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## FOREWORD

**RESPONSE TO THE SYMPOSIUM:  
*STRENGTHENED BONDS: ABOLISHING THE CHILD  
WELFARE SYSTEM AND RE-ENVISIONING CHILD  
WELL-BEING***

Tina Lee\*

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\* Professor of Anthropology, University of Wisconsin-Stout.

## I. INTRODUCTION

It is an honor to be asked to respond to the *Columbia Journal of Race and the Law's* Symposium, “Strengthened Bonds: Abolishing the Child Welfare System and Re-Envisioning Child Well-Being” and to introduce the Symposium contributions through this Foreword. The Symposium was full of clear and thoughtful analyses of the “child welfare” system, its harms, and the myriad ways it is embedded within and intersects with policing, incarceration, social welfare, education, and colonialism—systems bolstered by racism, homophobia, transphobia, and classism.<sup>1</sup> Most exciting was how each panel engaged in detailed, constructive thinking about a future where the system of family regulation and policing is abolished, to be replaced by systems of support that truly keep all children healthy and safe while supporting all parents and respecting their autonomy. The camaraderie, energy, and hope were palpable throughout our three days together, and it was truly inspiring to hear not only from academics but from parents and youth who have been affected, attorneys fighting for their clients, and activists who are on the front lines working for “nonreformist reform”<sup>2</sup>—all with the goal of eventually abolishing the system.<sup>3</sup>

I don't think it is hyperbole to say that the Symposium felt like an historic moment where the presenters put together the pieces of a comprehensive understanding of the status quo and in turn worked towards a clearer roadmap for change. This collective work and discussion helped build bridges between those of us who are working on this issue from different angles and positions, and I hope it will continue to grow a movement for abolition. Kudos to the co-chairs, Jane Spinak and Nancy Polikoff, for bringing together a diverse set of people and intentionally working to ensure that those affected by the system were given a space to share their experiences. Thank you, also, to the editors, Nicolás Quaid Galván, Jacob Elkin, Xyzlo R. Lee, and Chabely Altagracia Jorge, and to Michelle Ellis for organizing the logistics of the Symposium.

This Symposium was organized in honor of the twentieth anniversary of Dorothy Roberts' groundbreaking book, *Shattered Bonds: The Color of Child Welfare*. I first read the book as a graduate student in

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<sup>1</sup> For a discussion of how policing and incarceration intersect with child welfare to leave women vulnerable to losing parental rights, see generally Carla Laroche, *The New Jim and Jane Crow Intersect: Defending the Parental Rights of Mothers During Incarceration*, 12 COLUM. J. RACE & L. \_\_ (2022). For an analysis of the intersections between child welfare, juvenile justice, and education, see generally Kele Stewart, *Re-Envisioning Child Well-Being: Dismantling the Inequitable Intersections Among Child Welfare, Juvenile Justice and Education*, 12 COLUM. J. RACE & L. \_\_ (2022).

<sup>2</sup> RUTH WILSON GILMORE, *GOLDEN GULAG: PRISONS, SURPLUS, CRISIS, AND OPPOSITION IN GLOBALIZING CALIFORNIA* 242 (2007).

<sup>3</sup> Drawing on data from twenty institutional analysis conducted over the last fifteen years, Bill Bettencourt and Kristen Weber demonstrate that attempts at reform have not changed the negative outcomes for families caught up in child welfare. This points to the need to abolish current systems and reimagine ways to support children and families. See generally Bill Bettencourt & Kristen Weber, *Different Year, Different Jurisdiction, But the Same Findings: Reforming Isn't Enough*, 12 COLUM. J. RACE & L. \_\_ (2022). For a discussion of the need to center the experiences of those who have been directly affected by child welfare in abolitionist work, see generally Bianca Shaw et al., *Centering Parent Leadership in the Movement to Abolish Family Policing*, 12 COLUM. J. RACE & L. \_\_ (2022).

anthropology at the Graduate Center of the City University of New York a few years after its publication. The book provided me with an analysis and body of data that became a touchstone as I started to investigate child welfare by observing the day-to-day practices that make up this profoundly unjust system. At the time I conducted my research, anthropologists were writing about incarceration, policing, and the welfare system (i.e., workfare and “welfare reform”), but nothing had been written in anthropology about how the child welfare system was part of this larger picture.

My research looked at the history of child welfare in New York City and how it emerged as a way to police “dangerous” populations in the mid-nineteenth century (i.e. Irish, Eastern and Southern Europeans who were, at the time, considered racially inferior), how the system punished families of color for poverty through child removal, how the courts were or were not a forum for checking the power of the child welfare agency, and how a focus on “compliance” recreated poverty, leaving families more vulnerable. My book, *Catching a Case: Inequality and Fear in New York City’s Child Welfare System*, ended with a call to address the roots of family issues by addressing poverty and the lack of supportive services (including health care, mental health care, and drug treatment services), rather than continuing to punish families with child removal. Since then, I have become more engaged with thinking around police and prison abolition, and I have become convinced that the “child removal system” must be a part of the conversation about how to abolish coercive systems to create a more just society. I’m heartened to know that so many others are coming to the same conclusion and taking steps to make it happen.

