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Surviving the Velvet Hammer:
Analyzing the Criminalization of Working Class Mothers in a Neoliberal Context

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“Developing analyses of neoliberalism must ask how the many local alliances, cultural projects, nationalist agendas, and economic policies work together, unevenly and often unpredictably, rife with conflict and contradiction, to redistribute the world’s resources upward – money, security, healthcare, and mobility; knowledge and access to communication technologies; leisure, recreation, and pleasure; freedom – to procreate or not, to be sexually expressive or not, to work or not; political power – participatory access to democratic public life, and more...”

- Lisa Duggan, *The Twilight of Inequality?*

I. Introduction

In April of 2012 *New York Times* writer Ada Calhoun published a lengthy in-depth reporting piece that quickly gained traction within the online news community. The article, entitled “The Criminalization of Bad Mothers,” was featured on blogs, news sites, and social media forums, reaching a diverse pool of readers. *Buzzfeed*, the *Hairpin*, and the *Huffington Post* were among the many platforms who capitalized on the gripping headline, often starting a dialogue about the state of motherhood and pregnancy with their readers in comment sections and discussion boards. In the article Calhoun addresses the lived reality of a woman in Alabama who suffered the consequences of the state’s “chemical endangerment” law, which has been in effect in the state since 2006. After prematurely giving birth to her third child, who lived for only 19 minutes, the subject of the piece tested positive for methamphetamine. The mother was immediately enrolled in parenting classes and drug treatment, and was stripped of custody of her two older children.¹ The article focused on the specific chemical endangerment case, but also acknowledged the growing national trend of laws seeking to protect unborn fetuses and the implications those laws may have for mothers and pregnant women across the United States.

In the two years since the publication of Calhoun’s piece, the public interest in the issues her Alabama case raised has not seemed to wane in the least. In August of 2014 the popular magazine *The Nation* featured a discussion board among prominent women economists and scholars entitled “How to End the Criminalization of America’s Mothers.” In December of 2014 the same magazine published an article with the shocking headline “The State Where Giving Birth Can Be Criminal,” describing the reality in Tennessee after the state government passed new laws that criminalized drug use while pregnant. That same year the trendy online magazine *Slate* weighed in with a scathing report on the same type of legislation in Wisconsin. Coverage

¹ Calhoun, A. (2012, April 25). The Criminalization of Bad Mothers. *The New York Times*.

of and outrage over criminalized motherhood and pregnancy even appeared in mainstream media outlets, when the case of Shanesha Taylor, a mom arrested for leaving her two young children in her hot car during a job interview in Scottsdale, Arizona was featured on the *Today Show* in April of 2014.

As proven by the media's fascination with these women's stories, the arrests and criminalization of mothers and pregnant women is a subject that has the ability to capture audiences and media consumers in the United States. Cases and news stories that involve pregnant women and mothers capitalize on the national imaginary involving the sanctity of the role of mothers and the idealized notions that shape that imaginary. Going further, the criminalization of motherhood (manifested in things like forced intervention in childbirth, imprisonment, relinquishment of custody, etc.) and how it plays out through policy and media is an important subject for analysis in order to understand how far we as a society are willing to go in order to protect those idealized perceptions of pregnancy, child-bearing, and child-rearing. If the cultural understanding of motherhood in the United States is one that requires absolute selflessness and perfection, is that high cultural standard being imprinted onto our legal and mass media discourses? And if so, how?

II. Method

This project uses three case studies to explore this question. By interrogating the ways in which women are held to a higher standard of behavior when pregnant or mothering, I will show how these women are subsequently forced to endure much higher consequences for their actions. I will argue that those higher standards, and their corresponding consequences, are encoded into state and federal policy. Further, I will explore how the effects of those legislative policies intersect with media in the United States to show how factors outside the law itself have a role in propagating the criminalization of women based on their actions while pregnant, giving birth, or

mothering. By approaching these cases from an interdisciplinary perspective, I hope to reveal correlations between systems of media and policy that ultimately help to justify these practices. I aim to show that these systems do not operate in separate spheres of society, but in tandem with one another in order to maintain hegemonic cultural norms. In order to understand these women and their cases, it is imperative to understand the policies and laws at play, the cultural narratives being invoked, and the varied communities in which the cases occur. In addition to acknowledging these factors, I will argue that the media's role in reporting those cases is one that must also be acknowledged as having a discursive effect on the outcomes of these women's cases.

It would be remiss to approach a project concerning the criminalization of motherhood without an explicitly intersectional lens. By acknowledging these subjects' identities along lines of race and class, we can begin to question what roles those identities play in increasing or decreasing their likelihood to face the systems that enforce the criminalization of mothers. Previous work by feminist and legal scholars provides a framework for this intersectional approach. This work also gives important context to the issues of motherhood, criminalization, institutionalized racism, and the various means by which the state has historically controlled women's bodies in a wider context. By exploring these three cases through analysis of policy and media, this previous scholarship can be expanded upon in order to reveal the modern trends of women's criminalization and motherhood in a new context. By way of these case studies, I hope to trace the evolution of certain policies and media practices in order to unveil and understand any "new" means of control directed at and upon women's bodies.

To contextualize the subject, the project will begin with a brief overview of the theories and academic traditions that have previously been used to explain and predict the root causes and cultural implications of heavily policed motherhood. Applying theoretical frameworks that already exist to the media and policy analysis perspective will reveal continuities in scholarship

and cultural trends, as well as spaces for further investigation. I will draw from the academic traditions of critical race theory, critical and intersectional feminist theory, media studies, and identity politics to contextualize the case studies. After a brief introduction to these frameworks and their effectiveness in explaining relevant social phenomena, I will also periodically return to these theoretical points of view to provide insight into the specific cases and the women involved in them. In considering academic traditions in light of lived experiences, we can start to see the interconnectedness of academic theories and cultural norms, and how both provide a lens through which to understand women's lives, especially those explored analyzed through the three cases.

In order to show how the cultural phenomena of policed motherhood is one piece within a larger systems of modern social control and cultural hegemony, I will follow analysis of the specific cases with a wider-lensed analysis of neoliberalization in the period from the 1980s to the present. In this analysis, the intersection of media, cultural, political, and economic forces becomes clear, and I will argue that all of those systems have come to depend on the strict control of poor mothers for the realization of neoliberal visions like austerity, individualization, and globalization.

Although the national and global context of neoliberalization provides an important contextual framework for this study, this project includes three cases that all occurred in states throughout the southern United States, specifically. The decision to include only cases from states in the South was an intentional one, made to highlight the tendency of different forms of social control to play a bigger role in the social and political atmosphere in the region than it might in others. Although specific aspects of the criminalization of motherhood, like recent upticks in fetal personhood or fetal endangerment policy movements, can be found in many state legislatures across the United States, those aspects can be found in higher concentration in specifically Southern state legislatures. The reasons for this pattern are up to interpretation, and

are inevitably caught up in the many previously posed questions within academia concerning the elusive “Southern identity” and whether or not it persists in the modern day. But, for the purposes of this project, I argue that the social conservatism and patriarchal traditions that continue to color the South in its modern iterations provide a particularly fertile ground for the proliferation of hierarchical cultural politics. This ultimately makes the criminalization of those who the public deems “unfit” to mother one of the means by which to maintain those hierarchies. So, while the conclusion cannot be drawn that the phenomenon of criminalized motherhood is by nature a “southern” problem, the higher rate at which cases like those analyzed below happen in the American South compared to the nation writ large is a point of divergence that is definitely worth further consideration.

III. Theoretical Implications

There is no shortage of feminist scholarship focusing on the way motherhood and mothering shapes the lives of women in the United States. Feminist thought has, since its inception, complicated the notion of women’s essential and inherent contribution to society as the ability to reproduce bodies and propagate population growth. And, although one could (and many, in many different forums, have) make the argument that women’s lives in a modern context are much more “liberalized” or “free” from patriarchal standards about women’s reproductive justice than they have been in earlier historical contexts, many scholars in many disciplines have problematized this narrative of progress in terms of women’s bodily autonomy. The work of feminist scholars has served to systematically prove the reality of continued domination, control, and surveillance of women’s bodies justified based on their “sacred” ability to reproduce.

In order to prove that reality, scholars have traced the evolution of policy and law that targets the reproductive rights of women, showing how women’s bodies are continually defined through their potential for motherhood. This narrative reveals the historical tendency toward the

construction of women's bodies as places for political warfare in and of themselves. Studies of targeted regulations of abortion providers in the 40+ years since the legalization of abortion after the 1973 Supreme Court decision *Roe v. Wade* support this narrative, along with those that outline other, perhaps less publicized, forms of bodily control by way of patriarchal standards. Those policies run the gamut - from marriage incentives for female welfare recipients, to policies limiting access to family planning resources, to those which make way for the consistent slashing of state funding to social safety net institutions like Head Start, Medicare, and Medicaid. And these persistent policies all play a role in the continued bodily control of women by the state on a distinctly corporeal level. In a time when the liberal notions of equality and gender neutrality continue to characterize mainstream politics and media, these examples serve to disrupt the notion of steady and growing "progress" toward gender equality in the United States.

Observing these perpetuated norms from a policy outlook is important, but in the case of poor women who are mothers or are pregnant, the role of media and culture is an equally powerful component in the perpetuation of their oppression. Working in conjunction with the policy changes discussed above, media and cultural forces have inhabited a growing role in the increased policing of women and women's reproductive capacities. This role is less visible, less likely to be acknowledged as a material force acting on women's individual lives, but is just as powerful in its operation within those lives. There is perhaps no better example of the media's role in shaping the continued repression of women than the idealized notion of "motherhood" that has over the last 3-4 decades become a permanent cultural artifact imprinted on our public psyche.

