RACING AND ERASING PARENTAL RIGHTS

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ABSTRACT

According to the standard narrative, blue states are better for marginalized families while red states trample on their rights. Yet the most vulnerable families—primarily Black, Indigenous, and poor families entangled in the family policing system—have more rights in many red states than blue. States like Utah and Texas are passing radically narrowed neglect laws, mandating Miranda *rights for parents facing an investigation of child abuse or neglect, and calling for downsizing punitive state intervention. In contrast, lawmakers and state agents in New York and California are blocking such reforms and doubling down on warrantless and unfettered investigations in the name of child safety.*

This Article explains this phenomenon through the lens of Professor Derrick Bell's classic interest convergence theory, which posits that change occurs largely through a material overlap in the interests of groups in power and subordinated groups. Through analysis of state legislative memos, testimony, interviews, and media accounts, this Article unearths this counterintuitive legal change. It shows how these radical reforms to the family policing system have come about through unusual, pragmatic alliances between libertarians espousing "family values" and public defenders concerned about racial justice. This interest convergence is leading to meaningful improvements for thousands of families—more than one-tenth of families now live under narrowed neglect laws, and Texas has halved the number of children placed in foster care. Even more profoundly, narrowing the front door to the family policing system is a step toward a long-term abolitionist horizon.

By identifying and analyzing this path to sociolegal change, this Article makes three contributions. First, it complicates the standard narrative about political categories. Too often, progressive equals freedom and parental rights read as conservative. This Article demonstrates that progressive "child saving" can

* Professor of Law, Brooklyn Law School. I received thoughtful comments from Anna Arons, Nila Bala, Mary Anne Case, LaToya Baldwin Clark, Bennett Capers, Maxine Eichner, Alexis Hoag-Fordjour, Martin Guggenheim, Clare Huntington, Sarah Lorr, Diane Redleaf, Jocelyn Simonson, S. Lisa Washington, and participants in the Decarceration Summer Workshop, NYC Family Law Colloquium, SMU Law School Faculty Workshop, and the University of Chicago Workshop on the Regulation of Family, Gender, and Sexuality. I greatly appreciate the careful editing of Francesca Camacho and the *Boston University Law Review* team. Special thanks to the attorneys, activists, and parents who shared their experiences, and to Talia Land, Amina Rana, and Samantha Mintz for excellent research assistance. I am grateful to Ndjuoh MehChu for his thoughtful response.

further the racialized marginalization of parents, and that parental rights do not have to be associated with anti-Critical Race Theory ("anti-CRT") and "Don't Say Gay" laws. Second, the Article excavates the benefits and risks of these interest convergences and argues that the upsides, such as narrative shifts about family well-being, outweigh the dangers, including co-optation. Finally, this Article moves beyond theory to offer scholars, activists, and impacted parties concrete steps toward change. It concludes that scrutinizing state agents claiming to help, welcoming cross-aisle allies, and recapturing parental rights are a key, indeed perhaps the only, way to overcome the pathological politics of the family policing system.

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INTRODUCTION

While purporting to protect families, the family policing system ("system") separates hundreds of thousands of children and surveils millions of families—inevitably families that are low-income and disproportionately Indigenous and Black.[1] Professor Dorothy Roberts aptly termed this a "benevolent terror."[2] Consider the following: A parent in State A laments that "[t]hey purposely withhold your rights from you and scare you with the threat of taking your children."[3] Notably, the lead agency and key lawmakers in that state resist any change to narrow laws or curb reporting and unfettered warrantless investigations, ignoring the system's harms in the name of "child safety." In State B, lawmakers and advocates call out the system's "excessive investigation and prosecution of parents" for poverty and "lack of due process," highlighting the trauma of family separation.[4] They lobby for and enact significant changes to family policing law, while calling for the system to be massively downsized. Would it surprise you to learn that the first state is purportedly progressive New York, and that the second state is staunchly conservative Texas?

The harms of the vast and ever-expanding family policing system have been well documented by scholars, activists, and impacted parents. I argue here that

[1] I use the term "family policing system" to reflect the system's true nature. *See* ALAN DETTLAFF, KRISTEN WEBER, MAYA PENDLETON, BILL BETTENCOURT & LEONARD BURTON, HOW WE ENDUP: A FUTURE WITHOUT FAMILY POLICING 3 (2021), https://upendmovement.org/wp-content/uploads/2021/06/How-We-endUP-6.18.21.pdf [https://perma.cc/PS53-EWQ2] ("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.").

[2] DOROTHY ROBERTS, TORN APART: HOW THE CHILD WELFARE SYSTEM DESTROYS BLACK FAMILIES—AND HOW ABOLITION CAN BUILD A SAFER WORLD 30 (2022). Professor Roberts's role in exposing and theorizing the punitive and racist history and ongoing operation of the family policing system cannot be overstated.

[3] *See* Zach Williams, *Outraged NY Parent Advocates Demand Albany Pass a 'Miranda Rights' Bill for Child Protective Services Before Questioning*, N.Y. POST, https://nypost.com/2023/05/26/parent-advocates-call-for-albany-to-pass-miranda-rights-bill-for-child-welfare-cases/ [https://perma.cc/3DMX-DQ3A] (May 26, 2023, 8:23 PM) (quoting Black mother investigated twenty times with no substantiated allegations). For the many harms of anonymous and mandated reporting, see *infra* notes 139-45.

[4] *Free Range Parenting Act*, AM. LEGIS. EXCH. COUNCIL [hereinafter ALEC], https://alec.org/model-policy/free-range-parenting-act [https://perma.cc/7Q5M-AKZD] (last visited Dec. 13, 2024) (outlining proposed bill allowing parents to grant children independence and not be criminalized for child neglect); Sneha Dey, *Texas Lawmakers Move to Close Foster Care Hiring Loopholes and Expand Rights of Parents Facing Investigations*, KSAT.COM, https://www.ksat.com/news/texas/2023/03/02/texas-foster-care-system-has-been-in-shambles-for-years-heres-how-lawmakers-want-to-fix-it/ [https://perma.cc/YU7L-YXW3] (last updated Aug. 2, 2023, 1:05 PM) (quoting a Republican state representative, who noted "[t]here is a real lack of due process in the CPS arena, I believe. And I think a lot of my colleagues agree . . . . A parent should understand what is at risk and that we're doing an investigation and that they have rights").

the system not only punishes and damages marginalized families, but also erases their rights. The U.S. Supreme Court has declared the right of parents to raise their children as "perhaps the oldest of the fundamental liberty interests."[5] Parental autonomy is, in large part, based on a presumption that parents' and children's interests align, and that parents are best positioned to make decisions for children's welfare.[6] Yet many parents never benefit from that constitutional presumption; instead, a false dichotomy appears in marginalized communities, between the interests of children and those of their parents, between safety and family integrity. However, more reporting and interventions do not result in less child maltreatment; to the contrary, the system brings much more harm than safety.[7]

It might sound hyperbolic to say that some parents have almost no rights in relation to custody of their children, yet to most poor parents in the United States, it is a reality. Judges have said as much to me. In the Bronx County Family Court, one judge declared that she did not follow the federal Constitution, only state statutes.[8] Around the country, caseworkers and judges explicitly say that these "bad" parents "have no rights," that they "have never looked at what the law says," or that, after a report, a mother's sons are "no longer [her] children," but instead "clients of ACS," the state agency.[9] This plays out for millions of

[5] Troxel v. Granville, 530 U.S. 57, 65 (2000) (emphasizing that parental liberty is liberty interest Court recognized over seventy-five years earlier). The right was first articulated in Meyer v. Nebraska, 262 U.S. 390, 399 (1923) (describing parental rights as among those "essential to the orderly pursuit of happiness by free men").

[6] Parham v. J.R., 442 U.S. 584, 602 (1979) ("[N]atural bonds of affection lead parents to act in the best interests of their children.").

[7] *See, e.g.*, Kristin Jones, *States Find a Downside to Mandatory Reporting Laws Meant to Protect Children*, NPR (Apr. 25, 2024, 7:00 AM), https://www.npr.org/sections/health-shots/2024/04/25/1247021109/states-find-a-downside-to-mandatory-reporting-laws-meant-to-protect-children [https://perma.cc/3P2B-6VM3] (noting that, in Colorado, reports have increased 42% in past decade, yet do not reflect increased maltreatment).

[8] Other attorneys report similar comments in cases around the country. *See* Posting of family defense attorney from Alaska to child-parentsattorneys@mail.americanbar.org (Aug. 10, 2023) (on file with author) (communicating Alaska family defense attorney noting inconsistent, often contradictory, findings by caseworkers and courts about what is neglect and noting that "what exactly the [right to parent]" means for these families is "challenged" constantly for minor things such as teaching children to "use power tools," or not enrolling child in sports programs); *see also* Diane Redleaf, *When the Child Protective Services System Gets Child Removal Wrong*, CATO UNBOUND (Nov. 9, 2018), https://www.cato-unbound.org/2018/11/09/diane-redleaf/when-child-protective-services-system-gets-child-removal-wrong/ [https://perma.cc/9GSF-EB4L] (describing recent Illinois case where toddler was removed from parents with no evidence of abuse or neglect and caseworker told them that they "had no parental rights").

[9] Posting of family defense attorney from Lousiana to child-parentsattorrneys@mail.ammericanbar.org (Sept. 12, 2024) (on file with author) (describing Louisiana family courts); Complaint at 32, Gould v. City of New York, No. 1:24-cv-01263

families from the moment a report—anonymous or "mandatory," with the vast majority being baseless or biased—is called in. Arguably, parents' rights decrease based upon the neighborhood in which they live, and upon their race, income level, and other characteristics, such as being homeless or having a disability—because of systemic carceral logics.[10] Most families become entangled in the system for "neglect," a vague and poverty-related category that includes unstable housing, legal marijuana consumption, and a lack of childcare.[11] In many cases, despite no evidence of parental abuse, bad intention, or even harm, the constitutional presumption that parents act in their children's interest disappears.[12] Decisions about education and health care are scrutinized and overridden, while family associational rights are demeaned and riven with approximately 400,000 children removed into the foster system annually.[13]

(E.D.N.Y. filed Feb. 20, 2024) [hereinafter *Gould* Complaint] (alteration in original) (describing Curtayasia Taylor's experience with ACS's "warrantless, non-exigent searches").

[10] I have previously described carceral logic as "an array of legal practices that operate to police, discipline, and most importantly, subordinate a given population in the name of safety or protection." *See* Cynthia Godsoe, *Disrupting Carceral Logic in Family Policing*, 121 MICH. L. REV. 939, 941-47 (2023) (describing how parental rights "don't exist for *these* parents"); *see also* MARIAME KABA, WE DO THIS 'TIL WE FREE US: ABOLITIONIST ORGANIZING AND TRANSFORMING JUSTICE 63 (Tamara K. Nopper ed., 2021) (describing carceral logic as a "punishment mind-set").

[11] Justice Gorsuch has described how historically Indigenous families were punished for "[p]overty, poor housing, lack of modern plumbing, and overcrowding" and separated "without due process of law." Haaland v. Brackeen, 599 U.S. 255, 303-04 (2023) (Gorsuch, J., concurring) (quoting William Byler, *The Destruction of American Indian Families*, *in* THE DESTRUCTION OF AMERICAN INDIAN FAMILIES 1, 3-4 (Steven Unger ed., 1977)). However, this is not just a historic fact, but rather an ongoing issue for many families of color today. A recent case from the Bronx starkly illustrates state agency overreach and lack of oversight and process. Chanetto Rivers, a Black woman, was drug tested without her consent, resulting in her newborn child being removed due to testing positive for marijuana despite its legality in New York City at the time. *See* Michelle Bocanegra, *NYC Children's Services Agency to Settle with Parent Allegedly Targeted for Marijuana, Race*, GOTHAMIST, https://gothamist.com/news/nyc-childrens-services-agency-to-settle-with-parent-allegedly-targeted-for-marijuana-race (last updated Sept. 7, 2023). Even after being mandated to return her son, the city agency continued to require Ms. Rivers to attend "needless court proceedings," and to subject her to unannounced home visits and other intrusions—a pattern her lawyers allege has been carried out against other Black parents. *Id.* Ms. Rivers received a monetary settlement from the city, "a first-of-its-kind judgment." *Id.*

[12] Indeed, parents are not just questioned and criticized but openly demeaned in a lawless environment, similar to the process in low-level criminal courts described by scholars. *See, e.g.*, Shaun Ossei-Owusu, *Kangaroo Courts*, 134 HARV. L. REV. F. 200, 203 (2021) (describing lack of due process safeguards in some municipal courts); ISSA KOHLER-HAUSMANN, MISDEMEANORLAND: CRIMINAL COURTS AND SOCIAL CONTROL IN AN AGE OF BROKEN WINDOWS POLICING 51-53 (2018) (mapping implications of misdemeanor process on people of color).

[13] ADMIN. FOR CHILD. & FAMS., U.S. DEP'T OF HEALTH AND HUM. SERVS., THE AFCARS REPORT 1 (2022) [hereinafter AFCARS REPORT], https://www.acf.hhs.gov/sites/

Subjected to warrantless searches with no *Miranda* warnings, nonconsensual drug testing, strip-searching of their children, and other coercive interventions often with no assigned counsel or judicial oversight, these parents have virtually no opportunity to learn of and assert their rights or to put the state to its high burden of proof to invade family privacy.[14]

Despite many efforts at legislative reform and class action lawsuits across the country, the system's abuses have continued largely unchecked. However, in the last few years, radical reform has come from unexpected places—Utah, Texas, and a handful of other staunchly red states. They have dramatically shrunk entry into the system by enacting very narrow neglect laws and increasing procedural protections. Not known as particularly friendly to marginalized families, Texas has emerged as a leader in reform of the carceral family policing system.[15] In addition to enacting a tightened neglect law limiting state intervention, Texas abolished anonymous reporting and just this year became the first state to fully mandate *Miranda* rights in family policing cases, with an exclusionary rule for wrongfully obtained evidence.[16] Legislators and advocates supporting these laws often expressly referred to parental rights, as well as calling out the state's unwarranted intrusion into the private family sphere.[17] More than one-tenth of

default/files/documents/cb/afcars-report-29.pdf [https://perma.cc/S3JE-98AK]. These are not just any families, but rather disproportionately Black and Indigenous families. *See* Julia Lurie, *Child Protective Services Investigates Half of All Black Children in California*, MOTHER JONES (Apr. 26, 2021), https://www.motherjones.com/criminal-justice/2021/04/child-protective-services-investigates-half-of-all-black-children-in-california/ [https://perma.cc/35HS-9YP6] (reporting half of all Black and Indigenous children's families in California will be investigated at some point during their childhood); *see also* This Land, *Grandma Versus the Foster Parents*, CROOKED (Aug. 30, 2021), https://crooked.com/podcast/3-grandma-versus-the-foster-parents/ [https://perma.cc/9X3V-5PSS] (discussing judges' devaluation of family ties and minimization of trauma of family separation among Indigenous People).

[14] For low-income families, this burden of proof is more theoretical than actual. *See* KHIARA M. BRIDGES, THE POVERTY OF PRIVACY RIGHTS 109-10, 180-87 (2017) (describing state's invasions of poor mothers' privacy rights in family and reproduction matters); *see also* MARTIN GUGGENHEIM, WHAT'S WRONG WITH CHILDREN'S RIGHTS 175-76 (2005).

[15] Lenore Skenazy, *Texas Becomes Third State to Pass Free-Range Kids Law*, REASON (May 18, 2021, 4:15 PM), https://reason.com/2021/05/18/texas-becomes-third-state-to-pass-free-range-kids-law/ [https://perma.cc/4DFB-H3SW].

[16] *See* H.B. 730, 88th Leg. (Tex. 2023).

[17] *See, e.g.*, Dey, *supra* note 4 (highlighting approved and pending bills that require informing parents about right to attorney and ban anonymous reporting of neglect); *see also* NIKKI PRESSLEY & ANDREW BROWN, TEX. PUB. POL'Y FOUND., PARENTAL NOTIFICATION OF RIGHTS IN CHILD WELFARE INVESTIGATIONS 1 (2020), https://www.texaspolicy.com/wp-content/uploads/2020/04/Pressley-Brown-Notifications-of-Rights.pdf [https://perma.cc/26HQ-2X95] ("Despite the Supreme Court almost consistently affording parental rights the highest protection available in our justice system, practical protections for families who find themselves involved with the child welfare system are inconsistent at best.").

Americans now live under these narrowed neglect laws.[18] In Texas alone, researchers attribute a nearly 50% drop in family removals to the new neglect law with no evidence of worsening child safety.[19]

In contrast, legislators and advocates in blue states have been unsuccessful in achieving these same reforms.[20] Neglect laws remain broad; states, such as Massachusetts, have made efforts to expand reporting rather than curtail it.[21] A particular sticking point seems to be acknowledging and respecting parental rights. Tellingly, efforts to enact *Miranda* warnings in one of the most liberal jurisdictions nationwide—New York City—were halted by the city balking at the use of the word "rights."[22] While admitting that parents have rights (in

[18] Skenazy, *supra* note 15.

[19] *See* Roxanna Asgarian, *Texas Is Quietly Leading the Way on Limiting Child Protective Services Overreach*, TEX. MONTHLY (July 28, 2023), https://www.texasmonthly.com/news-politics/foster-care-reform/ [https://perma.cc/8ZWU-BRUZ] (highlighting how narrowed definition of "neglect" resulted in fewer child removals); *see also* Annie Sciacca, *In Texas, New Laws and Policies Have Resulted in Far Fewer Children Removed by CPS from Their Homes*, IMPRINT (Apr. 23, 2024, 5:35 PM), https://imprintnews.org/top-stories/texas-policies-fewer-foster-care-removals/248935 [https://perma.cc/J4MT-GLC9] (interviewing state officials, judges, and advocates from widely "divergent viewpoints" who all support new neglect law).

[20] Susan Arbetter, *'Family Miranda' Bills Regarding CPS Are Again in the Mix in Albany*, SPECTRUM NEWS (Apr. 9, 2024, 7:51 PM), https://spectrumlocalnews.com/nys/central-ny/politics/2024/04/09/-family-miranda--bills-are-again-in-the-mix-in-albany [https://perma.cc/D89Q-Y5EK] (noting *Miranda* bill A1980A faced uphill battle passing in New York, versus Texas, where it passed in 2023 by "large bipartisan majorities"). Ultimately, Assembly Bill A1980A was not passed in New York during the 2023-2024 Legislative Session. *See* Assemb. B. A1980A, 2023-2024 Reg. Sess. (N.Y. 2023), https://www.nysenate.gov/legislation/bills/2023/A1980/amendment/A [https://perma.cc/BEA4-L7P8]; *see also* Jonah E. Bromwich & Andy Newman, *Child Abuse Investigators Traumatize Families, Lawsuit Charges*, N.Y. TIMES (Feb. 20, 2024), https://www.nytimes.com/2024/02/20/nyregion/acs-nyc-family-trauma-lawsuit.html.

[21] Massachusetts, arguably the most consistently blue state, has one of the most racially disparate and overly intrusive family policing systems in the country. *See* Richard Wexler, *"Maybe We're Just Too Damn Intrusive": Tracing the Take-the-Child-and-Run Mentality That Has Endangered Massachusetts Children for More than a Century*, NCCPR CHILD WELFARE BLOG (Nov. 4, 2022), https://www.nccprblog.org/2022/11/maybe-were-just-too-damn-intrusive.html [https://perma.cc/JG32-XPZ3]; Nicole Garcia, *'Broken' Documentary Exposes Flaws in Massachusetts' Child Welfare System*, GBH (June 26, 2024), https://www.wgbh.org/news/local/2024-06-26/broken-documentary-exposes-flaws-in-massachusetts-child-welfare-system [https://perma.cc/9U5T-FD6Y].

[22] *See* Eli Hager, *Texas, New York Diverge on Requiring Miranda-Style Warnings in Child Welfare Cases*, PROPUBLICA (July 5, 2023, 3:00 PM), https://www.propublica.org/article/texas-new-york-diverge-miranda-warning-bill [https://perma.cc/X8X8-75YT]. In her seminal history of public assistance during the 1930s and the start of the modern administrative "welfare" state, Karen Tani notes the significance of low-level state actors, such as caseworkers, using "rights language" in creating and

theory), the city agency expressed concern that parents knowing about these rights would endanger children.[23] The legislative landscape is so unwelcome to reforms protecting low-income families in progressive states that numerous parents have recently filed lawsuits alleging violations of their constitutional rights.[24] Indeed, parents in these states are even punished for asserting their rights; if they decline to consent to a warrantless search, for instance, they may be met with police intrusions, heightened surveillance, and a higher likelihood of their children's removal.[25] Contrast this with the statement of Utah Senator Lincoln Fillmore, who sponsored the nation's first narrowed neglect law: "We all want to protect our children, and sometimes that means protecting them from government agencies that may use flimsy pretexts to undermine parental rights . . . ."[26]

How is this paradox to be explained? In earlier work, I have theorized the complex paths to sociolegal change, including: tensions between framing cases for mass appeal and re-entrenching racialized, gendered, and heteronormative tropes;[27] lawyers' roles in perpetuating carceral systems;[28] and the friction between so-called "progressive" politics and prosecutorial or other heroic

legitimating state assistance and the state itself. *See* Karen M. Tani, *Welfare and Rights Before the Movement: Rights as a Language of the State*, 122 YALE L.J. 314, 320 (2012).

[23] *See* Eli Hager, *NYC Child Welfare Agency Says It Supports "Miranda Warning" Bill for Parents. But It's Quietly Lobbying to Weaken It.*, PROPUBLICA (June 5, 2023, 5:00 AM), https://www.propublica.org/article/new-york-families-child-welfare-miranda-warning [https://perma.cc/PG9Z-AYBL].

[24] *See generally Gould* Complaint, *supra* note 9.

[25] The Bronx Defs., Brook. Def. Servs., Ctr. for Fam. Representation & Neighborhood Def. Serv. of Harlem, *The New York Family Policing System and Its Impact on Black Children and Families* 9 (Aug. 19, 2023) [hereinafter *Family Defense Providers Testimony*], https://bds.org/assets/images/Joint-Testimony-to-the-New-York-Advisory-Committee-to-the-U.S.-Commission-on-Civil-Rights.pdf [https://perma.cc/CG5Y-ZNYN] (detailing "countless instances in which a parent's exercise of their right to deny ACS entry into their home" were met with increased surveillance, mandated services, and other coercion).

[26] Connor Boyack, *Utah Is First in the Nation to Protect "Free Range" Parenting*, LIBERTAS INST. (Mar. 14, 2018), https://libertas.institute/2018-bills/utah-is-first-in-the-nation-to-protect-free-range-parenting/ [https://perma.cc/4AU7-MUW7].

[27] *See* Cynthia Godsoe, *Perfect Plaintiffs*, 125 YALE L.J.F. 136, 140-41 (2015).

[28] *See* Godsoe, *supra* note 10, at 949 (describing lawyers as insiders in carceral system that perpetuates racialized inequality); Caitlyn Garcia & Cynthia Godsoe, *Divest, Invest, & Mutual Aid*, 12 COLUM. J. RACE & L. 601, 603-09 (2022) (arguing "family policing system is a state apparatus of racialized social control"); Cynthia Godsoe, *Participatory Defense: Humanizing the Accused and Ceding Control to the Client*, 69 MERCER L. REV. 715, 716-17 (2018) (examining participatory-defense movement, which seeks to "transform the landscape of power in the court system" (quoting Raj Jayadev, *What Is "Participatory Defense*,*"* ALBERT COBARRUBIAS JUST. PROJECT, https://acjusticeproject.org/about/purpose-and-practice/ [https://perma.cc/2FVZ-HEDR] (last visited Dec. 14, 2024))).

roles.[29] Other scholars explore the tensions between abolitionist horizons and improving situations for those caught in carceral systems in the here and now.[30] Building on this work, I argue here that the "pathological politics" of state intervention in the family sphere are particularly fraught because of the appeal of "child saving" rhetoric and the long through line of social control of low-income families of color.[31] Accordingly, because political identities are disrupted ("progressive" means child saving means a larger foster system),[32] and change is extremely difficult to achieve, reforms must be assessed very carefully against a long-term horizon of downsizing, even abolishing, the system.

Through the frame of Professor Derrick Bell's interest convergence theory, this Article advances the claim that these strategic political alliances of family defenders with libertarian groups have led to meaningful changes in the laws governing family policing. Professor Bell theorized that progress toward racial equality is usually not the result of equality-based ideological commitments, but rather a determination by the majority powers that be that granting racial remedies would "secure, advance, or at least not harm societal interests deemed important by middle and upper class [W]hites."[33] Bell argued that the watershed *Brown v. Board of Education*[34] decision occurred when it did after decades of advocacy because de jure desegregation could help the federal government and

[29] Cynthia Godsoe, *The Place of the Prosecutor in Abolitionist Praxis*, 69 UCLA L. REV. 164, 192-201 (2022).

