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## FOREWORD

### 11TH ANNUAL SYMPOSIUM

#### **FOREWORD: STRENGTHENED BONDS: ABOLISHING THE CHILD WELFARE SYSTEM AND RE-ENVISIONING CHILD WELL-BEING**

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*The 2001 book, Shattered Bonds: The Color of Child Welfare, by Dorothy Roberts, called out the racism of the child welfare system and the harms that system perpetrates on families and communities. Twenty years later, despite numerous reform efforts, the racism and profound harms endure. It is time for transformative change. In this foreword to the symposium Strengthened Bonds: Abolishing the Child Welfare System and Re-Envisioning Child Well-Being, honoring the 20th anniversary of Shattered Bonds, we highlight Professor Roberts' articulation of her development as a family policing abolitionist and summarize the articles and comments contributed from scholars in numerous disciplines and well as impacted parents, family defense advocates and system-change activists. These contributions help us learn from history and political theory; focus on the unique and shared circumstances of Native American families; critique, and call for repeal of, much of current law; condemn the punitive, and racially disproportionate, surveillance of families; and demand a new approach that diverts the massive funding of the foster-care industrial*

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*complex into support, services, and healing for families, tribes, and communities.*

*We call for abolition of the family regulation system, the term we use as a more accurate description of what is commonly called the child welfare or child protection system. We situate this call in the context of the more developed movement for prison abolition. The current system is predicated on seeing individual parents as a risk to their children. It fails to see the strengths and resilience of parents and families; the harms of surveillance and removal; and the structural forces that harm children by failing to invest in adequate housing, income, child care, health and mental health services, and educational opportunities for all families. Abolition provides the transformative mind-set that will enable loving and strengthened families to raise happy, healthy, safe, educated, and imaginative children.*

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## I. INTRODUCTION

State removal of children from their parents is an act of violence and cruelty. That is why the Trump administration faced near universal condemnation for its 2018 policy of separating parents and children at the US-Mexico border.<sup>1</sup> With this symposium, *Strengthened Bonds: Abolishing the Child Welfare System and Re-Imagining Child Well-Being*, we call attention to the enduring, devastating, American practice of separating parents and children through state agency and court procedures cloaked under the misleading name of the *child welfare* system. Those family separations are no less traumatic and consequential than the ones that were denounced at the US-Mexico border, and they will be harder to end. The Articles and Comments in this and the subsequent symposium issue seek to contribute to abolishing the system that allows those separations to continue, and to reimagining and replacing it with policies and practices that facilitate the flourishing of all children within their families, tribes, and communities.

Twenty years ago, in *Shattered Bonds: The Color of Child Welfare*, law professor Dorothy Roberts systematically dismantled any pretense that the child welfare system functions to serve the interests of children.<sup>2</sup> Through data, documentation, history, analysis, and family narratives, Professor Roberts called out the racism at the heart of a system that has destroyed hundreds of thousands of families. “If you came with no preconceptions about the purpose of the child welfare system,” she wrote, “you would have to conclude that it is an institution designed to monitor, regulate, and punish poor Black families.”<sup>3</sup> Professor Roberts built on earlier analyses of child protection intervention that identified poverty as the leading reason for the state removing children from their families, and on the long legacy of early Progressive activists’ efforts to assimilate immigrant families who were a threat to “American” norms by conditioning assistance on intrusive and punitive interventions

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<sup>1</sup> Maggie Jo Buchanan et al., *The Trump Administration’s Family Separation Policy is Over* CTR. AM. PROGRESS (April 12, 2021), <https://www.americanprogress.org/issues/immigration/reports/2021/04/12/497999/trump-administrations-family-separation-policy> [<https://perma.cc/G36T-K5KP>].

<sup>2</sup> DOROTHY E. ROBERTS, *SHATTERED BONDS: THE COLOR OF CHILD WELFARE* (2001).

<sup>3</sup> *Id.* at 6.

in their lives.<sup>4</sup> Even before this late 19th century Progressive effort began, the legally sanctioned destruction of Native American families was already operating—a systemic genocide that has yet to abate fully.<sup>5</sup> All of these practices are rooted in the idea of saving children from their families and communities.<sup>6</sup>

The *Strengthened Bonds* symposium honors the 20th anniversary of this groundbreaking book and showcases Professor Roberts' contemporary assessment, as articulated in her keynote address, *How I Became a Family Policing Abolitionist*, that family policing—the term she now uses in place of the child welfare system—is an arm of the racist carceral state and must end. We agree with Professor Roberts that new terminology is in order. The term *child welfare* system is misleading, as is the equally recognized *child protection* system. The system these terms denominate does not protect nor support child well-being, and too often perpetrates harm on children, families, and communities. While the term *foster care system* is equally problematic—as it elides the documented harms children have experienced upon removal from their families—it has been easy to replace the term foster care system with foster system and to refer to placement in foster homes rather than foster care.<sup>7</sup>

Scholars and advocates have had more difficulty coming up with terminology to replace the *child welfare* system. Professor Roberts, as noted earlier, has chosen *family policing*. The terminology we believe best captures the operation of this system is the *family regulation system*, a term first coined by Emma Williams in her Oberlin College honors thesis.<sup>8</sup> This term

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<sup>4</sup> Leroy H. Pelton, *The Role of Material Factors in Child Abuse and Neglect*, in PROTECTING CHILD FROM ABUSE AND NEGLECT 131 (Gary V. Melton & Frank D. Barry eds., 1994); BARRY C. FELD, THE EVOLUTION OF THE JUVENILE COURT 22–25 (2017).

<sup>5</sup> LAURA BRIGGS, TAKING CHILDREN: A HISTORY OF AMERICAN TERROR, 46–75 (2020).

<sup>6</sup> See ANTHONY M. PLATT, THE CHILD SAVERS: THE INVENTION OF DELINQUENCY (40th ed. 2009).

<sup>7</sup> See generally Shanta Trivedi, *The Harm of Child Removal*, 43 N.Y.U. REV. L. & SOC. CHANGE 523 (2019).

<sup>8</sup> See Emma Williams, *'Family Regulation,' Not 'Child Welfare': Abolition Starts with Changing our Language*, IMPRINT (July 28, 2020), <https://imprintnews.org/opinion/family-regulation-not-child-welfare-abolition-starts-changing-language/45586> [<https://perma.cc/C45S-ZPH6>]. The term is also

was quickly adopted by many advocates, system-involved parents, and academics.<sup>9</sup> *Family regulation* reflects the pervasive impact legally-constructed agencies and courts have on every aspect of the families they touch. From the school report that a child was hungry, to the knock on the door in the middle of the night to check the refrigerator, to further prolonged investigations, to agency or court mandated supervision, to removal of children temporarily or permanently, family behavior

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consistent with Wendy Bach's use of the term *hyperregulation* to mean that "its mechanisms are targeted by race, class, gender, and place to exert punitive social control over poor, African-American women, their families, and their communities." Wendy A. Bach, *Flourishing Rights*, 113 MICH. L. REV. 1061, 1073 (2015).