The idealization of motherhood can be described as the elevation of the *idea* of the "mother" to the level of sanctity, essentially disseminating the cultural message that to participate in the culturally appropriate behaviors associated with mothering, or to give birth, is to be participating in the most important practice of the American society. This idealization, of

course, does not imply that the actual *mother* is elevated from a cultural standpoint into that same sacred space. In fact, the idealization of motherhood has simultaneously served to devalue the life of the mother at the expense of the mother's own quality of life. Feminist sociology and feminist theory draw this distinction, and a great deal of recent scholarship defines this divergence between "motherhood" and the "actual mother" as the fulcrum for the "mommy wars." The mommy wars are most often described as the cultural rift propagated by mainstream media between those who see motherhood idealized as stay-at-home mothers and those who see it idealized as working mothers who are able to balance a career and motherhood in the increasingly demanding world of individualized and liberalized family politics. The "mommy wars" have spawned countless books, opinion columns, and news publications weighing in on both sides of the issue. From the feminist sociologist perspective, the cultural construction of the mommy wars have simply served as the construction of a (relatively) new setting in which members of marginalized groups can participate in the practice of horizontal hostility. The term "horizontal hostility," coined by feminist scholars in the 1970's, is enacted through the members of a marginalized group through the enforcement of dominant codes of oppression onto members of the same group.² A form of cultural in-fighting, horizontal hostility theorizes the potential that marginalized groups have in propagating certain forms of oppression that the members of that group themselves suffer from.

In one of the most noteworthy academic attempts to trace the trajectory of the "mommy wars," feminist sociologists Susan Douglas and Meredith Michaels point out the ability of the media to justify and even provide spaces for horizontal hostility between women centered around the heightened status of motherhood in their 2004 book *The Mommy Myth: The Idealization of Motherhood and How it Has Undermined Women*. The authors define this cultural shift in terms

² Horizontal hostility. *The Diversity Dictionary*. Purchase College, State University of New York.

of what they call “The New Momism,” an idea that conflates the American media’s modern obsession with motherhood with modern mothers’ heightened awareness of their actions.³ They charge the “New Momism” with creating impossible-to-reach standards for motherhood that are constructed in direct contradiction to the lived realities of most American mothers. These ideas provide a convenient conception of idealized motherhood, and emphasize the ease with which that idealized notion is propagated through cultural means like the media. Douglas and Michaels draw on feminist traditions when defining this concept:

The “new momism” is a set of ideals, norms, and practices, most frequently and powerfully represented in the media, that seem on the surface to celebrate motherhood, but which in reality promulgate standards of perfection that are beyond your reach. The new momism is a direct descendent and latest version of what Betty Friedan famously labeled the “feminine mystique” back in the 1960’s. (229)

In this description, the authors definitively problematize the progress narrative of feminist politics, and reveal an arena in which control of women and women’s reproductive capacities are continuously and complicity controlled by multiple forces like the media despite the conception of modern and liberalized gender politics. Connecting with Friedan’s legacy, Douglas and Michaels provide a perspective on modern forms of patriarchal control when they define modern motherhood bluntly as a “psychological police state” (230), an activity that is constantly being monitored and critiqued. Those critiques come from many different voices (media, policymakers, etc.), but all perceive the institution of motherhood as a cause worthy of protection, even if that protection interferes with the sovereignty of the actual mother.

In approaching these ideas with intersectionality in mind, the exclusion of women of color and poor women from the new momism’s standards of motherhood is vital. The authors

³ Douglas, S., & Michaels, M. (2004). *The New Momism. The mommy myth: The idealization of motherhood and how it has undermined women*. New York: Free Press.

use humor and bluntness to get this point across, but do so aptly in stating, “At the same time that middle- and upper-middle-class mothers were urged to pipe Mozart into their wombs when they’re pregnant so their kids would turn out perfectly tuned, the government told poor mothers to get the hell out of the house and get to work – no more children’s aid for them” (237). Here we see the divisions of race and class being imprinted on mothers through these idealized standards of motherhood, with conservative policy changes and cultural messages serving as the vehicle for those divisions. With these considerations of identity comes the need to analyze more deeply the possibility for heightened surveillance and policing of mothers who do not fit the mold of the “idealized mother,” who is in the position to provide for her family all of the services and products that the new momism has deemed mandatory in the “proper” process of child-rearing.

Differences in identity along lines of race and class determine differences in the effects of systems like media and law in the lives of mothers. In this vein, the academic traditions of critical race theory and critical legal studies can provide a means to understand the reality of those mothers who face the culture of the new momism without enjoying the privileges provided through hegemonic systems of race and class. By providing an explanation of systemic inequalities through the structure of the legal system, critical legal studies as a field has the capacity to answer many questions about the ways seemingly “egalitarian” structures of criminal justice and corrective justice operate in ways that undermine equality while maintaining hierarchies of power that only benefit certain identities and not others.

In considering these theoretical frameworks in terms of the cases, the sociological idea of a psychological police state inevitably intersects with the state-backed and inherently physical police state. That police state is proven via critical legal studies to be an institution that maintains and enforces racial inequalities by way of disproportionate enactment of criminal justice on marginalized groups. In other words, poor women and women of color who are forced to interact

with the U.S. criminal justice system at higher rates are subject to a systems and norms which justify much greater state intervention into their private lives. But, as a result of the cultural sanctity of motherhood in general, they are simultaneously charged with surviving a type of imposition that is less formally encoded, but just as effective at disciplining and limiting behavior. In analyzing cases of criminalized motherhood that involve women who are not traditionally well-served by the American criminal justice system, we see how the psychological police state of modern mothering and the traditional police state imposed by the U.S. government intersect to create a precarious space in which these women are forced to live their lives and raise their children.

IV. The Case Studies:

Princess Beachem, 32

In November of 2013 Princess Beachem, a thirty-two year old black woman living in East Baton Rouge Parish, Louisiana was arrested two months after giving birth to a stillborn baby boy in September of the same year. According to crime reports, Beachem arrived at a Baton Rouge women's hospital on September 18 complaining of stomach pain during her pregnancy. During an exam, her doctor could not identify the heartbeat of the fetus and subsequently ordered an emergency cesarean section. After her seven-month old fetus was delivered stillborn, the EBR Parish Coroner ruled the baby's death a homicide, and swiftly contacted the Baton Rouge police. Soon after, homicide detectives arrived with a warrant. Beachem was questioned by the detective while still in intensive care, and disclosed to the police that she had bought and snorted powdered cocaine just a few days before her visit to Women's Hospital. Crime reports state that Beachem's drug use occurred "...because she was upset the baby's father broke up with her."⁴

Shortly after this incident, Princess Beachem was wanted by the Baton Rouge Police Department for one count of second-degree feticide.⁵ The charge reflected the Parish coroner, Dr. Beau Clark's ruling, stating definitively that Beachem's newly disclosed cocaine use alone was the cause of her baby's death. Clark cited the autopsy of the fetus in his report, claiming that the fetus had shown "no signs of developmental problems," proving that the baby's development was normal until the mother's use of drugs. After the toxicology test of the fetus tested positive for cocaine, Clark deemed its death a "placental feticide." In justifying his claim, the doctor cited

⁴ Mom wanted after doing cocaine, killing unborn child. WBRZ News 2 Louisiana: Baton Rouge, LA. (2013, November 13). www.wbrz.com.

⁵ Broussard, R. (2013, November 14). BRPD: Teen wanted in feticide after cocaine use. *The Advocate*. www.theadvocate.com.

the following effects of cocaine use on pregnancy and fetuses: “By ingesting cocaine when pregnant, it can cause the blood vessels to constrict and the placenta to abrupt or detach from the uterine wall. Once that happens, the nutrient supply from the mother that goes to the fetus is no longer attached and the fetus cannot survive.” With the coroner’s ruling came the charge for second-degree feticide. In the state of Louisiana, that charge is defined as follows:

Feticide is the killing of an unborn child by the act, procurement, or culpable omission of a person other than the mother of the unborn child. The offense of feticide shall not include acts which cause the death of an unborn child if those acts were committed during any abortion to which the pregnant woman or her legal guardian has consented or which was performed in an emergency as defined in R.S. 40:1299.35.12. Nor shall the offense of feticide include acts which are committed pursuant to usual and customary standards of medical practice during diagnostic testing or therapeutic treatment.⁶

After this charge was enacted, Beachem was found by police at her Iberia Street home and arrested on November 15, 2013. She was then kept in the East Baton Rouge prison, in lieu of a lofty \$100,000.00 bond.⁷

After almost ten days in prison, Princess Beachem was released because Louisiana State District judge Trudy White ruled that there was “no probable cause for Beachem to be held on the felony count.”⁸ White’s justification for rejecting the feticide charge was the state statute’s wording, which does not include actions by the expectant mother in its legal definition of the crime. White explained her ruling to the Baton Rouge newspaper *The Advocate* in saying, “it has to be a perpetrator other than the mother of the unborn child” when invoking the Louisiana

⁶ Subpart A-1: Feticide, R.S. 14:32.5. Louisiana State Legislature (2014).

⁷ Police arrest Baton Rouge woman for Feticide. (2013, November 18). www.nbc33tv.com.

⁸ Mustian, J. (2013, November 24). Feticide charge rejected by BR judge. *The Advocate*. www.theadvocate.com.

feticide statute. Even though White's ruling led to Beachem's release from jail and dismissal of her second-degree feticide charge, the judge assured press that her decision did not bar Baton Rouge authorities or prosecutors from pursuing other possible charges for the 32 year old mother.

Some individuals interviewed by *The Advocate* cited Louisiana's recognition of a fetus's personhood at twenty weeks as justification for a potential homicide charge after the failure of the feticide charge to hold up in court. If the legal definition of a person can be applied to Beachem's stillborn fetus, then her identity as the expectant mother would not serve as insulation from a potential homicide charge. Because Beachem's fetus was seven months old when it was born, advocates of fetus personhood find her "crime" of drug use during pregnancy as adequate footing for a new homicide charge. After Beachem's release, state detectives claimed that they would "go back to the drawing board" in order to investigate which charges, if any, could be made in order to criminalize Beachem's drug use during her pregnancy.⁸



Princess Beachem, 32
Baton Rouge Police Department
November 2013

Policy Analysis: Fetal Protection and Racialized Justice

Although the specific Louisiana policies, which led to the charges against Beachem, were previously examined in light of her case, it is important to take into account the growing trend of “fetal harm” legislation and policy decisions within a national context. Louisiana is not alone in its definition of personhood at twenty weeks, and it is among 38 states in the U.S. who have some form of “fetal homicide” legislation on the books. As the National Council of State Legislatures illuminates in their collective analysis of state’s fetal homicide legislation, these laws are not uniform in their approach to the rights of a fetus. While many seek to apply harsher sentencing on those who commit violent crimes against pregnant women, recent years have witnessed an uptick in a legislative trend of “feticide” laws, which assign “personhood” to fetuses earlier, and in turn establish a fetus and a mother as separate, and sometimes competing legal interests.⁹ It is this legislative shift that has made cases like Princess Beachem’s convoluted legal battles, often gaining the recognition and involvement of reproductive rights advocates and anti abortion advocates alike.

