“But the child was torn from the arms of its mother amid the most heart-rending shrieks from the mother and child on the one hand, and the bitter oaths and cruel lashes from the tyrants on the other.”

To better understand families of color that are being served in the child welfare system of the United States, one must first take a moment to understand who they are as human beings, their ancestry, resilience, and positive attributes outside of negative stereotypes and racist narratives. Although this historical background section will highlight the communities of color that have been disproportionately involved in the child welfare system, it is not exclusive of all communities of color. “The term ‘equity’ means the consistent and systematic fair, just, and impartial treatment of all individuals, including individuals who belong to underserved communities that have been denied such treatment, such as Black, Latino, and Indigenous and Native American persons, Asian Americans and Pacific Islanders and other persons of color” (The White House Briefing Room, January 21, 2021 Executive Order On Advancing Racial Equity and Support for Underserved Communities Through the Federal Government).

Early History of Racism Prior to 20th Century

Unfortunately, the context of history be that from slavery, post-slavery, civil rights eras are highly told from the perspective of Whiteness, from the lens of white people who colorize what history is, was and should be. Slavery, is generally the initial introduction of African American (Black) History, however, when one starts with slavery one starts with pain (Evans, Noelle, Black History Doesn’t Start With Slavery, February 24, 2020). Article written by Noelle E.C Evans, February 24, 2020). Why not start before the pain, why not start with the rich history of Africa, a history and heritage of royalty, resources, community and faith, before families were torn apart and enslaved? Moreover, the United States has a long history of separating Black and Indigenous families and using family separation as a means to inculcate poor children with westernized white protestant values. Therefore, it is critical to understand this historical context as it is the foundation of our enslaved person in an exhibit at the Smithsonian’s Museum of African American History and Culture, which documents the tragic U.S. history of enslaved children being separated from their enslaved parents).

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current child welfare system. Consequently, this document provides only a brief overview of the history of family separation in the United States, there are links at the end to provide more in-depth historical analyses.

For more than over 200 years when slavery was permitted by law in the United States, the dehumanizing and violent act of taking children from their families was intentional and served several economic interests for enslavers. For example, the threat of family separation was used as a tool to keep enslaved mothers, fathers, and children compliant – no threat was more horrifying than the fear of being sold away from one’s family. As archival recordings from formerly enslaved people make clear, parents and “[c]hildren, even from a young age, were well aware that their sale could occur at any moment.”

After the Civil War, Black leaders and their allies fought to secure a constitutional right to family integrity in recognition of the widespread destruction Black families had experienced and witnessed during slavery. No such provision emerged. Despite emancipation, family separation between Black children and parents continued with frequency. This included but was not limited to vagrancy laws, which criminalized unemployment, and led to regular Black family separation when parents were imprisoned and forced to perform hard labor through chain gangs or in direct service to former enslavers on the plantations. Or through “apprenticeships,” where Black children were “hired out” to former enslavers through an agreement, often certified by a court, in which the child’s unpaid labor was exchanged for a promise of “training.” In some cases, children were considered orphans when apprenticed. In others, children were required to enter labor agreements when their parents had been arrested or found to be destitute. Courts and landowners rationalized the agreements with rhetoric that it served the “child’s best interests” to be apprenticed because their families could not support them.

Though vagrancy laws, forced apprenticeships, and slavery no longer provide legal contexts for separating Black children from their parents and other kin, aspects of these systems continue to influence legal practices today. For example, poverty and parental arrest continue to serve as two of the most prominent drivers behind children’s removal into foster care.

For White society apprenticeships of children were common in the 17th and 18th centuries, but by the 1800s, privately run segregated orphanages became the primary way of caring for needy children. The first orphanage was established in the United States in 1729 in Natchez, MS exclusively for White children. At that time dependent children were generally cared for in

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2 Michael A. Robinson, Black Bodies on the Ground: Policing Disparities in the African American Community—An Analysis of Newsprint From January 1, 2015, Through December 31, 2015, University of Georgia School of Social Work, Athens, GA, USA; As Frederick Douglass noted in his autobiography “[i]t is a common practice, in the part of Maryland from which I ran away, to part children from their mothers at a very early age.” Narrative of the Life of Frederick Douglass.


6 At the same time, state laws severely limited Black property ownership as well as participation in certain businesses and skilled trades. https://www.history.com/topics/black-history/black-codes.


“almshouses” or “poorhouses” as they were more commonly known. For more than 100 years, the number of orphanages continued to grow (replacing the use of “poorhouses”) and they continued to be open solely to white children. However, the majority of children placed in orphanages were not, in fact, orphans and instead were placed into orphanages as a result of poverty. These orphanages were intended to not only provide food and shelter but instill moral character. Review of placements into an orphanage in St. Louis, MO between 1847-1869 found that only 27% of children were full orphans while 69% had at least one parent living. In 1822 the first orphanage for Black children, the Philadelphia Association for the Care of Colored Children, was founded in Philadelphia. Black orphanages were overcrowded and “woefully inferior to the orphanages established to rescue white immigrant children during the same period”.

