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## NEITHER COPS NOR CASEWORKERS: TRANSFORMING FAMILY POLICING THROUGH PARTICIPATORY BUDGETING

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### ABSTRACT

*A caseworker makes a home visit to a poor Black family under the guise of protecting the children in the household from suspected neglect. The caseworker investigates. They search the premises without a warrant, as the Fourth Amendment's restraints do not apply to them, even though they are state actors who replicate police power. The family's four children share a bedroom while the parents sleep in the living room. The caseworker interrogates the parents. Their obvious lack of resources is automatically assumed to endanger the children and place them at risk of future maltreatment. It is not alleged that the parents have otherwise neglected (or abused) their children. Despite holding itself out as a "caring institution," the state does not respond compassionately or even reasonably to the family's deprivation. Instead, the state wields the threat of removing the children from their home. Like in many cases, the threat is carried out, and the children are placed in unfamiliar environments with strangers. The removal directly links the parent's precarious financial situation to their fitness to parent, thereby targeting marginalized families who experience poverty. Money that could (and should) have gone to the needy family to care for their children is instead given to the strangers for taking in the children. The avoidable separation traumatizes the children, perpetuating the injustices they already experience as race-class subjugated people. This process, which plays out routinely in poor Black and brown communities, has been described as the "death penalty" of the child welfare system, otherwise known as the family police.*

*Drawing from the abolitionist praxis of powershifting, this Article argues for the implementation and expansion of participatory budgeting ("PB") to unravel the connection between economic deprivation and family policing. PB is a governance arrangement that provides an entry point for directly impacted*

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groups to “change the way—and for whom—policy and budgeting operates.”<sup>1</sup> Throughout the country, much of the federal dollars budgeted for the poor never reach their pockets because of the discretionary structure of federal block grants. This means that state and local administrators have a lot of control over how welfare funds are spent, and they have come up with creative ways to sit on the money instead of using it to expand the social safety net. Moreover, many families struggling to make ends meet avoid drawing welfare because the programs are stigmatized. PB shifts power from the state to directly impacted communities and allows these communities to organize so that money earmarked for their use will be spent to support them materially, addressing their specific needs as they define them. By bringing the dominated class into the democratic fora, PB also creates spaces where new social connections can form in the local economy. This helps to mitigate the social tax on welfare recipients and spurs welfare participation. Since the family police misguidedly uses poverty as a proxy for neglect, improving the material condition of the needy helps to shrink the reach of the child welfare system as it is constituted without legitimating its carceral logics.

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<sup>1</sup> Jocelyn Simonson, *Police Reform Through a Power Lens*, 130 YALE L.J. 778, 825 (2021) (internal quotations omitted).

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## INTRODUCTION

Scholars have written extensively about how the carceral apparatus in the United States punishes indigency. These works have primarily focused on cash bail,<sup>2</sup> fines and fees,<sup>3</sup> and the regulation of the unhoused,<sup>4</sup> to name a few examples. But the child welfare system, commonly referred to as “family policing” by those most affected by it,<sup>5</sup> is often overlooked as a site where the state exercises its police power to punish poverty.<sup>6</sup> Family policing describes the ways in which the child welfare system regulates and controls the typically poor Black and brown families who come under its jurisdiction.<sup>7</sup> Because the child welfare system is perceived as a benevolent “child-saving” institution, the parallels between the system and traditional policing often go unrecognized.<sup>8</sup>

The conventional understanding of the state’s police power revolves around cops patrolling the streets and responding to emergencies in service of keeping our communities safe.<sup>9</sup> It is difficult to wean ourselves off of this perception

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<sup>2</sup> See, e.g., Christine S. Scott-Hayward & Sarah Ottone, Essay, *Punishing Poverty: California’s Unconstitutional Bail System*, 70 STAN. L. REV. ONLINE 167, 170 (2018) (discussing how “using money as the sole criterion for release” unjustly burdens indigent people “even if they are neither dangerous nor a flight risk”); Lauren Bennett, *Punishing Poverty: Robinson & the Criminal Cash Bond System*, 25 WASH. & LEE J. CIV. RTS. & SOC. JUST. 315, 318 (2018) (discussing role cash bail system plays in criminalizing poverty).

<sup>3</sup> See generally Ndjouh MehChu, *Nickels and Dimes? Rethinking the Imposition of Special Assessment Fees on Indigent Defendants*, 99 N.C. L. REV. 1477 (2021) (arguing special assessment fees on indigent defendants may violate Excessive Fines Clause of Eighth Amendment to U.S. Constitution).

<sup>4</sup> See, e.g., Sara K. Rankin, *Hiding Homelessness: The Transcarceration of Homelessness*, 109 CALIF. L. REV. 559, 561 (2021) (explaining “[c]riminalization . . . saddles poor, unsheltered people with persecution, impossible fines, or criminal charges for merely surviving in public, rendering them much more likely to remain homeless”).

<sup>5</sup> MARIAME KABA & ANDREA J. RITCHIE, NO MORE POLICE.: A CASE FOR ABOLITION 169 (2022) (explaining how “family regulation system” is form of social policing that disproportionately effects on marginalized communities).

<sup>6</sup> A recent symposium at Columbia Law School honoring Dorothy Roberts’ work aimed to shine light on this oversight. See generally Symposium, *Strengthened Bonds: Abolishing the Child Welfare System and Re-envisioning Child Well-Being*, 11 COLUM. J. RACE & L. 421 (2021).

<sup>7</sup> See, e.g., Caitlyn Garcia & Cynthia Godsoe, *Divest, Invest, & Mutual Aid*, 12 COLUM. J. RACE & L. 601, 603 (2022) (“Like the criminal legal system, the family policing system is a state apparatus of racialized social control, ineffective at preventing or redressing harm on its own terms, while imposing very high fiscal and human costs. Players within the system—mandated reporters, police officers, ‘child protective specialists,’ and judges—perpetuate an intergenerational cycle that punishes and separates low-income and marginalized families.”).

<sup>8</sup> DOROTHY ROBERTS, TORN APART: HOW THE CHILD WELFARE SYSTEM DESTROYS BLACK FAMILIES—AND HOW ABOLITION CAN BUILD A SAFER WORLD 32, 34 (2022) [hereinafter ROBERTS, TORN APART] (noting “family policing continues to obscure its repressive political role by casting its work as rescuing individual children from pathological parents”); see also KABA & RITCHIE, *supra* note 5, at 186.

<sup>9</sup> See, e.g., Simonson, *supra* note 1, at 792-93.

when propaganda like the “thin blue line” depict “safety as always tenuous and society as always at risk of reverting to a natural state of violence, offering up police as the only way to save us from ‘perpetual crisis.’”<sup>10</sup> However, as Markus Dirk Dubber has pointed out, police power encompasses a range of state actions that extend far beyond the conventional law enforcement paradigm.<sup>11</sup> Scholars like Dorothy Roberts and Miriam Kaba have been advancing a more comprehensive understanding of policing that situates the child welfare system within the broader apparatus of the state’s coercive powers. Inviting us to look beyond the child welfare system’s benevolent packaging, they amplify that the system and traditional law enforcement share oppressive tendencies.

The traditional law enforcement paradigm views poverty as a personal failing warranting punishment.<sup>12</sup> This is because poverty is often seen as the individual’s fault, rather than the result of larger political, economic, and social factors.<sup>13</sup> For example, people who engage in fare evasion are commonly criminalized and marked as deviant, ignoring that many people who do so are simply trying to survive in a political and social economy that does not guarantee basic necessities like a living wage or transportation.<sup>14</sup> Similarly, states often equate poverty and neglect in their definition of child maltreatment.<sup>15</sup> This means that parents struggling financially are more likely to be investigated by

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<sup>10</sup> See KABA & RITCHIE, *supra* note 5, at 181. *Id.* at 25 (explaining how “[p]olicing is so deeply wedded to safety in our collective imaginations that it is difficult to disentangle them”).

<sup>11</sup> MARKUS DIRK DUBBER, *THE POLICE POWER: PATRIARCHY AND THE FOUNDATIONS OF AMERICAN GOVERNMENT* 99 (2005).

<sup>12</sup> See, e.g., MATTHEW DESMOND, *POVERTY, BY AMERICA* 19-20 (2023) (noting how “[t]oday, municipal regulations still allow the police to arrest [unhoused people] for being seen in public, criminalizing abject poverty” and highlighting “embarrassing, shame inducing . . . degradation rituals of the welfare office, where you are made to wait half a day for a ten-minute appointment with a caseworker who seems annoyed you showed up”); KABA & RITCHIE, *supra* note 5, at 168 (articulating how same logic “that society is endangered not by systems and institutions but by individual behavior . . . has been foundational to the prison industrial complex and much of social work”).

<sup>13</sup> DESMOND, *supra* note 12, at 41 (referring to “the old habit of blaming the poor for their own miseries” and noting “structural explanations [for poverty] are more in fashion [today]”).

<sup>14</sup> See, e.g., Ana Ley, *M.T.A. Looks Beyond Enforcement After \$690 Million in Fare Evasion*, N.Y. TIMES (June 6, 2023), <https://www.nytimes.com/2023/06/05/nyregion/mta-fare-evasion.html>.

<sup>15</sup> See, e.g., Melody R. Webb, *Building a Guaranteed Income To End the “Child Welfare” System*, 12 COLUM. J. RACE & L. 668, 675 (2022) (explaining in Washington D.C., as in many jurisdictions, “the definition of a ‘neglected child’ includes poverty factors as a basis for neglect”); DOROTHY ROBERTS, *SHATTERED BONDS: THE COLOR OF CHILD WELFARE* 27 (2002) [hereinafter ROBERTS, *SHATTERED BONDS*] (arguing, from perspective of caseworker, bringing up children in poor households can be perceived as neglect “because it often comes packaged with depression and anger, poor nutrition and housekeeping, lack of education and medical care, leaving children alone, [and] exposing children to improper influences”); ROBERTS, *TORN APART*, *supra* note 8, at 68 (“The conflation of poverty and neglect is written directly into some state statutes that define child maltreatment.”).

Child Protective Services (“CPS”),<sup>16</sup> who justify their intervention on the ground that the children are not provided vaguely defined support, such as “adequate nurturance and affection, food, clothing, shelter, sanitation, hygiene, or appropriate education.”<sup>17</sup>

To be clear, intervention itself is not inherently harmful. The problem lies in how intervention currently manifests for poor families of color ensnared in the child welfare system. Rather than intervening to provide material support to families trying their best, the state punishes them for the expected consequences of broader societal inequities. The child welfare system punishes disadvantaged groups for “quality-of-life” offenses driven by deprivation, exhibiting the same coercive impulses of “broken windows” policing.<sup>18</sup> Whether targeting fare evasion or perceived unfit parenting, the state regulates the poor instead of providing the material infrastructure to mitigate the problem. The state treats poverty as a willful failure warranting punishment and control, not as the result of inequitable societal arrangements that should be transformed.

As Mariame Kaba and Andrea Ritchie explain, cops are not the sole enforcers of oppressive social control—CPS agents also dominate race-class subjugated groups.<sup>19</sup> Though framed as a caring institution,<sup>20</sup> the child welfare system’s surveillance and control of Black and brown families maintains racist power structures rooted in slavery and settler colonialism.<sup>21</sup> Despite this close connection to the organizing logic of traditional law enforcement,<sup>22</sup> commitment to transforming policing has not gained steam in the context of family policing

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<sup>16</sup> Leroy H. Pelton, *The Continuing Role of Material Factors in Child Maltreatment and Placement*, 41 CHILD ABUSE & NEGLECT 30, 31-32 (2015) (discussing correlations between poverty and child maltreatment).

<sup>17</sup> OKLA. STAT. ANN. tit. 10A, § 1-1-105 (2021) (emphasis added).

<sup>18</sup> See Alexandra Natapoff, *The High Stakes of Low-Level Criminal Justice*, 128 YALE L.J. 1648, 1665 (2019); Jamelia N. Morgan, *Rethinking Disorderly Conduct*, 109 CALIF. L. REV. 1637, 1637 (2021) (describing how state marks communities as disorderly and criminalizes individuals for engaging in quality-of-life offenses).

<sup>19</sup> KABA & RITCHIE, *supra* note 5, at 140-42.

<sup>20</sup> ROBERTS, *TORN APART*, *supra* note 8, at 28 (describing how, without warrant, “government agents invade the homes of hundreds of thousands of families in poor and low-income communities . . . in the name of protecting the children who live there”); KABA & RITCHIE, *supra* note 5, at 140.

<sup>21</sup> See ROBERTS, *TORN APART*, *supra* note 8, at 102; see, e.g., Cynthia Godsoe, *Disrupting Carceral Logic in Family Policing*, 121 MICH. L. REV. 939, 939-40 (2023) (book review) (“As a growing body of research, scholarship, and, most importantly, lived experiences of impacted people reveals, the punishment and family separation of poor, Black, Native, and other marginalized families is central to the American project of maintaining [W]hite supremacy, as well as other hierarchies along divisions such as class and gender.”); Garcia & Godsoe, *supra* note 7, at 606 (“The family policing system maintains America’s caste system.”).

<sup>22</sup> Amna A. Akbar, *An Abolitionist Horizon for (Police) Reform*, 108 CALIF. L. REV. 1781, 1838-40 (2020) [hereinafter Akbar, *Abolitionist Horizon*] (describing policing’s history of racialized violence and highlighting its connection to enslavement and colonialism).

because the notion of child-saving provides cover for the system's coercive tendencies.

Historically, child welfare reforms have oscillated between two poles: family preservation and "hard-line 'better safe than sorry' approaches."<sup>23</sup> The pendulum has typically swung in the direction of removing children from their homes in response to high-profile cases where children suffer severe harm or even death at the hands of their biological parents.<sup>24</sup> As evidenced by the Supreme Court's recent decision in *Haaland v. Brackeen*,<sup>25</sup> there is increasing awareness of family separation's harms and the need to balance family preservation and the well being of children.<sup>26</sup> Drawing on the abolitionist praxis of powershifting, this Article argues that implementing and expanding participatory budgeting projects creates possibilities for race-class subjugated communities to become safer and break free from the cycle of poverty and family policing.

Some definitions are in order. Participatory budgeting ("PB") is a governance arrangement that provides an entry point for directly impacted groups to "change the way—and for whom—policy and budgeting operates."<sup>27</sup> Abolitionist demands and other projects of transformation advance structural critiques of policing that seek to undermine the idea that policing's core function is to provide safety and security.<sup>28</sup> Rooted in abolitionist praxis, powershifting focuses on redistributing power from the state to disempowered communities to challenge and transform existing structures that perpetuate the subordination of

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<sup>23</sup> ROXANNA ASGARIAN, *WE WERE ONCE A FAMILY: A STORY OF LOVE, DEATH, AND CHILD REMOVAL IN AMERICA* 278 (2023).

<sup>24</sup> *Id.* (discussing importance of high-profile cases in shaping attitudes toward child welfare).

<sup>25</sup> 143 S. Ct. 1609, 1641 (2023) (upholding validity of Indian Child Welfare Act partially on recognition that removing Indigenous children from their families and communities is harmful).

<sup>26</sup> Michael S. Wald, *Replacing CPS: Issues in Building an Alternative System*, 12 COLUM. J. RACE & L. 712, 714 (2022) ("Child development experts recognize that coercive state intervention, especially if it involves removal of a child from their family, is often harmful to the child, as well as the parents."); Elisa Minoff & Alexandra Citrin, *Systemically Neglected: How Racism Structures Public Systems To Produce Child Neglect*, CTR. FOR STUDY OF SOC. POL'Y 1, 5 (2022), <https://cssp.org/wp-content/uploads/2022/03/Systemically-Neglected-How-Racism-Structures-Public-Systems-to-Produce-Child-Neglect.pdf> [<https://perma.cc/A9QW-2TTL>] (explaining in addition to possibly experiencing harmful and abusive environment, "children who spend longer in foster care are at greater risk of poor educational, employment, and health and well-being outcomes over the long term"); ASGARIAN, *supra* note 23, at 276.

<sup>27</sup> CTR. FOR POPULAR DEMOCRACY, *RECKONING WITH MASS CRIMINALIZATION AND MASS INCARCERATION: A PROPOSAL TO ADVANCE A NEW VISION OF PUBLIC SAFETY AND DISMANTLE THE 1994 CRIME BILL THROUGH A PARTICIPATORY PEOPLE'S PROCESS* 5 (2019).

