra* note 42, at 138. See generally NED SUBLETTE & CONSTANCE SUBLETTE, *THE AMERICAN SLAVE COAST: A HISTORY OF THE SLAVE-BREEDING INDUSTRY* (2015) (explaining that after 1808 when the international slave trade closed, there was increased disruption to black families because of the thriving market in young people). Also, the practice of “forced mating” during slavery suggests that women being used as breeders would have their children taken away sooner so that they could get pregnant again quickly. *Id.*

54. DUNAWAY, *supra* note 19, at 136.

One of the duties that removed Black mothers from their infants was the directive to act as wet nurse for the White slave-owners' children.⁵⁵ Some plantation owners favored the use of their slaves for wet nursing over their wives' breastfeeding to prevent malaria.⁵⁶ In the 1600s, malaria viciously claimed the lives of many White settlers and Native Americans.⁵⁷ Slave owners believed that African mothers could transmit a natural immunity to this deadly disease to White babies through breast milk.⁵⁸ White plantation owners also sought to maximize their heirs by avoiding the contraceptive effects of breastfeeding on their wives.⁵⁹ By displacing the duty of nursing their children onto an enslaved mother, slave owners could impregnate their wives again more quickly.

The task of wet nursing slave owners' infants took Black mothers away from their own children when the children needed their mothers' care the most. Sometimes, they were separated permanently. Valerie Fildes explains:

The usual method of feeding was to take a [] slave into the house to act as a wet nurse. After weaning, the nurse, or mamma, frequently stayed on to care for the child until it was old enough to be taken over by tutors or, in some instances, until it was grown up. Some women took their former wet nurse with them to their new home when they married.⁶⁰

If there were no women on a plantation to serve as a wet nurse when needed, slave owners with new babies sometimes hired or purchased new mothers from other plantations, forcing them to leave their infants behind.⁶¹ Wet nursing thus reserved the benefits of breastfeeding for White children while simultaneously denying or severely restricting Black children's ability to enjoy its potentially life-saving properties. This increased the infant mortality rates in slave communities, while providing increased protection to White children.⁶²

Forced wet nursing on plantations also involved multiple, complex layers of displacement of maternal care. It operated to transfer some of enslaved mothers' nurturing and affection from their own children to the

55. See DUNAWAY, *supra* note 19, at 139.

56. Treckel, *supra* note 44, at 48.

57. Treckel, *supra* note 44, at 48.

58. Treckel, *supra* note 44, at 48.

59. Treckel, *supra* note 44, at 48; see also Thulier, *supra* note 43, at 86; Emily West & R.J. Knight, *Mothers' Milk: Slavery, Wet-Nursing and Black and White Women in the Antebellum South*, 83 J. S. HIST. 37, 39 n.5 (2017).

60. FILDES, *supra* note 38, at 139.

61. FILDES, *supra* note 38, at 139 ("If there was no suitable lactating slave on the premises to feed a newborn baby then one could be hired or purchased from other plantations through word of mouth or newspaper advertisements . . ."); see also West & Knight, *supra* note 59, at 45.

62. See Treckel, *supra* note 44, at 51 ("The use of slave women as wet nurses for the children of upper-class planters mirrored the use of wet nurses by the English aristocracy in the early eighteenth century, and helped to ensure the survival of planters' progeny.").

slave owners' children, creating distress and guilt for Black mothers.⁶³ It also created resentment in White women of the affection their children lavished on their Black nurses. Occasionally, it may have inspired empathy for the Black women's pain at separation from their newborns.⁶⁴ At the same time, many Whites feared that Black women's milk might be tainted by racial inferiority.⁶⁵

The ambivalence in the relationship between Black wet nurses and White infants created a discomfort in White observers that often registered as shock. For example, J. Davis, a White English traveler, described the closeness between White children and Black wet nurses as a unique American phenomenon. He wrote: "Each child has its *Momma*, whose gestures and accent it will necessarily copy, for children, we all know, are imitative beings. It is not unusual to hear an elegant lady say, *Richard always grieves when Quasheehaw is whipped, because she suckled him.*"⁶⁶ As demonstrated in this letter, nursing and raising White children did not protect Black women from cruelty.

Some wet nurses benefited, relative to other enslaved women, by escaping field labor to live in houses, as recounted by Mattie Logan, whose mother worked on an Oklahoma plantation:

My mother belonged to Mistress Jennie who thought a heap of her, and why shouldn't she? Mother nursed all Miss Jennie's children because all of her young ones and my mammy's was born so close together it wasn't no trouble at all for mammy to raise the whole kaboodle of them. I was born about the same time as baby Jennie. They say I nursed on one breast while that child, Jennie, pulled away at the other!

That was a pretty good idea for Mistress, for it didn't keep her tied to the place and she could visit around with her friends most any time she wanted 'thout having to worry if the babies would be fed or not.

Mammy was the house girl and account of that and because her family was so large, the Mistress fixed up a two-room cabin right back of the Big House and that's where we lived.

63. See DUNAWAY, *supra* note 19, at 140 ("[W]et nursing required slave mothers to transfer to white offspring the nurturing and affection they should have been able to allocate to their own children.").

64. See, e.g., *More Slavery at the South, by a Negro Nurse*, INDEPENDENT, Jan. 25, 1912, at 196–200, reprinted in PLAIN FOLK: THE LIFE STORIES OF UNDISTINGUISHED AMERICANS 177–85 (David M. Katzman & William M. Tuttle, Jr. eds., 1982).

65. JENNIFER M. SPEAR, RACE, SEX, AND SOCIAL ORDER IN EARLY NEW ORLEANS 75–76 (2009) ("[H]e reserved particular disdain for parents who allowed their children to have intimate contact with slaves, especially in the form of wet-nursing . . . Le Page du Pratz believed that children could be contaminated through cross-racial breastfeeding . . .").

66. FILDES, *supra* note 35, at 141 (quoting JOHN DAVIS, TRAVELS OF FOUR YEARS AND A HALF IN THE UNITED STATES OF AMERICA DURING 1798, 1799, 1800, 1801, AND 1802, at 93–94 (1909)). Treckel contests the prevalence of these relationships, arguing that historians believed it was more prevalent than it was because travelers documented it frequently due to how surprising, not how common, it was. Treckel, *supra* note 44, at 47.

...

My brother and sisters were allowed to play with the Master's children, but not with the children who belonged to the field Negroes [sic].⁶⁷

Nonetheless, even in the best of circumstances, wet nursing, like all slave labor, was difficult and debilitating.⁶⁸ The words of Ellen Betts, a wet nurse on a Texas plantation, express the deprivation that resulted from a life devoted to wet nursing.

Miss Sidney was Marse's first wife and he had six boys by her. Den he marry de widow Cornelius and she gave him three boys. With ten chillen springin' up quick like dat and de cullud chillen comin' long fast as pig litters. I don't do nothin' all my days, but nuss, nuss, nuss. I nuss so many chillen it done went and stunted my growth and dat's why I ain't nothin' but bones to dis day.⁶⁹

Under these circumstances, wet nursing created physical challenges equivalent to or approaching the harsh demands of work in the fields.

The negative effects of forced wet nursing during slavery have endured into the present. Blogger LaSha of Kinfolk Collective, a website dedicated to exploring issues of racial justice through Black perspectives, eloquently describes the practice's destructive legacy:

During my teen years, I read and learned a lot about slavery in America. One of the images that stuck with me was of a black woman nursing a white baby. Of all the customary violations of black bodies during that time, this one haunted me most. That a black woman's breasts, organs meant to grow and sustain the life of her own children, would be used as tools to grow the babies of white enslavers—babies who'd one day grow to be the enslavers of the same black women who had used their breasts to nourish them—was inconceivable to me.⁷⁰

LaSha further explains that, initially, because of this legacy, refusing to breastfeed felt like a way to reject an act that signified re-enslavement, and assert control over her own body.⁷¹ Later, she transformed her thinking and came to view breastfeeding, not as a reenactment of slavery practices but, instead, as a joyful symbol of emancipation.⁷² She describes this revelation as follows.

67. FILDERS, *supra* note 35, at 142.

68. West & Knight, *supra* note 59, at 52.

69. FILDERS, *supra* note 35, at 142–43.

70. LaSha, *Choosing Not to Breastfeed Was My Revolutionary Act*, KINFOLK COLLECTIVE (Jan. 21, 2016), <http://kinfolkcollective.com/2016/01/21/choosing-not-to-breastfeed-was-my-revolutionary-act/> (depicting this imagery as “evidence proving that black women have never been entitled to our own bodies in this country”). See generally Kimberly Seals Allers, *Breastfeeding: Some Slavery Crap?*, EBONY (Aug. 31, 2012), <http://www.ebony.com/wellness-empowerment/breastfeeding-some-slavery-crap> (“[M]any African Americans still negatively associate breastfeeding with our historical role as ‘wet nurses’ during slavery.”).

71. LaSha, *supra* note 70.

72. LaSha, *supra* note 70.

The real revolutionary act would have been to go against the racist capitalist conditioning I'd been consuming for decades and feed my baby at my breast, bonding and nurturing him. I would have been the warrior I wanted to be had I sat and learned from that nurse all about breastfeeding. A real revolution would have been declaring my breasts not as objects solely meant for sexual pleasure, but as instruments of nourishment for the most important person in my world. I was not revolting, I was conforming.⁷³

LaSha's initial response to the complex relationship between breastfeeding and slavery, however, is a common one that can inform the advice of grandmothers and other family members.

In addition to compelled wet nursing, other aspects of slavery disrupted, not only the attachment of mother and child, but the relationship between women and their own bodies. These included forced mating, sexual assault, harassment, and violence. In acclaimed writer Toni Morrison's novel *Beloved*, she harrowingly portrays a traumatizing rupture in an enslaved mother's control over her body's maternal functions.⁷⁴ Morrison's depiction highlights the lasting impact of breastfeeding practices during slavery on modern culture, and provides insight into experiences that were difficult, if not impossible, for women to document at the time.

In this incident, the plantation's schoolteacher's two nephews hold protagonist Sethe down and steal the milk from her breasts.⁷⁵ This theft provokes greater outrage and sadness in Sethe than the beating she receives for reporting it. Her punishment left a lasting, complicated scar that she likens to a tree on her back.⁷⁶ Describing the boys' attack, Sethe first relates how important it was to her to reach the child she had sent ahead of her so that she, and only she, could nurse her.⁷⁷

All I knew was I had to get my milk to my baby girl. Nobody was going to nurse her like me. Nobody was going to get it to her fast enough, or take it away when she had enough and didn't know it. Nobody knew that she couldn't pass her air if you held her up on your shoulder, only if she was lying on my knees. Nobody knew that but me and nobody had her milk but me.⁷⁸

Next, Sethe recounts the events that prevented her from getting to her baby on time:

"After I left you, those boys came in there and took my milk. That's what they came in there for. Held me down and took it. I told Mrs. Garner on em. She had that lump and couldn't speak but her eyes rolled out tears.

73. LaSha, *supra* note 70.

74. TONI MORRISON, *BELLOVED: A NOVEL* 86 (1st ed. 1987).

75. *Id.* at 19–20.

76. *Id.* at 20.

77. *Id.* at 19.

78. *Id.*

Them boys found out I told on em. Schoolteacher made one open up my back, and when it closed it made a tree. It grows there still.” “They used cowhide on you?” “And they took my milk.” “They beat you and you was pregnant?” “And they took my milk!”⁷⁹

In the novel, Sethe’s ability to breastfeed her children is the one thing that she possesses that no White person can take away, until the boys assault her. Morrison’s moving depiction of this indignity effectively conveys both the high value that enslaved women placed on breastfeeding and the unique vulnerability that they experienced because of it.

B. THE GREAT MIGRATION AND MEDICALIZED MOTHERHOOD

Some freed Black women found jobs after Emancipation in packing houses, steam laundries, and garment factories. However, domestic work was the most common employment for Black women throughout the early twentieth century, especially in the South. Many freed slaves continued to act as wet nurses and caregivers for White children.⁸⁰ In 1912, a Black nurse living in Georgia described her duties:

I frequently work from fourteen to sixteen hours a day. I am compelled to by my contract, which is oral only, to sleep in the house. I am allowed to go home to my own children, the oldest of whom is a girl of 18 years, only once in two weeks, every other Sunday afternoon—even then I’m not permitted to stay all night. I not only have to nurse a little white child, now eleven months old, but I have to act as playmate, or “handy-andy,” not to say governess, to three other children in the house, the oldest of whom is only nine years of age. I wash and dress the baby two or three times each day; I give it its meals, mainly from a bottle; I have to put it to bed each night; and, in addition, I have to get up and attend to its every call between midnight and morning. If the baby falls to sleep during the day, as it has been trained to do every day about eleven o’clock, I am not permitted to rest . . .—I live a treadmill life; and I see my own children only when they happen to see me on the streets when I am out with the children, or when my children come to the “yard” to see me, which isn’t often, because my white folks don’t like to see their servants’ children hanging around their premises.⁸¹

Without negating the importance of freedom, for many women, there was little distinction between these onerous duties, which severely restricted Black mothers’ abilities to care for and nurse their own children, and those of slavery.

The nurse continued, “Perhaps a million of us are introduced daily to the privacy of a million chambers thruout [sic] the South, and hold in our arms a million white children, thousands of whom, as infants, are

79. *Id.* at 19–20.

80. White women also sometimes worked as wet nurses. Robb, *supra* note 42.

81. *More Slavery at the South, by a Negro Nurse*, *supra* note 64, at 178–79.

suckled at our breasts—during my lifetime I myself have served as ‘wet nurse’ to more than a dozen white children.”⁸² She then implored Southern White women to ally themselves with their Black nurses, in recognition of their performance of intimate duties that would, absent racism and exploitation, fall on their own shoulders.

If none others will help us, it would seem that the Southern white women themselves might do so in their own defense, because we are rearing their children—we feed them, we bathe them, we teach them to speak the English language, and in numberless instances we sleep with them—and it is inevitable that the lives of their children will in some measure be pure or impure according as they are affected by contact with their colored nurses.⁸³

White women experienced sexism that might have led them to empathize with the oppression of the Black women in their households. Nonetheless, rigid racial lines prevented them from advocating for more humane working conditions. Easing the burdens on Black women might have meant more work for White women, further diminishing their social status. Even love for their children, who would have benefitted from the well-being of their caretakers, was not enough to overcome White women’s desire to maintain an elevated position over Black women.

During this period, many Black women continued to live in close-knit communities where cross nursing was possible, allowing their children to obtain both nurturing and sustenance from different community members.⁸⁴ However, the Great Migration disrupted this practice. Advances in food and milk preservation and new attitudes toward child rearing also contributed to a shift in infant feeding customs.

Economic instability in the South after the Civil War led to extreme poverty for Black southerners, who also suffered under the Black Codes, harsh laws designed to keep them in a state of near slavery.⁸⁵ To alleviate these conditions, the Republican Congress enacted the Civil Rights Act of 1866, which formally abolished Black Codes.⁸⁶ In the subsequent Reconstruction, Republicans controlled Congress and enjoyed popular support. Black people’s fortunes rose.⁸⁷ However, after a recession during the 1870s, the federal presence retreated from the South. Southerners seized the opportunity to reinstate White supremacy.⁸⁸ The ensuing Southern Redemption undid the political and economic gains of

82. *More Slavery at the South, by a Negro Nurse*, *supra* note 64, at 184.

83. *More Slavery at the South, by a Negro Nurse*, *supra* note 64, at 185.

84. DUNAWAY, *supra* note 19, at 136.

85. DOUGLAS A. BLACKMON, *SLAVERY BY ANOTHER NAME: THE RE-ENSLAVEMENT OF BLACK AMERICANS FROM THE CIVIL WAR TO WORLD WAR II* 99 (2009).

86. DUNAWAY, *supra* note 19, at 243–44.

87. DUNAWAY, *supra* note 19, at 379, 396–98.

88. *See* DUNAWAY, *supra* note 19, at 524–63.

Reconstruction and saw the emergence of the sharecropping system, alongside notoriously harsh prison farms. One, Parchman Farm, is now the oldest prison in the United States and the only maximum-security prison in Mississippi.⁸⁹

In 1866, Jim Crow laws legalized racial segregation, excluding Blacks from mainstream society and allowing them access to only a fringe economy. In the face of this relentless oppression, over six million Blacks left the South for urban centers in the North. Many Northern jobs became available to Blacks in the wake of the massive military mobilizations for the World Wars.⁹⁰ The Great Migration to Northern cities necessarily entailed the break-up of communities, leaving Black mothers isolated from friends and family members. In their new urban environments, Black women's work outside the home became necessary to support their families.⁹¹ This work consisted primarily of menial labor in the domestic and manufacturing spheres.⁹²

For most Black women, breastfeeding became impossible. For White women, it became unfashionable. By the beginning of the twentieth century, breastfeeding rates had generally declined in industrial cities.⁹³ This decline inspired scientific research proving that

89. DUNAWAY, *supra* note 19, at 536–37; see also DAVID OSHINSKY, “WORSE THAN SLAVERY”: PARCHMAN FARM AND THE ORDEAL OF JIM CROW JUSTICE 2, 135–45 (1997) (demonstrating that Parchman Farm was an extension of slave life).

90. See ISABEL WILKERSON, *THE WARMTH OF OTHER SUNS: THE EPIC STORY OF AMERICA'S GREAT MIGRATION* 161 (2010) (“[B]lacks got their chance when the North began courting them, hard and in secret . . . during the labor crisis of World War I.”).

91. See ROBERTS, *supra* note 34, at 15 (“Even after Emancipation, political and economic conditions forced many Black mothers to earn a living outside the home.”) (citing JACQUELINE JONES, *LABOR OF LOVE, LABOR OF SORROW: BLACK WOMEN, WORK, AND THE FAMILY FROM SLAVERY TO THE PRESENT* (1985)).

92. See DUNAWAY, *supra* note 19, at 206; Spencer R. Crew, *The Great Migration of Afro-Americans, 1915–40*, 110 *MONTHLY LABOR REV.* 34, 36 (1987).

93. See Kate Dailey, *Who, What, Why: Why Do African-American Women Breastfeed Less?*, BBC NEWS (June 10, 2014), <http://www.bbc.com/news/blogs-magazine-monitor-27744391>; Golden also noted:

The steady decline of wet nursing that began in the nineteenth century concluded in the twentieth century with the transformation of human milk to a commodity. In 1900 wet nurses occupied several niches—suckling foundlings in institutions or working for well-to-do private families. By the 1910s and 1920s the number of wet nurses in these venues had decreased, although new opportunities arose for women willing to suckle abandoned babies in their homes or premature infants in hospitals. At the same time, a new career opened for lactating mothers: expressing and selling their breast milk for use in homes and hospitals. This procedure proved so successful that by the 1930s wet nurses had almost entirely vanished, replaced by bottled human milk. As one physician described it, human milk had become “therapeutic merchandise.”

GOLDEN, *supra* note 40, at 179; see also ISABELLA MARY BEETON, *supra* note 43; West & Knight, *supra* note 56, at 40.

breastfeeding led to greater infant survival,⁹⁴ and public health campaigns designed to persuade new mothers of its benefits.⁹⁵ Researchers also set out to prove a connection between skin color and breast milk quality.⁹⁶ Racial theorists posited that the whiter the mother, the less nutritious her milk.⁹⁷

Nonetheless, public health advocates targeted White women for breastfeeding promotion, eventually leading to a transformation in their attitudes toward infant care. For White mothers who could afford not to work, employing wet nurses fell out of favor, as a new vision of the “priceless” child emerged.⁹⁸ Breastfeeding became a symbol of the value a mother attached to her child and an ideal that even mothers who could not afford this luxury strove to attain. This new perspective marked the beginning of the valorization of breastfeeding in the White community. Cultural beliefs equating nursing with good mothering masked the social and financial realities that drove many Black mothers to alternative feeding methods. Wealthier White women’s opportunities to breastfeed became glorified as reflections of choice, not circumstances.