<sup>9</sup> See RISE, 'Abolition is the Only Answer': A Conversation with Dorothy Roberts, (Oct. 20, 2020), <https://www.risemagazine.org/2020/10/conversation-with-dorothy-roberts> ("We've challenged terms that give a false impression of what the system does. Now, we are exploring different descriptions of it. One is 'family regulation' because the government is regulating families through laws and policies that address families' needs by threatening to take children away. Even when they don't take children away, they impose all sorts of requirements on families instead of support and providing for families."); Chris Gottlieb, *Black Families Are Outraged About Family Separation with the US. It's Time to Listen to Them*, TIME, (Mar. 17, 2021) <https://time.com/5946929/child-welfare-black-families> [<https://perma.cc/XJN7-6JL5>] ("It is time to call the 'child welfare system' what it is: a 'family regulation system.'"); Molly Schwartz, *Do We Need to Abolish Child Protective Services?*, MOTHER JONES (Dec. 10, 2020), <https://www.motherjones.com/politics/2020/12/do-we-need-to-abolish-child-protective-services> [<https://perma.cc/4H7W-DZ7X>] (citing parent advocate and activist Joyce McMillan); 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, 714 n.3 (2021) ("It is not, and never has been, a 'child welfare system.' . . . [c]hild welfare is not even within the portfolio of any so-called 'child welfare commissioner' [who] would surely have in her portfolio the authority to investigate all situations in which children's welfare are placed at risk. But no commissioner has the authority, for example, to address lead paint poisoning in public housing, or the rigging of lead level in the public schools . . . It literally is a family regulation system, exclusively."); Ava Cilia, *The Family Regulation System: Why Those Committed to Racial Justice Must Interrogate It*, HARV. C.R.-C.L. L. REV. AMICUS (Feb. 21, 2021) <https://harvardcrcl.org/the-family-regulation-system-why-those-committed-to-racial-justice-must-interrogate-it> [<https://perma.cc/2PTW-VJ3H>]. Other possible terms, all more accurate than *child welfare* system are *family destruction* system, see RISE *supra*, and *child removal* system, see Robert Latham, *A Starter Reading List on How Child Welfare Policies Harm Black People, Families, and Communities*, (June 12, 2020), <https://robertlathamesq.org/a-starter-reading-list-on-how-child-welfare-policies-harm-black-people-families-and-communities> [<https://perma.cc/8J5Z-HFNK>] ("The child welfare system has nothing to say about anti-Black state violence because the *child removal system* engages in it daily.").

is surveilled and regulated. This comes at great cost to families, generally with little or no benefit—indeed sometimes great harm—to children.

When we speak of the existing child welfare, or family regulation, system, we are referring to a regime of public, private, and faith-based agencies and institutions, courts, and individuals authorized by force of law to surveil and intervene in families, remove children from their parents temporarily or permanently, terminate the parent-child relationship, and create new legal families. Child removal is not the end result of all interventions by the family regulation system, but parental interaction with anyone in that system takes place under the specter of possible child removal and loss of parental rights. When children are removed from their families, they are generally placed in a massive foster system in which the state provides vastly more money and assistance to strangers to raise other people's children than it is willing to provide parents to raise their own children.<sup>10</sup> It is the coercive power of the state to intervene in and ultimately destroy families that distinguishes the so-called child welfare system and its actors from any other existing or envisioned system of providing assistance to families to promote the well-being of their children.

The current family regulation system is predicated on seeing the individual families who come within its grip as presenting the problems to be addressed. It purports to address those problems through surveillance, intervention in family life, deep reliance on removing children, and providing services to families that rarely support their complex needs. This approach fails to recognize or embrace the strengths of families and communities. The family regulation system has become an ineffective and harmful substitute for the more fundamental need to invest in families, communities, and tribes in order to ensure adequate housing, income, child care, health and mental health services, and educational opportunities for all families.

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<sup>10</sup> Compare ALI SAFAWI & IFE FLOYD, TANF BENEFITS STILL TOO LOW TO HELP FAMILIES, ESPECIALLY BLACK FAMILIES, AVOID INCREASED HARDSHIP, CTR. BUDGET & POL'Y PRIORITIES (Oct. 8, 2020), <https://www.cbpp.org/sites/default/files/atoms/files/10-30-14tanf.pdf> [<https://perma.cc/W9NH-3YJP>] (“Temporary Assistance for Needy Families” (TANF) payments), *with* Peeples, *Getting Paid to Be a Foster Parent: State-by-State Monthly Guide*, WE HAVE KIDS (July 23, 2020), <https://wehavekids.com/adoption-fostering/What-does-being-a-foster-parent-really-pay> [<https://perma.cc/9HHD-WDPC>] (foster care payments).

These investments strengthen communities so they have the ability to support and assist themselves.

Even the most recent federal legislation, the *Family First Prevention Services Act*, which purports to shift services for families into community-based agencies, applies only to children who are “candidates” for foster care but could remain safely in their homes with preventive services.<sup>11</sup> This means families cannot just appear at a community agency and say they need some assistance. They must first submit to state surveillance and obtain a determination that without services their child “would be at imminent risk of entering foster care,” a condition that exposes them to continued state monitoring and that most families in need of some assistance would contest.<sup>12</sup> In other words, this law, widely heralded for its focus on keeping families together, actually requires a parent who wants substance abuse treatment, for example, to voluntarily submit to the very system that has the power to remove her children and ultimately terminate her parental rights. That is the essence of a family regulation system.

## II. THE ROOTS OF THIS SYMPOSIUM

Since the very formation of a governmental family regulation system—first in the creation of the original juvenile court and later in the development of federally funded state child protection agencies—advocates, lawyers, judges, scholars, policy makers, activists, parents, and children have written and spoken about the defects in, and harms inflicted by, this system. Historic and current critics have identified myriad substantial and seemingly intractable concerns: the trauma of separating children and parents; vague standards of child maltreatment;

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<sup>11</sup> 42 U.S.C. §671 (a) (“In order for a State to be eligible for payments under this part, it shall have a plan approved by the Secretary which . . . provides for foster care maintenance payments in accordance with section 472, adoption assistance in accordance with section 473, and, at the option of the State, services or programs specified in subsection (e)(1) of this section for children who are candidates for foster care or who are pregnant or parenting foster youth and the parents or kin caregivers of the children, in accordance with the requirements of that subsection”).

<sup>12</sup> 42 U.S.C. §675 (13) (defining a child whose family is eligible for Family First prevention services as one “who is identified in a prevention plan . . . as being at imminent risk of entering foster care . . . but who can remain safely in the child’s home or in a kinship placement as long as services or programs . . . that are necessary to prevent the entry of the child into foster care are provided.”).

misidentifying poverty as neglect; the impact of increasing income inequality and the ever-more-frayed safety net; misdiagnoses of child abuse; the failure to distinguish and address the far smaller number of serious cases of physical and sexual abuse from the vast number of cases based largely on poverty and inequities in families' lives; downsides of mandatory and anonymous reporting of suspected child maltreatment; devastating and unneeded consequences of child abuse registries; inadequate mental health and substance abuse treatment; failure to create effective and often material services; denying services that are legally mandated to prevent child removal or reunite families who have been separated; the demonization of mothers and the disregard of fathers; the role of the courts in perpetuating inequality and injustice; drawing families under court supervision to receive services; widespread due process violations; inadequate, untimely, and ineffective legal representation; inappropriate family reunification requirements; financial incentives for foster placements and adoptions but not for family reunification; the priority of adoption over other permanency options; the vast funding of the foster-care industrial complex while limiting support to families; mistreatment of, and bad outcomes for, children in foster homes; unrelenting, ongoing, structural racism, seen especially in the devaluing of the relationships between Black mothers and their children; and the failure to see and seek solutions within those communities most affected by family regulation.<sup>13</sup>