<sup>28</sup> Simonson, *supra* note 9, at 778 (discussing social movement shift away from traditional policing and mass incarceration).

disadvantaged groups.<sup>29</sup> Within this framework, we typically contest the state's exercise of its police power when cops use excessive force or engage in other rights violations. However, we need to devote more attention to deconstructing the logic of state agents in ostensibly caring institutions who intervene in race-class subjugated families and communities. For example, is it appropriate for a caseworker to make a home visit to discipline and separate families when neglect is suspected solely because the families are poor and nonwhite? Should social policy instead focus on promoting bottom-up governance, meeting the needs of this disadvantaged class as they define them?<sup>30</sup>

As scholars like Jocelyn Simonson and Amna A. Akbar tell us, a powershifting analysis offers clear answers: those who are directly impacted by poverty and other forms of oppression must be included in solving the problems they face and engaging in self-governance.<sup>31</sup> This approach recognizes the value of looking for expertise outside of the conventional paradigm of people with resume virtues like advanced degrees, professional training, and certifications.<sup>32</sup> Directly impacted people are closest to the problem, have expertise on their own lives and should “claim[ ] their own power to make informed decisions about what ‘works’ and what doesn’t.”<sup>33</sup>

This Article has three parts. Part I briefly surveys the various ways social policy creates and maintains poverty. Part II provides background on family policing. In particular, I discuss the interplay of race, class, and poverty to highlight the way the system mirrors and is complementary to the broader police project. Part III is the heart of the Article. It begins by offering a descriptive account of non-reformist reforms, or reforms that “aim to undermine the prevailing political, economic, social order, construct an essentially different

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<sup>29</sup> See, e.g., Marbre Stahly-Butts & Amna A. Akbar, *Reforms for Radicals? An Abolitionist Framework*, 68 UCLA L. REV. 1544, 1559 (2022) (describing powershifting as radical reform framework which “expand[s] the space for democratic self-governance by directly impacted communities: poor, Black, and brown people who are subject to the most brutal aspects of the state’s coercive power, and whose resources, power, and life chances are shaped by histories of dispossession, brutalization, exploitation, and domination”); Ndjouh MehChu, *Policing as Assault*, 111 CALIF. L. REV. 865, 912 (2023) (“At the core of the abolitionist principle of power shifting is that the power to define harm should be in the hands of everyday people and the communities in which they live.”).

<sup>30</sup> KABA & RITCHIE, *supra* note 5, at 164.

<sup>31</sup> Stahly-Butts & Akbar, *supra* note 29, at 1560 (“[D]irectly impacted people must be the ones diagnosing problems, proposing and implementing solutions, and engaging in self-governance.”); KABA & RITCHIE, *supra* note 5, at 164 (explaining that providing safety and security outside shadow of carceral logics requires asking directly impacted people “what they want, need, and deserve”).

<sup>32</sup> Simonson, *supra* note 19, at 849-51.

<sup>33</sup> *Id.* at 852; see also Stahly-Butts & Akbar, *supra* note 29, at 1560 (describing how radical reforms must be bottom-up so directly impacted people can contribute).



one, and build democratic power toward emancipatory horizons.”<sup>34</sup> These reforms (also known as transformations) insist that we detach ourselves from the notion that violence is uncharacteristic of police activity and instead recognize violence as a defining feature.<sup>35</sup> The world we fight for—free from the violence of the coercive apparatus, whether it be family regulation, prison, or police—must include “redistribut[ing] power and reconstitut[ing]” our governance structures.<sup>36</sup> Situating PB in this emancipatory framework, I argue that PB projects are a worthwhile intervention to unravel the connection between economic deprivation and family policing.

PB originated in 1989 in Porto Alegre, Brazil, and has been successfully implemented in U.S. cities like Chicago, Illinois, and Greensboro, North Carolina.<sup>37</sup> In its most ambitious form, PB offers several possibilities for transforming the child welfare system, to which I now turn.

Research has shown that “state restrictions on access to [welfare] are significantly associated with increases in the number of child protection reports, victims of child maltreatment, as well as foster care placements, even after controlling for changes in incarceration and the nation’s opioid epidemic.”<sup>38</sup> Thus, solutions to perceived (or actual) neglect should endeavor to expand the social safety net, not break up families. Throughout the country, most of the federal dollars budgeted for the poor never reach their pockets because of the discretionary structure of federal block grants.<sup>39</sup> As Matthew Desmond explains,

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<sup>34</sup> Amna A. Akbar, *Non-Reformist Reforms and Struggles Over Life, Death, and Democracy*, 132 YALE L.J. 2497, 2507 (2023) [hereinafter Akbar, *Non-Reformist Reforms and Struggles*].

<sup>35</sup> See Garcia & Godsoe, *supra* note 7, at 606 (analogizing child welfare system to traditional law enforcement because system “maintains the status quo by holding parents of color and low-income parents within the lowest ranks of society’s hierarchies” and that “harms . . . inflicted on the lowest ranks . . . are a feature, not a bug”); Akbar, *Abolitionist Horizon*, *supra* note 22, at 1839 (“Rather than a departure from some norm, targeted and structural racialized police violence is . . . an enduring feature.”).

<sup>36</sup> Akbar, *Non-Reformist Reforms and Struggles*, *supra* note 34, at 2507 (discussing importance of redistributing power to people who are in position to understand and solve community problems).

<sup>37</sup> See Brandon Jordan, *How Communities Are Using Direct Democracy To Shape City Budgets*, WAGING NONVIOLENCE: PEOPLE POWERED NEWS & ANALYSIS (Sept. 28, 2016), <https://wagingnonviolence.org/2016/09/direct-democracy-participatory-budgeting/> [<https://perma.cc/7NY9-D9RP>].

<sup>38</sup> Brenda Jones Harden, Cassandra Simons, Michelle Johnson-Motoyama & Richard Barth, *The Child Maltreatment Prevention Landscape: Where Are We Now, and Where Should We Go?*, 692 ANNALS. AM. ACAD. POL. & SOC. SCI. 97, 101 (2020); see also Cara Baldari & Richa Mathur, *Increasing the Minimum Wage Is Good for Child Well-Being*, FIRST FOCUS ON CHILD.: THE BLOG (Aug. 31, 2017), <https://firstfocus.org/blog/increasing-the-minimum-wage-is-good-for-child-well-being> [<https://perma.cc/6W36-6LVR>] (observing strong correlation between economic security and decrease in rates of child abuse and neglect).

<sup>39</sup> DESMOND, *supra* note 12, at 28.

“for every dollar budgeted for [Temporary Assistance for Needy Families] in 2020, poor families directly received just 22 cents.”<sup>40</sup> In places like Mississippi, direct cash assistance intended for the poor ends up financing the pet projects of retired NFL legends.<sup>41</sup> Rather than top-down programs, shifting budgeting power to poor communities of color allows directly impacted people to allocate funds meant for them towards material provisions without coercive oversight.<sup>42</sup> When directly impacted communities have input in budgetary decisions, they can direct funding towards the very supports that address root causes of child welfare system involvement. Because deprivation and bias inform CPS’s intervention into poor Black and brown families under the status quo, any improvement in their material conditions moves us closer to a world where directly impacted communities are less likely to be subjected to the violence of family policing.

But even if the PB process does not lead local administrators to give the poor more welfare dollars, communities can leverage the process to fund essential programs like free or subsidized childcare. This is particularly significant in breaking the poverty-to-family-policing cycle, as low-income parents often face the challenging dilemma of having to leave their children at home alone while working because childcare is unaffordable.<sup>43</sup> Since leaving a child at home alone is sometimes considered neglect,<sup>44</sup> the provision of accessible and affordable childcare can mitigate the need for parents to make such choices and reduce the likelihood of child protective services intervening based on perceived neglect.

PB is also potentially transformative because it creates spaces where individuals experiencing poverty can come together and challenge the stigma surrounding welfare, which can increase the coverage of the social safety net. “[P]eople on public assistance have been labeled lazy, lacking in ambition, shiftless, dishonest, aggressive seekers of unearned rewards, morally weak, and bad parents.”<sup>45</sup> Studies have suggested that welfare imposes a social tax on recipients, which leads to welfare avoidance.<sup>46</sup> Unsurprisingly, welfare stigma often leads individuals to underreport that they are using it. Welfare stigma can be mitigated the more people know that others in their local economy use it and that welfare enrollment is not a sign of failure.<sup>47</sup> However, under the status quo, the spaces where poor people can come together and challenge narratives

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<sup>40</sup> *Id.*

<sup>41</sup> *Id.* at 29.

<sup>42</sup> Stahly-Butts & Akbar, *supra* note 29, at 1560.

<sup>43</sup> ROBERTS, TORN APART, *supra* note 8, at 207.

<sup>44</sup> *Id.* at 68-69.

<sup>45</sup> Jennifer Stuber & Karl Kronebusch, *Stigma and Other Determinants of Participation in TANF and Medicaid*, 23 J. POL’Y ANALYSIS & MGMT. 509, 511 (2004).

<sup>46</sup> *Id.*

<sup>47</sup> See Pablo A. Celhay, Bruce D. Meyer & Nikolas Mittag, *Stigma in Welfare Programs* 22 (Becker Friedman Inst., Working Paper No. 103, 2022).

surrounding welfare are limited, hindering opportunities for collective empowerment and change.

By facilitating connections between marginalized community members, PB can reveal the prevalence of public aid usage and needs, illuminating lived realities that counter damaging narratives about welfare reliance. Residents sharing their stories in an empowering setting reshapes reductive tropes into fully realized understandings. This on-the-ground truth telling in the local economy humanizes struggles, surfacing potential solidarities around material insecurity that is otherwise obscured by stigma. This means it is reasonable to expect people involved in PB projects to accurately report they are on welfare, or at least are considering it, than if say John and Jane ran into each other at their local grocery store. Through these interactions, directly impacted people can gain a better understanding of the choices similarly situated people in their community are making about welfare. Greater mutual comprehension of their neighbors' situations could encourage more people to seek the assistance they require without shame. In essence, PB's potential also lies in remaking consciousness among poor Black and brown people by validating shared hardships and diminishing harmful stereotypes and stigmas. By reducing welfare stigma, participation in welfare programs can increase, expanding the coverage of the social safety net and shrinking the reach of family policing without legitimating its carceral logics.

#### I. AMERICA'S POVERTY PROJECT

"Anyone who has ever struggled with poverty knows how extremely expensive it is to be poor," wrote James Baldwin in his 1960 essay *Fifth Avenue, Uptown: A Letter from Harlem*.<sup>48</sup> Walking down 131st Street and Lenox Avenue (also known as Malcolm X Boulevard), which Baldwin described in his essay as a "fetid block"<sup>49</sup> and not far from where I live, it is clear that difficult times still persist.<sup>50</sup> People in Harlem and elsewhere still experience grinding hardship. But even the seemingly prescient Baldwin<sup>51</sup> may be surprised by the receipts the poor today carry. The cost of being poor has increased significantly since Baldwin's time, notwithstanding that the United States is the richest country in the world.<sup>52</sup> Annually, the United States generates a whopping "\$5.3 trillion

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<sup>48</sup> JAMES BALDWIN, *NOBODY KNOWS MY NAME* 59 (1986).

<sup>49</sup> *Id.* at 57.

<sup>50</sup> DESMOND, *supra* note 12, at 6 (explaining how United States is "the richest country on earth" yet has "more poverty than any other advanced democracy").

<sup>51</sup> Nahlah Ayed, *James Baldwin: A 'Poet-Prophet' in Good Times and in Bad*, CBC RADIO (June 24, 2020), <https://www.cbc.ca/radio/ideas/james-baldwin-a-poet-prophet-in-good-times-and-in-bad-1.5625380> [<https://perma.cc/37VS-6LDN>].

<sup>52</sup> Jack Ewing, *United States Is the Richest Country in the World, and It Has the Biggest Wealth Gap*, N.Y. TIMES (Sept. 23, 2020), <https://www.nytimes.com/2020/09/23/business/united-states-is-the-richest-country-in-the-world-and-it-has-the-biggest-wealth-gap.html>.

more in goods and services than China,” the second-richest country on earth.<sup>53</sup> The United States’s gross domestic product is larger than the economies of the next six richest countries combined.<sup>54</sup> Even the individual U.S. states of California and New York have bigger economies than the entire nations of Canada and South Korea, respectively.<sup>55</sup> Yet for all our impressive wealth, we have been stingy in sharing our bounty.<sup>56</sup> This Part adds texture to the meaning of poverty and briefly surveys how social policy has generated and maintained poverty as though it is an inevitable part of life (which it is not).

#### A. *Defining Poverty*

In the United States a person is classified as “poor” if their income falls below the federal poverty line.<sup>57</sup> Mollie Orshansky created the poverty line in 1963-64.<sup>58</sup> Working at the time as an economist with the Social Security Administration, Orshansky’s calculation centered around the access families had to food and other basic necessities.<sup>59</sup> She proposed that families should spend at most one-third of their income on food.<sup>60</sup> Since food is the most basic necessity, the idea was that families that spent more than this amount on food were likely struggling to afford other basic necessities.<sup>61</sup> Based on this calculation, a family was considered poor if their income was less than three times the cost of their food budget.<sup>62</sup> Although the U.S. poverty formula is controversial and has been criticized as out-of-date,<sup>63</sup> the Official Poverty Measure still relies on Orshansky’s method of calculation, with yearly adjustments for inflation.<sup>64</sup> In 2022, the poverty line for a single person in the United States was drawn at an income of \$13,590 per year; for a family of four that figure was \$27,750.<sup>65</sup>

No advanced democracy has more poverty than the United States.<sup>66</sup> For approximately every nine Americans, one is living in poverty.<sup>67</sup> The number of

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<sup>53</sup> DESMOND, *supra* note 12, at 6.

<sup>54</sup> *Id.*

<sup>55</sup> *Id.*

<sup>56</sup> Garcia & Godsoe, *supra* note 7, at 607 (“The United States has virtually no social safety net, as compared to so many other nations.”).

<sup>57</sup> DESMOND, *supra* note 12, at 10.

<sup>58</sup> See JULIET M. BRODIE, CLARE PASTORE, EZRA ROSSER & JEFFREY SELBIN, POVERTY LAW, POLICY, AND PRACTICE 9 (2014).

<sup>59</sup> DESMOND, *supra* note 12, at 10.

<sup>60</sup> *Id.*

<sup>61</sup> *Id.*

<sup>62</sup> *Id.*

<sup>63</sup> See BRODIE ET AL., *supra* note 58, at 6.

<sup>64</sup> DESMOND, *supra* note 12, at 10.

<sup>65</sup> *Id.*

<sup>66</sup> *Id.* at 6.

<sup>67</sup> *Id.*

poor Americans surpasses the entire population of Australia or Venezuela.<sup>68</sup> These numbers are before accounting for the fact that the incarcerated, many of whom are poor,<sup>69</sup> do not count towards the poverty statistics.<sup>70</sup> Over 38 million people in the United States cannot afford basic necessities.<sup>71</sup> More than 108 million people are trapped between poverty and financial security with incomes of \$55,000 or less.<sup>72</sup> The harms of incarceration are well documented, yet many poor Americans report that their health actually improves while incarcerated because they faced worse conditions outside of carceral settings.<sup>73</sup> Over two million Americans lack access to basic amenities such as running water or a flushing toilet in their homes.<sup>74</sup> In case it does not go without saying, our children are also in the clutches of poverty. Indeed, the poverty rate is higher among children than adults.<sup>75</sup> One in eight children live in poverty, which means they cannot afford basic necessities like food, housing, and health care.<sup>76</sup> And over a million public-school children are experiencing homelessness.<sup>77</sup>

B. *How Poverty Is Created*

Who are the poor? What should society do about poverty? How is poverty created? These questions were never raised for much of U.S. history because poverty was generally assumed to be inevitable and the poor were simply thought to be a natural part of society.<sup>78</sup> Today, that thinking has shifted and

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<sup>68</sup> *Id.*

<sup>69</sup> *Id.* at 18 (“Hidden behind the [justice] system’s vague abstractions—justice, law and order—is the fact that the overwhelming majority of America’s current and former prisoners are very poor.”).

<sup>70</sup> *Id.* at 19 (explaining that America uses incarceration to manage poor and many “incarcerated are simply not counted in most national surveys, resulting in a falsely rosy statistical picture of American progress”).

<sup>71</sup> *Id.* at 6.

<sup>72</sup> *Id.*

<sup>73</sup> *Id.*

<sup>74</sup> *Id.* (highlighting many West Virginian residents only have access to polluted water and those living on the Navajo Reservation often have to travel multiple hours to get water).

<sup>75</sup> Craig Benson, *Poverty Rate of Children Higher than National Rate, Lower for Older Populations*, U.S. CENSUS BUREAU (Oct. 4, 2022), <https://www.census.gov/library/stories/2022/10/poverty-rate-varies-by-age-groups.html> [https://perma.cc/W9QJ-AWDS] (“The child poverty rate (for people under age 18) was 16.9% in 2021, 4.2 percentage points higher than the national rate, while poverty for those ages 65 and over was 10.3%, 2.5 percentage points lower than the national rate.”).

<sup>76</sup> DESMOND, *supra* note 12, at 6.

<sup>77</sup> See NAT’L CTR. FOR HOMELESS EDUC., *STUDENT HOMELESSNESS IN AMERICA: SCHOOL YEARS 2017-18 TO 2019-20*, at 1 (2021) (reporting that during “[s]chool year . . . 2019-20, public schools identified 1,280,886 students who experienced homelessness”); Jinghong Cai, *Homeless Students in Public Schools Across America: Down but Not Out*, NAT’L SCH. BDS ASS’N (July 27, 2021), <https://www.nsba.org/Perspectives/2021/homeless-students> [https://perma.cc/U25B-SDJG].