Many view the official beginning of foster care as 1854 with the beginning of the Orphan Train movement. Between 1854 and 1929 an estimated 200,000 children were relocated to foster homes largely in rural, Midwest areas. Some of these children were orphaned or abandoned, however there were also children who were taken from their families due to poverty. While the vast majority of children removed were white (many of them immigrants), there were accounts of Black children traveling on orphan trains as well.

**Indigenous People and Native Americans**

In addition to Black families, the United States also has a long history of marginalizing and separating Native American families. Indeed “colonization intentionally fragments families, community cohesion and cultures”. Lack of familiarity with history of treatment of Indigenous peoples of the United States, including the complex factors and outcomes of genocide and assimilation often cause inappropriate responses to Indigenous children and families legal representation.

The intention for indigenous people to be eradicated was executed through policies including forced removal to reservations, creation of blood quantum measurements, and war.

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16 Brown.
American colonialism required land acquisition from indigenous people and labor from Black people to succeed. The strategies and policies to address each community were different for that reason. Indigenous Peoples, referred to as “merciless Indian savages” in the Declaration of Independence were not viewed as humans with rights. And the Doctrine of Discovery, as established by the Supreme Court of the United States, undermined Indigenous land connection and was used as the tool for Europeans to take “unoccupied lands through discovery or conquest”. Indigenous children were specifically targeted for kidnapping and imprisonment by the federal powers of the Founding Generation, to temper resistance by the Indigenous peoples. By design, much of this history that is well-documented in federal records is not broadly discussed or taught in American schools or politics. Historians often describe American history that implies the indigenous peoples had disappeared. However, for indigenous families and communities, the truth of the history is much more understood and continues to be felt through historical and intergenerational trauma.

After contact with colonial parties, as much as 95% of the indigenous population died. Further Indigenous economies that were land and reciprocity based were destroyed, as an example western bison eradication that had devastating effects on Indigenous health, communities, and values. Bison populations went from 30 million to near extinction in the 19th century. The United States also has a long history of marginalizing and separating Indigenous families. Indeed “colonization intentionally fragments families, community cohesion and cultures”. One of the most explicit governmental schemes to disrupt Indigenous life was the Boarding School programs. Congress acknowledged that from “the beginning, Federal policy toward the Indian was based on the desire to dispossess him of his land. Education policy was a function of our land policy.”

In 1819 Congress passed the Indian Civilization Fund Act which encouraged the creation of a network of schools to be run by missionary societies, “and authorized an annual ‘civilization fund’ to stimulate and promote this work.” These schools were generally located near Native American communities and their focus was to strip Native American children of their customs. In 1830 Congress passed the Indian Removal Act which allowed for the forcible relocation of five Native American tribes (Cherokee, Choctaw, Chickasaw, Creek, and Seminole) to federal territory west of the Mississippi river. This violent push west and the ensuing confinement of the five tribes to reservations continued to fragment Native American families and communities. Not satisfied to confine Native American families

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20 Johnson v. McIntosh, 21 US 543 (1823).
Oct 15, 2014 | Article, Volume 3 - Issue 3
26 Kennedy Report, at 142; see also Northwest Ordinance of 1787, art. III (Jul. 13, 1787) (“Religion, morality, and knowledge, being necessary to good government and the happiness of mankind, schools, and the means of education, shall be forever encouraged.”), re-enacted as Act of Aug. 7, 1789, Ch. 8, 1 Stat. 50
27 “Let All That Is Indian Within You Die!,” Native American Rights Fund Legal Review 38, no. 2 (Summer/Fall 2013): 1–11.
28 “Let All That Is Indian Within You Die!”
30 Murphy.
to reservations or to educate children in day schools, Indian Boarding Schools were founded in 1860 under the slogan “Kill the Indian, save the man” with the explicit goal of exterminating Native American cultures and connections, and forcibly assimilating indigenous people into white society.31

Under the Act of March 3, 1893, Congress authorized the Secretary of the Interior to withhold rations, including those guaranteed by treaties, to Indian families whose children did not attend schools.32 The forcible removal of thousands of children from their families to send them to boarding school was a continuation of the intentional destruction of Native American families that had already been happening for generations.33