Alongside these cultural changes, pediatrics emerged as a new field of medicine in the early twentieth century. Its practitioners endeavored to establish themselves as legitimate and indispensable physicians. To accomplish this goal, it was necessary for them to displace mothers as the experts on child-raising and infant feeding.⁹⁹ By the 1930s, pasteurization had rendered bottle-feeding relatively safe.¹⁰⁰ With support from the burgeoning formula industry, pediatricians waged an information campaign to convince mothers that their instincts were unreliable when it came to infant feeding. They encouraged mothers to believe that their babies required medical, scientific managing of their first food, to stave off death or illness.¹⁰¹

94. Harvey Levenstein, “Best for Babies” or “Preventable Infanticide”? *The Controversy over Artificial Feeding of Infants in America, 1880–1920*, 70 J. AM. HIST. 75, 84 (1983).

95. As Jacqueline Wolf describes, these admonitions had a religious tone, beseeching new mothers not to try to improve on “God’s plan.” WOLF, *supra* note 47, at 104, 197.

96. See Thulier, *supra* note 43, at 86 (listing the ideal characteristics of wet nurses, specifically, a “brown, ruddy complexion”).

97. Ruth Hill, *Towards a Constructionist Essentialism: Critical Race Studies and the Baroque*, in *THE TRANSATLANTIC HISPANIC BAROQUE: COMPLEX IDENTITIES IN THE ATLANTIC WORLD* 40 (Harald E. Braun & Jesús Pérez-Magallón eds., 2016).

98. See generally VIVIANA A. ZELIZER, *PRICING THE PRICELESS CHILD: THE CHANGING SOCIAL VALUE OF CHILDREN* (1994); Thulier, *supra* note 43, at 87.

99. RIMA D. APPLE, *MOTHERS & MEDICINE: A SOCIAL HISTORY OF INFANT FEEDING 1890-1950*, at 97–98, 132 (1987).

100. E. MELANIE DUPUIS, *NATURE’S PERFECT FOOD: HOW MILK BECAME AMERICA’S DRINK* 81 (2002).

101. See ADRIENNE BERNEY, *REFORMING THE MATERNAL BREAST: INFANT FEEDING AND AMERICAN CULTURE, 1870-1920*, at 41 (1998) (showing that, with the rise of technology and Darwinian theory, infant feeding was no longer considered the expertise of mothers but of science, represented by male doctors, in order to control, civilize, and modernize infant feeding); see also Cathryn Britton,

Pediatricians' claims of expertise preyed upon mothers' natural anxieties about breastfeeding.¹⁰² A mother cannot measure how much milk a baby takes in while nursing. The machinations of breastfeeding, from latching on to the nipple to staying on it, are often frustrating for both mother and child. Many women are unprepared for how burdensome this process is because new mothers typically do not share their breastfeeding troubles with expectant mothers. This may be due to feelings of isolation or shame, or because they do not want to discourage or scare others. Lack of communication can lead mothers to experience self-doubt when nursing proves to be more difficult than anticipated. Consequently, the prospect of handing the daunting task of ensuring adequate feeding over to an expert can be very appealing.¹⁰³

Instead of guiding new mothers through best breastfeeding practices, pediatricians succeeded in persuading a new generation of mothers to defer to them regarding all maternal matters. A wealth of letters published in White women's magazines, directing a broad range of questions about child raising and feeding toward pediatric experts, demonstrated some mothers' eagerness to do so.¹⁰⁴ This medicalization of motherhood occurred swiftly, becoming firmly established by the 1940s. Parenting became a journey carefully punctuated by visits to the pediatrician's office for annual or bi-annual check-ups and in the case of any minor or major affliction.¹⁰⁵

Breastfeeding: A Natural Phenomenon or a Cultural Construct?, in *THE SOCIAL CONTEXT OF BIRTH* 305, 305 (Caroline Squire ed., 2d ed. 2009) (arguing that, given the "implied natural law and naturalness with regard to breastfeeding," medicalization of motherhood, including labor and infant feeding, has promulgated the idea that human lactation is an unreliable function and, thus, requires medical intervention); Jacqueline H. Wolf, *The Social and Medical Construction of Lactation Pathology*, 30 *WOMEN & HEALTH* 93, 94–95 (2000); Thulier, *supra* note 43, at 89; Nora Doyle, *Bodies at Odds: The Maternal Body as Lived Experience and Cultural Expression in America, 1750-1850* (2013) (unpublished Ph.D. dissertation, University of North Carolina at Chapel Hill) (available online at <https://cdr.lib.unc.edu/indexablecontent/uuid:fcfd2ef8-2541-4895-9f48-b8e87036dbbo>); MattTheSaiyan, *1950s Carnation Evaporated Milk Commercial ("Babies")—Aired Live*, YOUTUBE (Apr. 25, 2010), <https://www.youtube.com/watch?v=4Qn7fCikPsa> (featuring taglines that tout Carnation Milk as "doctor recommended" and "the milk all doctors know"); Throwback, *Pet Evaporated Milk Commercial (1950s)*, YOUTUBE (May 14, 2011), <https://youtu.be/ZyzyzmuLvWQ> (saying to moms, "Your baby. Yours to love, protect, care for. To be sure he gets the best of milk, ask your doctor about PET evaporated milk.").

102. JACQUELYN S. LITT, *MEDICALIZED MOTHERHOOD: PERSPECTIVES FROM THE LIVES OF AFRICAN-AMERICAN AND JEWISH WOMEN* 22 (2000) ("[A]s motherhood came to be seen as dependent on science, mothers were portrayed as incapable of performing child care without expert guidance.").

103. See BERNEY, *supra* note 101, at 162 ("More and more, educated mothers relied upon scientific expertise in performing their child rearing duties."); Britton, *supra* note 101, at 305; Wolf, *supra* note 101, at 100; Thulier, *supra* note 43, at 89; Doyle, *supra* note 101, at 194–99.

104. LITT, *supra* note 102, at 22.

105. LITT, *supra* note 102, at 34; see also RIMA D. APPLE, *PERFECT MOTHERHOOD: SCIENCE AND CHILDREARING IN AMERICA* 58 (2006) ("By the 1920s and 1930s, then, with the further consolidation of the medical profession, with the coalescence of medical specialties such as pediatrics, and the cultural

This ascendancy of male doctors' authority over the once female domain of motherhood took place in the contexts of popular reverence for technology and Darwinism.¹⁰⁶ Both embraced a vision of masculinity as essential to humankind's survival and progress. Within these frameworks, males were necessary to control, civilize, and modernize infant feeding practices in a way that females, who relied on instinct and emotion, could not. The unpredictability of breastfeeding called for medical intervention to tame the natural forces at work in women's bodily functions.

Immediately upon birth, pediatricians took charge of infants' nutrition. They prescribed and individually mixed doses of formula. They insisted on regular visits to monitor adequate growth.¹⁰⁷ Recognizing a unique opportunity to expand their market, the formula companies provided a steady supply of free products to pediatricians to distribute to new mothers.¹⁰⁸ Pediatricians did not reveal to their patients the nature of their relationship with the formula corporations.¹⁰⁹ The formula companies' gamble paid off in years-long dependence on their products by mothers who would otherwise have transitioned from breastfeeding to solid food without ever purchasing formula. This strategy also created a far wider customer base than traditional advertising and marketing. Most women would not even recognize that it was, in fact, a marketing ploy.

authority of medicine at its height, physicians presented an image of supreme self-confidence. Mothers, physicians insisted, must look to them, not to instinct, not to neighbors, friends, or relatives, not to advertisements. Furthermore, mothers were to follow the physicians' instructions to the letter, to passively acquiesce to medical instructions.”)

106. LITT, *supra* note 102, at 24–25, 30.

107. LITT, *supra* note 102, at 31–35.

108. See Marcia Berss, *Baby Milk Wars*, FORBES, Oct. 26, 1992, at 153; Kurt Andersen et al., *The Battle of the Bottle*, TIME, June 1981, at 36; Melody Petersen, *THE MEDIA BUSINESS: ADVERTISING; Pediatric Book on Breast-Feeding Stirs Controversy with Its Cover*, N.Y. TIMES, Sept. 18, 2002, at C1; Mary Campbell Bliss et al., *The Effect of Discharge Pack Formula and Breast Pumps on Breastfeeding Duration and Choice of Infant Feeding Method*, 24 BIRTH 90, 91 (1997); Claiborne I. Dungy et al., *Effect of Discharge Samples on Duration of Breast-Feeding*, 90 PEDIATRICS 233, 234–35 (1992); Bonnie Rochman, *Fewer Hospitals Hand Out Free Formula to New Moms*, TIME (Sept. 26, 2011), <http://healthland.time.com/2011/09/26/are-mothers-being-manipulated-fewer-hospitals-hand-out-formula-freebies-to-new-moms/>. But see Cynthia J. Evans et al., *The Effect of Infant Formula Samples on Breastfeeding Practice*, 15 J. OBSTETRIC, GYNECOLOGIC & NEONATAL NURSING 401, 405 (1986) (finding that while the distribution of formula samples may interfere with breastfeeding, these results do not support categorically banning the practice in hospitals); Joel M. Feinstein et al., *Factors Related to Early Termination of Breast-Feeding in an Urban Population*, 78 PEDIATRICS 210 (1986) (The data “do[es] not support the hypothesis that hospital discharge formula samples interfere with breast-feeding.”).

109. Stevens et al., *supra* note 51, at 36–37; cf. C. M. Wright & A. J. R. Waterston, *Relationships Between Paediatricians and Infant Formula Milk Companies*, 91 ARCHIVES DISEASE CHILDHOOD 383, 384–85 (2005).

After several decades of steady growth, the field of pediatrics officially arrived in 1948 with the publication of the first issue of the American Association of Pediatrics' (AAP) journal, *Pediatrics*.¹¹⁰ Despite the close relationship between the formula industry and the AAP, the organization has unwaveringly recommended breast milk as the optimal source of nutrition for infants.¹¹¹ This contradiction embodies the confusing delivery of mixed messages to the public about breastfeeding.

By the 1950s, only twenty-five percent of mothers in hospitals breastfed.¹¹² Alarmed at this unprecedented low rate of breastfeeding, groups of women organized to challenge the medical model of motherhood and bring attention to the profit-driven motivations of the formula companies. In 1958, this movement led to the birth of La Leche League, an organization that promotes breastfeeding by providing lactation support to women, primarily in White communities.¹¹³

In response to La Leche's efforts, in 1978 the AAP re-asserted that breastfeeding provides greater health benefits than formula.¹¹⁴ Notwithstanding the association's official position, individual pediatricians continue to distribute formula to new mothers

110. Corbin, *supra* note 17, at 2.

111. See generally Stewart H. Clifford, et al., Panel Discussion, *A Program to Develop and Improve Facilities for the Care of Newborn Infants—Full Term and Premature*, 2 *PEDIATRICS* 97 (1948) (recommending that state hospitals increase breastfeeding initiation rates through maternal education); see also *Policy Statement: Breastfeeding and the Use of Human Milk*, 115 *PEDIATRICS* 496, 496 (2005) (claiming that human milk is species-specific, containing greater essential nutrients for human infant development than other species' milk).

112. Anne L. Wright & Richard J. Schanler, *The Resurgence of Breastfeeding at the End of the Second Millennium*, 131 *J. NUTRITION* 421S, 422S (2001) (figure shows breastfeeding rates of initiation (in hospital)). By the 1970s, only fourteen percent of women reported nursing their babies for an extended period of a few months. Nicoletta Iacovidou et al., *Breastfeeding in the Course of History*, 2 *J. PEDIATR & NEONATAL CARE* 1, 7 (2015) ("During the 1950s and 1960s, breast-feeding steadily decreased, and by the early 1970s, only about 25% of infants were breast-fed at the age of 1 week and only 14% at 2 and 3 months of age.").

113. LINDA M. BLUM, *AT THE BREAST: IDEOLOGIES OF BREASTFEEDING AND MOTHERHOOD IN THE CONTEMPORARY UNITED STATES* 63–64 (1999). In 1958, La Leche published "The Womanly Art of Breastfeeding"—a collection of loose-leaf papers that was essentially La Leche's "breast-feeding bible." Emily Bazelon, *Founding Mothers*, *N.Y. TIMES* (Dec. 23, 2008), <http://www.nytimes.com/2008/12/28/magazine/28froelich-t.html>. La Leche and like-minded groups also organized the boycott of Nestle formula company in the 1970s in response to the deaths of at least one million babies in African countries caused by caregivers mixing or diluting formula with contaminated water. See BLUM, *supra* note 113, at 44–45; see also MIKE MULLER, *THE BABY KILLER: A WAR ON WANT INVESTIGATION INTO THE PROMOTION AND SALE OF POWDERED BABY MILKS IN THE THIRD WORLD* 7–9 (1974), <https://waronwant.org/sites/default/files/THETHE%20BABY%20KILLER%201974.pdf> (providing the initial exposé that incited the boycott). Through this campaign, predominantly White activists relied on the suffering of Black mothers and babies abroad to transform attitudes toward breastfeeding at home. Ironically, the subsequent popular shift from formula to breastfeeding in the United States and its accompanying health benefits occurred primarily in the White community. *Id.*

114. *Breast-Feeding: A Commentary in Celebration of the International Year of the Child*, 62 *PEDIATRICS* 591, 596–98 (1978).

indiscriminately. Nonetheless, in the wake of La Leche's successful campaigns, breastfeeding rates rose steadily from the 1970s up until the present.

Black women's breastfeeding rates, however, remain significantly lower than those of White women and Latinx, even though Latinx and Black women have similar poverty rates.¹¹⁵ Even White women's breastfeeding rates have so far failed to achieve the goals put forth by the United States Breastfeeding Committee. The Committee declared that, by 2020, 81.9% of mothers should have breastfed at least once, and 34.1% should still be breastfeeding at one year.¹¹⁶ Breastfeeding rates in the United States similarly do not live up to the WHO's recommendations that breastfeeding continue until at least age two.¹¹⁷

The historical arc of the medicalization and displacement of motherhood by pediatricians took place within a context of race and class exclusion. Throughout the twentieth century, White mothers dominated the popular dialogue on best parenting practices.¹¹⁸ Only economically privileged women had the time and resources to make regular pediatric visits. An image of ideal parenting that excluded Black and poor mothers became popular. This narrow construction of perfect motherhood continues into the present. White upper middle class parenting now

115. From 1986–1991, breastfeeding rates among White women and Latinas hovered around 58% and 56% while Black women's rates stayed flat at 22%. CTR. FOR DISEASE CONTROL & PREVENTION, HEALTH, UNITED STATES 123 tbl. 14 (2010), <https://www.cdc.gov/nchs/data/abus/2010/014.pdf>. From 1992 through 2001, White women's breastfeeding rates rose to 68% and Latinas' rates surpassed them at 76%. *Id.* Throughout this period, Black women also made good strides, despite their smaller percentages, jumping from 26% in 1994 to 45% in 2001. *Id.* By 2002, White women had achieved breastfeeding rates of 79%, while Black women fell slightly to 44%. *Id.* To date, Black mothers' breastfeeding rates have never even approached those of White or Latina mothers'. Katherine M. Jones et al., *Racial and Ethnic Disparities in Breastfeeding*, 10 BREASTFEEDING MED. 186, 186 (2015). In the most recent statistics, from 2008, approximately 75% of White mothers and 80% of Latina mothers initiated breastfeeding, while only 59% of Black mothers ever tried it, with only 12% still breastfeeding at one year. *Progress in Increasing Breastfeeding and Reducing Racial/Ethnic Differences—United States, 2000–2008 Births*, 62 MORBIDITY & MORTALITY WKLY. REP. 77, 77–80 (2013); see also SUZANNE MACARTNEY ET AL., POVERTY RATES FOR SELECTED DETAILED RACE AND HISPANIC GROUPS BY STATE AND PLACE: 2007–2011 3 (2013), <https://www.census.gov/prod/2013pubs/acsbr11-17.pdf> (reporting that the poverty rate was 25.8% for Blacks and 23.2% for Latinos).

116. *Healthy People 2020: Breastfeeding Objectives*, U.S. BREASTFEEDING COMMITTEE, <http://www.usbreastfeeding.org/p/cm/ld/fid=221> (last visited July 30, 2018).

117. *Promoting Proper Feeding for Infants and Young Children*, WORLD HEALTH ORG., <http://www.who.int/nutrition/topics/infantfeeding/en/> (last visited July 30, 2018); BERNARDO L. HORTA & CESAR G. VICTORA, LONG-TERM EFFECTS OF BREASTFEEDING: A SYSTEMATIC REVIEW 1, 1 (2013), http://www.who.int/entity/maternal_child_adolescent/documents/breastfeeding_long_term_effects/en/index.html.

118. LITT, *supra* note 102, at 6–7, 25–27 (noting the bias toward White women in the medicalization of motherhood).

demands great amounts of time and money,¹¹⁹ creating a standard that working-class families simply cannot emulate. Race magnifies the stigma of bad motherhood that these unrealistic standards imprint on poor mothers.

II. THE UNMOTHERING OF BLACK WOMEN

Since slavery, the dehumanization of Black people has been instrumental in perpetuating deeply entrenched political, financial, and social inequality. Perhaps the most insidious part of this racial project is the dehumanization of mothers.¹²⁰ Powerful racial stereotypes that divorce Black women from common conceptions of good mothering do some of this work.

In slavery, the mythical Mammy bestowed lavish attention on White children while neglecting or berating her own.¹²¹ Since that time, the Mammy image has maintained a prominent position in popular culture. Sometimes, she is transformed into Nanny. The nanny is a false mother who is a poor substitute for the real, White one,¹²² but who provides the same comfort that Mammy once did.¹²³ The mammy and nanny tropes often erase the positive role that Black mothers play in their own children's lives.¹²⁴ They also make Black babies and children largely

119. See, e.g., Elizabeth Currid-Halkett, *The New, Subtle Ways the Rich Signal Their Wealth*, BBC (June 14, 2017), <http://www.bbc.com/capital/story/20170614-the-new-subtle-ways-the-rich-signal-their-wealth>.

120. Fathers also do this but have traditionally not been viewed as caring and nurturing in the same way. See Darren Rosenblum, *Unsex Mothering: Toward a New Culture of Parenting*, 35 HARV. J.L. & GENDER 57, 73 (2012) (“[M]en function in the family realm with less legitimacy and commensurately lower burdens, in large part thanks to their economic primacy.”).

121. KIMBERLY WALLACE-SANDERS, MAMMY: A CENTURY OF RACE, GENDER, AND SOUTHERN MEMORY 2 (2009) (“[M]ammy’s stereotypical attributes—her deeply sonorous and effortlessly sooth voice, her infinite patience, her raucous laugh, her self-deprecating wit, her implicit understanding and acceptance of her inferiority and her devotion to whites—all point to a long-lasting and troubled marriage of racial and gender essentialism . . .”); West & Knight, *supra* note 59, at 47–48.

122. Nicole, *Nope! I’m Not the Nanny, Just a Black Mom, Thanks*, XOJANE (Dec. 9, 2013), <http://www.xojane.com/family/nope-im-not-the-nanny>.

123. *Mammy or Good Samaritan? About the Viral Image of a Black Woman Coddling a White Woman’s Baby*, CLUTCH, <http://www.clutchmagonline.com/2015/10/mammy-or-good-samaritan-about-the-viral-image-of-a-black-woman-coddling-a-white-womans-baby/> (last visited July 30, 2018).