In what follows, I draw out connections among the panels at the Symposium,<sup>4</sup> and the resulting pieces in this issue, and the themes that emerged. These make up, in my mind, a comprehensive analysis of this system and its ties to other systems which deal with the social problems stemming from structural inequalities through punishment. Along the way, I point to what I see as next steps in expanding this analysis and filling the few gaps that remain. I end by summarizing the concrete steps towards abolition that were identified by participants, steps which are already being taken in the work of activists, attorneys, and scholars.

## II. FIVE THEMES THAT, TOGETHER, PROVIDE A COMPREHENSIVE ANALYSIS

Professor Roberts’ keynote address,<sup>5</sup> the comments made in the panel afterwards, and the panels across the following two days drew many connections across time, across groups who have been affected by “child welfare,” and across state systems which follow carceral and punishment logics (such as criminal “justice,” education, and welfare). In many of the panels, the most powerful moments were those when the parents and youth

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<sup>4</sup> Video recordings of all of the panel presentations can be found on the Columbia Journal of Race and Law’s YouTube page. See Colum. J. Race & L., Playlist, Vol. 11 Symposium (“Strengthened Bonds: Abolishing the Child Welfare System and Re-Envisioning Child Well-Being”), YOUTUBE (July 13, 2021), [https://www.youtube.com/playlist?list=PLqqQx5I6USK6B9RjE\\_QHkjZDW9sdz6ypb](https://www.youtube.com/playlist?list=PLqqQx5I6USK6B9RjE_QHkjZDW9sdz6ypb).

<sup>5</sup> Dorothy Roberts, *How I Became a Family Policing Abolitionist*, 11 COLUM. J. RACE & L. 455 (2021) [hereinafter Roberts, *Family Policing Abolitionist*].

affected by these systems spoke about their experiences. In their words, they were working to turn “pain into power for change”<sup>6</sup> or “pain into purpose into policy.”<sup>7</sup> Throughout the Symposium, the participants discussed five themes, collectively making up a comprehensive analysis.

#### A. Theme One: Narratives of Irreparable Family Dysfunction

The narrative of irreparably broken families and parents, and the need to “save” their children, has been a driving force throughout American history and across the many systems that have intervened in the lives of poor, Black, and Native groups. The narrative is fundamentally grounded in racism and white supremacy, power structures and systems of belief that, when intertwined with sexism, homophobia, transphobia, and ableism, are integral to the capitalist system.<sup>8</sup> Throughout U.S. history, white supremacist culture has seen little value in poor or Black and brown families. It has sought to punish or assimilate those who don’t fit into white and middle-class norms of “proper” child rearing, often through child removals.<sup>9</sup>

The political choice to deal with the effects of inequality through child removal is tied to the central place of race in U.S. society and how it has fundamentally shaped policy choices throughout history. This point is brought home powerfully by Gwendoline Alphonso who has illuminated the way that—as a historical matter—supportive state policies and practices are reserved for white families seen on affectionate terms as fundamentally needing protection and privacy, as opposed to Black families who are seen in terms of their labor and potential to be exploited for profit.<sup>10</sup> Similarly, Native American families were also not seen as worthy of support, but were instead deliberately ripped apart to destroy the transmission of their culture.<sup>11</sup> A desire to control or assimilate non-white and poor families continues today in the modern foster care system, as Leyda Garcia-

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<sup>6</sup> Ashley Albert & Amy Mulzer, Adoption Cannot be Reformed, Panel Presentation at Columbia Journal of Race and Law Symposium: Strengthened Bonds: Abolishing the Child Welfare System and Re-Envisioning Child Well-Being (June 18, 2021).

<sup>7</sup> Kara Finck et al., Looking Through Client Lenses: Youth of Color, LGBT Parents and Youth, Disabled Parents, Panel Presentation at Columbia Journal of Race and Law Symposium: Strengthened Bonds (June 18, 2021).

<sup>8</sup> Catherine Sakimura and Courtney G. Joslin, for example, discuss how biases grounded in racism, sexism, and homophobia combine to make LGBTQ families of color particularly vulnerable to child welfare intervention and child removals. *See generally* Catherine Sakimura & Courtney G. Joslin, *Fractured Families: LGBTQ Families of Color and the Child Welfare System* (unpublished manuscript) (on file with the Columbia Journal of Race and Law); *See also* Ashley Albert et al., *Ending the Family Death Penalty and Building a World We Deserve*, 11 COLUM. J. RACE & L. 860, 872–78 (2021).

<sup>9</sup> *See* LAURA BRIGGS, TAKING CHILDREN: A HISTORY OF AMERICAN TERROR 11–13 (2020).

<sup>10</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, 476, 480–83 (2021).

<sup>11</sup> *See generally* Theresa Rocha Beardall & Frank Edwards, *Abolition, Settler Colonialism, and the Persistent Threat of Indian Child Welfare*, 11 COLUM. J. RACE & L. 533, 533–74 (2021).

Greenawalt<sup>12</sup> and the foster youth who spoke during the panel “Looking Through Client Lenses”<sup>13</sup> described.