Significant legal attention has been paid to this peculiar American legal trend and its effect on the treatment of pregnant women within law and criminal justice. Although pregnant women have always been effectively singled out through codes of law, Andrew Murphy argues that recent trends that establish adversarial legal frameworks between fetuses and mothers are a distinctly modern phenomenon.¹⁰ Tracing the legal status of pregnant women and fetuses all the way back to the Code of Hammurabi and English Common Law, Murphy’s law review makes the historical lineage of these laws clear while identifying turning points in their application. One of those turning points is an abandonment of the “born alive” rule, or a legal precedent that

⁹ Fetal Homicide State Laws. (2013, February 1). *The National Conference of State Legislatures*.

¹⁰ Murphy, Andrew S. (2014) “A Survey of State Fetal Homicide Laws and Their Potential Applicability to Pregnant Women Who Harm Their Own Fetuses,” *Indiana Law Journal*: Vol. 89: Iss. 2, Article 8.

guided fetal legislation in the United States for many years. This rule deemed fetal death a homicide only when the fetus was born and survived independently from its mother before its death. But in 1984, decisions by the Supreme Court, changes in modern medicine, and a shift in the opinion of the general public collided and resulted in a new federal definition of homicide – including prenatal death and injury in the realm of homicide legislation. This shift was most obviously embodied in the passing of the Unborn Victims of Violence Act.

In 2004, the Unborn Victims of Violence Act (UVVA) became law at the federal level, which sought to “protect unborn children from assault and murder.”¹¹ This Act included what is known as a “maternal exception,” which excluded the fetus’s mother’s actions from the fetal homicide law and reified the law’s intent of enacting harsher punishments on those separate perpetrators who harm or murder pregnant women rather than enacting harsher punishments on the women themselves. However, this maternal exemption is not reflected in many state-level iterations of fetal protection laws. This breakdown between federal precedent and state legislation makes these laws vulnerable to localized political interests, who seek harsher criminalization of those expectant mothers who are believed to be “harming” their fetus. As Murphy explains,

Many of these state statutes, like the federal statute, included an express maternal exception. However, many states with fetal homicide statutes have not explicitly exempted pregnant women from prosecution under the statutes. As a result, women in some of these states may now be at risk for criminal prosecution because some prosecutors have proved willing to advocate for a broad interpretation of the statutes.¹⁰

Because the exemption of expectant mothers from these laws has been a rallying point for reproductive rights advocates since 1984, efforts to keep those explicit exceptions out of state-level fetal harm legislation have become an understood watermark of conservative state politics.

¹¹ The Unborn Victims of Violence Act of 2004, 18 U.S.C. §§ 113-296 (2004).

By leaving the definitions of fetal harm and feticide intentionally vague, state legislatures grant prosecutors the legal authority to turn laws meant to protect pregnant women *and* their fetuses from harm around and back onto the pregnant women and mothers *themselves*. This legal grey area has undoubtedly served as a veritable breeding ground for cases like Princess Bechem's. While the fact that thirty-eight states have adopted some form of fetal protection laws proves that the trend is nationwide and not regionalized, it is otherwise important to note that of those thirty-eight states, only twenty-three define the legally protected fetus in legislation at the earliest stages of pregnancy, which can make an expectant mother liable to fetal harm as early as "conception" or "fertilization." Of those twenty-three states, ten are located in the Southeast.⁹

In the wake of these changes to fetal protection legislation, some legal scholars have made the argument that, by not exempting expecting mothers from fetal harm laws, policymakers have created a clear means by which to deprive low-income pregnant women of "basic human rights."¹² This phenomenon could be due to multiple factors. One is the role that physicians now have in identifying fetal harm and who is responsible for it, a role that makes violations of the patient-physician relationship both conceivable and legally justified. Another is state intervention in the lives of poor women, which often results in the loss of legal rights that are otherwise enjoyed by all citizens. This legal argument points out the roles of race and class in determining how likely it is that an expectant mother will have to face the harsh penalties that accompany fetal harm legislation. The work of critical race legal theorists helps to investigate this modern legal trend with a firmly intersectional lens.

Because critical legal studies is an outgrowth of legal studies itself, it acknowledges the reality of the American legal system's application, even when that reality contradicts the

¹² Roberts, D. (1991). Punishing Drug Addicts Who Have Babies: Women of Color, Equality, and the Right of Privacy. *Harvard Law Review*, 104 (1419).

embedded rhetorical messages of “equal” or “blind” justice in the American liberal democratic tradition. One way of acknowledging that problematic reality is by examining the lived experiences of members of marginalized groups within the criminal justice and legal systems. In Dorothy E. Roberts’ 1991 *Harvard Law Review* article, “Punishing Drug Addicts Who Have Babies,” she highlights the experiences of low-income women of color who are pregnant in order to show how the legal system itself is inherently unequal in its surveillance, control, and punishment of this marginalized group in particular. As Roberts’ argument illustrates, critical legal studies can help us to break down the effects of laws that may not have specific rhetoric of racial control written into them, but nevertheless perpetuate a very specific hierarchical structure of law enforcement that puts poor and low income women of color at the highest risk of criminalization related to motherhood.

In cases like that of Princess Bechem, which involve (1) poor black women, and (2) drug use during pregnancy, Roberts looks beyond the overarching political issue of pitting “the state’s interest in protecting the future health of the child against the mother’s interest in autonomy over her reproductive life” (Roberts 167). This issue, she argues, proves constitutionally problematic not only from the perspective of gender equality, but also because it puts a bigger burden on poor women and women of color in particular to suffer the consequences of fetal harm legislation. Her legal argument supports her controversial idea, that in terms of addicted pregnant women’s punishment under law, “poor black women have been selected for punishment” and that this phenomenon is due at least partly to “their devaluation as mothers” which, she says, “has its roots in the unique experience of slavery” (Roberts 168). Roberts’ perspective relies on intersectional analysis, which takes the varying experiences of women along lines of race and class into account. Her point of view also shows how the “colorblind” language of the legal system leaves plenty of room the abdication of women’s legal rights in cases like Bechem’s.

Roberts also approaches the issue with the principles of legal equality, bodily autonomy, and privacy in mind, showing definitively how even those values, which are of the utmost importance in American political messages, are constantly being taken away from the women who are punished under fetal harm legislation. Not only does Roberts insist that this is contradictory to American ideals, but also asserts that this “violation of poor black women’s reproductive rights helps perpetuate a racist hierarchy in our society.” (Roberts 169) This “racial hierarchy” about which Roberts writes is legally reified through things like fetal harm statutes, but is actively enforced by those factors beyond the law itself. She cites the higher likelihood that black women will be reported for drug use during health visits while pregnant due to “racist attitudes of health care professionals” to help to prove this point. As mentioned earlier, the fact that fetal harm laws inflate the jurisdiction of medical personnel justifies these interventions into the lives of their patients on behalf of the state. Roberts’ critical race theory application to these types of cases makes their discriminatory nature understandable from a policy perspective, but as she mentions, there are many other factors at play which contribute to the maintenance of that “racial hierarchy,” which is embodied in the criminalization of working class mothers. To understand some of these other factors, we turn to media analysis.

Media Analysis: Convenient Tropes and Politicized Medicine

The case of Princess Beachem garnered significant airtime from the local Baton Rouge press, and even managed to get attention from the New York-based National Advocates for Pregnant Women (NAPW),⁸ a national activist organization. Although NAPW made public comments deploring the state’s treatment of Princess Beachem, most of the press her case received in 2013 reflected instead a sort of fascination with the case – one that was arguably driven by our society’s collective obsession with motherhood, specifically the act of delineating between those who are “fit” to mother, and those who are not. This fascination is culturally

valuable and exportable in terms of media stories (“web traffic,” etc.), but in this case, it also relies heavily on deeply entrenched tropes that continue to plague media portrayals of working class women, women of color, and other marginalized groups. It is undeniable that these tropes have very clear connections to the American War on Drugs and its role in shaping the public opinion surrounding drugs like crack cocaine and, more specifically, who was using it. For the purposes of this analysis, Arizona State University Professor of Justice Doris Provine provides a good working definition for President Reagan’s often-referenced “War on Drugs:”

President Reagan was determined to put drug dealing on the public agenda, not because it was popularly perceived as a serious threat at the time but because of the political message it communicated. A punitive drug war would play well among middle-class suburban voters concerned that their children might be attracted to drugs. The human costs of enforcement would be borne by people with whom they did not identify or sympathize. [...] The strategy involved attacking policies targeted toward Blacks and minorities, without reference to race, but in a way that would polarize the electorate along racial lines. [...] President Reagan invested heavily in the antidrug strategy. On October 28, 1986, he signed the \$1.7 billion “Drug-Free America Act.” The president’s new drug czar, William Bennet, announced that prison capacities would be doubled and users, as well as dealers, would be incarcerated.¹³

Media scholars have proven the effects that news media can have on the stories they produce. Their scholarship has demonstrated how the media’s role is not confined merely to “reporting,” but also takes on the function of shaping the very stories they report, as well as the

¹³ Creating Racial Disadvantage: The Case of Crack Cocaine. (2006). In R. Peterson, L. Krivo, & J. Hagan (Eds.), *The Many Colors of Crime* (pp. 277-295). New York City, New York: New York University Press.

public opinion that surrounds them.¹⁴ The media in this case is no different. By invoking images and rhetoric that harken back to those fears described by Provine which ultimately drove the positive public opinion behind the Drug War, media forces are able to elicit higher emotional appeal from readers, which in turn results in wider publication and higher profits. By alluding to convenient cultural tropes that were created with a certain political imperative behind them in the 1970's and 1980's (i.e. wider political base of support from both "fiscal" and "social" conservatives), news reporting and media outlets can (intentionally or not) use cases like Princess Beachem's to strike a nerve with readers who still fear the hyperbolized nature of the Drug War's narratives about poor, urban, black communities and their potential for drug use.

