

## **Podcast Transcript:**

### **Race and Regulation Podcast**

**Presented by the Penn Program on Regulation**

**Episode 1: Black Families Matter with Dorothy E. Roberts**

**Released on May 25, 2022**

*Music: Joy Ike's "The Fall Song"*

**Dorothy Roberts:** People are working in a system that is structured and designed and whose purpose is to regulate Black families. It functions in a racist way. That doesn't mean that everybody working in the system has racist intentions. Some do. But they are working in a system that was designed to implement a racial, capitalist approach to inequality.

**Cary Coglianese:** That's law professor Dorothy Roberts, delivering a lecture at the University of Pennsylvania Law School organized by the Penn Program on Regulation. I'm Cary Coglianese, the director of the Penn Program on Regulation and a professor at the University of Pennsylvania Law School. Welcome to our podcast, "Race and Regulation." In this podcast series, we are focusing on the most fundamental responsibility of any society: ensuring equal justice, and dignity and respect, to all people.

We're focused in particular on two key questions: How does regulation create or reinforce structural racism in society? And how might regulation advance the cause of racial equity?

Advancing racial justice calls for all of us to understand better the racial dimensions of regulatory systems and institutions.

We're glad you can join us as we hear from Professor Roberts, a distinguished professor of law, sociology, and Africana Studies at the University of Pennsylvania. She is one of the most acclaimed scholars of our time in the fields of race, gender, and the law.

A central theme in any discussion of regulation focuses on the power of the state to intervene in private affairs. Often, these private affairs are thought of in terms of the marketplace, and transactions by businesses. But sometimes they are truly private and deeply personal. Few areas of the law affect people's lives so personally as the rules affecting families and the power of the state to intervene in family life, and to separate children from their parents. This power is what underlies what Professor Roberts has called "the family regulation system."

**DR:** I think it's just cool that I could speak about family regulation, which is not what most people think about as the child welfare system.

**CC:** Professor Roberts broke important new ground in the study of family regulation twenty years ago with the publication of her book, *Shattered Bonds: The Color of Child Welfare*. This podcast draws from her latest book, released in spring 2022 and entitled: *Torn Apart: How the Child Welfare System Destroys Black Families—And How Abolition Can Build a Safer World*.

Before we hear from Professor Roberts, I should say that this podcast touches on issues that may be difficult for some listeners. These include the separation of children from their families, allegations of mistreatment of children, and a reference to self-harm. Professor Roberts began her lecture with a story, based on events appearing in the media in August 2020.

**DR:** At that time, a Black father named Tyrone Deener live-streamed a video of armed deputies from the Manatee County Sheriff's office surrounding his car, detaining him, his partner, Syesha Mercado, who some people knew as a former *American Idol* finalist, and their ten-day-old baby.

**Music:** Syesha Mercado singing "*I Will Always Love You*"

The deputies had pulled the car over on the side of a highway to execute a Family Court judge's order to seize the couple's newborn daughter.

Now, the family's nightmare began earlier in February when the parents took their thirteen-month-old son to a hospital in St. Petersburg, Florida, to seek medical care. Mercado was pregnant at the time, and she was trying to transition the toddler from breastfeeding to solid food. He was having trouble, she was concerned about his health, and she brought him to the hospital for help. Instead, what the hospital staff did was call the child maltreatment hotline to report that the toddler was malnourished and failing to thrive, and the Department of Children and Families took him from his parents.

The video in August shows Mercado holding her baby, wrapped in a pink blanket, as she walks slowly from her car toward three white women who appear to be Child Protective Services agents. Mercado pauses in front of the workers, and she asked them, "Do you not feel anything? You guys, I'm human. This is my baby. My baby is days old and you're taking my baby away from me. You have no heart." With the help of the viral video and a team of lawyers and media attention, Mercado and Deener were reunited with their daughter nine days later while they continued to fight to recover their son from foster care.

The terror inflicted by armed officers who surrounded the family and the cruelty displayed by the CPS workers who tore an infant, a ten-day-old infant from her loving mother's arms leave no doubt that the point of that joint incursion between police and CPS agents was to criminalize the parents, not protect the child. It's hard to think about how that baby was helped by taking it away for nine days from her mother.

### ***Music: Joy Ike's "Promised Land"***

What happened to Syesha Mercado's family is common and reflects key features of the so-called child welfare system. The system accuses, investigates, and blames parents disproportionately in Black, Brown, and Indigenous communities for risk to children as a subterfuge for controlling their families. It's a multi-billion dollar state apparatus that relies on terrorizing families by taking their children away or weaponizing their children with the threat of removing them in order to impose intensive surveillance on every aspect of the family's life. And it executes this extraordinary level of state intervention and family regulation by both acting like police and working hand-in-hand with criminal law enforcement. The purpose of the so-called child protective services is to police families.