These beliefs in individual pathology, which are applied to families who cannot be helped but must be separated, are fundamentally tied to racial capitalist logics. Although racial capitalism bookended the Symposium, mentioned by both Professor Roberts in her remarks<sup>14</sup> and by Bill Bettencourt in his during the last panel,<sup>15</sup> the role of racial capitalism is worth more discussion. As Don Lash wrote in his 2017 book about the system, “child welfare” serves an important ideological function under capitalism:

Real or perceived dysfunction in working-class families reduces the supply of labor power and raises the threat of a disruptive class . . . . [T]he Marxist notion of social reproduction . . . is essential to understanding why capitalism needs to regulate poor and working-class families, and therefore why it needs an ideological framework to justify that . . . . [T]he child welfare system helps to make the impoverishment and societal neglect of children tolerable to the larger population by promoting the idea that children are valued and protected. Perhaps of even greater importance, the system situates blame for the danger and harm imposed on children on their families rather than on the material conditions of their existence.<sup>16</sup>

In other words, regulating some families is necessary, and child welfare narratives provide an ideological justification for doing so. However, it is also important to note that capitalism in the United States is fundamentally a racialized system. As Charles Hale and Leith Mullings put it: “Since its inception capitalism has both profited from and actively reproduced racial difference.”<sup>17</sup> Racial capitalism, then, relegates some populations, marked by supposed “racial” differences, to the worst forms of exploitation, leaving them vulnerable to coercive state intervention.<sup>18</sup>

Direct ties between racial capitalism and child removals abound in U.S. history. Slave owners destroyed African American families to terrorize

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<sup>12</sup> Leyda M. Garcia-Greenawalt, *Guilty: How Immigrating to the United States Became a Life Sentence to Child Welfare*, Panel Presentation at Columbia Journal of Race and Law Symposium: Strengthened Bonds (June 16, 2021) (describing being told to turn off music sung in Spanish by a white foster parent).

<sup>13</sup> Finck et al., Symposium Panel, *supra* note 7 (foster youth describing losing some part of their cultural and ethnic identities as they struggle to fit into foster families).

<sup>14</sup> Roberts, *Family Policing Abolitionist*, *supra* note 5, at 460–61.

<sup>15</sup> Bill Bettencourt & Kristen Weber, *Different Year, Different Jurisdiction, but the Same Findings: Reforming Isn’t Enough*, Panel at Columbia Journal of Race and Law Symposium: Strengthened Bonds (June 18, 2021) (mentioning the need to end racial capitalism during the question and answer session).

<sup>16</sup> DON LASH, *WHEN THE WELFARE PEOPLE COME: RACE AND CLASS IN THE US CHILD PROTECTION SYSTEM* 8–9 (2017).

<sup>17</sup> Charles Hale & Leith Mullings, *A Time to Recalibrate: Analyzing and Resisting the Americas-Wide Project of Racial Retrenchment*, in *BLACK AND INDIGENOUS RESISTANCE IN THE AMERICAS: FROM MULTICULTURALISM TO RACIST BACKLASH* 29 (2020).

<sup>18</sup> For a discussion of the effects of racialized poverty and the efforts to better support families, see generally Melody R. Webb, *Building a Guaranteed Income to End the Child Welfare System*, 12 *COLUM. J. RACE & L.* \_\_ (2022).

them, making them more compliant and their labor more exploitable.<sup>19</sup> Social workers in the 1960s separated Black children from their mothers who were kicked off welfare rolls when Black labor was needed.<sup>20</sup> Boarding schools tried to wipe out Native American cultures so that their land could be used more “productively” by white settlers.<sup>21</sup> Black and Native children in reform and boarding schools were loaned to white families as laborers to help offset costs. In the nineteenth century, representatives of Societies for the Prevention of Cruelty to Children would frequently turn a blind eye to family violence if parents were otherwise hardworking.<sup>22</sup> These links continue today, making an analysis of racial capitalism essential.

#### B. Theme Two: Child Welfare Harms

The second major theme is that, despite the narrative of “saving” children, the system is fundamentally harmful. As discussed by many of the pieces, “child welfare” does not create safety but reproduces the need for intervention, often across generations. It creates intergenerational trauma, as multiple generations of families are torn apart, while it recreates the very harms it purports to address (poverty, trauma, addiction, mental health issues).<sup>23</sup> By continually intervening in only some families while supporting and protecting the privacy of others, the state paints entire communities as unworthy of support and continually recreates conditions that are then used to justify continued interventions and harms.<sup>24</sup> These systems can only offer punishment or “services” that aim to “fix” individuals (such as counseling and parenting classes), refusing to address the profound social inequalities that lie at the roots of unsafe conditions for children, and instead blaming individuals and families. These profound harms were powerfully articulated by the parents and youth who shared their stories throughout the Symposium. In short, child removal terrorizes families, and it has always been a way to assimilate and control.

#### C. Theme Three: Support and Punishment are Intertwined

The third major theme (closely related to the second) is an analysis of how, for poor families and families of color, access to the supportive services that do exist has always been tied to punishment or the threat of

<sup>19</sup> BRIGGS, *supra* note 9, at 19 .

<sup>20</sup> Claudia Lawrence-Webb, *African American Children in the Modern Child Welfare System: A Legacy of the Flemming Rule*, 76 CHILD WELFARE 9, 9–31 (1997); Taryn Lindhorst & Leslie Leighninger, “Ending Welfare as We Know It” in 1960: Louisiana’s Suitable Home Law, 77 Soc. Serv. Rev. 564, 564–84 (2003); FRANCES FOX PIVEN & RICHARD A. CLOWARD, REGULATING THE POOR: THE FUNCTIONS OF PUBLIC WELFARE 135–39 (1993).

<sup>21</sup> Beardall & Edwards, *supra* note 11, at 541–42.