Since the publication of *Shattered Bonds* at the beginning of this century, there have been efforts to ameliorate these defects and reduce these harms. These efforts have been focused, for the most part, on making the current family regulation system work better without fundamentally challenging its

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<sup>13</sup> See generally ROBERTS, *supra* note 2; MARTIN GUGGENHEIM, WHAT'S WRONG WITH CHILDREN'S RIGHTS (2005); TINA LEE, CATCHING A CASE: INEQUALITY AND FEAR IN NEW YORK CITY'S CHILD WELFARE SYSTEM (2016); DON LASH, WHEN THE WELFARE PEOPLE COME: RACE AND CLASS IN THE U.S. CHILD PROTECTION SYSTEM (2017); MICAL RAZ, ABUSIVE POLICIES: HOW THE AMERICAN CHILD WELFARE SYSTEM LOST ITS WAY (2020); DIANE L. REDLEAF, THEY TOOK THE KIDS LAST NIGHT: HOW THE CHILD PROTECTION SYSTEM PUTS FAMILIES AT RISK (2018); VICTORIA LAW & MAYA SCHENWAR, PRISON BY ANY OTHER NAME: THE HARMFUL CONSEQUENCES OF POPULAR REFORMS 115–140 (2020); JANE M. SPINAK, WHEN GREAT IDEAS FAIL: FAMILY COURT AND THE DANGERS OF DOING GOOD (forthcoming N.Y.U. Press) (provisional title) (on file with author).

premises. Meanwhile, state and federal funding for the current system has more than tripled.<sup>14</sup> *Strengthened Bonds: Abolishing the Child Welfare System and Re-Envisioning Child Well-Being* has provided an opportunity to critique this approach and to consider radical change to re-imagine how society cares for and protects children while honoring their bonds to their families and communities. Most centrally, radical change recognizes the societal responsibility to invest in universal and mutual support systems in communities, tribes, and neighborhoods to enable families to flourish and thrive.

Less than three weeks after we issued the call for papers for this symposium, a Minneapolis police officer murdered George Floyd, a murder that 17-year-old Darnella Frazier captured on video and broadcast to the world. The mass protests and uprisings that followed, in cities and towns around the country, brought systemic racism to the forefront of American consciousness at a time when the Covid-19 pandemic was disproportionately devastating Black, Indigenous, and people of color (BIPOC) communities. The demonstrators also turned the demand for police and prison abolition—a movement decades in the making—into a serious topic of mainstream conversation. Reconsidering how systemic racism and white supremacy impact the purposes and practices of traditional institutions was legitimized in ways that hadn't been widespread throughout the country since the civil rights movement.

In our call for papers, we acknowledged the prison abolition movement. We commended its vision of replacing imprisonment, policing, and surveillance with alternatives that respond effectively to harm without putting people in cages or increasing the prison industrial complex, and that instead create and support healthy, stable families and communities.<sup>15</sup> We identified the parallels between the criminal legal system and the family regulation system. Most obviously, both systems trace their practices to colonization and slavery, mass immigration and displacement of Native populations, and the resulting and lasting inequities that have ensued and continue to

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<sup>14</sup> Compare ROBERTS, *supra* note 2 (placing the funding at \$10 billion) with KRISTINA ROSINSKY ET AL., CHILD WELFARE FINANCING SFY 2018: A SURVEY OF FEDERAL, STATE, AND LOCAL EXPENDITURES 1 (2021) [<https://perma.cc/7GES-MBA3>] (placing 2018 funding at \$33 billion).

<sup>15</sup> See *Mission*, CRITICAL RESISTANCE, <http://criticalresistance.org/about> [<https://perma.cc/R2ZZ-WCMC>] (last visited June 20, 2021).

disproportionately target BIPOC communities, as well as predominantly low-income families. We also recognized that the prison abolition movement had produced a robust body of scholarship, and we stated our aspiration that this symposium would generate equally insightful, imaginative, and impactful scholarship in support of abolishing the family regulation system and creating a radically new approach to child well-being.

The response to our call for papers was overwhelming. We received more than 100 proposals, including from scholars in law, sociology, anthropology, political science, history, gender studies, public health, medicine, social work, and education. Equally impressive were the proposals from practicing lawyers, social workers, parent advocates, and clinicians; policy advocates, activists, and journalists; and from parents who had been regulated by and even lost their children to the state, and from young adults who had been foster youth. The Editorial Board of the *Columbia Journal of Race and Law* agreed with the importance of this initiative, and committed to dedicating two issues to symposium Articles and Comments, and, to capture as much of the interest as possible, we severely limited the length of submissions. Even so, we could accept only a third of the proposals we received. Most of the pieces accepted for the first issue are contained in this volume, while some appear in the *Journal's* exclusively online publication, the *Columbia Journal of Race and Law Forum*. We captured several additional voices in blog posts published on the *Journal's* website in the months leading up to the symposium.<sup>16</sup>

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<sup>16</sup> See, e.g., Every Mother is a Working Mother Network et al., *Defund the Family Policing System: Fund Mothers and Other Primary Caregivers*, COLUM. J. RACE & L. BLOG (Feb. 13, 2021), <https://journals.library.columbia.edu/index.php/cjrl/blog/view/309> [<https://perma.cc/E7UX-TYPJ>]; Maya Pendleton, *Making Possible the Impossible: A Black Feminist Perspective on Child Welfare Abolition*, COLUM. J. RACE & L. BLOG (Feb. 20, 2021), <https://journals.library.columbia.edu/index.php/cjrl/blog/view/311> [<https://perma.cc/7D3X-UCU2>]; Brittney Frey, *Re-Envisioning the Child Welfare System with a Cup of a Science, a Spoonful of Law, and a Gallon of Love*, COLUM. J. RACE & L. BLOG (Feb. 21, 2021), <https://journals.library.columbia.edu/index.php/cjrl/blog/view/312> [<https://perma.cc/P6M3-6SGS>]; Shannan Wilber & Maribel Martínez, *SupportOUT: Promoting the Well-Being of LGBTQ Youth of Color in Their Homes, School, and Communities*, COLUM. J. RACE & L. BLOG (Feb. 25, 2021), <https://journals.library.columbia.edu/index.php/cjrl/blog/view/315> [<https://perma.cc/22FC-BPVW>];

## III. THE ARTICLES IN THIS ISSUE

Given the vast reach of the family regulation system and the breathtaking scope of the critiques, no symposium could address every systemic flaw or imagine every scenario for a future in which children are fully supported in their families, tribes, and communities.<sup>17</sup> The Articles and Comments that follow in this issue, and those that will appear in the second symposium issue, reflect an abolitionist stance that we hope will inform scholarship, advocacy, and activism to come. Several examine the historical context of family regulation, including the deep roots of slavery and Native American genocide. Without exploring those historical origins—as contributor Addie Rolnick notes—we suffer from a “failure of memory” that allows us to forget that “what we imagine as benevolent, helpful systems [were] originated as ways to control, eradicate, or confine disfavored populations.”<sup>18</sup>

Dorothy Roberts, in her keynote address, *How I Became a Family Policing Abolitionist*, identifies the three developments that led her to advocate for abolition: the dismal track record of supposed reforms; the growth of the prison abolition movement;

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Esther Anne & Penthea Burns, *Truth, Healing, and Change in the Dawnland*, COLUM. J. RACE & L. BLOG (Mar. 4, 2021), <https://journals.library.columbia.edu/index.php/cjrl/blog/view/317> [<https://perma.cc/73ZP-8G4C>]; Leyda Garcia-Greenawalt, *Guilty: How Immigrating to the United States Became a Life Sentence to Child Welfare*, COLUM. J. RACE & L. BLOG (Mar. 19, 2021), <https://journals.library.columbia.edu/index.php/cjrl/blog/view/319> [<https://perma.cc/9ET6-SHSA>].