124. It has other consequences as well. See Eisa Nefertari Ulen, *Black Women Do Breastfeed, Despite Intense Systemic Barriers in the U.S.*, TRUTHOUT (Aug. 26, 2016), <http://www.truthout.org/news/item/37385-black-women-do-breastfeed-despite-intense-systemic-barriers-in-the-us> (“This erasure of living, real Black children empties the American imagination, influencing even those health care professionals who work in Black communities. Their implicit bias perpetuates stereotypes that have real health consequences.”).

invisible.¹²⁵ Further, Black women who care for White children, although no longer enslaved, are still exploited and underpaid.¹²⁶

The “bad Black mother” stereotype affects breastfeeding rates in various ways. It influences the behavior of public health professionals, discouraging them from providing education about and support for breastfeeding to new Black mothers. It guides the work of the White-dominated La Leche movement, leading to a lack of lactation resources in Black communities.¹²⁷ It supports government policies that disproportionately deter breastfeeding by Black women, such as the distribution of free formula through the WIC program and welfare requirements that force new mothers to leave the home to work. Finally, it sends messages about Black motherhood that Black women and their families internalize, leading them unconsciously to view formula feeding as the more desirable option.¹²⁸

This Part begins by exploring how formula marketing targeted at Black women contributes to low breastfeeding rates in the Black community. Next, it describes the enduring stereotypes of bad Black mothers in politics, the media, and popular culture that justify the lack of resources, support for, and protection of Black mothers who breastfeed.

125. Past popular images of Black children have portrayed them as disposable and ingestible. See generally KYLA WAZANA TOMPKINS, *RACIAL INDIGESTION: EATING BODIES IN THE 19TH CENTURY* (2012).

126. Denene Millner, Opinion, *Beyoncé Is Not the Magical Negro Mammy*, NPR: CODE SWITCH (Feb. 15, 2017, 2:13 PM), <http://www.npr.org/sections/codeswitch/2017/02/15/515060729/beyonce-is-not-the-magical-negro-mammy>. This characterization applies to all domestic workers and nannies.

127. La Leche and like-minded groups also organized the boycott of Nestle formula company in the 1970s in response to the deaths of at least one million babies in African countries caused by caregivers mixing or diluting formula with contaminated water. See BLUM, *supra* note 113, at 44–45; see also MIKE MULLER, *WAR ON WANT, THE BABY KILLER* 7–9 (1974), <https://waronwant.org/sites/default/files/THE%20BABY%20KILLER%201974.pdf> (providing the initial exposé that incited the boycott). Through this campaign, predominantly White activists relied on the suffering of Black mothers and babies abroad to transform attitudes toward breastfeeding at home. Ironically, the subsequent popular shift from formula to breastfeeding in the United States and its accompanying health benefits occurred primarily in the White community.

128. Carolyn M. West, *Mammy, Jezebel, Sapphire, and Their Homegirls: Developing an “Oppositional Gaze” Toward the Images of Black Women*, in *LECTURES ON THE PSYCHOLOGY OF WOMEN* 163–64 (Joan C. Chrisler, Carla Golden, & Patricia D. Rozee eds., 4th ed. 2008); see also Caleb Lack, *Mammy, Jezebel, Sapphire, or Queen? Stereotypes of the African-American Female*, SKEPTICINK (Apr. 28, 2015), <https://www.skepticink.com/gps/2015/04/28/mammy-jezebel-sapphire-or-queen-stereotypes-of-the-african-american-female/>. One study surveyed WIC employees’ perspectives on environmental factors in breastfeeding success for mothers of newborns:

Another staff member related how one young girl said her boyfriend would not like her to breastfeed because “it would take time away from him.” According to another staff member, a WIC recipient said her husband didn’t want her to breastfeed because her breasts “would get all saggy.” Thus, comments were made that referred to the influence of breastfeeding on sexuality.

Elizabeth Reifsnider et al., *Breastfeeding Attitudes of WIC Staff: A Descriptive Study*, 12 J. PERINATAL EDUC. 7, 11 (2003).

A. FORMULA MARKETING TO BLACK MOTHERS

Before formula became widely available in stores, pediatricians mixed it in their offices, customizing it to each baby's individual and constantly changing needs.¹²⁹ Corporations marketed their products directly to physicians without making them available on the retail market.¹³⁰ Eventually, the introduction of commercial formula relieved pediatricians of the burdensome task of carefully measuring and dispensing individually tailored mixes of milk, water, and carbohydrates.¹³¹ In the 1920s, Mead Johnson, the company that manufactures Enfamil, produced a film showing new mothers how to make their own formula mixes at home.¹³² During the next two decades, formula companies narrowly pursued an elite, White consumer base. They branded their product as emblematic of sophistication and leisure, with no downsides for mother or infant.¹³³

This strategy attracted White women from a broad class range, in addition to Black women, some of whom relied on formula because of their need to work. Others became swayed by formula advertising, which often misleadingly suggested that formula, in addition to being convenient, provided greater nutrition for infants than breast milk.¹³⁴ This simply was not true, particularly in the early stages of formula development. This message belied medical research concluding that breast milk is superior to formula because it responds to infants' unique needs and provides important immunities to health hazards.

Formula campaigns preyed on mothers' insecurities about the quality and quantity of their breast milk.¹³⁵ By sowing seeds of doubt in mothers, who were often already overwhelmed, formula companies sought to replace maternal instinct with commercial and medical expertise. In turn, pediatricians, who lack training in lactation, could not provide significant support to mothers, even if they wanted to.¹³⁶

129. See Samuel J. Fomon, *Infant Feeding in the 20th Century: Formula and Beikost*, 131 J. NUTRITION 409S, 410S (2001) ("The early years of the 20th century were notable in the United States for the adoption by many physicians of a complex sequence of changes in formula composition, the 'percentage method' or 'American method' of formula feeding.").

130. Corbin, *supra* note 17, at 16.

131. APPLE, *supra* note 99, at 78.

132. APPLE, *supra* note 99, at 78 (noting that Mead Johnson marketed Dextrin-Maltose at first to physicians only but in the 1930s "produced a film to teach women the correct procedures for bottle feeding . . .").

133. Allers, *supra* note 70.

134. Allers, *supra* note 70.

135. KIMBERLY SEALS ALLERS, *THE BIG LETDOWN: HOW MEDICINE, BIG BUSINESS, AND FEMINISM UNDERMINE BREASTFEEDING* 14–16 (2017) [hereinafter *THE BIG LETDOWN*].

136. *Id.* at 22–24.

By 1946, when Pet Milk contracted to use the Fultz Quads as poster children for its formula and evaporated milk,¹³⁷ Blacks' income and spending power was high. Mass migration to Northern cities with plentiful factory work led to significant advances in their financial status.¹³⁸ Advertisers sought a cut of this emerging market. This period also marked the beginning of the baby boom, producing a growing number of new mothers for formula companies to target.

In the first half of the century, advertisers shared a belief that the best way to reach the Black market, for formula or any other product, was through trickle down marketing. They assumed that Black consumers would want whatever White consumers desired.¹³⁹ They were wrong. Research revealed that Blacks had their own sets of tastes and preferences and did not seek merely to emulate the White lifestyle.¹⁴⁰ Black consumers favored products that reflected their new economic status. Formula fit the bill, as one of the markers of an upscale lifestyle, despite the reality that working mothers needed formula the most.

Black mothers sought out safe, healthy alternatives to breastfeeding because so many of them were employed before, during, and after World War II. Consequently, when White women began to equate nursing with good parenting and turn away from formula feeding, Black mothers did not follow their lead.¹⁴¹ The exigencies of the daily lives of most Black women made exclusive breastfeeding impossible. They also had to contend with misinformation and negative stereotyping.

In addition to its adoption of the Fultz Quads, Pet Milk broke new racial ground when it created its "Happy Family" campaign targeting Black consumers.¹⁴² The Pet Milk Happy Family ads appeared in Black publications, including the *Birmingham World*, the *Washington Afro-American*, and the *Los Angeles Sentinel*, between November 5, 1949, and March 29, 1958.¹⁴³ Carefully designed to appeal to Black consumers, these ads contained unique copy that did not simply replicate White ads using Black models. Instead, there were four general themes, each one tracking studies showing the preferences of Black shoppers. The ads focused on upward mobility; homemaking as a career; fatherhood; and

137. See *supra* discussion in Introduction.

138. ERIC FONER, RECONSTRUCTION: AMERICA'S UNFINISHED REVOLUTION, 1863-1877, at 396-98 (1988).

139. Mangun & Parcell, *supra* note 140, at 71.

140. Kimberley Mangun & Lisa M. Parcell, *The Pet Milk Company "Happy Family" Advertising Campaign: A Groundbreaking Appeal to the Negro Market of the 1950s*, 40 JOURNALISM HIST. 70, 71-72, 76 (2014).

141. Mangun & Parcell, *supra* note 140, at 71.

142. Mangun & Parcell, *supra* note 140, at 71.

143. Mangun & Parcell, *supra* note 140, at 72.

career success as a product of higher education and hard work.¹⁴⁴ The families featured in the ads owned homes, where they happily entertained friends and neighbors and cultivated blooming gardens.¹⁴⁵

Although likely not as prevalent as Pet Milk's campaign made it appear, home ownership for Blacks did increase after World War II, due to changes to mortgage financing and some returning soldiers' ability to take advantage of the GI Bill's mandated home loans for veterans. An early Pet Milk ad showed Helen and John Norman and their twins, preparing for a move: "It's a big year for the Normans—in March [1950], they'll start their new house on Birmingham's Elsberry Drive."¹⁴⁶ The ad reported that John juggled three jobs—teacher, tax consultant, and typewriter salesperson—to make home ownership possible.¹⁴⁷ Despite the happy face that this ad put on the Normans' hard-won achievement, reality was not so idyllic.

Segregation cabined Black families into poor urban neighborhoods. The GI Bill excluded all but a few Black veterans.¹⁴⁸ White violence sought to discourage Blacks from moving into previously all-White neighborhoods, fiercely protecting White spaces from incursion.¹⁴⁹ These efforts included six bombings of homes in Birmingham, Alabama—the Normans' destination—in 1949, the year that Pet Milk ran the Happy Family ad that featured them.¹⁵⁰

The Happy Family campaign also exaggerated Black women's domesticity in their own homes.¹⁵¹ Portraying them on leisurely shopping trips with their children and cheerfully performing chores in their homes,¹⁵² these ads obscured the reality that the homes where most Black women cooked and cleaned were not their own, and neither were the children that they spent their days caring for.¹⁵³ Black women were underpaid compared to White men and women, making it necessary for them to work twice as hard to achieve the same income levels. They also faced the challenges of financial instability that resulted from the absence of wealth that many White families amassed through home ownership and other financial and social advantages. Black women's need to work

144. Mangun & Parcell, *supra* note 140, at 73.

145. Mangun & Parcell, *supra* note 140, at 73.

146. Mangun & Parcell, *supra* note 140, at 71, 73.

147. Mangun & Parcell, *supra* note 140, at 73.

148. Mangun & Parcell, *supra* note 140, at 73.

149. Mangun & Parcell, *supra* note 140, at 73.

150. Mangun & Parcell, *supra* note 140, at 73.

151. Mangun & Parcell, *supra* note 140, at 74.

152. Mangun & Parcell, *supra* note 140, at 74–75.

153. Mangun & Parcell, *supra* note 140, at 74, 77 (quoting ANDREW WIESE, *PLACES OF THEIR OWN: AFRICAN AMERICAN SUBURBANIZATION IN THE TWENTIETH CENTURY* 153 (2009)) ("[T]he portrayal 'of a stay-at-home mother belied economic reality for millions of African American families.'").

outside the home is what made them such excellent targets for formula advertising.

In a separate advertising campaign, initially intended solely for White consumers, Pet Milk began adopting sets of triplets in 1934. The company gave families with multiples free formula in exchange for the use of their stories.¹⁵⁴ When the Fultz girls were born in 1946, William Leonard Evans Jr., mastermind of the Happy Family campaign, saw a unique opportunity to secure a contract with the country's first recorded set of identical quadruplets. The campaign would expand the very limited set of products advertised to Blacks at the time.¹⁵⁵

Formula represented an ideal product to advance this goal, because it signified elevated social and economic status, despite the reality that it was working mothers who needed formula the most.¹⁵⁶ This gave formula marketers two significant entry points into the market of Black women. First, the false but persistent message that formula provides nutrition comparable to breast milk relieved working Black women of some of the guilt created by their long absences from home. Second, the trend of associating formula with wealth branded them as sophisticated consumers.

Formula promotion existed alongside a dearth of positive images of breastfeeding Black women. In magazines, television, and newspapers, the most common image of a Black woman nursing, then and now, is not of a nurturing, middle-class African American but, instead, of a bare-breasted African woman.¹⁵⁷ These types of images, prevalent in the popular magazine *National Geographic* and in other "educational" media, make breastfeeding by Black women appear to be a primitive practice.¹⁵⁸ This is not an image or label with which most Black women in the United States want to be associated. Ironically, most non-stereotypical images of Black women breastfeeding appear in formula advertisements.¹⁵⁹ The formula companies use these positive portrayals to create a feeling of goodwill for their product, promising to deliver a

154. Mangun & Parcell, *supra* note 140, at 71.

155. Mangun & Parcell, *supra* note 140, at 72–73, 76.

156. Mangun & Parcell, *supra* note 140, at 73.

157. See, e.g., Israel Feiler, *African Himba Women Breastfeeding*, YOUTUBE (Mar. 2, 2012), <https://www.youtube.com/watch?v=ZC-r4xrESro>; Heidi Akkers (@heidiakkers), *Mothers, Babies, Breastfeeding Worldwide*, PINTEREST, <https://www.pinterest.com/heidiakkers/mothers-babies-breastfeeding-worldwide/> (last visited July 30, 2018).

158. Allers, *supra* note 70.

159. See, e.g., Molly M. Ginty, *Industry, Feds Entice Black Mothers to Bottle Feed*, WOMEN'S E-NEWS (Nov. 17, 2008), <http://womensnews.org/2008/11/industry-feds-entice-black-mothers-bottle-feed/> ("Four African American women gather for a baby shower. Two rave about an infant formula's new packaging. And one cuddles a sleeping newborn. These images fill the Web site for Similac, the most popular infant formula in the United States. Enfamil and other leading brands also publish ads featuring African Americans.").

bonding and nurturing relationship between Black mother and child, without the hassle and unpredictability of actual breastfeeding.¹⁶⁰

Beyond traditional advertising campaigns, formula companies employ marketing techniques that reach disproportionately more Black than White mothers. Specifically, women receive the corporations' products from benevolent and trusted emissaries—their doctors, nurses, and benefits programs.¹⁶¹ Countering this, the implementation of baby-friendly certification requirements in many hospitals nationwide has reduced the frequency with which new mothers receive free formula.¹⁶² However, there are fewer baby-friendly programs in Black neighborhoods.¹⁶³ Also, Black women in all hospitals disproportionately receive free formula from doctors and nurses, who often rely on stereotypes to assume that Black women will choose not to breastfeed.¹⁶⁴

An experiment at Boston Medical Center proved how easy it would be to increase the percentage of Black women who try breastfeeding. After the hospital prohibited the distribution of free formula to new mothers, except in the event of an emergency, ninety percent of the new

160. See, e.g., Mangun & Parcell, *supra* note 140, at 74–75.

161. Deborah L. Kaplan & Kristina M. Graff, *Marketing Breastfeeding—Reversing Corporate Influence on Infant Feeding Practices*, 85 J. URB. HEALTH 486, 489 (2008) (“Since the early 1990s, infant formula manufacturers have supplied obstetricians’ offices with infant feeding education packs containing formula samples, discount coupons, and business reply cards redeemable for free cases of formula.”).

162. Brigid Schulte, *More U.S. Hospitals Adopting ‘Baby-Friendly’ Policies*, WASH. POST (Sept. 10, 2014), https://www.washingtonpost.com/local/more-us-hospitals-adopting-baby-friendly-policies/2014/09/10/49a86998-34c4-11e4-a723-fa3895a25d02_story.html. Baby friendly certification requires hospitals to: (1) communicate a written breastfeeding policy routinely to all health care staff; (2) train all health care staff in the skills necessary to implement this policy; (3) inform all pregnant women of the benefits of breastfeeding; (4) help mothers initiate breastfeeding within one hour of birth; (5) show mothers how to breastfeed and how to maintain lactation, even if the hospital separates them from their infants; (6) give infants no food or drink other than breast milk, unless medically indicated; (7) practice rooming in—allow mothers and infants to remain together twenty-four hours a day; (8) encourage breastfeeding on demand; (9) give no pacifiers or artificial nipples to breastfeeding infants; (10) foster the establishment of breastfeeding support groups and refer mothers to them upon discharge from the hospital or birth center. See *Baby Friendly Hospital Initiative*, WORLD HEALTH ORG. & UNICEF 3 (rev. 2009), http://apps.who.int/iris/bitstream/handle/10665/43593/9789241594967_eng.pdf?sequence=1.

163. Rita Henley Jensen, *‘Baby-Friendly’ Hospitals Bypass Black Communities*, WOMEN’S E-NEWS (Aug. 29, 2013), <http://womensenews.org/2013/08/baby-friendly-hospitals-bypass-black-communities/>.

164. THE BIG LETDOWN, *supra* note 135; PUBLIC CITIZEN, INFANT FORMULA MARKETING IN PUBLIC HOSPITALS: AN OUTDATED AND UNETHICAL PRACTICE 7 (2016), <https://www.citizen.org/documents/public-hospitals-infant-formula-marketing-report-april-2016.pdf>; Kimberly Allers, *Place Matters: What Is a First Food Dessert?*, YOUTUBE (Oct. 10, 2013), <https://www.youtube.com/watch?v=wqSXdmIXfzM>.

Black mothers in their care breastfed their babies. The national average is fifty-nine percent.¹⁶⁵

Giving free formula to women through the USDA's WIC program, where Black women are disproportionately represented, also leads to lower breastfeeding rates.¹⁶⁶ Reversing this policy is complicated, however, because some observers frame the decision to remove this aspect of the benefits program as an attack on poor women.¹⁶⁷ Nonetheless, the provision of greater resources for breastfeeding and a re-framing of formula as a nutritionally inadequate product, recommended for use only when absolutely necessary, could address this problem.

Currently, the formula companies spend \$480 million on marketing, while the government spends only \$68 million on breastfeeding support and promotion.¹⁶⁸ Additionally, the United States has declined to sign on to the WHO Code of Marketing of Breast Milk Substitutes. This decision leaves formula companies free to market to women without restrictions, despite the evidence, recognized by most countries, of the extensive harm this marketing does to women and children.¹⁶⁹ Signing on to this document and implementing limits on formula marketing to new mothers would have a positive effect on Black women's breastfeeding rates.

The next Part explains how stereotypes about Black mothers stand in the way of positive reforms by creating and reinforcing the idea that Black mothers are not naturally nurturing.

B. THE BAD BLACK MOTHER STEREOTYPE IN HISTORY, POLITICS, AND THE

165. *Progress in Increasing Breastfeeding and Reducing Racial/Ethnic Differences*, *supra* note 115, at 77–80; see also Jubie Bhatia, *U.S. Hospitals Hinder Black Women's Breastfeeding*, WOMEN'S ENEWS (Aug. 29, 2014), <https://womensenews.org/2014/08/u-s-hospitals-hinder-black-womens-breastfeeding/>.

166. Alan S. Ryan & Wenjun Zhou, *Lower Breastfeeding Rates Persist Among the Special Supplemental Nutrition Program for Women, Infants, and Children Participants, 1978–2003*, 117 PEDIATRICS 1136, 1136 (2006).

167. See Jennifer Ludden, *Teaching Black Women to Embrace Breast-feeding*, NPR (Dec. 23, 2009, 11:17 AM), <http://www.npr.org/templates/story/story.php?storyId=121755349>.

168. Alison Stuebe, *It's Time to Disarm the Formula Industry*, BREASTFEEDING MED. (May 20, 2016, 4:01 PM), <https://bfmed.wordpress.com/2016/05/20/its-time-to-disarm-the-formula-industry/>.

169. See, e.g., Hannah Ellis-Petersen, *How Formula Milk Firms Target Mothers Who Can Least Afford It*, GUARDIAN (Feb. 26, 2018, 7:01 PM), <https://www.theguardian.com/lifeandstyle/2018/feb/27/formula-milk-companies-target-poor-mothers-breastfeeding>; WORLD HEALTH ORG., *MARKETING OF BREAST-MILK SUBSTITUTES: NATIONAL IMPLEMENTATION OF THE INTERNATIONAL CODE, STATUS REPORT 2016* 7, 51 (2016).