### 20th Century Racism and Family Separation

The mid-20th century also saw a significant change in the child welfare system’s approach to Native American families. In 1958, the federal government initiated the Indian Adoption Project.34 The goal of this project was the same as the Indian boarding schools - to exterminate Native American cultures - however it recognized that sending Native American children to white foster homes was a cheaper way to achieve this end than running a system of boarding schools.35 The Act portrayed Native American women as poor and impoverished and thus unable to care for their children and it framed leaving children with anyone outside of the nuclear family, a common practice in Native American communities, as “neglect”.36 Thus, the pretext of abuse or neglect investigations was again used to intentionally break up families and 85% of Native American Children who were removed from their homes were placed in non-Native American homes or institutions.37 The Indian Adoption Project was so effective, that by the late 1970s, over 25-35% of all Native American children in the country had been adopted.38 In 1978, after extensive activism by tribes and Native activists, Congress passed the Indian Child Welfare Act (ICWA), which was designed to reduce the number of Native American children being removed from their families, and to prioritize placements with Native American families when foster care was deemed necessary.39 Unfortunately ICWA is often ignored and has faced systemic challenges since its passage which attempt to overturn the law. The ICWA was passed as a reparative measure to address the 25-35% of Indigenous children that were placed outside of the homes, and 90% of the times with non-Indigenous peoples. The law recognized a broader framework that children, families, relatives and communities exist and the human need to be connected. “The values of Indigenous connectedness, the interrelated welfare of an individual, one’s family, one’s community, and the natural environment.” 40

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33 See https://www.nicwa.org/boarding-schools/
35 Beardall and Edwards.
36 Beardall and Edwards.
37 Beardall and Edwards.
38 Beardall and Edwards.
39 Beardall and Edwards.
Housing and Infrastructure Racism

The current make-up of the child welfare system, and its geographic concentration in poor Black and Brown families, is also linked to federal housing and infrastructure policies first instituted during the New Deal era. Among the sweeping initiatives aimed at reversing the Great Depression, New Deal housing initiatives intended to bail out homeowners and provide federally insured mortgages honored existing patterns of neighborhood segregation.

Following World War II, there was a significant expansion of white suburban communities driven by mortgage assistance to returning servicemen in the Serviceman’s Adjustment Act of 1944 and the GI Bill. Suburbs simultaneously used zoning, eminent domain and restrictive covenants to keep out Black residents. The Housing Act of 1949, which expanded the federal role in mortgage insurance and construction of public housing, was implemented in ways that cemented place-based inequity. For example, housing authorities built separate public housing for Black families and imposed morality based restrictions on who could access affordable housing. At the same time, redlining policies through which banks refused to lend or imposed higher rates in Black neighborhoods made home ownership disproportionately unattainable for Black families. Other policies that contributed to low investment in communities of color include the construction of infrastructure projects like freeways or the placement of hazardous waste sites. Despite the gains of the civil rights era, discriminatory housing practices and divestment in Black communities persists today and corelate with a range of inequitable outcomes in health, education and employment to name a few. In many places, historical communities of color subjected to discriminatory housing practices for more than a century also have high rates of child welfare removal.

By 1967, all states had enacted child abuse reporting laws in response to articles published highlighting cases where medical professionals could identify severe physical child abuse. Then in 1974 Congress passed the Child Abuse Prevention and Treatment Act (CAPTA) which provided funding and guidance to states to support the prevention, assessment, investigation, prosecution, and treatment of child abuse and neglect. It conditioned federal funding on states instituting mandatory reporting laws for child abuse and neglect and it sanctioned the expansion of the network of professionals mandated to report abuse and neglect. CAPTA marked a shift from child welfare as a social service system to a child protection system. In the decades since, mandated reporters have grown to include mental health and social services providers, clergy, and all school personnel. Including such a large number of individuals, most of whom are untrained in identifying child abuse or neglect and who bring their own subjective definition of what is a “reasonable” suspicion of harm, has led to significant overreporting. The number of suspected maltreatment reports increased dramatically from 60,000 in 1974 to one million in 1980 and two million in 1990. Mandatory reporters continue to be heavily involved in the disproportionate surveillance brown and black families, and their corresponding involvement in the child


42 Brown and Gallagher.

43 Brown and Gallagher.

welfare system. For example, the Department of Health and Human Services’ Children’s Bureau reported that in 2019 fiscal year, 4.4 million reports about 7.9 million children were made to Child Protection Service agencies. Over half – 2.4 million – of these reports were screened as appropriate, and only 16% of those referrals were found to be substantiated after being investigated. This data clearly demonstrates the high rate of unsubstantiated reports that are made annually, which perpetuates the regulation through surveillance of the families named in these reports. This creates an environment in which these families’ trust in institutions that could provide valuable supports, including schools and medical providers, is broken.

In 1980 Congress adopted the Adoption Assistance and Child Welfare Act (AACWA) which instituted a requirement that state agencies must make “reasonable efforts” to prevent or eliminate the need for removal and to make it possible for children to return home once they enter foster care but the Act did not provide resources to operationalize those efforts. Thus, “the ‘reasonable efforts’ provision has remained largely illusory as a protection from unjustified removal, especially for Black families.”