<sup>17</sup> We also acknowledge previous law review symposia that have provided significant critiques of the current system. See, e.g., *CUNY LAW Review's Spring Symposium: "Reimagining Family Defense"*, CUNY L. REV. (May 1, 2016), <http://www.cunylawreview.org/cuny-law-review-spring-symposium/#more-2327> [<https://perma.cc/HC37-UN5S>]; *Elie Hirschfeld Symposium on Racial Justice in the Child Welfare System Transcript*, 44 N.Y.U. REV. L. & SOC. CHANGE 129 (2019). *Achieving Justice: Parents and the Child Welfare System*, FORDHAM L. REV., <http://fordhamlawreview.org/symposiumcategory/achieving-justice-parents-and-the-child-welfare-system> [<https://perma.cc/25EJ-L3RQ>] (last visited June 21, 2021); the Articles contained in 70 FORDHAM L. REV. 1–458 (2001) and 21 BROOK. J. L. POL'Y 1–153 (2012).

<sup>18</sup> Addie Rolnick, *Assimilation, Removal, Discipline, and Confinement: Native Girls and Government Intervention*, 11 COLUM. J. RACE & L. 811, 823 (2021).

and the increase in organizing by parents and youth affected by the system.<sup>19</sup>

Twenty years of reform efforts, some of which Professor Roberts participated in, have taught her that trying to reform a system can legitimate and strengthen it without changing its punitive ideology or racist impact. She writes that “we can’t tinker with the flaws of a system designed at its roots to police poor, Black, Indigenous and other marginalized families as a way of maintaining a racial capitalist system.”<sup>20</sup> Professor Roberts draws extensively on the work of prison abolitionists, applying abolitionist analysis to family policing and concluding that the system cannot be fixed. “Instead,” she writes, “we need a paradigm shift in the state’s relationship to families—a complete end to family policing by dismantling the current system and reimagining the very meaning of child welfare.”<sup>21</sup> She cautions that funds divested from police should not go to enriching family policing, and she admonishes prison abolitionists who fail to recognize how the family policing system surveils and represses Black and other marginalized communities in ways that are similar to law enforcement systems. Finally, Professor Roberts has been influenced by the rise of parent and youth groups that have organized to demand and implement transformative change as well as the rise of multi-disciplinary, holistic parent defense offices to challenge family policing practices.<sup>22</sup>

Again borrowing from the reasoning of prison abolitionists, Professor Roberts advocates “non-reformist reforms,” those that shrink the state’s capacity to destroy families.<sup>23</sup> These can include ending mandatory reporting—the requirement that persons in certain occupations report any suspected child maltreatment to the states; providing high-quality, multidisciplinary legal defense to parents at every stage of the process, including before their children are removed; and organizing for community-based mutual aid. Professor Roberts’ contribution to this symposium previews the history, analysis,

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<sup>19</sup> Dorothy E. Roberts, *How I Became a Family Policing Abolitionist*, 11 COLUM. J. RACE & L. 455 (2021).

<sup>20</sup> *Id.* at 460.

<sup>21</sup> *Id.* at 464.

<sup>22</sup> *Id.* at 465.

<sup>23</sup> *Id.* (citing Dan Berger, Mariame Kaba & David Stein, *What Abolitionists Do*, JACOBIN (June 24, 2017), <https://www.jacobinmag.com/2017/08/prison-abolition-reform-mass-incarceration> [<https://perma.cc/C55S-5GEL>]).

and arguments she develops more fully in her forthcoming book, provisionally entitled, *Torn Apart: How the Child Welfare System Destroys Black Families—And How Abolition Can Build A Safer World*.

Two Articles were crafted, in part, as responses to Professor Roberts' keynote themes. Gwendoline M. Alphonso, in *Political-Economic Roots of Coercion—Slavery, Neoliberalism, and the Racial Family Policy Logic of Child and Social Welfare*, contrasts two distinctive standards applied to Black and white motherhood during the last two centuries: the Black economic utility standard versus the white affective family standard.<sup>24</sup> The ante-bellum period valued Black women for what they could contribute to the accumulation of white wealth but valued white women for what they could contribute to their own families. Post-bellum policies compelled Black women to work rather than care for their children and twentieth century financial supports first went only to white mothers. The later expansion of supports that included Black families came with punitive work requirements that to this day are implemented most coercively against Black mothers. Today's punitive child welfare and social welfare policies will not end, she argues, as long as we perpetuate this multi-century devaluation of the affective and nurturing labor performed by Black mothers.

Professor Laura Briggs, in *Twentieth Century Black and Native Activism Against the Child Taking System: Lessons for the Present*, recalls mid-twentieth century activism against state removal of Black and Native families.<sup>25</sup> In direct response to *Brown v. Board of Education*,<sup>26</sup> southern states implemented "suitable home" rules that resulted in the removal of tens of thousands of Black families from public financial assistance, a move specifically designed to get Black families to flee the south so that schools could remain segregated. Families who could not feed their children were then subjected to the possibility of child removal. In Louisiana in particular, this resulted in a National Urban League call to "Feed the Babies," both through mutual aid

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<sup>24</sup> Gwendoline M. Alphonso, *Political-Economic Roots of Coercion—Slavery, Neoliberalism, and the Racial Family Policy Logic of Child and Social Welfare*, 11 COLUM. J. RACE & L. 471 (2021).

<sup>25</sup> Laura Briggs, *Twentieth Century Black and Native Activism Against the Child Taking System: Lessons for the Present*, 11 COLUM. J. RACE & L. 611 (2021).

<sup>26</sup> 347 U.S. 483 (1954).

and through state support.<sup>27</sup> But the Urban League pivoted from a radical call to support families to a reform approach through the Social Security Administration, resulting in a rule that states could not deny benefits to children in “unsuitable homes” unless it also removed those children and placed them elsewhere. Instead of funding family support, the resultant federal laws in 1961–62 funded foster homes for removed Black children. In the first year alone, 150,000 Black children were removed from their families.<sup>28</sup>

Turning to Native American families, Professor Briggs notes that child-taking was a feature of state policy against Native American tribes, both to extinguish land claims and to punish non-nuclear forms of child-rearing. Native activism sought tribal control of child welfare matters, and gained a victory—one under persistent attack<sup>29</sup>—in the passage of the Indian Child Welfare Act (ICWA) in 1978. Briggs sees the community control intrinsic to ICWA as a principle worth considering beyond the Native context, but she also cautions that widespread Native child removal endures, and that activists’ contemporaneous call for support to families went unfunded.

Professor Brigg’s call for caution is well heeded in the three articles that consider the sordid history of Native American family destruction in the name of child protection. While the authors pause to consider the potential in ICWA to reimagine the relationship between family regulation and Native American families, the first four decades of ICWA’s existence have not undone that legacy of destruction.

In *Abolition, Settler Colonialism, and the Persistent Threat of Indian Child Welfare*, Theresa Rocha Beardall and Frank Edwards calculate whether ICWA has diminished the prevalence and frequency of Native family separation after

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<sup>27</sup> *Id.* at 625.

<sup>28</sup> *Id.* at 627–29.