**CC:** Professor Roberts first identified this system when she was working on her 1997 book, *Killing the Black Body*.

**DR:** I had been researching the charges brought against hundreds of Black women across the country for using crack cocaine while pregnant and investigating how racism and the long-standing devaluation of Black mothers turned a public health issue into a crime.

Twenty years later, Black and Native communities are still targeted for child welfare investigations. Although the racial disparities in foster care are less glaring than they were in the 1990s, Black and Native children remain overrepresented in foster care populations. More telling are recent data indicating children's chances of landing in foster care at some point while growing up—in other words, not just one point in time, but their chances over their entire childhoods. According to a 2014 study, about fifteen percent of Native children and twelve percent of Black children can expect to enter foster care before their eighteenth birthday. That's an extremely high rate of the state taking children away from their homes and putting them in substitute care, in state custody. The rate for white children, about one in twenty, is also remarkably high even though it's lower. It's alarming that so many white children also are taken from their homes.

In many cities, child welfare agency involvement is concentrated in segregated and impoverished Black neighborhoods. So, every child residing there, whether they're taken or not, lives with a realistic fear that state agents may come to their home and snatch them away from their parents. This to me is one of the main differences between the meaning of the child welfare system for Black children and white children in America. Most Black children know about the child welfare system and fear that it can come and interrupt their family's lives. That's not true for most white children in America. I call that the "racial geography of child welfare."

***Music: Joy Ike's "Promised Land"***

**CC:** Professor Roberts argues that the only way to end this racial geography is to abolish the current system and replace it with what she calls a "radically reimagined way of caring for families and keeping children safe."

**DR:** To understand why, it helps to look back at the roots that still structure the system we have today. The origins of the U.S. child welfare system lie in oppression of marginalized people by powerful white elites. The ideology of violent supervision of Black families by white people can be traced to the forcible separation of enslaved families where, of course, under slavery, Black

people were deemed the legal property of enslavers. And the enslavers had the absolute right to separate families at any time they wanted to, and they did. And then after the Civil War, Black children were routinely returned to enslavers to work for them as apprentices by family courts. And if you look at some of the laws that allowed that, they sound very much like neglect laws on the books today.

The mass removal of Indigenous children to be placed in boarding schools was an instrument of tribal genocide. It was a war tactic that the U.S. government developed as part of its military strategy to decimate Native Peoples. And then following that was the U.S. government's adoption policy that deliberately took Native children from their tribes to be adopted into white homes.

For white children, placing European immigrants from impoverished cities was part of the origin of foster care. The first foster homes were where charities sent European immigrant children to work in those homes. And in fact, there is this myth that the child welfare system began to protect a little girl from abuse by her parents, and that was actually abuse by a foster family where the girl was placed because she was poor. Later, white children were put on orphan trains and sent to distant locations to work on farms.

### ***Music: Joy Ike's "Promised Land"***

So, the whole point of the child welfare system has always been to regulate economically and racially marginalized communities. Their subordinated status makes them vulnerable to state intervention because of the way that child maltreatment is defined, to blame them for harms to children that are caused by societal inequities. The definition of neglect is easily conflated with poverty. In fact, in some places, it's basically a definition of poverty. And so, the very meaning of child maltreatment is framed as a way to blame parents for the harms of societal inequities that cause children to be raised in poverty.

Family policing helps them to keep these communities in their subordinated status by disrupting their family and social relationships and interfering with their communities. And more broadly, family policing implements an approach to child welfare that buttresses an unequal social structure by attributing the horrible consequences of these inequities to the supposed parental pathologies of the family and pretending that child protective services is addressing the problems through therapeutic remedies.

For most of the system's history, Black children's needs were completely ignored by the charities that were developing in the eighteen hundreds and early nineteen hundreds. It wasn't until the Civil Rights Movement when Black people demanded extension of government welfare entitlements that white people had been receiving to Black communities. And then, public agencies pivoted sharply from providing services to children in their homes – white children in their homes – to taking children from their parents. We can clearly see the collusion and convergences of the skyrocketing of foster care with the skyrocketing of Black families in the child welfare system, propelling the spike in foster care and also in federal funding for foster care so that today, the vast majority of federal funds to the child welfare system go to maintaining children outside their homes. And that was linked to the massive removal of Black children from their homes.