[30] *See generally, e.g.*, JOCELYN SIMONSON, RADICAL ACTS OF JUSTICE: HOW ORDINARY PEOPLE ARE DISMANTLING MASS INCARCERATION (2023) (demonstrating how people collectively resist carceral state through bottom-up interventions like bail funds, participatory defense, courtwatching, and people's budgets); Jamelia Morgan, *Abolition in the Interstices*, LAW & POL. ECON. PROJECT (Dec. 14, 2023), https://lpeproject.org/blog/abolition-in-the-interstices/ [https://perma.cc/47LF-RQ6W] ("[A]ctivists need to think holistically about their obligations and strategies, for pursuing non-reformist reforms will sometimes conflict with our duties to mitigate harm in the here and now."); Amna A. Akbar, *Non-Reformist Reforms and Struggles over Life, Death, and Democracy*, 132 YALE L.J. 2497, 2516 (2023) ("The non-reformist reform framework suggests reform is less about expertise than it is about intervening in the balance of power . . . ."); Janet Moore, Marla Sandys & Raj Jayadev, *Make Them Hear You: Participatory Defense and the Struggle for Criminal Justice Reform*, 78 ALB. L. REV. 1281, 1282 (2015) (arguing people charged with crimes, their families, and their communities can "transform themselves from service recipients to change agents").

[31] *See* sources cited *infra* note 96.

[32] *See* William J. Stuntz, *The Pathological Politics of Criminal Law*, 100 MICH. L. REV. 505, 553 (2001) (describing warped political pressures in criminal system leading to one-way ratchet to increased criminalization and incarceration); *see also* Ndjuoh MehChu, *Neither Cops nor Caseworkers: Transforming Family Policing Through Participatory Budgeting*, 104 B.U. L. REV. 73, 79 (2024) ("[C]hild-saving provides cover for the system's coercive tendencies.").

[33] Derrick A. Bell, Jr., Comment, Brown v. Board of Education *and the Interest-Convergence Dilemma*, 93 HARV. L. REV. 518, 523 (1980).

[34] 347 U.S. 483 (1954).

other powerful interests in fighting communism and other goals.[35] Although some have decried the theory as overly cynical, others have praised it as pragmatic and noted its potential. More recently, some have suggested that the theory is no longer useful in a "color-blind" or purportedly "racially just" society, but the ongoing realities of the racialized family policing system suggest otherwise.[36]

This type of unusual and pragmatic alliance is certainly playing out in family policing reforms.[37] Libertarian conservative groups, such as the Utah-based Libertas Institute, which details its vision as helping to build "[a] future where individuals are unleashed from restrictions that prevent them from peacefully building the lives they want,"[38] and the Texas Public Policy Foundation, whose mission is "to promote and defend liberty, personal responsibility, and free enterprise in Texas and the nation,"[39] are pairing with public defenders representing parents (usually called "family defenders") concerned about racial justice and with more liberal, suburban parenting groups, such as "Let Grow."[40] Advocates on both sides of the aisle describe the aim for a "healthy strong

[35] Bell, *supra* note 33, at 524-25.

[36] Indeed, at a recent workshop of this paper, one scholar sincerely opined that Bell's theory was outdated because of the societal "reckoning" after the murder of George Floyd. Unfortunately, the harms of the carceral state show that this scholar's view is overly optimistic.

[37] *See* Clare Huntington, *Pragmatic Family Law*, 136 HARV. L. REV. 1501, 1547-48 (2023) (demonstrating pragmatism in family law as "courts, policymakers, and advocates eschew ideology and instead focus on how a rule or policy might advance well-being"). To be clear, my point is quite different than Huntington's. I argue here that the alliances are not about empirically proven and rationally selected policies, but rather about mutually beneficial political alliances—the only way to advance the interests of marginalized communities given the reality of systemic racism, as I discuss further *infra* Part II.1 and Part III. Accordingly, I agree with Mariela Olivares that "for marginalized families, evidence-based family law," or what Huntington terms as pragmatic, "does not operate in their favor." Mariela Olivares, *The Unpragmatic Family Law of Marginalized Families*, 136 HARV. L. REV. F. 363, 374 (2023).

[38] *About Libertas*, LIBERTAS INST., https://libertas.institute/about/ [https://perma.cc/CAH4-9DSB] (last visited Dec. 13, 2024).

[39] *Mission*, TEX. PUB. POL'Y FOUND., https://www.texaspolicy.com/about/ [https://perma.cc/BHQ7-9A2P] (last visited Dec. 13, 2024).

[40] Let Grow's mission statement includes "believ[ing] today's kids are smarter and stronger than our culture gives them credit for" and "making it easy, normal and legal to give kids the independence they need to grow into capable, confident, and happy adults." *Our Mission*, LET GROW, https://letgrow.org/about-us/ (last visited Dec. 13, 2024). The bipartisan nature of these alliances was made particularly clear during the recent national election. *See* Election Report: Parental Rights Edition, PARENTAL RTS. FOUND. (Nov. 6, 2024) https://parentalrightsfoundation.org/election-report-parental-rights-edition/ ("While many weigh winning or losing by how well one major party did versus the other, the realm of parental rights and family defense creates some unexpected alliances, leading us to count our victories *across party lines*.").

bipartisan coalition" and the long history of "collaboration . . . in a variety of ways."[41]

In detailing this largely hidden story through state legislative memos and testimony, interviews with system actors, and media accounts, this Article makes three contributions to the legal literature. First, it complicates standard narratives of right- and left-wing politics, running counter to the current progressive critiques that parental rights harm marginalized communities and that conservative states are growing the carceral state. I document that just the opposite is happening and argue that a "hands-off" approach is essential to recapture parental rights and prioritize parental expertise over that of the state. Many scholars and advocates are uncomfortable with this approach but it is one that is essential to true equality among all families. In the wake of anti-CRT bills and "Don't Say Gay" laws, the rush to diminish the rhetoric and politics of parental rights and strengthen the state is understandable but misguided; scholars and advocates ignore the potential of these rights to help the most vulnerable families against punitive state intrusion.[42] Indeed, the critics of parental rights often overlook the state's historic and ongoing harms to LGBTQIA+ children and parents, as well as to families of color.

Second, this Article builds on interest convergence theory with a contemporary example that has remained unstudied despite the recent spate of excellent scholarship on the family policing system.[43] It does not just map this groundbreaking development, but also theorizes the benefits and perils of interest convergences. The benefits include obtaining material gains for families

[41] Telephone Interview with B.D., self-described conservative Texas policy advocate (Jan. 15, 2024) (notes on file with author); E-mail from Martin Guggenheim, Fiorello LaGuardia Professor of Clinical L. Emeritus, N.Y.U. Sch. of. L., to Cynthia Godsoe, Professor of L., Brook. L. Sch. (Jan. 29, 2024) (on file with author). I interviewed several family defender leaders and parent advocates in blue states and a conservative advocate, which enrich the narrative of this largely "under the radar" story.

[42] Parental rights have been aptly described as usually weaponized on behalf of White parents against racial integration and other changes. *See, e.g.*, LaToya Baldwin Clark, *The Critical Racialization of Parents' Rights*, 132 YALE L.J. 2139, 2199 (2023) (describing historical and current examples of parents' rights being asserted to "protect[] Whiteness for the benefit of White children"). I agree, but also argue here for parental rights to be recast to include families of color.

[43] For just a few examples, see generally Sarah H. Lorr, *Disabling Families*, 76 STAN. L. REV. 1255, 1288-92 (2024) (describing how system disproportionately surveils and punishes parents with disabilities); S. Lisa Washington, *Weaponizing Fear*, 132 YALE L.J.F. 163, 166 (2022) (describing how state actors "use a structural environment that induces, benefits from, or relies on fear, ultimately producing further marginalization"); Josh Gupta-Kagan, *Confronting Indeterminacy and Bias in Child Protection Law*, 33 STAN. L. & POL'Y REV. 217, 220 (2022) (critiquing law's indeterminacy in child protection cases). Despite this work, many scholars and policymakers continue to overlook the family policing system and to ignore race in family law. *See, e.g.*, Jessica Dixon Weaver, *Racial Myopia in* [*Family*] *Law*, 132 YALE L.J.F. 1086, 1095 (2023) (arguing that "[m]eaningful inclusion of race and its consequences within the U.S. legal system is critical to family law reform").

right now; overcoming partisan politics; and changing the narrative, a key precursor to sociolegal change. The risks include co-optation, both internal and external; obscuration of the racialized harms in the "American as apple pie," bourgeois packaging of these laws;[44] and the potential re-entrenchment and legitimation of the system via "reformist reforms."[45]

Third, in positing these unusual alliances as a key, and maybe the only, way to overcome the pathological politics of family policing, this Article moves beyond theory to inform scholars, activists, and scholar-activists about concrete steps toward change and the risks that must be continually assessed along the way. Critics of the carceral state have sometimes dismissed more conservative or libertarian approaches while embracing state social service interventions, preferring caseworkers to cops.[46] The account here casts doubt on both those assumptions and suggests a pragmatic path forward with a healthy suspicion of all state actors and perhaps even of advocates.

This Article proceeds in three Parts. Part I maps the robust jurisprudence of parental rights on the books and contrasts it with the devaluation of parents and family ties, along with the degradation and lack of due process, which characterize the family policing system. Part II maps a new framework for meaningful change, as revealed in red states embracing and enforcing parental rights, even for marginalized families. Building on interest convergence theory to explain these recent changes can reveal the potential of political alliances, and rights rhetoric, to strengthen the autonomy and resistance of those families and communities who need it the most. Part III delves into the benefits, as well as the perils, of these alliances.

I conclude that the benefits outweigh the risks—at least for now. The benefit to thousands of families already escaping the family policing system and family separation is immense and unquantifiable. More broadly, although much of the legislative and public support for these bills fail to mention the racial disproportionality and historic through lines in social control of the family policing system, some, especially in Texas, explicitly draw the connection between poverty and neglect charges and educate the public about the trauma of family separation, even citing data (which is rarely used in making poverty- or

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[44] Mike Lee, *Free-Range Parenting Makes for Responsible Kids. We Shouldn't Penalize It.*, DAILY SIGNAL (Apr. 5, 2018), https://www.dailysignal.com/2018/04/05/free-range-parenting-makes-responsible-kids-shouldnt-penalize/ [https://perma.cc/E79V-BZK2].

[45] *See infra* Part III.

[46] *See, e.g.*, Emily Cooke, *Defund Social Workers*, NEW REPUBLIC (Sept. 23, 2022), https://newrepublic.com/article/167627/defund-social-workers [https://perma.cc/APL6-PDN4]; *see also* DERECKA PURNELL, BECOMING ABOLITIONISTS: POLICE, PROTESTS, AND THE PURSUIT OF FREEDOM 283-84 (2021) (noting that both "cops and social workers" remove children in communities of color and remarking how as a new Black mother, she listened to White parents' stories of children wandering outside or eating poison where "police involvement, prison, or losing custody were never a part of the conversation—those were unfathomable").

family-related policy).[47] This alliance is part of a "massive culture shift," and even more significant is the fact that the libertarians and family defenders agree that a massive downsizing of the system is warranted.[48] To be clear, these alliances alone cannot fully accomplish this. For that, centering the voices of impacted people, building community power, and redistribution need to occur.[49] Nonetheless, these interest convergences are a positive step along the way toward the long-term goal of abolishing the family policing system and achieving a society where, as parent and advocacy leader Joyce McMillan puts it, all families have the "[f]reedom to be who you are and do the things that you enjoy, without being punished by a system that doesn't have your best interests."[50]

I. ERASURE OF PARENTAL RIGHTS IN THE FAMILY POLICING SYSTEM

> [W]e follow the New York Family Court Act, not [the Constitution].[51]
> —New York City Family Court Judge

This Part outlines the robust parental rights articulated by the U.S. Supreme Court a century ago and repeatedly affirmed by courts since. It then, however, contrasts these rights on paper with the reality of the process marginalized or low-income families are subjected to in the family policing system. In the system, family bonds are devalued, all too frequently impaired, or even permanently terminated on vague grounds usually related to poverty.[52] This violence to family unity—and parental rights—is often accomplished with few to no procedural protections. As Professor Khiara Bridges has argued about privacy rights for poor families, parental rights do not really exist for these

[47] *See* Sneha Dey, *New Texas Laws Favor Parents in Child Abuse Investigations as Legislators Try to Limit Number of Kids in Foster Care*, KSAT.COM (June 29, 2023, 5:00 AM), https://www.ksat.com/news/texas/2023/06/29/new-texas-laws-favor-parents-in-child-abuse-investigations-as-legislators-try-to-limit-number-of-kids-in-foster-care/ [https://perma.cc/KG5R-MQUW]; *see also* PRESSLEY & BROWN, *supra* note 17, at 2.

[48] Dey, *supra* note 47 ("It's an approach supported by both social conservatives who tout family values and progressive child welfare abolitionists who want to do away with the system.").

[49] *See infra* note 383 & Conclusion.

[50] Bocanegra, *supra* note 11. Abolitionism is simultaneously a theory and a blueprint to guide activism, and as such, it is particularly relevant to assessing on the ground structural change. *See What Is the PIC? What Is Abolition?*, CRITICAL RESISTANCE, https://criticalresistance.org/mission-vision/not-so-common-language/ [https://perma.cc/37X8-P3DE] (last visited Dec. 13, 2024) ("Abolition is both a *practical organizing tool* and a *long-term* goal.").

[51] The judge stated this after I was "berated for citing the U.S. Constitution." Godsoe, *supra* note 10, at 953.

[52] *See* ROBERTS, *supra* note 2, at 158.

families.[53] The rending of family ties and paucity of due process have existed since the modern family policing system began in the 1970s and are reflected in the history of family separation particularly impacting Indigenous, Black, poor, and immigrant families.[54]

A. *Rights on the Books*

Although less known and far less theorized than adult intimate and marital rights, parental rights to "direct the upbringing" of their children were in fact the first familial rights articulated by the United States Supreme Court.[55] Since *Meyer v. Nebraska*[56] in 1923, the Court has repeatedly expressed parents' fundamental right to raise their child as they see fit,[57] and has emphasized that the "primary role of the parents in the upbringing of their children is . . . an enduring American tradition."[58] These rights extend more broadly than in many other nations and give parents autonomy in "education, medical care, and other aspects of child rearing."[59] These include the right to "reasonably" corporally punish children,[60] homeschool them with patently inadequate education, refuse medical treatment for children based on faith healing,[61] and more. Although parental rights are limited by the state parens patriae duty to protect children,[62] this is not a significant limitation for most families.

Parental autonomy is in large part based on a presumption that the parent and the child's interests accord because "natural bonds of affection lead parents to

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[53] BRIDGES, *supra* note 14, at 7-10.

[54] *See generally* ROBERTS, *supra* note 2.

[55] *See* Troxel v. Granville, 530 U.S. 57, 65 (2000).

[56] 262 U.S. 390 (1923).

[57] *See id.* at 402-03 (holding that parents may choose to have their children taught foreign language in addition to English in school); *Troxel*, 530 U.S. at 65.

[58] Wisconsin v. Yoder, 406 U.S. 205, 232 (1972).

[59] Cynthia Godsoe, *Redefining Parental Rights: The Case of Corporal Punishment*, 32 CONST. COMMENT. 281, 281 (2017).

[60] *See id.* at 282-83 (critiquing breadth of parental corporal punishment privilege in American law); *see also* Cynthia Godsoe, *Parental Love and Purposeful Violence*, *in* THE POLITICIZATION OF SAFETY: CRITICAL PERSPECTIVES ON DOMESTIC VIOLENCE RESPONSES 119, 124 (Jane K. Stoever ed., 2019).

[61] *See* Godsoe, *supra* note 59, at 281-82. *But see* Erwin Chemerinsky & Michele Goodwin, *Compulsory Vaccination Laws Are Constitutional*, 110 NW. U. L. REV. 589, 595, 603-05 (2016) (arguing that compulsory vaccination law can withstand challenges based on parental rights and religious beliefs, and describing courts' consistent rejection of constitutional challenges to compulsory vaccination laws); Erwin Chemerinsky & Michele Goodwin, *Religion Is Not a Basis for Harming Others*, 104 GEO. L.J. 1111, 1128-31 (2016) (reviewing PAUL A. OFFIT, BAD FAITH: WHEN RELIGIOUS BELIEF UNDERMINES MODERN MEDICINE (2015)) (arguing against parents' ability to deny children medical care on basis of their religious or other philosophical beliefs).

[62] Prince v. Massachusetts, 321 U.S. 158, 166 (1944).

act in the best interests of their children."[63] It is also animated by the privacy and liberty of choice about intimate relations at the heart of constitutional family law.[64] These rights are thus specifically designed to protect against excessive state intrusion, although they do not always do so in practice, as outlined further below. Perhaps believing this assumption of aligned interests goes too far, some scholars have critiqued parental rights as being too prominent in U.S. law, and potentially harming children.[65] This critique has been reinvigorated lately with recent state laws banning gender-affirming care and CRT in schools.[66]

A word on children's interests: growing awareness of children's independent interests renders parental rights more flexible and context-specific than other family constitutional rights. Scholars have persuasively argued that the most recent case, *Troxel v. Granville*,[67] has often been overread and is in fact a nuanced compromise among the triad of interests of children, parents, and state.[68] Nonetheless, the American parental rights framework remains much more robust than in other countries.[69] Even the early cases remain salient today;

[63] Parham v. J.R., 442 U.S. 584, 602 (1979).

[64] *See* Griswold v. Connecticut, 381 U.S. 479, 485-86 (1965); Lawrence v. Texas, 539 U.S. 558, 565 (2003); Obergefell v. Hodges, 576 U.S. 644, 645 (2015); *cf.* Melissa Murray, *Rights and Regulation: The Evolution of Sexual Regulation*, 116 COLUM. L. REV. 573, 577 (2016).

[65] Barbara Bennett Woodhouse, *"Who Owns the Child":* Meyer *and* Pierce *and the Child as Property*, 33 WM. & MARY L. REV. 995, 997 (1992) (arguing that right of parental control, although termed liberty interest, seems to consider children as parental property); *see also* Anne C. Dailey & Laura A. Rosenbury, *The New Law of the Child*, 127 YALE L.J. 1448, 1452, 1470 (2018) (arguing "when parental rights come into play, children's interests generally drop out of the equation altogether" and proposing new theoretical frameworks for legal issues involving children that "loosen[] the grip of parental rights on American law"); *cf.* DeShaney v. Winnebago Cnty. Dep't of Soc. Servs., 489 U.S. 189, 203 (1989) (positing if government intervened and took custody of child who was severely beaten and harmed, "they would likely have been met with charges of improperly intruding into the parent-child relationship"); Akhil Reed Amar & Daniel Widawsky, *Child Abuse as Slavery: A Thirteenth Amendment Response to* DeShaney, 105 HARV. L. REV. 1359, 1364 (1992) (arguing that treating children like parental property is unconstitutional). *But see* Clare Huntington & Elizabeth Scott, *The Enduring Importance of Parental Rights*, 90 FORDHAM L. REV. 2529, 2529 (2022) ("Parental rights are—and should remain—the backbone of family law."); GUGGENHEIM, *supra* note 14, at 46-47.

[66] *See infra* notes 361-64.

[67] 530 U.S. 57 (2000).

[68] *See* David D. Meyer, *Family Diversity and the Rights of Parenthood*, *in* WHAT IS PARENTHOOD? CONTEMPORARY DEBATES ABOUT THE FAMILY 124, 133-34 (Linda C. McClain & Daniel Cere eds., 2013).

[69] *See generally* Kevin Moclair, *In America, Kids Come Last*, BROWN POL. REV. (Apr. 24, 2022), https://brownpoliticalreview.org/2022/04/in-america-kids-come-last/ [https://perma.cc/R58R-SFRV] (discussing failure of United States to ratify UN Convention on the Rights of the Child ("UNCRC")—universally ratified human rights treaty for rights of children—for fear of infringing parental rights).

Meyer v. Nebraska[70] was cited in *Obergefell v. Hodges*[71] to support a right to same-sex marriage.[72] Numerous recent decisions have confirmed the breadth and strength of parental rights.[73]

Parents are protected from state intervention by a range of procedural rights.[74] These include the right to know the grounds for a search and to refuse entry without those grounds; notice and a hearing before child removal; a showing of a nexus of parental conduct with harm to the child;[75] and the right to proof of grounds by clear and convincing evidence for a termination of parental rights.[76] While the Constitution does not accord defendants in the family policing system the full procedural protections of the criminal legal system, courts have outlined that a high bar should precede any interference, and certainly separation, for both parents' and children's interests; even after separation, parental rights continue: "The fundamental liberty interest of natural parents in the care, custody, and

[70] Meyer v. Nebraska, 262 U.S. 390 (1923).

[71] 576 U.S. 644 (2015).

[72] *Id.* at 665, 667-68. One ongoing area outside the family policing context that is ripe for change is who is considered to be a legal parent, an issue that arises particularly outside of the "traditional" biological nuclear family. *See, e.g.*, Courtney G. Joslin & Douglas NeJaime, *How Parenthood Functions*, 123 COLUM. L. REV. 319, 327 n.66 (2023).

[73] For instance, a federal court recently declared that "parents, not schools, have the primary responsibility to inculcate moral standards, religious beliefs, and elements of good citizenship in their children." Tatel v. Mt. Lebanon Sch. Dist., 637 F. Supp. 3d 295, 323 (W.D. Pa. 2022) (citation omitted); *see also* Deanda v. Becerra, 645 F. Supp. 3d 600, 628-29 (N.D. Tex. 2022), *reversed on other grounds*, 96 F.4th 750 (7th Cir. 2024) (granting summary judgment for father after finding that Texas' administration of Title X program violates his parental rights). *But see* L.W. *ex rel.* Williams v. Skrmetti, 83 F.4th 460, 475 (6th Cir. 2023) (reversing preliminary injunctions issued with respect to enforcement of Prohibition on Medical Procedures Performed on Minors Related to Sexual Identity, TENN. CODE ANN. § 68-33-101 (2024)).

[74] Santosky v. Kramer, 455 U.S. 745, 769 (1982) (establishing clear and convincing evidence standard); *see also* Stanley v. Illinois, 405 U.S. 645, 651 (1972) (entitling nonmarital fathers to hearing on fitness before any child removal because of "the interest of a parent in the companionship, care, custody, and management of his or her children"). *But see* Lassiter v. Dep't of Soc. Servs., 452 U.S. 18, 33-34 (1981) (holding indigent parents do not have constitutional right to counsel at termination proceedings).

[75] *See* CAL. WELFARE & INSTS. CODE § 300(b)(1)(D) (Cal. 2023) (granting juvenile court jurisdiction to adjudge that a person is dependent child of the court if child has suffered due to "[t]he inability of the parent or guardian to provide regular care for the child due to the parent's or guardian's mental illness, developmental disability, or substance abuse"); *cf. In re* N.R., 539 P.3d 417, 439-41 (Cal. 2023) (holding §300(b)(1)(D) inquiry requires evidence of "inability [by the parent] to provide regular care and a substantial risk of serious physical harm or illness," for which parent's substance use disorder alone is insufficient).

[76] *See Santosky*, 455 U.S. at 769.

management of their child does not evaporate simply because they have not been model parents or have lost temporary custody of their child to the State."[77]

B. *Rights (or Lack Thereof) on the Ground*

I trace here how parents' rights do not exist in the family policing system. Both the substantive rights against excessive state intervention and family separation, as well as procedural rights to protect those substantive rights, are virtually meaningless for these families, who are overwhelmingly low-income and disproportionately people of color. After several decades of working in and studying the system, I have come to believe that this approach is not merely tangential. Indeed, it is central to the project—as Malcolm Feeley famously said about the criminal legal system, "the process is the punishment."[78]

Detailing the derogation, or outright flouting, of substantive and procedural rights in the system, I explain how parents who assert or even mention their rights are punished for doing so. Behaving like rights-bearing actors—which of course they are in theory—upends the "degradation ceremonies" that solidify their low place in the societal hierarchy, and thus, such behavior must be squelched.[79]

1. Substantive Devaluation of Family Ties

The right to "care, custody, and control"[80] of one's children is virtually nonexistent for the millions of parents ensnared in the family policing system, who are nearly all low-income and disproportionately families of color.[81] Their judgment on every parenting issue (e.g., whether they gave a toddler juice or whether they had money to pay for therapy) is questioned; their challenges are pathologized;[82] and their love and family ties are devalued.[83] As a result, from

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[77] *See id.* at 745, 760 ("[U]ntil the State proves parental unfitness, the child and his parents share a vital interest in preventing erroneous termination of their natural relationship.").

[78] *See generally* MALCOLM M. FEELEY, THE PROCESS IS THE PUNISHMENT: HANDLING CASES IN A LOWER CRIMINAL COURT (1979).

[79] Kaaryn Gustafson, *Degradation Ceremonies and the Criminalization of Low-Income Women*, 3 U.C. IRVINE L. REV. 297, 304-06 (2013) (documenting humiliation and subordination accompanying state assistance provided to low-income families, particularly women of color).

[80] Troxel v. Granville, 530 U.S. 57, 66 (2000).