<sup>29</sup> See *Braackeen v. Haaland*, 994 F.3d 249 (5th Cir. 2021) (en banc). For an explanation of the history and impact of the decision, see Erin Dougherty Lynch & Dan Lewerenz, *Brackeen v. Bernhard—Indian Child Welfare Act*, NATIVE AM. RTS. FUND (Apr. 6, 2021), [<https://perma.cc/KPF5-TSNK>] and NATIVE AM. RTS. FUND, *Brackeen v. Bernhard: That One Big ICWA Case* (last visited June 21, 2021) [<https://perma.cc/3LUC-CRWL>] (graphic breaking down the impact of the decision on current cases).

centuries of systemic genocide under federal authority.<sup>30</sup> Their empirical analysis establishes that despite the intention of ICWA to “address and ameliorate” family separation of Native Peoples, Native children and families today remain at higher risk of separation than any other group in the country.<sup>31</sup> ICWA was intended to eliminate two practices. The first was the long history of removing Native American children from their families and tribes and sending them to Bureau of Indian Affairs “boarding schools” to strip them of their Native customs and beliefs. The second was federal adoption programs created specifically to have Native children adopted by non-Native families. Instead, “the magnitude of Native family separation through the child welfare system has substantially increased since the passage of ICWA.”<sup>32</sup> They conclude that only funding that delinks federal regulatory authority, and prioritizes redirecting social and financial resources into the control of Native families and tribal communities, will stop the routine separation of Native children from their families.

In *Assimilation, Removal, Discipline, and Confinement: Native Girls and Government Intervention*, Addie Rolnick evokes the voices of Native girls and women to humanize the terrible numbers Beardall and Edwards calculate.<sup>33</sup> Native families and tribes always resisted the kidnapping of their children. In the era of the boarding schools, they were fearful not only of the physical and emotional trauma of separation for families, but also the physical and psychological violence at the institutions intended to assimilate Native children away from Native culture and practices. When the boarding school era ended, its impact remained. Generations of Native families had been traumatized and their parenting practices devalued, leading to conditions that have enabled non-Native child protection and juvenile justice systems to police Native children. Rolnick believes a “failure of imagination” has permitted on-going punitive family regulation practices to retraumatize Native families rather than embracing

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<sup>30</sup> Theresa Rocha Beardall and Frank Edwards, *Abolition, Settler Colonialism, and the Persistent Threat of Indian Child Welfare*, 11 COLUM. J. RACE & L. 533 (2021).

<sup>31</sup> *Id.* at 550.

<sup>32</sup> *Id.* at 552.

<sup>33</sup> Rolnick, *supra* note 18.

Native family and tribal practices that can protect children and stop the criminalization of trauma.<sup>34</sup>

Lauren van Schilfgaarde and Brett Lee Shelton highlight one Native practice that can help transform current tribal child welfare systems in *Using Peacemaking Circles to Indigenize Tribal Child Welfare*.<sup>35</sup> Situating their concerns in the lasting impact of destructive federal “child saving” practices against Native families, they stress the differences between parental rights and parental responsibilities in Native and Western legal systems.<sup>36</sup> The extended family and community of Native peoples responsible for children are contrasted with the individual and adversarial nature of parental rights to children in the American legal system. The pressure on tribal child welfare systems to assimilate to Western forms of legal determinations has been reinforced by federal funding mechanisms which mandate substantial compliance with federal laws that continue to disrupt Native families. The authors, van Schilfgaarde and Shelton, herald an Indigenous family system that encompasses a world view of “responsibilities, relationships, reciprocity, and respect” which orients around duties owed to children.<sup>37</sup> They recommend the “collaborative and supportive problem-solving” Circle practices to augment resilience in children and parents and to involve extended family and community to create social and spiritual engagement and support.<sup>38</sup>

Although not represented in the scholarship in this issue, we chose to screen the film *Dawnland* as part of this symposium, highlighting additional Native experiences and practices.<sup>39</sup> *Dawnland* documents the work of the Maine Wabanaki-State Child Welfare Truth and Reconciliation Commission (TRC), the first government-sponsored TRC in the United States. The Commission gathered testimony and issued a report on the impact of Maine’s child removal practices on families in the state’s Maliseet, Micmac, Passamaquoddy, and Penobscot tribal

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<sup>34</sup> *Id.* at 823.

<sup>35</sup> Lauren van Schilfgaarde & Brett Lee Shelton, *Using Peacemaking Circles to Indigenize Tribal Child Welfare*, 11 COLUM. J. RACE & L. 681 (2021).

<sup>36</sup> *Id.* at 688–90.

<sup>37</sup> *Id.* at 703.

<sup>38</sup> *Id.* at 708.

<sup>39</sup> *Dawnland*, UPSTANDER PROJECT <https://upstanderproject.org/dawnland> [<https://perma.cc/Y8M5-THU5>] (last visited June 21, 2021).

communities.<sup>40</sup> Wabanaki REACH, the Native organization that conceptualized the TRC process and supported the individuals and families who participated in it, continues to work for the self-determination of the Wabanaki people and to advocate truth-telling as a restorative process necessary for healing and change.<sup>41</sup>

Four Articles explore several of the principal federal statutes that structure the current family regulation system: the 1974 Child Abuse Prevention and Treatment Act (CAPTA), the 1997 Adoption and Safe Families Act (ASFA), and the 2018 Family First Prevention Services Act (Family First). The authors conclude that the first two laws must be repealed and that the most recent law—while laudably aimed at reducing child removals—continues investment in the current family regulation system.

Angela Burton and Angeline Montauban, in *Toward Community Control of Child Welfare Funding: Repeal the Child Abuse Prevention and Treatment Act and Delink Child Protection From Family Well-Being*, place Montauban's story, as a mother whose child spent five years in the foster system, in the context of the larger foster care industrial complex, a multi-billion dollar industry that presumes Black parents are a danger to their children and perpetuates itself by the harmful practice of removing children from their families.<sup>42</sup> Montauban faced a child protective services investigation after she called a widely advertised domestic violence hotline for protection from intimate partner violence. Her son was removed to a foster home, and she faced retaliation for raising concerns about his care and the agency's actions. She was also subjected to unnecessary mental health evaluations, a direct outgrowth of the flawed underpinnings of CAPTA, which look to individual parental

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<sup>40</sup> BEYOND THE MANDATE: CONTINUING THE CONVERSATION: REPORT OF THE MAINE WABANAKI –STATE CHILD WELFARE TRUTH AND RECONCILIATION COMMISSION (2015) [<https://perma.cc/25E3-WP6Q>].

<sup>41</sup> WABANAKI REACH, *What We Do*, <https://www.mainewabanakireach.org> [<https://perma.cc/T64T-R2WK>] (last visited June 21, 2021). See Anne & Burns, *supra* note 16.

<sup>42</sup> Angela Burton & Angeline Montauban, *Toward Community Control of Child Welfare Funding: Repeal the Child Abuse Prevention and Treatment Act and Delink Child Protection From Family Well-Being*, 11 COLUM. J. RACE & L. 639 (2021).

deviance rather than structural inequities to explain children's circumstances.

Burton and Montauban extensively critique mandatory reporting, and they decry the harm of embedding agencies filled with mandatory reporters in Black communities. They call for an end to mandatory reporting, as well as the prosecuting of poverty by calling it neglect. Instead, they herald reparations in the form of redirecting the massive funding of the foster care industrial complex to social support programs and community resources.