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The stereotype of the “bad Black mother” has infiltrated popular culture, politics, and the media, with very few counter images to contradict this dominant narrative. White society initially created this trope to justify the inhumane practice of separating Black mothers from their children when slave owners compelled them to work as wet nurses, caregivers, or laborers. Some slave owners went so far as to give Black infants away to other plantations for free, calculating their mothers’ value as workers to be higher than the potential future earnings from their children’s labor.¹⁷⁰ Even when slave owners kept mothers and children together, this did not guarantee that mothers would be able to breastfeed their babies. Many slave owners believed that nursing was a form of birth control and did not want to limit enslaved women’s capacity to give birth to the future laborers upon which the slave economy depended.¹⁷¹

One of the stereotypes that evolved to rationalize this cruelty was the Mammy. Mammy did not breastfeed because she and, by extension, all Black women, lacked maternal instincts. This myth obscured the reality that it was her owner that prohibited her from nursing. The resulting false image of the bad Black mother, and its corollary of unusually self-sufficient Black children, has endured in various incarnations throughout history. In one modern version of this trope, Mammy has evolved into the benevolent, all-knowing Aunt Jemima, purveyor of perfect pancakes to White families.¹⁷² In another, she is the much-desired Black nanny, a figure so endemic to the popular imagination that White onlookers often assume that Black women with light-skinned children are their nannies, not their mothers.¹⁷³ This misperception can be more palatable to some observers than the reality of a Black woman with a White male partner.¹⁷⁴

The myth of Jezebel, a brash, highly sexual Black woman, also developed during slavery. Jezebel uses her erotic power over men to

170. See West & Knight, *supra* note 59, at 43 n.17 (discussing how “‘skilled’ laborers, including ‘nurses,’ were worth more”).

171. See Klein & Engerman, *supra* note 52, at 358–59 (discussing the common American practice of “slavebreeding”).

172. See WALLACE-SANDERS, *supra* note 121, at 68–72 (detailing how “Quaker Oats transformed Aunt Jemima into an expert on the ideal southern breakfast, an image the public accepted because she reminded people of the southern mammy”).

173. See West & Knight, *supra* 59, at 48 (“Loyal and devoted to her ‘white family,’ mammy put all her energies into domestic work that sometimes included wet-nursing. She hence represented an idealized black womanhood for white slaveholders.”).

174. See generally ANGELA ONWUACHI-WILLIG, ACCORDING TO OUR HEARTS: RHINELANDER V. RHINELANDER AND THE LAW OF THE MULTIRACIAL FAMILY (2013).

manipulate and deceive them into giving her attention.¹⁷⁵ By portraying Black women as sexually insatiable and casting their bodies as mere instruments of sexual desire, the Jezebel stereotype erases Black women's humanity, including their maternal and spousal roles. It makes sexual assault look acceptable, unworthy of preventing or penalizing. This dehumanizing myth renders it extremely uncomfortable, if not emotionally impossible, for some Black women to expose their breasts in public while breastfeeding. The exposure feels dangerous because it seems to confirm the Jezebel stereotype and makes them vulnerable to attack.¹⁷⁶ If mothers affected by this fear feel compelled to restrict their breastfeeding to the home or other private spaces, they are unlikely to continue breastfeeding for very long because babies must be fed on demand to ensure adequate nutrition and milk supply.¹⁷⁷

Compounding the harm of the Jezebel stereotype, the practice of forcing Black women to expose their bodies in public during slavery created an aversion to public nudity of any kind that persists today.¹⁷⁸

175. David Pilgrim, *The Jezebel Stereotype*, FERRIS ST. U. (July 2002), <https://ferris.edu/HTMLS/news/jimcrow/jezebel/index.htm> [hereinafter *Jezebel Stereotype*].

176. In their study of low-income black women in Baltimore, Maryland, researchers Bentley, Dee, and Johnson found that breastfeeding rates are strongly influenced by the opinions of fathers and grandmothers. Margaret E. Bentley et al., *Breastfeeding Among Low Income, African-American Women: Power, Beliefs and Decision Making*, 133 J. NUTRITION 305S, 307S (2003). Fathers' views had a greater impact on women's decisions to breastfeed than any other family member's. *Id.* While fathers whose own mothers had breastfed often looked upon nursing favorably, others discouraged it due to feelings of ownership of their partners' breasts or a sense of danger in having her breasts exposed in public. *Id.* at 308S ("I think that breastfeeding out in the public will cause you to get raped or something.").

177. Kate Boyer, *Affect, Corporeality and the Limits of Belonging: Breastfeeding in Public in Contemporary UK*, 18 HEALTH & PLACE 552, 554 (2012) ("Breastfeeding in public relates to duration rates . . ."); Morgan Doshier, *The Effects of Breastfeeding and Breastfeeding in Public: Looking at Nursing Nooks* 8, 15–20 (Winter 2015) (unpublished B.S. thesis, California Polytechnic State University) (available online at <http://digitalcommons.calpoly.edu/cgi/viewcontent.cgi?article=1057&context=psycdsp>); see also Michele Acker, *Breast Is Best . . . But Not Everywhere: Ambivalent Sexism and Attitudes Toward Private and Public Breastfeeding*, 61 SEX ROLES 476, 477 (2009) ("[B]reastfeeding mothers are likely to need to feed in public spaces unless the new mother is to become a prisoner of her home or the infant is to scream and go hungry. Nonetheless, the United States has not been particularly receptive to breastfeeding . . . studies of breastfeeding mothers have found that worries about breastfeeding in public are prevalent. These worries include embarrassing themselves, embarrassing others, and fears of negative reactions. This fear of censure keeps many a mother from breastfeeding in public and in turn leads to early discontinuation of breastfeeding because of the impossibility of breastfeeding successfully without doing it in public."); see also Alan S. Ryan et al., *The Effect of Employment Status on Breastfeeding in the United States*, 16 WOMEN'S HEALTH ISSUES 243, 247 (2006) (the workplace environment is often hostile to nursing parents, with few employers providing them with the space and time to pump so as to maintain their milk supply, forcing them to diminish or stop nursing). See generally Valeria Skafida, *Juggling Work and Motherhood: The Impact of Employment and Maternity Leave on Breastfeeding Duration: A Survival Analysis on Growing Up in Scotland Data*, 16 MATERNAL & CHILD HEALTH J. 519 (2012); BERNEY, *supra* note 101.

178. Ulen, *supra* note 124.

The fact that many slave children died because slave owners prevented their mothers from breastfeeding them also continues to haunt Black women, creating a negative association with nursing.¹⁷⁹

Sapphire, a character created for the Amos n' Andy show in the 1950s, originated in early depictions of the Sassy Mammy, a Black woman who was not afraid to chastise Whites, while remaining steadfastly loyal to them.¹⁸⁰ Sapphire is:

Tart-tongued and emasculating, one hand on a hip and the other pointing and jabbing (or arms akimbo), violently and rhythmically rocking her head, mocking African American men for offenses ranging from being unemployed to sexually pursuing white women. She is a shrill nagger with irrational states of anger and indignation and is often mean-spirited and abusive.¹⁸¹

The modern version of this stereotype is the Angry Black Woman, who elicits no sympathy when she speaks up against injustice or simply raises her voice.¹⁸² She exists in stark contrast to the calm, gentle White woman.

Another modern incarnation of the bad Black mother is the Welfare Queen or Welfare Mother. Reminiscent of the Breeder stereotype in slavery that portrayed Black women as perpetual but indifferent mothers, these two new stereotypes add the dimension of criminality onto this trope. The Welfare Queen or Mother is a single, morally and socially deviant woman who fails to care for her children because the sole purpose of their existence is to make her eligible for government benefits.¹⁸³ She

179. Ulen, *supra* note 124 (“Historical records show that many slave children died because their mothers could not breastfeed them enough. Because of this, there is sometimes a negative association with breastfeeding, especially among older relatives, as something we were forced to do, something we did for others and not for ourselves, or something associated with a negative part of our history.”).

180. David Pilgrim, *The Sapphire Caricature*, FERRIS ST. U. (Aug. 2012), <https://ferris.edu/HTMLS/news/jimcrow/antiblack/sapphire.htm>.

181. *Id.*

182. Trina Jones & Kimberly Jade Norwood, *Aggressive Encounters & White Fragility: Deconstructing the Trope of the Angry Black Woman*, 102 IOWA L. REV. 2017, 2045–50 (2017).

183. VIVYAN ADAIR, FROM GOOD MA TO WELFARE QUEEN: A GENEALOGY OF THE POOR WOMAN IN AMERICAN LITERATURE, PHOTOGRAPHY, AND CULTURE 1–3 (2000); ANGE-MARIE HANCOCK, THE POLITICS OF DISGUST: THE PUBLIC IDENTITY OF THE WELFARE QUEEN 20–23 (2004); DAVID ZUCCHINO, MYTH OF THE WELFARE QUEEN: A PULITZER PRIZE-WINNING JOURNALIST'S PORTRAIT OF WOMEN ON THE LINE 13–14 (1997); Michele Estrin Gilman, *The Return of the Welfare Queen*, 22 AM. U. J. GENDER, SOC. POL'Y & L. 247, 247 (2014); Ann Cammett, *Deadbeat Dads & Welfare Queens: How Metaphor Shapes Poverty Law*, 34 B.C. J.L. & SOC. JUST. 233, 237 (2014); Rose Ernst, *Localizing the “Welfare Queen” Ten Years Later: Race, Gender, Place, and Welfare Rights*, 11 RACE, GENDER & CLASS 181, 181–82 (2008); Carly Hayden Foster, *The Welfare Queen: Race, Gender, Class, and Public Opinion*, 15 RACE, GENDER & CLASS 162, 162 (2008); Ange-Marie Hancock, *Contemporary Welfare Reform and the Public Identity of the “Welfare Queen,”* 10 RACE, GENDER & CLASS 31, 31 (2003); Premilla Nadasen, *From Widow to “Welfare Queen”: Welfare and the Politics of Race*, 1 BLACK WOMEN, GENDER & FAM. 52, 52–53 (2007); Karen Johnson, *Myth of the Welfare Queen*, 25 ESSENCE 42 (1995); Beth Reinhard, *The Return of the Welfare Queen*, 45 NAT'L J. 12, 14 (2013); Ashley Sayeau, *The Myth of the Welfare Queen*, NEW STATESMAN, <https://www.newstatesman.com/society/2010/08/welfare-women-work-coalition> (last visited July 30, 2018); John Blake, *Return of*

lives off her government checks without lifting a finger to help herself, society, or her offspring.

Dorothy Roberts identifies the first published depiction of a bad Black mother as a 1786 Georgia Gazette story berating Hanna, an enslaved woman, for running away with her five year old daughter while leaving behind “a child at her breast.”¹⁸⁴ In reality, other women in Hanna’s community would care for and nurse the child, but her vilification in the White press served to make slave owners’ frequent forced separation of Black mothers from their children appear natural and forgivable.¹⁸⁵ False portrayals like these evolved into the Mammy myth, bolstering the lie of the enslaved woman who preferred to nurture White children while neglecting her own.¹⁸⁶

In her comprehensive study of cultural representations of Mammy, *Mammy: A Century of Race, Gender, and Southern Memory*, Kimberly Wallace-Sanders describes the complexity of Mammy’s dual maternal aspects: “her devotion for the children she cares for is best illustrated by her disregard for her own children.”¹⁸⁷ Rejecting her children is not merely incidental to her love for the slave owner’s children, it is fundamental to it. One cannot exist without the other. Therefore, it is not simply convenient to use Black women to rear White children, it is the better choice. Wallace-Sanders elaborates that, “because of widespread theories of nineteenth-century racial essentialism, African American women were thought to be innately superior in their abilities as

the “Welfare Queen,” CNN (Jan. 23, 2012, 5:32 PM), <http://www.cnn.com/2012/01/23/politics/welfare-queen/>; Franklin D. Gilliam, Jr., *The ‘Welfare Queen’ Experiment: How Viewers React to Images of American-American Mothers on Welfare*, 53 NIEMAN REP. 49, 50 (1999); Karen McCormack, *Resisting the Welfare Mother: The Power of Welfare Discourse and Tactics of Resistance*, 30 CRITICAL SOC. 355, 361 (2004) (“The dominant image of a welfare mother is of a young, black woman, living in the inner city with a large family. While white recipients represented 39% of AFDC recipients in 1993, Blacks 37%, and Latinos (of any race) 18%, the imaginary welfare mother is black.”).

184. Dorothy E. Roberts, *Race, Gender, and the Value of Mothers’ Work*, 2 SOC. POL. 195, 197 (1995) [hereinafter Roberts, *Mothers’ Work*]; see also DOROTHY ROBERTS, SHATTERED BONDS: THE COLOR OF CHILD WELFARE 16 (2002) [hereinafter ROBERTS, SHATTERED BONDS].

185. Roberts, *Mothers’ Work*, *supra* note 184, at 201 (“Toni Morrison’s character Baby Suggs in *Beloved* exemplifies slave mothers who knew the regular pain of seeing their loved ones ‘rented out, loaned out, bought up, brought back, stored up, mortgaged, won, stolen or seized.’”).

186. Roberts, *Mothers’ Work*, *supra* note 184, at 197 (quoting BELL HOOKS, AIN’T I A WOMAN? BLACK WOMEN AND FEMINISM 85 (1981)); Ann Ferguson, *On Conceiving Motherhood and Sexuality: A Feminist Materialist Approach*, in MOTHERING: ESSAYS IN FEMINIST THEORY 171 (Joyce Trebilcot ed. 1984) (“[Mammy was a] ‘passive nurturer, a mother figure who gave all without expectation of return, who not only acknowledged her inferiority to whites but who loved them.’”); see also ELIZABETH FOX-GENOVESE, WITHIN THE PLANTATION HOUSEHOLD: BLACK AND WHITE WOMEN OF THE OLD SOUTH 361 (1988) (examining how class, race, and gender shaped female slaves’ and female slaveholders’ experiences and determined their identity).

187. WALLACE-SANDERS, *supra* note 121, at 8.

caretakers of white children.”¹⁸⁸ Consequently, “the mammy emerges as a mother who frequently displaces white mothers and has ambiguous relationships with her own children.”¹⁸⁹

Popular portrayals of cruel Black mothers thus developed alongside concomitant myths of their superior ability to nurture White children. Further contributing to the popular White perception of Black mothers as negligent and incompetent in regard to their own children, Whites commonly attributed the high rate of infant mortality among slave children to Black parents’ “carelessness and total inability to take care of themselves.”¹⁹⁰ In reality, it resulted from poor nutrition, abuse, hard labor during pregnancy, and inadequate opportunity to breastfeed.

Even after Emancipation, the long hours required of domestic laborers took them away from their own children, forcing them into the care of others. During this time, physical and emotional abuse of Black mothers by White employers was the norm, reflecting the continued devaluation of Black women’s lives and Whites’ reluctance to let go of their positions of privilege, despite the legal end of slavery.¹⁹¹

As Dorothy Roberts documents in *Killing the Black Body*, the attacks on Black mothering that began in slavery have endured throughout history.¹⁹² Poor Black women have consistently received approbation for the ills of their communities that are, in fact, the products of entrenched structural racism. For example, at the turn of the twentieth century, White reformers blamed Black mothers for rampant social disorder, claiming that it arose from maternal inattentiveness to the care and education of their children.¹⁹³ Identifying poor Black

188. WALLACE-SANDERS, *supra* note 121, at 8.

189. WALLACE-SANDERS, *supra* note 121, at 8. Mammy was also significant as the embodiment of both the perfect slave and perfect mother figure. McElya explains: “The myth of the faithful slave lingers because so many white Americans have wished to live in a world in which African Americans are not angry over past and present injustices, a world in which white people were and are not complicit, in which the injustices themselves—of slavery, Jim crow, and ongoing structural racism—seem not to exist at all. The mammy figure affirmed their wishes.” MICKI MCELYA, *CLINGING TO MAMMY: THE FAITHFUL SLAVE IN TWENTIETH CENTURY AMERICA* 3–4 (2007).

190. Roberts, *Mothers’ Work*, *supra* note 184, at 197 (quoting Michael P. Johnson, *Smothered Slave Infants: Were Slave Mothers at Fault?*, 47 J. S. HIST. 493, 495 (1981)); see also Todd L. Savitt, *Smothering and Overlaying of Virginia Slave Children: A Suggested Explanation*, 49 BULL. HIST. MED. 400 (1975) (quoting a census marshal after recording the cause of death of one month old Harriet as “[s]mothered by carelessness of mother” and also saying “I wish it to be distinctly understood that nearly all the accidents occur in the negro population”).

191. See MCELYA, *supra* note 189, at 9 (“The idealized mammy set the contours of the faithful slave narrative. The scene of black loyalty was almost always the white home . . .”).

192. ROBERTS, *KILLING THE BLACK BODY*, *supra* note 34, at 14 (“Contrary to the ideal white mother, Black mothers had their own repertory of images that portrayed them as immoral, careless, domineering, and devious.”).

193. Melissa Harris-Perry, *Bad Black Mothers*, NATION (Nov. 25, 2009), <https://www.thenation.com/article/bad-black-mothers/>.

mothers as the source of social problems justifies the denial of government benefits to Blacks. It simultaneously vindicates their award to Whites, who appear deserving in contrast. Examples of policies that disproportionately distributed benefits include home loans managed by the Federal Housing Administration, created in 1934,¹⁹⁴ the 1935 Social Security Act,¹⁹⁵ the Farm Bill,¹⁹⁶ and the 1944 GI Bill.¹⁹⁷

Senator Daniel Patrick Moynihan bolstered this type of racialized policy justification in his 1965 report titled *The Negro Family: The Case for National Action*, in which he blamed Black mothers for poverty in the Black community.¹⁹⁸ The report's stigmatization of Black families as inappropriately matriarchal contributed to the popular misconception of Black women as bad mothers. Building on this falsity, in 1976, Ronald Reagan introduced the myth of the Welfare Queen into the popular imagination. He thereby created a new version of the poor, bad Black mother to support welfare reform.¹⁹⁹

During his presidential campaign, Reagan spoke about Linda Taylor, a Chicago woman who "used 80 names, 30 addresses, 15 telephone numbers to collect food stamps, Social Security, veterans' benefits for four nonexistent, deceased veteran husbands, as well as welfare."²⁰⁰ Although Whites are the primary beneficiaries of welfare, Reagan's rhetorical device of imposing the face of a Black woman on the common image of a welfare recipient transformed public perception. What was once an appropriate government response to entrenched structural inequalities became a free handout for undeserving scammers.

Similarly, in *Losing Ground*, his influential and controversial 1984 book on American welfare policy, political scientist Charles A. Murray argues that welfare encourages Black women to have more children. He insists that this harms, rather than benefits, them.²⁰¹ Murray claims that abolishing welfare would help impoverished racial minorities get back on their feet and lead to long-term, not band-aid, solutions.²⁰² In his view,

194. The Federal Housing Administration was created by the National Housing Act. National Housing Act of 1934, Pub. L. No. 73-479, 48 Stat. 1,246 (1934).

195. Social Security Act of 1935, Pub. L. No. 74-271, 49 Stat. 620 (codified as amended at 42 U.S.C. ch. 7) (1935)).

196. Agricultural Act of 2014, Pub. L. No. 113-79, 128 Stat. 649 (2014).

197. Servicemen's Readjustment Act of 1944, Pub. L. No. 79-268, 59 Stat. 623 (1944).

198. U.S. DEP'T OF LABOR, *THE NEGRO FAMILY: THE CASE FOR NATIONAL ACTION* 22 (1965), <https://www.dol.gov/oasam/programs/history/webid-meynihan.htm>.

199. Josh Levin, *The Welfare Queen*, SLATE (Dec. 19, 2013, 12:41 AM), http://www.slate.com/articles/news_and_politics/history/2013/12/linda_taylor_welfare_queen_ronald_reagan_made_her_a_notorious_american_villain.html.