<sup>22</sup> ELIZABETH PLECK, DOMESTIC TYRANNY: THE MAKING OF AMERICAN SOCIAL POLICY AGAINST FAMILY VIOLENCE FROM COLONIAL TIMES TO THE PRESENT 81–84 (1987).

<sup>23</sup> Webb, *supra* note 18, at \_\_. Shanta Trivedi and Mathew Fraidin also discuss how income supports for families would be a truly meaningful “reasonable effort” to prevent foster care placement. See generally Shanta Trivedi & Matthew Fraidin, *A Role for Communities in Reasonable Efforts to Prevent Removal*, 12 COLUM. J. RACE & L. F. 29 (2022).

<sup>24</sup> Michael Wald points out that coercive child welfare interventions are often harmful to children and their families. See generally Michael Wald, *Replacing CPS: Issues in Building an Alternative System*, 12 COLUM. J. RACE & L. \_\_ (2022). For a discussion of the harms of adoption and especially how it denies people the opportunity to pass down culture, see generally Ashley Albert & Amy Mulzer, *Adoption Cannot Be Reformed*, 12 COLUM. J. RACE & L. \_\_ (2022).

punishment. Removals and threat of removals terrorize and attempt to control Black, brown, poor, and LGBTQ folks as well as individuals with disabilities<sup>25</sup>—particularly when those groups start to assert their rights.<sup>26</sup> Mandated reporting laws create the links between systems; for example, when teachers, who are mandated reporters, call child protective services, they link schooling to family regulation. These laws require helping professionals (doctors, social workers, school officials) to report children they suspect are being maltreated, bringing them into a policing, rather than a helping, relationship with marginalized families. This point was powerfully made in several panels, but especially in the piece on schools by Brianna Harvey, Josh Gupta-Kagan, and Christopher Church<sup>27</sup> and the piece on hospitals by Clara Presler.<sup>28</sup>

#### D. Theme Four: Child Welfare is Not Separate from Other Punishment Systems

The fourth major theme that came out of the Symposium is that family policing is part of, and intertwined with, other state efforts to uphold the status quo, including white supremacy and racial capitalism: policing, mass incarceration, “welfare,” immigration, juvenile “justice,” education, and so on.<sup>29</sup> As Roberts put it in her keynote, there is a “coherent carceral machine,” which originates in slavery, settler colonialism, and genocide of Native Americans; its function is to oppress politically marginalized people in order to maintain racial capitalism and white supremacy.<sup>30</sup> Carceral logics are found in policing as well as in ostensibly “helping” systems like child welfare. As Addie Rolnick points out, although educational, criminal, and child welfare systems have been formally separate and at different times focused on different groups (such as in the late nineteenth and early twentieth centuries, when boarding schools housed Native American children, reform schools tied to criminal justice housed Black children, and private foster homes or group homes housed the children of the urban immigrant poor), their boundaries are porous, and systems have shifted focus over time.<sup>31</sup> Despite these historical changes, there are clear continuities across time as these state systems have dealt with poor and non-white children through punishment and child removal.<sup>32</sup>

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<sup>25</sup> See generally L. Frunel & Sarah Lorr, *Lived Experience and Disability Justice in the Family Regulation System*, 12 COLUM. J. RACE & L. \_\_ (2022).

<sup>26</sup> See BRIGGS, *supra* note 9, at 37.

<sup>27</sup> Brianna Harvey, Josh Gupta-Kagan, & Christopher Church, *Reimagining Schools’ Role Outside the Family Regulation System*, 11 COLUM. J. RACE & L. 575, 575–610 (2021).

<sup>28</sup> Clara Presler, *Mutual Deference Between Hospitals and Courts: How Mandated Reporting from Medical Providers Harm Families*, 11 COLUM. J. RACE & L. 733, 733–66 (2021).

<sup>29</sup> See, e.g., Stewart, *supra* note 1, at \_\_; Laroche, *supra* note 1, at \_\_.

<sup>30</sup> Roberts, *Family Policing Abolitionist*, *supra* note 5 at 467.

<sup>31</sup> Addie C. Rolnick, *Assimilation, Removal, Discipline, and Confinement: Native Girls and Government Intervention*, 11 COLUM. J. RACE & L. 811, 811–60 (2021).

<sup>32</sup> Another ostensibly “helping” system which was not much discussed during the symposium, but was implicit in the panel *Looking Through Client Lenses*, is that associated with historical practices of institutionalizing individuals with disabilities and mental illnesses. On this point, see MOLLY LADD-TAYLOR, *FIXING THE POOR: EUGENIC STERILIZATION AND CHILD WELFARE IN THE TWENTIETH CENTURY* (2017).

### E. Theme Five: Abolition, not Reform, is the Way Forward

Finally, across the entire Symposium, it was made clear again and again that the child welfare system (and the systems closely aligned to it) cannot be reformed. The speakers reminded all of us that these repressive and negative outcomes are part of the design of these systems and are not a flaw that can be fixed. In the end, “child welfare” and other ostensibly helping systems that use carceral and punishment logics work as they are supposed to. For decades, those who see the family regulation system’s harms (including many who presented at and attended the Symposium) have worked to reform the system, but very little has changed.<sup>33</sup> Instead, reforms have merely strengthened the system. The Family First Prevention Act, as Miriam Mack identifies, is a case in point.<sup>34</sup> In contrast, some of the most promising changes have come from Native American groups who have been able, to an extent, to build systems to protect children outside of state-run and federally funded child protective systems. As Theresa Rocha Beardall and Frank Edwards note, even these efforts, since they are often funded through states and are not separate from larger systems that focus on parental “unfitness” and child removal, have been less transformative than hoped.<sup>35</sup>