Martin Guggenheim, in *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*, agrees with Burton and Montauban.<sup>43</sup> Guggenheim posits that current law reflects a pernicious belief that Black parents are an inherent danger to their children, and he describes the racism that littered the path to the enactment of ASFA. Proposals to end poverty through wealth redistribution failed in the Johnson and Nixon administrations because direct support to Black families—seen as pathological and undeserving—was politically unfeasible. Refusal to index welfare payments to keep up with inflation, as the government does with Social Security payments, further doomed efforts at poverty reduction. Racial politics became more explicit under Reagan, including the enactment of racially discriminatory drug laws, setting the stage for Clinton ending guaranteed public assistance and dehumanizing Black children as “superpredators.”<sup>44</sup>

In that racially-charged context, ASFA was enacted by the Clinton administration in 1997, to mandate termination of parental rights when a child was in out-of-home care for more than 15 months. A parent's faults rather than the structural problems caused by poverty were identified as the reason behind the family's failure to reunify. Although private family law routinely maintains children's connections to noncustodial parents, ASFA permanently severs familial connections, a result Guggenheim argues was only acceptable because Black families were viewed as inherently dangerous. Although Guggenheim locates ASFA firmly within the history of American racism, he provocatively asks whether the efforts to repeal it should focus

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<sup>43</sup> Guggenheim, *supra* note 9.

<sup>44</sup> *Id.* at 727.

on racism, or whether, given AFSA's destruction of vast numbers of white families as well, advocates pressing for repeal should focus instead on the Act's harms to all families.

A multi-authored Article from impacted mothers, community organizations, and allied advocates, *Ending the Family Death Penalty and Building a World We Deserve*, also demands repeal of ASFA, deemed the family death penalty for its mandated termination of parental rights.<sup>45</sup> Authors Ashley Albert, Tiheba Bain, Elizabeth Brico, Bishop Marcia Dinkins, Kelis Houston, Joyce McMillan, Vonya Quarles, Lisa Sangoi, Erin Miles Cloud, and Adina Marx-Arpadi center the voices of mothers organizing for transformative and lasting change. Their contribution highlights "the underlying oppressive ideologies which gave rise to such [a] violen[t]" law, and urges "engaging in a praxis of imagination, healing and building" to achieve transformation.<sup>46</sup> Their Article describes movement building, developing alliances with indigenous communities impacted by child removal, learning from the prison abolition movement, and looking toward individual healing as well as collective reparations. Most fundamentally, the authors ask us to embrace their ideas "not [as] prescriptive," but "as a time of thinking between a group of women envisioning and embodying change."<sup>47</sup>

Miriam Mack, in *The White Supremacy Hydra: How the Family First Prevention Services Act Reifies Pathology, Control, and Punishment in the Family Regulation System*, critiques Family First, the recent law touted for its emphasis on family preservation.<sup>48</sup> Family First allows states to use federal funds previously earmarked for children in the foster system for services to families to prevent child removal. Mack argues that the law leaves in place the pillars of the family regulation system: pathology, control, and punishment. Specifically, Family First focuses on individual behavior modification, but does nothing to provide housing, food, and other material resources to families in need; it continues intense monitoring and supervision of families with the specter of child removal; and it perpetuates

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<sup>45</sup> Ashley Albert et al., *Ending the Family Death Penalty and Building a World We Deserve*, 11 COLUM. J. RACE & L. 861 (2021).

<sup>46</sup> *Id.* at 867.

<sup>47</sup> *Id.* at 868.

<sup>48</sup> Miriam Mack, *The White Supremacy Hydra: How the Family First Prevention Services Act Reifies Pathology, Control, and Punishment in the Family Regulation System*, 11 COLUM. J. RACE & L. 767 (2021).

the foster system, termination of parental rights, and financially incentivized adoption. Mack acknowledges that it is too soon to know if Family First will reduce forced family separation. Although it will be an improvement if it does so, it is not a radical reordering of the family regulation system. That, she argues, will come from implementing principles adapted from the prison abolition movement to steer change in the direction of non-reformist reforms.

Surveillance in the family regulation system is a frequent theme throughout this volume, with the strongest critique reserved for mandatory reporting. Although only a small percentage of mandated reports are deemed credible, mandatory reporting subjects millions of parents to intrusive and traumatic investigations; over fifty percent of Black children are subjected to a family regulation investigation in their lifetime.<sup>49</sup> In *The Surveillance Tentacles of the Child Welfare System*, Charlotte Baughman, Tehra Coles, Jennifer Feinberg, and Hope Newton examine how mental health and social service providers, schools, and police feed families into the family regulation system.<sup>50</sup> They note the harm of removing a child to the foster system, but they emphasize that investigations and mandating services as an alternative to removal also harm families by disrupting them without providing the material support that families need. Ultimately, they call for increased cash assistance, access to safe and affordable housing, and other needed services and support outside the surveillance model of the family regulation system.

Mandatory reporting in schools and the medical profession are explored in two Articles. In *Reimagining Schools' Role Outside the Family Regulation System*, Brianna Harvey, Josh Gupta-Kagan, and Christopher Church scrutinize how educational personnel are the leading drivers of child maltreatment reports, yet these reports are least likely to need further investigation and, when investigated, least likely to be substantiated.<sup>51</sup> These reports overwhelm the child welfare system with unnecessary allegations of maltreatment and they

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<sup>49</sup> Charlotte Baughman et al., *The Surveillance Tentacles of the Child Welfare System*, 11 COLUM. J. RACE & L. 501, 509 (2021) (citing Hyunil Kim et al., *Lifetime Prevalence of Investigating Child Maltreatment Among US Children*, 107 AM. J. PUB. HEALTH 274 (2017)).

<sup>50</sup> *Id.*

<sup>51</sup> Brianna Harvey et al., *Reimagining Schools' Role Outside the Family Regulation System*, 11 COLUM. J. RACE & L. 575 (2021).

disproportionately affect Black children. The authors note that school personnel believe, mostly incorrectly, that a report will result in child protective services providing needed support to families. Instead, intrusive, unnecessary investigations focus on parental fault, creating a strained relationship between families and schools. They propose an alternative vision for schools, one in which only severe child maltreatment is subject to reporting and schools become hubs to link families to public benefits, legal services, and mental health care entirely outside of child protective service agencies.

Clara Presler, in *Mutual Deference Between Hospitals and Courts: How Mandated Reporting from Medical Providers Harms Families*, also urges an alternative to mandatory reporting, this time for medical providers and hospitals. Statutes and regulations explicitly guide medical professionals to report to the state any “reasonable suspicion” of child maltreatment but the reporter is not tasked with any further investigation or response.<sup>52</sup> In this way, hospitals defer to state officials to conduct the investigations and take action. There are legal and financial penalties for failure to report and there is immunity for making reports that turn out to be unfounded, all further incentivizing reporting. Clinicians’ opinions vary widely on what level of likelihood of abuse amounts to reasonable suspicion, and they are often influenced by nonmedical factors that involve race and class bias.

Although the court must find “imminent risk” to the child to remove the child from the home, the judge making that initial decision routinely lacks any additional information, relying on the hospital’s initial report and deferring to the medical provider’s “reasonable suspicion.”<sup>53</sup> This effectively turns “reasonable suspicion” into a finding of “imminent risk.”<sup>54</sup> Pressler includes examples from her practice as a family defender, where families were separated as a result of this practice of mutual deference, causing lasting harm even though the families were eventually reunified. Similar to the call for ending mandatory school reporting, ending mandatory medical

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<sup>52</sup> Clara Presler, *Mutual Deference Between Hospitals and Courts: How Mandated Reporting from Medical Providers Harms Families*, 11 COLUM. J. RACE & L. 733 (2021).