200. *Id.*

201. CHARLES A. MURRAY, *LOSING GROUND: AMERICAN SOCIAL POLICY, 1950-1980*, at 228-33 (1984).

202. *Id.*; see also *Dethroning the Welfare Queen: The Rhetoric of Reform*, 107 HARV. L. REV. 2013, 2024 (1994) (discussing Murray's controversial argument).

welfare benefits allow the government to usurp Black parents' roles, ultimately damaging their families.²⁰³ The myth of the welfare queen makes this claim appear both palatable and reasonable.

Ten years later, in *The Bell Curve*, Murray posited that the comparative social and economic status of different racial groups reflects natural, genetic variations in intellect and ability, not systemic racism.²⁰⁴ Government intervention is therefore wasteful and ineffective. Benefits are merely an unnecessary and unfortunate manifestation of White guilt. Murray's philosophy, which denies the realities facing low-income communities of color, formed the basis of American welfare policy, and helped reframe family assistance as an unfair windfall bestowed on the undeserving poor.²⁰⁵

Continuing this trend in the 1990s, social commentators accused a cohort of Black and Brown mothers of giving birth to "crack babies."²⁰⁶ A moral panic ensued, manifesting itself in widespread enthusiasm for prosecuting predominantly Black and Brown women for giving birth to babies with addictions.²⁰⁷ Attackers did not spare the babies their vitriol and instead cast them as a burden on the taxpayer and living proof of their mothers' cruelty and indifference.²⁰⁸ This myth of the crack baby persists, despite the lack of evidence to support a causal connection between crack addiction and infant abnormalities.²⁰⁹ Similarly, incarcerated Black women receive little respect for their role as mothers. Prisons often force them to give birth while shackled.²¹⁰ All but a handful of prisons separate babies born in prison from their mothers, forcing

203. MURRAY, *supra* note 201, at 18.

204. CHARLES MURRAY & RICHARD J. HERRNSTEIN, *THE BELL CURVE: INTELLIGENCE AND CLASS STRUCTURE IN AMERICAN LIFE* 318 (1996).

205. See GWENDOLYN MINK & RICKIE SOLINGER, *WELFARE: A DOCUMENTARY HISTORY OF U.S. POLICY AND POLITICS* 466–74 (2003); Rickie Solinger, *Constraining Choices: Welfare Queens as Illegitimate Consumers*, in *BEGGARS AND CHOOSERS: HOW THE POLITICS OF CHOICE SHAPES ADOPTION, ABORTION AND WELFARE IN THE UNITED STATES* 139, 210 (2002); see also KAARYN GUSTAFSON, *CHEATING WELFARE: PUBLIC ASSISTANCE AND THE CRIMINALIZATION OF POVERTY* 38–44 (2011) ("The welfare reforms crafted during the first Clinton administration were the result of rare bipartisan effort. Social scientists, including . . . conservative Charles Murray, played prominent roles in proposing policies that would require welfare recipients to work.").

206. Harris-Perry, *supra* note 193; SUSAN DOUGLAS & MEREDITH MICHAELS, *THE MOMMY MYTH: THE IDEALIZATION OF MOTHERHOOD AND HOW IT HAS UNDERMINED ALL WOMEN* 161 (2005) ("Media coverage of crack babies serves as a powerful cautionary tale about the inherent fitness of poor or lower class African American women to be mothers at all.").

207. LAURA E. GÓMEZ, *MISCONCEIVING MOTHERS: LEGISLATORS, PROSECUTORS, AND THE POLITICS OF PRENATAL DRUG EXPOSURE* 12–18 (1997).

208. *Id.*

209. *Id.* at 21–22.

210. See Priscilla Ocen, *Punishing Pregnancy: Race, Incarceration, and the Shackling of Pregnant Prisoners*, 100 CALIF. L. REV. 1239, 1310 (2012) (prisons, where Black women are disproportionately incarcerated, rarely accommodate breastfeeding mothers).

them into relatives' homes or foster care.²¹¹ This practice denies the babies and their mothers the benefits of breastfeeding, and echoes back to slavery practices.

The image of the welfare queen also casts all poor, single Black mothers as heartless, corrupt, and deviant. This myth justifies disproportionate interventions into Black families by child services,²¹² the over-criminalization and mistreatment of pregnant Black mothers,²¹³ the highest increase in incarceration rates of any segment of the

211. See *id.* at 1257–58, 1310; Kebby Warner, *Pregnancy, Motherhood, and Loss in Prison: A Personal Story*, in *INTERRUPTED LIFE: EXPERIENCES OF INCARCERATED WOMEN IN THE UNITED STATES 90–93* (Rickie Solinger et al. eds., 2010); see also Alexa Garcia-Ditta, *Bonding Behind Bars*, *TEX. OBSERVER* (Dec. 1, 2015, 9:00 AM), <https://www.texasobserver.org/breastfeeding-in-jail-travis-county/> (stating, at the time, Travis County Jail was one of only four nationwide—and the only in Texas—to allow new moms to breastfeed in custody); Eliana Dockterman, *Jail Forbids New Mother from Pumping Breast Milk*, *TIME* (Mar. 4, 2014), <http://time.com/12329/jail-forbids-a-new-mother-from-pumping-breast-milk/>; David Taube, *Doctor, Officials Spar over Washington County Jail's Breast-Feeding Rules*, *POST STAR* (Apr. 5, 2011), http://poststar.com/news/local/doctor-officials-spar-over-washington-county-jail-s-breast-feeding/article_cebe669a-5fcb-11e0-993c-001cc4c002e0.html; Elizabeth Swavola et al., *VERA INST. OF JUSTICE, OVERLOOKED: WOMEN AND JAILS IN AN ERA OF REFORM* (2016), <http://www.safetyandjusticechallenge.org/wp-content/uploads/2016/08/overlooked-women-in-jails-report-web.pdf>; NAT'L WOMEN'S LAW CTR., *MOTHERS BEHIND BARS: A STATE-BY-STATE REPORT CARD AND ANALYSIS OF FEDERAL POLICIES ON CONDITIONS OF CONFINEMENT FOR PREGNANT AND PARENTING WOMEN AND THE EFFECT ON THEIR CHILDREN* (2010), <http://www.nwlc.org/sites/default/files/pdfs/mothersbehindbars2010.pdf>.

212. ROBERTS, *SHATTERED BONDS*, *supra* note 184, at 25; Sarah Jaffe, *GOP's Bad Black Mother Myth: Meet the Modern-day Welfare Queens*, *SALON* (Aug. 6, 2014), http://www.salon.com/2014/08/06/gops_bad_black_mother_myth_meet_the_modern_day_welfare_queens/. Jaffe also offers a contemporary example from New York City in 2014:

The New York City Police Department arrived at Denise Stewart's Brooklyn apartment last week looking for a "disturbance." They responded to a call that gave no apartment number and allegedly knocked on Stewart's door when they heard shouting inside. Stewart, 48, answered her door in a towel, just out of the shower. The video that has gone viral across the Internet shows what happened to her next: She was yanked into the hallway and handcuffed, losing her towel in the struggle. Her neighbors can be heard protesting her treatment, including one who says, "That's a woman. Where are the female cops?" When she collapsed, her neighbors screamed at the police that she had asthma, that they should do something for her. Stewart's 12-year-old daughter, allegedly the object of the police's concern when they saw "visible injuries" on her, was also arrested, charged with assaulting a police officer, criminal mischief and criminal possession of a weapon after she kicked out a window of the police car when she was forcibly removed from the apartment.

Id.

213. Ocen, *supra* note 210, at 1262; KHIARA BRIDGES, *REPRODUCING RACE: AN ETHNOGRAPHY OF PREGNANCY AS A SITE OF RACIALIZATION* 46, 83, 92 (2011); Khiara Bridges, *Understanding Reproductive Injustice: Panel 3*, *YOUTUBE* (Nov. 9, 2015), <https://www.youtube.com/watch?v=e7pOMcfrAmo>. See generally *DRUG POLICY ALL., FACT SHEET: WOMEN, PRISON, AND THE DRUG WAR* (Feb. 2016), https://www.drugpolicy.org/sites/default/files/DPA_Fact%20Sheet_Women%20Prison%20and%20Drug%20War%20%28Feb.%202016%29.pdf.

population,²¹⁴ and punitive welfare reform that has the effect of removing Black mothers from their infants and disrupting breastfeeding.²¹⁵

The bad Black mother myth also leads to the criminalization of behavior in which White mothers can engage without recrimination.²¹⁶ In *Cheating Welfare*, Kaaryn Gustafson chronicles how Black women on welfare often face criminal fraud charges for working extra jobs to afford food for their families. They work because the benefits are inadequate to support a family.²¹⁷

Similarly, parents across the country commonly resort to using friends' or relatives' addresses to get their children into better-resourced school districts. Ordinarily, school boards deal with this type of boundary hopping by transferring the student to their parents' school district and issuing a warning.²¹⁸ In contrast, two Black mothers, Kelley Williams-Bolar in Ohio and Tanya McDowell in Connecticut, received felony convictions for using the wrong address on their school applications.²¹⁹

Alexis Hutchinson was a soldier and a single Black mother who chose not to deploy after failing to find appropriate care for her infant

214. See generally Priscilla A. Ocen, *Unshackling Intersectionality*, 10 DU BOIS REV. 471 (2013); Kimberlé W. Crenshaw, *From Violence to Mass Incarceration: Thinking Intersectionally About Women, Race, and Social Control*, 59 UCLA L. REV. 1418 (2012); see also Amy Goodman, *Stopping Violence Against Women: Eve Ensler and Kimberlé Crenshaw on V-Day, Women in Prisons and Breaking the Silence*, DEMOCRACY NOW! (June 21, 2006), https://www.democracynow.org/2006/6/21/stopping_violence_against_women_eve_ensler (Women are the “fastest growing group of people who are incarcerated,” with the rate of increase for African American women in the last 15 years reflecting an 888 percent increase); Julie Ijinkya, *The Top 5 Facts About Women in our Criminal Justice System*, CTR. FOR AM. PROGRESS (Mar. 7, 2012, 9:00 AM), <https://www.americanprogress.org/issues/women/news/2012/03/07/11219/the-top-5-facts-about-women-in-our-criminal-justice-system/> (stating that Black women are three times as likely to be incarcerated as White women).

215. Freeman, *supra* note 20, at 3066–68; ROBERTS, *supra* note 34, at 208 (“Part of the reason that maternalist rhetoric can no longer justify public financial support for mothers is that the public views this support as benefiting primarily black mothers. Maternalist rhetoric has no appeal in the case of black welfare mothers because most white Americans see no value in supporting their domestic care-giving. Many welfare advocates fail to see the benefit in poor black mothers’ care for their young children.”); Foster, *supra* note 183, at 177 (“The gendered racism and classism embodied in the public identity of the Welfare Queen is reflected in public opinion survey data. Americans are hesitant about supporting government spending on welfare because they think this spending will benefit the Welfare Queen.”).

216. See Tope Fadiran Charlton, *The Impossibility of the Good Black Mother*, TIME (Jan. 21, 2014), <http://time.com/1311/the-impossibility-of-the-good-black-mother/>; Sinikka Elliot & Megan Reid, *The Superstrong Black Mother*, 15 CONTEXTS 48 (2016).

217. GUSTAFSON, *supra* note 205, at 157–63.

218. Kaaryn Gustafson, *Degradation Ceremonies and the Criminalization of Low-Income Women*, 3 U.C. IRVINE L. REV. 297, 321–24 (2014).

219. Michael Martin, *Mother Jailed for School Fraud, Flares Controversy*, NPR (Jan. 28, 2011, 12:00 PM), <https://www.npr.org/2011/01/28/133306180/Mother-Jailed-For-School-Fraud-Flares-Controversy>; Peter Applebome, *In a Mother’s Case, Reminders of Educational Inequalities*, N.Y. TIMES (Apr. 27, 2011), <https://www.nytimes.com/2011/04/28/nyregion/some-see-educational-inequality-at-heart-of-connecticut-case.html>. See generally GUSTAFSON, *supra* note 205, at 321–24.

son.²²⁰ As a result of this decision, Hutchison lost custody of her son and faced charges and possible jail time.²²¹ Comparably, Shanesha Taylor, a houseless, Black single mother in Arizona, faced charges of felony child abuse after she left her two children in a car during a job interview because her child care fell through.²²²

In South Carolina, Deborah Harrell, a forty-six year old Black single mother, could not afford child care for her nine year old daughter on her McDonald's salary.²²³ Her daughter regularly accompanied her to work, playing quietly on the family laptop during Deborah's shift.²²⁴ After thieves broke into their home and stole the computer, her daughter asked to play in a nearby park while Deborah worked.²²⁵ Three days later, a woman discovered the daughter alone in the park and called the police. They subsequently arrested Deborah and placed her unharmed daughter in the custody of social services.²²⁶

In Georgia, Raquel Nelson and her children, a two-year old she held in her arms and her four-year old son, A.J., waited in the median for cars to pass so they could cross safely after getting off a city bus. A.J. wriggled his hand out of hers and ran straight into a car driven by a drunk driver who did not stop.²²⁷ The Atlanta prosecutor charged Raquel with reckless conduct, improperly crossing a roadway, and second-degree homicide by vehicle.²²⁸ An all-White jury, all but one of whom admitted that they had never ridden a city bus, convicted her of vehicular manslaughter.²²⁹

The public has also blamed Black mothers when police officers have killed their children.²³⁰ Some commentators attributed the police

220. Harris-Perry, *supra* note 193.

221. Harris-Perry, *supra* note 193.

222. Andres Jauregui, *Shanesha Taylor, Homeless Single Mom, Arrested After Leaving Kids in Car While on Job Interview*, HUFFINGTON POST (Mar. 28, 2014, 2:04 PM), http://www.huffingtonpost.com/2014/03/28/shanesha-taylor-homeless-mom-arrested_n_5050356.html; Bryce Covert, *Homeless Mother Arrested for Leaving Kids in Car During Job Interview Won't Go to Prison*, THINKPROGRESS (July 21, 2014, 7:13 PM), <https://thinkprogress.org/homeless-mother-arrested-for-leaving-kids-in-car-during-job-interview-wont-go-to-prison-256806fb0ff3>.

223. Noah Remnick, Opinion, *Debra Harrell and the Mythology of Bad Black Mothers*, L.A. TIMES (July 18, 2014, 1:47 PM), <http://www.latimes.com/opinion/opinion-la/la-ol-debra-harrell-mythology-black-mothers-20140718-story.html>.

224. *Id.*

225. *Id.*

226. *Id.*

227. Radley Balko, *Grieving Mother Faces 36 Months in Jail for Jaywalking After Son Is Killed by Hit-and-Run Driver*, HUFFINGTON POST (Sept. 20, 2011, 2:01 PM), http://www.huffingtonpost.com/radley-balko/raquel-nelson-jail-for-jaywalking_b_905925.html.

228. *Id.*

229. *Id.*

230. See, e.g., Jim O'Brien, *Black Women Are to Blame for Black Crime and Poverty*, BACON, BOOKS & BULLETS, <http://baconbooksandbullets.com/black-women-are-to-blame-for-black-crime-and-poverty/> (last visited July 30, 2018); Ian Schwartz, *CNN's Don Lemon: Bill O'Reilly's Criticism of*

shooting of unarmed teenager Michael Brown in Ferguson, MO to the bad parenting of his mother Lesley McFadden.²³¹ Similarly, after police shot and killed twelve-year old Tamir Rice while he played with a toy gun in a Cleveland park, officers blamed his death on his mother Samaria Rice's parenting choices.²³² When a police officer shot sleeping seven-year old Aiyana Stanley-Jones in the head during a raid on the wrong home, the shooter blamed her grandmother, who reached out to protect her grandchild.²³³

Demonstrating greater concern for animal than human life, many individuals publicly condemned the parenting of Black mother Michelle Gregg after park workers shot a seventeen-year-old gorilla in the Cincinnati Zoo to prevent him from hurting her three-year-old son Isaiah.²³⁴ An online petition, signed by five hundred thousand individuals, stated:

It is believed that the situation was caused by parental negligence and the zoo is not responsible for the child's injuries and possible trauma. We the undersigned want the parents to be held accountable for the lack of supervision and negligence that caused Harambe to lose his life. We the undersigned feel the child's safety is paramount in this situation. We

Black Community "Doesn't Go Far Enough," REAL CLEAR POL. (July 27, 2013), http://www.realclearpolitics.com/video/2013/07/27/cnns_don_lemon_bill_oreillys_criticism_of_black_community_doesnt_go_far_enough.html (listing five ways the Black community must change before racism can be overcome, including Black women no longer having children out of wedlock, because fatherless children are on "an express train right to prison and the cycle [of fatherless Black children] continues.").

231. See, e.g., Jesse Lee Peterson, Opinion, *Michael Brown: Bad Apple Doesn't Fall Far from Tree*, WORLD NET DAILY (Nov. 30, 2014, 3:54 PM), <http://www.wnd.com/2014/11/michael-brown-bad-apple-doesnt-fall-far-from-tree/> ("Michael Brown is dead because . . . his parents failed him."). But see generally LESLEY MCSADDEN, TELL THE TRUTH AND SHAME THE DEVIL: THE LIFE LEGACY AND LOVE OF MY SON MICHAEL BROWN (2016) (describing her loving parenting style). Interestingly, some reports of the shooting referred to Brown as a man, and others as a teenager. *Compare What Happened in Ferguson?*, N.Y. TIMES (Aug. 10, 2015), <https://www.nytimes.com/interactive/2014/08/13/us/ferguson-missouri-town-under-siege-after-police-shooting.html> ("Brown, an unarmed black teenager, was shot and killed."), with German Lopez, *Why Was Michael Brown Shot?*, VOX (Jan. 27, 2016, 6:19 PM), <https://www.vox.com/cards/mike-brown-protests-ferguson-missouri/mike-brown-shooting-facts-details> ("Wilson attempted to stop Brown, and both men had a physical altercation . . .") (emphasis added).

232. Sean Flynn, *The Tamir Rice Story: How to Make a Police Shooting Disappear*, GQ (July 14, 2016), <http://www.gq.com/story/tamir-rice-story> (Samaria Rice stated, "It was almost like they were trying to blame me . . . They were talking to me like I was a bad mother, like I gave him that BB gun.").

233. Kate Abbey-Lambertz, *How a Police Officer Shot a Sleeping 7-Year-Old to Death*, HUFFINGTON POST (last updated Dec. 6, 2017), https://www.huffingtonpost.com/2014/09/17/aiyana-stanley-jones-joseph-weekley-trial_n_5824684.html.

234. Tom Cleary, *Michelle Gregg, 5 Fast Facts You Need to Know*, HEAVY (May 30, 2016, 3:20 PM), <http://heavy.com/news/2016/05/michelle-gregg-cincinnati-zoo-mother-mom-name-gorilla-harambe-facebook-photos-son-petition/>; Carol Hood, *Stop Blaming Black Parents for Harambe's Death—Blame Zoos*, ESTABLISHMENT (June 1, 2016), <https://theestablishment.co/stop-blaming-black-parents-for-harambes-death-blame-zoos-3ce574788bc8#.e82sqn1u3>.

believe that this negligence may be reflective of the child's home situation. We the undersigned actively encourage an investigation of the child's home environment in the interests of protecting the child and his siblings from further incidents of parental negligence that may result in serious bodily harm or even death.²³⁵

Racist Internet memes compared Michelle to a gorilla.²³⁶

In contrast, there was almost universal support for Matt and Melissa Graves, the White parents of a two-year old eaten by an alligator at Disney World.²³⁷ Michelle Schwab, a White woman who dropped her two-year old son into a cheetah cage at the Cleveland Zoo, was not subject to calls for child services' intervention. Instead, when wealthy White parents allow their children increased independence and fail to monitor their movements closely, some experts label this behavior "free range parenting," framing it as a deliberate and positive parenting choice.²³⁸

Blaming Black mothers for society's ills continues to relieve Whites of the need to relinquish privilege and absolve the government from the responsibility to enact reforms. It supports the case for minimal or no welfare benefits for Black mothers and, by extension, all mothers. Demonizing Black mothers also justifies disparate treatment in all areas of social and economic life and reinforces racist stereotypes.