The most relevant of those media tropes is the "crack baby," and the social message that trope carries with it. With the government seeking a specific outcome in terms of public opinion during the time of the Drug War, officials began to invest in shaping the media outlets, which were charged with getting stories about the inevitable dangers of "crack" out into the American zeitgeist. Provine further describes the effect of this collusion between the US government and the US news media: "The tone of this coverage became increasingly moralistic and dramatic over time. It included many misleading and inaccurate claims about an 'epidemic' of drug use, about crack as a violence-inducing drug, and about pathetic '*crack babies*' destined to struggle with addiction" (282). In the crack baby trope we see the seemingly boundless potential of media forces to frame expectant mothers like Princess Beachem as violent criminals, who not only commit drug crimes, but commit the more culturally abhorrent crime of not performing as the ultimate ideal of the "fit" mother – endangering her unborn child as a result of her assumed lack of personal responsibility.

¹⁴ Westbrook, L., & Schilt, K. (2013). Doing Gender, Determining Gender: Transgender People, Gender Panics, and the Maintenance of the Sex/Gender/Sexuality System. *Gender & Society*, 28(32), 32-57.

The correlations between press in the 1980's and the press that reported Beachem's 2013 case are made most clear when considering the medical implications of her case, and the way they were presented to the public. In all three news media outlets analyzed in this study (*The Advocate* Baton Rouge, *NBC* Baton Rouge affiliate, *WBRZ* News), Beachem's cocaine use as the cause of her baby's death, citing the ruling of the Baton Rouge coroner Dr. Beau Clark who deemed the stillborn death a homicide due to what he termed "placental abruption."⁵ This information was reported overwhelmingly as "medical fact." However, in light of recent science, the determination made by Dr. Clark about what specifically caused the stillbirth was impossible to determine with the information he had.

As Jeanne Flavin, author of *Our Bodies, Our Crimes: The Policing of Women's Reproduction in America* states, "...in a sizable proportion of miscarriages and stillbirths, no cause for the fetal death can be established. [...] in somewhere between 40 percent and two thirds of all cases of stillbirth, no physical cause can be determined. Concluding that an adverse pregnancy outcome has been caused by a woman's use of an illicit drug is simply not possible in light of existing medical evidence."¹⁵ Flavin's sentiment is corroborated by recent medical literature. In a 2001 review of medical data from the years 1984-2000 from the US National Library of Medicine, medical researchers found that "there is no convincing evidence that prenatal cocaine exposure is associated with developmental toxic effects that are different in severity, scope, or kind from the sequelae of multiple other risk factors."¹⁶ Citing other factors, such as tobacco and marijuana use and "quality of a child's environment," the study concludes that prenatal cocaine is no more of a risk factor than other prenatal exposure. These findings are

¹⁵ Flavin, J. (2009). *Our bodies, our crimes: The policing of women's reproduction in America*. New York: New York University Press. (pp. 95-107).

¹⁶ Frank, D. (2001). Growth, Development, and Behavior in Early Childhood Following Prenatal Cocaine Exposure: A Systematic Review. *JAMA: The Journal of the American Medical Association*, 285(12), 1613-1625.

contrary to the message propagated by figures like Baton Rouge Coroner Beau Clark, and justify skepticism toward his ruling of homicide that ultimately sent Beachem to jail. Even though they were in contrast to popular medical opinion, the determinations of Clark were taken as fact and reported as such in outlets such as *The Advocate*:

Clark determined the baby died as a direct result of a “placental abruption” caused by the cocaine use, a detachment that cut off the fetus from its nutrient supply. An autopsy showed no signs of developmental problems in the fetus, he added, meaning the baby had developed normally. The fetus tested positive for cocaine and Clark said the mother’s drug use “led to a normally healthy baby ending up dying.”⁷

In choosing to report Clark’s diagnosis as simple “medical fact,” in Beachem’s case, media outlets provided the public a convenient explanation for her stillbirth that ultimately justified the state’s intervention into and deprivation of her reproductive autonomy. In public depictions of crime such as this, the discursive effect of media is made visible. But cases like this also reveal the deeply entrenched cultural narratives and tropes that have roots in the political interests that originally drove the War on Drugs, and how those narratives have so effectively sustained throughout the years. The role news and media outlets play in the propagation of those narratives cannot be ignored.

Significant scholarship since the declaration of the United States government’s War on Drugs in the 1970’s has been written in an effort to unveil how this domestic “war” continues to disproportionately affect the lives of low-income Americans and people of color through avenues like highly militarized police, maximized sentencing laws, and federally mandated standards for harsher drug criminalization. Cases like Princess Beachem’s suggest how the modern trend of criminalizing poor and Black pregnant women and mothers is simply a reification of that phenomenon, made possible not just by law, but also by the tacit acceptance of the media’s messages concerning the crimes and lives of these women.

Mallory Loyola, 26

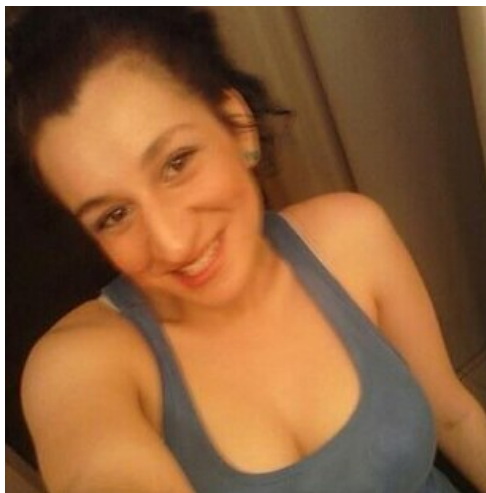
Less than a year after the fetal harm-fueled arrest of Princess Beachem in Baton Rouge, Louisiana, a 26-year-old white, working class woman living in rural Tennessee faced a similar fate just two days after giving birth to her infant daughter. In July of 2014 ABC News reported the arrest of Mallory Loyola after “both she and her newborn infant tested positive for meth.” The article included quotes from the local county sheriff, who said that Loyola had “admitted to smoking meth days before giving birth” on the day she was arrested.¹⁷ The doctors’ tests led them to contact the Tennessee Department of Child Services which quickly led to the intervention into the case. All of those involved in Loyola’s arrest were helping to enforce one of the state’s newest laws regarding pregnant and drug-addicted women in Tennessee.

Just three months earlier, Tennessee governor Bill Haslam passed a new law that defined drug use during pregnancy as a criminal offense, as a form of assault. As previous policy analysis shows, this law is by no means the only one in the United States that seeks to criminalize pregnant mothers, but it was at the time, the first legislation to specifically outline drug use by pregnant women as a criminal offense in and of itself. Instead of adapting already-existing laws pertaining to pregnant women and fetuses to fit the goal of criminalizing “unfit” mothers, Haslam’s law was explicit in its language in order to single out those women who enact potential harm on their own fetuses by using illegal drugs during pregnancy.¹⁸ Although the law’s passage caused significant controversy when it was being written and debated in the legislature, Mallory Loyola was the first woman in Tennessee to be charged using its legal framework.

¹⁷ Mohny, G. (2014, July 13). Woman Charged on Controversial Law that Criminalizes Drug Use During Pregnancy. www.abcnews.com.

¹⁸ McDonough, K. (2014, July 11). First woman arrested under Tennessee law that criminalizes pregnancy outcomes. *Salon*.

After her arrest, Loyola spent two days in the Monroe County Prison, and during that time was separated from her two-day-old daughter. She was then charged with an assault misdemeanor due to her “illegal use of a narcotic drug while pregnant,” and was eventually released after a \$2,000 bond was paid.¹⁹ Even though some states (e.g. Alabama and South Carolina) have found ways to criminalize drug use by pregnant women either through child abuse regulations or civil law, Mallory Loyola’s case stands out due to its specificity. The Tennessee law that prompted her arrest cannot be left up to interpretation by medical professionals, law enforcement, or state prosecutors; a woman in Tennessee who allegedly endangers her fetus via drug use is explicitly guilty of assault, and her arrest is now inevitable.



Mallory Loyola, 26
Buzzfeed.com
July 14, 2014

¹⁹ Kemp, J. (2014, July 14). Tennessee mom busted under new drug law after newborn tests positive for meth. www.nydailynews.com.

Policy Analysis: Crimes of Addiction and Fallacies of Access

There are clearly correlations between the cases of Tennessee's Mallory Loyola and Louisiana's Princess Beachem. Both involved the arrest of an expectant mother. Both arrests were attributed to that expectant mother's drug use. And both garnered attention from communities and media circles beyond those in which they occurred. But understanding the points at which these cases differ is imperative to a greater understanding of how criminalization of poor motherhood is enacted in the United States. The biggest point of divergence between the cases of Beachem and Loyola is the local policy context in which they occurred. As mentioned in previous policy analysis, the legal precedent in the United States concerning the behavior of pregnant women is far from stagnant. With modern changes in administrations, medical advancements, and shifts in public opinion, women expecting children have seen changes in their degree of protection (or lack thereof) under the law. Most recent shifts, especially since the 1980's, have involved legislative action that establishes competing legal interests between a woman and her fetus.¹⁵ While the protection of the fetus has become a more substantive and politically pertinent goal in the United States, the laws used to enact that protection have not, on average, been those that were explicitly written for the application to pregnant women (Princess Beachem's prosecution, for example, relied on a law that was originally meant to protect a pregnant woman *herself* from homicide or abuse). However, Loyola's case, by virtue of her living in the state of Tennessee, represents a shift in this trend.