<sup>78</sup> See BRODIE ET AL., *supra* note 58, at 56.

there are a few leading theories on poverty. These theories operate along economic, sociological and moral dimensions, and “reflect fundamental values as to how society should be organized, how people should act, how to assign blame, and when to relieve misery.”<sup>79</sup>

### 1. Deindustrialization

One popular theory is that deindustrialization is the root of poverty in the United States.<sup>80</sup> This theory argues that the country’s shift to a service economy caused a drastic economic downturn in the manufacturing industry.<sup>81</sup> Under this schema, structural changes in the economy have shuttered factories and decreased the number of jobs that used to support middle-class workers, particularly in the American heartland.<sup>82</sup> Workers who once depended on these middle-wage jobs and lived comfortably in such roles have been thrust into the so-called low-skill job market, which pays paltry wages, forcing families to live paycheck to paycheck.<sup>83</sup> These low wages lead to poverty, and as a result, the formerly middle-wage earners are incapable of supporting a family.<sup>84</sup>

### 2. Moral Decay/Lack of Industriousness

In addition to deindustrialization, “[t]here is . . . the old habit of blaming the poor for their own miseries, as if Americans were made of lesser stuff than people in countries with far less poverty.”<sup>85</sup> According to sociologist Loïc Wacquant, the welfare state, “the constellation of government programs and services that aim to protect and foster the health and wellbeing of the nation’s citizens and residents,”<sup>86</sup> embraces the notion that the poor’s precarious financial condition is due to their own moral failings.<sup>87</sup>

In this way, the welfare state mirrors the logic of America’s colonists, who labeled the poor either as the “worthy” or the “unworthy.”<sup>88</sup> The elderly, blind, and widowed were among the worthy.<sup>89</sup> People in these groups were considered

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<sup>79</sup> *Id.*

<sup>80</sup> John Russo & Sherry Lee Linkon, *The Social Cost of Deindustrialization*, YOUNGSTOWN STATE UNIV.: CTR. FOR WORKING CLASS STUD., <https://ysu.edu/center-working-class-studies/social-costs-deindustrialization> [<https://perma.cc/AP3A-XH9C>] (last visited Jan. 15, 2024).

<sup>81</sup> See Ronald E. Kutscher & Valerie A. Personick, *Deindustrialization and the Shift to Services*, 109 MONTHLY LAB. REV. 3, 3 (1986).

<sup>82</sup> See Russo & Linkon, *supra* note 80.

<sup>83</sup> *Id.*

<sup>84</sup> *Id.*

<sup>85</sup> DESMOND, *supra* note 12, at 41.

<sup>86</sup> KHIARA M. BRIDGES, CRITICAL RACE THEORY: A PRIMER 407 (2018).

<sup>87</sup> See LOÏC WACQUANT, PUNISHING THE POOR: THE NEOLIBERAL GOVERNMENT OF SOCIAL INSECURITY 15-16 (2009).

<sup>88</sup> See, e.g., ANDREA ELLIOT, INVISIBLE CHILD: POVERTY, SURVIVAL AND HOPE IN AN AMERICAN CITY 181 (2021).

<sup>89</sup> *Id.*

worthy of government assistance because their plight was assumed to be through no fault of their own.<sup>90</sup> By contrast, the “unworthy” poor “were seen to have chosen their condition—among them, beggars, drunks, and other undesirables who were banished to the poorhouse.”<sup>91</sup> This logic persists today—many believe that if certain people are at the bottom of the socioeconomic ladder, it is because they have not earned their keep.<sup>92</sup> They are undisciplined, unmotivated, and lack the work ethic necessary to succeed financially in the wage labor market.<sup>93</sup> These narratives are typically deployed to explain why nonwhite people are disproportionately poor: “[B]lack people are lazy and do not like to work, Latinx people prioritize family over work outside of the home, indigenous people are alcoholics whose addiction makes them unproductive, [and] Hmong people prefer welfare over hard work.”<sup>94</sup> While racialized people are cast as lazy, White people are thought to be “naturally industrious.”<sup>95</sup> For Wacquant, the welfare system rejects the idea that structural shifts in the economy explain why some people are poor.<sup>96</sup>

### 3. Exploitation

The idea that exploitation accounts for the poor’s economic condition is also widely circulated. I’ll use banks as an example. For as long as banks have existed in the United States, the banking sector has discriminated against people of color.<sup>97</sup> In the early days, banks only served White people.<sup>98</sup> Today, these doors have been opened to Black and brown people, but the banking industry’s racist

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<sup>90</sup> See *id.*

<sup>91</sup> *Id.*

<sup>92</sup> See Jason Le Miere, *Why Are People Poor? Because They’re Lazy, Say Almost Half of Christians in the U.S.*, NEWSWEEK (Aug. 3, 2017, 1:32 PM), <https://www.newsweek.com/why-are-people-poor-lazy-646062> [<https://perma.cc/4R7Z-NARG>] (discussing survey conducted by Kaiser Family Foundation finding 46% of Christians surveyed believed lack of effort was to blame for poverty).

<sup>93</sup> See David Lauter, *How Do Americans View Poverty? Many Blue-Collar Whites, Key to Trump, Criticize People as Lazy and Content to Stay on Welfare*, L.A. TIMES (Aug. 14, 2016), <https://www.latimes.com/projects/la-na-pol-poverty-poll/> [<https://perma.cc/TJ52-J826>] (discussing American Enterprise Institute survey finding 44% of White, non-college-educated respondents believe poor Americans would prefer to stay on welfare over earning their own living).

<sup>94</sup> BRIDGES, *supra* note 86, at 216.

<sup>95</sup> *Id.*

<sup>96</sup> See *id.* at 408-09 (explaining Wacquant’s claim that welfare state is based on attributing economic insecurity to individuals’ moral failures).

<sup>97</sup> See DESMOND, *supra* note 12, at 72 (discussing disparate treatment of Black bank customers throughout history).

<sup>98</sup> See *id.*; Mehra Baradaran, *Jim Crow Credit*, 9 U.C. IRVINE L. REV. 887, 890-91 (2019) (detailing discriminatory methods of redlining that banks and credit unions depended on during New Deal Era).

legacy lives on.<sup>99</sup> As captured by the slogan “Banking While Black,” a trip to the bank can be a harrowing experience for a Black customer.<sup>100</sup> Bank tellers unjustifiably accuse Black customers of fraud.<sup>101</sup> Routine transactions, like attempting to cash a check, can draw the suspicions of employees who respond by calling the cops, thereby escalating the situation and instilling fear and anxiety in the customer.<sup>102</sup> Additionally, Black people are turned down for mortgages more often than any other racial or ethnic group, and the loans they do receive require higher interest rate payments.<sup>103</sup> The Federal Deposit Insurance Corporation (“FDIC”) estimates that more than seven million families did not have a bank account in 2019—one in every nineteen U.S. households.<sup>104</sup> Black and brown families, who are also disproportionately poor, were almost five times more likely than White families to be unbanked.<sup>105</sup> This exclusion breeds exploitation.<sup>106</sup>

Poverty encompasses more than just a lack of money—it also involves a lack of options and being vulnerable to exploitation because of scarcity.<sup>107</sup> It is often said that the poor are “unseen, shadowed, and forgotten people.”<sup>108</sup> In cities across the country where homelessness is pervasive,<sup>109</sup> people walking around frequently pass the unhoused, ignoring their entreaties for help as though they were invisible.<sup>110</sup> While our own individual actions might give the impression that the poor are unseen, markets have always paid attention to the indigent.<sup>111</sup>

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<sup>99</sup> Emily Flitter, ‘Banking While Black’: How Cashing a Check Can Be a Minefield, N.Y. TIMES (June 18, 2020), <https://www.nytimes.com/2020/06/18/business/banks-black-customers-racism.html>.

<sup>100</sup> See, e.g., *id.*

<sup>101</sup> See, e.g., *id.*

<sup>102</sup> See, e.g., *id.*

<sup>103</sup> See DESMOND, *supra* note 12, at 72.

<sup>104</sup> *Id.*

<sup>105</sup> *Id.*

<sup>106</sup> *Id.*

<sup>107</sup> See *id.*

<sup>108</sup> *Id.* at 71.

<sup>109</sup> See Jerusalem Demsas, *The Obvious Answer to Homelessness*, ATLANTIC (Dec. 23, 2022), <https://www.theatlantic.com/magazine/archive/2023/01/homelessness-affordable-housing-crisis-democrats-causes/672224/> [<https://perma.cc/3XYE-QNX5>] (identifying cities like Seattle, Portland, New York City as cities with high numbers of unhoused people); German Lopez, *Homeless in America*, N.Y. TIMES (July 15, 2022), <https://www.nytimes.com/2022/07/15/briefing/homelessness-america-housing-crisis.html> (describing America’s homelessness problems as having “the makings of an acute crisis”).

<sup>110</sup> See, e.g., Howard Allen, *Homeless People in Nashville Feel Ignored and Powerless Once More*, TENNESSEAN (Jan. 6, 2023, 4:53 PM), <https://www.tennessean.com/story/opinion/contributors/2023/01/06/homeless-people-in-nashville-feel-ignored-and-powerless-once-more/69786368007/> [<https://perma.cc/ZSX2-VS6M>].

<sup>111</sup> See DESMOND, *supra* note 12, at 71.



The banking industry was deregulated in the 1980s, boosting industry competition.<sup>112</sup> To attract customers, many banks increased fees and instituted minimum balance requirements.<sup>113</sup> More than a third of banks provided accounts without charging service fees in 1977, but just 5% did so by the early 1990s.<sup>114</sup> By 2019, the biggest banks in the United States collected almost \$12 billion in overdraft fees from customers.<sup>115</sup> The vast majority of these fees were paid by a small percentage of account holders—just 9%.<sup>116</sup> These unlucky customers were disproportionately low-income, with an average account balance of less than \$350.<sup>117</sup> In essence, the poor were charged for being poor.<sup>118</sup>

In her book, *Race for Profit*, the historian Keenga-Yamahtta Taylor uses the term “predatory inclusion” to describe instances in the American capitalist project where disadvantaged groups are provided inferior housing and financial services when they are refused adequate ones.<sup>119</sup> Poor people are forced to find unconventional means of cashing their checks or getting secure loans due to their exclusion from traditional banking market and credit systems.<sup>120</sup> As banks have abandoned Black communities, fringe banking establishments have stepped in.<sup>121</sup> Payday loan outlets exemplify this practice. Payday loans are short-term, high-interest loans that target people who are struggling financially.<sup>122</sup> The typical payday loan customer makes about \$30,000 each year,<sup>123</sup> and payday

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<sup>112</sup> *Id.* (explaining how deregulating banking system in 1980s increased competition between banks); *see also* 1 FED. DEPOSIT INS. CORP., *The Banking Crises of the 1980s and Early 1990s: Summary and Implications*, in HISTORY OF THE EIGHTIES – LESSONS FOR THE FUTURE 3, 5 (1997) [https://www.fdic.gov/bank/historical/history/3\\_85.pdf](https://www.fdic.gov/bank/historical/history/3_85.pdf) [<https://perma.cc/589K-7265>] (noting several ways in which competition increased in 1980s).

<sup>113</sup> *See* DESMOND, *supra* note 12, at 71.

<sup>114</sup> *Id.*

<sup>115</sup> *Id.*

<sup>116</sup> *Id.*

<sup>117</sup> *Id.*

<sup>118</sup> *See id.*

<sup>119</sup> *See id.* at 77 (citing KEEANGA-YAMAHTTA TAYLOR, *RACE FOR PROFIT: HOW BANKS AND THE REAL ESTATE INDUSTRY UNDERMINED BLACK HOMEOWNERSHIP* (Chapel Hill: Univ. N.C. Press 2019)) (“‘Predatory inclusion’ is what historian Keeanga-Yamahtta Taylor calls it in her book *Race for Profit*, describing the long-standing American tradition of incorporating marginalized people into housing and financial schemes through bad deals when they are denied good ones.”).

<sup>120</sup> DESMOND, *supra* note 12, at 77.

<sup>121</sup> *Id.* at 72.

<sup>122</sup> *See* Ann Carrns, *An Alternative to Payday Loans, but It’s Still High Cost*, N.Y. TIMES (Sept. 21, 2018), <https://www.nytimes.com/2018/09/21/your-money/alternative-payday-loans-high-interest-us-bank.html> (describing payday loans as “small, short-term, very-high-cost loans—with interest rates sometimes as high as 400 percent—that typically must be repaid in full from the borrower’s next paycheck” and explaining “[p]ayday loans are often taken out by people whose credit scores are too low for traditional loans or credit cards”).

<sup>123</sup> DESMOND, *supra* note 12, at 75.

loans are common in Black neighborhoods with concentrated poverty.<sup>124</sup> Matthew Desmond describes how payday loans prey on race-class subjugated communities as follows:

You take out a small loan, usually for less than \$500, and are typically charged a percentage or fee per \$100 borrowed. A charge of \$15 per \$100 lent might sound reasonable, but it equates to an APR of 400 percent . . . . [W]hen the loan comes due, you usually still happen to be broke. So you ask for an extension, which will cost you. If you took out a two-week \$400 loan with a \$60 fee (\$15 per \$100), the loan officer might allow an extension if you pay the \$60 fee when the original loan comes due. Then he will issue another fee, say for an additional \$60. Just like that, you are charged \$120 for borrowing \$400, and that's if you ask for only a single extension.<sup>125</sup>

Check cashing stores also play a heavy hand in exploiting the poor, effectively trapping them in a cycle of poverty. Cashing a check costs anywhere from 1 to 10 percent of the check's total amount.<sup>126</sup> So a person who earns \$10 an hour and cashes a \$1,000 check will pay between \$10 and \$100 in fees just to access their money.<sup>127</sup> These practices are not only legal, but the commercial banks with the deepest pockets subsidize them.<sup>128</sup> In 2020 alone, Americans lost \$1.6 billion cashing checks, which is the equivalent of hundreds of thousands of hours of work.<sup>129</sup> Here again we witness how the limited (good) options afforded to the needy create the conditions for their exploitation.<sup>130</sup>

### C. *How Poverty Is Maintained*

Compared to other economically developed countries, the welfare state that the United States has constructed is porous. It is "more fragmented and less universal."<sup>131</sup>

What explains America's outlier status?

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<sup>124</sup> *Id.* at 72.

<sup>125</sup> *Id.* at 75.

<sup>126</sup> *Id.* at 73.

<sup>127</sup> *See id.*

<sup>128</sup> *See id.* at 77.

<sup>129</sup> *See* DESMOND, *supra* note 12, at 73.

<sup>130</sup> *See id.* at 76 (describing how exploitative fee imposition is made possible by scarcity of nonexploitative competition).

<sup>131</sup> Robert C. Lieberman, *Race and the Limits of Solidarity: American Welfare State Development in Comparative Perspective*, in RACE & POL. WELFARE REFORM 23, 26 (Sanford F. Schram, Joe Soss & Richard C. Fording eds., 2003).

1. “American Values”

Observers typically point to so-called “American values.”<sup>132</sup> Americans prioritize property rights and individualism, values that are supposedly incompatible with the welfare state.<sup>133</sup> This is because welfare aims to buffer citizens from the harshest consequences of poverty through collective efforts like taxation and governmental programs. It entails the government taking money from some people and giving it to others.<sup>134</sup> Under this logic, society infringes on the property rights of the well-off because “some of the money to which those enjoying financial stability can lay claim has to be taken from them in order to finance the programs and services that will care for the financially unstable.”<sup>135</sup> Similarly, the welfare state undermines individualism by making it more difficult for people to be self-reliant and live a life free of government intervention.<sup>136</sup> The supposed clash of Americans’ ideal of individualism and recognition of property rights and the logic of the welfare state has led observers to suggest that this explains why the United States has been hesitant to fully wrap its arms around welfare programs.<sup>137</sup> Some might be persuaded by this explanation, but others find flaws with it. For example, it is difficult to reconcile this explanation with the fact that some safety net programs such as Medicare and Social Security enjoy widespread support even in the polarized political economy.<sup>138</sup>

2. Weakness of Organized Labor

It has also been suggested that the U.S. welfare system is fragmented because the United States lacks a labor-based political party and organized labor in the country is relatively weak.<sup>139</sup> Under this explanation, if workers had more political clout, they would have insisted on the establishment of a more generous welfare state.<sup>140</sup> But without a labor-based party, there is nothing putting the country’s feet to the fire to develop a more robust welfare state, so the argument goes.<sup>141</sup> It is likely true that increased pressure from within our political systems might have led the United States to create a more inclusive social safety net.<sup>142</sup> But this explanation is also vulnerable to criticism. Namely, “it does not explain

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<sup>132</sup> BRIDGES, *supra* note 86, at 411 (explaining that one popular explanation for U.S. porous welfare state “looks to the values that people in the U.S. are imagined to embrace”).

<sup>133</sup> *Id.*

<sup>134</sup> *Id.*

<sup>135</sup> *Id.*

<sup>136</sup> See Lieberman, *supra* note 131, at 26.

<sup>137</sup> BRIDGES, *supra* note 86, at 411.

<sup>138</sup> *Id.*

<sup>139</sup> *Id.* (“Another explanation for the insubstantiality of the U.S. welfare state is the absence of a labor-based political party in the country and the relative weakness of organized labor.”).