C. BAD BLACK MOTHERS IN POPULAR CULTURE

The bad Black mother pervades the cinematic experience, in all her incarnations. As Robin M. Boylorn explains:

"Bad" black mamas are common tropes in films where black women are scapegoated . . . as the precursor for pathology in the black family. Black mothers are blamed or implicated though rarely praised or celebrated. Working mothers are chastised for not being stay-at-home mothers; welfare mothers are demonized for not working; single mothers are blamed for not being sufficient "father-figures,"; married women are expected to want to be mothers; young mothers are vilified for unplanned babies; older mothers are harshly judged for waiting too long.²³⁹

²³⁵. Cleary, *supra* note 234.

²³⁶. Cleary, *supra* note 234.

²³⁷. See Brian Raftery, *We Wish We Could Unsee This Vile Tweet About the Alligator Attack*, WIRED (June 16, 2016, 1:48 PM), <https://www.wired.com/2016/06/wish-unsee-vile-tweet-alligator-attack/> (describing one unsupportive reaction).

²³⁸. Stephanie Land, *Free Range Parenting Is a Privilege for the White and Affluent*, ESTABLISHMENT (Aug. 9, 2016), <https://theestablishment.co/free-range-parenting-is-a-privilege-for-the-white-and-affluent-1ac7ce8a4b8c#.ukwrcb5z>. See generally LENORE SKENAZY, *FREE-RANGE KIDS: HOW TO RAISE SAFE, SELF-RELIANT CHILDREN (WITHOUT GOING NUTS WITH WORRY)* (2010).

²³⁹. Robin M. Boylorn, *Moonlight Musings & Motherhood: On Paula, Teresa, and the Complicated Role of (Bad) Black Mamas in Film*, CRUNK FEMINIST COLLECTIVE (Oct. 28, 2016), <http://www.crunkfeministcollective.com/2016/10/28/moonlight-musings-motherhood-on-paula-teresa-and-the-complicated-role-of-bad-black-mamas-in-film/>.

These portrayals conform to the common societal visions of the welfare mother and the destroyers of family values popularized by Moynihan and Reagan.

The Mammy stereotype has appeared in a long list of films by White directors, reflecting and reinforcing the image that became part of popular mythology during slavery.²⁴⁰ The first bad Black mother to grace the silver screen was Mammy, who appeared in minstrel shows in the 1820s and on screen in 1914 in *Coon Town Suffragettes*.²⁴¹ Hattie McDaniel was the first Black woman to win an Oscar. The Academy named her Best Supporting Actress for her performance as Mammy in *Gone with the Wind*. When she won, she needed special dispensation to collect the award at the segregated Ambassador hotel where the ceremony took place.²⁴²

Over fifty years later, Whoopi Goldberg followed in McDaniel's footsteps, winning the Best Supporting Actress award for her performance as Oda Mae Brown in *Ghost*. Goldberg's role fell into the stereotype of the 'Magical Negro.'²⁴³ Spike Lee coined this term in the early 2000s to mean a saintly Black character, alone in a predominantly White universe, whose sole purpose is to enrich the lives of the White characters around her.²⁴⁴ White directors have also created roles for Black women that perpetuate the Jezebel, Sapphire, and bad Black mother myths.²⁴⁵

240. Some of these films include *THE BIRTH OF A NATION* (D.W. Griffith Corp. 1915), *HER FAIRY PRINCE* (Reliance Film Co. 1915), *HEART AND SOUL* (Fox Film Corp. 1917), *HALLELUJAH* (MGM 1929), *MAMMY* (Warner Bros. 1930), *IMITATION OF LIFE* (Universal 1934), *THE BUCCANEER* (Paramount Pictures 1938), *GONE WITH THE WIND* (MGM 1939), *MAMMY* (Codo Cinéma 1951), *THE HELP* (Dreamworks Pictures 2011).

241. Ukiya C. Henson, *The Mammy Reloaded: African American Men Playing the Updated Caricature in Contemporary Films* (Mar. 22, 2013) (unpublished M.A. research project, Southern Illinois University) (available online at http://opensiu.lib.siu.edu/cgi/viewcontent.cgi?article=1436&context=gs_rp). The stereotype has persisted until the present. See generally DONALD BOGLE, *TOMS, COONS, MULATTOS, MAMMIES, AND BUCKS: AN INTERPRETIVE HISTORY OF BLACKS IN AMERICAN FILMS* (4th ed. 2001); K. SUE JEWELL, *FROM MAMMY TO MISS AMERICA AND BEYOND: CULTURAL IMAGES AND THE SHAPING OF US POLICY* (1993); ED GUERRERO, *FRAMING BLACKNESS: THE AFRICAN AMERICAN IMAGE IN FILM* (1993).

242. W. Burette Carter, *Finding the Oscar*, 55 *HOWARD L.J.* 107, 115–17 (2011).

243. Cerise L. Glenn & Landra J. Cunningham, *The Power of Black Magic: The Magical Negro and White Salvation in Film*, 40 *J. BLACK STUD.* 135, 137 (2009).

244. *Id.*

245. See, e.g., *Amos n' Andy* (CBS Television 1951–1953); *FOXY BROWN* (Am. Int'l Pictures 1974) *MONSTER'S BALL* (Lionsgate 2001); *LOSING ISAAH* (Paramount Pictures 1995) (Khaila Richards, played by Halle Berry); *THE BLIND SIDE* (Netter Production 2009) (Denise Oher, played by Adrian Lenox). The real Denise Oher also received media attention highlighting her poverty and inability to care for her children. See *ONLY ON 5: Denise Oher Shares Her Side of 'The Blind Side'*, *WMC ACTION NEWS 5* (Feb. 3, 2013, 8:11 PM), <http://www.wmcactionnews5.com/story/20953196/only-on-5-denise-ohershares-her-side-of-the-blind-side> ("Just one of Ms. Oher's 11 living children lives with her. She did not

Decades of White cultural production entrenched these stereotypes in popular culture, leading eventually to their incorporation into the work of Black cultural creators. They also infiltrated the tastes of Black cultural consumers. As a result, some of the most controversial bad Black mothers exist in films created by Black filmmakers and directed at Black audiences. Tyler Perry's overwrought caricature of a Black mother, Madea, exemplifies this character, and appears in many popular films.²⁴⁶ Martin Lawrence also created and portrayed a stereotypical matriarch, Big Momma.²⁴⁷

Madea, Big Momma, and a host of other bad Black mothers in film are direct descendants and modern incarnations of Mammy, Sapphire, and Jezebel: vicious, unaffectionate, and grotesquely sexual women. The popular Madea and Big Momma characters have inspired harsh criticism for their degradation of women. Their perpetuation of stereotypes about Black mothers contribute to damaging societal myths and negatively affect Black women's self-perception.²⁴⁸ Several critiques identify

even have a TV to watch the Super Bowl. Dee Dee, as her friends call her, said she hocked her TV at the pawn shop to replace three tires.”).

246. TYLER PERRY'S MADEA ON THE RUN: THE PLAY (Tyler Perry Studios 2017); BOO! A MADEA HALLOWEEN (Tyler Perry Studios 2016); TYLER PERRY'S MADEA'S TOUGH LOVE (Tyler Perry Studios 2015); MADEA'S NEIGHBORS FROM HELL (The Tyler Perry Company 2014); A MADEA CHRISTMAS (Tyler Perry Studios 2013); MADEA GETS A JOB: THE PLAY (Lionsgate 2013); MADEA'S WITNESS PROTECTION (Tyler Perry Studios 2012); MADEA'S BIG HAPPY FAMILY (Tyler Perry Studios 2011); MADEA GOES TO JAIL (Tyler Perry Studios 2009); MADEA'S FAMILY REUNION (Tyler Perry Studios 2006); DIARY OF A MAD BLACK WOMAN (Tyler Perry Studios 2005); MADEA'S CLASS REUNION (My.Te.Pe. Productions 2003).

247. BIG MOMMA'S HOUSE (Twentieth Century Fox Film Corporation 2000); BIG MOMMA'S HOUSE 2 (Twentieth Century Fox Film Corporation 2006); BIG MOMMAS: LIKE FATHER LIKE SON (Twentieth Century Fox Film Corporation 2011); *see also* Eddie Murphy in NORBIT (Dreamworks Pictures 2007).

248. Gina Masullo Chen et al., *Male Mammies: A Social-Comparison Perspective on How Exaggeratedly Overweight Media Portrayals of Madea, Rasputia, and Big Momma Affect How Black Women Feel About Themselves*, 15 MASS COMM. & SOC'Y 115, 130 (2012); Dorian Love, *Mammy Depictions in Film: Effects on African American Women's Perceptions, Beliefs, and Eating Behaviors*, 15 MCNAIR SCHOLARS J. 57, 62, 64 (2013). *See generally* WOMANIST AND BLACK FEMINIST RESPONSES TO TYLER PERRY'S PRODUCTIONS (LeRhonda S. Manigault-Bryant et al. eds., 2014); BRIAN C. JOHNSON, *THE PROBLEMATIC TYLER PERRY* (2016); Nargis Ihsan Fontaine, *From Mammy to Madea, and Examinations of the Behaviors of Tyler Perry's Madea Character in Relation to the Mammy, Jezebel, and Sapphire Stereotypes* (May 5, 2011) (unpublished M.A. thesis, Georgia State University) (available online at http://scholarworks.gsu.edu/aas_theses/5); *see also* Eric David, *Big Momma's House 4*, YOUTUBE (Dec. 18, 2014), <https://www.youtube.com/watch?v=Bj6Kpdu-FJ4> (attacking the racist stereotype of Big Momma); MICHAEL P. JEFFRIES, *PAINT THE WHITE HOUSE BLACK: BARACK OBAMA AND THE MEANING OF RACE IN AMERICA* 123–24 (2013); LeRhonda S. Manigault-Bryant, *“Don't Make Me Hop After You . . .”: Black Womanhood and the Dangerous Body in Popular Film*, in *BLACK WOMEN AND POPULAR CULTURE: THE CONVERSATION CONTINUES* 71 (Adria Y. Goldman et al. eds., 2014) (characterizing Big Momma and Madea as examples of a new, hybrid stereotype, “Sapphmammibel—a combination of Sapphire, Mammy, and Jezebel that is so stylized and hidden in her fat suit that she is difficult to decipher”); Aneeka A Henderson, *The Rebirth of Queer: Exile, Kinship and Metamorphosis in Dee Rees' Pariah*, in *AFRICAN AMERICAN CULTURE AND SOCIETY AFTER RODNEY KING: PROVOCATIONS AND PROTESTS, PROGRESSION AND POST-RACIALISM* 141–51 (Josephine Metcalf & Carina Spaulding

harmful effects on Black women's self-image and eating habits that these characters, who are both unrealistically large, could engender. One writer named this hybrid of stereotypes Sapphimmibel.²⁴⁹ While Mammy represents a Black woman who is indifferent to her own children, Sapphire is a loud, obnoxious Black woman who relentlessly nags Black men.²⁵⁰ This composite character appears not to have a nurturing bone in her body and thus reinforces the idea that these stereotypical Black women would not breastfeed.

The bad Black mother also appears in serious films, played convincingly by skilled actors that include Loretta Devine as Marguerite Slocumb in *Kingdom Come*, Kim Wayans as Audrey in *Pariah*, Taraji P. Henson as Yvette in *Baby Boy*, and Tasha Smith as Jennifer in *Daddy's Little Girls*.²⁵¹ One critique of *Pariah's* Audrey explains that “[s]uch a representation supports E. Franklin Frazier and Senator Patrick Moynihan’s infamous and specious characterizations of African American women as emasculating, causing fathers and husbands to desert their families as well as precipitating racial inequality.”²⁵²

Perhaps the most extreme version of the modern bad Black mother in film, also the product of a Black director's work, is the character of Mary Jones. Mary is the mother of the protagonist in Lee Daniels' movie *Precious: Based on the Novel Push by Sapphire*.²⁵³ In 2010, comedian/actor Mo'Nique won Best Supporting Actress for her performance as Mary.²⁵⁴ Despite this highly coveted recognition,

eds., 2015) (analyzing the mother character of Audrey in the film *Pariah* as part of a long chain of bad Black mothers in film and observing that the director chose to augment Audrey's cruelty when converting the film from a short to feature length as a “marketing strategy”). In *Pariah*, “Audrey's violent parenting is echoed in a slew of films depicting villainous African American mothers and is often portrayed without question. Such a representation supports E. Franklin Frazier and Senator Patrick Moynihan's infamous and specious characterizations of African American women as emasculating, causing fathers and husbands to desert their families as well as precipitating racial inequality.” *Id.* at 151.

249. LeRhonda S. Manigault-Bryant, *supra* note 248, at 71.

250. Pilgrim, *supra* note 180 (“The Sapphire Caricature portrays black women as rude, loud, malicious, stubborn, and overbearing. This is the Angry Black Woman (ABW) popularized in the cinema and on television.”).

251. KINGDOM COME (Bates Entertainment 2001); PARIAH (Chicken and Egg Pictures 2011); BABY BOY (Columbia Pictures 2001); DADDY'S LITTLE GIRLS (The Tyler Perry Company 2007).

252. Henderson, *supra* note 248, at 151.

253. PRECIOUS (Lionsgate 2009).

254. Oscars, *Mo'Nique Winning Best Supporting Actress*, YOUTUBE (Mar. 12, 2010), <https://www.youtube.com/watch?v=dxxqA4NhQM4>. In 2002, Halle Berry won Best Actress for her portrayal of Leticia Musgrove in *Monster's Ball*. Cole Delbyck, *The Most Memorable Best Actress Acceptance Speeches in Oscars History*, HUFFINGTON POST (Feb. 25, 2016, 2:58 PM), http://www.huffingtonpost.com/entry/best-actress-oscar-speeches_us_56cb7667e4boec6725e3810b. Some critics argued that Berry “betrayed black women” or “fed the stigma” by playing the part of a stereotypical hyper-sexual Black woman. See Shawn James, *How Halle Berry Tarnished the Image of Black Women*, SHAWN JAMES, BLACK FREELANCE WRITER

critiques of the role as perpetuating harmful stereotypes about Black mothers abounded. Armond White, then chief film critic for the *New York Press* and chair of the New York Film Critics Circle, controversially attacked the film as “a sociological horror show” that was “[f]ull of brazenly racist clichés”²⁵⁵ He asserted that “[*Precious*’s] agreed-upon selection of the most pathetic racial images and social catastrophes helps to normalize the circumstances of poverty and abandon that will never change or be resolved.”²⁵⁶ White also decried the film’s effect on White audiences:

Worse than *Precious* itself was the ordeal of watching it with an audience full of patronizing white folk at the New York Film Festival, then enduring its media hoodwink as a credible depiction of black American life. A scene such as the hippopotamus-like teenager climbing a K-2 incline of tenement stairs to present her newborn, incest-bred baby to her unhinged virago matriarch, might have been met with howls of skeptical laughter at Harlem’s Magic Johnson theater. Black audiences would surely have seen the comedy in this ludicrous, overloaded situation, whereas too many white

(Sept. 29, 2013, 7:36 PM), <http://shawnsjames.blogspot.com/2013/09/how-halle-berry-tarnished-image-of.html>; Sam Etzi, *Civic Issue of Race: African American Women Today*, JEZEBEL (Mar. 19, 2014), <https://sites.psu.edu/samcivicissue/2014/03/19/jezebel/>. Actor Angela Bassett fed into this criticism by stating publicly that she turned down the role because she refused to play a prostitute on film. Although, she asserted that she did not blame Berry, but Hollywood. *Actor Says Monster’s Ball Stereotypes Black Women*, GUARDIAN (June 24, 2002, 6:05 PM), <https://www.theguardian.com/film/2002/jun/24/news1>. The overly sexual Jezebel stereotype originated in slavery to dehumanize black women and justify sexual assault by White men. Pilgrim, *supra* note 175. In 2010, Jennifer Hudson won the Best Actress award for the role of Effie White in *Dreamgirls*. The musical, chronicling the careers of a Black singing group, traded on the “Blacks as entertainers” stereotype. See BLACK AND MULTIRACIAL POLITICS IN AMERICA 187 (Yvette M. Alex-Assensoh & Lawrence J. Hanks eds., 2000) (“[T]v’suals in the contemporary news reflect most of all two of the most common stereotypes: African Americans as talented athletes and entertainers.”). In 2014 Lupita Nyong’o received the Best Supporting Actress award for her performance as Patsey, the slave, who is brutally raped and beaten in the film. Kanika Lal, *Oscars: Lupita Nyong’o Earns Her First Academy Award for Best Supporting Actress (Video)*, HOLLYWOOD REP. (Mar. 2, 2014, 7:33 PM), <http://www.hollywoodreporter.com/news/best-supporting-actress-oscar-lupita-nyong-o-12-years-a-slave-video-685031>. Irene Cara received an Oscar for the Best Original Song for *Flashdance*. . . *What A Feeling* in 1984. *Best Original Movie Song Oscar Goes to Irene Cara for ‘Flashdance’ Title Tune*, JET, Apr. 23, 1984, at 53. In 2012, Octavia Spencer received the Best Supporting Actress award for her role as maid Minny Jackson in *The Help*. *Oscars 2012: Octavia Spencer Wins Best Supporting Actress*, GUARDIAN (Feb. 26, 2012, 9:13 PM), <https://www.theguardian.com/film/2012/feb/27/octavia-spencer-best-supporting-actress-oscar>. Both the movie and the book upon which it was based received criticism for telling the story of Black servant from a White woman’s perspective. See generally FIONA MILLS, *LIKE ONE OF THE FAMILY: DOMESTIC WORKERS, RACE AND IN/VISIBILITY IN THE HELP* (Fiona Mill ed., 2016).

255. Armond White, *Precious Is the Most Damaging Film to the Black Image Since Birth of a Nation*, HIP HOP & POL. (Nov. 19, 2009), <http://hiphopandpolitics.com/2009/11/19/armond-white-precious-is-the-most-damaging-film-to-the-black-image-since-birth-of-a-nation/>; see also Felicia R. Lee, *To Blacks, Precious Is Demeaned or Angelic*, N.Y. TIMES (Nov. 20, 2009), <http://www.nytimes.com/2009/11/21/movies/21precious.html>; Erin Aubrey Kaplan, *Black Viewers Are Divided on Film’s Precious-ness*, L.A. TIMES (Nov. 29, 2009), <http://articles.latimes.com/2009/nov/29/entertainment/la-ca-precious29-2009nov29>.

256. White, *supra* note 255.

film habitués casually enjoy it for the sense of superiority—and relief—it allows them to feel.²⁵⁷

The character of Mary personifies the myth of cold, bad Black mothers. Mary is a quintessential welfare mother who physically, sexually, and emotionally abuses her daughter. Her dialogue consists mainly of curses and invective.²⁵⁸ Other critics described her as “an unredeemed monster who brutalizes her daughter”²⁵⁹ and “a callous and indifferent mother, consumed by afternoon television and psychologically dependent upon welfare.”²⁶⁰

Mary thus embodies all the worst clichés about Black mothers. Not satisfied with collecting her own welfare checks, she takes her daughter’s as well.²⁶¹ She consistently puts her own needs first, and justifies Precious’ father’s rape of their daughter as necessary for Mary to earn his affection.²⁶² The horrific largeness of Mary’s evil, both literal and figurative, provides support for the myth that welfare is primarily for single Black mothers who cheat the government and are poor due to their own, deeply personal failings, not society’s. This portrayal confirms the dog whistle politics that Reagan relied on to give life to the welfare queen myth.²⁶³ Confronted with this repulsive portrayal of Black motherhood, there is no scenario in which the viewer can imagine Mary lovingly breastfeeding her ironically-named daughter Precious as a baby.²⁶⁴

Seven years after the Oscars honored Mo’Nique for her portrayal of Mary, Naomie Harris received an Oscar nomination for her work as Paula. Paula is the mother of protagonist Chiron in the 2017 Best Picture-winning film *Moonlight*,²⁶⁵ created by Black auteur Barry Jenkins.²⁶⁶

257. White, *supra* note 255.

258. Claudia Müller, *The Welfare Mother and the Fat Poor: Stereotypical Images and the Success Narrative in Sapphire’s Push*, 14 CURRENT OBJECTIVES POSTGRADUATE AM. STUD. 1, 7–8 (2013).