In April of 2014, less than three months before Loyola's arrest, Tennessee Governor Bill Haslam signed Senate Bill 1391 into state law. Its passage made national headlines, simply because it explicitly and legally codified the protections of the fetus, which, up until this time, were simply being implied by use of other legislative means in other states. SB 1391 called for "the prosecution of a woman for an assaultive offense for the illegal use of a narcotic drug while pregnant, if her child is born addicted to or harmed by the narcotic drug or for criminal homicide

if her child dies as a result of her illegal use of a narcotic drug taken while pregnant.”²⁰ Even though Loyola was far from the first woman arrested for reasons related to drug use during pregnancy, hers was the first case that resulted from specific, targeted legislation that was not geared towards *anyone* who sought to harm pregnant women or their fetuses, and instead was geared unambiguously toward the expectant mother herself. SB 1391 was particularly headline-worthy, because it eliminated the legal grey area that arguably led to Princess Beachem’s case being dismissed by a judge. Under the new Tennessee law, Loyola was not simply accused of endangering a life; she was accused of assault via drug use during pregnancy. Governor Haslam’s legislation made sure that her case would not be dismissed because of any legal loopholes. Just three months into the its existence, Loyola’s arrest and misdemeanor assault charge were documented as the first case resulting from the bill’s new legal reach into monitoring pregnant women’s behavior. For that reason, her case and the legislation that made it possible marked a turning point for the nationwide trend of policing and criminalizing expectant mothers’ lives.

SB 1391 drew national attention when it was proposed in the Tennessee state legislature because it was perceived as an effort to criminalize addiction. In terms of responses to drug use and drug-related crimes, recent research by national health organizations and policy experts has disproven any effectiveness of addressing drug addiction with criminalization. Responding to drug use and addiction with punishments like jail time, probation, or loss of custody of children, for example, discourages those struggling with addiction to seek help from treatment centers. When those who are struggling with addiction feel at risk of those sorts of punishments, they are unlikely to use whatever resources are available to them, for fear of facing the criminal justice system as a result. That fear is compounded even further in the case of drug users who are also pregnant women because the shame and stigma that accompany drug addiction are much higher

²⁰ Section 2: S.B. 1391. Tennessee State Legislature (2014).

due to the high standards of motherhood that remain imprinted in the culture of the United States. Groups like the ACLU's Tennessee chapter brought this information to the governor during the waves of backlash that came to the state legislature during SB 1391's drafting. That chapter's legal director told media before the bill's passage that "by focusing on punishing women rather than promoting healthy pregnancies, the state is only deterring women struggling with alcohol or drug dependency from seeking the pre-natal care they need."¹⁸

But Governor Haslam's support for the bill did not waver in the face of these facts. He released a statement after its passage, during which he said that the intent of the law is to "give law enforcement and district attorneys a tool to address illicit drug use among pregnant women through treatment programs."¹⁷ Because the law allows for completion of a treatment program after an arrest to be grounds for a legal defense, it could be marketed as a means through which otherwise marginalized women could seek help. However, the reality of those women's access to addiction treatment and other healthcare services is less promising than supporters of the bill might think. One factor that contributes to that reality is the rurality that characterizes much of the state of Tennessee. While the whole state has 177 treatment centers, their locations are rarely accessible for women who live in Tennessee's rural counties. Without a car, the majority of those addiction treatment centers are simply impossible to get to without a car. In considering issues like rurality and access, the fact that the law will disproportionately affect poor and working class women becomes clear.

Additionally, when considering the type of care that is available to addicted pregnant women specifically, the options for treatment get significantly more limited. According to a July article in *Salon*, only nineteen of those 177 drug and addiction treatment centers in Tennessee even have programs that are geared toward pregnant women. And only five of those nineteen facilities accept TennCare, the Tennessee Medicaid insurance program. So, even if the law provides the option of defense via a treatment program, that option becomes more and more out

of reach when considering the lived realities of poor and working class women in Tennessee who face drug addiction during pregnancy. The sheriff in Loyola's own Monroe County aptly summed up the publicized political goals of the legislation while talking to press after her arrest. He stated, "hopefully it will send a signal to other women who are pregnant and have a drug problem to seek help. That's what we want them to do."¹⁷ Unfortunately, the available statistics at national and local levels suggest that the "signal" the sheriff hopes is getting sent is one that *deters* women from seeking (already severely limited) medical help for addiction rather than one that promotes it.

One study by the Guttmacher Institute compiled all of state-level legislation that addressed substance abuse during pregnancy. The study found that, in light of the national legislative trends which seek to target pregnant women by way of fetal protection, many states have responded by creating treatment centers and programs that "specifically target pregnant women" in an attempt to provide medical service to pregnant substance abuse victims rather than punish them by way of incarceration. While nineteen state legislatures have created those programs through policy changes, eleven other states have changed policies in order to "provide pregnant women with priority access to state-funded drug treatment programs."²¹ Despite the governor's claim that SB 1391 is a "tool" to promote addiction treatment to pregnant women, neither of these access-related policy changes have been made in Tennessee.

Because Tennessee is the only state that has classified substance abuse during pregnancy as a criminal act, an attempt to expand access to healthcare in order to keep women from entering the criminal justice system in the first place seems like a logical next step in terms of policy. Unfortunately, conservative state politics have instead created a landscape that is even more hostile to those women who are not traditionally well served by medical and legal systems.

²¹ Substance Abuse During Pregnancy. (2015). *The Guttmacher Institute: State Policies in Brief*, pp. 1-3.

By criminalizing addiction and refusing to expand access to care, the Tennessee legislature has made the burden of the law weigh even more heavily on working class and poor expectant mothers.

Media Analysis: The “New” Moral Panic

Just as the press coverage of Princess Beachem’s case invoked the sanctity of motherhood in its news coverage, Mallory Loyola also became an example of someone who was deemed “unfit” to perform the culturally sacred task of reproduction and mothering. Quickly after her arrest, Loyola’s mug shot was swept up by US news media sources and circulated throughout Tennessee news reporting outlets. She then instantly became the first “face” of SB 1391. Her association with the controversial legislation meant that she took on one of two personas during her time in the news cycle: Loyola was either the irresponsible drug user, placing her unborn daughter at risk; or, she was the first of many “victims” of a new law that specifically targeted women who were already marginalized. Within this second narrative, SB 1391 made it even easier for those women to end up in the hands of the criminal justice system, where their recovery and protection are prioritized below their punishment. While neither media-driven identity affords Loyola or women like her with much agency in terms of their own healthcare or decisions, the media forces that painted her case as one that involved bad parenting and irresponsibility relied heavily on scare tactics that vaguely resemble those discussed earlier in relation to Princess Beachem and the War on Drugs.

However, Loyola’s identity as a white woman changes the nature of those scare tactics and their operations completely. Because of her whiteness, the local press could not fit Loyola into the heavily racially coded “welfare queen” role as quickly or easily. But the public’s more recent fascination and panic over illicit use of methamphetamine provided a new and timelier

vehicle through which media could communicate the shame and criminality associated with Loyola's actions during her pregnancy.

News outlets like the local Tennessee affiliate of *ABC News* and *Buzzfeed* included quotes from the sheriff who oversaw the arrest and charge of Loyola, which might accurately sum up much of the public opinion around the issues involving her case. After her arrest, Monroe County Sheriff Bill Bivens appealed to the cultural shame and stigma often attached to drug-addicted parents in saying, "Anytime someone is addicted and they can't get off for their own child, their own flesh and blood, it's sad."²² Just as the narrative of the crack-addicted baby and irresponsible mother captured the imagination of media consumers during the beginning of the War on Drugs in the 1980's, images of mothers and expectant mothers addicted to methamphetamine have become a new media obsession. Coverage of meth and its "growing presence" in the United States in recent years has served as a sort of warning for readers and watchers of news. While the crack scare of the 80's may be starting to wane, meth has come on the scene just in time to provide a new proverbial "boogeyman," ready for its spotlight in the media. By vilifying meth and its users, the media has played a substantial role in the ways in which people like Mallory Loyola are perceived on national scales. But despite many claims and campaigns to publicize the inherent dangers of this "new" drug, research shows that its effects are probably not as devastating as media consumers might be led to believe.

A 2014 report by psychologists and substance abuse experts at Columbia University used empirical research to disprove much of the hyperbolic claims about meth and its effects that have fueled anti-meth campaigns and related media panic. Working with social science and philosophy departments, the report also went further to show correlations between the "crack scare" of the 1980's and the more current "meth scare." During controlled laboratory studies,

²² Broder Van Dyke, M. (2014, July 14). First Woman Charged Under New Pregnancy Drug Law in Tennessee. www.buzzfeed.com.

researchers studied the effects of methamphetamine on patients who were administered different doses of the drug. In testing for reaction factors like cognitive functioning and blood pressure in their patients after taking the drugs, the doctors found that changes were significant, but did not reflect some of the symptoms most reported about in the popular depictions of “meth addiction.” As the report notes, many of the levels of change recorded in the test subjects after exposure to meth were “well below levels obtained when engaging in rigorous physical exercise.”²³

Some of the most widely publicized effects of meth on its users were things like prolonged insomnia and violent hallucinations. Also, as evidenced by the widespread “Meth: Not Even Once” media campaign and its success, the belief in meth’s highly addictive nature dominates much of the public’s fear of its effects. But the report’s data provide no scientific grounding for these effects on the drug’s users, either. In fact, when researchers offered patients the choice between taking \$20.00 cash or taking one more dose of the drug, subjects “almost never chose the drug.” In the face of this data, one is hard-pressed to find the scientific evidence that proves that hyperbolic images of hopelessly addicted, violent, and out of control meth users is the norm for anyone who tries the drug once. But, just as the media-backed “crack epidemic” of the 1980’s was fueled by falsities parading as hard science, meth and its effects are blown out of proportion in order to keep headlines relevant and profitable.