<sup>140</sup> *Id.*

<sup>141</sup> *Id.*

<sup>142</sup> *Id.*

*why* such a party failed to develop or *why* industrial labor unions have remained weak when compared to their peers in industrialized nations around the world.”<sup>143</sup>

### 3. Race

Critical scholars contend that none of the above explanations survive reflection, as the explanations ignore racism’s central role in perpetuating poverty.<sup>144</sup> In its recent decision gutting affirmative action in college admissions, a majority of the Supreme Court would like us to believe that race no longer plays a meaningful role in ordering our society.<sup>145</sup> Referring to the Court’s head-in-the-sand attitude towards race, Justice Ketanji Brown Jackson lamented that, “those who demand that no one think about race (a classic pink-elephant paradox) refuse to see, much less solve for, the elephant in the room—the race-linked disparities that continue to impede achievement of our great Nation’s full potential.”<sup>146</sup>

Critical scholars have urged that we talk about the elephant in the room because it explains why our social safety net is flimsy.<sup>147</sup> They point to the fact that labor unions in the United States have been weak, in part because White workers have been reluctant to build coalitions with Black workers.<sup>148</sup> If White workers had been willing to treat Black workers as equals, the groups would have been more likely to band together to demand better work conditions.<sup>149</sup> But race has interfered with the formation of this coalition and increased employers’ power over both groups.<sup>150</sup> Employers have in turn exercised this power by keeping wages low and offering benefits parsimoniously.

These thinkers also propose that race is the reason why a labor-based political party never coalesced in the United States.<sup>151</sup> More significantly, they invite us to see race as the reason why the welfare state in the United States is as insubstantial as it is.<sup>152</sup> As Khiara Bridges explains, “the desire to keep people of color at the bottom of the country’s racial hierarchy prevented the welfare state from developing in any other way.”<sup>153</sup> And it continues to be deficient and

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<sup>143</sup> *Id.*

<sup>144</sup> *Id.*

<sup>145</sup> *Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll.*, 143 S. Ct. 2141, 2204 (2023) (“A contrary, myopic world view based on individuals’ skin color to the total exclusion of their personal choices is nothing short of racial determinism.”).

<sup>146</sup> *Id.* at 2277 n.103 (Jackson, J., dissenting) (arguing ignoring race-linked disparities prevents institutions from finding solutions to those disparities).

<sup>147</sup> BRIDGES, *supra* note 86, at 411.

<sup>148</sup> *Id.*

<sup>149</sup> *See id.*

<sup>150</sup> *Id.*

<sup>151</sup> *Id.*

<sup>152</sup> *Id.*

<sup>153</sup> *Id.* at 412.

paltry because it is thought to primarily benefit Black people.<sup>154</sup> “Society shows its contempt for people of color by being contemptuous towards the system that society imagines to care for them,” writes Bridges.<sup>155</sup>

a. *Symbiotic Relationship Between Race and Class*

Critical scholars underscore that race and the economic ordering in our society are not independent of one another, but rather intersect in a variety of ways.<sup>156</sup> There is a symbiotic relationship between race and class, these scholars recognize, such that “talk about unregulated markets, individual preferences, reduced investment in people and social and physical infrastructure, tax cuts for big business, and other policy choices is not just economic talk or class talk but race talk.”<sup>157</sup> They draw attention to Mothers’ Pensions programs as an example of the symbiotic relationship between race and class.<sup>158</sup>

Launched in the Progressive Era of the 1920s when the welfare state began in earnest, Mothers’ Pensions offered financial assistance to single mothers who were widowed and unable to support themselves and their children.<sup>159</sup> The most impoverished families were often led by widows or mothers who had been abandoned by their partners.<sup>160</sup> These women were forced to work long hours to support their families, often leaving their children unsupervised.<sup>161</sup> Before Mothers’ Pensions were established, one way society dealt with poverty was by separating poor children from their families,<sup>162</sup> a practice that is familiar to many poor Black and brown families today.<sup>163</sup> Social reformer Charles Loring Brace, known as the father of foster care and founder of the Children’s Aid Society

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<sup>154</sup> *Id.*

<sup>155</sup> *Id.*

<sup>156</sup> *See id.* at 411-12.

<sup>157</sup> Athena D. Mutua, *Stuck: Fictions, Failures and Market Talk as Race Talk*, 43 Sw. L. REV. 517, 540 (2014).

<sup>158</sup> *See* ROBERTS, TORN APART, *supra* note 8, at 113.

<sup>159</sup> *See id.*; ELLIOT, *supra* note 88, at 181, 183-85 (describing widows as falling into class of downtrodden deemed “worthy” of aid by society).

<sup>160</sup> *See* ELLIOT, *supra* note 88, at 183.

<sup>161</sup> *Id.*

<sup>162</sup> *Id.* at 182.

<sup>163</sup> Chris Gottlieb, *Black Families Are Outraged About Family Separation Within the U.S. It’s Time To Listen to Them*, TIME (Mar. 17, 2021, 9:00 AM), <https://time.com/5946929/child-welfare-black-families/> [<https://perma.cc/5YK7-7G8U>] (“Today, more than 200,000 children of color are in government custody in our foster system, and the current protesters are largely low-income Black and brown parents who explain that fearmongering about child abuse has empowered child protective authorities to unfairly target their communities and invade their homes with virtual impunity.”).

(“CAS”) in New York City,<sup>164</sup> pioneered this approach.<sup>165</sup> CAS’s mission was to “place out” New York’s downtrodden children who languished in the streets.<sup>166</sup> CAS organized “orphan trains” to transport these children to new homes in the Midwest.<sup>167</sup> An estimated 200,000 children were sent away on these trains.<sup>168</sup>

This and other similar arrangements prompted concern at the highest level of government.<sup>169</sup> President Theodore Roosevelt gathered a group of child welfare experts to discuss the breaking up of poor families, which he described as the most “important subject from the standpoint of the nation.”<sup>170</sup> The meeting was the launching pad for the Mothers’ Pensions programs.<sup>171</sup> The impetus for the programs was that mothers should stay at home and raise their children and that with financial aid they would not have to look for work outside the home.<sup>172</sup>

For the first half of the 20th century, Black women were largely excluded from social welfare programs like Mothers’ Pensions,<sup>173</sup> which states and localities administered under fiscal federalism. Fiscal federalism is the idea that “the central government should provide financial stability in paying a significant part of program costs, and the decentralized state and local governments should take more control of program operations so that local needs and preferences are addressed.”<sup>174</sup> For much of U.S. history, “local needs and preferences” has basically meant “local needs and preferences *for Whites*.” In 1931, just 3% of the 93,000 families who received social welfare programs’ cash stipends were Black.<sup>175</sup>

By limiting aid to “worthy” mothers who were single because their husbands had died, and not because they had never married, were divorced, or abandoned, the programs were intended to squeeze out Black women because they were more likely to be single for reasons other than the death of their husbands.<sup>176</sup> Even when Black mothers were eligible, the localized structure of the benefits programs enabled administrators to act on racial biases to deny them access to

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<sup>164</sup> Francesco Cordasco, *Charles Loring Brace and the Dangerous Classes: Historical Analogues of the Urban Black Poor*, 7 KAN. J. SOCIO. 142, 143 (1971) (explaining Charles Loring Brace helped found The Children’s Aid Society of New York in 1853).

<sup>165</sup> See ELLIOT, *supra* note 88, at 182.

<sup>166</sup> See *id.*

<sup>167</sup> *Id.*

<sup>168</sup> *Id.*

<sup>169</sup> *Id.*

<sup>170</sup> *Id.*

<sup>171</sup> *Id.* at 183.

<sup>172</sup> See ROBERTS, TORN APART, *supra* note 8, at 113.

<sup>173</sup> See ELLIOT, *supra* note 88, at 183.

<sup>174</sup> DANIEL L. HATCHER, *THE POVERTY INDUSTRY: THE EXPLOITATION OF AMERICA’S MOST VULNERABLE CITIZENS* 33 (2016).

<sup>175</sup> See ELLIOT, *supra* note 88, at 183.

<sup>176</sup> See BRIDGES, *supra* note 86, at 418.

welfare.<sup>177</sup> As Khiara Bridges explains, “it [was] difficult for [Black] women to convince local administrators that they qualified for assistance by meeting the high standards of female behavior that the programs had established.”<sup>178</sup>

Although the civil rights efforts of the 1950s and 1960s eventually opened welfare access to Black people,<sup>179</sup> the gains were short-lived.<sup>180</sup> As Black families’ enrollment on welfare rose, racial resentment grew towards the safety net.<sup>181</sup> The face of welfare shifted from the “worthy [W]hite widow to the immoral unwed Black mother.”<sup>182</sup> This racist stereotyping generated public backlash against welfare, undercutting the support necessary to make the programs robust.

There was public support for giving government assistance to widows and enabling them to stay home and care for their children when the beneficiaries were White women.<sup>183</sup> But the same government aid that was socially and politically popular when White widows were the recipients drew resentment when believed to be aiding single Black mothers.<sup>184</sup> Attitudes changed to “get a job—any job,”<sup>185</sup> and welfare administrators shifted their focus from helping keep families intact to separating them.<sup>186</sup>

Welfare continues to be “raced” today, meaning that it is linked with Black and brown people. This perception developed in the 1960s around the time President Lyndon B. Johnson launched the “War on Poverty.”<sup>187</sup> With particular attention to Black people, who by design had been squeezed out of the New Deal’s social safety net,<sup>188</sup> the War on Poverty was a series of initiatives under President Johnson’s Great Society program to improve the lives of Americans

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<sup>177</sup> *Id.*

<sup>178</sup> *Id.*

<sup>179</sup> *Id.* at 114.

<sup>180</sup> *Id.* at 115.

<sup>181</sup> *Id.* at 116.

<sup>182</sup> *Id.* at 114.

<sup>183</sup> *See id.* at 423.

<sup>184</sup> *See id.*

<sup>185</sup> *Id.*

<sup>186</sup> *See* ROBERTS, TORN APART, *supra* note 8, at 4.

<sup>187</sup> BRIDGES, *supra* note 86, at 419-20.

<sup>188</sup> *See* Terry Gross, *A “Forgotten History” of How the U.S. Government Segregated America*, NPR (May 3, 2017), <https://www.npr.org/2017/05/03/526655831/a-forgotten-history-of-how-the-u-s-government-segregated-america> [https://perma.cc/Y6JB-DQJF] (describing how New Deal excluded African Americans from participating in mortgage and housing programs, and pushed into projects and “redlined” neighborhoods); Charles Blow, Opinion, *The New Deal and Old Pitfalls*, N.Y. TIMES (Aug. 11, 2021), <https://www.nytimes.com/2021/08/11/opinion/biden-infrastructure-plan-race.html> (explaining “once [The New Deal] programs were up and running, they systematically excluded Black and brown workers, most of whom couldn’t receive Social Security benefits or the full protection of the new labor laws”).

struggling to make ends meet.<sup>189</sup> Head Start,<sup>190</sup> Community Action Program,<sup>191</sup> Job Corps<sup>192</sup> and other federal programs were the outgrowth of the so-called unconditional war. The programs lifted “tens of thousands above a subsistence standard of living”<sup>193</sup> but also produced some unintended consequences. By attempting to expand the safety net that had been in place for poor White people to cover nonwhite people, some Americans mistakenly believed that the programs were *only* for Black people.<sup>194</sup> This led to the racialization of welfare, which hit a high point during the heyday of the Black “Welfare Queen” stereotype that the Reagan Administration popularized.<sup>195</sup>

The perception prevails that a social safety net that supports the needy supports only Black and brown people. Because of the negative stereotypes that people of color are not industrious, these programs are patchily designed and implemented, and fail to effectively alleviate poverty.<sup>196</sup> Instead, they perpetuate a cycle of “low-skill,” low-wage employment that ensures poverty.<sup>197</sup>

b. *Conceptual Collapse of Race and Class*

The Mother’s Pensions program is an example of how the interplay between race and class functions to keep Black and brown people at the bottom of the socioeconomic ladder. Race also operates to maintain poverty through what scholars call “the conceptual collapse of race and class.”<sup>198</sup> According to this

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<sup>189</sup> Ron Haskins, *The War on Poverty: What Went Wrong?*, BROOKINGS (Nov. 19, 2023), <https://www.brookings.edu/opinions/the-war-on-poverty-what-went-wrong/> [https://perma.cc/YKG4-7GYE]; Annie Lowrey, *50 Years Later, War on Poverty Is a Mixed Bag*, N.Y. TIMES (Jan. 4, 2014), <https://www.nytimes.com/2014/01/05/business/50-years-later-war-on-poverty-is-a-mixed-bag.html>.

<sup>190</sup> Jason DeParle, *Cleaner Classrooms and Rising Scores: With Tighter Oversight, Head Start Show Gains*, N.Y. TIMES (Feb. 4, 2019), <https://www.nytimes.com/2019/02/04/us/politics/head-start-preschool.html>.

<sup>191</sup> *History of Community Action*, CMTY. ACTION P’SHIP OF SAN LUIS OBISPO, <https://capslo.org/history/> [https://perma.cc/2JPA-SBSH] (detailing how federal government gave control to local governments to help target communities) (last visited Jan. 15, 2024).

<sup>192</sup> Jane Gross, *Remnant of the War on Poverty, Job Corps Is Still a Quiet Success*, N.Y. TIMES (Feb. 17, 1992), <https://www.nytimes.com/1992/02/17/us/remnant-of-the-war-on-poverty-job-corps-is-still-a-quiet-success.html>.

<sup>193</sup> Trip Gabriel, *50 Years Into the War on Poverty, Hardship Hits Back*, N.Y. TIMES (Apr. 20, 2014), <https://www.nytimes.com/2014/04/21/us/50-years-into-the-war-on-poverty-hardship-hits-back.html>.

<sup>194</sup> BRIDGES, *supra* note 86, at 419-20.

<sup>195</sup> *Id.* at 422 (explaining how “President Ronald Reagan often is credited with giving birth to the ‘welfare queen’—a figure who not only lived lavishly off the benefits that the government provided to her, but who also had children for the sole purpose of increasing the size of her welfare checks” and who is frequently presumed to be Black).

<sup>196</sup> *See id.* at 421-22.

<sup>197</sup> *Id.* at 423-24 (finding 1996 welfare reform primarily intended to stymie recipients perceived as lazy).

<sup>198</sup> *Id.* at 227.



theory, there is a tendency to conflate race and class because of the close relationship between the two.<sup>199</sup> The observation that Black people are disproportionately poor is misunderstood as saying that all Black people are in financial ruin.<sup>200</sup> Conversely, the observation “that [W]hite people are underrepresented among the poor is taken to suggest that no [W]hite people are poor—that *all* [W]hite people are middle-class or better.”<sup>201</sup> As an initial matter, the theory is incorrect.<sup>202</sup> Beyond that, it also simultaneously erases the White poor and Black middle class.<sup>203</sup> These defects notwithstanding, scholars argue that the conceptual collapse of race is another reason why the United States’s record on poverty is abysmal when compared to other developed nations. If being poor is perceived as something that only Black people experience, then falling into poverty means becoming Black or nonwhite. In a society where whiteness is privileged, “[t]he conceptual collapse [turns] working class [W]hite people’s battles over their economic interests into fights about racial status.”<sup>204</sup> Coding poverty as nonwhite leads poor White people to resist antipoverty measures that would also benefit them in order to avoid imagined loss of racial status.<sup>205</sup> Meanwhile, elites have little incentive to disrupt the status quo because it serves their interests when working-class people are divided along racial lines.<sup>206</sup>

Given these dynamics, race is the straw that stirs the drink. It entrenches poverty in the United States as though it is a natural condition, like groundwater keeping rivers flowing. As I explain in the Section that follows, the existence of an impoverished class has long offered the pretext to justify family policing’s intrusion.

## II. NEITHER COPS NOR CASEWORKERS

In 1909, President Theodore Roosevelt convened the first White House Conference on the Care of Dependent Children.<sup>207</sup> There it was urged that the

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<sup>199</sup> *Id.*

<sup>200</sup> *Id.*

<sup>201</sup> *Id.*

<sup>202</sup> *Id.*

<sup>203</sup> *Id.*

<sup>204</sup> *Id.* at 228.

<sup>205</sup> See generally, JONATHAN M. METZL, *DYING OF WHITENESS: HOW THE POLITICS OF RACIAL RESENTMENT IS KILLING AMERICA’S HEARTLAND* (2020).

<sup>206</sup> See Sean Illing, *How the Politics of Racial Resentment Is Killing White People*, VOX (Mar. 19, 2019, 8:10 AM), <https://www.vox.com/2019/3/19/18236247/dying-of-whiteness-trump-politics-jonathan-metzl> [<https://perma.cc/G5UA-Q2SX>] (explaining “powerful forces” in United States benefit from divide and polarization between Black and White working-class members).

<sup>207</sup> Jennifer Michael & Madeleine Goldstein, *Reviving the White House Conference on Children*, CHILD WELFARE LEAGUE OF AM. (2020), <https://www.cwla.org/reviving-the-white->

homes of poor children “should not be broken up for reasons of poverty.”<sup>208</sup> Yet today, the homes of poor Black and brown children across the country are routinely broken up for this very reason. This Part provides background on today’s child welfare system, highlighting the way it operates as a form of policing that surveils, punishes, and controls nonwhite families because they are poor.