***Music: Joy Ike's "Promised Land"***

Given its oppressive foundations, it should come as no surprise that the child welfare system is structured to cause devastating injuries to the children it separates from their families. On top of inflicting trauma of separating children from their loved ones, state agencies fail to ensure that children in their custody receive the care they need and subject many of them to sexual and physical abuse. Many children are shuffled to multiple placements, including congregate settings that aren't fit for children. And so the system is set up to interfere with their emotional and physical health, their education, and their social relationships. It forces many children into poverty, homelessness, and prisons. We've known this for a long time, the connection between imprisonment, being unhoused, being unemployed, having PTSD, et cetera, with placement in foster care. Many children try to escape foster care by running away either back to their families, and often that's where they're running, or just to surviving in the streets. They would rather survive in the street than be put back into foster care. And even more tragically, many escape by taking their own lives. There is an extremely high rate of suicide among even little children in foster care.

**CC:** Professor Roberts describes these horrific outcomes as an inevitable outgrowth of a highly invasive regulatory system known as child welfare services.

**DR:** One of the child welfare system's chief functions is to keep an eye on families in Black communities. Family surveillance extends far beyond the numbers of children placed in foster care, the measure most commonly noted to gauge the system's scope and impact. CPS agencies investigate the families of 3.5 million children every year. More than half of Black children will

be subject to investigation at some point before they reach age 18. And let me repeat that: more than half of Black children will be subjected to an investigation before they reach the age of 18. I say “subjected to” because many of these children are forced to strip for strangers. Their private information is taken. They are removed, sometimes, from their families as a result. But even if they are not, the investigation itself is a traumatizing experience.

As states around the country began to reduce their foster care populations in recent decades, they simultaneously expanded their invasion into the private lives of families by investigating them and overseeing them with coercive services. Identifying children at risk for abuse or neglect gives caseworkers the authority to probe into and regulate every aspect of their family’s life. And it doesn’t diminish the state’s power to tear families apart. Family regulation still relies on this ever-present threat to take away children, and child welfare authorities still make good on that threat far too often.

**CC:** And the state’s child welfare authorities are assisted and supplemented by a network of third-party regulatory intermediaries.

**DR:** To assist in surveilling families, child welfare departments enlist the eyes and ears of deputized agents. Under federal law, every state must identify mandated reporters, people who work in professions that put them in contact with children such as teachers, healthcare providers, social services staff, and daycare workers, and require them, under certain circumstances, to report suspected child abuse and neglect to government authorities. Family policing relies on this expansive network of information sharing that spans the school, healthcare, public assistance, and law enforcement systems. This confluence of social services and child protective services directs state surveillance against poor and low-income families, especially Black families who are more likely to rely on public service providers. Using social services, receiving welfare benefits, and living in public housing subject families to an extra layer of contact with mandated reporters. Public professionals are far more likely to report maltreatment than are private professionals who serve a more affluent, paying clientele. This is part of the reason why the vast majority of children in foster care, or just investigated even by CPS, are poor because wealthy families don’t get reported. It’s not because they’re not doing the same things that impoverished parents might be doing that the impoverished parents get blamed for as child neglect. It’s mainly because they’re not meant for this system, so the system doesn’t bother to investigate them, and mandated reporters don’t report them the way that they easily report impoverished parents especially if they’re parents of color.

The racial disparities in mandated reporting show that reporters don’t really think they’re required to report abuse and neglect in every case. They serve as agents of a system designed to

regulate marginalized families only. CPS then treats these reports like accusations to be investigated, not requests for help. So, parents risk losing their children every time they interact with teachers, doctors, and welfare staff who double as surveillance agents for the state. Mandated reporting, therefore, drives many family caregivers from the very people who are most likely to support them. It deters families from seeking needed assistance and weakens service providers' capacity to improve children's welfare. Providing services within a punitive family policing system thwarts the potential for schools, healthcare clinics, and social programs to be caring hubs of community engagement that non-coercively help families meet their material needs.

The state's vast family surveillance apparatus has been expanded even more to startling levels now that state CPS authorities are employing big databases, computer programming, and artificial intelligence to monitor families and make automated decisions about intervening in them. Some of the nation's largest child welfare departments in California, Florida, Illinois, Pennsylvania, and Texas are using computerized risk assessment technologies to magnify family surveillance with child welfare agencies following digital models that are implemented by police to identify so-called hotspots where police focus their surveillance and intervention. Of course, those hotspots tend to be in Black neighborhoods, the same neighborhoods where we see concentrations of child welfare agency involvement.

Now, all of the algorithms that go into calculating when the alarm should go off to send caseworkers into people's homes is a black box. The mathematical formulas are proprietary trade secrets and safeguarded from disclosure by intellectual property law. So, government agencies and the public have no idea how these risk scores are calculated. And like predictive policing, these models import into the database and the algorithms biases against poor families and families of color. Of course, this creates a feedback loop. Once you're predicted to be a risky family, that now you're under investigation, really intense investigation, which increases the chances that a caseworker is going to find something wrong in the family, and then that proves to the county officials that the prediction was accurate. But in fact, studies of predictive models in Los Angeles and Chicago reveal tremendous numbers of false positives, children predicted to be abused by the algorithm who weren't. But that's not the main problem. Accuracy isn't the main problem. The main problem is that these mathematical models are used to statistically identify targets of investigation within these giant databases detached from any regard to whether these families have actually harmed their children.