### F. Missing Pieces: Whiteness and Rural Areas Outside Indian Country

The analyses made across the Symposium are comprehensive, providing us with a deep understanding of family regulations systems, their origins, and their harms. However, I did see two small gaps where more analysis is needed. To be clear, these gaps speak more to where most of the important work on child welfare is currently and rightfully centered, rather than an oversight or blind spot in the Symposium. First, there was little discussion of how the boundaries of whiteness have shifted over time and how child removals have also been used to punish non-Black and non-Native groups. For example, child removals were used to punish recent Eastern and Southern European immigrants who were seen, due to cultural differences and especially their poverty, as inferior races of European or not-quite-white in the mid-nineteenth to early twentieth centuries.<sup>36</sup> Although we must center our analysis on the disproportionate harms done to Black and Native communities, adding an analysis of whiteness—particularly how its boundaries shift and are policed along lines of class—is also needed and will help us to better understand how child welfare works throughout the United States.<sup>37</sup>

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<sup>33</sup> See generally Bettencourt & Weber, *supra* note 3; Wald, *supra* note 24; Shaw et al., *supra* note 3.

<sup>34</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, 767–810 (2021).

<sup>35</sup> Beardall & Edwards, *supra* note 11, at 559–65.

<sup>36</sup> TINA LEE, CATCHING A CASE: INEQUALITY AND FEAR IN NEW YORK CITY’S CHILD WELFARE SYSTEM 19 (2016).

<sup>37</sup> Martin Guggenheim makes a similar point in his article, noting that the Adoption and Safe Families Act was driven by racial politics and the idea that families of color were mostly affected, making it easy for many to believe that these parents were “unfit” and dangerous. Once the law was in place, it would be harmful to all families caught up in child welfare. Martin Guggenheim, *How Racial Politics Led Directly to the Enactment of the Adoption and Safe Families Act of 1997*, 11 COLUM. J. RACE & L. 711, 729 (2021).



This brings me to the second area that was less discussed in the Symposium: an analysis of rural areas outside of Indian country. My current work (in its very early stages) examines how the child welfare system operates in a rural, poor, and largely white community in the Midwest, a type of child welfare system that is very understudied. I am finding both differences and continuities in the ways that poor, white families are treated as compared to Black and Native families. For example, caseworkers are, in some ways, more sympathetic to the white parents they investigate as compared to the caseworkers I studied in New York. Patterns of trauma are acknowledged; the agency can be slightly more flexible in what assistance it offers to parents (e.g., they occasionally might be able to help with housing); and caseworkers will acknowledge that timelines set out in the Adoption and Safe Families Act (“ASFA”) are unfair for parents battling addiction. Alongside this sympathy, however, caseworkers also blame parents for their own poverty and deeply stigmatize them. Use of and addiction to methamphetamine (the most common issue faced by these families) is discussed by caseworkers in ways that are very similar to how crack cocaine was discussed by caseworkers in New York. Both drugs are described through the language of “epidemics,” and mothers in both cases (fathers are rarely discussed) are described as monsters, women whose addiction completely overrides any maternal instinct and leads them to do anything just to get the drug. As with other drug scares, the meth “epidemic” is tied to racial anxieties. Meth is presented as endangering entire rural communities and becomes emblematic of perceived declines in white status and privilege.<sup>38</sup>

Through conversations with caseworkers, it has become apparent that intergenerational poverty and meth use combined are seen as creating, almost automatically, unfit parents whose children must be removed from their care. To an extent, the issues faced by many of the families in contact with child welfare in this rural community override the benefit of the doubt these parents get from their whiteness. Although the term is not used, families are described in ways that echo descriptions of “white trash” in other contexts. “White trash” is a term that serves to draw boundaries, along lines of class, around who is fully white; it has historically been linked to a sense of the innate, biological inferiority of poor whites.<sup>39</sup> Families here are stigmatized in ways that mark them as unlikely to change and in almost automatic need of intervention since they are fundamentally unable to raise children.

The assumptions made about these white families living in poverty sweep them into a system that works much like it does in urban areas: needed services are scarce, and help to escape poverty is practically nonexistent. Caseworkers strictly follow ASFA timelines, leading to many

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<sup>38</sup> Naomi Murakawa, *TOOTHLESS: The Methamphetamine “Epidemic,” “Meth Mouth,” and the Racial Construction of Drug Scares*, 8 *DU BOIS REV.* 219, 223 (2011); William Garriott, *Methamphetamine in Rural America: Notes on Its Emergence*, 5 *ANTHROPOLOGY NOW* 27, 27–35 (2013); Travis Linnemann & Tyler Wall, *‘This is Your Face on Meth’: The Punitive Spectacle of ‘White Trash’ in the Rural War on Drugs*, 17 *THEOR. CRIMINOL.* 315, 315–34 (2013).