A. *Origins of Policing*

The term “policing” originated in the fifteenth century while capitalism was emerging in Europe as a system of economic arrangement.<sup>209</sup> Budding European nation-states wanted to promote business by coercing people to become wage laborers. This was a significant departure from the precapitalism status quo.<sup>210</sup> Precapitalist communities were organized around cooperation and communal sharing.<sup>211</sup> They worked together to produce food, clothing, and other essential goods for their sustenance.<sup>212</sup> Goods changed hands within these communities based on reciprocal relationships; people shared their surplus with one another—a way of life known as “commoning.”<sup>213</sup> With capitalism’s ascent, communal lands called the commons<sup>214</sup> were privatized, dispossessing people and pushing them into wage labor.<sup>215</sup> The term “policing” was first used in the 15<sup>th</sup> century to describe the policies and practices that were adopted to instill this new social order centered around private wealth accumulation.<sup>216</sup> Policing aimed to ensure compliance with emerging capitalist imperatives by disrupting communal ties and autonomy. The process of creating this political economy was called “police science[.]”<sup>217</sup> By century’s end, this capitalist logic was cemented and treated as the natural order,<sup>218</sup> despite requiring mass disruption and dislocation engineered by profit motives.<sup>219</sup> Suppressing dissent and forcing compliance enabled the transition, underscoring policing’s role as social control.<sup>220</sup> The

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house-conference-on-children/ [https://perma.cc/FR4S-XPZC] (“The White House Conference on the Care of Dependent Children in 1909 was designed to raise public awareness and address children’s issues . . . . President Roosevelt, together with 200 conference attendees, offered nine proposals concerning the use of institutional care for dependent and neglected children.”).

<sup>208</sup> ELLIOT, *supra* note 88, at 183.

<sup>209</sup> See KABA & RITCHIE, *supra* note 5, at 142.

<sup>210</sup> *Id.* at 142-43.

<sup>211</sup> *Id.* at 143.

<sup>212</sup> *Id.*

<sup>213</sup> *Id.* at 143, 214.

<sup>214</sup> *Id.* at 143.

<sup>215</sup> *Id.* at 142-43.

<sup>216</sup> *Id.* at 143.

<sup>217</sup> *Id.*

<sup>218</sup> *Id.*

<sup>219</sup> *Id.*

<sup>220</sup> *Id.*

result was a society that was more stratified and unequal than ever before.<sup>221</sup> The rich and powerful benefited from the new order, while the poor and marginalized were left behind.<sup>222</sup>

Over time, the term “police” came to be more narrowly associated with its present-day connotation of law enforcement, while “‘police science’ fragmented into the fields of social policy we recognize today: public health, urban planning, sanitation, social assistance and welfare, workforce development, family regulation, and so on.”<sup>223</sup> A notable example can be seen in the early responsibilities of the New York City Police Department, which was responsible for a wide range of tasks, from enforcing slave codes<sup>224</sup> to sanitation management.<sup>225</sup> Those responsibilities are now divided among many government agencies and institutions that work together to develop and uphold social policy: the “rules that govern the management and distribution of resources and enforce social norms.”<sup>226</sup>

#### B. *Carceral Logics of the Child Welfare System*

Institutions that are typically perceived as working for the betterment of society often play a role in controlling, regulating, and even criminalizing individuals and communities.<sup>227</sup> The ways in which caseworkers operate as cops are particularly apparent in the context of the child welfare system.<sup>228</sup> The child welfare system is “a large web of state, county, and city agencies that each run their own operations, with their own rules and procedures, all with the main goal of protecting children from child abuse and neglect.”<sup>229</sup> As part of the civil legal system, Child Protective Service workers are social workers responsible for

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<sup>221</sup> *Id.* at 144.

<sup>222</sup> *See id.* at 145.

<sup>223</sup> *Id.* at 143-44.

<sup>224</sup> *See* Steven L. Nelson & Ray Orlando Williams, *From Slave Codes to Educational Racism: Urban Education Policy in the United States as the Dispossession, Containment, Dehumanization, and Disenfranchisement of Black Peoples*, 19 J.L. Soc’y 82, 87 (2019) (“The Slave Codes consisted of a series of legislations aimed at managing the way that [W]hite people interacted with Black slaves . . . [and] banned slaves from assembling in public, receiving an education, owning weapons, etc.”).

<sup>225</sup> *See* KABA & RITCHIE, *supra* note 5, at 144.

<sup>226</sup> *Id.*

<sup>227</sup> *Id.* at 161 (“Police are increasingly found in health care settings: accompanying ambulances, providing ‘security’ in emergency rooms, and conducting investigations.”); *id.* at 144.

<sup>228</sup> *Id.* at 169.

<sup>229</sup> ASGARIAN, *supra* note 23, at x.

investigating allegations of child abuse or neglect.<sup>230</sup> The term caseworker is used generally to refer to the various workers who provide CPS services.<sup>231</sup>

Kaba and Ritchie argue that social work is a form of soft policing that “has carceral origins.”<sup>232</sup> They trace social work’s history to the Industrial Revolution, when it emerged as a way “to soften the impacts of the social and economic disruptions” caused by industrialization.<sup>233</sup> They argue that social work’s original mandate as “social police” was to address individual deviance through what has been termed “therapeutic governance.”<sup>234</sup> This legacy is reflected in contemporary practices like mandatory counseling, which fail to remedy the underlying issues such as poverty that bring people into the carceral apparatus, and instead “simply replicate and expand the police project.”<sup>235</sup> The child welfare system’s carceral logic can be observed in (1) the coercive methods it uses to subjugate race-class exploited people, and (2) its intermingling with traditional law enforcement.<sup>236</sup> Let us turn to these aspects now.

### 1. Coercive Methods that Control Race-Class Subjugated Communities

Those ensnared in the child welfare system, as well as their allies, often refer to it as the family policing system.<sup>237</sup> This is because they see the system as similar to the criminal legal system in many ways. Primarily, the family policing system does not uniformly subject all families to the risk of entanglement.<sup>238</sup> Much like the people under the supervision and control of the criminal legal system, people entangled in the child welfare system are disproportionately

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<sup>230</sup> See *A Family’s Guide to Protective Services for Children*, Mass. Dep’t of Children & Families, MASS. DEP’T OF CHILD. & FAMS., <https://www.mass.gov/doc/a-family-s-guide-to-protective-services-for-children-english-1/download> [https://perma.cc/C59Z-RGR9] (last visited Jan. 15, 2024).

<sup>231</sup> DIANE DEPANFILIS, *CHILD PROTECTIVE SERVICES: A GUIDE FOR CASEWORKERS* 11 (2018) (emphasizing terminology varies throughout field, from system to system, and over time).

<sup>232</sup> See KABA & RITCHIE, *supra* note 5, at 167.

<sup>233</sup> See *id.*

<sup>234</sup> *Id.* (giving examples such as counseling, anger management, parenting, and other “life skills” classes).

<sup>235</sup> *Id.*

<sup>236</sup> See *id.* at 168.

<sup>237</sup> ALAN DETTLAFF, KRISTEN WEBER, MAYA PENDLETON, BILL BETTENCOURT & LEONARD BURTON, *HOW WE ENDUP: A FUTURE WITHOUT FAMILY POLICING* 3 (2021) (“The child welfare system is predicated on the subjugation, surveillance, control, and punishment of mostly Black and Native communities experiencing significant poverty. We more accurately refer to this as the family policing system.”).

<sup>238</sup> See ROBERTS, *TORN APART*, *supra* note 8, at 41.

poor, Black, and Indigenous families<sup>239</sup> from “communities that exist at the intersection of structural racism and poverty.”<sup>240</sup>

*a. Structural Racism*

A recent study estimated that 37.4% of children undergo a malnutrition investigation by age eighteen, with 53% of Black youth investigated—nearly double the rate for White children.<sup>241</sup> And “Black children are twice as likely as [W]hite children to wind up in foster care and face its devastating effects.”<sup>242</sup> Like cops and prosecutors, caseworkers have a great deal of discretion.<sup>243</sup> They exercise their discretion to decide which people are “offenders” or likely to offend, and therefore justifiably targets of surveillance, control and regulation.<sup>244</sup> This discretion is often shaped by individual and systemic biases which cast nonwhite parents experiencing economic hardship as presumptively questionable parents.<sup>245</sup> A study conducted by psychologist Joseph Westermeyer reported eight cases in Minnesota where Indigenous parents asked for welfare services for help to provide for their children.<sup>246</sup> Rather than offering the requested assistance, CPS removed their children and sent them to the foster care system.<sup>247</sup> Indeed, family separation is not an uncommon response to nonwhite families experiencing economic hardship. Echoing this sentiment, one Black child entangled in the child welfare system described his interactions with caseworkers in this way: “[e]very time I see [them], [they] take me away.”<sup>248</sup>

*b. Poverty*

Like the criminal legal system, family policing also disproportionately burdens and targets the poor. Many state laws equate poverty with neglect.<sup>249</sup> Because

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<sup>239</sup> *See id.*

<sup>240</sup> *Id.*

<sup>241</sup> *Id.*

<sup>242</sup> Sherry Lachman, Opinion, *The Opioid Plague’s Youngest Victims: Children in Foster Care*, N.Y. TIMES (Dec. 28, 2017), <https://www.nytimes.com/2017/12/28/opinion/opioid-crisis-children-foster-care.html>.

<sup>243</sup> KABA & RITCHIE, *supra* note 5, at 170 (observing child welfare cases based on allegations of substance use run from occasional cannabis use to severe substance use disorders, allowing caseworkers a wide amount of discretion).

<sup>244</sup> *See* ROBERTS, TORN APART, *supra* note 8, at 68.

<sup>245</sup> *See id.* at 44.

<sup>246</sup> *See* Joseph Westermeyer, *The Ravage of Indian Families in Crisis*, in *THE DESTRUCTION OF AMERICAN INDIAN FAMILIES* 47, 47-48 (Steven Unger ed., 1997); ASGARIAN, *supra* note 23, at 89.

<sup>247</sup> Westermeyer, *supra* note 246, at 49 (“The children were summarily taken by the institution in every one of these cases and placed in [W]hite foster homes.”).

<sup>248</sup> ASGARIAN, *supra* note 23, at 14.

<sup>249</sup> *See* ROBERTS, TORN APART, *supra* note 8, at 69 (highlighting 2020 fifty-state survey of child neglect statutes, many of which define child neglect as “the failure to provide adequate nurturance, food, clothing, shelter, sanitation, and education”).

the majority of CPS removals stem from suspected neglect,<sup>250</sup> CPS interventions fall heaviest on poor families.<sup>251</sup> Coding poverty with neglect “broadly permit[s] intervention into families whenever parents fall short of supplying ‘the proper or necessary support for a child’s well-being.’”<sup>252</sup> Unsurprisingly, studies show that children in foster care are predominantly from impoverished families.<sup>253</sup>

Lest my point be misunderstood, I do not mean to suggest CPS intervention is inherently bad. The problem lies in how ill-defined child maltreatment laws are applied and how intervention manifests. “Neglect” definitions use vague language like “appropriate education” and focus on factors that are more common among poor families.<sup>254</sup> Oklahoma law exemplifies this dynamic by incorporating factors associated with hardship into its definition of neglect, including “the failure or omission to provide . . . adequate nurturance and affection, food, clothing, shelter, sanitation, hygiene, or *appropriate* education.”<sup>255</sup> As Mikki Kendall wrote, “[p]overty can look like neglect, even if a parent is doing their very best.”<sup>256</sup> In most cases, parents do not intentionally deprive their children of resources<sup>257</sup> or otherwise deliberately mistreat their children. Just 16% of children are placed in foster care due to physical or sexual abuse.<sup>258</sup> Physical abuse accounts for 10.3% of reported cases, while sexual abuse accounts for 7.2%.<sup>259</sup> Parents commonly lack resources, not love.<sup>260</sup> However, vague neglect definitions like Oklahoma’s interact with individual

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<sup>250</sup> See *id.* at 68-69; Godsoe, *supra* note 21, at 940 n.4 (explaining “[d]espite the rhetoric around ‘parental abuse,’ the vast majority of children are removed from their parents for ‘neglect’”); U.S. DEP’T OF HEALTH & HUM. SERVS., CHILD MALTREATMENT 2019, at ii (2019), <https://www.acf.hhs.gov/sites/default/files/documents/cb/cm2019.pdf> [<https://perma.cc/VF8A-72BH>] (reporting that nearly two-thirds of reported children were alleged to have been neglected only).

<sup>251</sup> See ROBERTS, TORN APART, *supra* note 8, at 68 (emphasizing that definition of child maltreatment detects deficits on part of poor parents and ignores middle-class and wealthy parents’ failings).

<sup>252</sup> *Id.*

<sup>253</sup> Pelton, *supra* note 16, at 35 (noting national study which found that half of the caregivers of children investigated as victims of abuse and neglect have trouble paying for basic necessities).

<sup>254</sup> See OKLA. STAT. ANN. tit. 10A, § 1-1-105, ¶ 49 (West 2021) (emphasis added) (defining “neglect”).

<sup>255</sup> *Id.*

<sup>256</sup> MIKKI KENDALL, HOOD FEMINISM: NOTES FROM THE WOMEN THAT A MOVEMENT FORGOT 193 (2020).

<sup>257</sup> See ROBERTS, TORN APART, *supra* note 8, at 69 (citing insecure housing as leading reason parents are accused of child neglect).

<sup>258</sup> See *id.* at 66; see also *Child Welfare and Foster Care Statistics*, ANNIE E. CASEY FOUND. (May 30, 2023), <https://www.aecf.org/blog/child-welfare-and-foster-care-statistics#> [<https://perma.cc/LWV9-EHRM>].

<sup>259</sup> See U.S. DEP’T OF HEALTH & HUM. SERVS., CHILD MALTREATMENT, *supra* note 250, at ii.

<sup>260</sup> See ROBERTS, TORN APART, *supra* note 8, at 68-69.

and systemic biases to permit intrusive surveillance and control of poor families, instead of alleviating their hardship through material aid. The state faults poor parents for their deprivation even when it is primarily the result of poverty and other structural factors.<sup>261</sup>

If the child welfare system lived up to its benevolent framing as a caring institution, CPS intervention would be reserved for situations where abuse or neglect was credibly alleged. Any threat to a child's safety would be addressed without controlling and dominating poor Black and brown families. Caseworkers would provide material aid and voluntary services rather than disrupting families with removals absent urgent safety threats.

Even when formal removals are not initiated, caseworkers sometimes pressure parents to sign "safety plans" which involve parents "voluntarily" sending kids to relatives on the threat of formal CPS intervention.<sup>262</sup> These "soft removals" are often presented as an alternative to opening a formal case.<sup>263</sup> Since opening a case raises the chances that a child will eventually be placed with a stranger, scholars like Josh Gupta-Kagan have argued that parents who agree to soft removals are essentially forced to do so.<sup>264</sup> That is, the removals are inherently coercive because the alternative is worse.<sup>265</sup> As Gupta-Kagan has explained, "[i]t is as if a police department investigated a crime, concluded an individual was guilty, did not file charges or provide him with an attorney, and told him he had to agree to go to jail for several weeks or months, or else it would bring him to court and things could get even worse."<sup>266</sup>

The racial and economic disparities in the child welfare system reveal biases that pathologize poor Black and brown families, mirroring the carceral logics of the criminal legal system. These biases manifest through overrepresentation of Black and brown youth in the child welfare system, unequal access to resources, and differential treatment by caseworkers. In both regimes, poverty and race intertwine to produce excessive surveillance and intervention in the lives of those deemed unworthy of raising their children because they are poor and nonwhite.

## 2. Partnership with Law Enforcement

The second way we can observe the carceral logic of the child welfare system is through the direct collaboration between social workers and law enforcement

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<sup>261</sup> See *id.* at 30 ("This nation's terroristic approach to protecting children blames the most marginalized parents for the impact of race, class, and gender inequalities on their children, obscuring those unequal structures and the need to dismantle them."); KABA & RITCHIE, *supra* note 5, at 171.

<sup>262</sup> See ASGARIAN, *supra* note 23, at 242-43.

<sup>263</sup> See *id.*

<sup>264</sup> See Josh Gupta-Kagan, *America's Hidden Foster Care System*, 72 STAN. L. REV. 841, 866 (2020).

<sup>265</sup> See *id.*

<sup>266</sup> *Id.* at 843.

officers.<sup>267</sup> CPS workers are not technically law enforcement officers,<sup>268</sup> but they sometimes train with cops.<sup>269</sup> In a candid statement, one CPS worker said that, “[o]ur ultimate goal is the same as the cops.”<sup>270</sup> Some have argued that CPS workers have more power than cops.<sup>271</sup> This argument is easier to appreciate when we consider that there are fewer checks on caseworkers’ conduct.<sup>272</sup> As Dorothy Roberts has noted, “[c]hild welfare investigations are the stop and frisk of family surveillance without the safeguards of law and public scrutiny that are present in the criminal context.”<sup>273</sup> This is made possible “[b]ecause they are operating under the guise of offering government support rather than policing.”<sup>274</sup>

The Fourth Amendment to the U.S. Constitution places constraints on police power, but these constraints do not apply to caseworkers.<sup>275</sup> It is important to underscore again that caseworkers exercise dominion over disempowered groups that can be every bit as damaging (if not more) as traditional law enforcement’s conduct.<sup>276</sup> But “agencies and courts in effect have created a child welfare exception.”<sup>277</sup> This means that caseworkers can enter homes where abuse or neglect is suspected without a warrant, interrogate household members without reading them their Miranda rights, compel children to remove their clothing, and pry into all kinds of intimate aspects of their lives.<sup>278</sup>

When parents resist a CPS investigation, as they are apt to do because of the intrusiveness and dignity-stripping nature of the conduct, caseworkers can use their response as an indication of neglect or abuse.<sup>279</sup> This presents a classic Sophie’s Choice: if they cooperate with the investigation, they risk having their children removed from their home; if they do not cooperate, the same thing

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<sup>267</sup> See KABA & RITCHIE, *supra* note 5, at 168; ROBERTS, TORN APART, *supra* note 8, at 33 (“[Family policing] is deeply entangled with cops, criminal courts, and prisons, forming an integrated arm of the US carceral regime.”).