[81] Melissa L. Breger, *The (In)visibility of Motherhood in Family Court Proceedings*, 36 N.Y.U. REV. L. & SOC. CHANGE 555, 557 (2012) ("Scholars examining Family Court have long criticized the overrepresentation of low-income litigants of color . . . .").

[82] S. Lisa Washington, *Pathology Logics*, 117 NW. U. L. REV. 1523, 1544-60 (2023) (describing procedural and institutional means of pathologizing parents in family regulation system).

[83] *See* Chris Gottlieb, *A Path to Eliminating the Civil Death Penalty: Unbundling and Transferring Parental Rights*, 19 HARV. L. & POL'Y REV. 43, 52 (2024) (noting despite frequent state narrative of lack of care or bonding, most "children were taken from their homes

2017 to 2021, approximately 200,000 to 270,000 children annually were forcibly separated from their parents and put in the foster system, usually with strangers; approximately 63,000 to 72,000 children annually had parents whose rights and all ties to their children were permanently terminated.[84] These separations and, even more, the severing of all ties, cause immense trauma to both children and parents.[85] Yet separation often occurs for the slightest of reasons; despite political rhetoric around child abuse, the vast majority of children are taken from their homes for alleged parental "neglect," which includes inadequate housing, "child behavioral problem[s]," lack of "appropriate" supervision, or similarly ill-defined and poverty-based allegations.[86] The biggest predictors of a filed report and eventual family policing system involvement are not risk of harm to a child or risk of abuse, but rather a family's neighborhood, their race or income level, their unhoused status, and/or their disabilities.[87] Indeed, parents virtually

over their parents' objection, and the parents desperately want to be reunited with their children").

[84] AFCARS REPORT, *supra* note 13, at 1. *See generally* 42 U.S.C. § 671(a)(14) (requiring state plans for foster care and adoption assistance to include "specific goals . . . for each fiscal year . . . as to the maximum number of children . . . who, at any time during such year, will remain in foster care after having been in such care for a period in excess of twenty-four months"); 42 U.S.C. § 675(4) (explaining "foster care maintenance payments" meant to cover cost of "food, clothing, shelter, daily supervision, school supplies, a child's personal incidentals, liability insurance with respect to a child, reasonable travel to the child's home for visitation, and reasonable travel for the child to remain in the school in which the child is enrolled at the time of placement"); ROBERTS, *supra* note 2, at 119-22 (describing how time pressures imposed by Adoption and Safe Families Act ("ASFA") lead to higher rates of child removals and termination of parental rights through adoption).

[85] *See* Shanta Trivedi, *The Harm of Child Removal*, 43 N.Y.U. REV. L. & SOC. CHANGE 523, 527-52 (2019) (documenting ways in which removal and foster system cause mental, emotional, and physical harm to children); Vivek Sankaran, Christopher Church & Monique Mitchell, *A Cure Worse than the Disease? The Impact of Removal on Children and Their Families*, 102 MARQ. L. REV. 1161, 1169-70 (2019) (describing how child removal causes feelings of loss, grief, and trauma in parents whose children have been taken from them).

[86] AFCARS REPORT, *supra* note 13, at 2 (indicating that 63% of child removals were associated with neglect, 9% with housing, and 7% with child behavioral problem); Rachel M. Flynn, Nicholas J. Shaman & Diane L. Redleaf, *The Unintended Consequences of "Lack of Supervision" Child Neglect Laws: How Developmental Science Can Inform Policies About Childhood Independence and Child Protection*, 36 SOC. POL'Y REP. 1, 3-5 (2023) (discussing how children participating in developmentally appropriate unsupervised activities can lead to CPS reports for "supervisory neglect"); Kelley Fong, *Getting Eyes in the Home: Child Protective Services Investigations and State Surveillance of Family Life*, 85 AM. SOCIO. REV. 610, 611 (2020) (describing CPS investigations as "concentrated among poor families and families of color").

[87] Kelley Fong, *Neighborhood Inequality in the Prevalence of Reported and Substantiated Child Maltreatment*, 90 CHILD ABUSE & NEGLECT 13, 19 (2019) (explaining CPS reporters and social workers "draw on racialized and classed ideas of risk"); Godsoe, *supra* note 10, at 944-47 (describing how family policing system is employed "virtually exclusively against

cease to have rights at the moment an often anonymous and/or baseless or biased report is called in, wherein guilt is immediately assumed.[88] Tellingly, racial disproportionality continues at every stage, with at least half of Black children in California undergoing an investigation during their childhood,[89] as well as Black and Indigenous children being removed at far higher rates.[90] In short, it is as if the assumption of parental and child mutual interests stated in *Parham v. J.R.*[91] ceases to exist at the moment of report, or even at the moment of birth into a certain identity.[92] Recall the mother who was told that an agency could proceed with a warrantless search and question her sons because an unsubstantiated report rendered them "no longer [her] children."[93]

The system demonstrates two thick continuities—its use almost exclusively against low-income and non-white families and a strategic narrative that families are surveilled and separated for children's best interests. The punishment and family separation of poor, Black, Indigenous, and other marginalized families is central to the American project of maintaining White supremacy, as well as class, gender, and other hierarchies.[94] As Professor Dorothy Roberts describes, the system wields "unparalleled powers to terrorize entire communities, shape national policies, and reinforce our unequal social order."[95] Part of the system's

low-income and nonwhite families"); Lorr, *supra* note 43, at 1260-61 ("[P]arents with disabilities are more than three times as likely as parents without disabilities to have their parental rights terminated."). *See generally* This Land, *supra* note 13 (discussing trauma caused by separation of Indigenous families).

[88] Recall the statements, even boasting, by agency workers and judges about parents' lack of rights in the investigation and subsequent case. *See supra* notes 8-11.

[89] Lurie, *supra* note 13.

[90] HINA NAVEED, HUM. RTS. WATCH, "IF I WASN'T POOR, I WOULDN'T BE UNFIT": THE FAMILY SEPARATION CRISIS IN THE US CHILD WELFARE SYSTEM 39-44 (2022), https://www.hrw.org/sites/default/files/media_2022/11/us_crd1122web_3.pdf [https://perma.cc/TLW7-XZYV]; *see also* Fong, *supra* note 87, at 17 (finding "Hispanic and Black children more than twice as likely to experience" reports and substantiated CPS investigations); Dorothy Roberts, *How I Became a Family Policing Abolitionist*, 11 COLUM. J. RACE & L. 455, 456 (2021) ("Although Black children were only 14% of children in the United States in 2018, they made up 23% of children in foster care.").

[91] 442 U.S. 584 (1979).

[92] A significant indication of the social control and harms of the system is its intergenerational cycle. *See* Shereen A. White, *We Must Demand Recognition and Protection of the Sanctity of Black Families*, CHILD.'S RTS. (June 2, 2023), https://www.childrensrights.org/news-voices/we-must-demand-the-sanctity-of-black-families [https://perma.cc/EB5C-QESL] ("We're generational products of the family policing system. So they didn't just start with my mother and my aunt. They took my mother's kids, they took my dad's kids, they've taken some of my sister's kids.").

[93] *See Gould* Complaint, *supra* note 9, at 32 (alteration in original).

[94] *See* Godsoe, *supra* note 10, at 945 (citing historic examples, including removal of Indigenous and Black children from parents, "orphan" trains of low-income Eastern European immigrant children, and villainization of parents of transgender children).

[95] ROBERTS, *supra* note 2, at 30.

power comes from the moral authority and lack of oversight of those claiming to help children. "Child saving" has long been used to justify family separation and other punitive state interventions.[96] Just as Teju Cole has written about efforts to "save" African children, the rhetoric and practice around the U.S. foster and family policing system, especially adoption, similarly stroke "White egos" while ignoring the impact of systemic poverty and racism and perpetuating significant harm through often permanent family separation.[97]

The lack of substantive parental rights in practice is as extreme today as it was historically due to the immense net of racialized surveillance and policing;[98] vague laws that give caseworkers and judges immense discretion to intervene in families;[99] and the equation of poverty with parental unfitness.[100] In his 2023 concurrence in *Haaland v. Brackeen*,[101] Justice Gorsuch lamented the past separations of Indigenous families "without due process of law," wherein "'[v]ague grounds' such as 'neglect' or 'social deprivation'" punished parents for "[p]overty [and] poor housing" under a lack of judicial oversight.[102] Unfortunately, the same process continues today for Indigenous and Black families across the country.[103]

The racial and class disparities in who is subjected to the system is impossible to ignore. Impacted parent and organizer Imani Worthy describes one Family Court in New York City (but it could be anywhere):

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[96] *See* Erin F, *White Saviors Are Not Saving Children*, CRIM. L. & POL'Y (Apr. 22, 2019), https://crimlawandpolicy.wordpress.com/2019/04/22/white-saviors-are-not-saving-children/ [https://perma.cc/5GBZ-5NUB] (describing system's overwhelmingly White judges, lawyers, and social workers and potential for "saviorism" to creep in when making judgments for children from different racial, class, and cultural backgrounds). "Child welfare" workers have seen themselves as "saviors" since their first incarnation during the Progressive Era. *See, e.g.*, ANTHONY M. PLATT, THE CHILD SAVERS: THE INVENTION OF DELINQUENCY 137-45 (2d ed., enlarged 1977). For further discussion of the "child saving" rhetoric being used to impede reforms in blue states, see *infra* notes 209-217.

[97] Teju Cole, *The White-Savior Industrial Complex*, ATLANTIC (Mar. 21, 2012), https://www.theatlantic.com/international/archive/2012/03/the-white-savior-industrial-complex/254843 ("The White Savior Industrial Complex is not about justice. It is about having a big emotional experience that validates privilege.").

[98] *See* VICTORIA COPELAND & MAYA PENDLETON, SURVEILLANCE OF BLACK FAMILIES IN THE FAMILY POLICING SYSTEM 4-5 (2022), https://upendmovement.org/wp-content/uploads/2022/06/upEND-Surveillance-06_2022.pdf [https://perma.cc/U3YC-E87E]; Chaz Arnett, *Race, Surveillance, Resistance*, 81 OHIO ST. L.J. 1103, 1106 (2020).

[99] Gupta-Kagan, *supra* note 43, at 223.

[100] NAVEED, *supra* note 90, at 89-90.

[101] 599 U.S. 255 (2023).

[102] *Id.* at 303-04 (Gorsuch, J., concurring) (quoting William Byler, *The Destruction of American Indian Families*, *in* THE DESTRUCTION OF AMERICAN INDIAN FAMILIES 1, 3-4 (Steven Unger ed., 1977)).

[103] NAVEED, *supra* note 90, at 39-44.

> While in the courthouse I couldn't help but notice a separation when you enter. Lawyers, judges . . . [and caseworkers] walk in on the left side. On this side, I notice a lot of Caucasian people entering. The right side is for the general public. The general public had so many Black and Brown faces . . . .[104]

Indeed, the Child Abuse Prevention and Treatment Act ("CAPTA") of 1974 and the Adoption and Safe Families Act ("ASFA") of 1997, which together form the federal statutory framework underlying and funding the system, were both enacted to cut supports to low-income families and justified by racist language and false narratives about violent abuse and "bad" parents.[105] The contrast to the private family law system, wherein parents in divorce rarely, if ever, lose custody or especially visitation rights, could not be starker.[106]

State intrusion is so broad and unchecked in large part because of the sweeping and vague nature of neglect laws. Criminal law scholars have persuasively argued that vague laws serve as "an invitation to [enforcement] abuse," particularly against people of color and other marginalized groups.[107] Child neglect statutes—while largely overlooked by vagueness scholars—present these concerns in an extreme manner. The language is so broad and subjective that it includes much innocent, non-harmful parenting behavior, and makes it nearly impossible for parents to know what they are permitted to do and what they are not. Take, for example, the Michigan child neglect statute, which criminalizes "[p]lacing a child at an *unreasonable* risk to the child's health or welfare,"[108] or Alabama's, which defines neglect to include "the failure to provide *adequate* food, medical treatment, supervision, clothing or shelter."[109] The statutes and agency regulations give no information about what constitutes a risk, or what risks are unreasonable, or what proper care or adequate nurturance require. As a result, parents are left to guess at what the statute prohibits, law enforcement is free to enforce the law in an arbitrary, and perhaps discriminatory, manner, and the scope of the statute is determined by police and

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[104] ROBERTS, *supra* note 2, at 128; *see also* Godsoe, *supra* note 10, at 953 (discussing family court as forum where White lawyers and judges' scrutinize mostly Black, Hispanic, and low-income families and children).

[105] *See* Richard Wexler, *CAPTA Law Codifies Everything Wrong with How We 'Fight' Child Abuse*, YOUTH TODAY (Aug. 31, 2018), https://youthtoday.org/2018/08/capta-law-codifies-everything-wrong-with-how-we-fight-child-abuse/ [https://perma.cc/AVG4-NY4H]; Martin Guggenheim, *How Racial Politics Led Directly to the Enactment of the Adoption and Safe Families Act of 1997—the Worst Law Affecting Families Ever Enacted by Congress*, 11 COLUM. J. RACE & L. 711, 723 (2021) (asserting that ASFA was driven by "Congress's understanding that most of the children in foster care were non-white").

[106] Marsha Garrison, *Why Terminate Parental Rights?*, 35 STAN. L. REV. 423, 478 (1983); Cynthia Godsoe, *Parsing Parenthood*, 17 LEWIS & CLARK L. REV. 113, 118-22 (2013).

[107] *See, e.g.*, Dorothy E. Roberts, *Foreword: Race, Vagueness, and the Social Meaning of Order-Maintenance Policing*, 89 J. CRIM. L. & CRIMINOLOGY 775, 782 (1999).

[108] MICH. COMP. LAWS § 722.622(k)(ii) (2022) (emphasis added).

[109] ALA. CODE § 26-14-1(2) (2022) (emphasis added).

prosecutors through enforcement in individual cases. Tellingly, a study on these cases in Illinois found that inadequate supervision was the biggest category of "indicated" neglect cases, making up 30% of the state agency's caseload.[110] The report also found that these cases were disproportionately brought against immigrant women and women of color and were almost always related to a lack of affordable childcare.[111] Even medical neglect, usually proven using experts and therefore purportedly subject to more definitive meaning and evidence, has been critiqued as overly vague and variable so as to result in a lack of notice and uneven application.[112]

Compounding the vagueness problem is the fact that most laws do not include a proven nexus to harm or a mens rea requirement. Most states also include a catchall neglect category, which allows for virtually infinite discretion by caseworkers, attorneys, and judges to find neglect in any situation of suboptimal parenting or deviation from mainstream practices.[113] Vast numbers of cases reveal the use of these vague laws to impose normative behavior that has nothing to do with harm and much to do with bias and structural inequality. Taking just a few examples are the immigrant parents who are ordered to learn English to have their children returned to their custody;[114] gay and lesbian parents who are disproportionately drawn into the child welfare system;[115] and Black and Indigenous families who are deemed neglectful for culturally common shared parenting practices and living with extended family and kin.[116] Even under these

[110] CAITLIN FULLER & DIANE L. REDLEAF, FAM. DEF. CTR., WHEN CAN PARENTS LET CHILDREN BE ALONE? 1, 9 (2015), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2643804. [https://perma.cc/ZN3N-J4HT].

[111] *Id.* at 16, 33.

[112] Lucy Johnston-Walsh et al., *The Unreasonably Uncertain Risks of "Reasonable Medical Certainty" in Child Abuse Cases: Mechanisms for Risk Reduction*, 66 DRAKE L. REV. 253, 298-303 (2018).

[113] *See, e.g.*, OKLA. STAT. ANN. tit. 10A, §1-1-105(49) (West 2021) (including failure to provide "adequate nurturance and affection, food, clothing, shelter, sanitation, hygiene, or appropriate education, . . . supervision or appropriate caretakers to protect the child from harm or threatened harm of which any reasonable and prudent person responsible for the child's health, safety or welfare would be aware" in definition of neglect).

[114] Godsoe, *supra* note 106, at 127. In fact, children may be removed for grounds completely unrelated to childcare, such as where "an anxious parent loses her temper with a rude child protection investigator." Helen Epstein, *New York: The Besieged Children*, N.Y. REV. (July 12, 2012), https://www.nybooks.com/articles/2012/07/12/new-york-besieged-children/ [https://perma.cc/Z26H-BDHS]; *see, e.g.*, D.C. CITIZEN REV. PANEL, AN EXAMINATION OF THE CHILD AND FAMILY SERVICES AGENCY'S PERFORMANCE WHEN IT REMOVES CHILDREN FROM AND QUICKLY RETURNS THEM TO THEIR FAMILIES 5-6 (2011), https://www.dc-crp.org/_files/ugd/46a508_a96fd6cf00a5427cb644f9ed59beef66.pdf [https://perma.cc/3LEF-RNHH].

[115] Nancy D. Polikoff, *Neglected Lesbian Mothers*, 52 FAM. L.Q. 87, 90 (2018).

[116] Laura Sullivan & Amy Walters, *Incentives and Cultural Bias Fuel Foster System*, NPR (Oct. 25, 2011, 12:00 PM), http://www.npr.org/2011/10/25/141662357/incentives-and-

amorphous standards, cases are also ripe for error. For instance, Illinois researchers found numerous cases where parents were erroneously accused of child neglect, and even cases where children were removed to the foster care system based on wrongful findings.[117] Similarly, an ethnographic study of ninety-four cases over a one-year period at an urban Northeast family court concluded that the "subjective judgments about human behavior" that characterize neglect and abuse cases compound existing biases, so that parents are stereotyped based on race and class and judged as culpable and harmful, rather than under-resourced or loving.[118]

In addition to being open to arbitrary enforcement and biased opinions about parenting, neglect statutes largely center on a parent's failure to provide housing, food, and childcare—i.e., poverty is equated with neglect. A particularly egregious example of punishing poverty is one school district's recent threat to report parents with unpaid school lunch fees because nonpayment "constitutes child neglect."[119] Across the country, many families are swept into the system for homelessness, housing insecurity, or "dirty house" cases. Even one experience of homelessness increases the risk of system involvement, while housing problems in general delay reunification for many children in the foster system.[120] The likelihood of a neglect investigation occurring doubles if a parent or caregiver is experiencing food hardship.[121] Given that neglect essentially means poverty, it is not surprising that there is a direct connection between removing families from welfare (Temporary Assistance for Needy Families ("TANF") program) and increased neglect cases (33%), as well as entries into

cultural-bias-fuel-foster-system [https://perma.cc/B6QA-66EN] (explaining Indigenous People's tradition, such as sharing single home with many family members, is often construed as neglect, rather than cultural practice, by social workers visiting Indigenous reservations); *see also* DOROTHY ROBERTS, SHATTERED BONDS: THE COLOR OF CHILD WELFARE 59 (2002) ("Caseworkers often misinterpret Black parents' cultural traditions, demeanor, and informal means of handling family distress as neglect.").

[117] FULLER & REDLEAF, *supra* note 110, at 21-26.

[118] Vicki Lens, *Judging the Other: The Intersection of Race, Gender, and Class in Family Court*, 57 FAM. CT. REV. 72, 73 (2019).

[119] Melanie Burney, *N.J. School-Lunch Policies: Parents Must Pay Delinquent Meal Fees or Face Possible State Probe for Child Abuse*, PHILA. INQUIRER (Aug. 24, 2019, 5:00 AM), https://www.inquirer.com/news/new-jersey/school-lunch-tuna-fish-sandwich-new-jersey-fees-shaming-20190824.html.

[120] *See* Debra J. Rog, Kathryn A. Henderson, Laurel M. Lunn, Andrew L. Greer & Mei Ling Ellis, *The Interplay Between Housing Stability and Child Separation: Implications for Practice and Policy*, 60 AM. J. CMTY. PSYCH. 114, 114-15 (2017).

[121] *See* Mi-Youn Yang, *The Effect of Material Hardship on Child Protective Service Involvement*, 41 CHILD ABUSE & NEGLECT 113, 122 (2015) (examining impact of economic hardship on children, like food insecurity, on instances of CPS involvement).

foster care (13-16%).[122] Research by the government,[123] social scientists,[124] and communities themselves,[125] all confirm that support through material resources such as housing, childcare, and physical and mental health care would improve children's well-being. Yet these resources are not what the system provides them;[126] instead, the parents of teenagers are mandated to attend classes about how to care for newborns, while other parents must engage in supervised visitation with social workers from different communities telling them how to care for their children.[127]

Low-income parents are essentially set up to fail. Unlike in other wealthy nations, the U.S. Constitution does not include positive rights to education, housing, health, or physical safety. As Professor Anne Alstott describes it: "The law protects negative liberty in family life but denies positive rights to the resources that make family life possible."[128] When families lack these things, as a growing number do in this time of rising inequality, parents are blamed for their children's poverty, and families are often separated.

At no point is this more stark than when some parents have their rights terminated, often without appropriate due process and usually on grounds of

[122] CHAPIN HALL, UNIV. OF CHI., FAMILY AND CHILD WELL-BEING SYSTEM: ECONOMIC & CONCRETE SUPPORTS AS A CORE COMPONENT 19-21 (2021), www.in.gov/dcs/files/Economic-Supports-deck.pdf [https://perma.cc/8MJ5-ZUKM].

[123] *See* CHILD.'S BUREAU, U.S. DEP'T OF HEALTH & HUM. SERVS., CHILD MALTREATMENT 23 (2019), https://www.acf.hhs.gov/sites/default/files/documents/cb/cm2019.pdf [https://perma.cc/N9GV-4YF5] (affirming child well-being is priority and listing inadequate housing and lack of financial resources as risk factors).

[124] *See, e.g.*, DON LASH, "WHEN THE WELFARE PEOPLE COME": RACE AND CLASS IN THE US CHILD PROTECTION SYSTEM 16 (2017) (stating children "are identified because of homelessness or housing insecurity and inadequate income to meet material needs" and may experience "overcrowded living conditions, lack of childcare, barriers to a mother escaping an abusive relationship, and lack of effective treatment for mental illness or substance abuse"); TINA LEE, CATCHING A CASE: INEQUALITY AND FEAR IN NEW YORK CITY'S CHILD WELFARE SYSTEM 12 (2016) ("In most of the cases described . . . the problems reported to child welfare were about the problems facing poor mothers of color that they had inadequate resources to manage.").

[125] NAASHIA B. ET AL., AN UNAVOIDABLE SYSTEM: THE HARMS OF FAMILY POLICING AND PARENTS' VISION FOR INVESTING IN COMMUNITY CARE 9, 17, 19 (2021), https://www.risemagazine.org/wp-content/uploads/2021/09/AnUnavoidableSystem.pdf [https://perma.cc/Z6NX-AHVQ].

[126] *See generally* LEE, *supra* note 124 (chronicling history of inequity in how child welfare systems provide services to children).

[127] *See id.* at 97-101.

[128] Anne L. Alstott, *Neoliberalism in U.S. Family Law: Negative Liberty and Laissez-Faire Markets in the Minimal State*, 77 LAW & CONTEMP. PROBS. 25, 25-26 (2014) ("Rich children prosper and poor ones suffer, and neither children nor their parents can seek legal redress."); *see also* DANIEL L. HATCHER, THE POVERTY INDUSTRY: THE EXPLOITATION OF AMERICA'S MOST VULNERABLE CITIZENS 5 (2016) (documenting how states even make money off children in the foster system via federal funding).

poverty-related neglect.[129] Parents with disabilities, Indigenous parents, and Black parents are all much more likely to have their rights terminated.[130] The system, particularly the underlying federal ASFA statute,[131] prioritizes adoption in funding, rhetoric, and practice, often to the detriment of children and their families.[132] This rush to terminate on strict timelines also ignores the realities of the adoption market, where adopters prefer babies, especially those who can pass for White: more terminations do not add up to more homes for children.[133] Accordingly, while some—especially younger, Whiter children—are funneled into an adoption "market," tens of thousands of other children are never adopted or even placed in a stable home, bouncing among many foster homes and institutions and entering adulthood as "legal orphans" with a catastrophically high likelihood of experiencing homelessness, imprisonment, and mental health trauma.[134] A particularly disturbing recent trend amply demonstrates the paucity

[129] *See* Eli Hager, *In Child Welfare Cases, Most of Your Constitutional Rights Don't Apply*, PROPUBLICA (Dec. 29, 2022, 6:00 AM), https://www.propublica.org/article/some-constitutional-rights-dont-apply-in-child-welfare.

[130] Robyn M. Powell, *Legal Ableism: A Systematic Review of State Termination of Parental Rights Laws*, 101 WASH. U. L. REV. 423, 428 (2023) (analyzing "facially discriminatory state laws that allowed for parental disability as grounds for termination of parental rights"); NAVEED, *supra* note 90, at 2-3.

[131] *See generally* Guggenheim, *supra* note 105.