During an interview with online magazine *Alternet*, Psychology professor Dr. Carl Hart implied his own explanation for the hyperbolic depictions of crack in the media: “The thing we have to understand is it’s associated with poor white folks.”²⁴ Hart’s comments clearly outline how structures of class determine patterns of drug criminalization. Because of its relative

²³ Hart, C., Csete, J., & Habibi, D. (2014). Methamphetamine: Fact vs Fiction and Lessons from the Crack Hysteria. *Open Society Foundation*, 1-36.

²⁴ Short, A. (2014, February 20). Meth Panic! American Media’s Drug Hysteria Vilifies Poor People. www.alternet.org.

affordability and ease of production, meth has come to be associated with poor and working class people. And because of its prevalence in non-urban areas (such as Mallory Loyola's own Monroe County, Tennessee), it is also associated with whiteness, as opposed to the media's fixation on "blackness" as an inherent prerequisite for use of crack. Meth has now become an accessory to the War on Drugs: in non-urban settings and in majority white networks, meth has ultimately picked up where crack left off. With the help of the media, this "new" drug is now a public policy issue that warrants great intervention by the state in the name of eliminating the drug entirely.

In this context we see how the use of meth while pregnant has been crafted as a heinous moral crime – one that endangers a sacred unborn life for the sake of a mother's uncontrollable addiction. Where the cultural stigmas of irresponsible motherhood and unscrupulous drug use intersect is where the case of Mallory Loyola takes place. This leaves her in prime position for punishment not just by law, but also by a hyperbolic media looking to enforce highly valued cultural norms. News outlets that reported Loyola's case under such headlines as "Mom Arrested After Baby Tests Positive for Meth"²⁵ lay the groundwork for continued criminalization of women who suffer from addiction while also occupying the role of mother. Loyola and women like her are subjects in need of punishment, rather than those in need of empathy when viewed through the lens of policy and media frameworks.

While those administering this kind of justice might employ the rhetoric of recovery or support, public agreement on the inherent danger of drugs is used to justify harsher criminal punishment to poor women, who are most likely to be affected by laws like SB 1391. One Tennessee attorney and prosecutor captured this cognitive dissonance while talking with state press. In arguing that the law which she helped to create was an attempt to help and not punish

²⁵ Mom arrested after baby tests positive for meth. (2014, July 12). www.wtsp.com.

women, she noted, “We use the phrase the ‘velvet hammer’ to decide the statute [...] We're not looking to lock them up, we're looking to get them help.”²⁶ Of course, sentiments like this one are complicated by the fact that access to the “help” she seeks to provide addicted women is severely limited by someone’s politics of identity and lived experience. Things like class status and rural residency often leave women limited choices in terms of healthcare and recovery support, which discourages them from seeking care they need, leading to their arrest and eventual incarceration.

But when considering the demographics of the women affected by SB1391 and other legislation like it, it is glaringly clear that the velvet hammer’s justice does not affect all women equally. Those women who are already marginalized due to their identities along hierarchies of race and class are going to be punished at much higher rates and much more harshly for their behavior during pregnancy. Additionally, these women face a whole new form of punishment when the media continuously employs such hyperbolic language and moral policing when telling their stories.

²⁶ Goldensohn, R., & Levy, R. (2014, December 10). The State Where Giving Birth Can Be Criminal. *The Nation*.

As shown with the cases of Princess Beachem and Mallory Loyola, the criminalization of motherhood sometimes begins before a woman even has a chance to become a mother. While pregnant, women face different standards in terms of legal and media representation that ultimately place them in a position that is more vulnerable to harsh punishment. This treatment is also heavily dependent on identity politics, because women who already face marginalization within hierarchical social organizations like race and class are more likely to come into contact with the institutions and authority figures who have the power to report their behavior or enact their punishments. But, as the case of forty-six-year-old South Carolina woman Debra Harrell will show, this pattern of higher standards and harsher consequences for poor mothers continues in the lives of women after they give birth, and at every stage of the parenting process.

In June of 2014, black woman and working single mom Debra Harrell was arrested and placed in jail in her hometown of North Augusta, SC for what was deemed by law enforcement officials as “unlawful conduct towards a child.”²⁷ According to the incident report describing her arrest and booking, Harrell was arrested after local police were notified by a witness that her 9-year-old daughter, Regina Harrell, had been left by herself in a park for “hours at a time, more than once.” After noticing that Regina had been by herself for several hours, the witness reportedly approached her and asked her if an adult was accompanying her. Regina told the witness that her mom had dropped her off there before going to work at a nearby McDonald’s as a shift manager. She assured the witness that this was not the first time she had been left to play in the park all day by herself. Soon after Regina’s conversation with the witness, Debra Harrell was arrested and reportedly confessed to South Carolina “Public Safety officers” that she routinely left her daughter to play alone in the park while she was at work during the summer

²⁷ Guillory, D. (2014, July 1). North Augusta Mother Charged With Unlawful Conduct Towards A Child. www.wjbf.com.

months when school was not in session. After Harrell's arrest, custody of Regina was granted to the South Carolina Department of Social Services (DSS).

The charge of Unlawful Conduct Towards a Child carries with it a maximum sentence of up to 10 years in prison in the state of South Carolina. However, after spending 17 days in jail, and apart from her daughter Regina, Harrell was released on bond, and her case was taken on pro bono by an area lawyer who told the press that he took the case simply because it "struck a nerve" with him. Her attorney, Robert Verner Phillips, explained to press and law enforcement the context of Harrell's decision to leave her daughter in the park while she went to work:

He said when Harrell worked, she would sometimes leave her daughter at a friend's house, let her go with a group of friends to the park or take her to McDonald's and let her play on a laptop inside the restaurant. But, after the laptop was stolen from their home and Harrell's daughter was "bored to death" being at McDonald's with nothing to do, Harrell ended up taking her to the park on a few occasions -- a park that was about a six-minute walk from their home and about a seven-minute drive from where Harrell worked²⁸

The park was also the site of a "Feed a Child" program sponsored and administered by the government, which provided breakfast and lunch to community children who would otherwise go without during the months that school was not in session. Volunteers for the program attested to seeing Regina playing in the park by herself on more than one occasion, but never felt the need to call the police.

Although Harrell's case was still pending as of July 28, 2014, she had regained custody of Regina after her time in jail, and was set to return to work at McDonald's. However, during the time between her arrest and release on bond, her story and the issues it raised "struck a

²⁸ Wallace, K. (2014, July 21). Mom arrested for leaving 9-year-old alone at park. www.CNN.com.

nerve” with audiences beyond her lawyer and community members. With features on national programs such as *CBS News*, *CNN*, and a host of morning talk shows and opinion blogs, Debra Harrell’s case and the questions it raised about access to childcare for working class women created a nation-wide dialogue about her plight and others like it. This rush of media attention even resulted in the establishment of a crowd-funding effort to raise money for Regina and her mom, and to help pay off any legal fees. After less than a month the crowd-funding page had garnered over \$40,000 in donations from people all over the country. The original goal of the page was to raise just \$10,000.



Debra Harrell, 46
Thinkprogress.org
June 22, 2014

Policy Analysis: Outside Intervention and a Slippery Slope

Just as the two earlier cases highlighted the dynamic and fluid nature of so-called “fetal harm” laws and legal precedents, the case of Debra Harrell sheds light on the surprising level of ambiguity that exists in laws pertaining to child abuse and neglect. As one law professor explained to the online magazine *Slate*, the nature of laws geared toward protecting children vary widely on a state-by-state basis. Additionally, many use vague language to define what exactly the “welfare of a child” denotes. She notes, “I don't know of any law that specifies the age or the precise nature of failure to supervise.”²⁹ Without the sort of specific parameters encoded into law to define the acceptable way to raise a child, law enforcement, prosecutors, and local officials are left with much more discretion than they are given in the context of other crimes, like robbery or homicide. As suggested previously, this ambiguity works to the advantage of those seeking to enforce social control that entails very specific expectations for successful parenting. Additionally, just as drug abuse laws are felt disproportionately by communities of color and the working class, child abuse and endangerment legislation is more likely to be enacted on those who rely more on state and public institutions for things like childcare, supplemental income, etc.

In Harrell’s case, her inability to pay a private entity for childcare due to her low income was assumedly a driving factor behind her decision to leave Regina to play in the park. By relying on this public space, Harrell’s parenting decisions were subjected to a form of involuntary publicity – something that parents who are able to provide private or outside childcare are rarely, if ever, exposed to. Through class privilege, those parents who are able to make use of private spaces as parenting spaces greatly limit their own visibility in the public eye. Things like private childcare during the summer months, for example, provides parents with

²⁹ Grose, J. (2014, July 15). Parents Are Now Getting Arrested for Letting Their Kids Go to the Park Alone. *Slate*.

means to perform parenting in an “acceptable” way, guarding them, by and large, from the constant policing that characterizes parenting in public spaces. By affording parenting and mothering with a sanctity all its own, society is able to justify intervention into the lives of those who it deems unfit to do the best job. But, because not everyone is forced to use spaces like public parks as venues for parenting as Harrell was, not everyone is subject to the same outside intervention that resulted in her arrest. This type of cultural context is important in considering the language of South Carolina’s laws pertaining to child abuse and neglect.

Even though South Carolina’s child protection laws are lengthy, they do not provide the type of specificity that Dorothy Roberts mentions as important to defining these types of crimes. The regulation under which Harrell’s crime was defined is under Title 63 of the state’s Code of Laws on “Child Protection and Permanency.” South Carolina defines “unlawful conduct towards a child” in a few different ways, none lacking in ambiguity of language. The most pertinent definition of this type of crime reads as follows: “(4) “Child abuse or neglect” or “harm” occurs when the parent, guardian, or other person responsible for the child’s welfare: (a) inflicts or allows to be inflicted upon the child physical or mental injury or engages in acts or omissions which present a substantial risk of physical or mental injury to the child...”³⁰ Although many followers of the case, legal scholars, and Harrell’s own attorney find her charge as a bit of a stretch of the law, her leaving Regina unattended in the park for long periods was ultimately defined by the state as an “omission which presented a substantial risk” to her own child’s well-being. Witnesses reporting that Harrell was far from the only parent who was leaving their children unattended at the park prove the irregularity of this specific law.³¹ Harrell’s arrest can be

³⁰ Section 63: South Carolina Children’s Code 7.10. South Carolina State Legislature (2014).