<sup>53</sup> *Id.* at 756.

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

reporting, she argues, would realign the doctor-patient relationship, allow for referrals directly to supportive community programs, and redirect resources from state-sanctioned violence to therapeutic interventions.

The Articles in this issue have been supplemented by two Comments that appear in *The Columbia Journal of Race and Law Forum*, the exclusively online companion to the *Journal's* print pieces. Victoria Copeland furthers our understanding of the surveillance function of the family regulation system in her Comment, "*It's the Only System We've Got*": *Exploring Emergency Response Decision-Making in Child Welfare*, reporting the results of her qualitative research interviewing frontline investigative caseworkers in four urban counties.<sup>55</sup> Copeland examines the paradoxical role of caseworkers as helpers and investigators in surveillance practices that require multi-agency collaborations with law enforcement, schools and hospitals. The caseworkers acknowledge their discomfort in extending "government eyes" or additional demands on families, especially those that are resistant or uncooperative with investigations, because of their fear of missing something.<sup>56</sup> The caseworkers are also ambivalent about using historical and current data readily available to them from multiple government sources, which increases "cycle[s] of subjectivity" about families and further entrenches them in "a diffuse matrix of power."<sup>57</sup> Copeland warns that the increased use of predictive analytics and artificial intelligence by multiple government agencies in child protection decision-making must be tempered by increasing the caseworkers' abilities to find "alternative ways of supporting child safety without the surveillance and policing tactics."<sup>58</sup>

J. Khadijah Abdurahman, in *Calculating the Souls of Black Folk: Predictive Analytics in the New York City Administration of Children's Services*, interrogates the relationship between the Family First prevention provisions and the use of predictive analytics by the NYC Administration for

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<sup>55</sup> Victoria A. Copeland, "*It's the Only System We've Got*": *Exploring Emergency Response Decision-Making in Child Welfare*, 11 COLUM. J. RACE & L. F. 59 (2021).

<sup>56</sup> *Id.* at 67–68.

<sup>57</sup> *Id.* at 87, 88.

<sup>58</sup> *Id.* at 89.

Children’s Services (ACS).<sup>59</sup> Families First provides preventive services when children are “at risk of foster care.”<sup>60</sup> ACS’s predictive analytics presumes the “dangers to children and their families are located within them and their communities,” while ignoring the structural forces that control those families, like police and housing authorities, which produce “conditions of unsafety through separation, surveillance, and investigation.”<sup>61</sup> The “assumptions of Black pathology are rearticulated as risk management,” leading to the maintenance and ultimate expansion of ACS into the lives of BIPOC families, even if children are not removed.<sup>62</sup> Abdurahman stresses that without reckoning with how predictive analytics is an “apparatus” we will falsely believe that prevention is a form of abolition.<sup>63</sup>

#### IV. SITUATING THIS SYMPOSIUM IN A LARGER CONTEXT

The authors of these symposium articles are not alone in seeking transformation rather than reform. The 2020 policy platform of the Movement for Black Lives calls for, among other things, an end to open-ended entitlement funding for the foster system; reinvestment in community organizations; and repeal of the Adoption and Safe Families Act.<sup>64</sup> Parents impacted by the family regulation system have been organizing since before the publication of *Shattered Bonds*—including the Child Welfare Organizing Project and the foundational work to establish *RISE*<sup>65</sup>—and their numbers have increased and they have begun making abolitionist demands. One of the leading parent organizations, *RISE*, has partnered with the International Parent Advocacy Network (IPAN) to create a Toolkit for Transformation, resources for an international parent advocacy

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<sup>59</sup> J. Khadijah Abdurahman, *Calculating the Souls of Black Folk: Predictive Analytics in the New York City Administration of Children’s Services*, 11 COLUM. J. RACE & L. F. 91 (2021).

<sup>60</sup> *Id.* at 108–10.

<sup>61</sup> *Id.* at 115.

<sup>62</sup> *Id.* at 102.

<sup>63</sup> *Id.* at 125.

<sup>64</sup> *Policy Platform: End the War on Black People*, MOVEMENT FOR BLACK LIVES, <https://m4bl.org/policy-platforms/end-the-war-black-women> [<https://perma.cc/NT4H-8PSX>] (last visited June 21, 2021).

<sup>65</sup> *Rise Timeline*, RISE <https://www.risemagazine.org/timeline> [<https://perma.cc/9PUP-FZ36>] (last visited June 21, 2021); Jane M. Spinak, *They Persist: Parent and Youth Voice in the Age of Trump*, 56 FAM. CT. REV. 308, 308–10 (2018).

movement.<sup>66</sup> The Shriver Center on Poverty Law's Strong Communities project calls for ending the harmful removal of children from their homes; its work this year has included webinars on the foster system as part of the carceral web and mandatory reporting as state surveillance.<sup>67</sup> Articles supporting abolition of family regulation appeared in the past year in *The Imprint*, the daily news publication about child welfare and juvenile justice,<sup>68</sup> and *Children's Bureau Express*, the monthly publication of US Department of Health and Human Services Children's Bureau.<sup>69</sup> Public policy organizations and media

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<sup>66</sup> *Toolkit for Transformation: Support Groups for Impacted Parents*, RISE (Feb. 23, 2021) <https://www.risemagazine.org/2021/02/toolkit-for-transformation-support-groups-for-impacted-parents> [<https://perma.cc/7DWE-KJKW>].

<sup>67</sup> *Foster System*, SHRIVER CTR. POVERTY L. <https://www.povertylaw.org/issue/strong-communities/foster-system> [<https://perma.cc/F9JT-9VL2>] (last visited June 21, 2021).

<sup>68</sup> Brianna M. Harvey & Kenyon Lee Whitman, *From a Moment to a Movement: Envisioning a Child Welfare System We Have Yet to See*, IMPRINT (July 8, 2020), <https://imprintnews.org/child-welfare-2/from-moment-to-movement-envisioning-child-welfare-system-we-have-yet-see/45035> [<https://perma.cc/ZS7Z-SFZG>]; Alan Dettlaff et al., *What It Means to Abolish Child Welfare as We Know It*, IMPRINT (Oct. 14, 2020), <https://imprintnews.org/race/what-means-abolish-child-welfare/48257> [<https://perma.cc/5CHX-3MQQ>]; Dorothy E. Roberts, *Abolishing Police Also Means Family Regulation*, IMPRINT (June 16, 2020), <https://imprintnews.org/child-welfare-2/abolishing-policing-also-means-abolishing-family-regulation/44480> [<https://perma.cc/8V8L-YLQH?type=image>]; Alan Dettlaff & Kristen Weber, *Now is the Time for Abolition*, IMPRINT (June 22, 2020), <https://imprintnews.org/child-welfare-2/now-is-the-time-for-abolition/44706> [<https://perma.cc/26T7-UF8Z?type=image>]