[132] *See* Cynthia Godsoe, *Kinship Care and Adoption Myopia*, 76 RUTGERS L. REV 689, 700 (2024) (quoting Ashley Albert & Amy Mulzer, *Adoption Cannot be Reformed*, 12 COLUM. J. RACE & L. 557, 563 (2022)) (arguing that adoption "reinforces racist, classist, ableist, and misogynistic ideas about which families matter and which do not"). Indeed, adoption from the family policing system usually involves children "being transferred from lower-income, families of color into [W]hite, middle-class families." *Id.* at 698; *see also* Laura Briggs, *Making Abortion Illegal Does Not Lead to More Adoptions*, 10 ADOPTION & CULTURE 251, 252 (2022) (noting that "the relentless and endless desire for adoptable children, particularly young and [W]hite ones" has led to "officials looking the other way when they separate families for political reasons or for no good reason at all"). The funding disparities reflect these skewed priorities. Elizabeth Brico, *The Government Spends 10 Times More on Foster Care and Adoption than Reuniting Families*, TALK POVERTY (Aug. 23, 2019), https://talkpoverty.org/2019/08/23/government-more-foster-adoption-reuniting/index.html [https://perma.cc/69VM-Q6F6] (reporting substantial financial reimbursements for foster care programs, contrasted with small budgets for family reunification programs, results in Congress typically spending almost ten times more money on foster care and adoption services than reunification programs); *see also* EMILIE STOLTZFUS, CONG. RSCH. SERV., R45270, CHILD WELFARE FUNDING IN FY2018, at 4-5 (2018) (updating members of Congress on latest data about child welfare funding).

[133] This truth reveals the flawed basis for Senator Jesse Helms' insistence at the time of ASFA's enactment that, if more children were offered for adoption, the adoptive parents would be there: "[T]here is no shortage of prospective parents." 143 CONG. REC. S12198, S12200 (daily ed. Nov. 8, 1997) (statement of Sen. Jesse Helms).

[134] Godsoe, *supra* note 106, at 132-34 (highlighting negative consequences for "legal orphans" never adopted or placed in home).

of parental rights for these families: a growing number of states allow foster parents to intervene in court proceedings even before a termination of parental rights, giving them equal footing in a custody/best interests challenge with the legal parent.[135] This is an upending of the process—there is not even supposed to be a best interests determination until after a parent's rights are terminated.[136] The implicit message from this growing trend—growing in an adoption market tightened by the cessation of most international adoption—is that poor parents, or those who may need temporary respite (usually related to poverty), do not have full parental rights. Instead, these parents are rendered by their poverty equal players against other adults who want to become the legal parents of their children.

2. Lack of Procedural Rights

The erasure of parents' substantive rights to family autonomy and custody of their children is enabled by a lack of even minimal procedural rights.[137] Sociologist Kelley Fong has detailed how the immense web of surveillance and the "dual capacities" of CPS investigations—(purported) "therapeutic support alongside the threat of coercive intervention—generate expansive investigations of domestic life by inviting referrals from adjacent systems, such as healthcare, education, law enforcement, and social services."[138] From the start, anonymous reports—sometimes used as harassment by landlords, "spiteful neighbor[s]," or "vindictive" spouses—can trigger intensive investigation.[139] As parent advocate

[135] Eli Hager, *When Foster Parents Don't Want to Give Back the Baby*, NEW YORKER (Oct. 16, 2023), https://www.newyorker.com/magazine/2023/10/23/foster-family-biological-parents-adoption-intervenors (reporting on numerous states that now allow intervenor actions or even give foster parents ability to file directly to terminate biological parent's rights, as if they were state agents/prosecutors).

[136] *See, e.g.*, Smith v. Org. of Foster Fams. for Equal. & Reform, 431 U.S. 816, 848-50, 853 (1977) (noting overlap between interests of foster parents and foster child is akin to overlap in "parental" relationship, putting foster parents and legal parents on similar level, but suggesting such determinations come later in process after other parental rights are gone).

[137] NAVEED, *supra* note 90, at 129-38 (discussing supposed rights and how "US child welfare system's practices are inconsistent with these standards"); *see also* Cynthia Godsoe, *An Abolitionist Horizon for Child Welfare*, LAW & POL. ECON. PROJECT (Aug. 6, 2020), https://lpeproject.org/blog/an-abolitionist-horizon-for-child-welfare/ [https://perma.cc/6H8Z-6RYS] (outlining how child welfare system is better understood as "family regulation and policing system" in context of carceral state's effects on families).

[138] Fong, *supra* note 86, at 611.

[139] Jeremy Loudenback, *More States Seek to Curb Anonymous CPS Reports Against Parents*, IMPRINT (Nov. 7, 2023, 2:00 AM), https://imprintnews.org/top-stories/more-states-seek-to-curb-anonymous-cps-reports-against-parents/245884 [https://perma.cc/BUE5-J8PX] (noting "limited data available in some local systems shows that anonymous reporting has even lower substantiation rates than the average call"); *see also* SWANSON ET AL.., TEX. S. RSCH. CTR., BILL ANALYSIS, H.B. 63 (2023), https://capitol.texas.gov/tlodocs/88R/analysis/html/HB00063E.htm [https://perma.cc/CP6C-5T85] (analyzing intent of bill

Shalonda Curtis-Hackett has testified, false CPS reports are weaponized in a racial fashion and are "not about the safety of . . . children . . . . This is about power and control."[140]

Even reporting by professionals, primarily teachers and doctors, has been shown to be racially biased and ineffective at keeping children safe.[141] Although most of these "mandated reports" are benevolently intended, they still involve poverty-related or harmless parenting issues. Beyond the damage of invasive and unnecessary searches to individual families, investigations demonstrate that reporting actually makes children in the aggregate less safe because the volume of reports makes it impossible to determine who are the small number of children at risk of serious harm.[142] Overreporting results in a tidal wave of reports for neglect or unfounded issues, making it harder to find and assess the small percentage of actual abuse cases.[143] Demonstrating this, Pennsylvania's expanded mandatory reporting after the Sandusky sex abuse scandal actually led to more fatalities.[144] Another harmful aspect of mandatory reporting is that it

author to prevent CPS from accepting anonymous report outright to prevent abuse of anonymous reporting system).

[140] Loudenback, *supra* note 139; *see also Gould* Complaint, *supra* note 9, at 34-35; Susanti Sarkar & Michael Fitzgerald, *New York City Class-Action Lawsuit Defends Parents' Rights in CPS Home Visits—A Rare Constitutional Challenge*, IMPRINT (Feb. 21, 2024, 2:09 PM), https://imprintnews.org/top-stories/new-york-city-class-action-lawsuit-defends-parents-rights-in-cps-home-visits-a-rare-constitutional-challenge/247637 [https://perma.cc/67DX-QDQB] (detailing how anonymous reports were used by her abusive ex-partner to subject named plaintiff Ebony Gould and her children to twelve unsubstantiated investigations, with additional stigma and trauma due to neighbor interviews and under-clothing inspections).

[141] *See* Mical Raz, *Why Mandatory Reporting Doesn't Keep Children Safe*, TIME (Jan. 31, 2024, 7:00 AM), https://time.com/6589854/mandatory-reporting-child-abuse-prevention/ [https://perma.cc/47W2-T8JV] ("Policies that expand reporting are not associated with more accurate detection of children at risk of harm . . . .").

[142] *See id.* ("Families may be reported to authorities if they are late for daycare pick up, if a child is playing unsupervised or waiting in the car unattended, or if a family misses repeated medical appointments for a lack of transportation."); *see also* ELENA GORMLEY, ERIN VIRGO, KIJUANA HOOPER, SIMONNE HARRIS & EANARA GHOULEH, ALTERNATIVES TO CALLING DCFS 5 (2020), https://www.povertylaw.org/wp-content/uploads/2020/12/Before-you-call-DCFS_FINAL-2.pdf [https://perma.cc/Y2V8-S5VZ] (outlining how neglect reports reflect "[b]elief that parents having challenges finding childcare, or who need respite from the stresses of parenting are neglectful").

[143] Mike Hixenbaugh, Suzy Khimm & Agnel Philip, *Mandatory Reporting Was Supposed to Stop Severe Child Abuse. It Punishes Poor Families Instead.*, PROPUBLICA (Oct. 12, 2022, 8:00 AM), https://www.propublica.org/article/mandatory-reporting-strains-systems-punishes-poor-families [https://perma.cc/A2DA-7KUP] (quoting one family court expert who noted "strong evidence that [increasing mandatory reporting] puts child safety at risk" and likely overwhelms systems with unnecessary reports).

[144] Mical Raz, *Unintended Consequences of Expanded Mandatory Reporting Laws*, 139 PEDIATRICS PERSPS. 1-2 (Apr. 2017), https://publications.aap.org/pediatrics/article-

leads marginalized families to (rationally) avoid seeking help as doing so often leads to a report.[145] Tellingly, large numbers of the families the state is purportedly helping relate that the report made their family's situation worse; 50% of those surveyed report such a reality, while 34% report that they avoid seeking help due to fear of state intervention.[146]

Indeed, the investigation itself is traumatizing, as demonstrated by research and even acknowledged by some family policing agencies.[147] Yet (outside of Texas, as explained below) even those agencies continue to support anonymous and mandatory reporting, and continue to oppose *Miranda* warnings and other curbs on their power to surveil and investigate families with no notice, information, or court oversight. Parents have constitutional rights to refuse warrantless searches and invasive investigations by family policing workers, similar to the criminal context; however, most parents do not know this. The New York state legislature has acknowledged: "[a]t the crux of the problem lie the parents who are often unaware of their legal rights when faced with CPS."[148] Caseworkers, often trained by police, behave like police and sometimes show up to search homes accompanied by police.[149] Yet there are no meaningful Fourth Amendment protections against government overreach in practice;[150] instead, in the name of family well-being, state agents come on surprise "visits"

abstract/139/4/e20163511/38317/Unintended-Consequences-of-Expanded-Mandatory?redirectedFrom=PDF.

[145] *See* Raz, *supra* note 141.

[146] Shana Salzberg, *Mandated Reporting*, VENNGAGE, https://infograph.venngage.com/ps/QppFp189BKw/mandated-reporting? [https://perma.cc/XD3P-82PG] (last visited Dec. 13, 2024).

[147] *See US: Child Welfare System Harms Families*, HUM. RTS. WATCH (Nov. 17, 2022, 12:01 AM), https://www.hrw.org/news/2022/11/17/us-child-welfare-system-harms-families [https://perma.cc/4DLP-L4RE] (highlighting how "[i]nvestigations are often highly stressful, and even traumatizing, for children and their families"); *Family Defense Providers Testimony*, *supra* note 25, at 6 n.34 (quoting city agency director on how child protective services "can be intrusive and traumatic for families" such that government intervention should be "sought and used only when there is true concern for the safety of a child").

[148] *See* S.B. S901A, 2023-2024 S., Reg. Sess. (N.Y. 2023).

[149] *See* Dey, *supra* note 4 (detailing lawmakers' interest in limiting unconstitutional reach of caseworkers into homes under CPS investigations); *see also* Anna Belle Newport, Note, *Civil* Miranda *Warnings: The Fight for Parents to Know Their Rights During a Protective Services Investigation*, 54 COLUM. HUM. RTS. L. REV. 854, 881 (2023) (noting that caseworkers in NYC participate in NYPD investigator trainings).

[150] *See* Anna Arons, *The Empty Promise of the Fourth Amendment in the Family Regulation System*, 100 WASH. U. L. REV. 1057, 1065 (2023) ("[I]t is the very design of the family regulation system that explains the sharp divergence between abstract Fourth Amendment protections against government home searches and the government's actual ability to invade marginalized families' homes."); Tarek Z. Ismail, *Family Policing and the Fourth Amendment*, 111 CALIF. L. REV. 1485, 1490-91 (2023) (arguing agency home visits should be viewed under more protective Fourth Amendment standard rather than how they are currently approached, which is under more permissible administrative search doctrine).

at midnight to people's homes, often accompanied by armed police officers.[151] They then scrutinize fridges and bathrooms for inadequate food or supplies, strip search children, interrogate parents about very personal issues, and even conduct drug testing.[152]

Workers search the homes of approximately 3.5 million children annually, virtually all without warrants.[153] There is almost never judicial oversight, nor counsel assigned, during investigations or until after a case is filed; by then all kinds of rights have been unknowingly waived or even violated, with parents having no informed opportunity to refuse.[154] For example, in New York, the Administration for Children's Services ("ACS") "agents had an entry order for a search only 0.2% of the time."[155] The agency claims that the other 99.8% of homes were entered with "'voluntary consent,' but this often includes threats of calling the police and other methods of coercion."[156] Most parents are not aware of their right to deny entry, which results in invasive home and child searches, participation in drug or psychological testing, and unwarranted child removals.[157] As detailed earlier, this only happens to certain parents—parents who are almost exclusively low income, and disproportionately parents of color.[158] Beyond being uninformed, parents are sometimes even misled about their rights by

[151] *See* Garcia & Godsoe, *supra* note 28, at 619-20; *see also* Arons, *supra* note 150.

[152] Drug testing occurs almost exclusively to low-income women, giving birth, without their permission. This very problematic practice is encouraged by the federal CAPTA statute. *See* Wexler, *supra* note 105; *see also* MOVEMENT FOR FAM. POWER ET AL., DRUG TESTS ARE NOT PARENTING TESTS: THE FIGHT TO REIMAGINE SUPPORT FOR PREGNANT PEOPLE WHO USE DRUGS 7 (2023), https://issuu.com/movfamilypower/docs/rs_draft_2023 (highlighting state bills and national organizing efforts to abolish this practice).

[153] Hager, *supra* note 22. Professor Anna Arons elaborates in detail on these widespread harms, and argues that many, if not most, of these "consent searches" are unconstitutional. *See* Anna Arons, *Family Regulation's Consent Problem*, 125 COLUM. L. REV. (forthcoming 2025) (on file with author) (documenting how "consent" to search homes of marginalized families are obtained by caseworkers implying searches are mandatory, bringing police, and/or threatening family separation).

[154] *See* Law & Disorder, *New York's Family Policing System Fails to Inform Families of Their Rights; Plus, the Latest in Banko Brown's Killing and More*, KPFA (May 30, 2023, 8:00 AM), https://kpfa.org/player/?audio=401870; *see also Why a Child Welfare 'Miranda Rights' Law Is Essential: A Q&A with Advocate and Organizer Joyce McMillan*, NEW SCH. (June 2, 2021), http://www.centernyc.org/urban-matters-2/2021/6/2/why-a-child-welfare-miranda-rights-law-is-essential-a-qampa-with-advocate-and-organizer-joyce-mcmillan [https://perma.cc/VCT7-6HMB].

[155] Rachel Holliday Smith, *What to Do When Children's Services Comes to the Door*, CITY (Oct. 5, 2023, 5:00 AM), https://www.thecity.nyc/2023/10/05/childrens-services-acs-rights-parents-children/ [https://perma.cc/P3D5-BLR4].

[156] Williams, *supra* note 3.

[157] *See id.*

[158] *See id.* (reporting 2019 study finding that New York City families in neighborhoods with high percentages of Black parents were seven times more likely to be investigated than other parents).

caseworkers, who "often tell parents that if they fail to cooperate with CPS's demands immediately, their children will be removed."[159] Relatedly, families are punished if they do refuse consent.[160] As defense lawyers in New York City detail: "We have seen countless instances in which a parent's exercise of their right to deny ACS entry into their home results in . . . threat[s] to call the police, and on many occasions, ACS does in fact return to the home with armed police"—all without a court order.[161] Even worse, parents' exercise of their rights is punished throughout the case, resulting in more surveillance, delayed reunification, et cetera.[162]

Indeed, the informality of family court proceedings is both coercive and intentional—the procedural side of the child saving "benevolent terror" purpose.[163] This lack of process is ostensibly intended to allow for collaboration in children's best interests, but it results in a "shadow" system of "voluntary" placements where family separation is frequently accomplished via deception and coercion, outside of any court process at all.[164] Even worse, both in and out of court, parental "cooperation"—with baseless accusations, time-consuming yet ineffective services, and even family separation—is the most important factor in assessing a parent's "worth."[165] Professor S. Lisa Washington has described the stigma and harm that arise from refusing to conform or display humility and shame.[166] Even those who do conform often face the same fate, as

[159] *Senate Bill S901A*, N.Y. ST. SENATE, https://www.nysenate.gov/legislation/bills/2023/S901/amendment/A (last visited Dec. 13, 2024).

[160] *See Family Defense Providers Testimony*, *supra* note 25, at 13 (noting that ACS often "weaponizes this lack of consent as proof of further bad judgment by a parent, ignores the parents lack of consent, or seeks a judicial override of the judgment of the parent").

[161] *Id.* at 9.

[162] *Id.*

[163] Dorothy Roberts & nia t. evans, *The "Benevolent Terror" of the Child Welfare System*, BOS. REV. (Mar. 31, 2022), https://www.bostonreview.net/articles/the-benevolent-terror-of-the-child-welfare-system/ (defining "benevolent terror" as the way in which child welfare system justifies harsh interventions, such as family separation, under guise of protecting children). I have previously critiqued this false notion of a rehabilitative court for juveniles. *See* Cynthia Godsoe, *Recasting Vagueness: The Case of Teen Sex Statutes*, 74 WASH. & LEE L. REV. 173, 195-96 (2017) (analyzing how juvenile courts' handling of sex offenses reveals their discriminatory design); *see also* JANE M. SPINAK, THE END OF FAMILY COURT: HOW ABOLISHING THE COURT BRINGS JUSTICE TO CHILDREN AND FAMILIES 3 (2023) ("One hundred and twenty years later, we are still sending children and families into a court that thinks it is doing good and the consequence is that, by trying to do good, it fails to do justice and often does great harm.").

[164] Josh Gupta-Kagan, *America's Hidden Foster Care System*, 72 STAN. L. REV. 841, 859-61 (2020) (describing widespread practice of coercing parents into "voluntary" custody transfers to others by threats of foster care placement).

[165] *See* S. Lisa Washington, *Survived & Coerced: Epistemic Injustice in the Family Regulation System*, 122 COLUM. L. REV. 1097, 1118, 1127 (2022).

[166] *See id.* at 1149-52.

many parents enter the system—or are further punished—simply for seeking assistance.[167]

Things are no better in official court proceedings. Despite the strong language in cases such as *Santosky v. Kramer*[168] or *Nicholson v. Williams*,[169] removals are frequent and usually unnecessary, and they occur with little process.[170] Parents are routinely denied a meaningful opportunity to attend or be heard at hearings on removals, neglect or abuse findings, or even termination of their parental rights; they are not guaranteed counsel, any kind of "speedy trial," or other basic legal protections, even those minimal ones found in our deeply flawed criminal legal system.[171] Regular evidentiary rules do not apply—for instance, hearsay is permissible in most jurisdictions—and judges often do not enforce the state's burden of proof, despite the very high stakes involved.[172] Parents facing often baseless accusations of neglect or abuse are met with loosened standards of proof, insufficient due process, and the use of children as bargaining chips, leaving them with few legal protections against dire employment consequences, societal stigma, and, worst of all, the loss of their children.[173] Terminations of parental rights are often finalized rapidly or even ex parte, and are now increasingly opened up to competing third parties, such as foster parents, to initiate directly.[174] Indeed, the lack of due process and degradations of family

[167] Godsoe, *supra* note 10, at 948 (noting "parents are expected to be not only obedient but humble, to deny their own expertise or ability to care for their children, to present as weak, a victim themselves, and to throw themselves at the mercy of the caseworker and court," but this still often does not work to escape the system).

[168] 455 U.S. 745 (1982).

[169] 203 F. Supp. 2d 153 (E.D.N.Y. 2002).

[170] Godsoe, *supra* note 106, at 128-29 (describing how most removals are unnecessary for child's safety and do more harm than good).

[171] *See, e.g.*, A.M. v. Dep't of Child. & Fams., 223 So. 3d 312, 315 (Fla. Dist. Ct. App. 2017) (finding that termination of parental rights hearing for mother deemed incompetent due to mental illness was allowed to proceed without her, as court ruled that severing parent-child relationship is not comparable to criminal case since it does not "involve the deprivation of 'physical liberty'" (quoting N.S.H v. Fla. Dep't of Child. & Fam. Servs., 843 So. 2d 898, 902)).

[172] *See, e.g.*, N.Y. FAM. CT. ACT § 1046(a)(vi) (McKinney 2021) (stating that in child protective proceedings, there is statutory hearsay exception for "previous statements made by the child relating to any allegations of abuse or neglect").

[173] For just a few examples that made it to appellate courts—obviously just the tip of the iceberg—*see, e.g.*, *In re* Tre.S. v. Ind. Dep't of Child Servs., 149 N.E.3d 310, 312-13 (Ind. Ct. App. 2020) (reversing termination of mother's parental rights after proceeding in which her attorney was absent and emergency motion to continue was denied, while reprimanding the Department of Children's Services for repeatedly committing "significant violations" of parents' due process rights); M.D. v. K.A., 921 N.W.2d 229, 237-38 (Iowa 2019) (holding that parental telephone testimony in termination hearing without opportunity to fully participate is violation of due process).

[174] *See* Daniel W. Clark, *Best Interests: The Courts' Polar Star Illuminates Foster Parent Concerns*, 65 N.C. L. REV. 1317, 1325 (1987) (noting states, including North Carolina,

court proceedings—wherein people are referred to not by name, but as "mom," paramour, or even (appalling but true) "fat lady"—render the court a virtually lawless forum akin to a "kangaroo court."[175] Similar to the misdemeanor criminal system, the family policing system does *not* increase child safety or help families; instead, it sorts, "marks," and "hassles" them (and worse), thus perpetuating a society stratified by race, class, or immigration status.[176]

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In sum, the exercise of rights by parents and/or their attorneys is discouraged, and may even be prohibited or sanctioned.[177] As one longtime family defender put it: "Our colleagues and friends are demeaned and derided for putting the government to its paces: how many times have we been scolded . . . that these are not adversarial proceedings even though it sure felt adversarial when they took our client's children?"[178] Indeed, caseworkers and judges are sometimes explicit about not following black letter law, or even the Constitution.[179] To cite just one example, a Louisiana family defender describes how "more than one judge . . . proudly say they have never looked at what the law says."[180]

"specifically recognize the right of a foster parent to petition to terminate the parental rights of parents to their minor child" if child has resided with foster parents for two or more years).

[175] These incidents were relayed to me by parents or family-defense attorneys, or I witnessed them myself in court. *See* Alison Greer et al., *A Life Changing Visitor: When Children's Services Knocks*, VIMEO (July 26, 2021, 5:29 PM), https://vimeo.com/71127830 (documenting parents' humiliations experienced during family policing visits); Vivek Sankaran, *My Name Is Not "Respondent Mother*,*"* AM. BAR ASS'N (June 5, 2018), https://www.americanbar.org/groups/public_interest/child_law/resources/child_law_practiceonline/january-december-2018/my-name-is-not-_respondent-mother/ (describing how court system "strips [parents] of their dignity"); FRANKLIN H. WILLIAMS JUD. COMM'N OF THE N.Y. STATE CTS., REPORT ON NEW YORK CITY FAMILY COURTS 9, 28 (2022), https://www.nycourts.gov/LegacyPDFS/IP/ethnic-fairness/pdfs/FHW%20-%20Report%20on%20the%20NYC%20Family%20Courts%20-%20Final%20Report.pdf [https://perma.cc/VQ9V-UPES] (finding that New York City family court fostered "dehumanizing" culture and treatment of litigants).

[176] This is analogous to what scholars have theorized about the criminal system. KOHLER-HAUSMANN, *supra* note 12, at 80-81 (describing societal discipline function of prosecution of lower-level crimes); Ossei-Owusu, *supra* note 12, at 200-02.

[177] *See Family Defense Providers Testimony*, *supra* note 25, at 9 (acknowledging instances where ACS involved police when parents exercised right to reject agency home visits).

[178] Matthew I. Fraidin, *Afterword*, 20 CUNY L. REV. 237, 239 (2016) (footnote omitted); *see also* Posting of family defense attorney from Alaska to child-parentsattorrneys@mail.americanbar.org (July 11-26, 2022) (on file with author) (discussing consistent pressure from judges and agencies not to be overly "zealous" and to cooperate, no matter what impact on their clients).

[179] *See* discussion *supra* notes 8-9.

[180] Posting of family defense attorney from Louisiana to child-parentsattorrneys@mail.ammericanbar.org (Sept. 12, 2023) (on file with author).

II. AN UNEXPECTED PATH TO CHANGE

I can't fathom how Texas of all places can beat New York to something on this . . . . Texas is not considered a bastion of racial equality.[181]
—New York Democratic Senator Jabari Brisport

It's not a Democrat or Republican issue. Both parties haven't reconciled their issues with race and the carceral systems.[182]
—S.W., impacted parent and advocate

In the prior Section, I described the lack of both substantive and procedural rights on the ground for marginalized families, a lack that has persisted for decades despite attempts to reform it. Yet in the last few years, a handful of states have recognized and meaningfully enforced parental rights in the family policing system.[183] Texas is at the forefront of implementing criminal system type protections, such as *Miranda* rights, for parents in the family policing system, while advocates in staunchly Democratic New York have repeatedly been stymied by so-called progressive legislators when trying to get such protections enacted.[184] This Part will first outline these significant legal changes, and then explore how this happened via interest convergence between coalitions of libertarians and family defenders. These coalitions not only agree on enforcing parental rights for marginalized families, but also on massively downsizing the system itself.[185]

[181] Williams, *supra* note 3. Most of these alliances were quiet. *See, e.g.*, Asgarian, *supra* note 19. Scholars have previously described the potential benefits of under-the-radar change. *See e.g.*, Cynthia Godsoe, *Adopting the Gay Family*, 90 TUL. L. REV. 311, 359-360 (2015) (describing how caseworkers, family court judges, and other low-level state actors in numerous states licensed gay and lesbian families as foster and adoptive parents as early as 1980s).