<sup>39</sup> See generally MATT WRAY, *NOT QUITE WHITE: WHITE TRASH AND THE BOUNDARIES OF WHITENESS* (2006) (elaborating on this argument and tracing the cultural history supporting it).

terminations of parental rights. Caseworkers also told me that they have been actively working to strengthen the cooperative relationship between the child protective services department and the local police, mirroring practices in other locations. However, legal protections for these rural families are less robust than those that exist for families of color in some large urban areas. Parents do not have attorneys assigned to them so most of them go through the process of attempting to reunify with their children with only the guidance of caseworkers who are often “concurrent planning” for termination as well as reunification. Because terminations of parental rights require a jury trial in this state (which is not the case in most others), and caseworkers perceive juries as improperly “pro-parent,” caseworkers work very hard to avoid a trial and push parents to relinquish their rights voluntarily. Again, we see the idea that some parents are so pathological that removal is the only safe option being reinforced by policy and used to police and further traumatize. Including poor white families in our analysis, while still centering Black and Native families, can allow us to more precisely understand how race and class intersect. This system creates harms for everyone involved in it, and expanding our lens to see all of it might help us build a larger movement for change.

### III. ROADMAP FOR NON-REFORMIST REFORMS

Throughout the panels, analysis was tied to concrete actions and policy proposals that ultimately aim to dismantle rather than reform the system. In listening to these ideas, it seems clear there is a platform of “nonreformist reforms” for change and, most importantly, there are many organizations and people around the country already doing this important work. The pain of family separation is already being turned into power, into organizing, into activism, and into policy change. Again and again, we heard about how communities affected by child welfare are working to change it, and it is clear that those who have been affected must lead. Their experiences and knowledge must drive the movement, and their leadership should be supported by the work of collaborators and professionals (attorneys, social workers, teachers, and scholars) who can refuse to go along with the status quo. In summarizing and outlining what emerged for me as a platform, I will group specific actions into four categories: narrative change, non-reformist reforms, ways to build alternatives, and ways to begin healing.

#### A. Narrative Change

First, work to change the public narrative around child welfare must continue. During the Symposium, there was practically universal agreement that we must stop using the terms “child welfare” or “child protective services” since these terms act as propaganda to shore up support for the system and continue the false narrative that the system serves to improve the lives of children. Many different names were used (e.g., the family regulation system, the family policing system, the child removal system, the foster care system), however, and I think shared terminology would make this message stronger. In addition, the work, already being done by activists and scholars, of providing a true narrative about this system and its harms, which concretely links it to other punitive systems that have gotten more attention (mass incarceration and policing),

should also continue.<sup>40</sup> The headlines—monstrous parents and heart-warming tales of adoption—must change. We must continue to demonstrate that inequality, not pathological parents, harms children. We must share all the reasons that children are removed, including for choices routinely made by middle-class and white families.

This work of publicizing and educating also needs to extend to professionals and those entering these professions—especially attorneys, social workers, and mandated reporters. They must better understand the harms that are likely to follow a report. As one participant asked: What would it mean to train professionals to engage in mass refusal? Efforts to train reporters to not call in a case “just to be safe” but to instead help connect families to resources should continue. We should work to make sure mandated reporters know what is available and who, outside of child protective services, can help. Perhaps a website like “dontcallthepolice.com” can be created to provide a list of such resources. Educators can also work to motivate social workers who truly want to help children to find careers outside child welfare; to emphasize macro causes of child harms; to root out racist, classist, sexist, homophobic, and transphobic content and beliefs from their curriculum; and to diligently challenge these beliefs when they come up in their classrooms.

## B. Non-Reformist Reforms

The second set of recommendations revolves around support for families currently caught up in the system and steps to shrink and dismantle the system. First, all parents, starting at the investigation stage, should have high-quality legal defense by practitioners who know the harms of the system and who bring an anti-racist and abolitionist lens to their work. Second, as Ismail advocated during the “Family Surveillance” panel, if caseworkers are already policing, they should be treated as police legally.<sup>41</sup> They should have to inform parents of their rights, should be held to stricter standards in their investigations (evidence collected without parents knowing their rights or without probable cause should be thrown out), and should not be able to remove children without court orders in the vast majority of cases.<sup>42</sup> Anthropologist Jessica Lopez-Espino’s work<sup>43</sup> shines a bright light on the problems with the standards of evidence used in family court. These rules might also be changed to better protect parents and reduce removals. Although it could be seen as a “reformist reform,” even efforts to apply existing law can have benefits for families, as seen in the way the Judge Ernestine Gray was able to dramatically shrink the foster care population in New Orleans.<sup>44</sup> These actions, taken on a broader

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<sup>40</sup> See generally Shaw et al., *supra* note 3; Weber & Bettencourt, *supra* note 3; Albert et al., *supra* note 8; Albert & Mulzer, *supra* note 24.

<sup>41</sup> Tarek Ismail, The Consent of the Compelled: Child Protective Agents as Law Enforcement Officers, Panel Presentation at Columbia Journal of Race and Law Symposium: Strengthened Bonds (June 17, 2021).

<sup>42</sup> Frunel & Lorr, *supra* note 25, at .

<sup>43</sup> Jessica López-Espino, “Minimally Fit” Parenting Is Not “Good” Parenting: Challenging Beliefs About Parental Care in Child Welfare Cases, Presentation at Columbia Journal of Race and Law Symposium: Strengthened Bonds (June 18, 2021).

<sup>44</sup> See generally Melissa Carter, Christopher Church, & Vivek Sankaran, *A Quiet Revolution: How Judicial Discipline Essentially Eliminated Foster Care and Nearly Went Unnoticed*, 12 COLUM. J. RACE & L. \_\_ (2022).

scale, might help limit the numbers of children who are removed and begin to shrink the system, provided, and this is key, that attorneys are trained and practicing with “nonreformist reform” in mind.