<sup>268</sup> See ROBERTS, TORN APART, *supra* note 8, at 158 (explaining CPS workers are not considered law enforcement officers because “child welfare is classified as part of the civil legal system”).

<sup>269</sup> See KABA & RITCHIE, *supra* note 5, at 172.

<sup>270</sup> *Id.*

<sup>271</sup> See *id.* (noting CPS workers have power to remove children “without evidence of wrongdoing, shifting the burden of proof onto parents”).

<sup>272</sup> See ROBERTS, TORN APART, *supra* note 8, at 164.

<sup>273</sup> *Id.* at 157.

<sup>274</sup> KABA & RITCHIE, *supra* note 5, at 168.

<sup>275</sup> See ROBERTS, TORN APART, *supra* note 8, at 158.

<sup>276</sup> *Id.* at 159 (noting “child protection investigations dig far deeper into the private lives of suspects” compared to their law enforcement counterparts).

<sup>277</sup> *Id.*

<sup>278</sup> See *id.* at 159.

<sup>279</sup> See *id.* at 158 (“Any resistance on the part of parents to giving CPS full access to inspect their homes, children, and intimate lives is considered evidence of guilt.”).



might happen.<sup>280</sup> While caseworkers lack the authority to arrest people, they frequently call cops to assist with the removal process—to take children away from their families—even when no criminal law violation is alleged.<sup>281</sup> Little wonder that “[r]esidents of Black neighborhoods live in fear of CPS agents entering their homes, interrogating them, and taking their children as much as they fear police stopping them in the streets, harassing them, and taking them to jail.”<sup>282</sup>

### III. DIMINISHING THE REACH OF THE CHILD WELFARE SYSTEM

If a person “could be sold in any other quarter so distant as never more to be heard of among us, it would to the others be as if he were put out of the way by death,” so wrote the third President of the United States.<sup>283</sup> An ignominious buyer and seller of human beings,<sup>284</sup> Thomas Jefferson often punished enslaved people “by selling them individually to distant places away from their families—a treatment he intended to replicate death.”<sup>285</sup> Even contemporaneous observers recognized the unique cruelty in the practice. As Heather Andrea Williams explains, “[s]ome [W]hites boasted of never selling slaves or separating families precisely because they realized the horror and pain slaves felt at losing their families.”<sup>286</sup>

Another site where we can observe the connection between family separation and death is the forced removal of Indigenous children from their families and communities. Indigenous children were removed from their homes and sent to boarding schools where they were subjected to assimilationist practices designed to “[k]ill the Indian” to “save the man.”<sup>287</sup> Taking native children from their families was intended “to put a final end to the Indian Wars by disrupting the passing down of indigenous languages and the organization of tribal nations.”<sup>288</sup>

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<sup>280</sup> See Michiko Kakutani, *Styron Visible: Naming the Evils that Humans Do*, N.Y. TIMES (Nov. 3, 2006), <https://www.nytimes.com/2006/11/03/books/03styr.html> (explaining “Sophie’s Choice” stems from William’s Styron’s novel where a difficult decision has to be made despite both choices being equal and unfavorable outcomes); ROBERTS, TORN APART *supra* note 8, at 158-59.

<sup>281</sup> See KABA & RITCHIE, *supra* note 5, at 172.

<sup>282</sup> See ROBERTS, TORN APART *supra* note 8, at 32.

<sup>283</sup> Letter from Thomas Jefferson to Thomas Mann Randolph (June 8, 1803), in 40 THE PAPERS OF THOMAS JEFFERSON 505, 505 (Barbara B. Oberg ed., 2014).

<sup>284</sup> See, e.g., Ndjuoh MehChu, *Help Me To Find My Children: A Thirteenth Amendment Challenge to Family Separation*, 17 STAN. J.C.R. & C.L. 133, 162 (2021) (highlighting how Thomas Jefferson was “an ignominious trader of human beings”).

<sup>285</sup> *Id.*

<sup>286</sup> HEATHER ANDREA WILLIAMS, *HELP ME TO FIND MY PEOPLE: THE AFRICAN AMERICAN SEARCH FOR FAMILY LOST IN SLAVERY* 97 (2012).

<sup>287</sup> ASGARIAN, *supra* note 23, at 50.

<sup>288</sup> LAURA BRIGGS, *TAKING CHILDREN: A HISTORY OF AMERICAN TERROR* 48 (2020); ASGARIAN, *supra* note 23, at 50 (noting White educators at boarding schools also forced Indian

These and other similar practices prompted Congress in 1978 to pass the Indian Child Welfare Act (ICWA),<sup>289</sup> a comprehensive set of protections for Native American children that the Supreme Court recently upheld in *Haaland v. Brackeen*.<sup>290</sup> Writing in the context of the Trump Administration's zero tolerance policy, Stephen Lee has also argued that family separation is "slow death," a paradigm that refers to "the kinds of harms that happen slowly and over time, which can often go overlooked or unnoticed."<sup>291</sup>

Across the country today, race-class subjugated families in the crosshairs of CPS experience slow death. CPS removes "as many children from their parents every week as were separated under the entire Trump 'zero tolerance' policy."<sup>292</sup> When caseworkers remove children from their homes, the separation is often permanent; some never see or reunite with their families again.<sup>293</sup> This is slow death at the hands of people who wield police power. However, when addressing police violence, viral episodes like police shootings and killings get most of the attention, while the violence of family separation is sidelined in the discourse.<sup>294</sup> To their enormous credit, scholars like Dorothy Roberts,<sup>295</sup> Miriam Kaba, and Andrea Ritchie<sup>296</sup> have kept the fire burning on the importance of including the child welfare system in our analysis of the carceral regime. They urge that we locate the child welfare system in the tradition of the police project rooted in capitalism, patriarchy, and White supremacy. This Part contributes to that dialogue by identifying the so-far underexplored transformation of PB to address the violence of family policing.

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children to abandon their native languages and adopt Christianity); *see also* Neoshia R. Roemer, *The Indian Child Welfare Act as Reproductive Justice*, 103 B.U. L. REV. 55, 94-95 (2023) (arguing these removals to boarding school were sites of colonialism where government purposely disrupted American Indian families to conduct assimilation project and terminate Indian Tribes).

<sup>289</sup> *See* Jeanne Louise Carriere, *Representing the Native American: Culture, Jurisdiction, and the Indian Child Welfare Act*, 79 IOWA L. REV. 585, 588-90 (1994).

<sup>290</sup> 143 S. Ct. 1609 (2023).

<sup>291</sup> Stephen Lee, Essay, *Family Separation as Slow Death*, 119 COLUM. L. REV. 2319, 2327 (2019).

<sup>292</sup> ROBERTS, TORN APART, *supra* note 8, at 52.

<sup>293</sup> *See* CHILDS. BUREAU, U.S. DEP'T OF HEALTH AND HUM. SERVS., THE AFCARS REPORT 1-3 (2022), <https://www.acf.hhs.gov/sites/default/files/documents/cb/afcars-report-29.pdf> [<https://perma.cc/YK4Q-BQSA>] (noting only 56% of case plan goals include reunification with family members).

<sup>294</sup> Godsoe, *supra* note 21, at 939 ("The tremendous harm the [child welfare] system inflicts on millions of families and communities—particularly low-income populations and communities of color—is ignored [despite the] growing consensus that the criminal legal system is oversized.").

<sup>295</sup> *See generally*, e.g., ROBERTS, SHATTERED BONDS, *supra* note 15; ROBERTS, TORN APART, *supra* note 8.

<sup>296</sup> *See generally* KABA & RITCHIE, *supra* note 4.

A. *Non-Reformist Reforms*

When people think of abolition, the image that comes to mind is an overnight transformation, e.g., “all police standing down at noon tomorrow.”<sup>297</sup> Far from this, abolition is an incremental process that envisions a society where safety and security are met through collective resources, free from the control and surveillance of the carceral apparatus.<sup>298</sup> To that end, one of the core principles of abolitionist theory is to eschew reformist reforms, or reforms that maintain the status quo by simply tinkering with existing systems.<sup>299</sup> For social movements on the left, the problem with reformist reforms is that they “orient action toward entrenching, rather than overthrowing or substituting, a fundamentally corrupt system, institution, or set of relations.”<sup>300</sup> In the context of traditional policing, reformist reforms mean increasing budgets and funding,<sup>301</sup> expanding training and technology to promote accountability,<sup>302</sup> limiting use of force tactics,<sup>303</sup> diversifying police departments<sup>304</sup>—more Black and brown cops—and so on. In so doing, reformist-reforms “telegraph[] to the public that the system, institution, or set of relations [which are the subject of reform] are here to stay; that the problem is not structural or symptomatic . . . .”<sup>305</sup> It is a matter of a “few bad apples”—as the popular refrain goes.<sup>306</sup> But as Caitlyn Garcia and Cynthia Godsoe note, “[b]y obscuring the true nature of fundamentally unjust and flawed institutions—be it the police, the family policing system, or the neo-liberal capitalist state—reformist reforms

<sup>297</sup> MehChu, *supra* note 29, at 876.

<sup>298</sup> See Dorothy Roberts, *Abolition Constitutionalism*, 133 HARV. L. REV. 1, 43 n.255 (2019).

<sup>299</sup> Garcia & Godsoe, *supra* note 7, at 622 (“In abolitionist theory, all reforms must be assessed against the horizon of dismantling the carceral state (transformative or abolitionist reforms), rather than inadvertently empowering it (reformist reforms).”).

<sup>300</sup> Akbar, *Non-Reformist Reforms and Struggles*, *supra* note 34, at 2518-19.

<sup>301</sup> Garcia & Godsoe, *supra* note 7, at 623 (identifying “increase[s in] police budgets to monitor police malfeasance and develop diversion programs that are ultimately controlled by law enforcement” as example of reformist reform).

<sup>302</sup> See, e.g., George Floyd Justice in Policing Act of 2021, H.R. 1280, 117th Cong. § 331(b)(2) (2021) (proposing additional training on racial profiling issues for law enforcement).

<sup>303</sup> See, e.g., OHIO ATT’Y GEN., OHIO ATTORNEY GENERAL’S ADVISORY GROUP ON LAW ENFORCEMENT TRAINING 13 (2015), <https://www.ohioattorneygeneral.gov/Files/Publications-Files/Publications-for-Law-Enforcement/LE-Advisory-Report-WEB> [<https://perma.cc/8DEF-RBGW>] (recommending all state law enforcement agencies adopt clear use of force policy and conduct use of force training).

<sup>304</sup> See, e.g., George Floyd Justice in Policing Act of 2021, H.R. 1280, 117th Cong. § 114(d)(2) (2021) (proposing funding for “hiring and recruitment of diverse law enforcement officers who are representative of the communities they serve”).

<sup>305</sup> Akbar, *Non-Reformist Reforms and Struggles*, *supra* note 34, at 2519.

<sup>306</sup> See, e.g., Godsoe, *supra* note 21, at 947 (explaining that by conceptualizing harms of policing as “caused by a few ‘bad apples,’ . . . reforms . . . such as police bodycams . . . obscure the systemic nature of the harms”).

help to reinvent and perpetuate these institutions and the concomitant hierarchies of race and class.”<sup>307</sup> This is why Miriam Kaba has urged that “all of the ‘reforms’ that focus on strengthening the police or ‘morphing’ policing into something more invisible but still as deadly should be opposed.”<sup>308</sup>

To create a world where safety and security are not linked to the policing of race-class subjugated communities, we cannot simply engage with the current power structures in a way that reconsolidates the power of the ruling class.<sup>309</sup> Instead, our demands must center around transformative changes that challenge and reshape the existing material and ideological infrastructures of power, politics, and the state.<sup>310</sup> Our demands must empower the “dominated classes [to build] independent political power” and reject “formal law and politics as the primary terrain of struggle.”<sup>311</sup> French Austrian philosopher Andre Gorz termed these types of demands “non-reformist reforms.”<sup>312</sup> Gorz initially applied this framework as a response to capitalism, urging us to “link the struggle for socialism to the everyday demands of . . . workers.”<sup>313</sup> Today, through the writings of scholars like Ruth Wilson Gilmore, Jocelyn Simonson and Amna A. Akbar, these reforms have expanded into a new ecosystem. They are broadly understood as intended to bring the dominated class into the democratic fora while simultaneously dismantling the power of the carceral regime as it is constituted, building a new social, economic, and political order.<sup>314</sup> So what could this look like in the context of family policing? To transform the child welfare system, I argue that we should implement and scale up PB.

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<sup>307</sup> Garcia & Godsoe, *supra* note 7, at 623.

<sup>308</sup> Miriam Kaba, *Police “Reforms” You Should Always Oppose*, TRUTHOUT (Dec. 7, 2014), <https://truthout.org/articles/police-reforms-you-should-always-oppose/> [<https://perma.cc/UY3Q-FAPS>]; see also ASGARIAN, *supra* note 23, at 276; Stahly-Butts & Akbar, *supra* note 29, at 1553 (explaining these reforms “seek[] to shrink the system perpetuating harm, subordination and exploitation”).

<sup>309</sup> See Akbar, *Non-Reformist Reforms and Struggles*, *supra* note 34, at 2520 (arguing reform is strategy of ruling class to “do as little as possible to quell revolt that might force deeper changes and self-rule”).

<sup>310</sup> *Id.* at 2526 (“The question . . . for many on the left . . . is how to create ruptures or breaks within the political, economic, social order for deep transformation.”).

<sup>311</sup> *Id.* at 2523-24.

<sup>312</sup> ANDRÉ GORZ, *STRATEGY FOR LABOR: A RADICAL PROPOSAL* 7 (Martin A. Nicolaus & Victoria Ortiz trans., 1967).

<sup>313</sup> *Id.* at 5.

<sup>314</sup> See RUTH WILSON GILMORE, *GOLDEN GULAG: PRISONS, SURPLUS, CRISIS, AND OPPOSITION IN GLOBALIZING CALIFORNIA* 242 (2007) (describing non-reformist reforms as “changes that, at the end of the day, unravel rather than widen the net of social control through criminalization”); Stahly-Butts & Akbar, *supra* note 29, at 1553 (explaining that these reforms “seek[] to shrink the system perpetuating harm, subordination and exploitation”); KABA & RITCHIE, *supra* note 5, at 135 (explaining that non-reformist reforms “improv[e] material conditions [of directly impacted people while] reducing harms of policing, while building power, participation, and possibilities of practicing new ways of producing safety”); ASGARIAN, *supra* note 23, at 276 (same).

## B. Participatory Budgeting

### 1. Defining Participatory Budgeting

PB is a local governance tool that fosters a more democratic approach to how public dollars are spent.<sup>315</sup> It involves a four-step process, listed below, “where citizens deliberate among themselves and with government officials to allocate funds for public goods.”<sup>316</sup>

1. Idea Collection Phase: “residents submit project ideas through a series of public meetings and online.”<sup>317</sup>
2. Budget Delegate Phase: “residents volunteer to work in groups to turn ideas into actual project proposals.”<sup>318</sup>
3. Voting Phase: “fully developed project ideas are put on a ballot for residents—including youth and noncitizens—to vote on.”<sup>319</sup>
4. Implementation Phase: “projects that get the most votes, and fall within the cap of allocated funds, win. Government commits to implementing winning projects.”<sup>320</sup>

PB has been practiced since 1989, when it began that year in Porto Alegre, Brazil.<sup>321</sup> In Porto Alegre, PB is credited with increasing public spending in the most impoverished communities and fostering greater citizen participation in the democratic process.<sup>322</sup> It has since spread around the world to countries like Spain and India.<sup>323</sup> U.S. cities including Boston, Greensboro, New York, and Los Angeles have also adopted it.<sup>324</sup> PB is “boosting confidence among citizens in working with neighbors to solve problems together” in over forty communities nationwide.<sup>325</sup>

A study released in 2016 found that PB has had promising results in the United States and Canada.<sup>326</sup> The study collected data from forty-six different PB campaigns in the United States and Canada and found that over 70,000

<sup>315</sup> See Jordan, *supra* note 37 (explaining residents vote on where their locality’s budget will be spent).

<sup>316</sup> Mhairi Campbell, Oliver Escobar, Candida Fenton & Peter Craig, *The Impact of Participatory Budgeting on Health and Wellbeing: A Scoping Review of Evaluations*, 18 BMC PUB. HEALTH 1, 1 (2018).

<sup>317</sup> *Public Spending, by the People: Participatory Budgeting in the United States and Canada in 2014-15*, PUB. AGENDA (May 10, 2016) [hereinafter *Public Spending, by the People*], <https://www.publicagenda.org/reports/public-spending-by-the-people-participatory-budgeting-in-the-united-states-and-canada-in-2014-15/> [https://perma.cc/GGY2-JZ7V].

<sup>318</sup> *Id.*

<sup>319</sup> *Id.*

<sup>320</sup> *Id.*

<sup>321</sup> See Jordan, *supra* note 37.

<sup>322</sup> See Campbell et al., *supra* note 316, at 1.

<sup>323</sup> See Jordan, *supra* note 37.