[182] Telephone Interview with T.Y., impacted parent and adavocate (Oct. 7, 2024) (notes on file with author).

[183] *Legislative Highlights: Alabama and Illinois*, PARENTAL RTS. FOUND. (Mar. 6, 2024) [hereinafter *Legislative Highlights*], https://parentalrightsfoundation.org/legislative-highlights-alabama-and-illinois/ [https://perma.cc/98KX-FJ4Y].

[184] *See, e.g.*, Asgarian, *supra* note 19 ("Several laws that passed this session make Texas the unlikely front-runner in limiting overreach by Child Protective Services by tightening statutes related to removals, informing parents of their rights, and banning anonymous reports of abuse to the state hotline.").

[185] Dey, *supra* note 47. In addition to the significant substantive and procedural changes noted here, these bipartisan alliances are working to make the system smaller and more fair for parents in numerous other ways, such as increased transparency and a curtailed role for "child abuse pediatricians." *See Legislative Highlights*, *supra* note 183; *see also* Sciacca, *supra* note 19 (quoting conservative think tank policy expert who said the motivation behind narrowed neglect law was "to try to right-size the system").

A. *Radical Legal Changes in Red States*

In recent years, several states have enacted much narrower neglect laws, significantly shrinking the number of families entering the system and facing possible separation, while also introducing procedural reforms. Eight states have passed these narrower neglect laws, beginning with Utah, Oklahoma, Texas, and Colorado.[186] These substantive law changes have been accompanied by significant procedural protections, primarily in Texas.[187]

1. Substantive Law: Narrowed Neglect Statutes

Often named "free range parent" or "reasonable independence" laws,[188] these new state statutes are altering the vague and broad landscape of neglect laws, and thereby curtailing state discretion from running amok.[189] As detailed earlier, the vast majority of parents in the family policing system are not accused of physical or sexual abuse, but rather of neglect, an amorphous term that includes both a lack of resources, such as housing and childcare, and a very ambiguous standard of parenting.[190] Typical state statutes define neglect to include the failure to "provide adequate food, clothing, shelter . . . or supervision that a *prudent* parent would take" or where "[t]he child lacks *proper* parental care."[191] Before the new neglect law, for instance, the Colorado government suggested

[186] *See, e.g.*, S.B. 1133 (Conn. 2023); S.B. 1367 (Va. 2023); H.B. 1038, 73rd Gen. Assemb., Reg. Sess. (Colo. 2022); H.B. 2565, 2021 Leg., 1st Sess. (Okla. 2021); H.B. 567, 2021 Leg., 87th Sess. (Tex. 2021); S.B. 65, 63rd Gen. Assemb., Reg. Sess. (Utah 2018). New states continue to propose similar legislation. *See e.g.*, Adam Sexton, *New Hampshire Lawmakers Discuss Protections for 'Free-Range Parenting*,*'* WMUR, https://www.wmur.com/article/new-hampshire-free-range-parenting/46938386 [https://perma.cc/4FA7-GYLE] (last updated Feb. 24, 2024, 6:46 PM); *Bipartisan Child Welfare Coalition*, PARENTAL RTS. FOUND., https://parentalrights.org/understand_the_issue/coalition/ [https://perma.cc/X4MJ-JBLN] (last visited Dec. 13, 2024) (discussing national efforts to amend Child Abuse Prevention and Treatment Act and ASFA).

[187] Dey, *supra* note 47.

[188] *See Reasonable Independence*, PARENTAL RTS. FOUND. (Feb. 16, 2022), https://parentalrightsfoundation.org/reasonable-independence-model/ [https://perma.cc/XX9U-3XX7]; *Let Grow Legislative Toolkit*, LET GROW, https://letgrow.org/legislative-toolkit/ [https://perma.cc/F4Z8-3WT4] (last visited Dec. 13, 2024); Diane Redleaf, *The Challenge of Changing America's Amorphous, Limitless Neglect Laws*, IMPRINT (May 16, 2022, 1:00 AM), https://imprintnews.org/opinion/challenge-changing-americas-amorphous-limitless-neglect-laws/65055 [https://perma.cc/95XS-ZGF9].

[189] *See, e.g.*, Jill Vogel & Jennifer Boysko, *Column: Letting Kids Play Outside Isn't 'Neglect*,*'* RICHMOND TIMES-DISPATCH (Jan. 28, 2023), https://richmond.com/opinion/column/column-letting-kids-play-outside-isn-t-neglect/article_bf033a5c-9db0-11ed-99a7-53ffa0c8cf3c.html [https://perma.cc/69JQ-W92P].

[190] *See* Eleanor J. Bader, *No More Family Policing*, INQUEST (Dec. 7, 2023), https://inquest.org/no-more-family-policing/ [https://perma.cc/M3ET-NE2X].

[191] The former Colorado statute highlights the vagueness of neglect definitions. COLO. REV. STAT. §§ 19-1-103, 19-3-102, (2022) (emphasis added).

that the only age when it is definitively legal to leave a child alone, even briefly, is at twelve years old.[192] For many families, this is an impossible standard—they simply do not have the childcare and other resources to meet this very high bar.

The left-leaning organization, Let Grow, and the libertarian think-tank ALEC collaborated to propose similar model acts.[193] ALEC's model act specifies that

> Parents and guardians often are in the best position to weigh the risks and make decisions concerning the safety of children under their care . . . . The excessive investigation and prosecution of parents and guardians . . . has introduced unnecessary governmental intrusion into the homes of families and diverted valuable public resources . . . to inconsequential and trivial matters.[194]

The legislative intent highlights parents' constitutional rights, including their "decision to grant [their] children unsupervised time to engage in activities that include without limitation playing outside, walking to school, bicycling, remaining briefly in a vehicle, and remaining at home."[195] The model act puts forth a narrow definition of neglectful supervision, including a high mens rea of "blatant disregard:"

> Neglectful supervision means placing a child in or failing to remove a child from a situation that a reasonable person would realize requires judgment or actions beyond the child's level of maturity, physical condition, or mental abilities and that results in bodily injury or a substantial risk of immediate harm to the child as a result of a blatant disregard of parent or caretaker responsibilities . . . .[196]

The first state to enact such a statute was Utah—not a typical site of racial justice or progressive legislation.[197] The sponsor of Utah's "Free Range Parenting Act" flagged the vagueness problem and described the state neglect statute as "broad enough that anyone could say a child playing alone in a park was being neglected."[198] The statutory language in other states that have enacted narrowed neglect statues is very similar to the Oklahoma statute below. Contrast it with the former Oklahoma statute, which read only: "the failure . . . to

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[192] *What Is the Right Age for My Child to . . . ?*, CHILD.'S HOSP. COLO. (Dec. 12, 2019), https://www.childrenscolorado.org/conditions-and-advice/parenting/parenting-articles/the-right-age-to/ [https://perma.cc/9URF-2WEK].

[193] ALEC, *supra* note 4.

[194] *Id.*

[195] *Id.*

[196] *Id.*

[197] Joe Carter, *Utah Becomes First State to Legalize 'Free-Range Parenting*,*'* ACTON INST. (Apr. 5, 2018), https://rlo.acton.org/archives/101041-utah-becomes-first-state-to-legalize-free-range-parenting.html [https://perma.cc/T2U8-TYQ5].

[198] Donna De La Cruz, *Utah Passes 'Free-Range' Parenting Law*, N.Y. TIMES (Mar. 29, 2018), https://www.nytimes.com/2018/03/29/well/family/utah-passes-free-range-parenting-law.html.

provide . . . *adequate* nurturance and affection, food, clothing, shelter, sanitation, hygiene, or *appropriate* education."[199] The revised statute contains specific omissions that would constitute potential neglect and explicitly specifies that neglect does not include the following: "[A] child who engages in independent activities, except if the person responsible for the child's health, safety or welfare *willfully disregards* any harm or threatened harm to the child, given the child's level of maturity, physical condition or mental abilities."[200] The revised statute then includes a non-comprehensive list of such activities.[201] This much narrower and more specific definition excludes the reasons many families become entangled in the system, such as for children being left alone for "reasonable amounts of time" and the like.[202]

Unlike most neglect laws, these statutes differ significantly by including mens rea requirements and having a more limited scope, as demonstrated by the comparison between the old and new Oklahoma statutes. While many of the statutes mirror each other, there are slight differences between states. In Illinois, for example, there must be an "unreasonable risk of harm," in Virginia, the parental conduct must be grossly negligent,[203] and in Oklahoma, parents must demonstrate "willful[] disregard[]."[204] Notably, some of the state statutes provide greater specificity as to the "reasonable activities" children can perform independently. For instance, Montana allows children to "remain[] for less than 15 minutes in a vehicle if the temperature inside the vehicle is not or will not become dangerously hot or cold."[205] Others, as in Texas, do not name any specific activities, and simply state "independent activities that are appropriate and typical for the child's level of maturity, physical condition, developmental abilities, or culture."[206] Such statutes are not even on the agenda in most blue states, such as California and New York; they are currently just politically unfeasible.

2. Procedural Reforms: *Miranda* Rights & Narrowed Reporting

There have been numerous attempts, both successful and not, to provide reforms that offer greater procedural protections for families involved in the family policing system.[207] These include measures like *Miranda* warnings

[199] OKLA. STAT. tit. 10A, § 1-1-105 (2022) (emphasis added).

[200] OKLA. STAT. tit. 10A, § 1-1-105 (2023) (emphasis added).

[201] *Id.*

[202] *Id.*

[203] 705 ILL. COMP. STAT. 405/2-3 (2024); VA. CODE ANN. § 18.2-371.1 (2024).

[204] OKLA. STAT. tit. 10A, § 1-1-105 (2023).

[205] MONT. CODE ANN. § 45-5-622 (2023). In some states, specific provisions may differ because of essential compromises made to pass the legislation. For example, in Virginia, leaving a child briefly in a car is not included as a violation. Telephone Interview with E.S., family defender (July 15, 2023) (notes on file with author).

[206] TEX. FAM. CODE ANN. §§ 261.001–.505 (West 2024).

[207] *See* Hager, *supra* note 22.

before caseworkers enter and search homes without a warrant, as well as revisions to reporting laws which subject many families to investigations based on vague or unfounded accusations.[208]

a. Miranda *Rights*

Advocates have been trying for several years to enact a *Miranda* warning requirement in New York State, or even just New York City, but it has repeatedly failed to pass, including most recently in the spring of 2024.[209] Those opposing the bill are progressive legislators and social services workers, claiming to speak for children and opining that it will impede safety, despite research showing otherwise.[210] For instance, the union for state agency investigators opposed the bill, claiming that parents knowing their rights will lead to harm against children.[211] Influenced by the union and other state workers, the Democrat Senate majority leader blocked the measure from getting a vote, and it has not progressed since in the state or city legislature.[212] ACS in New York City, the largest agency in the state, engaged in "quiet lobbying" to block the bill, despite the agency being led for the last few years by a reformer "progressive" commissioner.[213]

Despite parents possessing constitutional rights, an agency spokesperson erroneously claimed that telling parents they have the right not to let caseworkers in without a warrant and the right to contact an attorney would be "a major and important change to the law."[214] After much advocacy and media attention, ACS did start a pilot project providing some parents with cards informing them of their legal rights. The cards, however, are not necessarily accessible to many parents with disabilities or other barriers, and, worse, "pieces of important

[208] *See id.* In the same bill as the narrowed neglect law, Texas also enacted numerous other significant procedural changes, such as a robust "probable cause" to gain court-ordered entry into a home and prohibiting removal of a child for marijuana use alone.

[209] S.B. S901, 2023 Reg. Sess. (N.Y. 2023) (requiring that every parent who is subject of investigation has knowledge of their rights in "Parental Bill of Rights"). The legislation failed to pass in spring 2024, repeatedly blocked by Democrats claiming to worry about child safety. *See* Arbetter, *supra* note 20.

[210] *See* Roxanna Asgarian, *Strengthening Parents' Rights: New York City Child Welfare Agency Says Not So Fast*, IMPRINT (June 23, 2023, 12:20 PM), https://imprintnews.org/top-stories/strengthening-parents-rights-new-york-city-child-welfare-agency-says-not-so-fast/242471 [https://perma.cc/KAJ3-DVSN].

[211] *See id.*; *see also* Hager, *supra* note 22 (detailing behind-the-scenes advocacy of ACS to block bill in repeated legislative sessions).

[212] Hager, *supra* note 22.

[213] *See generally Gould* Complaint, *supra* note 9.

[214] Hager, *supra* note 23; *see* Tehra Coles, Lauren Shapiro, Emma Ketteringham & Zainab Akbar, Opinion, *Black Parents in N.Y. Need to Know Their Rights*, N.Y. DAILY NEWS (Feb. 26, 2024, 5:00 AM), https://www.nydailynews.com/2024/02/26/black-parents-in-n-y-need-to-know-their-rights/.

information are buried, threateningly-worded, or left out altogether."[215] Moreover, this policy, which falls far short of what exists in Texas or what the proposed legislation in New York requires, allows the agency to "pick[] and choos[e] who is informed of their rights and when," inserting even more discretion into a system already riven with racial disproportionality.[216] Progress is even slower in other blue states, such as Massachusetts where nascent efforts for civil *Miranda* rights are underway, but unlikely to bear fruit for several years.[217]

What advocates could not accomplish in these blue states, however, was recently enacted in Texas with "little fanfare or controversy."[218] The Texas legislature enacted a state statute requiring *Miranda* rights, Republican Governor Greg Abbott signed the legislation, and it took effect September 2023.[219] As with the famous warnings in the criminal law context, family policing workers will be required to inform parents that they have the right to remain silent, to have a lawyer, and to decline searches of their homes and children.[220] Statements made without *Miranda* rights being given are inadmissible, as is anything derived from the statement—the law actually has teeth! In supporting the law, local legislators and advocates emphasized not only the importance of curtailing government intrusion but also the lack of due process in current practices.[221] And the same bipartisan coalition that worked to pass the narrowed neglect laws moved this measure forward.[222] It is currently in agreement on limiting or eliminating mandatory reporting laws, which would again be a national outlier.[223]

b. *Narrowed Reporting*

Yet again, Texas was ahead of more "progressive" states such as New York in significantly changing the system's procedure by eliminating anonymous

[215] *See* Coles et al., *supra* note 214.

[216] *Id.*

[217] Telephone Interview with S.T., family defense attorney in Massachusetts (Oct. 11 2024) (notes on file with author).

[218] *See* Asgarian, *supra* note 19.

[219] *Id.* Although Connecticut passed a *Miranda* law in this context over a decade ago, the Texas law goes quite a bit further in that it requires orally informing parents of their rights at the first point of contact and also provides for exclusion of wrongfully admitted evidence. *See* CONN. GEN. STAT. § 17a-103d(a) (2023).

[220] Hager, *supra* note 22.

[221] Dey, *supra* note 4.

[222] Asgarian, *supra* note 19 ("[T]he reforms represent an unlikely alliance between conservative legislators and progressive-minded activists who are seeking to reduce the surveillance of poor and Black families by the state's child welfare agency."); *see also* ALEC, *supra* note 4.

[223] Telephone Interview with B.D., *supra* note 41.

reporting.[224] In 2023, Texas enacted a law authored by a Republican, which enacts a "sea change" by banning anonymous reporting "with the goal of reducing false reports that can come from vindictive ex-partners or others using abuse reports as a tool to harass parents."[225] As one conservative state advocacy group noted when endorsing the bill, it "discourages malicious false reports, and improves CPS investigations."[226] Conservative groups, such as the Parental Rights Foundation, have also drafted model laws in this realm, such as one changing anonymous reporting to confidential reporting.[227]

Government officials in bluer states have taken a very different position on this issue. Massachusetts recently tried to expand reporting.[228] In New York, a bill to ban anonymous reporting "has yet to receive a full vote in the state Legislature" and stalled, after failing in other years.[229] A bill did pass in 2023 in California, despite Los Angeles agency officials claiming that anonymous reporting is "essential to child safety."[230] Indeed, the politics around this system are so skewed in more liberal states, such as New York and Massachusetts, that advocates have turned to lawsuits after legislative failures to increase public attention and pressure, as well as perhaps achieve a court win for some families.[231] The cases in each state both allege constitutional violations from warrantless searches and coercive and harmful interactions with agents and, in some cases, police, based on anonymous or flawed reports.[232] The cases also meaningfully differ, however, in that the New York one describes a systemic

[224] Asgarian, *supra* note 19.

[225] Dey, *supra* note 47; Asgarian, *supra* note 19.

[226] Ella Carter & Andrew C. Brown, *From Policy to Progress: Highlighting the Successful Child Welfare Bills of the 88th Texas Legislature*, TEX. PUB. POL'Y FOUND. (July 30, 2023), https://www.texaspolicy.com/from-policy-to-progress-highlighting-the-successful-child-welfare-bills-of-the-88th-texas-legislature/ [https://perma.cc/FK9G-QEJR].

[227] *Confidential Reporting*, PARENTAL RTS. FOUND. (Jan. 10, 2022), https://parentalrightsfoundation.org/confidential-reporting/ [https://perma.cc/PT67-3XR4] (discussing how anonymous reporters, who can be "an angry neighbor" or "a parent in a nasty divorce situation," can "weaponiz[e] the system" via placing anonymous calls).

[228] While the path for expansion stalled, a Massachusetts commission considered expansion of reporting. *See Massachusetts Commission Declines to Recommend Expansion of Mandated Reporters*, IMPRINT (July 12, 2021, 4:50 PM), https://imprintnews.org/news-briefs/massachusetts-commission-declines-to-recommend-expansion-of-mandated-reporters/56821 [https://perma.cc/D4SM-TCLW].

[229] Loudenback, *supra* note 139.

[230] *Id.*

[231] *See generally Gould* Complaint, *supra* note 9; Sabey v. Butterfield, No. 23-10957, 2024 WL 1107867 (D. Mass. Mar. 14, 2024).

[232] *See Gould* Complaint, *supra* note 9, at 3-4; *Sabey*, 2024 WL 1107867, at *2-3; Ryan Kath & Shira Stoll, *Federal Lawsuit Moving Forward After Kids Removed from Waltham Home at 1 A.M.*, NBC BOS., https://www.nbcboston.com/investigations/federal-lawsuit-moving-forward-after-kids-removed-from-waltham-home-at-1-a-m/3313057/ [https://perma.cc/96D7-LDKC] (last updated Mar. 20, 2024, 1:12 PM).

racialized pattern with nine diverse plaintiffs, whereas the Massachusetts one is based on the experiences of one White family.[233]

B. *Interest Convergence Theory & Practice*

How did these changes come about? This Section outlines Professor Derrick Bell's classic interest convergence theory. It then flags some contemporary examples of these "strange bedfellow" coalitions in other contexts, before turning to unusual alliances in family policing system reform.

1. Interest Convergence

a. *Theory*

In several groundbreaking articles, Professor Derrick Bell aptly described how progress toward racial equality is usually not due to equality-based ideological commitments or a desire to do better, but rather a determination by the White majority societal powers that some racial equality would also benefit their interests.[234] After decades of unsuccessful advocacy, power structures such as the federal government and the Supreme Court were ready to address racially segregated education because they could "see the economic and political advances" that could follow de jure desegregation.[235] For instance, it would help with returning Black military members who had fought for "equality and freedom" in World War II, now developing the sunbelt South to the benefit of Whites there, and, particularly, with the nation's reputation abroad and in its ideological struggle against communism.[236] Accordingly, "in 1954, the skies opened" with the *Brown* holding.[237] Although this theory, like all theories, has its limits, this critical theoretical insight has been proven accurate in numerous contexts, as I outline further below.[238]

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[233] *See* Sarkar & Fitzgerald, *supra* note 140 (describing NYC lawsuit that seeks both individual damages and "to overhaul child maltreatment investigations citywide").

[234] Derrick A. Bell, Jr. first posited the theory in *Racial Remediation: An Historical Perspective on Current Conditions*, 52 NOTRE DAME LAW. 5, 6 (1976), and further developed the theory a few years later. *See* Bell, *supra* note 33, at 523-24 (describing theory in context of *Brown* school desegregation case and U.S. foreign policy).

[235] Bell, *supra* note 33, at 524; *see also* William M. Carter, Jr., *The Thirteenth Amendment, Interest Convergence, and the Badges and Incidents of Slavery*, 71 MD. L. REV. 21, 25 (2011), ("Under this view, American apartheid ended only when it no longer served the material interests of [W]hite elites.").

[236] Bell, *supra* note 33, at 524-25.

[237] Richard Delgado, *Rodrigo's Roundelay:* Hernandez v. Texas *and the Interest-Convergence Dilemma*, 41 HARV. C.R.-C.L. L. REV. 23, 41 (2006); *see also* Bell, *supra* note 33, at 524-25 (noting that NAACP and federal government attorneys explicitly made arguments about fighting Communism to support desegregation).

[238] For a thoughtful and detailed critique, see generally Justin Driver, *Rethinking the Interest-Convergence Thesis*, 105 NW. U. L. REV. 149 (2011) (pointing out analytical flaws including oversimplifying intragroup differences; positing static status of Black people over

Some may deem it pessimistic, but interest convergence can also be seen as realistic, serving as a pragmatic tool for activists.[239] At its first writing, some were "outrage[d]" and took it as a personal condemnation, arguably reflecting more their own lack of self-awareness than a critique of the theory itself.[240] As Bell specifies, it "emphasize[s] the world as it is rather than how we might want it to be,"[241] and accordingly offers "strategies and perhaps some solace" for activists.[242] The theory recognizes the constantly demonstrated fact that too few people in power are really willing to take "the personal responsibility and the potential sacrifice" of their privileges that are essential to achieve racial equality.[243] That is a depressing statement on our racially unequal society.[244] But it is also pragmatic, and thus helpful to achieve actual change.

A clarification is due here: it is not that the elites perform a conscious calculus of whether racial justice advances will personally benefit them, although some might. Rather, most elites generally do not support civil rights measures that benefit only marginalized communities and not themselves.[245] Recognizing the "deeper truth about the subordination of law to interest-group politics with a racial configuration," Bell's theory relies on having a material—not merely an ideological—interest overlap.[246] This material interest convergence can, however, sweep broadly. For instance, eliminating slavery not only benefitted Black enslaved people; it also benefitted the White abolitionists who were severely punished for supporting abolition, the White working class whose

time; minimizing individual agency; and the fact that theory cannot be tested or refuted). The critique is persuasive in some respects, but does not dilute the power of Bell's theory, especially in the decade and a half since Driver's article was published.

[239] *See* Alexis Hoag, *Derrick Bell's Interest Convergence and the Permanence of Racism: A Reflection on Resistance*, HARV. L. REV. BLOG (Aug. 24, 2020), https://harvardlawreview.org/blog/2020/08/derrick-bells-interest-convergence-and-the-permanence-of-racism-a-reflection-on-resistance/ [https://perma.cc/GN6C-R4HV].

[240] *See* Richard Delgado, *Explaining the Rise and Fall of African American Fortunes—Interest Convergence and Civil Rights Gains*, 37 HARV. C.R.-C.L. L. REV. 369, 373 (2002) (noting Bell's theory met with "cries of outrage" and seen as "cynical explanation of [W]hites' benevolent conduct").

[241] Bell, *supra* note 33, at 523.

[242] Bell, *supra* note 234, at 5-6 (noting "optimism for the future must be tempered by past experience and contemporary facts").

[243] Bell, *supra* note 33, at 522.

[244] Carter, *supra* note 235, at 21 (arguing that despite its intention, Thirteenth Amendment has not eliminated legacies of slavery).

[245] Bell, *supra* note 33, at 525 (noting that "there were [W]hites for whom recognition of the racial equality principle was sufficient motivation," but "the number who would act on morality alone was insufficient to bring about the desired racial reform").

[246] *Id.* at 523; *see also* Bryan L. Adamson, *The H'aint in the (School) House: The Interest Convergence Paradigm in State Legislatures and School Finance Reform*, 43 CAL. W. L. REV. 173, 174-75 (2006) ("Victories gained by African Americans never arose out of an absolute moral imperative of restorative justice . . . .").

wages the slavery system drove down, and even the nation more broadly for its collective moral shame.[247] To take another example, Professor Richard Delgado has urged different non-White racial and ethnicity groups to overcome "dichotomous thought," because it hinders their "ability to forge useful coalitions."[248] In short, interest convergence theory can apply to a wide range of fields and potential reforms, particularly if advocates are strategic.[249]

b. *Examples*

Beyond *Brown v. Board of Education* and school desegregation, there are numerous examples of interest convergence, including a growing number in recent years. Although this is far from a comprehensive accounting of these alliances, it does demonstrate their proliferation and potential to bring meaningful change.[250] These alliances span multiple areas, including small-government Republicans and traditionally left-leaning teachers' unions in education policy,[251] anti-abortion "Right to Life" groups allied with pro-immigration nonprofits as to prenatal health care,[252] and environmental groups

[247] Carter, *supra* note 235, at 36-37.