In addition to these legal changes, funding streams that incentivize removals must be changed. Rather than funding foster care and preventive services, resources should be shifted to communities and to service providers that are outside this surveillance system so that families can get support without the threat of child removal. This money must be under the control of communities who can decide how and where to spend it. In addition, as Webb discusses in her article,<sup>45</sup> Temporary Assistance for Needy Families (“TANF”) and child support payments should not be diverted to foster families. It cuts parents off from much needed material support at exactly the time that they need these resources to prove they are a fit parent. Along with these policy changes, lawyers should begin to demand income help for families more regularly and to contest “services” that provide little help while continuing to surveil. Attorneys should start arguing that the only “reasonable efforts” to prevent removals are those that address the root cause of poverty and lack of resources, as Fraidin and Trivedi argue.<sup>46</sup>

In addition to changes in funding, the practice of terminating parental rights should end. Instead, other options to ensure that children retain ties with families and communities (kinship care, guardianship) should be used.<sup>47</sup> This is another place where Native American tribes provide models of how to care for children without the legal fiction of ending a parents’ rights—an extremely traumatic process for parents, children, families, and communities.

Child abuse registries must also be tackled for the harms they create. State registries are frequently used to deny parents jobs, cutting off potential sources of income. These practices recreate poverty and intergenerational harm by making it difficult for parents to escape surveillance and the threat of removal. A campaign like the “ban the box” campaigns mounted by activists for criminal justice reform could be used to help end the practice of automatically denying parents jobs because of past Child Protective Services (“CPS”) involvement.<sup>48</sup> Changing laws to limit the types of cases that end up on registries is also important. For example, activists in New York successfully lobbied to make it more difficult for parents to end up on the registry (essentially requiring some evidence before parents are listed), limited the time they would be listed, and made it easier for parents to petition to remove their name.<sup>49</sup> These efforts should continue in other locations.

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<sup>45</sup> Webb, *supra* note 18, at \_\_; *see also* Caitlyn Garcia & Cynthia Godsoe, *Divest, Invest, and Mutual Aid*, 12 COLUM. J. RACE & L. \_\_ (2022).

<sup>46</sup> Trivedi & Fraidin, *supra* note 23, at 38–43.

<sup>47</sup> *See* Albert et al., *supra* note 8, at 883–86.

<sup>48</sup> BAN THE BOX CAMPAIGN, <https://bantheboxcampaign.org/> [<https://perma.cc/HVB3-2P7Y>].

<sup>49</sup> Keyna Franklin & Sara Werner, *New Law Reforming NY State Central Registry Will Provide Justice and Relief to Families*, RISE (Apr. 16, 2020), <https://www.rise-magazine.org/2020/04/scr-reforms/> [<https://perma.cc/7EST-FHME>].

A campaign to end predictive analytics in child welfare is also needed, as Abdurahman argues.<sup>50</sup> Systems that use “big data” to assign risk scores and predict who might need intervention from the state (in child welfare, welfare, and criminal justice) build biases into the decision-making process<sup>51</sup> since these computerized assessments are “based on data taken from a social context that has already been shaped by hierarchies of race, class, and gender.”<sup>52</sup> These systems then work together to become a “digitized carceral state”<sup>53</sup> or “a coherent carceral form of governance that extends far beyond prisons to deal with problems caused by structural inequalities by punishing the very people suffering from them most.”<sup>54</sup> These efforts to use “big data” to police and control must be resisted.

Finally, policy and law changes should be made so that cases of neglect are not reported to CPS but instead referred to services provided by communities, a change that could dramatically decrease the number of cases.<sup>55</sup> As Michael Wald reminds us, the current system frames child harm as stemming from the actions of individual parents, ignoring that most cases labeled “neglect” have their roots in larger social inequalities. Reporting to community-based services rather than child welfare could dramatically shift child welfare responses towards addressing underlying causes rather than punishing parents while providing needed resources to community-based agencies. This would be a step towards ending the mandatory reporting system all together and disentangling support and policing. In addition to changing mandatory reporting, ASFA, which according to Martin Guggenheim is “the worst law affecting families ever enacted by Congress,”<sup>56</sup> should be repealed since it incentivizes removals and adoption while embodying the idea that certain families should not be entitled to support.

### C. Building Alternatives

The third set of recommendations revolves around how we can start to build a world where all families are supported without needing to go through the harmful family regulation/policing system.<sup>57</sup> We must build alternatives that support families outside of the state and work towards mutual aid and other ways to provide “solidarity, not charity.” For example, schools could be removed from the web of carceral control through eliminating “school resource officers” who turn disciplinary matters into criminal justice matters and ending the practice of reporting children to child welfare “just to be safe.” Instead, schools should be a conduit to link

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<sup>50</sup> J. Khadijah Abdurahman, *Calculating the Souls of Black Folk: Predictive Analytics in the New York City Administration for Children’s Services*, 11 COLUM. J. RACE & L. 75, 75–110 (2021).

<sup>51</sup> See generally VIRGINIA EUBANKS, *AUTOMATING INEQUALITY: HOW HIGH-TECH TOOLS PROFILE, POLICE, AND PUNISH THE POOR* (2017).