**CC:** Given the state's extensive surveillance apparatus, and in light of its stark class-based and racial disparities, what is to be done?



**DR:** What we need is a total paradigm shift in the state's relationship to families. A complete end to family policing by dismantling the current system and reimagining the very meaning of child welfare and safety.

We are seeing an uprising of radical organizing by system-involved parents to end family policing with Black mothers. Others involved in family policing are calling for change across the nation. And their calls for abolition are beginning to garner support from scholars, foundations, policy centers, and activist organizations. They're working to end mandated reporting, to give parents high-quality, multi-disciplinary legal defense at every stage of the process, including before children are removed, to fund and engage in community-based mutual aid, and to put income and other needed resources directly in the hands of family caregivers.

So, we need a common mission with other abolitionist struggles that are going on across the nation to bring down all the extensions of a carceral state. And we need a common vision for meeting human needs, preventing violence, and caring for children, families, and communities. And a first step is to help people understand that the child welfare system is a system designed to police families, not to protect children.

***Music: Joy Ike's "Promised Land"***

**CC:** Although such a policy may seem hard to imagine being adopted in the United States, it is telling that it was effectively the policy during the Covid pandemic, when additional economic relief checks were shared with millions of families across the country. Many large cities, such as New York, provided additional assistance too.

**DR:** What would actually support families? What would actually keep children safe? And these are both community-based ways of meeting families' concrete needs. But I'm someone who says we also need federal policy and state policy that does that. So, an example is the policies of what are called "child tax credits." So they're actually checks made out to families outside the child welfare system, without strings attached. Families can do whatever they want with this money to help them raise their children. It is because of those checks and mutual aid in New York City was the reason why, even when the child welfare system basically shut down in New York City during the lockdown, there wasn't a rise in child abuse. In fact, some have said that there was a decrease in child abuse and neglect because there was a better policy implemented in New York City during that time. You know, so there was all this alarm, oh, children are going to be stuck at home and their parents are going to be abusing them and we won't have caseworkers

investigating. But it turns out that that didn't happen at all. What happened was mutual aid organizations sprang into action and provided the resources that families needed, and families were getting checks in the mail or in their bank accounts to help them take care of their children. So we have evidence that this works better than policing families to keep children safe and thriving.

**CC:** Closing out the Q&A segment that followed her lecture at Penn Law, I asked, "Can you leave us with one or two action items? Something that each of us could do that would be positive and move in a good direction?"

**DR:** Sure! So one thing I would say is become familiar with some of the organizations that are working to abolish this system and replace it with a truly caring approach to families that actually meets family and children's needs and prevents violence instead of just reacting to it. JMAC for Families led by Joyce McMillan. Movement for Family Power is another. The Upend Movement is another. JMAC for Families has a legislative action program where they are – this is mostly in New York, but it could be replicated in other places – ending mandated reporting, giving legal representation to parents, notifying parents of their rights from the very beginning of the interaction with the system. Around the country, there are family defender services that are providing multi-disciplinary defense representation for families.

And think about ways that you, in your communities, can help each other to care for children. Many communities have some form of mutual aid where you can reach out to struggling families and instead of turning them over to—and have the families, the children separated, you can figure out in the community ways of supporting each other.

So those are just some ways of not only dismantling the system through legislation, through protests, but also just as importantly, can we help children throughout our society thrive. As we imagine that, we will no longer need to have intervention into families to take children away to keep them safe. That's what we want to have, a society where we couldn't imagine that that would make any sense to do that to protect a child. What happened to Syesha Mercado, ripping her ten-day-old baby from her, that would be absurd. Why would you ever do that? That's what we want where that would be unimaginable because we have such a wonderful way of caring for each other.

**CC:** Caring for each other seems a fitting way to end this talk.

***Music: Joy Ike's "Walk"***

**CC:** Thank you for listening to this episode of “Race and Regulation.” I hope you have learned more how the child welfare system in the United States operates to regulate Black families ... and that you will read Professor Roberts’ book, *Torn Apart: How the Child Welfare System Destroys Black Families—and How Abolition Can Build a Safer World*.

This podcast has been adapted from Professor Dorothy Roberts’ lecture in the fall of 2021. She spoke as part of the Penn Program on Regulation’s lecture series on race and regulation, co-sponsored by the Office on Equity and Inclusion at the University of Pennsylvania Law School.

This podcast was produced by Patty McMahon, with help from Andy Coopersmith, our program’s managing director. Our music is by Philadelphia-based artist, Joy Ike.