[248] Richard Delgado, *Derrick Bell's Toolkit—Fit to Dismantle that Famous House?*, 75 N.Y.U. L. REV. 283, 302-06 (2000) (noting that failure to perceive these opportunities for alliance can "disguise the way [dominant] American society often affirmatively pits groups against one another, using them as agents of each other's subordination").

[249] For several recent examples, see Jasmine E. Harris, *COVID-19 as Disability Interest Convergence?*, PETRIE-FLOM CTR. (Sept. 29, 2022), https://blog.petrieflom.law.harvard.edu/2022/09/29/covid-disability-interest-convergence/ [https://perma.cc/UVF3-ZHF9] (discussing that although pandemic lacks certain catalysts for interest convergence, use of disability frames has proven successful for increased inclusivity); Ndjuoh MehChu, *No Child Left Behind? An Interest-Convergence Roadmap to the U.S. Ratification of the Convention on the Rights of the Child*, 76 N.Y.U. ANN. SURV. AM. L. 1, 4 (2020) (arguing for American ratification of United Nations Convention on the Rights of the Child to decrease international criticism of "U.S. government's mistreatment of migrant children and families").

[250] Indeed, these coalitions have been active for longer than most people know. *See, e.g.*, Neena Satija, *Water Funding Proposition Makes Unusual Allies*, TEX. TRIB. (Oct. 14, 2013, 6:00 PM CT), https://www.texastribune.org/2013/10/14/strange-bedfellows-come-together-prop-6-campaign/ [https://perma.cc/Z7P3-Q9QU] (quoting leader of Texas environmental group remarking on strong "connection between fiscal conservatives and conservationists").

[251] Libby Nelson, *The Bizarre Alliance Between Republicans and Teachers Unions, Explained*, VOX (July 17, 2015, 6:10 PM), https://www.vox.com/2015/7/16/8982409/republicans-teachers-unions [https://perma.cc/DG8T-4XRU] ("Teachers unions and Senate Republicans might not have shared the same rationale — unions were defending their members' interests, while Republicans were arguing in favor of small government. But they wanted the same result: an end to the federal accountability system for K-12 schools.").

[252] Fred Knapp, *Unusual Alliances Form in Nebraska's Prenatal Care Debate*, NPR (Apr. 18, 2012, 3:03 AM), https://www.npr.org/sections/health-shots/2012/04/18/150839788/unusual-alliances-form-in-nebraskas-prenatal-care-debate [https://perma.cc/C6Y7-A6UW]

and right-wing libertarian, landowner/taxpayer groups allied to oppose development.[253] Another prominent example is around gun regulation, although various groups would instead frame the issue as "gun rights" or "racial justice." Gun regulation has exhibited unusual alliances for over a decade, culminating in the *New York State Rifle & Pistol Association v. Bruen*[254] case before the U.S. Supreme Court in 2022.

2. Alliances in the Family Policing Context

The significant gains in substantive and procedural rights in the family policing system outlined above were achieved through a deliberate alliance between libertarian and family defender forces. This coalition not only helps achieve immediate gains for marginalized communities but can also be a valuable step toward long-term power shifting and the eventual abolition of the family policing system, with a community-based support system as its replacement.

("A political showdown over taxpayer funding of prenatal care for [noncitizens] has produced some unusual political splits and alliances in the statehouse of the Cornhusker State.").

[253] Robert G. McLusky & Matthew S. Tyree, *Sierra Club Links Up with Libertarian Landowners in Continued Opposition to Gas Development*, JACKSON KELLY (Sept. 7, 2017), https://www.jacksonkelly.com/energy-environment-blog/sierra-club-links-up-with-libertarian-landowners-in-continued-opposition-to-gas-development [https://perma.cc/N6YS-3EG2] (reporting that Sierra Club and local partners in Virginia "have focused their efforts on joining forces with local landowners to oppose both pipeline permits and legislative efforts to allow development of fractionated ownership interests in the gas"); Joshua Haiar, *Unusual Alliances Emerge amid Opposition to Eminent Domain for Carbon Pipelines*, NEB. EXAM'R (July 10, 2023, 3:30 AM), https://nebraskaexaminer.com/2023/07/10/unusual-alliances-emerge-amid-opposition-to-eminent-domain-for-carbon-pipelines/ [https://perma.cc/ZS9F-529D] (noting unique coalition "includes Republicans, Democrats, climate change deniers who see the pipelines as a boondoggle, and environmentalists skeptical of the pipelines' benefits").

[254] 597 U.S. 1 (2022); *see, e.g.*, Ralph Blumenthal, *Unusual Allies in a Legal Battle over Texas Drivers' Gun Rights*, N.Y. TIMES (Apr. 5, 2007), https://www.nytimes.com/2007/04/05/us/politics/05guns.html (detailing Texas alliance between state affiliate of National Rifle Association and American Civil Liberties Union of Texas and Texas Criminal Justice Coalition "to spotlight unlawful, unnecessary governmental encroachment on average law-abiding citizens"); Adam Edelman, *Strange Alliances Emerge in Tennessee as the GOP Governor Pushes for Gun Reform*, NBC NEWS (May 20, 2023, 5:00 AM), https://www.nbcnews.com/politics/politics-news/strange-alliances-tennessee-gop-governor-pushes-gun-reform-rcna81613 [https://perma.cc/K4HF-J9HC] (reporting coalition between Republican governor and gun safety groups). As to *New York State Rifle & Pistol Association v. Bruen*, 597 U.S. 1 (2022), see Brief of the Black Attorneys of Legal Aid, the Bronx Defenders, Brooklyn Defender Services, et al. as Amici Curiae in Support of Petitioners, N.Y. State Rifle & Pistol Ass'n., Inc. v. Bruen, 597 U.S. 1 (2022) (No. 20-843) [hereinafter Black Attorneys of Legal Aid et al. Amicus].

a. *Laying the Groundwork Historically*

These unusual coalitions have been a long time in the making. Indeed, early family defenders report that they were approached about potential collaboration by Michael Farris, the founder of conservative ParentalRights.org, as early as the mid-1990s.[255] Over the next decades, Diane Redleaf, Marty Guggenheim, and others seeking to reform the family policing system engaged in some advocacy with Farris, while not finding common ground with high profile children's advocates.[256]

One of the earliest, widescale, public instances of this right-left alliance was in the 2011 U.S. Supreme Court case *Camreta v. Greene*,[257] concerning the extent of government power to search on suspicion of child neglect or abuse.[258] The case was eventually dismissed on mootness grounds.[259] While many professional organizations of social workers and prosecutors, as well as governmental entities, including counties, school boards, forty-two states, and the federal government, supported invasive searches of families, the line-up on the other side included both progressive public interest organizations (such as Lawyers for Children) along with conservative think tanks and advocacy organizations (such as the Home School Legal Defense Association and Family Research Council).[260] Sometimes these conservative groups collaborated with legal services and (what we would now call) family defense offices to draft amicus briefs.[261]

Almost all of the amici supporting the parent-defendant speak at length about parental rights.[262] In contrast, amici supporting the petitioners' state rights,

[255] Telephone Interview with E.S., *supra* note 205; E-mail from Martin Guggenheim to Cynthia Godsoe, *supra* note 41.

[256] *See* Telephone Interview with E.S., *supra* note 205; E-mail from Martin Guggenheim to Cynthia Godsoe, *supra* note 41.

[257] 563 U.S. 692 (2011).

[258] *See id.* at 697-98.

[259] *Id.* at 698 (determining case was moot at time of appeal to U.S. Supreme Court, because child in question had grown up, moved away from state in which interview occurred, and was no longer subject to interviewing practices in question).

[260] *See, e.g.*, FAM. RSCH. COUNCIL, https://www.frc.org/ [https://perma.cc/7S5N-NKBG] (last visited Dec. 13, 2024) (describing organization as "committed to advancing faith, family, and freedom in public policy and the culture from a biblical worldview"); LAWS. FOR CHILD., https://www.lawyersforchildren.org/ [https://perma.cc/SH52-SWD3] (last visited Dec. 13, 2024) (demonstrating organization's commitment to providing legal and social work services for children in foster care and engaging in policy work to reform child welfare system).

[261] *See* Brief of Amici Curiae the American Family Rights Ass'n et al. in Support of Respondents at 1-3, Camreta v. Greene, 563 U.S. 692 (2011) (Nos. 09-1454, 09-1478) (presenting amici curiae as "collection of non-profit organizations and advocacy groups with a strong interest in parental and family rights" and listing mix of conservative advocacy groups, legal service agencies, and family defense offices).

[262] *See id.* at 7; *see also, e.g.*, Brief of the Family Research Council and the American Coalition for Fathers and Children as Amicus Curiae in Support of the Respondents at 2-9,

remark on the purportedly minimally invasive nature of questioning a young child without parental consent; claim that these are not criminal proceedings and thus that there are no Fourth Amendment implications; and, most of all, assert potential harm to children if anything changes.[263] Again, we see child-saving weaponized against families.

Two amici filed nominally as "neutral" do not actually appear to be.[264] Instead, they largely ignore family ties while catastrophizing potential and unproven harm to children: "We well know, as the evidence cited above suggests, that a large number of children will die if CPS is impeded in its task—an appalling and largely unreported number already die from child abuse with prior or pending CPS investigations."[265]

In contrast, amici for the respondent-parent delve into detail about the need for parental consent, the presumption of parental fitness, and the larger framework of family privacy and parental rights over their children's education.[266] These briefs employed the same parental rights language that had long been used successfully to support home schooling, corporal punishment, and other conservative family law issues, to now support a man accused of child abuse, and more broadly, the marginalized families in the family policing system.[267] This bipartisan coalition was groundbreaking, and the result of much behind-the-scenes advocacy, but has gone largely unnoticed by scholars.

Camreta, 563 U.S. 692 (Nos. 09-1454, 09-1478) (discussing Supreme Court's affirmation of parental rights against state interference and concluding these cases demonstrate parents' fundamental liberty to protect and manage their children).

[263] *See* Amicus Curiae Brief of the District Attorneys of San Diego County, California and Sacremento County, California in Support of Petitioners, Bob Camreta and James Alford, Deschutes County Deputy Sheriff at 24-25, *Camreta*, 563 U.S. 692 (Nos. 09-1454, 09-1478); Brief for Nat'l School Bds. Ass'n et al. as Amici Curiae Supporting Petitioners at 3-4, *Camreta*, 563 U.S. 692 (Nos. 09-1454, 09-1478).

[264] *See* Brief of the Cook County Public Guardian as Amicus Curiae in Support of Neither Party and Suggesting Reversal at 7, *Camreta*, 563 U.S. 692 (Nos. 09-1454, 09-1478) (noting that parents' right to care and control their children is qualified, and that parents have no constitutional right to be free from child abuse investigations); Amicus Curiae Brief of the Children's Advocacy Institute in Support of Neither Party at 37, *Camreta*, 563 U.S. 692 (Nos. 09-1454, 09-1478) (defending Child Protective Services and State as protector of children).

[265] *See* Amicus Curiae Brief of the Children's Advocacy Institute in Support of Neither Party, *supra* note 264, at 37.

[266] *See, e.g.*, Brief for Center for Law and Education et al. as Amici Curiae in Support of Respondent at 9, *Camreta*, 563 U.S. 692 (Nos. 09-1454, 09-1478) ("Parents do not and need not expect a wholesale surrender of their rights to exercise care, custody, and control over their children during school hours.").

[267] *See* Brief of the Family Research Council and the American Coalition for Fathers and Children as Amicus Curiae in Support of the Respondents, *supra* note 262, at 10-11 (noting the Court's recognition of parental rights); Brief for Center for Law and Education et al. as Amici Curiae in Support of Respondent, *supra* note 266, at 28 (indicating parents retain their rights even when their children are at school).

b. *Current Robust Bipartisan Alliances*

On the right are organizations such as the Texas Public Policy Institute, the Libertas Institute, the Institute for Family Studies,[268] the American Legislative Exchange Council ("ALEC"), the Parental Rights Foundation, and Homeschool Legal Defense Fund. On the left are the Family Defense Institute and the ACLU.[269] There are also a few expressly bipartisan organizations founded to work on these issues, proposing model acts and lobbying together in states.[270] In addition to drafting model bills and engaging in legislative advocacy, bipartisan coalitions have also submitted amicus briefs challenging the family policing system in individual cases, and more broadly.[271] For instance, the Parental Rights Foundation joined with family defenders and progressive nonprofits as amici to clarify a higher standard for the termination of parental rights ("TPR") in Michigan, opposing TPRs for parents who "struggled with addiction" and where children could be safely cared for by relatives.[272]

Progressive or liberal advocates and legislators are often silent, and even oppose enforcing parental protections in this field.[273] Groups claiming to "save children" were particularly likely to oppose it. For instance, the District Attorneys' Association killed the narrowed neglect bill in Nebraska.[274] In other states, the "child welfare" agency opposed reforms, including those proposing caseworkers inform parents about their rights.[275]

Several motivations emerge for the more conservative groups and legislators. First, opposing big government and state overreach is very important, along with saving money from downsizing the system. Tellingly, one commentator described the political powers in Utah, who are overwhelmingly Mormon, as "fairly libertarian" and "notoriously distrustful" of government.[276] Another

[268] INST. FOR FAM. STUD., https://ifstudies.org/about/our-mission [https://perma.cc/3K4W-8H4S] (last visited Dec. 13, 2024) (stating mission is to "strengthen marriage and family life").

[269] *Legislative Highlights*, *supra* note 183 (noting partnership with ACLU of Illinois to support state Senate bill protecting parental rights during abuse or neglect investigation ordered by children and family services agency).

[270] The Parental Rights Foundation advertises itself as "protecting children by empowering parents." *Protecting Children by Empowering Parents*, PARENTALRIGHTS.ORG, https://parentalrights.org/ [https://perma.cc/FYD6-NVJU] (last visited Dec. 13, 2024).

[271] *See Foundation Joins Briefs, Submits Briefs in Michigan TPR Cases*, PARENTAL RTS. FOUND. (May 3, 2024), https://parentalrightsfoundation.org/foundation-joins-briefs-submits-briefs-in-michigan-tpr-cases/ [https://perma.cc/4JP4-P2QT] (hoping to challenge ASFA and "shift the entire discussion of parental rights terminations").

[272] *Id.*

[273] Telephone Interview with E.S., *supra* note 205.

[274] *Id.*

[275] *See* Hager, *supra* note 22.

[276] Naomi Schaefer Riley, *Why Utah Adopted the Nation's First "Free-Range Parenting" Law*, INST. FOR FAM. STUD. (Apr. 3, 2018), https://ifstudies.org/blog/why-utah-adopted-the-nations-first-free-range-parenting-law.

lawyer supporting the Utah statute put it more starkly, naming government actors "Regulators," and arguing that the bill was necessary because "Regulators' animosity toward parental autonomy has increased, [imperiling] traditional childhood activities and family lifestyles."[277] The suspicion of government is very apparent, with commentators noting that government agents use neglect laws "to expand their own power and leverage implementation of their own child-raising philosophies against the will of parents."[278] Even in a more moderate state like Connecticut, legislators supporting the bill "affectionally call[] it the free range kids bill," and propose it to correct for excessive state intrusion and to achieve "a happy balance with allowing parents to exercise reasonable latitude in what they will allow or not allow their children to do."[279] Much of this conservative movement is explicitly evangelical Christian, such as the homeschooling movement and the push for latitude to corporally punish; interestingly, however, unlike the adjacent child saving movement, it cuts for more family autonomy, rather than less.[280]

A second impetus is to improve outcomes for children and society. As the Oklahoma bill sponsors note, "Youth anxiety, depression, obesity and diabetes have all been going up as childhood independence goes down. Let's help bring it back!"[281] Sometimes the motivation is personal: one Republican legislator sponsored a free-range parenting bill in her state after someone called 911 to report that her eight- and ten-year-old grandchildren were playing on their quiet street.[282] Although Representative Alexis Hansen is White, married, and her son

[277] Dan Witte, *Senate Bill S.B. 65 - Utah's Important New "Free-Range Parenting Law" Protecting Utah Parents and Children*, PEARSON BUTLER (July 13, 2018), https://www.pearsonbutler.com/blog/2018/july/senate-bill-s-b-65-utahs-important-new-free-rang/ [https://perma.cc/R8L2-4W3B]; *see also SB 65: Protect "Free-Range" Parenting*, LIBERTAS INST., https://libertas.org/bill/sb-65-protect-free-range-parenting/ [https://perma.cc/DA9P-H78S] (last visited Dec. 13, 2024) (praising bill as helping Utah to steer "clear of the many notorious examples happening nationwide were [sic] police and bureaucrats intervene, separate children, arrest parents, etc.").

[278] Witte, *supra* note 277.

[279] Transcript of Conn. Gen. Assembly Senate Regular Session at 220 (May 23, 2023) (statement of John A. Kissel, State Senator, 7th Senate District) (detailing "free range kids" bill and goal of allowing parents to give children latitude without fearing enforcement actions).

[280] For discussion of punitive intrusions into the family in the name of child saving, see *supra* notes 83-87.

[281] Chad Caldwell & Jacob Rosecrants, *Opinion: A Bipartisan Bid to Save Childhood*, OKLAHOMAN (Mar. 26, 2021, 6:01 AM CT), https://www.oklahoman.com/story/opinion/2021/03/26/opinion-bipartisan-bid-save-childhood-oklahoma/6986563002/ [https://perma.cc/6MFV-ZP75].

[282] *See* Lenore Skenazy, *In Oklahoma and Texas, Parents Who Let Their Kids Play Outside Will No Longer Fear Neglect Charges*, REASON (Apr. 29, 2021, 2:01 PM), https://reason.com/2021/04/29/reasonable-childhood-independence-texas-oklahoma-parenting/ [https://perma.cc/3SC2-4AS3].

is a doctor, her concern went beyond their individual case to the many less privileged families, including single mothers, such as the one who raised her.[283]

III. PROMISE AND PERILS OF INTEREST CONVERGENCE

If the state agents start to change their message to adopt the policies we are pushing for, that's not co-optation—that means we're winning.[284]
—self-described conservative Texas policy advocate

When a "free-range" White middle-class family was found neglectful, an attorney said, "I've worked in this field for 35 years, and I can't remember when child-welfare cases like this have been in the news.[285]
—Diane Redleaf, one of the first family defense attorneys

I respect what they have been able to accomplish [in states like Texas] but the movement is too White, and so doesn't always reflect the different experiences of the families actually in the system.[286]
—J.N., impacted parent and movement leader from New York

This Part outlines the benefits and risks of reform through interest convergence, both in the short and long terms. After examining three benefits and three risks, I conclude that the benefits outweigh the risks, at least for short-term change.

A. *Promise*

1. Material Benefits

A major benefit is that these changes can lead to improvement for actual people.[287] First, and most significantly, these changes will mean harming fewer

[283] *See id.* As I discuss further *infra* at notes 332-36, the ability to publicly discuss and advocate around one's own experience with the family policing system is something that is itself more limited to affluent, White families. *See, e.g.*, Arons, *supra* note 150, at 1060, 1062 n.12 (discussing *Clark v. Stone*, 998 F.3d 287 (6th Cir. 2021), in which "[W]hite, politically connected [father] with the means to pursue a civil rights suit" was supported by conservative politicians such as Kentucky Governor Andy Beshear, and ultimately prevailed in establishing warrant requirement for family policing searches).

[284] Telephone Interview with B.D., *supra* note 41 (noting that government position must be continually monitored to ensure that they are on board).

[285] Michelle Goldberg, *Whose Kids Is Big Brother Watching*, NATION, Oct. 19, 2015, at 13.

[286] Telephone Interview with K.O., impacted parent and movement leader from New York (Feb. 26, 2024) (notes on file with author).

[287] *See, e.g.*, Black Attorneys of Legal Aid et al. Amicus, *supra* note 254, at 5, 33 (arguing that striking down restrictions on gun ownership will benefit Black and Brown people, who constitute vast majority of those prosecuted for unauthorized gun ownership).

children and families in the family policing system. Because the family policing system is challenging to study, and changes to the system are relatively new, it is difficult to presently quantify results from these changes. There is, however, evidence from some states about the large positive impact of narrowed neglect laws.[288] For instance, the year after Texas enacted the narrowed neglect law, removals of children from their homes dropped almost 50% compared to two years earlier, and over 100% between the 2018 and 2022 fiscal years.[289] Experts and advocates across the political spectrum attribute this huge drop to the narrowed neglect law (and to a lesser extent to the recent procedural reforms).[290] Significantly, they report no increase in child fatalities or other indication that the much smaller system led to any tradeoff in safety.[291]

The impact of this unprecedented nationwide drop cannot be overstated; thousands more families have remained intact, avoiding the immense trauma of separation and the frequent harms of the foster system.[292] Beyond avoiding system involvement itself, parents and children experience significant psychological benefits when they do not have to worry about potential visits from caseworkers and police officers.[293] Additional benefits include a greater ability for the state to focus resources, such as foster homes, on those children who are most at risk, and more public education and transparency about the system.[294] More broadly, narrowing the front door—whether decreasing invasive and unnecessary investigations by banning anonymous reports or traumatizing and usually unnecessary court cases and removals by narrowing neglect laws—is a significant step toward long-term change.[295]

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[288] Asgarian, *supra* note 19 (reporting drop from over 16,500 children removed in 2020 to 9,600 in 2022 in Texas); *see also* Sciacca, *supra* note 19.

[289] *See* Asgarian, *supra* note 19; Sciacca, *supra* note 19.

[290] *See* Sciacca, *supra* note 19 (including interviews from wide range of system actors and advocates, including judges, conservative lobbyists, and abolitionist organizers, all crediting narrowed neglect law with most of this systemic downsizing).

[291] *See id.*

[292] *See id.*

[293] One psychologist surveyed Utah parents on the first narrowed neglect law, reporting overwhelmingly positive effects from "empower[ing] parents to allow more freedom for their children." *See* Peter Gray, *Legislation and Public Policy Aimed at Restoring Childhood*, PSYCH. TODAY (Aug. 19 2019), https://www.psychologytoday.com/us/blog/freedom-to-learn/201908/legislation-and-public-policy-aimed-at-restoring-childhood.

[294] *See* Sciacca, *supra* note 19 (showing narrowing focus helped children who needed help most, as opposed to children who could stay safely at home or with relatives). Regarding the benefits of transparency, see Zohra Ahmed, *The Demand for Transparency as Non-Reformist Reform*, LAW & POL. ECON. PROJECT (Jan. 15, 2024), https://lpeproject.org/blog/the-demand-for-transparency-as-non-reformist-reform/ [https://perma.cc/K8D3-L6BM] (acknowledging that transparency alone is not enough but, in context, it can help build coalitions and disrupt carceral systems). This is related to changing the narrative, discussed *infra* at Part III.A.3.

[295] Even the quite minimal pilot project New York City engaged in to give some parents "know-your-rights" cards, described *supra* at notes 214-17, has had a major impact in just six

2. Circumvention of Pathological Politics

Second and relatedly, these alliances get around partisan politics, which can be particularly entrenched and resistant to any change that is deemed more "lenient" on families. While family law politics may seem inherently bipartisan to some, state aid for low-income families has always been racialized and stigmatized.[296] The government consistently underfunds families, depriving children of even basic necessities such as food, health care, and education.[297] The family policing system demonstrates this pathology in its most extreme form, as so many commentators have pointed out in detail; states spend billions of dollars to investigate and separate families, rather than provide them with minimal financial aid.[298] (An additional word on money: in addition to political clout, many of the right-leaning groups have significant resources, which they use to advertise and lobby for this legislation.[299])

These pathological politics both reflect the systemic racism entrenched in carceral state systems, and the concomitant failure of other frameworks, such as evidence-based or well-being-centered ones, to be applied on the ground to marginalized communities. Professor Mariela Olivares describes such approaches to families as "presuppos[ing] a 'race-neutral' vacuum in which policymakers and judges would not castigate families of color, migrants, and poor families."[300] Yet this ideal does not exist and reality "is inextricable from

months in downsizing the system, with about 20% of "early-stage" cases being diverted away from investigation. *See* Sarkar & Fitzgerald, *supra* note 140.

[296] Cynthia Godsoe & Steven Dean, *It's Time for an Antiracist Welfare Policy*, IMPRINT (Mar. 15, 2021, 7:47 AM), https://imprintnews.org/child-welfare-2/time-for-an-antiracist-welfare-policy-america/52691 [https://perma.cc/2RNX-QGY8].

[297] *Our View: The Child Poverty Rate Doubled Because We Let It*, PORTLAND PRESS HERALD (Sept. 15, 2023), https://www.pressherald.com/2023/09/15/our-view-the-child-poverty-rate-doubled-because-we-let-it/ [https://perma.cc/AQ5K-9UA7]. The warped politics are likely even more skewed in the family policing system than the criminal system. *See* Cynthia Godsoe & Shanta Trivedi, *Parenting as Crime*, CALIF. L. REV. ONLINE (forthcoming 2025) (on file with author) (describing immense "political pressure for [a] one-way ratchet to increased surveillance, family separation, and punishment, when children are involved").