<sup>52</sup> Dorothy E. Roberts, *Digitizing the Carceral State*, 132 HARV. L. REV. 1695, 1708 (2019).

<sup>53</sup> *Id.* at 1699.

<sup>54</sup> *Id.* at 1698.

<sup>55</sup> Wald, *supra* note 24.

<sup>56</sup> Guggenheim, *supra* note 37, at 711.

<sup>57</sup> See generally Anna Arons, *An Unintended Abolition: Family Regulation During the COVID-19 Crisis*, 12 COLUM. J. RACE & L. F. 1 (2022); Garcia & Godsoe, *supra* note 45; Trivedi & Fraidin, *supra* note 23.

families to supportive services (food pantries, drug treatment, mental health treatment, etc.) in their communities.<sup>58</sup> Similar steps to disentangle hospitals and healthcare from family surveillance are also needed.<sup>59</sup>

As Lauren van Schilfgaarde and Brett Lee Shelton suggest,<sup>60</sup> rather than asking who is at fault if a child is harmed, we can shift our thinking, as many Native American groups already do, and ask: What does this child need to be a full-fledged member of the community? Who can help? Communities should adopt practices that involve everyone who can contribute to a resolution in a discussion of how to repair the damage and move forward outside of repressive state systems. We should also find ways to make the supports that white, middle-class families already have—childcare, stable income, health care and mental healthcare, education—universal. These resources either shield privileged families from some of the worst family issues or help them through the same crises that poor, Black and brown families face (mental health, addiction, violence, etc.) without the threat of child removal. The resources families need to be stable and thrive must become universal and not tied to employment, and this would remove the stigma attached to “public” versus “private” services. Universal basic income, universal health care, and education fully funded and available to all must be our goal.

Here, again, an analysis of racial capitalism and how to change it must be part of the conversation. As has already been discussed, our society has not had a universal safety net but has instead made the political choice again and again to reserve supportive services for white folks or, more recently, to tie support firmly to middle-class employment. In contrast, public services are stingy, bring stigma, and are tied to punishment. To change this, we must build multi-racial and cross-class coalitions to build universal support systems and end poverty. Racial capitalism will, in the end, need to be dismantled to allow a society where everyone can flourish to grow.

#### D. Steps to Begin Healing

Finally, ways to start to heal the harms already perpetuated by child removals must be pursued. Peacemaking and talking circles, restorative justice, and truth and reconciliation commissions are all models we can look to as we find ways to tell the truth about what has happened and begin healing. Reparations are also needed to help repair the damage.

### IV. CONCLUSION

Although all of this seems daunting, I am hopeful that these changes can be accomplished, and I see them as more doable than it might seem at first glance. A few of the presentations and pieces provide glimpses of what another way can look like. For example, Anna Arons in her piece, alongside Caitlyn Garcia and Cynthia Godsoe in theirs, discusses how the COVID-19 pandemic brought about a dramatic decrease in reports, the

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<sup>58</sup> Harvey, Gupta-Kagan, & Church, *supra* note 27, at 604–605.

<sup>59</sup> See generally Presler, *supra* note 28, for an analysis of how these two institutions are intertwined.

<sup>60</sup> Lauren van Schilfgaarde & Brett Lee Shelton, *Using Peacemaking Circles to Indigenize Tribal Child Welfare*, 11 COLUM. J. RACE & L. 681, 702–708 (2021).

expansion of mutual aid groups, and a redistribution of resources to families (i.e., stimulus checks and expanded unemployment benefits), all of which were decoupled from punitive systems.<sup>61</sup> Judge Ernestine Gray's work is a similar example of dramatic change. By forcing the child welfare agency in New Orleans to explain and prove why children would face irreparable harm if not removed, and by keeping the harm caused by removal and foster care in mind when making decisions, she was able to shrink the foster care population to twenty children at one point and to dramatically shorten the time that children spent in care.<sup>62</sup> The work of activists around the country also provides many examples of concrete changes that have already happened.

To be sure, this work will be challenging and will face resistance from entrenched interests who benefit from the status quo. As Guggenheim pointed out in his presentation, the "progressive establishment" largely supports much of child welfare.<sup>63</sup> Service providers and social workers who rely on this system for employment will resist; racism and classism will continue to allow many in our society to refuse to sympathize with parents caught up in the system; and the very wealthy and the politicians they currently lobby will vehemently resist universal support systems. Although it will take time, this Symposium was an important step in creating a basis for change and helping those who have been affected by the system to take on even more prominent leadership roles. We must all continue to look to these activists who are already doing the work and find ways to amplify and support their work.

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<sup>61</sup> Arons, *supra* note 57, at 13–18; Garcia & Godsoe, *supra* note 45, at \_\_\_. Despite dramatic claims that an epidemic of abuse would occur during lockdowns and fears that abuse would be missed as mandated reporters weren't watching families, these things didn't (unsurprisingly) come to pass. Even New York City's child welfare agency, the Administration for Children's Services, has recently admitted that children stayed safe. *The Child Welfare System During COVID-19: Oversight Hearing Before the Comm. on the General Welfare*, N.Y. City Council (June 14, 2021) (written testimony of David Hansell, Comm'r, Admin. For Child. Servs.).

<sup>62</sup> Carter, Church, & Sankaran, *supra* note 44, at \_\_\_.

<sup>63</sup> 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, Panel Presentation at Columbia Journal of Race and Law Symposium: Strengthened Bonds (June 17, 2021).