259. Harris-Perry, *supra* note 193.

260. Darryl Lorenzo Wellington, *Sex, Race, and Precious*, DISSENT (Mar. 8, 2010) https://www.dissentmagazine.org/online_articles/sex-race-and-precious.

261. PRECIOUS, *supra* note 253.

262. PRECIOUS, *supra* note 253.

263. See generally IAN HANEY LÓPEZ, DOG WHISTLE POLITICS: HOW CODED RACIAL APPEALS HAVE REINVENTED RACISM & WRECKED THE MIDDLE CLASS (2014).

264. Precious is also a Black mother, but not an exemplary one. See Wellington, *supra* note 260 (“The film closes upon the image of Claireece Precious Jones hoisting the two incestuous children that she has finally gained custody of, her body language still ominously touched by self-abnegation but silently transformed. She has learned to read. She has learned to think. She has become a woman and a mother. She aspires to raise two children on public assistance until she graduates from college, while she concurrently battles AIDS. In most, if not all these ambitions, she will probably fail.”).

265. MOONLIGHT (A24 2016).

266. James Reed, *Too Nervous to Watch the Oscars Announcement, Naomie Harris Ends Up with a Supporting Actress Nomination*, L.A. TIMES (Jan. 24, 2017, 7:50 AM), <http://www.latimes.com/entertainment/la-et-oscar-nominations-2017-live-too-nervous-to-watch-the-oscars-1485273042-htmistory.html>.

Similar to Mary, Paula is a Black single mother who selfishly puts herself before her child; in this case, in service of her crack addiction. Unlike Mary, Paula alternates between bestowing affection on her child and cruelly rejecting him, but her unpredictability is equally destructive. Despite universal praise for the film²⁶⁷ and the conscious efforts of the filmmakers and Harris herself to avoid stereotypes,²⁶⁸ the role of a single Black mother who neglects her son due to crack addiction falls squarely into the stereotype of the bad Black mother, no matter how nuanced the portrayal.

In the film, the character of Teresa, the caring and supportive girlfriend of the benevolent drug dealer who becomes a father figure to young Chiron, reinforces the cultural assumption that Black mothers are incapable of nurturing their own children.²⁶⁹ Teresa, who has no children of her own, acts as a type of surrogate mother to Chiron. This contrast between biological mothers and nurturing mother figures without biological children²⁷⁰ underscores the historical disassociation of Black mothers from their biological children.²⁷¹ Although biological motherhood is not essential to good mothering, this juxtaposition in films reinforces the idea that Black biological mothers and the acts that

267. See, e.g., A. O. Scott, *'Moonlight': Is This the Year's Best Movie?*, N.Y. TIMES (Oct. 20, 2016), <https://www.nytimes.com/2016/10/21/movies/moonlight-review.html>; Hilton Als, *"Moonlight" Undoes Our Expectations*, NEW YORKER (Oct. 24, 2016), <http://www.newyorker.com/magazine/2016/10/24/moonlight-undoes-our-expectations>; David Sims, *Moonlight Is a Film of Uncommon Grace*, ATLANTIC (Oct. 26, 2016), <https://www.theatlantic.com/entertainment/archive/2016/10/moonlight-barry-jenkins-review/505409/>; Peter Travers, *'Moonlight' Review: Story of African American Boy Growing Up Is a Gamechanger*, ROLLING STONE (Oct. 19, 2016), <http://www.rollingstone.com/movies/reviews/peter-travers-moonlight-movie-review-w444552>.

268. Cara Buckley, *Naomie Harris Explains How 'Moonlight' Avoided Crack Addict Stereotypes*, N.Y. TIMES (Dec. 16, 2016), <https://www.nytimes.com/2016/12/16/movies/naomie-harris-moonlight-avoided-addict-stereotypes.html>. Harris initially turned down the role then later changed her mind. Paula Rogo, *'Moonlight's' Naomie Harris on Why She Was Hesitant to Take a Role in This Powerful Movie*, ESSENCE (Feb. 5, 2017), <http://www.essence.com/celebrity/naomie-harris-hesitant-moonlight-role> (Harris said: "I feel that there are enough negative portrayals of women in general, and Black women in particular. [] I grew up with this really strong mother—really intelligent, powerful, independent—and I've always admired her. She was part of a group of strong, powerful women as well. I very rarely saw those women represented then. So I initially said no to the role.").

269. See Boylorn, *supra* note 239. Comparing Paula with her antithesis in the movie, Teresa, who acts as a surrogate mother to Chiron, Boylorn observes: "Chiron's mother lacks the depth, until the end, to mark her as anything other than a bad mother." *Id.*

270. Other examples of the nurturing, childless mother figure include Rose in *Fences*, a role for which Viola Davis also received a Supporting Actress nomination in 2017, and Ms. Rain, the kind social worker played by Paula Patton in *Precious*. *FENCES* (Paramount Pictures 2016); *PRECIOUS* (Lionsgate 2009).

271. Of course, there are some examples of good Black mothers in popular culture, including Julia, Claire Huxtable, the mother from *Good Times* and, sometimes, Bow on *Black-ish*. *Good Times* (Tandem Productions 1974–1979); *Black-ish* (ABC Studios 2014–).

they perform, specifically, breastfeeding, are simply not necessary to good child rearing.

The bad Black mother stereotype in popular culture²⁷² sometimes bleeds into news media, making fictional stereotypes appear real. For example, in 2009, the well-publicized child abuse inflicted by Black mother Antoinette Nicole Davis on her five-year old daughter Shaniya echoed the brutality brought so convincingly to life on the screen in the same year by Mo’Nique.²⁷³ Officers charged Davis with child sex trafficking after they found Shaniya’s body on a North Carolina road.²⁷⁴ In response, political commentator Melissa Harris Perry observed:

In a country with tens of thousands of missing and exploited children, it is not accidental that the abuse and murder of Shaniya Davis captured the American media cycle just as Precious opened. The sickening acts of Shaniya’s mother become the story that underlines and makes tangible, believable, and credible the jaw-dropping horror of Mo’Nique’s character.²⁷⁵

Perry’s comments explain how fiction and reality become unified in individuals’ minds, allowing stereotypes to do the work of supporting and promoting political and social viewpoints—in this case, Black women’s criminality and, in others, their decision not to breastfeed.

Good Black mothers are largely absent from popular images of good parenting. Denene Millner explains:

Pick up any parenting journal of record; rarely will one see an image of a black mom tending to and loving on her children, much less participating in any kind of discussion on ordinary motherly concerns like teething or breast-feeding. Instead, chroniclers of modern family life tend to see little value in our voices and experiences outside of a racial context rooted in the effects of poverty or black-on-black crime on our kids or how we processed Trayvon Martin’s death. Society, in turn, perpetuates the idea that we’re all poor, strict disciplinarian, welfare-sapping single moms with no men to speak of and kids we barely love, who are destined for prison or early graves.²⁷⁶

272. Even positive portrayals of Black women, however, suggest that they must sacrifice good mothering for success. See *HIDDEN FIGURES* (20th Century Fox 2016) (depicting Katherine G. Johnson (Taraji P. Henson), Dorothy Vaughan (Octavia Spencer), and Mary Jackson (Janelle Monae)); *Black-ish*, *supra* note 271 (featuring Rainbow Johnson (Tracie Ellis Ross)); *Empire* (20th Century Fox Television 2015–) (portraying the complicated parenting of Cookie Lyon (Taraji P. Henson)). Other portrayals of strong Black women suggest that they must abdicate parenting altogether. See *Scandal* (ABC Studios ShondaLand 2012–) (Olivia Pope (Kerry Washington)); *How to Get Away with Murder* (ABC Studios ShondaLand 2014–) (Annalise Keating (Viola Davis), whose dedication to her work results in a devastating miscarriage); *The Walking Dead* (AMC Studios 2010–) (Michonne (Danai Gurira)).

273. *Mother Pleads Guilty in Shaniya Davis’ Death*, WRAL (Oct. 18, 2013), <http://www.wral.com/mother-pleads-guilty-in-shaniya-davis-death/13011614/>.

274. *Id.*

275. Harris-Perry, *supra* note 193.

276. Millner, *supra* note 126.

The dearth of images of Black women breastfeeding negatively affects a range of individuals, from health professionals to Black women themselves.

Although Latinx also do not see themselves reflected in breastfeeding promotional materials, this lack of representation does not play an important role in determining their breastfeeding rates. This is likely because they have cultural support for the practice and need not overcome the legacy of slavery and subsequent structural barriers to breastfeeding that Black women face.

In hospital and clinical settings, Black women often receive inadequate information or support for breastfeeding, leading them to choose formula feeding initially or abandon attempts to nurse prematurely.²⁷⁷ In an extreme example of this, misinformation about breastfeeding given to young single Black mother Tabitha Walrond led to the death of her seven-week old son Isaac.²⁷⁸

Most low-income Black neighborhoods are “first food” deserts that offer little to no resources for breastfeeding mothers. Grassroots organizations like La Leche bypass them and most city and state-run programs overlook them.²⁷⁹ Even in mixed race neighborhoods where assistance is available, informational materials systematically fail to include Black women.²⁸⁰

To combat the lack of positive images in media and popular culture and the manipulative messaging of the formula companies, a group of Black mothers created a blog and Facebook page, Black Women Do Breastfeed. The organization’s mission is to “mak[e] the community of Black women breastfeeding visible.”²⁸¹ The site supplies information about lactation groups for families of color, serves as a forum for questions, and provides a platform for breastfeeding Black women to share their pictures, stories, benchmarks, and accomplishments. Other advocates have produced informational books and materials specifically

277. Ulen, *supra* note 124.

278. Tyler died after doctors sent her home from the hospital without warning her that previous surgery and childbirth complications could lead to an inadequate milk supply. Nina Bernstein, *Mother Convicted in Infant’s Starvation Death Gets 5 Years’ Probation*, N.Y. TIMES (Sept. 9, 1999), <http://www.nytimes.com/1999/09/09/nyregion/mother-convicted-in-infant-s-starvation-death-gets-5-years-probation.html>; Freeman, *supra* note 20, at 3053–56.

279. Ulen, *supra* note 124.

280. Ulen, *supra* note 124.

281. BLACK WOMEN DO BREASTFEED, <https://blackwomendobreastfeed.org/> (last visited July 30, 2018); see also Nicole Sandiford, *The Facebook Page that Proved Black Women Do Breastfeed*, MOMS RISING (Feb. 12, 2015), <https://www.momsrising.org/blog/the-facebook-page-that-proved-black-women-do-breastfeed>.

targeted at Black women.²⁸² Nonetheless, Black women generally continue to lack role models for breastfeeding.

Celebrity mothers represent a potential source of positive role models. In the age of TMZ and Us Weekly, these women undergo close scrutiny and wide imitation of their parenting styles. While White mothers have many celebrity role models to validate their choice to breastfeed, including Pink, Angelina Jolie, Jennifer Garner, Gwen Stefani, and Alyssa Milano, there are few Black mothers who publicly advocate breastfeeding.²⁸³ Thandie Newton of *Westworld* and Kandi Burruss of *Real Housewives of Atlanta* have posted breastfeeding selfies, and Serena Williams has engaged in online conversation about it. Although celebrity news outlets reported that Beyoncé nursed her daughter Blue Ivy while eating on a New York restaurant's patio in 2012, there was no documentation of the occurrence.²⁸⁴ Nonetheless, Beyoncé's highly public celebration of her motherhood and pregnancy may contribute to more positive attitudes toward Black motherhood.²⁸⁵

Beyoncé announced her pregnancy on February 1, 2017 with a beatific Instagram picture of herself in lingerie with a sheer veil over her head against a backdrop of flower wreaths. The picture's caption read: "We would like to share our love and happiness. We have been blessed two times over. We are incredibly grateful that our family will be growing by two, and we thank you for your well wishes.—The Carters."²⁸⁶ The post broke the record for most-liked photo on Instagram.²⁸⁷ Experts set about analyzing the picture, with Phillip Prodger, head of photographs at London's National Portrait Gallery in London, declaring that "[i]t's a wonderfully clever blend of references, showing Beyoncé as a Renaissance Madonna . . . With its arched garland of roses, it calls to mind one of my favorite paintings, the famous 'Madonna in a Rose Garden' painted by Martin Schongauer in Colmar, Alsace, in 1473."²⁸⁸

282. See generally KATHERINE BARBER, *THE BLACK WOMAN'S GUIDE TO BREASTFEEDING: THE DEFINITIVE GUIDE TO NURSING FOR AFRICAN AMERICAN MOTHERS* (2005).

283. *Id.*

284. See, e.g., Ann Pride, *Breast Milk Is Best for Beyoncé! Singer Spotted Feeding Newborn Blue Ivy in Public*, DAILY MAIL (Mar. 1, 2012), <http://www.dailymail.co.uk/tvshowbiz/article-2108734/Beyonce-spotted-breastfeeding-baby-Blue-Ivy-Carter-public.html>.

285. *Beyoncé's Instagram Pregnancy Photo Sets Record with Millions of Likes*, FOX NEWS (Feb. 2, 2017), <http://www.foxnews.com/tech/2017/02/02/beyonces-instagram-pregnancy-photo-sets-record-with-millions-likes.html>.

286. Maane Khatchaturian, *Beyoncé Announces She's Pregnant with Twins*, VARIETY (Feb. 1, 2017, 11:10 AM), <http://variety.com/2017/music/news/beyonce-pregnant-twins-photo-1201975568/>.

287. *Id.*

288. Olivier Laurent, *A Portrait Expert Analyzes Beyoncé's Pregnancy Photos*, TIME: LIGHTBOX (Feb. 2, 2017), <http://time.com/4657982/beyonce-pregnant-2017-photo-analysis/>.

One month after giving birth to the twins, on July 14, 2017, Beyoncé posted another stunning image on Instagram, introducing Sir Carter and Rumi to the world, and breaking her own Instagram record.²⁸⁹ The picture echoed the first one, as Beyoncé posed with the twins before a wreath of roses, in a flowing flowered dress and long sheer veil. The backlash against these joyous images provides evidence of the tenacity of the bad Black mother trope.²⁹⁰ White Twitter users accused Beyoncé of using her children to maintain her brand and daring to compare herself to the Madonna.²⁹¹ In contrast, White celebrity mothers who celebrated their twins and babies on national magazine covers received overwhelmingly positive responses.²⁹²

Even presumably well-intentioned embraces of Beyoncé's vision of strong Black motherhood have fallen back on derisive tropes. For example, at the 2017 Grammys, award-winning singers and self-professed Beyoncé fans Adele and Faith Hill expressed their desire for Beyoncé to be their "mommy."²⁹³ This evocation of slavery's Mammy myth, directed at arguably the most influential Black woman in the United States, at the music industry's largest event of the year, reinforced the White vision of Black mothers' proper role as nurturers of White children.²⁹⁴

The next Part explores how constitutional protection and principles might increase breastfeeding rates in Black communities. It also takes on some of the controversies surrounding this issue.

289. Steph Harmon, *Beyoncé Publishes Photo of Her Twins on Instagram*, *GUARDIAN* (July 14, 2017, 3:25 PM), <https://www.theguardian.com/music/2017/jul/14/beyonce-photo-twins-instagram-sir-carter-rumi>.

290. See Kellee Terrell, *The Beyoncé Twins Backlash Proves Black Mothers Can't Get a Break*, *HARPER'S BAZAAR* (July 19, 2017), <https://www.harpersbazaar.com/culture/features/a10329274/beyonce-twins-instagram-photo-backlash/>; Amy Roberts, *Beyoncé's Baby Photoshoots Aren't the Problem, You Are*, *BUSTLE* (July 14, 2017), <https://www.bustle.com/p/beyonces-baby-photoshoots-arent-the-problem-you-are-70309>.

291. See, e.g., Jonny Harvey (@JonnyHarvey3), *TWITTER* (July 14, 2017, 1:57 AM), https://twitter.com/jonny_harvey3/status/885785240400211968 ("Using your newborn children as a brand maintenance/pr exercise tool is so tacky #beyoncetwins."); Haiden (@newyorkscripts), *TWITTER* (July 14, 2017, 12:10 AM), <https://twitter.com/newyorkscripts/status/885758271042330628> ("[B]eyonce is essentially a more talented version of the Kardashians . . . in terms of her over the top shenanigans and lust for media attention."); Lisa (@LittleLisaUSA), *TWITTER* (July 14, 2017, 12:48 AM), <https://twitter.com/LittleLisaUSA/status/885767955362926592> ("Attention starved any? Whatever happened to keeping some mystery? I have Beyoncé burnout.").

292. See Terrell, *supra* note 290; Danielle Kwateng-Clark, *The Beyoncé Pregnancy Backlash Is Unwarranted*, *ESSENCE* (Feb. 4, 2017), <https://www.essence.com/culture/beyonce-pregnancy-backlash/>.

293. Millner, *supra* note 126.

294. Millner, *supra* note 126.

III. FRAMING THE PROBLEM AND POTENTIAL SOLUTIONS

This Part examines how constitutional principles can frame the problem of low breastfeeding rates in the Black community and provide a strong imperative to implement solutions. It then briefly confronts some feminist critiques of breastfeeding promotion and centers the problem as one of racial and health justice. Finally, it outlines a blueprint for systemic reform.

A. CONSTITUTIONAL PROTECTION OF BREASTFEEDING

Perhaps the most effective way to ensure universal protection for breastfeeding in the United States would be to add a positive right to health or to healthy food to the Constitution that would encompass the right to breastfeed.²⁹⁵ This is an unlikely development, however. Although some countries include positive rights such as these in their constitutions,²⁹⁶ the United States has always relied solely on the Bill of Rights and the structure of the document to ensure individual liberties.

Nonetheless, in 1997, in *Dike v. School Board*, the Fifth Circuit held breastfeeding to be a constitutional right protected by Fifth Amendment due process.²⁹⁷ The court stated:

Breastfeeding is the most elemental form of parental care. It is a communion between mother and child that, like marriage, is “intimate to the degree of being sacred.” Nourishment is necessary to maintain the child’s life, and the parent may choose to believe that breastfeeding will enhance the child’s psychological as well as physical health. In light of the spectrum of interests that the Supreme Court has held specially protected we conclude that the Constitution protects from excessive state interference a woman’s decision respecting breastfeeding her child.²⁹⁸

This holding heralds the potential for wider protection of mothers’ rights to breastfeed which could, in turn, lead to positive policy changes and greater social acceptance of breastfeeding.

295. Ghana’s constitution provides for “nursing pauses of one hour during the working hours for women to nurse her baby up to the baby’s first year of age.” See INT’L LABOR ORG., NATIONAL LABOUR LAW PROFILE: GHANA (2006), http://www.ilo.org/ifpdial/information-resources/national-labour-law-profiles/WCMS_158898/lang--en/index.htm.

296. For example, Brazil’s Constitution endows citizens with the right to health care, El Salvador’s Constitution grants the right to education, and South Africa’s Constitution includes the right to housing. See Octavio L. M. Ferraz, *Harming the Poor Through Social Rights Litigation: Lessons from Brazil*, 89 TEX. L. REV. 1643 (2011); Christopher Jeffords, Constitutional Environmental Human Rights: A Descriptive Analysis of 142 National Constitutions (Jan. 21, 2013) (unpublished manuscript) (on file with author); UNITED NATIONS, RETHINKING POVERTY: REPORT ON THE WORLD SOCIAL SITUATION 2010 (2009), <http://www.un.org/esa/socdev/rwss/docs/2010/fullreport.pdf>.