[298] *See* John Pfaff, Opinion, *The Never-Ending 'Willie Horton Effect' Is Keeping Prisons Too Full for America's Good*, L.A. TIMES (May 14, 2017, 4:00 AM PT), https://www.latimes.com/opinion/op-ed/la-oe-pfaff-why-prison-reform-isnt-working-20170514-story.html [https://perma.cc/2TZR-733L]; *see also* Garcia & Godsoe, *supra* note 28, at 621 (documenting racialized "Willie Horton" effect dominating media and public discourse and how few outliers can cast all parents in system as abusive and bad).

[299] Loudenback, *supra* note 139 (describing "well-heeled" interest group ALEC and its efforts to draft legislation to protect against false reports of child abuse and neglect); *see also* Telephone Interview with C.B., longtime family defender and advocate for reform out of Illinois (Aug. 10, 2023) (notes on file with author) (describing the large staff and budget of the Texas Public Policy Foundation).

[300] Olivares, *supra* note 37, at 375.

fundamentally flawed systemic injustices."[301] The "child welfare" agencies in many blue states continue to double down on their role as "saving" children from their parents, reversing the constitutional—and usually true—presumption of interests between parents and children; as one urban agency repeatedly states while trying to avoid telling parents about their rights, they are "committed to keeping children safe and respecting parents' rights," suggesting a tension between the two.[302] They fail to recognize that it is actually respecting parents' rights that helps keep children safe.

Interest convergences defy traditional party divides and can help to move beyond deadlock. In the other contexts outlined above, groups often openly acknowledge their differences but argue that these "strange bedfellows" are required by the pathologies of politics, including financing; as one leader in a national coalition said, "Our groups may not agree on many things. But, we are united in our view that [this legislation would be] unconscionable."[303] His counterpart from the other side agreed, emphasizing that the legislation's significance had brought together "folks from across the political spectrum."[304]

This usually entails recognizing nonobvious material interest convergences, such as the problems with police profiling of both people of color and of "Bubba" White men types in Texas.[305] Consistent with interest convergence theory, the groups often indicate that these are not permanent, or even long-term alliances, but rather are issue- or even legislation-specific.[306] This helps to keep the goals clear and straightforward and leads to concrete short-term change.[307] Nonetheless, they also note that working with these unusual allies is easy, often easier than working with the "usual suspects"—perhaps because it is pragmatic rather than ideological.[308] As an ACLU lawyer said about the Texas State Rifle Association, "I find working with strange bedfellows more comfortable than with those we most often agree with."[309] In the case of the family policing system, advocates for racial justice are sometimes more comfortable relying on

[301] *Id.*

[302] Sarkar & Fitzgerald, *supra* note 140.

[303] Sarah Gonzalez, *Libertarian and Environmental Groups Unite Against Five-Year Farm Bill*, AGRI-PULSE (Dec. 10, 2012, 1:36 PM), https://www.agri-pulse.com/articles/2431-libertarian-and-environmental-groups-unite-against-five-year-farm-bill [https://perma.cc/9WJD-5M68].

[304] *Id.*

[305] Blumenthal, *supra* note 254.

[306] *See, e.g.*, Nelson, *supra* note 251 ("Republicans and teachers unions aren't enthusiastically embracing one another . . . . But the unusual alliance is evidence of how much the Obama administration has mixed up the traditional politics of education so that it no longer conforms to party lines.").

[307] Telephone Interview with E.S., *supra* note 205.

[308] Blumenthal, *supra* note 254; *see also* E-mail from Martin Guggenheim to Cynthia Godsoe, *supra* note 41 (making same point about defending parental rights of marginalized families).

[309] Blumenthal, *supra* note 254.

more conservative allies who want to downsize the system than on self-described "progressives" who set up a false dichotomy between parental autonomy and child safety.

3. Change to the Narrative

Another benefit of these coalitions is changing the narrative about families and state intervention, usually by referring to overarching values that transcend partisan politics, including the U.S. Constitution.[310] Demonstrating this, the *Bruen* coalition of public defenders and gun rights advocates centers on constitutional rights the most explicitly, and thus is very analogous to the parents' rights example discussed here.[311] The public defenders argue that Second Amendment rights are a "fiction" for their clients, who are overwhelmingly low-income people of color, noting that they are convicted of felonies for "exercising a constitutional right."[312] They also highlight the racialized history of gun control, noting that "New York enacted its firearm licensing requirements to criminalize gun ownership by racial and ethnic minorities."[313]

Similarly, coalition members in family policing reform sometimes refer to overarching values, including parental rights, whether implicitly or explicitly.[314] Demonstrating the latter is an op-ed by State Senator Lincoln Fillmore, one of the sponsors of the Utah legislation: "We all want to protect our children, and sometimes that means protecting them from government agencies that may use flimsy pretexts to undermine parental rights . . . ."[315] In Texas, speaking about rights—even putting the word "rights" in bill titles—was encouraged.[316] In contrast, in a more "purple" state such as Virginia, advocates were warned not

[310] *See, e.g.*, Haiar, *supra* note 253 (quoting Republican state legislator: "I want to know if you are for the United States of America and the rights written in our Constitution," highlighting that issues transcend party lines).

[311] *See* Damon Root, The New York Times *Is Surprised to Find Public Defenders Championing the Second Amendment*, REASON (Aug. 1, 2022, 1:23 PM), https://reason.com/2022/08/01/the-new-york-times-is-surprised-to-find-public-defenders-championing-the-second-amendment/ [https://perma.cc/T3EW-QQHH].

[312] Avinash Samarth, Aimee Carlisle, Christopher Smith, Michael Thomas & Meghna Philip, *We Are Public Defenders. New York's Gun Laws Eviscerate Our Clients' Second Amendment Rights.*, SCOTUSBLOG (Oct. 28, 2021, 7:40 PM), https://www.scotusblog.com/2021/10/we-are-public-defenders-new-yorks-gun-laws-eviscerate-our-clients-second-amendment-rights/ [https://perma.cc/YRX7-TH8Q].

[313] *See* Black Attorneys of Legal Aid et al. Amicus, *supra* note 254, at 5.

[314] For an example of implicitly communicated values, see Liz Mair, Opinion, *New Law a Victory for Kids' Independence*, CTPOST (July 5, 2023), https://www.ctpost.com/opinion/article/liz-mair-opinion-new-law-a-victory-for-kids-18183965.php ("Parents are generally best-suited to assess what their child is and is not capable of, and what they can and cannot be trusted with.").

[315] Boyack, *supra* note 26.

[316] *See* Asgarian, *supra* note 19.

to use "rights" language because the left/Democrats would not like it; as outlined above, many progressive/left folks are critical of parents' rights in this moment.[317]

Bringing parental rights back into the conversation for these families—even acknowledging that they have them—helps to change the narrative around the family policing system and sheds light on the disproportion of minority and low-income families trapped in it. This is analogous to the major impact of the public defenders' amicus brief in *Bruen*, which brought racial justice to the forefront of arguments around gun control.[318] Similarly, participatory budgeting can result in low-income and minoritized people speaking about their needs and overcoming the wrongful stigma of welfare; as Professor Ndjuoh MehChu aptly describes it: "participatory projects are designed to build class consciousness."[319] Narrative change is an essential precursor to sociolegal change.[320] Beyond talking about rights, conservatives in Texas, for instance, are also highlighting the harms of family separation and emphasizing the intersection of system involvement and poverty.[321] Notably, in just a few years, the conversation has changed; Andrew Brown of the Texas Public Policy Foundation recently noted a "massive culture shift" as policymakers are speaking about family preservation and having "mainstream conversations about the trauma of removal."[322]

B. *Perils*

In this Part, I will discuss the potential pitfalls of social change relying on interest convergences, including backlash and backsliding when interests diverge. Professor Bell and others have highlighted this dynamic in numerous social movements, including school desegregation and anti-poverty/welfare measures.[323] Three interrelated challenges pose particular threats to progress,

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[317] Telephone Interview with C.B., *supra* note 299.

[318] *See, e.g.*, Root, *supra* note 311 (noting that alliance described by some as "unexpected" becomes less so when taking into account "racially disparate impact" of gun control).

[319] *See* MehChu, *supra* note 32, at 115.

[320] *See* Godsoe, *supra* note 10, at 962; *see also* MATTHEW DESMOND & GREISA MARTINEZ ROSAS, SQUARE ONE PROJECT, BEYOND THE EASIEST CASES: CREATING NEW NARRATIVES FOR CRIMINAL JUSTICE AND IMMIGRATION REFORM 5-7 (2021), https://squareonejustice.org/wp-content/uploads/2021/12/CJLJ9282-Beyond-the-Easiest-Cases-report-211206-WEB.pdf [https://perma.cc/9YAQ-GB3Q]; Elizabeth F. Emens, *Shape Stops Story*, 15 NARRATIVE 124, 125 (2007).

[321] *See* Andrew C. Brown, *HB 567 – Preserving and Strengthening Families*, TEX. PUB. POL'Y FOUND. 1-2 (Mar. 8, 2021), https://www.texaspolicy.com/wp-content/uploads/2021/03/HB-567-Testimony.pdf [https://perma.cc/2JFY-FHHX] (citing research on trauma caused by even short removals and attributing wide disparity in removal rates among counties largely to poverty, based on own analysis of data).

[322] Dey, *supra* note 47.

[323] *See* Bell, *supra* note 33, at 528 (noting difficulties in implementing *Brown* and subsequent court decisions limiting its scope "reflect a substantial and growing divergence in

including the obscuration of racialized and other harms, internal and external co-optation, and "reformist reforms" which can re-entrench and legitimate harmful systems.[324]

1. Obscuration of Racialized and Other Harms

Almost all of the legislative and public support for these bills does not mention the harms of the family policing system, including racial disproportionality, historic through lines with White supremacy, and unnecessary and traumatizing family separation. Instead, the commentary portrays an idealized, middle class, "Anytown" America, almost a "Leave it to Beaver" 1950s throwback, where children can ride their bikes around suburban settings without fear of school shootings or car crashes, and without the distractions of cell phones, social media, or global warming.[325] Tellingly, a cosponsor of the Oklahoma bill, Republican State Representative Chad Caldwell, asserted that parents endanger their children by "being overprotective and limiting their experiences."[326] This narrative fails to fully acknowledge more salient risks to families actually likely to be investigated, punished for poverty, or threatened with child removal for purported "non-compliance."[327] More to this point, other Oklahoma legislators said narrowing the state's definition of neglect is important because parents will not have to worry about being accused of neglect by "letting their children play or fish or farm."[328] Another opinion piece similarly praised one proposed neglect statute in Connecticut: "Parents on the same quiet, suburban cul-de-sac who allowed their kids to ride bicycles around that cul-de-sac without adult monitoring—like many of us did as kids—could . . . have been charged with committing a crime."[329] Even more nostalgic is this op-ed by Republican Utah Senator Mike Lee:

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the interests of [W]hites and [B]lacks"); *see also* Carter, *supra* note 235, at 22 ("[A]s interest convergence theory recognizes, civil rights gains made through interest convergence can quickly slip away when the moment of convergence passes.").

[324] *See* Akbar, *supra* note 30, at 2510.

[325] *See, e.g.*, Lenore Skenazy, *Free-Range Kids in Virginia, Connecticut, and Illinois Celebrate a Very Special Independence Day*, REASON (July 1, 2023, 7:00 AM), https://reason.com/2023/07/01/reasonable-childhood-independence-free-range-independence-day/ [https://perma.cc/T75V-DFE5] ("[T]his is a country founded on freedom. That includes the freedom of kids to play outside, climb trees, run errands, and just be kids, especially on Independence Day.").

[326] *Oklahoma "Reasonable Childhood Independence Bill" Signed into Law!*, LET GROW (May 5, 2021) [hereinafter LET GROW], https://letgrow.org/oklahoma-reasonable-childhood-independence-bill-signed-into-law/ (celebrating bill's enactment and lessons it will teach children by being independent while also helping child protective services focus on more serious cases).

[327] *See* Godsoe, *supra* note 10, at 947-48.

[328] Caldwell & Rosecrants, *supra* note 281.

[329] Mair, *supra* note 314.

> It's a scene as American as apple pie. Neighborhood children are playing together at a park. Then, as the sun starts to fade and their stomachs start to rumble, the children scatter and begin the journey back to their various homes . . . . [P]arents [are] being investigated or prosecuted for simply allowing their kids to walk to school or play in the park by their house without direct parental supervision.[330]

Oklahoma legislator Chad Caldwell states his motivation for sponsoring the bill is to ensure that his constituents do not "feel they ha[ve] to be 'helicopter parents'" and to ensure that "kids have the chance to develop the 'coping skills they need to overcome ordinary, everyday hardships.'"[331] Again, the contrast with the low-income and families of color in the family policing system could not be starker. As opposed to the privilege and choice to be over-involved parents, those families are struggling simply to make it through the month and pay the bills. Further, their children sometimes suffer high numbers of Adverse Childhood Experiences ("ACEs") because of their poverty, under-resourced communities, and other challenges, experiences for which they very rarely receive appropriate treatment or trauma-informed services and education.[332] They do not need to face more "hardships" in order to learn and mature. Even the names of the bills—*Independence Bill* or *Free-Range Parenting Bill*—are bourgeois and ignore the realities of the family policing system.

The parental rights framework itself has been critiqued as being weaponized for elites and racialized White. In a recent article, Professor LaToya Baldwin Clark persuasively argues that parental rights have historically been racialized White and asserted to protect only certain kinds of children and families.[333] Citing a long history of the use of parental rights rhetoric, particularly by White mothers, to oppose racial justice measures—including emancipation and Reconstruction, anti-segregation efforts in the 1950s and 1960s, and now Critical Race Theory—Baldwin Clark describes how current parents' rights organizations, such as *Moms for Liberty*, perpetuate and further entrench the racialized hierarchy by controlling educational content in public schools and libraries.[334] She persuasively argues that this branch of the parents' rights movement is "positioning (White) parents as brave protectors of their innocent (White) children" and "protecting Whiteness for the benefit of White children."[335]

As I posited above, changing the narrative is one of the most important precursors to transformative socio-legal change, but this goal is in tension with "under the radar" or politically palatable change. Ideally, libertarian advocacy

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[330] *See* Lee, *supra* note 44.

[331] LET GROW, *supra* note 326.

[332] Brief of the Cook County Public Guardian as Amicus Curiae in Support of Neither Party and Suggesting Reversal, *supra* note 264, at 31.

[333] Baldwin Clark, *supra* note 41, at 2199, 2202.

[334] *See id.* at 2161.

[335] *Id.* at 2189, 2199.

against intrusive state intervention would be consistent with racial justice advocacy on behalf of marginalized families. As currently operating, however, it may be further burying the lived realities of families of color for the political expediency of legal change.[336] I've previously addressed these tensions and tradeoffs in the context of LGBTQIA+ rights and marriage equality. In *Perfect Plaintiffs*, I argued that the framing of the marriage-equality movement was very White, "straight-acting," and affluent; while it brought a hugely important win to many people, it also reinscribed gender roles and further entrenched marriage as the only relationship between individuals that merited state support.[337]

In a similar vein, we need to ask who this limited framing of parenthood could be leaving behind in current reform efforts. In the criminal law context, the focus on reducing incarceration of "nonviolent, nonserious, and nonsexual" crimes has been critiqued as insufficient for meaningful change.[338] Analogously in the family policing context, the focus on parents accused of (mild or low-level) neglect demonizes those parents who commit more serious abuse, yet the latter group face the same structural obstacles as parents in the family policing system more broadly and deserve parental rights as well. This division between those deemed worthy and those unworthy can "legitimate the system by dividing families into 'worthy' and 'unworthy' ones, obscuring the structural causes of family poverty and other struggles, and further perpetuating the false narrative of individual wrongdoing."[339]

2. Co-optation

A second cost of these coalitions is that the key, often radical messages, may be lost or co-opted both internally and externally. In the family policing context, for example, the larger abolitionist and racial justice struggle could be obscured by focusing on the few middle-class White families in the system (outliers) or by the state offering a more benevolent face without truly disconnecting its punitive arm.[340]

First is the risk of internal co-optation. In these campaigns to narrow neglect laws, White middle-class parents have been the public face of the legislative advocacy, and their voices continue to be prioritized. According to those

[336] *See* Huntington, *supra* note 37, at 1567 ("[A]dvocates and policymakers generally have not framed [bipartisan family] policies as efforts to address racial inequity. And framing the programs in such terms may well erode support.").

[337] *See* Godsoe, *supra* note 27, at 140.

[338] For arguments that those crimes deemed "violent" must be included to achieve meaningful decarceration, see MARIE GOTTSCHALK, CAUGHT: THE PRISON STATE AND THE LOCKDOWN OF AMERICAN POLITICS 165 (2015); and Cynthia Godsoe, *The Victim/Offender Overlap and Criminal System Reform*, 87 BROOK. L. REV. 1319, 1321-22 (2022) (arguing that for true transformational change, criminal system downsizing must include those convicted of violent crimes, and calling for dismantling of victim/offender overlap).

[339] Garcia & Godsoe, *supra* note 28, at 623.

[340] *See* Roberts, *supra* note 90, at 457, 466-67.

working on the campaigns, the parents who publicly supported the bills were mostly more privileged, mainly White, coming via legislators or the Let Grow organization. There was some variation among states; for instance in Colorado, their first "swing" state, the coalition was much more grassroots and at least some members felt that they could talk about race.[341] In Utah, Texas, and Oklahoma, advocates chose not to talk about race as too "incendiary" or "complicated."[342] These coalitions also sometimes did not openly speak about parents' rights, particularly in more moderate or liberal jurisdictions. As a result, very few youth or parents who have been involved in the system, or even members of the most impacted communities, were involved in the advocacy.[343]

In contrast, grassroots community action moves away from the hierarchical structure of charities and nonprofits.[344] Demonstrating this, parent movements like Rise have brought parents to the front and center of change while "working to build a peer and community care network to support families and give them information about resources, so that when families have challenging situations they can address them early on . . . without system involvement."[345] Omitting these voices can lead to more superficial changes and prevent the empowerment of impacted communities.

Race is a big and complicating part of potential co-optation. To cite just one example, a White middle-class Boston family whose children were briefly removed became a huge news sensation—largely because of who they are as a very non-typical family in the system.[346] This media attention to the agency's bad practices and public education on the matter is helpful, and the parents in that case hired an attorney and expressed hope that the public attention would

[341] Telephone Interview with E.S., *supra* note 205.

[342] Telephone Interview with B.D., *supra* note 41; *see also* Telephone Interview with C.B., *supra* note 299.

[343] *See generally* NAASHIA B. ET AL., *supra* note 125.

[344] *See* Godsoe, *supra* note 28, at 716-17.

[345] Garcia & Godsoe, *supra* note 28, at 615 (quoting Keyna Franklin, *How Rise Is Working to Support Faster Family Reunification—and Shrink the Foster System*, RISE (June 16, 2021), https://www.risemagazine.org/2021/06/how-rise-supports-faster-reunification/ [https://perma.cc/A25R-78P5]) (noting recent increase in mutual aid networks and "peer-to-peer assistance" that provides families with resources more quickly than government and creates collective well-being from lack of power imbalance); *see also Family Reunification, Equity & Empowerment (Free) Project*, STARTING OVER, INC., https://www.startingoverinc.org/free [https://perma.cc/Y3X9-W4DL] (last visited Dec. 13, 2024) (describing mission to make California child dependency court procedures more accessible for family members and community members to help defense counsel and "improve outcomes"); NAASHIA B. ET AL., *supra* note 125, at 9 (reporting on "community conversations" and surveys asking parents themselves, particularly those who had been involved with city's family policing system, what they and their families needed most).

[346] Steve LeBlanc, *State Taking Waltham Couple's Sons Prompts Questions over Child Removal, Federal Lawsuit*, WBUR, https://www.wbur.org/news/2023/05/31/child-removal-home-parents-lawsuit [https://perma.cc/FSB2-MHVX] (last updated June 1, 2023).

continue.[347] However, it bears noting that their case seems to have been given special treatment, probably because they do not look like, or live like, most families in the system.[348] Moreover, the dynamics within advocacy groups may change when the media attention, and hence power, focuses on White or otherwise privileged families as "outlier" examples of the system getting it wrong.[349] The concurrent New York litigation, in contrast, was carefully framed to come from a "totally different orientation,"[350] as it was conceived of and framed using community input from impacted parents, and included claims based on participatory research and the lived experience of many families of color.[351] For instance, the New York complaint alleges that this is a widespread and long-standing practice in Black and Brown neighborhoods, rather than one case gone amok.

External co-optation is also a significant risk to any reforms, even non-reformist reforms. Caitlyn Garcia and I have previously described how the Black Panthers' breakfast clubs—an innovative program to both feed low-income families and empower or politically mobilize marginalized communities—were destroyed and then co-opted by the federal government to create the School Breakfast program, which continues today.[352] This is not a wholly negative

[347] *Id.* ("What's really frightening is that it happens a lot. What was unique was our ability to hire an attorney . . . .").

[348] Glenn Roper, *These Parents Did Not Hurt Their Children—but Child Protection Agencies Targeted Them Anyway*, PAC. LEGAL FOUND. (Dec. 14, 2023), https://pacificlegal.org/parents-did-not-hurt-children-child-protection-targeted-them/ [https://perma.cc/5DC7-3Y5L] (elaborating on Boston case and listing other well-known examples, including Jack and Beata Kowalski). The conservative non-profit representing the parents now is not an organization that discusses racial justice issues.

[349] Telephone Interview with S.T., *supra* note 217.

[350] *Id.*

[351] *See Gould* Complaint, *supra* note 9, at 3 ("The trauma inflicted by ACS predominantly and disproportionately falls on Black and Hispanic families. More than 80% of the parents and children subjected to ACS investigations are Black or Hispanic. One out of every two Black children in New York City has been subjected to an ACS investigation by the time they reach the age of 18."). *See generally* antwuan wallace, Abigail Fradkin, Marshall Buxton & Sydney Henriques-Payne, *New York City Administration for Children's Services Racial Equity Participatory Action Research & System Audit: Findings and Opportunities*, NAT'L INNOVATION SERV. (Dec. 2020), https://int.nyt.com/data/documenttools/draft-report-of-nyc-administration-for-children-s-services-racial-equity-survey/fc3e7ced070e17a4/full.pdf [https://perma.cc/Q6DR-J54X].

[352] Garcia & Godsoe, *supra* note 28, at 627. A more recent example is some states' co-optation of community bail funds. *See, e.g.*, Kira Lerner, *Nation's Largest Bail Fund Plans to Stop Bailing People Out of Jail*, APPEAL (Sept. 30, 2019), https://theappeal.org/nations-largest-bail-fund-plans-to-stop-bailing-people-out-of-jail/ [https://perma.cc/T8DU-ZZL7] (describing how one of nation's first bail funds, Brooklyn Community Bail Fund, decided to stop paying bail after state enacted legislation making bail and bail funds part of criminal legal "system in perpetuity" so that paying bail was just helping to "prop up an unjust system"); Nick Pinto, *Bailing Out*, NEW REPUBLIC (Apr. 6, 2020),

development, as more children are fed, but the government program comes with significant strings attached, such as stigma for recipients of the "handout" and the participation of mandated reporters.[353] Moreover, "it does not come with the organizing and solidarity that are key to a mutual aid framework;" to the contrary, "[t]he government has made sure to thwart any efforts at community building and mobilization from the inception" of its program.[354]

The risks of state co-optation are similarly present here. Programs to assist families that are nominally noncoercive, such as differential response, often have the potential to be an entry point into the carceral family policing system and to be net-widening, bringing more families under surveillance and intervention.[355] For instance, in response to reports of systemic racism, the largest agency in the country, located in New York City, created a purportedly "voluntary" family support intervention for cases with no urgent safety concerns or serious abuse allegations.[356] Rather than helping families with material support—which is the key thing almost all families reported needing—the new program (misnamed "CARES") is more invasive than a traditional investigation, sweeping in families who would otherwise have had "unfounded" reports and no agency intervention.[357] The CARES program is decidedly not voluntary, as police sometimes accompany caseworkers to secure "consent," and if a parent declines the program, they may be put on the "traditional" investigation track. As noted before, child-saving is an especially appealing "hook" for funding and political goodwill; expanding these systems, instead of implementing more racially just anti-poverty provisions or universal family supports, is a risk.

Indeed, numerous commentators and scholars have argued that parental rights themselves have been co-opted—rhetorically and substantively—to enact book bans and other racialized and heteronormative limitations on public education and discourse.[358] For instance, Professors Naomi Cahn, Maxine Eichner, and Mary Ziegler argue in a forthcoming piece that parental rights are used as cover

https://newrepublic.com/article/156823/limits-money-bail-fund-criminal-justice-reform [https://perma.cc/C46R-XA9R] (documenting this tension with bail funds nationwide in potentially helping system run by "letting off steam in a pressure cooker").