<sup>69</sup> See the articles contained in the August/September Issue, *The Moment is Now*, 21 CHILD. BUREAU EXPRESS (2020), <https://cbexpress.acf.hhs.gov/index.cfm?event=website.viewSection&issueID=218&subsectionID=99> [<https://perma.cc/F2YX-CCPX>]. Jerry Milner, then Associate Commissioner of the Children's Bureau, and David Kelly, Special Assistant to the Associate Commissioner, wrote "We should not wait for harsh life conditions and imperfect systems to degrade parents' capacities and then deliver the blow of removing their children. If we commit to helping families thrive before child welfare is needed, and focus resources on child and family well-being, there is greater hope for families to realize their potential. . . . There remains a steadfast attachment to the existing way of operating. But it is time for a different approach. . . . We are calling for an approach that demonstrates that families matter, especially poor families and families of color. . . . Incrementalism of the kind we typically see is insufficiently bold to address the traumas we witness." Jerry Milner & David Kelly, *We Must Meet the Moment in Child Welfare*, 21 CHILD. BUREAU EXPRESS (2020), <https://cbexpress.acf.hhs.gov/index.cfm?event=website.viewArticles&issueid=218&sectionid=2&articleid=5638> [<https://perma.cc/CYR7-BBUL>] (last visited June 21, 2021).

outlets reporting on this system have begun to question the efficacy of limited reforms.<sup>70</sup>

Two organizations are central in the abolition efforts, and are represented in this symposium: The Movement for Family Power (MFP)<sup>71</sup> and the UpEnd movement.<sup>72</sup> MFP centers the leadership of parents and families affected by the foster system. “We believe,” they write, “in a total divestment from the foster system and investment in community. Thus, we will not advocate for reforms that simply recreate systems of surveillance, control and punishment of families.”<sup>73</sup> In the past year, MFP published a landmark report in collaboration with the NYU Family Defense Clinic and the Drug Policy Alliance, *Whatever They Do, I’m Her Comfort, I’m Her Protector: How the Foster System Has Become*

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<sup>70</sup> The National Coalition for Child Protection Reform (NCCPR) offers comprehensive analyses of every aspect of the child welfare system and produces extensive issue papers. NAT’L COALITION CHILD PROTECTION REFORM, <https://nccpr.org> [<https://perma.cc/SSR3-CSQ7>] (last visited June 21, 2021). Executive Director Richard Wexler prepares a must-read weekly news and commentary round-up from sources all across the country and writes a blog notable for both its breadth and depth that analyzes in real time the actions of local agencies; reports and scholarship; and media coverage. The National Center for Housing and Child Welfare works within the existing system to make housing funds available to parents once they have been subject to family regulation, but this year its Executive Director, Ruth White, wrote that “families should never be referred to child protective services (CPS) to access housing assistance or other poverty-related resources. NCHCW is committed to working with the U.S. Children’s Bureau in the coming year to reimagine the training of mandated reporters so that families in need are not referred to CPS for reasons of poverty and are instead served by Community Action Agencies and other appropriate human services organizations.” Ruth White, *Use Federal Child Welfare Funds to Prevent Family Housing Crises*, IMPRINT (Mar. 2, 2021), <https://imprintnews.org/child-welfare-2/use-family-first-act-prevent-family-housing-crisis/52373> [<https://perma.cc/489J-SYWF>].

<sup>71</sup> MOVEMENT FOR FAM. POWER, <https://www.movementforfamilypower.org> [<https://perma.cc/M3LP-CMPN>] (last visited June 21, 2021). The Movement for Family Power is represented in Ashley Albert et al., *Ending the Family Death Penalty and Building a World We Deserve*, *supra* note 45.

<sup>72</sup> UPEND, <https://upendmovement.org> [<https://perma.cc/EU9R-KRPQ>] (last visited June 21, 2021). The UpEND Movement is represented in this Symposium through Bill Bettencourt and Kristen Weber, *Different Year, Different Jurisdiction, but the Same Findings: Reforming Isn’t Enough*, 12 COLUM. J. RACE & L. \_\_\_\_ (2021) (forthcoming) which will appear in the second symposium issue.

<sup>73</sup> *Our Areas of Work*, MOVEMENT FOR FAM. POWER, <https://www.movementforfamilypower.org/indexa> [<https://perma.cc/22SQ-R5EX>] (last visited June 21, 2021).

*Ground Zero for the U.S. Drug War*.<sup>74</sup> The report lambasts the conflation of drug use with abuse and neglect and the way the drug war and the foster system intersect to the detriment of children, families, and communities. It calls for a radical reimagining of how to support children and families through a completely different system that does not rely on surveillance, control, and family separation.

The UpEND movement, launched in June 2020, is a collaboration between the Center for the Study of Social Policy and the University of Houston Graduate School of Social Work. It envisions a society in which “forcible separation of children from their families is no longer an acceptable solution for families in need.”<sup>75</sup> It calls for abolition of the foster care and child welfare system and for implementation of anti-racist policies and practices that safely keep children with their families. The UpEND’s call for abolition recognizes that the child welfare field has implemented numerous reforms centering on racial equity with insufficient improvement and persistent poor outcomes for Black, Native, and Latinx families and youths.

The Issue’s scholarship, including the online-scholarship in the *Forum*, exists within this larger context of demands for change. The virtual *Strengthened Bonds Symposium*, featuring presentations from all the authors of both symposium issues, also has a larger context. Days before the virtual symposium, the Graduate Workers of Columbia-United Auto Workers Local 2101 called a strike to incentivize the university in bargaining negotiations. This led the symposium organizers to postpone the symposium until the strike ended. This decision was widely supported by the presenters and panelists, many of whom would not have crossed the virtual picket line to attend. Some presenters noted that the union’s demands included not only increased wages but also child care and health care, supports that all families need and that are critical to avoiding family regulation system involvement. The Symposium proceeded on

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<sup>74</sup> MOVEMENT FOR FAM. POWER, “WHATEVER THEY DO, I’M HER COMFORT, I’M HER PROTECTOR”: HOW THE FOSTER SYSTEM HAS BECOME GROUND ZERO FOR THE U.S. DRUG WAR (2020), <https://static1.squarespace.com/static/5be5ed0fd274cb7c8a5d0cba/t/5eead939ca509d4e36a89277/1592449422870/MFP+Drug+War+Foster+System+Report.pdf> [<https://perma.cc/DAE9-49M3>].

<sup>75</sup> *About Us*, UPEND <https://upendmovement.org/about> [<https://perma.cc/H39C-4N9A>] (last visited June 20, 2021).

June 16–18, 2021, and we will report on the proceedings in the second issue of the *Columbia Journal of Race and Law* dedicated to the symposium.

As we finished writing this Foreword in late May, 2021, George Floyd’s killer had been convicted of murder and a rising number of people in the country had been fully vaccinated against Covid-19. Perhaps the most optimistic news is that the new Biden administration’s stimulus package is being hailed as “the most effective set of policies for reducing child poverty ever in one bill, especially among Black and Latinx children.”<sup>76</sup> Reducing poverty is an essential step in dismantling the current family regulation system. But as the authors in this Issue and the legions on the ground have attested, more than money is needed. Rather, we must nurture a transformative mind-set that acknowledges the harm that the current system has perpetrated and invests in families, tribes and communities to raise happy, healthy, safe, educated and imaginative children within loving and strengthened families.

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<sup>76</sup> Heather Long et al., *Biden Stimulus Showers Money on Americans, Sharply Cutting Poverty and Favoring Individuals Over Businesses*, WASH. POST (Mar. 6, 2021), <https://www.washingtonpost.com/business/2021/03/06/biden-stimulus-poverty-checks> [<https://perma.cc/EW8M-M4A3>](quoting Indivar Dutta-Gupta, Co-Executive Director of the Georgetown Center on Poverty and Inequality).