297. *Dike v. Sch. Bd. of Orange Cty., Fla.*, 650 F.2d 783, 786 (5th Cir. 1981); see also Danielle M. Shelton, *When Private Goes Public: Legal Protection for Women Who Breastfeed in Public and at Work*, 14 LAW & INEQ. 179, 192–96 (1996).

298. *Dike*, 650 F.2d at 787 (citations omitted) (quoting *Griswold v. Connecticut*, 381 U.S. 479, 486 (1965)).

If the Supreme Court considered and adopted the Fifth Circuit's holding in *Dike*, the courts would have to subject any laws, policies, or government practices that restrict breastfeeding to strict scrutiny, the most exacting level of review.²⁹⁹ For example, under this standard, women could challenge welfare laws that force nursing mothers to leave the home to work, or exemptions to breastfeeding accommodation laws for small businesses. The burden of proving that Welfare-to-Work³⁰⁰ or small workplace accommodations exemptions represent the least restrictive method of achieving a compelling government interest would be difficult at best and would likely lead to their invalidation.³⁰¹

The Court, however, has been reluctant to extend the list of fundamental rights arising under substantive due process. This is due, in part, to the lack of textual grounding in the Constitution for these rights.³⁰² Presently, due process definitively applies to opposite-sex marriage and contraception. Other rights related to family and medical treatment receive more limited protection.³⁰³ Nonetheless, the Court might consider adopting the 'undue burden' standard, applicable to laws restricting abortion, for breastfeeding.³⁰⁴ Under this standard, courts would invalidate any laws or state practices that put an undue burden on a woman's right and ability to breastfeed.³⁰⁵

Abortion and breastfeeding rights share the objective of seeking to protect women's control over their own bodies, and women's abilities to make intimate parenting decisions free from government interference. Yet it may be ill-advised to tie these rights together because abortion rights are highly contested, constantly under attack, and evocative of deeply religious views.³⁰⁶ In contrast, breastfeeding is relatively uncontroversial. It might therefore be more strategic to compare it to contraceptive rights, which also concern a woman's right to control over

299. See, e.g., *Reno v. Flores*, 507 U.S. 292, 302 (1993) (citing substantive due process cases).

300. *Temporary Assistance to Needy Families*, 42 U.S.C. §§ 601 *et seq.* (1996).

301. Strict scrutiny is often said to be "strict in theory but fatal in fact." *Adarand Constructors, Inc. v. Peña*, 515 U.S. 200, 237 (1995).

302. See, e.g., *Griswold*, 381 U.S., at 527 (Stewart, J., dissenting); *Roe v. Wade*, 410 U.S. 113, 221 (1973) (White, J., dissenting); *Troxel v. Granville*, 530 U.S. 57, 91 (2000) (Scalia, J., dissenting).

303. See generally *Loving v. Virginia*, 388 U.S. 1 (1967); *Zablocki v. Redhill*, 434 U.S. 374 (1978); *Turner v. Safley*, 482 U.S. 78 (1987); *Moore v. City of E. Cleveland*, 431 U.S. 494 (1977); *Vill. of Belle Terre v. Boraas*, 416 U.S. 1 (1974); *Michael H. v. Gerald D.*, 491 U.S. 110 (1989); *Griswold*, 381 U.S. at 479; *Cruzan v. Dir., Mo. Dep't of Health*, 497 U.S. 261 (1990); *Washington v. Glucksberg*, 521 U.S. 702 (1997); *Vacco v. Quill*, 521 U.S. 793 (1997).

304. See generally *Planned Parenthood v. Casey*, 510 U.S. 1309 (1994) (strict scrutiny requires the government to demonstrate that a law or act is necessary to achieve a compelling government interest).

305. *Id.*

306. See, e.g., Stephanie Russell-Kraft, *The Right to Abortion—and Religious Freedom*, ATLANTIC (Mar. 3, 2016), <https://www.theatlantic.com/politics/archive/2016/03/abortion-rights-a-matter-of-religious-freedom/471891/>.

parenting and her body but are not subject to the virulent objections that confront even limited attempts to expand abortion rights.³⁰⁷ Further, although there are some religious objections to contraception, there are none to breastfeeding.

Even though substantive due process rights have the potential to protect women generally from laws and practices that discourage breastfeeding, they do not reach the problem of racial disparities in breastfeeding rates. Accordingly, the Thirteenth and Fourteenth Amendments, enacted specifically to eliminate the vestiges of slavery and ensure racial equality, are more likely candidates to reduce or eliminate these disparities. Current constitutional jurisprudence, however, presents significant challenges to putting them to this use.

Under the most recent interpretations of the Fourteenth Amendment, the Equal Protection Clause almost never provides protection for individuals from harms that arise from facially neutral laws, policies, or practices.³⁰⁸ Instead, proof of discriminatory purpose is essential for redress.³⁰⁹ Realistically, it is extremely unlikely that any discoverable evidence exists to establish this purpose. For example, it would be difficult, if not impossible, to prove that the USDA distributes free formula to low-income women through the WIC program with the specific intent of preventing Black women from breastfeeding. The courts would therefore not find a discriminatory purpose behind this policy, unless they determined that no other explanation for this action is possible.³¹⁰ Accordingly, any such challenge would receive rational basis review, virtually guaranteeing that the practice would stand as constitutional.

The intersectional nature of the injury of low breastfeeding rates among Black women might also make it possible to challenge harmful laws and practices as sex discrimination.³¹¹ Discrimination on the basis of sex receives intermediate review.³¹² Despite this being a lower standard of review than strict scrutiny, which applies to analyses of racial discrimination, plaintiffs claiming sex discrimination must still show that the government acted because of, not merely in spite of, the

307. See generally *Griswold*, 381 U.S. at 479; *Eisenstadt v. Baird*, 405 U.S. 438 (1972); *Carey v. Population Servs. Int'l*, 431 U.S. 678 (1977).

308. See, e.g., *Washington v. Davis*, 426 U.S. 229 (1976); *McClesky v. Kemp*, 481 U.S. 279 (1987).

309. *Davis*, 426 U.S. at 243.

310. See generally *Yick Wo v. Hopkins*, 118 U.S. 356 (1886); *Gomillion v. Lightfoot*, 364 U.S. 339 (1960).

311. Intersectionality refers to oppression that occurs simultaneously on two or more axes. Kimberle Crenshaw, *Mapping the Margins: Intersectionality, Identity Politics, and Violence Against Women of Color*, 43 STAN. L. REV. 1241, 1244 (1993); see also Angela Harris, *Race and Essentialism in Feminist Legal Theory*, 42 Stan. L. Rev. 581 (1990).

312. See generally *Craig v. Boren*, 429 U.S. 90 (1975).

discriminatory effect of its action.³¹³ It is therefore no more likely to result in positive change.

It is possible, however, that a future Court will expand Fourteenth Amendment protection by allowing plaintiffs to prove discriminatory treatment through the use of statistics.³¹⁴ This approach would acknowledge and account for the fact that much discriminatory behavior is not the product of racial malice, but of inequalities entrenched in our legal system and institutions since slavery.³¹⁵ Moreover, even when it is possible to trace discrimination to individuals' behavior, implicit or unconscious bias, as opposed to explicit or intentional desire to harm, may have driven it.³¹⁶ It is the impact, not the source or motivation, of the discrimination that matters. Regardless of the type of discrimination, the law must provide a path to eradicate or compensate for it. In this case, the Thirteenth Amendment might prove more useful to accomplish that task.³¹⁷

The Thirteenth Amendment applies more broadly than the Fourteenth Amendment because it is not limited to redressing state action.³¹⁸ It also does not require a plaintiff to prove discriminatory intent. Nonetheless, the Court has consistently limited its application.³¹⁹ In theory, Thirteenth Amendment protection extends beyond pure slavery,³²⁰ to include “badges and incidents of slavery” in addition to “vestiges” and “relics” of slavery.³²¹

Low breastfeeding rates in the Black community, which trace directly back to practices established during slavery, represent an

313. See generally *Pers. Admin. of Mass. v. Feeney*, 442 U.S. 256 (1979).

314. See, e.g., Melissa Whitney, *The Statistical Evidence of Racial Profiling in Traffic Stops and Searches: Rethinking the Use of Statistics to Prove Discriminatory Intent*, 49 B.C. L. REV. 263 (2008).

315. *Id.*

316. See generally Charles R. Lawrence III, *The Id, the Ego and Equal Protection: Reckoning with Unconscious Racism*, 39 STAN. L. REV. 317 (1987); Robin Lenhardt, *Understanding the Mark: Race, Stigma, and Equality in Context*, 79 N.Y.U. L. REV. 803 (2004); Linda Hamilton Krieger, *The Content of Our Categories: A Cognitive Bias Approach to Discrimination and Equal Employment Opportunity*, 47 STAN. L. REV. 6 (1995).

317. For a full analysis of the Thirteenth Amendment's application to food oppression, see Andrea Freeman, *The Thirteenth Amendment, Welfare Reform, and Dietary Control*, forthcoming manuscript (on file with author).

318. The Fourteenth Amendment begins “No state shall” and requires state action, but the Thirteenth Amendment simply prohibits slavery and involuntary servitude. Compare U.S. CONST. amend. XIV, with U.S. CONST. amend. XIII.

319. See Alexander Tsesis, *Into the Light of Day: Relevance of the Thirteenth Amendment to Contemporary Law*, 112 COLUM. L. REV. 7 (2012).

320. In modern times slavery includes sex trafficking, human trafficking, and other forms of forced labor. See Shaheen P. Torgoley, *Trafficking and Forced Prostitution: A Manifestation of Modern Slavery*, 14 TUL. J. INT'L & COMP. L. 553 (2006).

321. *Civil Rights Cases*, *supra* note 30, at 3; *Jones v. Alfred H. Mayer Co.*, 392 U.S. 409, 440–43 (1968).

enduring “incident” and “vestige” of slavery.³²² Therefore, although Thirteenth Amendment jurisprudence does not presently offer a practical way of altering current practices through the courts, it nonetheless provides a constitutional principle upon which the dismantling of official obstacles to Black women breastfeeding should stand.³²³ Further, constitutional rights provide a strong basis around which to educate and organize, potentially mobilizing a powerful social movement.³²⁴

B. BREASTFEEDING CONTROVERSIES

Despite the overwhelming and nearly undisputed medical and scientific evidence that breast milk provides better nutrition for infants than formula and enduring health benefits for mothers and children, there are many vocal opponents of breastfeeding promotion.³²⁵ The issue of breastfeeding centers motherhood in a way that can obfuscate the importance of women’s other societal roles. From a feminist perspective, facilitating and encouraging breastfeeding can appear to oppress women, seeking to keep them out of the workforce, hidden in the home, and tied to an infant’s erratic and unpredictable feeding schedule. There is merit to this argument in the context of a society that fails to support breastfeeding and often requires women to choose between work and family. Moreover, obstacles to “having it all” as a mother hit women of color hardest because many of them earn less pay, work longer hours and more jobs, live in segregated communities, go to schools with fewer resources, experience employment discrimination, and suffer from over-surveillance and criminalization.

Nonetheless, promoting breastfeeding, particularly for Black women, is an act designed to further racial justice. Good health strengthens communities, raising up everyone. That said, to be effective, breastfeeding advocates should not direct their efforts toward individual

322. Freeman, *supra* note 317.

323. See, e.g., David Lyons, *Constitutional Principles*, 92 B.U. L. REV. 1237, 1238–39 (2012) (discussing principles that are not in the constitutional text but embody its meaning).

324. Jamal Greene, *Thirteenth Amendment Optimism*, 112 COLUM. L. REV. 1733 (2012).

325. See, e.g., SUZANNE BARSTON, BOTTLED UP: HOW THE WAY WE FEED BABIES HAS COME TO DEFINE MOTHERHOOD, AND WHY IT SHOULDN’T 126 (2012); JOAN B. WOLF, IS BREAST BEST? TAKING ON THE BREASTFEEDING EXPERTS AND THE NEW HIGH STAKES OF MOTHERHOOD 16, 21–31 (2011). See generally MADELEINE MORRIS & SASHA HOWARD, GUILT-FREE BOTTLE FEEDING: WHY YOUR FORMULA-FED BABY CAN BE HAPPY, HEALTHY AND SMART (2014); AMY TUTUER, PUSH BACK: GUILT IN THE AGE OF NATURAL PARENTING (2016); Hanna Rosin, *The Case Against Breast-Feeding*, ATLANTIC (Apr. 2009), <https://www.theatlantic.com/magazine/archive/2009/04/the-case-against-breast-feeding/307311/> (conceding that breastfeeding does provide the most health benefits, but arguing that the benefits are not so overwhelming as to justify the demonization of formula, and contending that it does not prevent obesity in children, as found in M.L. Hediger, et al., *Association Between Infant Breastfeeding and Overweight in Young Children*, 285 J. AM. MED. ASS’N 19 (2001)).

women. Instead, their goal must be structural, aimed at reforming law, policy, and social inequality. They should seek to shed light on the institutionalized, systemic obstacles to breastfeeding in Black communities and the lingering stereotypes that make these obstacles falsely appear to be personal choices or failings. Energy spent criticizing breastfeeding supporters can best be redirected toward lobbying and other acts of political activism designed to support parents in the workplace.

Some authors suggest that the disparate rise in White breastfeeding is the product of an individualist, child-centric perspective on parenting called intensive mothering.³²⁶ They contend that breastfeeding under this model, conducted primarily by White, middle class women who seek to give their children the best of everything, can be a detached and unfulfilling experience.³²⁷ Black women, they theorize, consciously reject the intensive mother ideal. They acknowledge the benefits of breastfeeding but also recognize the formidable barriers that society places in their way. Instead of breastfeeding, they focus on the positive aspects of sharing child-rearing and caring duties with others such as siblings and extended family.³²⁸

Regardless of how individual women feel, however, the fact remains that many Black women lack the opportunity to make a genuine choice about whether or not they will breastfeed.

C. STRATEGIES FOR REFORM

Hospitals located in Black neighborhoods should implement baby-friendly practices,³²⁹ including rooming infants and mothers together. They should offer lactation guidance and support around the clock, with

326. See generally SHARON HAYS, *THE CULTURAL CONTRADICTIONS OF MOTHERHOOD* (1996); JUDITH WARNER, *PERFECT MADNESS: MOTHERING IN THE AGE OF ANXIETY* (2005).

327. Orit Avishai, *Managing the Lactating Body: The Breast-Feeding Project and Privileged Motherhood*, 30 *QUALITATIVE SOC.* 135, 145–46, 149–50 (2007).

328. See generally LINDA M. BLUM, *AT THE BREAST: IDEOLOGIES OF BREASTFEEDING AND MOTHERHOOD IN THE CONTEMPORARY UNITED STATES* (1999).

329. Baby-friendly practices require hospitals to: (1) communicate a written breastfeeding policy routinely to all health care staff; (2) train all health care staff in the skills necessary to implement this policy; (3) inform all pregnant women of the benefits of breastfeeding; (4) help mothers initiate breastfeeding within one hour of birth; (5) show mothers how to breastfeed and how to maintain lactation, even if the hospital separates them from their infants; (6) give infants no food or drink other than breast milk, unless medically indicated; (7) practice rooming in—allow mothers and infants to remain together twenty-four hours a day; (8) encourage breastfeeding on demand; (9) give no pacifiers or artificial nipples to breastfeeding infants; (10) foster the establishment of breastfeeding support groups and refer mothers to them upon discharge from the hospital or birth center. BABY FRIENDLY USA, INC., *THE BABY-FRIENDLY HOSPITAL INITIATIVE: GUIDELINES AND EVALUATION CRITERIA FOR FACILITIES SEEKING BABY-FRIENDLY DESIGNATION* (2010), <https://www.babyfriendlyusa.org/get-started/the-guidelines-evaluation-criteria>.

formula available only as a last resort. Pediatricians should similarly provide lactation support, dispense formula only when medically necessary, and remove all forms of formula advertising and marketing from their offices. Their walls should display pictures of Black women breastfeeding. Health and Human Services should fund and staff clinics for new mothers in Black neighborhoods.

Workplace accommodation laws for nursing parents should apply to every type of employment, regardless of size, and cover both full and part time employees. These laws should require employers to provide sufficient break time, privacy, and access to proper refrigeration. The Family and Medical Leave Act should mandate paid maternity leave up to one year with a guaranteed position upon a mother's return. It should also provide for paternity leave. Non-working mothers should receive welfare benefits without conditions that require them to leave their home.

City, state, and federal laws, in addition to the Fifth Amendment, should protect mothers who need or wish to breastfeed in public. The United States should sign on to the WHO Ban on Advertising Breast Milk Substitutes and prohibit formula advertising to new mothers. The USDA should stop purchasing formula to distribute to women and children through the WIC program, or should do so only in small quantities for mothers who need it. The government and the American Association of Pediatrics should operate independently of the formula industry.

Norway provides an excellent model for how supportive laws and policies can increase breastfeeding rates. In Norway, an impressive ninety-nine percent of the country's new mothers breastfeed, with seventy percent still breastfeeding exclusively at three months.³³⁰ Norwegian law makes this possible by offering mothers the choice of receiving thirty-six months off from work at full pay, or forty-six weeks off at eighty percent of their salary. Additionally, public breastfeeding is both common and welcome.³³¹

Norwegian law prohibits formula advertising, and the culture discourages it. Images of baby bottles at baby showers or similar occasions are rare.³³² This comprehensive approach to breastfeeding

330. *Norway—The WHO Code and Breastfeeding: An International Comparative Overview*, AUSTRAL. GOV'T DEP'T OF HEALTH (May 3, 2012), <http://www.health.gov.au/internet/publications/publishing.nsf/Content/int-comp-whocode-bf-init-int-comp-whocode-bf-init-ico-int-comp-whocode-bf-init-ico-norway>.

331. Lizette Alvarez, *Norway Leads Industrial Nations Back to Breast-Feeding*, N.Y. TIMES (Oct. 21, 2003), <http://www.nytimes.com/2003/10/21/world/norway-leads-industrial-nations-back-to-breast-feeding.html>.

332. *Norway—The WHO Code and Breastfeeding*, *supra* note 330.

support makes breastfeeding possible for almost all women.³³³ However, importing this model from the largely homogenous country of Norway to the racially and socially stratified United States would present significant challenges.

CONCLUSION

In 1946, when Fred Klenner forever altered the lives of the four infants who came under his charge, he also opened the door to over a half-century of misleading, racially targeted marketing. Although the Fultz sisters always had each other, their contract with Pet Milk severed their relationship with their mother, echoing the legacy of separation of enslaved mothers and children. The Fultz girls' exile from their family occurred in the service of the formula industry and its quest to exploit the social realities of Black women. Their story serves as inspiration for legal and social reform. Constitutional principles, justice, and morality require steps toward the reforms outlined above to afford Black women the opportunity to nurse their children at will and eliminate the unacceptable disparities in breastfeeding rates that have persisted since slavery. It is time to tell a new story about Black motherhood.

333. Greek law similarly supports new mothers by offering them a number of options to reduce their time away from their infants, including: working an hour less every day without a salary reduction for thirty months after the end of their maternity leave; working two fewer hours a day without a salary reduction for the first year after their maternity leave ends and one hour less a day for six months after that; or extending maternity leave by three and a half months. Additionally, breastfeeding mothers in Greece can lawfully refuse to work at night until their children are age one, or can choose to receive leave with full pay. Charis Chairopoulos, *Employment and Employee Benefits in Greece: Overview*, PRAC. L. (Nov. 1, 2015), <http://us.practicallaw.com/5-620-5757?source=relatedcontent>; Yvette Manes, *What Are Breastfeeding Laws in Other Countries? A Breakdown of Nursing Around the World*, ROMPER (Oct. 3, 2016), <https://www.romper.com/p/what-are-breastfeeding-laws-in-other-countries-a-breakdown-of-nursing-around-the-world-19434>. Norwegian society, however, is less racially diverse than it the United States.