War on Drugs, War on Blacks

In the 1980s, the escalation of the War on Drugs, and the dramatic increase in mass incarceration had significant impacts on Black families. The widespread fear of drugs was used to stoke racist stereotypes of “Welfare Queens” and “crack babies”, both of which were mobilized against poor Black women to reduce welfare and increase removal of their children. Additionally, increasingly punitive sentences for drug crimes targeted Black communities, leading to vastly disproportionate numbers of Black people being incarcerated. While Black families were systematically broken apart by parents being sentenced to prison, this harm was often exacerbated when children were placed in foster homes and parental rights were permanently terminated. The policies from the 1980’s drug wars that equate drug use with abuse and neglect continue to contribute to the surveillance and control of Black, Latinx and Indigenous women. Medical professionals have used mandated reporting as a basis to implement pre and post-natal drug testing that overwhelming targets Black, Latinx and Indigenous women, regardless of extensive research showing rates of drug use to be roughly equal across all racial groups. In 2018, Congress again attempted to address some of these issues in the Family First Prevention Services Act, which was designed provide states increased financial support for in home prevention

47 U.S. Department of Health and Human et al.
48 U.S. Department of Health and Human et al.
49 U.S. Department of Health and Human et al.
50 White et al.
51 White et al., 43.
52 Alphonso, “Political-Economic Roots of Coercion.”
services in attempt to end or reduce the financial incentives that had previously existed to break up families. However, the law did nothing to address the racially disproportionate surveillance of families of color by child protective services, which directly leads to families of colors high rates of involvement in the child welfare system.

The result of all of these parts of the War on Drugs was a sharp increase in the overrepresentation of children of color in the child welfare and foster care systems. These moves toward increasingly punitive welfare and child removal policies culminated in the Congress’s passage of the Personal Responsibility and Work Act in 1994, and the Adoption and Safe Families Act in 1997. PRWA tied welfare benefits to work requirements, which systematically excluded some of the poorest parents from receiving benefits, thus increasing the likelihood that their poverty could be seen as an inability to care for their children. At the same time, no caps were put on the entitlements for foster care and adoption assistance. ASFA “ushered in an era of heightened regulation of families, especially Black families.”

“In stark contrast to AACWA, ASFA has prioritized family separation.” It includes provisions to terminate parental rights if a child remains in foster care for 15 of the most recent 22 months and to initiate efforts to place a child for adoption or with a legal guardian concurrently with reunification efforts. ASFA even included financial incentives to states which increase their adoptions. The impact of these policies was stark, as former Judge Karen Baynes-Dunning has observed. “By 1999 merely two years after the passage of ASFA, there were 46,000 adoptions from foster care, an increase of 28 percent from the previous year. The majority of these children (51 percent) were Black.” For black children who remain in foster care, their chances of aging out of the system as legal orphans increased as their rates of adoption, in comparison to their white peers, decreased. ASFA is also inconsistent with the values of tribal communities. ASFA defines permanency as a parent-child legal relationships while tribal communities recognize and value the importance of a child’s multiple connections to family, community, land, and culture.

In an attempt to address these issues, congress passed the Multiethnic Placement Act (MEPA), in 1994. This law prohibited child welfare agencies from “delaying or denying” any adult the chance to adopt or foster a child because of their race, color, or national origin – practices which previously had been standard practice in many jurisdictions. Furthermore, MEPA required foster agencies to create “diligent recruitment” plans to increase the racial and

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56 White et al.
57 White et al.
58 Guggenheim.
59 Alphonso, “Political-Economic Roots of Coercion.”
ethnic diversity of foster parents. Unfortunately, these provisions have not been aggressively enforced, and as a result, Black children continue to stay longer in foster care than their white peers.

Racism and the 21st Century

In reflection of this historical narrative, it is important to acknowledge that racism and the separation of family within communities of color still exists today. Black families are experiencing mass incarceration, police brutality, housing discrimination, and a lack of zealous advocacy in and out of our Court system. While crack was deemed a criminal offense for Blacks in the 20th Century, the use of Opioids in the 21st Century for those who are White, is not. Such offense for White families yields a cry for help, health services, and a national crisis. The child welfare system that exists today was historically created with racist, harmful intentions, and continues to have disproportionate impacts on parents, children, and families of color. Furthermore, there are ongoing efforts to repeal the progress that has been made in recent decades. For example, numerous ongoing lawsuits are currently working their way through the courts striving to strike down ICWA, which could end the protections this law provides for Native American children and families and create precedent threatening Native American’s sovereign legal rights.

For more information see:
CSSP-Entangled-Roots.pdf
Childrens-Rights-2021-Call-to-Action-Report.pdf (childrensrights.org)

69 White et al.