³¹ S.C. mom's arrest over daughter alone in park sparks debate. (July 28, 2014) *CBSNews.com*.

attributed not only to this law, which arguably leaves room for parenting practices like hers, because it was ultimately made possible by outside intervention by a witness.

While only certain members of communities are required by law to report signs of abuse and neglect (e.g. teachers, counselors, etc.), guidelines from the South Carolina DSS Department of Child Services specifies that even those who are not mandated to report by law “may report when they believe a child is harmed or at significant risk of being harmed” and even provide some tips on how to spot possible child abuse. Prolonged lack of supervision is one of the warning signs from SC’s DSS.³² The specific reasons why the witness in Harrell’s case reported Regina’s lack of supervision to the police and chose not to report cases of others must be left up to speculation, as they were absent from all press coverage of the case. But it is important to note that the ambiguity that runs as a common thread through all child abuse/neglect laws in the United States coupled with the growing pressures on mothers to perform up to certain cultural standards provides the necessary groundwork for state-tolerated citizen interventions such as that which landed Harrell in jail.

A second policy question that has been raised in the uproar since Harrell’s arrest is the “slippery slope” argument. Those who view Harrell as a well-meaning mom with limited options instead of as a criminal invoke this argument in order to reflect the state’s unrealistic approach to policing motherhood. Harrell’s attorney invoked this slippery slope logic in statements to press, noting, “Because if this woman gets convicted, guess what? ... From now on, do officers now have an obligation every time they see a 9½-year-old not in the presence of their parents, do the parents get arrested?”²⁸ Phillips highlights in this sentiment the inherent inefficiency in the type of policing that Harrell was victim to. But, if legal precedents concerning motherhood-related policy issues (e.g. fetal personhood or drug use during pregnancy) serve as any indication, the

³² *Child Protective Services*: South Carolina Department of Social Services, www.state.sc.us/dss.

state's desire to imprint hegemonic cultural norms about "suitable" mothering and child-rearing onto mothers themselves seems convincing.

Additionally, because cases like this involve those who occupy marginalized identities, they provide another outlet through which to enact conservative policies that limit the movement or action of those marginalized groups. By considering the slippery slope, the ease with which conservative policymakers can enact this kind of criminalization on working class mothers becomes clear. By vilifying certain types of individual behavior that occurs in working class communities and among people of color, the state is able to divert attention away from structural issues like social welfare and lack of community resources in order to continually justify fiscally conservative and austere policies to their electorate. This strategy of the right, however, proves less effective when national opinions on the subject differ greatly. And thanks to the national media during the time of Harrell's arrest, these differing opinions were offered a public voice within the national debate surrounding her case.

Media Analysis: Potential for Fear, Opportunities for Empathy

While the cases of Princess Beachem and Mallory Loyola garnered significant attention from many local and a few national press outlets, their coverage paled in comparison to that which came in response to Debra Harrell's arrest and deprivation of custody. National news and entertainment publications like *Slate*, *CNN*, and *Jezebel* all published pieces on the story, hoping to join in the growing debate about whether or not Debra Harrell deserved criminalization for her choice to leave her 9-year-old unattended in public while at work. While most audiences agreed that arrest and incarceration were severely overblown punishments for her perceived "crime," some media coverage included the voices of those who disagreed with Harrell's choice entirely and perceived her behavior as legal child neglect along with the state.

A local ABC News affiliate included three of those voices, all of which used were members of the Harrells' community and frequented the park in which Regina was found. One woman interviewed by the TV station showed sympathy for Harrell's predicament, but did not justify her ultimate decision to leave Regina unsupervised: "I understand the mom may have been in a difficult situation, not having someone to watch the child, but at the same time, you've got to find somebody [...] you cannot just leave your child alone at a public place, especially. This day and time, you never know who's around. Good, bad, it's just not safe." Another interviewee, an employee of a local preschool, echoed similar sentiments of fear for safety: "...what if a man would have came and just snatched her because you have all kinds of trucks that come up in here so you really don't know."²⁷ These quotes get at one of the fundamental questions concerning Harrell's case and the debate in which it remains caught. Those who read about and form opinions about this story are forced to decide which they believe is more dangerous; the supposed danger of lack of supervision in a public space, or the risk of potentially losing a job and source of income in order to provide constant supervision of your child.

The fears of potential danger expressed by these interview subjects and those who agree with them, are undoubtedly exacerbated by the gender identity of Regina. The crime of "child neglect" is seen as especially irresponsible when the child left unsupervised is a young girl, perceived and shaped to through cultural messages as being weak and unable to protect herself. Despite precautionary measures taken by the family, like making sure Regina had house keys and a cell phone at all times,²⁸ the threat of danger is one that cannot be overstated when considering the vulnerability of the young girl. In engaging with the story in this way and capitalizing on the fear of young women's helplessness to danger, the actions of Debra Harrell simply cannot be justified and in turn, the intervention made by the state during her arrest is more easily written off as a necessary precaution against the other, undefined, but allegedly "greater" risks that exist for young girls like Regina in the public sphere.

However, most of the debate that circulated on national media platforms reflected the counterpoint to this argument, shaping Debra Harrell as a struggling working mother through an empathetic lens, rather than one that defined her only as an irresponsible, and even criminal, parent. Headlines like “Mom Arrested for Letting her 9-year-old Kid Play Outside Alone” and “Parents Are Now Getting Arrested for Letting Their Kids Go To the Park Alone” reflect a fundamental rejection of the state’s definition of Harrell by way of a criminal identity. By reporting on the fraught conditions in which she was raising her family, these publications emphasized factors like the mother’s low-wage job and lack of disposable income. They then subsequently turned Harrell’s case into an opportunity for empathy from those who could understand and sympathize with her position as a single mom who was also a working class woman of color (none of which are identities that are served particularly well by traditional systems of law, criminal justice, and media representation). In this regard, Harrell’s case garnered a wave of public support that never materialized in the cases of Beachem and Loyola.

Most notably, an online fundraising page that was formed shortly after Harrell’s story made rounds on national news outlets provided a forum where nationwide support of the woman was made visible via the thousands of dollars that were donated in a show of support for the arrested woman. The page was registered by a woman named Clair, a Boston area native who claims in the page’s description to have no connection to Debra or Regina Harrell except that she was “moved by Debra’s story and by the response from both very liberal and conservative people that arresting Debra and taking her daughter away was not the right solution.”³³ After setting a goal of \$10,000 to help offset the Harrells’ legal costs, the crowd funding page generated over \$45,000. The description of Debra Harrell’s case found on the “Support Debra Harrell” crowd funding page sheds light on the reason why both “very liberal and conservative”

³³ *Support Debra Harrell*, YouCaring.com, August 2014.

audiences around the country saw her arrest as an blunder by North Augusta law enforcement instead of a reasonable reaction to a crime. It notes:

It's a known fact that poor families with single and working parents struggle mightily in the summer when kids aren't able to go to school. However, it would be a very rigid reading of the SC state laws regarding child protection to consider leaving a nine-year-old at a busy park close to the parent's location during daylight hours "abandonment."

Taking her daughter away was also a slap in the face to Debra as it sends a message that as a working mom, all her efforts are just not good enough.

The narrative of the hardworking single mother employed in this description was usually the driving factor behind many of the debates that emerged on blogs, morning talk shows, and comment threads over Harrell's sentencing. Audiences disagreed with the arrest of Harrell on the grounds that it criminalized her for circumstances that were perceived to be beyond her control.

By characterizing Harrell as a working mom who was desperately trying to make ends meet for her family, media could acknowledge the ways in which she embodied the values of motherhood that society deems sacred, like hard work and maintaining a steady income. Even though many could see the dangers associated with leaving a 9-year-old by herself in the park, the actions that Harrell was taking as a mother led many audiences to believe that her actions that day were driven simply by unfortunate circumstance and not out of any lack of "good" mothering ability. This distinction is the biggest point of departure between Harrell's case and the previous two mentioned in the study. The women accused of drug use during pregnancy did not garner huge amounts of public support or national debate, which signifies a higher degree of public complacency with their sentencing. In other words, most public audiences more easily understood those women's actions as inherently criminal. If media reactions to these cases are any sort of indication, U.S. audiences are more willing to accept the criminalization of addiction during pregnancy than they are to accept the criminalization of the working mom.

While in the case of addiction, the media reporting these sorts of stories rarely take a woman's background or conditions into account, making it easier to place the blame directly on the shoulders of the addicted woman themselves. In this regard, media can play a discursive role by indirectly justifying women's arrests, making an impact on the public opinion concerning these types of cases (whether intentionally or not). Conversely, after a woman's child is born, and if that mother is taking all the culturally appropriate measures to raise her child successfully, the media and its audiences are much more likely to question the role of state intervention in that mother's life. Debra Harrell's identity as a working mom in this case provided "proof" of her ability to mother responsibly, and as a result many consumers of media and media pundits then called her arrest into question. That questioning and skepticism was arguably driven by a fundamental disbelief in the need for state intervention in the lives of those who are trying their best to raise families according to hegemonic upper middle class standards of motherhood while occupying the working class.

V. Discussion and Analysis: Widening the Scope

It would be remiss to think of these cases only in the context of their own state governments and political landscapes, ignoring the national and transnational political circumstances into which these women's lives and cases have been molded. There are a few political and economic shifts in overall domestic U.S. policy that are central to the understanding of the modern trend of criminalization of working class mothers and its conditions for justification. Additionally, these shifts are commonly associated with the trend of neoliberalism – a term that has figured prominently in the majority of social science scholarship since the 1970's and 1980's.