<sup>324</sup> See *id.*

<sup>325</sup> *Id.*

<sup>326</sup> *Public Spending, by the People*, *supra* note 317.

residents “directly decided how their cities and districts should spend nearly \$50 million in public funds. The residents voted at nearly 400 sites, with some areas registering fewer than 200 voters, while others saw participation from over 3,000.<sup>327</sup> As a result, 360 projects were successfully awarded funding through PB funding, with an average allocation of \$1 million for each community project.<sup>328</sup>

The study found that PB projects were diverse, ranging from public safety projects to parks and recreation projects.<sup>329</sup> It also found that PB projects were effective in engaging low-income and minority residents. “In nearly all communities, [B]lack residents were overrepresented or represented proportionally to the local census among voter survey respondents.”<sup>330</sup> And “[i]n most communities, residents from lower-income households were overrepresented or represented proportionally to the local census among voter survey respondents.”<sup>331</sup> These results suggest it is worth exploring PB as an intervention to create greater safety for families experiencing the violence of family policing because they are poor. By giving families a say in how public dollars are spent, PB could ensure that these families are not targeted by caseworkers simply because of their financial insecurity. As I explain below, materially uplifting the poor would not require an infusion of cash to the local budget. Rather, it would entail that the “local need and preferences” logic that local administrators apply in disbursing welfare actually account for the needs of the people in the locality who are poor and/or nonwhite.

## 2. How States and Local Administrators Siphon Money from the Poor

In the United States, a significant portion of government money intended for the poor fails to reach them. To appreciate why, take welfare as an example. In 1935, President Franklin D. Roosevelt signed into law the Aid to Dependent Children Act, the successor to the Mother’s Pensions program and later known as Aid to Families with Dependent Children (“AFDC”) Act.<sup>332</sup> When it was first created, AFDC was designed to provide public aid to any “needy child . . . who has been deprived of parental support or care by reason of the death, continued absence from the home, or physical or mental incapacity of a parent.”<sup>333</sup> When welfare was meted out through AFDC, almost all of the money allocated for the program wound up in the pockets of single-parent families.<sup>334</sup> In 1996, President

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<sup>327</sup> *Id.*

<sup>328</sup> *Id.*

<sup>329</sup> *Id.*

<sup>330</sup> *Id.*

<sup>331</sup> *Id.*

<sup>332</sup> See John G. Winant, *An Approach to Social Security*, ATLANTIC (July 1936), <https://www.theatlantic.com/magazine/archive/1936/07/an-approach-to-social-security/304020/>.

<sup>333</sup> 45 C.F.R. § 233.90.

<sup>334</sup> See DESMOND, *supra* note 12, at 28.

Bill Clinton reformed welfare and replaced the program with Temporary Assistance for Needy Families (“TANF”).<sup>335</sup> TANF is a block grant program. Block grant programs are programs under which the federal government gives states a set amount of money each year to administer.<sup>336</sup> States have a lot of flexibility in how they spend this money because of fiscal federalism,<sup>337</sup> and the result is that much of the allocated money never reaches the families that need and are entitled to it.

As Matthew Desmond noted, “[n]ationwide, for every dollar budgeted for TANF in 2020, poor families directly received just 22 cents.”<sup>338</sup> The federal government set aside “\$31.6 billion in welfare funding, [but] just \$7.1 billion was realized as dollars-in-hand relief to the poor.”<sup>339</sup> The money did not simply vanish into thin air. Instead of giving the money that is earmarked for the needy to them, “states have come up with rather creative ways to spend TANF dollars” that “[have] little or nothing to do with reducing poverty.”<sup>340</sup>

Take Mississippi as an example. A Department of Human Services audit revealed that the state siphoned money meant for poor families and used these funds “to hire an evangelical worship singer who performed at rallies and church concerts [and] to purchase a Nissan Armada, Chevrolet Silverado, and Ford F-250 for the head of a local nonprofit and two of her family members . . . .”<sup>341</sup> The retired NFL legend Brett Favre, reportedly worth more than \$100 million, even got a cut of the money (\$1.1 million) for speaking appearances he never made.<sup>342</sup> TANF dollars were also spent “on college football tickets, a private school, a twelve-week fitness camp that state legislators could attend free of charge (\$1.3 million), and a donation to the University of Southern Mississippi for a wellness center (\$5 million).”<sup>343</sup> Also contributing to the problem is that

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<sup>335</sup> See Clyde Haberman, *20 Years Later, Welfare Overhaul Resonates for Families and Candidates*, N.Y. TIMES (May 1, 2016), <https://www.nytimes.com/2016/05/02/us/20-years-later-welfare-overhaul-resonates-for-families-and-candidates.html> (“The 1996 law signed by President Clinton threw out that New Deal remnant and replaced it with Temporary Assistance for Needy Families, or TANF.”).

<sup>336</sup> See DESMOND, *supra* note 12, at 28.

<sup>337</sup> See *id.* (“[President Clinton] transformed [welfare] into a block grant that gives states considerable leeway in deciding how to distribute the money.”).

<sup>338</sup> *Id.*

<sup>339</sup> *Id.*

<sup>340</sup> *Id.* at 28-29.

<sup>341</sup> *Id.* at 29.

<sup>342</sup> See Neil Vigdor, *Brett Favre To Repay \$1.1 Million for Speeches He Didn't Make, Auditor Says*, N.Y. TIMES (Oct. 28, 2021), <https://www.nytimes.com/2020/05/06/us/Brett-Favre-speeches-money.html>; Jack Meserve, *The Mississippi Welfare Fraud Involving Brett Favre, Explained*, VOX (Sept. 24, 2022, 8:00 AM), <https://www.vox.com/policy-and-politics/2022/9/24/23368759/mississippi-welfare-fraud-scandal-brett-favre-reform> [<https://perma.cc/PL9V-3QD2>]; Jenny Vrentas, *Brett Favre's Most Memorable Stat May Be \$8 Million Meant for the Poor*, N.Y. TIMES (Sept. 26, 2022), <https://www.nytimes.com/2022/09/26/sports/football/brett-favre-mississippi-scandal.html>.

<sup>343</sup> DESMOND, *supra* note 12, at 29.

states are not obligated to use all their TANF funds every year.<sup>344</sup> Lots of states do not, instead opting to carry their remaining balance into the next year.<sup>345</sup> In 2020 alone, states sat on \$6 billion in funds intended for the needy.<sup>346</sup> What if all the money meant to help poor families actually went to them? What if there was a way to ensure needy families had a say in how those dollars were spent? PB offers promising answers.

### 3. Improving the Material Condition of the Needy Through Participatory Budgeting

Applying the practice of PB to the allocation of welfare funds would give poor families a voice in how welfare dollars are spent. “[P]articipatory budgeting is not in itself transformative,”<sup>347</sup> but it can become so in this context because the bottom-line goal is to improve the material condition of directly impacted communities. How so? Begin with the obvious. Consider a parent who is below the poverty line and struggling to make ends meet. She is single and has two school-age children. She lives in a state that, like most, has set the TANF benefit level at less than 40% of the federal poverty line—\$1,830 per month for a family of three in 2021.<sup>348</sup> She applies for TANF and gets \$498—the median cash assistance in 2021.<sup>349</sup> Unsurprisingly, this is hardly enough to meet all her family’s basic needs.<sup>350</sup> Even if the benefit level was set at 100% of the poverty line, the federal poverty line is too low, so “families and children who are a little above the poverty line still face incredible difficulties.”<sup>351</sup> She does not know that the state is withholding money from her and people like her. How could she? The disadvantaged class to which she belongs is usually closed off from the decision-making process about how public funds are allocated. And most people do not know that local administrators routinely sit on money earmarked for the poor.<sup>352</sup>

Now imagine that she and others like her are at the table when local administrators are deciding where to set the benefit level. Would they push for a benefit level resembling the 2021 national median of 27% of the poverty line? Or would they push for something more generous, like at least the 60% New

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<sup>344</sup> See *id.* at 30.

<sup>345</sup> *Id.*

<sup>346</sup> *Id.*

<sup>347</sup> Stahly-Butts & Akbar, *supra* note 29, at 1561.

<sup>348</sup> See CTR. ON BUDGET & POL’Y PRIORITIES, *Policy Brief: Increases in TANF Cash Benefit Levels Are Critical To Help Families Meet Rising Costs* (Feb. 3, 2023), <https://www.cbpp.org/research/income-security/temporary-assistance-for-needy-families> [<https://perma.cc/CQ8N-MK9Z>].

<sup>349</sup> *Id.*

<sup>350</sup> *Id.*

<sup>351</sup> See HATCHER, *supra* note 174, at 14.

<sup>352</sup> See DESMOND, *supra* note 12, at 28 (explaining author’s process of attempting to better understand why aid to poor is not robust and noting aspects of state of affairs were “baffling”).



Hampshire gives to its needy families?<sup>353</sup> If the poor controlled funds intended for them, it is reasonable to conclude that they would want more of it as cash assistance. To paraphrase the inimitable James Baldwin, all you think about is money if you don't have it.<sup>354</sup> PB would provide an entry point for the poor to make their voices heard and to communicate their preferences in a space where those preferences can be taken into account to improve their material condition. Instead of programs to provide marriage counseling,<sup>355</sup> they could vote that local administrators use the welfare funds to give them cash. This would allow them to meet their own needs, such as buying food or clothing for their children. This practice would also give the poor more control over their lives and help them to achieve greater financial stability, the absence of which is often conflated with neglect. Putting money in their pockets would mitigate the possibility of CPS intervening based on perceived neglect.

All this assumes that directly impacted communities would *want* to draw more welfare through the PB process if the option was available to them. Although research shows that what most directly impacted families want is direct support,<sup>356</sup> Matthew Desmond's recent work on poverty abolition reveals that this group's preferences might not match their actions.<sup>357</sup> Contrary to the belief that poor people are welfare dependent—i.e., they are lazy and eschew work and other outlets of productivity if they can get by on welfare<sup>358</sup>—Desmond argues that the “American poor are terrible at being welfare dependent.”<sup>359</sup> Only 25% of TANF eligible families apply for aid.<sup>360</sup> And rough estimates report that hundreds of billions of dollars a year in aid intended for low-income Americans go unclaimed.<sup>361</sup> Observing the low program take-up rate, Desmond concludes that “many poor families don't take advantage of aid that's available to them.”<sup>362</sup>

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<sup>353</sup> See CTR. ON BUDGET & POL'Y PRIORITIES, *supra* note 348, at 9.

<sup>354</sup> BALDWIN, *supra* note 48, at 173 (“[M]oney, it turned out, was exactly like sex, you thought of nothing else if you didn't have it and thought of other things if you did.”).

<sup>355</sup> DESMOND, *supra* note 12, at 29 (“Between 1999 and 2016, Oklahoma spent more than \$70 million in TANF funds on the Oklahoma Marriage Initiative, providing counseling services and organizing workshops open to everyone in the state, poor or not.”).

<sup>356</sup> See, e.g., NAASHIA B. et al., RISE PARTICIPATORY ACTION RSCH. PROJECT & TAKEROOT JUST., AN UNAVOIDABLE SYSTEM: THE HARMS OF FAMILY POLICING AND PARENTS' VISION FOR INVESTING IN COMMUNITY CARE 6 (2021), <https://takerootjustice.org/wp-content/uploads/2021/09/AnUnavoidableSystem.pdf> [<https://perma.cc/E5HB-WS4V>].

<sup>357</sup> DESMOND, *supra* note 12, at 90.

<sup>358</sup> See Eduardo Porter, *The Myth of Welfare's Corrupting Influence on the Poor*, N.Y. TIMES (Oct. 20, 2015), <https://www.nytimes.com/2015/10/21/business/the-myth-of-welfares-corrupting-influence-on-the-poor.html> (surveying stigma advertised in United States of recipients becoming “dependent” on government assistance and discouraging employment).

<sup>359</sup> DESMOND, *supra* note 12, at 90.

<sup>360</sup> *Id.* at 89.

<sup>361</sup> *Id.*

<sup>362</sup> *Id.*

Part of the reason welfare programs have a low take-up rate is because welfare is stigmatized.<sup>363</sup> In a 2003 study, Jennifer Stuber and Karl Kronebusch examined the “association between stigma, enrollment barriers . . . and participation in [TANF] . . . .”<sup>364</sup> These authors identified welfare stigma as operating along two dimensions: (1) identity stigma and (2) treatment stigma.<sup>365</sup> Identity stigma is “related to concerns about being labeled with negative stereotypes associated with recipients of means-tested programs.”<sup>366</sup> And treatment stigma is defined as “how others view and treat [welfare] recipients.”<sup>367</sup> The authors found that “stigma associated with welfare stereotypes reduced” TANF participation.<sup>368</sup> In a country where anyone can supposedly “pull themselves up by their bootstraps,”<sup>369</sup> to rely on government assistance is often taken as evidence that one lacks industriousness.<sup>370</sup> Because of this notion, “people on [U.S.] public assistance have been labeled lazy, lacking in ambition, shiftless, dishonest, aggressive seekers of unearned rewards, morally weak, and bad parents.”<sup>371</sup>

In a similar vein to the Stuber and Kronebusch study, a 2022 study by Pablo A. Celhay and coauthors reported “strong evidence that stigma matters for welfare programs.”<sup>372</sup> Today, welfare stigmatization imposes a social tax on eligible recipients. The social tax of identity stigma “makes applying for benefits a threat to a person’s self-image.”<sup>373</sup> And at the treatment level, welfare stigma “means many potential aid recipients also worry that they’ll face hostile treatment as they apply for benefits.”<sup>374</sup> Importantly, Celhay and his coauthors also found that the intensity with which people experience stigma “depends on

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<sup>363</sup> See, e.g., Hannah Tremont, *Welfare Stigma*, PUB. HEALTH POST (Oct. 25, 2022), <https://www.publichealthpost.org/research/welfare-stigma> [https://perma.cc/YY96-3QVV].

<sup>364</sup> Stuber & Kronebusch, *supra* note 45, at 509.

<sup>365</sup> *Id.* at 511.

<sup>366</sup> *Id.*

<sup>367</sup> *Id.*

<sup>368</sup> *Id.* at 509.

<sup>369</sup> Tremont, *supra* note 363. The phrase “pull yourself up by your bootstraps” perpetuates the idea that people have the ability to achieve upward mobility without any assistance from external sources. See Tricia Young, *A Change Must Come: The Intersection of Intergenerational Poverty and Public Benefits*, 114 DEPAUL J. FOR SOC. JUST. 1, 9 (2021) (“It is a phrase that says to people that are poor that they should be able to resolve their needs independently, without government help and that their poverty is their fault.”). This phrase has been, and continues to be, frequently used when discussing racial, social, and economic disparities in the United States. *Id.*

<sup>370</sup> See, e.g., Celhay et al., *supra* note 47 (“Those who do not succeed in escaping poverty are viewed as meriting this fate.”).

<sup>371</sup> Stuber & Kronebusch, *supra* note 45, at 511.

<sup>372</sup> See Celhay et al., *supra* note 47, at 18.

<sup>373</sup> Livia Gershon, *The Health Threats of Welfare Stigma*, JSTOR: DAILY (Jan. 30, 2018), <https://daily.jstor.org/the-health-threats-of-welfare-stigma/> [https://perma.cc/USM4-UPF9].

<sup>374</sup> *Id.*

the extent that others within the relevant social network make similar choices.”<sup>375</sup> Since stigma is defined in the local economy rather than the national,<sup>376</sup> higher local enrollment decreases welfare stigma.<sup>377</sup>

Here too we see the liberatory potential of PB. A benefit of PB is the social connections that form by bringing people directly impacted in conversation with city officials to decide how to set budget priorities. Through these connections, directly impacted people can gain a better understanding of the choices that other similarly situated people in their community are making with respect to welfare—a precondition for reducing welfare stigma.<sup>378</sup> This increased awareness can help reduce welfare stigma if, for example, it reveals to an individual on the fence about enrollment that welfare usage in the local economy exceeds assumed levels.

There is good reason to believe that PB might surface potential solidarity around meeting material needs that stigma obscures. At present, there is a tendency for welfare recipients to underreport the aid they receive.<sup>379</sup> For example, say that John and Jane are acquaintances who run into each other at their local grocery store. Both are below the poverty line and discuss how the price of eggs is too damn high.<sup>380</sup> John is barely making ends meet and is receiving TANF. Jane is struggling financially too and is considering applying for TANF. Neither discloses their position because they fear the stigma around welfare. Now, imagine that a PB campaign has been launched in their city. They both show up to the campaign’s first assembly where they see each other and other local residents. In this environment, John and Jane would be more likely to share information about their situations because participatory projects are designed to build class consciousness.<sup>381</sup> The “inherently localized” projects create “spaces where oppressed groups can come together to both get their needs met and organize against the causes of their oppression.”<sup>382</sup> The coming together

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<sup>375</sup> Celhay et al., *supra* note 47, at 8.

<sup>376</sup> *See id.* (“We assume that individuals’ perception about the intensity of social norms is defined locally, rather than in the entire economy, because recipient households have some knowledge of the frequency with which neighbors participate in each program we study, possibly through interactions at the local store, program office or by word of mouth.”).

<sup>377</sup> *See id.* at 22 (“Our finding that stigma decreases with local participation shows that peer valuation indeed affects social image concerns.”).

<sup>378</sup> *See id.* at 7 (“[S]tigma should be decreasing in local participation as the belief of being ostracized for welfare receipt depends on the extent that others within the relevant social network make similar choices.”).