[353] Garcia & Godsoe, *supra* note 28, at 627.

[354] *Id.*

[355] *See id.* at 618-22.

[356] *Family Defense Providers Testimony*, *supra* note 25, at 7-8.

[357] *Id.*

[358] *See, e.g.*, Maxine Eichner, *Free-Market Family Policy and the New Parental Rights Laws*, 101 N.C. L. REV. 1305, 1323, 1337 (2023) (arguing that recent "parental rights" laws overstep bounds of parental authority and limit state's mandate to protect children's welfare); *see also* Dailey & Rosenbury, *supra* note 65, at 1469; Edward Larson, *Crusading for Parental Rights May Cloak Other Motives*, WASH. POST (Sept. 19, 2022, 8:00 AM), https://www.washingtonpost.com/made-by-history/2022/09/19/crusading-parental-rights-may-cloak-other-motives/ (connecting "parental control" arguments against evolution in 1920s Scopes Trial era to debates and battles over public education going on today).

to roll back equality gains for children and adults.[359] *New York Times* columnist Jamelle Bouie similarly argues that recent so-called "parents' rights" laws represent only a certain group of parents:

> "Parents' rights," you will have noticed, never seems to involve parents who want schools to be more open and accommodating toward gender-nonconforming students. It's never invoked for parents who want their students to learn more about race, identity and the darker parts of American history. And we never hear about the rights of parents who want schools to offer a wide library of books and materials to their children.[360]

This is certainly true, both historically and currently, with proposed laws banning CRT, gender-affirming care, and the like.[361] Nonetheless, the critiques overlook state harms in the name of helping children, along with the potential of parents' rights to be weaponized *for* equality and inclusion.

These critiques characterize parental rights as overly broad and as requiring scrutiny or even curtailment in favor of state (e.g., teacher and doctor) expertise.[362] Although these concerns have some valence, they ignore the fact that the state's purported "expertise" in the family policing system has been

[359] *See* Mary Ziegler, Maxine Eichner & Naomi Cahn, *The New Law and Politics of Parental Rights*, 123 MICH. L. REV. (forthcoming 2024) (on file with author) (detailing history of use of parental rights rhetoric to oppose desegregation, LGBTQIA+ rights, and more).

[360] Jamelle Bouie, Opinion, *What the Republican Push for 'Parents' Rights' Is Really About*, N.Y. TIMES (Mar. 28, 2023), https://www.nytimes.com/2023/03/28/opinion/parents-rights-republicans-florida.html; *see also* Hayes Brown, Opinion, *The GOP's 'Parents Bill of Rights' Excludes Millions of Parents*, MSNBC (Mar. 27, 2023, 6:00 AM), https://www.msnbc.com/opinion/msnbc-opinion/gops-parents-bill-rights-nightmare-teachers-rcna76554 [https://perma.cc/LE9L-FYQ5] ("As with so many laws that authorize bigotry, the language seems decidedly neutral. But it's clear that Republicans only believe [W]hite, straight, conservative parents should get to have a say in what everyone's kids get to learn.").

[361] *See, e.g.*, Act of Aug. 16, 2023, ch. 114A, 2023 N.C. SESS. LAWS 106 (enacting "Parents' Bill of Rights" barring education on sexual orientation, gender identity, and expression through fourth grade); Washington, *supra* note 43, at 165 (describing some of these laws). Much of this state legislation was supported by some of the groups in coalition with family defenders to strengthen families against the family policing system. *See, e.g.*, *Parental Rights Win in Tennessee!*, PARENTAL RTS. FOUND. (May 30, 2024), https://parentalrightsfoundation.org/parental-rights-win-in-tennessee/ [https://perma.cc/YF2R-C532]; Jordan Carpenter, Opinion, *New Tennessee Law Strengthens Parental Rights in School. That's a Good Thing*, TENNESSEAN, https://www.tennessean.com/story/opinion/contributors/2024/09/27/tennessee-law-parents-rights-children-health-decisions/75091505007/ [https://perma.cc/G6R3-2VFD] (last updated Sept. 27, 2024, 7:00 AM CT) (discussing recently enacted state Families' Rights and Responsibilities Act reinforcing parents' right to consent to medical care for their children, prompted in large part by Nashville schools' implementation of "Gender Support Plans").

[362] This is resonant of expertise versus democracy debates in criminal law. *See* Godsoe, *supra* note 29, at 219-20 (outlining debate regarding including community expertise in practice of criminal law).

employed almost exclusively to control and separate marginalized families.[363] Indeed, while the harm to LGBTQIA+ children and parents and to families of color from recent measures under the guise of parental rights is very problematic, the harm done to these same families by decades of surveillance and family separation via the family policing system is immeasurable.[364]

In short, these arguments presume that parental rights can only hurt, not help marginalized families. Who is able to invoke parental rights and when are ultimately debates over who should have the final say over most decisions regarding children, even decisions that may be sites of robust disagreement. Currently, the commentary surrounding parental rights just does not include families in the family policing system, as the scholars cited above illustrate by ignoring the family policing system in their critiques. Parental rights are indeed racialized White and should be recaptured to include and benefit parents of color as well. Although concern about how parental rights are used by some groups is warranted, it does not merit jettisoning parental rights altogether as powerful tools against state overreach. I argue here to let all families benefit from the rhetorical and actual power of parental rights.[365]

3. Re-entrenchment & Legitimation of Carceral Systems

Reforms can be perilous as they may re-entrench and legitimate fundamentally unjust systems; "[b]y obscuring the true nature of unjust and flawed institutions—be it the police, prosecutors, or the capitalist, neoliberal state—reformist reforms help to reinvent and perpetuate these institutions and concomitant hierarchies of race and class."[366] Accordingly, scholars and activists must be mindful to support only "non-reformist reforms," or reforms that do not grow the carceral state and that challenge the underlying power dynamics. These non-reformist reforms, as Professor Amna Akbar describes them, are bottom-up rather than formulated by elites, "advance radical critique and radical imagination," and are "pathways for building ever-growing organized popular power."[367] In contrast, slight improvements to the family policing system may obscure the inherent brute force of the institution, thus prolonging its existence.

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[363] *See, e.g.*, Sandra Knispel, *American Child Welfare System Has Lost Its Way, Says Rochester Historian*, UNIV. OF ROCHESTER (Dec. 11, 2020), https://www.rochester.edu/newscenter/american-child-welfare-system-has-lost-its-way-says-rochester-historian-464292/ [https://perma.cc/A4SA-7A36].

[364] *See, e.g.*, *id.*; sources cited *supra* notes 84-87.

[365] *See* Olivares, *supra* note 37, at 383 (noting that "by centering the normative family . . . [scholars and others] miss the cornerstone question: what about families of color, immigrant families, and poor families?").

[366] Godsoe, *supra* note 29, at 197; *see also* Akbar, *supra* note 30, at 2518-19.

[367] *See* Amna A. Akbar, *Demands for a Democratic Political Economy*, 134 HARV. L. REV. F. 90, 104, 113 (2020) (describing non-reformist reforms as those that propose radical transformation of social and political systems away from capitalism and carceral state).

More broadly, assessing the pros and cons of political-legal change via interest convergence helps to illuminate the limits of rights. As Bell himself recognized,[368] and numerous scholars since, rights can be empty if the communities asserting them have no self-determination or power.[369] The inherent individualistic nature of "rights" claims does not map well onto structural biases and calls for systemic change.[370] Accordingly, "[r]ights discourse contributes to passivity, alienation, and a sense of inevitability about the way things are."[371] Indeed, rights "talk" and even some rights measures, particularly with regard to procedural rights, can sometimes be reformist reforms, legitimating the system and giving it cover to grow.[372]

Scholars have critiqued the original *Miranda* rights in the criminal context for this reason.[373] More broadly, Professor William Stuntz presciently argued that as procedural rights expanded, the criminal system itself became larger and more punitive: "underfunding, overcriminalization, and oversentencing have increased as criminal procedure has expanded."[374] In a recent piece on purported "consent" searches in the family policing context, Professor Anna Arons argues that even improving the knowledge of consent requirements in such situations, such as via *Miranda* warnings, will not solve the problem of state surveillance

[368] Bell, *supra* note 33, at 531-32 (advocating "focus on obtaining real educational effectiveness which may entail the improvement of presently desegregated schools as well as the creation or preservation of model black schools," rather than formal implementation of *Brown*'s mandate).

[369] *See, e.g.*, Paul D. Butler, *Poor People Lose:* Gideon *and the Critique of Rights*, 122 YALE L.J. 2176, 2178-79 ("*Gideon* bears some responsibility for legitimating [racialized mass incarceration] and diffusing political resistance to [it]. . . . invest[ing] the criminal justice system with a veneer of impartiality and respectability that it does not deserve.").

[370] *See* Mark Tushnet, *The Critique of Rights*, 47 SMU L. REV. 23, 26 (1993) ("[L]egal rights are *essentially* individualistic, at least in the U.S. constitutional and legal culture, and . . . progressive change requires undermining the individualism that vindicating legal rights reinforces.").

[371] *Critical Perspectives on Rights*, BRIDGE, https://cyber.harvard.edu/bridge/CriticalTheory/rights.htm [https://perma.cc/CV2S-PE54] (last visited Dec. 13, 2024).

[372] *See, e.g.*, Tani, *supra* note 22, at 325 (noting that "ultimately the rights language . . . does not evidence the hopes and beliefs of claimants so much as it suggests the 'benevolent imperialism' of national state-builders" (footnote omitted)).

[373] *See, e.g.*, Louis Michael Seidman, Brown *and* Miranda, 80 CALIF. L. REV. 673, 746 (1992) (arguing that *Miranda* did not mandate power relations restructuring because decision "traded the promise of substantial reform . . . for a political symbol"); *see also* Michael J. Klarman, *The Racial Origins of Modern Criminal Procedure*, 99 MICH. L. REV. 48, 84-88 (2000) (arguing that constitutional criminal procedure rights did not concretely advance racial justice much at the time, but could have "intangible effects" of mobilizing and educating public).

[374] William J. Stuntz, *The Uneasy Relationship Between Criminal Procedure and Criminal Justice*, 107 YALE L.J. 1, 4-5 (1997) ("Warren-era constitutional criminal procedure began as a kind of antidiscrimination law.").

and coercive intervention into (only some kinds of) families.[375] Even substantive law changes may not do much work if not accompanied by redistribution; for instance, even clearer or narrower definitions of child neglect will not likely "significantly alter deeply entrenched mechanisms of control."[376]

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Although these risks are significant, the tradeoffs are worth it in both the short and intermediate term, as long as change continues to be premised on a long-term horizon of systemic downsizing and eventual abolition. Two reasons underlie this decision: the significant and immediate tangible benefits to families and entire communities, and the collaboration on shrinking the system that brings us closer to its dismantlement.

The first rationale raises an important, sometimes overlooked, concern in abolitionist praxis. Eschewing reformist reforms does not mean refusing to make things better for those in the system while working toward a long-term abolitionist goal. Former prisoner and now-lawyer Angel Sanchez analogizes the carceral state to cancer: "we should fight to eradicate it but never stop treating those affected by it."[377] Here, the narrowed neglect laws in eight states, along with the procedural changes in Texas, undoubtedly help so many families along the way. Bigger picture, these laws and the reforms to reporting very significantly narrow the front door to shrink the system.

Miranda rights are a bit trickier—perhaps that reform risks further legitimating the system, as some of the scholars argued above. I am cautiously optimistic that they will not, both because they are hugely important to so many families who have little to no knowledge of their rights and so are deceived and coerced, and the call for that change is always paired with other, system-downsizing reforms such as the narrowed neglect laws. Moreover, not all scholars decry rights as useless; indeed some scholars tout their potential, especially for communities of color, to amplify subordinated voices and build community.[378]

Diminishing the role of race and co-optation are both serious concerns, but they are not unique to unusual partnerships; indeed, child saving is often accompanied by a "color-blind" or even "white savior" mentality and continues

[375] *See* Arons, *supra* note 153 (manuscript at 45) (noting that "consent [may] provide[] cover for suspicionless searches"). Indeed, evidence from reforms in both the criminal and family policing context show that permission to search may indeed increase with education about rights. *Id.* (manuscript at 43-46) ("[D]ecades of experience show that telling people their rights rarely means that people will exercise their rights.").

[376] Washington, *supra* note 43, at 168; *see also* Bell, *supra* note 33, at 523 (noting difficulty to achieve equality became clear in failure of *Brown*).

[377] Angel E. Sanchez, *In Spite of Prison*, 132 HARV. L. REV. 1650, 1652 (2019).

[378] *See, e.g.*, Patricia J. Williams, *Alchemical Notes: Reconstructing Ideals from Deconstructed Rights*, 22 HARV. C.R.-C.L. L. REV. 401, 410 (1987) (arguing "rights rhetoric has been and continues to be an effective form of discourse for [B]lacks").

to be a significant obstacle to change in more liberal states such as Massachusetts and New York.[379] Moreover, some family defenders and activists believe the tradeoffs are worth it, as long as they are vigilant and the tradeoffs are in the short term. As one impacted parent and advocate puts it: "I will never close the door; I am very open to talking to and working with those who appear different; there is much room for collaboration."[380] Other advocates point out that mainstream critique or even coverage of the harms of the family policing system barely existed until a few years ago when two "[W]hite, affluent, and highly educated" parents became nationwide news after they received a neglect finding for letting their children walk to local parks by themselves.[381] As one of the first family defense attorneys, Professor Martin Guggenheim, explained at the time, "the[se] 'free-range' cases that are hitting the paper today are a dream come true, because finally people who otherwise don't care about this problem are now calling out and saying, 'Aren't we going too far here?'"[382]

As awareness of the harms of the family policing system has grown—significantly even in the eight years since that case—so too has an increased focus on the racial disproportionality and coalition-building to include more families from the most impacted communities at least in some states. One promising strategy is to include some less representative families that may bring more mainstream media, legislative, and public attention to the issue. The New York unlawful search lawsuit uses such a coalition, as do state advocates on, for instance, lobbying for passage of the *Miranda* bill. While searches and family policing cases in NYC are even more disproportionately against Black families than nationwide, many of the families who proactively reached out to litigators were more affluent and White, reflecting their greater sense of "rights" and a lower sense of negative consequences than the most surveilled communities. Yet the public interest law firm, which has a community advisory board, carefully selected plaintiffs to include many from the most marginalized communities, as well as a few who are less typical in their class and race, perhaps to appeal to the media.[383]

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[379] *See* Telephone Interview with S.T., *supra* note 217 (discussing Massachusetts focus on child saving and concomitant obscuring of racial justice). For further discussion of the harms of child saving, see *supra* notes 96-97.

[380] Telephone Interview with T.Y., *supra* note 182.

[381] Goldberg, *supra* note 285, at 13.

[382] *Id.* (citing also family defense attorney Diane Redleaf, who noted that one White affluent family caught in system was so unusual that it warranted international news coverage and accomplished almost overnight what advocates and impacted families had struggled for years to do: expose harms of system).

[383] Telephone Interview with D.F., family defender from New York (Oct. 4, 2024) (notes on file with author); *see also* Bromwich & Newman, *supra* note 20 (profiling two families demonstrating this mix). Contrast this with the Massachusetts case, which turns on the (horrific yet isolated) experience of one White family and does not discuss race. *See Parents Sue City of Waltham for Illegally Seizing Their Children*, PAC. LEGAL FOUND. (May 2, 2023),

As for co-optation, a conservative lobbyist explained that one of his progressive/left coalition partners became concerned that state agencies were calling for the same things as the coalition—in this case, changes to reporting—but the lobbyist sees that not as cooptation but as proof that the coalition "was winning."[384] They were spearheading the cultural shifts and paradigm change that needed to happen, and as long as they monitored the newly joined to ensure they were "really on board," then it was positive.[385] A parent advocate from a blue state echoed this sentiment, noting that, while representation was important, if more "mainstream" (i.e., White middle-class or affluent) faces can get the message out, she would not turn them down.[386] Theorist and advocate Mariame Kaba emphasizes the utility of compromise, while always keeping in mind the long-term horizon, and clear messaging; for instance in the context of bail reform, Kaba notes, "If you are just stuck on ending money bail, what you're going to end up with [is] a system that will adapt to that, end cash bail altogether, giving people no way out . . . . We should be saying, 'End cash bond *and* pretrial detention,' always in the same paragraph. That helps slow down the co-optation."[387] Similarly, reiterating that children's safety and interests are in accord with parental rights and interests is essential—who speaks for the child should almost always be the family, rather than state actors or professionals.

Being vigilant about representation, co-optation, and legitimating systems is important; change is complicated and often messy. As Professor Jamelia Morgan describes in her theory of "abolition in the interstices," advocates "do not, and arguably need not, reflect or practice the kind of intellectual purity so often seen in academic theorizing. But what is required of abolitionist groups . . . is a clear sense of which strategies should be pursued and why."[388] In the family policing system abolitionist and adjacent organizers have intentionally entered these alliances and will maintain them so long as they continue to improve life for many marginalized families and/or downsize the system, while always keeping in mind the potential risks. As a Black Lives Matter organizer said in the analogous case of supporting a progressive prosecutor, they would remember that "the prosecutor's office will remain a part of an unjust system," but backing one candidate over the other was the best option for right now.[389] These

https://pacificlegal.org/press-release/parents-sue-city-of-waltham-for-illegally-seizing-their-children/ [https://perma.cc/3T7H-YSKJ].

[384] Telephone Interview with B.D., *supra* note 41.

[385] *See id.*

[386] Telephone Interview with N.P. (Jan. 27, 2024) (notes on file with author) (interviewing parent advocate about cooperation with non-progressive, mainstream voices).

[387] Pinto, *supra* note 352. Similarly, Arons advises that reforms to consent searches should be coupled with broader calls for change to the surveillance and searches themselves. Arons, *supra* note 153 (manuscript at 42-45).

[388] Morgan, *supra* note 30.

[389] *See* Sam Levin, *How Black Lives Matter Reshaped the Race for Los Angeles' Top Prosecutor*, GUARDIAN (Oct. 15, 2020, 11:00), https://www.theguardian.com/us-

deliberate choices, made with constant reconsideration as politics shift or strategies are co-opted, are a key part of abolitionist praxis.[390] When the alliances are no longer helpful in the intermediate term, or become too "reformist" for the long-term goals, organizers should, and likely will, change their strategies.

CONCLUSION

Considering paths to change inevitably raises the thorny questions of how much government collaboration is desirable, and what the state's role is in supporting families to thrive in their own ways. I do not, and cannot, fully answer that question here. However, I will flag some differing points on the continuum of abolitionist thought that can help guide scholars and activists. To some, abolitionism is a positive project of envisioning a more supportive state. As W.E.B. Du Bois first conceived of it, "abolition democracy" is not only a project of dismantling unjust institutions but also a positive one of imagining and building a more equal and just society—what Reconstruction should have been.[391] From a slightly different vantage point, some activists and scholars posit that "the state is never neutral . . . . It has blood on it."[392] These two viewpoints are actually closer together than they might seem because neither anticipates that the state will benevolently hand over benefits to subordinated groups. Indeed, any vision of abolition entails creating new ways of societal adhesion and interaction.[393]

No matter what the approach to the state, redistribution is essential to long-term family well-being and equality. As documented above, most family policing cases concern poverty. Increased income supports—such as the Earned

news/2020/oct/15/los-angeles-district-attorney-black-lives-matter [https://perma.cc/268S-5BH4].

[390] Although not stated in the non-reformist reform or abolitionist framework, I believe from his writings that Professor Bell approached change in the same pragmatic, "long-game" fashion. Accordingly, the critique that the interest convergence theory denied agency to, for instance, Black communities is incorrect. While recognizing the pervasive obstacle of systemic racism, Bell also saw, and indeed encouraged, the power of marginalized communities to strategically resist White supremacy.

[391] W.E.B. DU BOIS, BLACK RECONSTRUCTION IN AMERICA 185 (1935) (arguing persuasively that formerly enslaved people built thriving civil society and nearly achieved true, racially inclusive democracy, until violent and politically powerful White supremacist backlash resulted in unjust Jim Crow era).

[392] Barnard Center for Research on Women, *No Borders! No Prisons! No Cops! No War! No State?*, YOUTUBE, at 20:51 (Nov. 15, 2022), https://www.youtube.com/watch?v=4ji7Z8mMe78 (saying state is "not a tool" to be used "like a hammer" due to inherent violence); *see also* @lizar_tistry, INSTAGRAM (Nov. 28, 2022), https://www.instagram.com/p/Clg5VkerlkT/ [https://perma.cc/67NQ-SJSA] (summarizing in visual form conversation cited above).

[393] *See* Allegra M. McLeod, *Prison Abolition and Grounded Justice*, 62 UCLA L. REV. 1156, 1162-63 (2015) (describing abolitionism as entailing "fundamentally reconstructing social, economic and political arrangements").

Income Tax Credit, a higher minimum wage, expanded Medicaid access, and supportive housing—would lead to much lower rates of "neglect" and child removal.[394] The child tax credit provided during the pandemic was shown to dramatically reduce the incidence of child maltreatment.[395] One trade-off of the alliances described here is an acceptance of smaller government; although, as noted above, families in the system would prefer no government intrusion over what they receive now when they ask for help. Nonetheless, there is some hope for small steps toward redistribution. At the time of writing, the House of Representatives has passed a bipartisan child tax credit—only the second time in U.S. history, other than during the height of the pandemic—a government benefit to low-income families that would have been unthinkable five years ago.[396]

Finally, transformative change, in a world of structural racism and widespread childhood poverty, necessitates political and economic power shifting.[397] Children and families will ultimately come to thrive only through community self-defense, mutual aid, and bottom-up leadership.[398] Parent leadership movements are gaining ground across the country—a few even work with some of these bipartisan coalition members.[399] Scholars, lawyers, and other professionals should learn from these community movements as they organize for more specific goals, such as to repeal ASFA, and a broader vision of reimagined support.[400] In the short and intermediate term, the "strange

[394] *See, e.g.*, Cara Baldari & Rricha Mathur, *Increasing the Minimum Wage Is Good for Child Well-Being*, FIRST FOCUS ON CHILD. (Aug. 31, 2017), https://firstfocus.org/blog/increasing-the-minimum-wage-is-good-for-child-well-being [https://perma.cc/7ZRB-99QS]; *see also* Anna Arons, *An Unintended Abolition: Family Regulation During the COVID-19 Crisis*, 12 COLUM. J. RACE. & L.F. 1, 3 (2022).

[395] Lindsey Rose Bulinger & Angela Boy, *Association of Expanded Child Tax Credit Payments with Child Abuse and Neglect Emergency Department Visits*, JAMA NETWORK OPEN 8 (Feb. 16, 2023), https://jamanetwork.com/journals/jamanetworkopen/fullarticle/2801496? [https://perma.cc/7TPN-VUA7].

[396] *See* KRIS COX ET AL., CTR. ON BUDGET & POL'Y PRIORITIES, ABOUT 16 MILLION CHILDREN IN LOW-INCOME FAMILIES WOULD GAIN IN FIRST YEAR OF BIPARTISAN CHILD TAX CREDIT EXPANSION (2024), https://www.cbpp.org/sites/default/files/1-16-24tax.pdf [https://perma.cc/3L7Y-FPFE]; *see also* Jason DeParle, *Trump and Harris Both Like a Child Tax Credit, but with Different Aims*, N.Y. TIMES (Oct. 14, 2024), https://www.nytimes.com/2024/10/14/us/politics/trump-harris-child-tax-credit.html?

[397] Bell certainly recognized this truth—indeed it is the first principle underlying his interest convergence theory.

[398] *See, e.g.*, Scribe Video Center, *DHS, Give Us Back Our Children! By the Every Mother Is a Working Mother Network*, YOUTUBE (Sept. 18, 2019), https://www.youtube.com/watch?v=OHLNsIlxFsQ. *See generally* MOTHER'S OUTREACH NETWORK, https://mothersoutreachnetwork.org [https://perma.cc/9FMF-NB7E].

[399] But even still, narrative-shifting entails elevating "Black mothers' voices." *See* Telephone Interview with T.Y., *supra* note 182.

[400] *See* Mari J. Matsuda, *Looking to the Bottom: Critical Legal Studies and Reparations*,

bedfellows" coalition is doing a lot of work to lift up families and shrink the carceral state; however, long-term change will only come when those most impacted are centered—families and communities themselves.

22 HARV. C.R.-C.L. L. REV. 323, 324, 349 (1987) (urging legal scholars to "listen" to marginalized groups and "build coalitions with others," since we "will never be the center of any successful movement for social change"); *see also Our Story & Values*, MOVEMENT FOR FAM. POWER, https://www.movementforfamilypower.org/our-story-values [https://perma.cc/85HS-9CMN] (last visited Dec. 13, 2024) (describing use of "movement lawyering principles" to center directly impacted people and grassroots activism); CAL. FAMS. RISE, https://familiesrise.org/ [https://perma.cc/7KKE-FQPX] (last visited Dec. 13, 2024) (mobilizing "impacted families to fight for systemic change and implement policy reform" to family policing system and family courts).