For the purposes of this discussion I will employ the definition of neoliberalism provided by New York University professor Lisa Duggan, who describes this political and cultural movement in the context of the American Empire as one that emphasizes privatization and personal responsibility at the expense of programs that promote public welfare and ensure democratic participation. Duggan argues that the neoliberal agenda associated with historical figures like Margaret Thatcher and Ronald Reagan undermines democracy, by using the rhetoric of personal responsibility and individual liberty to promote upward redistribution of wealth. This redistribution of wealth and resources in return, leaves a veritable path of destruction in the form of shrunken welfare programs due to tax cuts for corporations, increased burdens on families and caretakers, and larger numbers of low-wage jobs due to the cultural, political, rhetorical, and social embrace of “free market” capitalist ideals. These harmful byproducts of neoliberalism are, of course, experienced the most directly by those who already occupy traditionally marginalized identities in terms of hierarchical organizations of race, class, ability, and nationality in the United States.³⁴ In considering the three case studies, two specific domestic policy changes

³⁴ Duggan, L. (2003). *The twilight of equality?: Neoliberalism, cultural politics, and the attack on democracy*. Boston: Beacon Press.

associated with neoliberalism are especially important to consider in understanding the fraught conditions in which these women pursue the role of mother.

The first of those policy changes is the United States' welfare reform of the 1990's. Associated with the Clinton administration, the series of policy changes associated with the Clinton era of reform are often associated with the president's now infamous phrase, "the end of welfare as we know it."³⁵ As *The New Jim Crow* author Michelle Alexander expertly describes,

Welfare reform legislation signed by President Bill Clinton in 1996 ended individual entitlements to welfare and provided states with block grants. The Temporary Assistance for Needy Family Program (TANF) imposes a five-year lifetime limit on benefits and requires welfare recipients, including those who have young children and lack of child care, to work in order to receive benefits.³⁶

Driven by the popularized socio-political concepts like "self-reliance," "individual rights," and "free market ideals," these reforms effectively changed the nature of the American social safety net from one centered on welfare, to one centered on *workfare*. Although workfare is defined in political and media forums as continued social insurance, it is now heavily dependent on a recipient's ability to work, which conveniently fits within neoliberal rhetoric but is taken for granted in the case of women who are pregnant or mothering.

In considering these changes to welfare programs, it is easy to see how women like Debra Harrell end up in the difficult situation of choosing between childcare and work. In a society that continually eliminates and downsizes programs that promote a public social safety net, women and their families are inevitably forced to absorb more and more costs on their own. This puts

³⁵ Clinton, William J. (July 1996). "Address Accepting the Presidential Nomination at the Democratic National Convention in New York." *The American Presidency Project*.

³⁶ Alexander, M. (2010). The Cruel Hand. In *The new Jim Crow: Mass incarceration in the age of colorblindness* (Revised ed.). New York City, New York: The New Press.

more pressure on the private sphere, wherein women are often charged with the majority of the (unpaid) labor associated with things like childcare. Few projects have documented the effects of these changes in the lives of American women as effectively as feminist scholars Jane Collins and Victoria Mayer's ethnographic study of woman welfare recipients, *Both Hands Tied*. In describing the phenomenon of workfare and its effects on women, the authors note,

...the ever-present and unmet need for time to care for families while engaged in low-wage work throws women back into a punitive and stigmatized welfare system [...] without jobs that adequately support women in their dual roles as workers and mothers – this dynamic will solidify a caste of low-wage workers with attenuated rights at the bottom of the labor market, and punish them for attending to their families.³⁷

By touting self-reliance, American neoliberal policies exert more pressure on women specifically to work more and more hours within both private and public spheres in order to survive in a society that values the ideals of motherhood, but refuses to acknowledge the reality of working class mothers themselves. In the context of this national political climate, it remains unsurprising that the criminalization of working class mothers has simply become a side effect of our rapidly shrinking social safety net. Although these cases of criminalized motherhood are marketed as individual failures to live up to normalized cultural standards, they are evidently symptomatic of the deeper issues that characterize a continuously neoliberalizing society.

Another aspect to consider in terms of the American neoliberal context of these cases is the more recent policy shift associated with 2010 passage of the federal legislation known as the Patient Protection and Affordable Care Act. Although the ACA provided for expanded access to coverage through means such as reduced rates and the establishment of competitive insurance

³⁷ Collins, J., & Mayer, V. (2010). Introduction: The Connection Between Welfare and Work. In *Both hands tied: Welfare reform and the race to the bottom in the low-wage labor market*. Chicago, Illinois: University of Chicago Press.

marketplaces, the policy's implementation also depended upon state-level expansions of Medicaid coverage. In the three states mentioned above, federally funded expansions to Medicaid were rejected as a result of those states' conservative politics of state legislatures and governors' offices.³⁸ Louisiana, Tennessee, and South Carolina all boast Republican governors, whose political interests rely on the rhetoric of neoliberal concepts like self-reliance, individual liberty, and "shrinking government" in favor of market and business interests, keeping them aligned with the strict regional conservatism that has defined the politics of the American Southeast since the 1990's. This rhetoric has been translated into policies that not only reduce healthcare and social insurance resources for citizens, but also end up punishing historically marginalized sectors of society more harshly than others. In considering cases like Princess Bechem's, for example, we can see how scarce access to healthcare resources can easily translate into criminalization and subsequent incarceration when women lack access to addiction recovery services. Similarly, as questions of rurality and poverty are raised in the Tennessee case of Mallory Loyola, one can only assume that expanded access to healthcare coverage could have provided a "way out" for the many poor and uninsured women who find themselves struggling with addiction or other health problems during pregnancy.

Rejections to expand Medicaid programs are born from the same line of thinking that has resulted in the shrinking of the American social safety net since the Clinton era Welfare reforms in 1996. While the state and its actors consistently employ the rhetoric of neoliberal individualism, they simultaneously restrict the resources available to members of the working class and people of color in the United States. Women are hit especially hard by these changes, because the standards of mothering in our society have not changed accordingly in the face of historically low social welfare availability. In fact, as authors of *The Mommy Myth* have proven, those standards have become even stricter in the last three decades, charging women with the

³⁸ *A 50-State Look at Medicaid Expansion*. (November 2014) FamiliesUSA.org.

tasks associated with social reproduction through means like greater surveillance and discipline upon them when mothering. These standards are heavily policed as a result of a collective belief in the sanctity of motherhood, and get embodied and enforced through systems of media, law, criminal justice, and culture. Ultimately, this phenomenon leaves poor and working class women to fend for themselves in a society that demands their perfection but implies their oppression.

VI. Conclusion, and a Return to Theory

Although the criminalization of poor and working class mothers may seem to many a string of isolated events due to irresponsible decisions by few, a consideration of neoliberalism's context helps us to understand this phenomenon simply as a byproduct of more broad modern circumstances at play. Those broad circumstances are inextricably linked to systems of increasingly globalized and transnational free market capitalism, which have since the 1980's promoted the language and ideology of privatization and individualization in all spheres of American society, not only those associated with business and economics.

Prominent French theorists Pierre Bourdieu and Loïc Wacquant acknowledged the power this language has enacted on every vector of society in their essay published in the *Journal of Radical Philosophy* in 2001. Their explanation of the "NewLiberalSpeak" expertly identifies the global political and economic interest in employing language of "self-reliance" and "individualism." They argue that this rhetorical strategy has been successfully used by those in power to camouflage the nature of our capitalist society as one that is benign and equally prosperous for all its members, even in the face of souring wealth inequality. The NewLiberalSpeak hides the nature of a society that is "characterized by the deliberate dismantling of the social state and the correlative hypertrophy of the penal state, the crushing of trade unions and the dictatorship of the "shareholder-value" conception of the firm and their sociological effects: the generalization of precarious wage labour and social insecurity, turned into the privileged engine of economic activity."³⁹ In other words, by individualizing and responsabilizing citizens for their actions, the free market society can provide justification for the elimination of things like social welfare programs under the guise of promoting self-reliance. It can write off massive poverty and gaps in wealth distribution as mere side effects of a successful

³⁹ Bourdieu, P., & Wacquant, L. (2001). NewLiberalSpeak: Notes on the new planetary vulgate. *Radical Philosophy*, 105(12), 2-5.

marketplace. It can render labor rights and activists virtually powerless in order to champion the market, advertised as the “real driver” of the neoliberal society. And it can divert public attention away from soaring inequalities by insisting on the inherent virtue of the industrious individual to overcome despite all odds.

This rhetorical game has defined American politics for decades now. And, although these women’s cases may not have been directly caused by the political and economic changes associated with the neoliberal movement, their characterization as criminals and subsequent devaluation in the eyes of media audiences were arguably made possible by way of neoliberal ideas about individualism, autonomy, and resourcefulness. Although people like Princess Beachem, Mallory Loyola, and Debra Harrell all represent historically under-resourced, under-represented, and under-valued sectors of society, their introduction into the public eye was characterized instead by their own personal “irresponsibility,” with very little or no regard given to the types of environments in which these women and their families were forced to live their lives. The reality of these women’s lives was undoubtedly shaped by the “dismantled social state,” and “precarious wage labour” that have become the norm in our successful free market capitalist American society today. But those issues are not convenient in terms of crafting the narrative of the criminal mother.

It is much easier to justify the incarceration of a woman for prenatal drug use when you do not consider her lack of access to healthcare to begin with, for example. And similarly, it is much easier to justify the arrest of a mother for “child negligence” if you are not forced to reckon with the reality of childcare costs compared to the economic insecurity of a low-wage worker. This blurring of reality that has come to characterize neoliberal rhetoric and media messages has resulted in more harmful policies that eliminate already slim resources for working class citizens in the name of austerity or self-reliance. Additionally, it has simultaneously shifted the media-driven image of working class mothers in the United States from victims of their circumstances

to irresponsible and unsuccessful members of the free market society. When all of the circumstances that are associated with living while poor in the United States are considered in tandem with the highly policed and “sacred” task of motherhood, then it is hard to imagine women like those discussed above ending up anywhere but in the control of the criminal justice system. When systems of law, politics, social control, and criminal justice all intersect, it will undoubtedly be those who are already living on the margins of society who are punished the most harshly by whatever consequences are deemed appropriate. And unfortunately, the plight of the poor mother is a perfect example of this phenomenon being propagated daily in the modern United States. Working class women and women of color especially face a path fraught with inequality and indignity if they attempt to have and raise children in this age of neoliberalism while living at those intersections.

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