<sup>379</sup> *See id.* at 17 (“We document a robust negative relationship between underreporting of welfare participation [a proxy for welfare stigma] and local program participation.”).

<sup>380</sup> *See* Danielle Wiener-Bronner, *Eggs are 70% More Expensive than They Were a Year Ago*, CNN: BUS. (Feb. 14, 2023, 10:40 AM), <https://www.cnn.com/2023/02/14/business/grocery-prices-cpi/index.html> [<https://perma.cc/HT8S-8RLZ>].

<sup>381</sup> *See* Akbar, *Non-Reformist Reforms and Struggles*, *supra* note 34, at 2564, 2571-72; García & Godsoe, *supra* note 7, at 611.

<sup>382</sup> García & Godsoe, *supra* note 7, at 611.

counters the isolation that enables disadvantaged groups to be demonized. Illuminating the struggles and choices facing real people “helps to overcome the stigma and shame, which the government and society have consistently imposed on low-income people throughout history.”<sup>383</sup> Reshaping narratives through on-the-ground truth telling enables people like Jane to see others using welfare programs, thereby reducing welfare stigma and increasing the likelihood that disadvantaged groups apply for welfare in the first place.

Therein lies PB’s potential to remake not only budgets but also the bonds and consciousness in poor communities of color. By bringing directly impacted people into conversation with one another in a setting that is designed to empower and foster transparency, PB helps create an environment that encourages participation in welfare programs.

#### 4. Improving the Material Condition of the Needy Shrinks the Reach of Family Policing

PB’s democratic approach reorients the focus from punishing poor families of color in the child welfare system towards the collective material uplifting of directly impacted communities. Financial hardship strains parents’ ability to provide stability, leaving them vulnerable to allegations of neglect triggered by poverty.<sup>384</sup> More material investments in the needy would give them greater economic stability. As a result, fewer families would face the hardships often construed as neglect, and the justifications for CPS’s “child-saving” intrusions would be reduced. It is not just a theoretical possibility that increasing material aid to directly impacted communities diminishes family policing’s reach. A study of families in Wisconsin “found that mothers eligible to receive all child support paid on behalf of their children were less likely to have a child subject to a screened-in report of maltreatment than were mothers who were eligible for only partial child support payments.”<sup>385</sup> Another study showed that TANF policy sanctions depriving unemployed recipients of all benefits resulted in a 23.3% spike in neglect cases and a 13.4% spike in child placement into foster care for neglect.<sup>386</sup> By increasing enrollment in welfare programs or raising benefit levels, PB would *likely* disrupt this pathway. I emphasize the term “likely” to highlight that including directly impacted communities in resource decisions does not guarantee more money will actually be given to the poor. If we consider the interplay of race and poverty and take seriously the idea that

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<sup>383</sup> *Id.*

<sup>384</sup> Maria Cancian, Kristen Shook Slack & Mi Youn Yang, *The Effect of Family Income on Risk of Child Maltreatment* 3 (Inst. for Rsch. on Poverty, Discussion Paper No. 1385-10, 2010), <https://www.irp.wisc.edu/publications/dps/pdfs/dp138510.pdf> [https://perma.cc/W5EQ-9VM7].

<sup>385</sup> Webb, *supra* note 15, at 678.

<sup>386</sup> DONNA K. GINTHER & MICHELLE JOHNSON-MOTOYAMA, DO STATE TANF POLICIES AFFECT CHILD ABUSE AND NEGLECT? 14-15, 26 (2017), [https://www.econ.iastate.edu/files/events/files/gintherjohnsonmotoyama\\_appam.pdf](https://www.econ.iastate.edu/files/events/files/gintherjohnsonmotoyama_appam.pdf) [https://perma.cc/89FZ-HB5G].

race plays a role in determining how resources are allocated, we would be naïve to assume that PB would necessarily result in direct cash assistance to the poor. Racist tropes could still mark poor Black and brown families as unworthy and restrict assistance. Regina Austin's work on the social construction of money might help us to better appreciate this dynamic.<sup>387</sup> She writes that "according to Victorian notions that remain alive still, money is at its most sacred when it is in the possession of those who exhibit thrift, diligence, energy, civility, . . . and a touch of the class or cultural capital."<sup>388</sup> These people are thought to be deserving of the beneficence of money. Then "[t]here are other people in whose hands money should not want to be found, i.e., people who give even money a bad name."<sup>389</sup> Among this group are minorities and the poor.<sup>390</sup> We see this invidious notion play out in the context of jury awards in cases involving race-class subjugated people where claimants' "recoveries [are negatively impacted] by the social meaning attached to money in their hands."<sup>391</sup> Any PB scheme that proposes that public funds intended for poor Black and brown people ought to be used to support them by giving them cash outright should be understood within this larger context.

Apart from direct cash assistance to the poor, PB can improve the quality of life in poor communities by funding projects and services these communities need, such as free or subsidized childcare, healthcare, reliable transportation, or any other number of basic necessities. In Greensboro, North Carolina, for example, local residents succeeded in funding projects like the construction of a community center through PB.<sup>392</sup> Alyzza May, the principal organizer of the efforts, observed that the process was not "easy to organize,"<sup>393</sup> but praised PB for "completely transform[ing] how residents of Greensboro engage with the city money and budget."<sup>394</sup> Instead of spending money on fitness camps for legislators, PB could lead decisionmakers in Mississippi to prioritize affordable childcare, which has direct implications for breaking the poverty-to-family-policing pipeline.

One of the many interpretations of neglect is leaving a child at home alone.<sup>395</sup> Low-income parents sometimes find themselves in difficult positions where they have to leave their children at home alone to work because childcare is too

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<sup>387</sup> See generally Regina Austin, "Black People's Money": *The Impact of Law, Economics, and Culture in the Context of Race on Damage Recoveries*, 1674 PENN CAREY L.: LEGAL SCHOLARSHIP REPOSITORY 1 (2003), [https://scholarship.law.upenn.edu/cgi/viewcontent.cgi?article=2675&context=faculty\\_scholarship](https://scholarship.law.upenn.edu/cgi/viewcontent.cgi?article=2675&context=faculty_scholarship) [<https://perma.cc/K9ZD-HCFC>].

<sup>388</sup> *Id.* at 30.

<sup>389</sup> *Id.*

<sup>390</sup> *Id.*

<sup>391</sup> *Id.* at 46.

<sup>392</sup> Jordan, *supra* note 37 ("Voting was successful and projects, including . . . a community center . . . were funded through the process.").

<sup>393</sup> *Id.*

<sup>394</sup> *Id.*

<sup>395</sup> ROBERTS, TORN APART, *supra* note 8, at 69.

expensive.<sup>396</sup> Instead of spending millions of dollars on ineffective programs like motivational speaking, PB could prompt investment in affordable childcare. This prevents hardship-induced neglect findings by ensuring that children are supervised when parents work. Alleviating the root economic constraint allows low-income families to avoid this prevalent trigger for system involvement. Rather than breaking up families, the solution is addressing poverty's material impacts for parents trying their best yet struggling to make ends meet. PB has this emancipatory potential.

### 5. Participatory Budgeting's Limitations

I do not mean to suggest that PB is a simple, risk-free process. In New Orleans, for example, the Committee for a Better New Orleans, a civic engagement nonprofit, initiated preliminary discussions with local organizations such as Puentes New Orleans about launching a participatory budget campaign.<sup>397</sup> Committee for a Better New Orleans' campaign manager Kelsey Foster thought that "participatory budgeting would be a great complement" to existing ideas to improve local governance in the city.<sup>398</sup> "You have to work together to spend this money, you have to work together to understand how much projects costs [sic]. But also, you get to see real direct results, you vote and something is built," Foster explained.<sup>399</sup> But unlike in cities like Greensboro, North Carolina where PB was successful,<sup>400</sup> the plans never took off in New Orleans because the mayor had "a very low opinion of the capacities of residents" and did not trust the locals.<sup>401</sup>

Indeed, as Jocelyn Simonson has explained, power shifting is difficult work laden with pitfalls.<sup>402</sup> There are first-order questions that demand our attention. For example, how do we "defin[e] the group of people to whom power should be shifted"?<sup>403</sup> How do we make sure that the "opening up the ability of generally disempowered people" to contest how public dollars are spent will not reestablish new hierarchies?<sup>404</sup> These are hard-to-answer questions. And movement organizers do not pretend otherwise, as the Greensboro context illustrates.<sup>405</sup> The state cannot "simply shift all power into the hands of a specific

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<sup>396</sup> *Id.* at 73.

<sup>397</sup> Jordan, *supra* note 37.

<sup>398</sup> *Id.* (quoting interview with Kelsey Foster, Campaign Manager, Committee for a Better New Orleans).

<sup>399</sup> *Id.*

<sup>400</sup> *Id.*

<sup>401</sup> *Id.* (quoting Interview with Keith Twitchell, President, Comm. for a Better New Orleans).

<sup>402</sup> See Simonson, *supra* note 9, at 857.

<sup>403</sup> *Id.*

<sup>404</sup> *Id.* at 860.

<sup>405</sup> See Jordan, *supra* note 37.

category of people” and “hope for the best.”<sup>406</sup> This is a recipe for failure. Rather, “the state can help those it newly recognizes as experts to understand and parse through complicated realities together.”<sup>407</sup>

Even assuming we clear these preliminary schematic hurdles, PB’s payoff does not happen overnight. As previously noted, PB is a multistep process—it takes time. Thus, there are additional challenges to implementing PB in this context because it entails taking up the time of people for whom time already is most in short supply. Poverty is not only about financial limitations, it is also about temporal limitations.<sup>408</sup> Financially poor people are also the most “time poor.”<sup>409</sup> How realistic is it to expect people experiencing time poverty to commit to something like PB? This is a serious challenge that should not be taken lightly. To answer this question, our analysis must focus on *why* economically poor people are time poor.

Studies show, for example, that low-income mothers without the support available to financially stable parents are especially vulnerable to time pressure.<sup>410</sup> Exactly because they lack the material infrastructure to support their families, tasks like cooking and cleaning take up more of their time compared to their richer counterparts.<sup>411</sup> This underscores the importance of building the material infrastructure of poor Black and brown communities in order to create a foundation for these communities to engage in self-governance. Relying solely on powershifting is unlikely on its own to transform unjust structures.<sup>412</sup> We must pursue it with other projects of transformation.

In this Section, I have argued that PB is a practical reform that can be pursued while building towards larger transformations in the child welfare system. PB has transformative potential because it gives poor people a say in how public money is spent on child welfare services. Children are removed from their homes because they come from poor households. They are then sent to live in distant places with strangers who are provided monthly allowances to care for the children. In an alternate society where establishing safety and security does not mean punishing already marginalized groups, we could just give that money to the children’s biological parents. PB allows directly impacted communities to advocate for money earmarked for their use to be spent to support them

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<sup>406</sup> See Simonson, *supra* note 9, at 858.

<sup>407</sup> *Id.*

<sup>408</sup> See generally Ashley Whillans & Colin West, *Alleviating Time Poverty Among the Working Poor: A Pre-Registered Longitudinal Field Experiment*, SCI. REPS., Jan. 2022, at 1, 1 (2022) (finding time-saving and monetary conditions create similar increases in well being).

<sup>409</sup> *Id.*

<sup>410</sup> See Katie Bishop, *The ‘Time Poverty’ that Robs Parents of Success*, BBC: FAM. TREE (Feb. 3, 2022), <https://www.bbc.com/worklife/article/20220201-the-time-poverty-that-robs-parents-of-success> [<https://perma.cc/3WMJ-2CZE>] (noting parents have up to fourteen fewer hours of free time per week than people living alone without children).

<sup>411</sup> Whillans & West, *supra* note 408, at 1.

<sup>412</sup> Simonson, *supra* note 9, at 789 (“[T]here is no guarantee that a power-shifting arrangement in policing would on its own lead to any particular outcomes.”).

materially, addressing their specific needs as they define it. Additionally, PB creates spaces for new social relationships to develop and spreads awareness of alternative ideas, which are important indicators of non reformist reforms.<sup>413</sup> These new localized social relationships can help to reduce the stigma surrounding welfare, leading to increased program participation. The greater welfare participation is, the more people are brought under the social safety net. This, in turn, can alleviate the control and surveillance of the family police, which often conflates poverty and neglect, without legitimating the system.

C. *Mutual Aid and Other Projects of Transformation*

Although not the focus of this Article, it is also important to acknowledge other projects of transformation that would push us towards a society where the provision of safety and security in the child welfare system is decoupled from controlling and punishing race-class subjugated communities. For example, as Garcia and Godsoe remind us, we can also practice mutual aid.<sup>414</sup> Abolitionist Dean Spade describes mutual aid as “people giving each other needed material support, trying to resist the control dynamics, hierarchies, and system-affirming, oppressive arrangements of charity and social services.”<sup>415</sup> At its core, mutual aid involves cooperative efforts for the collective well-being, grounded in the understanding that our survival is interconnected.<sup>416</sup> This concept has a long history in the Black radical tradition, where enslaved and formerly enslaved people joined forces to purchase and maintain each other’s freedom, provide support to newcomers, and navigate challenges during the Great Migration.<sup>417</sup> Throughout history, mutual aid has assisted migrants in times of displacement, supported workers during strikes, aided communities in boycotts, and provided care and community for disabled people facing access barriers.<sup>418</sup> It played a crucial role in the Black Panthers’ “survival pending revolution” framework, exemplified by initiatives like free breakfast programs and medical services such as sickle cell testing.<sup>419</sup>

During the height of the COVID-19 pandemic, there was a surge of engagement in mutual aid projects as communities rallied together to provide essential aid to the most vulnerable.<sup>420</sup> In Chicago, for example, Equity and Transformation (“EAT”) distributed COVID-19 “Life Kits” while advocating

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<sup>413</sup> See KABA & RITCHIE, *supra* note 5, at 132.

<sup>414</sup> Garcia & Godsoe, *supra* note 7, at 624 (“Given the strong correlation between family struggles and a lack of resources, a mutual aid model that increases community infrastructure without stigma or surveillance would likely bring very beneficial results.”).

<sup>415</sup> KABA & RITCHIE, *supra* note 5, at 253 (quoting DEAN SPADE, *MUTUAL AID: BUILDING SOLIDARITY DURING THIS CRISIS (AND THE NEXT)* (2020)).

<sup>416</sup> *Id.* at 252.

<sup>417</sup> *Id.*

<sup>418</sup> *Id.*

<sup>419</sup> *Id.*

<sup>420</sup> *Id.*



for guaranteed incomes for communities impacted by the pandemic.<sup>421</sup> On the city's South side, Black abolitionists established the People's Grab-n-Go to provide food to residents.<sup>422</sup> As Kaba and Ritchie explain, "[a]t one point [during the early days of the pandemic], an online map tracked hundreds of mutual aid projects across the country, as people stepped in to create greater safety for each other through food and medication deliveries, emergency cash assistance, medical, child, and elder care, scheduling vaccination appointments, and more."<sup>423</sup> These examples highlight the power of mutual aid in addressing immediate needs and building community resilience outside of traditional systems. We do not need to wait for a global crisis to care for the neediest in our communities.

In addition to mutual aid, we can also join organizations like the Dream Defenders in agitating for universal basic income, a guaranteed jobs program, and universal health care.<sup>424</sup> As we build towards larger abolitionist demands of divesting from the child welfare system as we presently know it, we can work towards improving material conditions for people. By taking these steps, we create a safer and more resilient society for everyone.<sup>425</sup>

#### CONCLUSION

Scholars have extensively examined how the carceral regime in the United States punishes individuals experiencing poverty. However, this sustained treatment has not extended to the child welfare system. Building on the work of scholars who have argued that we need to recognize the carceral tendencies of the child welfare system, this Article draws from the abolitionist praxis of powershifting to propose that we adopt participatory budgeting as a response to the immediate needs of race-class subjugated families who are entangled in the web of family policing while we build towards larger transformations. The child welfare system often conflates poverty and neglect. As a result, Black and brown families, who are disproportionately poor, are often subjected to the violence of policing based on the perceived danger they pose to their children. Rather than giving impoverished families who are not otherwise dangerous or a threat to their children the necessary resources to provide for them, the child welfare system punishes these families by removing their children from their homes.

PB is potentially transformative because it empowers individuals experiencing poverty to have a voice in how public funds intended for them are allocated. To be clear, PB does not solely dismantle the carceral tendencies of the child welfare system, but it is a way to mitigate the harm caused by the

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<sup>421</sup> *Id.* at 253.

<sup>422</sup> *Id.*

<sup>423</sup> *Id.* at 252 (citation omitted).

<sup>424</sup> See, e.g., DREAM DEFENDERS, DEFUND POLICE REBUILD OUR COMMUNITIES 5 (2020), <https://secure.everyaction.com/p/PN6aQpREDU6OccefBqxPmQ2> [<https://perma.cc/79VG-697P>].

<sup>425</sup> KABA & RITCHIE, *supra* note 5, at 254.

system. By actively engaging in PB, directly impacted communities can vote for public money to be spent to address their specific material needs and challenges. PB projects are also sites where new social relationships among impoverished people can form, which can contribute to reducing stigma around government assistance to the needy. As the stigma around welfare programs decreases, program participation increases. And, as more individuals have access to the social safety net, the grip of family policing can be gradually loosened, all while refraining from legitimizing the existing system.